

22-6044

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. _____

100%
ORIGIN

IN THE
SUPREME COURT OF THE UNITED STATES

JERLARD DEREK REMBERT Petitioner,

vs.

STATE OF FLORIDA, Respondent

On Petition for A WRIT OF CERTIORARI To The UNITED STATES SUPREME
COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JERLARD DEREK REMBERT
712 H STREET N.E. SUITE # 1397
WASHINGTON DC, 20002
Phone 727-565-5506

i . Question

Presented where the Lower Court held a de novo determination that the 1983 complaint at issue, claiming constitutional violations, was plaintiffs failing to show cause as to why the court should not dismiss this action as barred by the heck Doctrine or the statute of limitations, not and that, as a result, it lacks subject jurisdiction to resolve the claim. The plaintiff has claimed incompetency in his 1983 civil rights complaint which would violate due process, a basic and fundamental principle, subjecting him to an 8th amendment violation in his incarceration from 1995 to 2013. A defendant's right not to be tried or convicted while incompetent is a basis for federal subject matter jurisdiction. where federal law creates a cause of action federal courts automatically have subject jurisdiction to hear the case.

The plaintiff asserts, in a de nova determination, a district court's application of the law to the facts in arriving at its legal conclusions are based on federal law and the constitution. There is no statute of limitations when raising constitutional violations with a 1983 civil rights complaint.

Certificate of interested person and corporate disclosure statement

I, Jerlard D.Rembert, Petitioner in this proceeding hereby Disclose the following pursuant to the court order and hereby serve certificate of interested persons and corporate disclosure statement ;

1. Eleventh Circuit Court Of Appeal
2. Circuit Judges WILSON, LAGOA, and ANDERSON
3. United States District Court Middle District Of Florida
4. United States District Judge Charlene Edwards Honeywell
5. Magistrate Judge Sean P. Flynn
6. Attorney General of the state of Florida defendant
7. Jerlard D. Rembert Plaintiff
8. Office Of Attorney General

No publicly related company or Corporation has an interest in the outcome of this lawsuit

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IV. Petition for Writ Of Certiorari

Jerlard Derek Rembert, pro se litigant respectfully petitions this court for a writ of certiorari to review the judgment of the 11th Circuit court of Appeals dated 10/7/2022.

V. Opinions Below

The decision by the 11th circuit Court of Appeals denying Rembert's direct appeal is reported as Jerlard Derek Rembert v. Office of the Attorney General, et al., No. 22-11167 (11th Cir. 2022) case opinion unpublished from the US Court of Appeals for the Eleventh circuit. That order and Justice are WILSON, LAGOA, and ANDERSON, Circuit Judges attached in Appendix ("App.") at 5 - 1

VI. Jurisdiction

Mr. Rembert's appeal to the 11th circuit court of appeals was denied on 10/7/2022. Mr. Rembert invokes U.S. Supreme Court's jurisdiction under 28 U.S.C. § 1251, having timely filed this petition for a writ of certiorari within ninety days of the Eleventh Circuit Court's judgment.

VII. Constitutional Provisions Involved

United States Constitution, Amendment VIII

excessive bell should not be required nor excessive lines imposed nor cruel and unusual punishment inflicted.

United States Constitution, Amendment XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

VIII. Statement of Case

1. Convicted while incompetent

The plaintiff was arrested on December 2nd, 1990, and charged with two counts of first-degree murder in Pinellas County Florida. The plaintiff was adjudicated incompetent to proceed on September 23rd, 1992 with the court's order entered. The plaintiff was convicted in the sixth judicial circuit court in Pinellas County Florida on February 13th, 1995 on two counts of second-degree murder without being found competent. Plaintiff was in prison between February 16th, 1995, and January 31st, 2013. During that time The plaintiff exhausted both state and federal remedies claiming incompetency and violations of his rights under the 8th and 14th amendment to the United States Constitution with 3.800, 3.800 (A), and 3.850 motions and habeas relief and both state and federal court which were all denied or dismissed. plaintiff filed a lawsuit against the state of Florida under 42 USC 1983 alleging that he was convicted in this Florida 6th judicial circuit court on February 13th, 1995 on two counts of 2nd-degree murder while incompetent to proceed in violations of his rights under the 8th and 14th amendment to the United States Constitution and violation of Florida rules of criminal procedure 3.212(b).

2. Direct appeal

On January 11th, 2022 The Magistrate Judge ordered the plaintiff to show cause as to why the courts should not dismiss his complaint as barred by either the heck doctrine or the statute of limitations. The plaintiff responded to that order stating that The plaintiff did exhaust state remedies and filed state and federal habeas corpus raising the 8th and 14th amendment violations of his constitutional rights in his Pinellas county conviction. The plaintiff was adjudicated incompetent to

proceed, not found competent to proceed in this case, and was convicted while incompetent to proceed. The plaintiff is no longer incarcerated making him ineligible for Habeas Corpus relief and the Federal 1983 Civil rights complaint for damages is the only remedy. The plaintiff invoked federal supplemental jurisdiction 28 U.S.C. 1337 ' Subject Matter Jurisdiction' which allows a litigant an opportunity to pursue complete relief in federal court arising under the constitution. The Magistrate Judge issued a report and recommendation in which he recommended that the court dismiss the complaint, The district judge adopted the magistrate judge's report and recommendation and dismissed the plaintiff's 1983 complaint with prejudice. The plaintiff appealed to the 11th circuit court of appeals. The 11th circuit court of appeals Per Curiam Affirmed the district court's order on 10/7/2022, stating that Rembert was attempting to challenge the validity of his conviction and incarceration but had not demonstrated that his conviction had been overturned. Moreover, the district court found that the statute of limitations also bars Rembert's action.

IX. REASONS FOR GRANTING THE WRIT

To avoid erroneous deprivations of the right to be free from cruel and unusual punishment and the right to due process this Court should clarify the standard in the 11th circuit court of appeals decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, " A defendants right not to be tried or convicted while incompetent and Subject Matter Jurisdiction " as determined by the Supreme Court of the United States, without any evidence outside the record. ("[T]he failure to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial" (citing *Pate v. Robinson*, 383 U. S. 375, 385 (1966))." The procedure in Florida to determine competence is Florida statute 3.212 (b) finding of competence" ... The court shall first consider the issue Of the defendants competency to proceed the court shall enter it's order so finding and shall proceed. One of the basic and fundamental principles coming down to us from the common law is that a person may not be tried, sentenced, or executed while insane. *Perkins v. Mayo*, 92 So.2d 641, 644 (Fla.1957); *Brock v. State*, 68 So.2d 344 (Fla.1954); *Horace v. Colver*, 111 So.2d. 670 (Fla. 1959). The conviction of a defendant while mentally incompetent violates due process. Under 18 U.S.C. § 4241(a), the court must order a competency hearing from the state of Florida.

The lower court held a de novo determination that the 1983 complaint at issue, claiming constitutional violations, was the plaintiff's failure to show why the court

should not dismiss this action as barred by heck doctrine or the statute of limitation, not and as a result, it lacked subject matter jurisdiction to resolve the claim. Where federal law creates a cause of action federal courts automatically have subject jurisdiction.

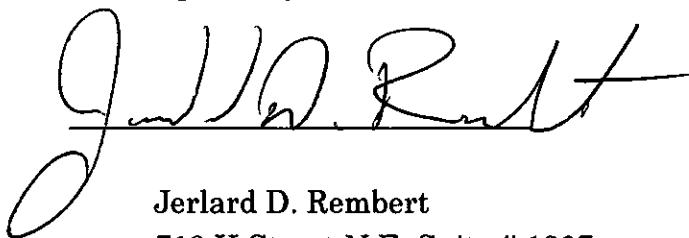
Heck doctrine

The petitioner was in prison from 1995 until 2013. The petitioner seeks compensation for the sentence served based on violations of his rights and not challenging the validity of his confinement, the petitioner is no longer incarcerated. Existing Supreme Courts precedents do not require barring 1983 damage claims when the plaintiff cannot pursue habeas relief, in fact, the case law underlying rationale counsels against such conclusions. Heck V Humphrey 512 US 477. 114 S. CT. 2364, (1994)

X. CONCLUSION

WHEREFORE, for the foregoing reasons, Petitioner prays that his petition for Writ Of Certiorari is read and granted.

Respectfully Submitted,



J. D. Rembert

Jerald D. Rembert
712 H Street N.E. Suite # 1397
Washington DC, 20002
Phone:727-565-5506