No. 22-6187

ORIGINAL

FILED
OCT 24 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

DEMETRIO LIFRIERI — PETITIONER
(Your Name)

vs.

JAMES STINSON — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR SECOND CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Demetrio Lifrieri, No. 93-A-7119
(Your Name)

Green Haven Corr. Facility
(Address)

P.O. Box 4000, Stormville,N.Y.12582
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

1. Was petitioner's right to a fair trial compromised by the admission of the "unlawfully obtained evidence" at his murder prosecution?

2. Was petitioner's right to privacy violated by the police unlawfully entering a gated parking area to seize the lawfully parked automobile in plain view?

3. Was petitioner's Fourth Amendment right violated by the police breaking and entering a private parking area to seize his automobile without a warrant?

4. Was petitioner's Fourth Amendment right violated by the police entering the enclosed parking lot and breaking into the trunk of the legally parked automobile where they removed two plastic bags containing the bodies of the victims?

5. What remedy is available to petitioner if he has not received a "full and fair" opportunity on the litigation of his Fourth Amendment right in State Court, other than the suppression of the evidence?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Lifrieri v. Stinson, 2022 WL 801209, March 15, 2022
Lifrieri v. Stinson, 2009 WL 2413400, July 31, 2009, Not Reported
Lifrieri v. Stinson, 2008 WL 2323378, April 1, 2008, Not Reported
Lifrieri v. Stinson, 2003 WL 27390663,August 29,2003,Not Reported
People v. Lifrieri, 181 A.D.3d 715, 117 N.Y.S.3d 623, 3/11/2020
People ex rel Lifrieri v.Lee, 116 A.D.3d 720, April 2, 2014
People v. Lifrieri, 230 A.D.2d 754, N.Y.S.2d 172
People ex rel Lifrieri, 24 N.Y.3d 952, September 23, 2014
People v. Lifrieri, 89 N.Y.2d 865, 675 N.Y.S.2d 1241, 11/12/1996
People v. Lifrieri, 36 N.Y.3d 930, November 19, 2020
People v. Lifrieri, 93 N.Y.2d 854, 710 N.E.2d 1101, 2/1/1999
People v. Lifrieri, 28 N.Y.3d 971, 66 N.E.3d 5, 9/2/2016
People v. Lifrieri, N.Y.3d 814, 855 N.E.2d 805, August 25, 2006
People V. Lifrieri, 15 N.Y.3d 921, 939 N.E.2d 814, 11/29/2010
People etc ex Lifrieri v. Lee, 19 N.Y.3d 898, 2012 WL 716551
People ex rel Lifrieri V. Lee, 19 N.Y.3d 1014,976N.E.2d 237, 2012

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STATUTES AND RULES

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was February 9, 2022.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 25, 2022, and a copy of the order denying rehearing appears at Appendix A(1).

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including October 24, 2022 (date) on August 19, 2022 (date) in Application No. 22A156.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. 22A156.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S.C.A. Constitutional Amendment IV (Searches and Seizures):

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oaths and affirmation, and particularly describing the place to be searched and the persons or things to be seized."

STATEMENT OF THE CASE

Petitioner's case arose out of the investigation of his employer for the importation and distribution of drugs originating in South America and the purveying of various goods out of the New York piers.

Petitioner was arrested at the door step of his apartment without a warrant and accused of committing two murders, and for refusing to answer questions or cooperating with the Assistant United States Attorney's investigation, while at the same time looking for information into the murders that petitioner was being accused of participating.

He was eventually charged and prosecuted for the murders. He was tried and convicted, and in August of 1993 he was sentenced to two consecutive terms of twenty five years to life in State Prison. The Appellate Division, Second Department affirmed his conviction in People v. Lifrieri, 230 A.D. 2d 54 (August 5, 1996), and the New York Court of Appeals denied review in People v. Lifrieri, 89 N.Y.2d 865, 653 N.Y.S. 2d 288 (November 12, 1996).

For the next twenty five years, petitioner made several State and Federal challenges to what he always believed to be an unlawfully obtained conviction, but they were all rejected by the various State and Federal Courts.

1. In 1997, appellate counsel submitted a C.P.L. 440.10 Motion in his behalf, asking for (1) the appointment of counsel, (2) the appointment of an investigator and (3) vacatur of judgment of conviction pursuant to CPL 440.10 or for a hearing.

2. In November of 1997, petitioner filed a writ of habeas corpus in the Eastern District of New York, arguing more than twenty different issues. That petition was pending in the District Court for more than five years and was transferred to a number of different Judges, until the Honorable Judge Jack B. Weinstein held a hearing, and on August 19, 2003, appellant's petition was denied in a written decision; please see Lifrieri v. Stinson, 2003 WL 27390663, (August 29, 2003).

3. In June of 1998, petitioner filed a second petition pursuant to CPL 440.10 for vacatur of his conviction on the ground that he was not advised of his right to speak and get assistance from the Italian Consulate. The motion was denied by the Trial Court on October 9, 1998, and the Appellate Division denied petitioner's leave to appeal.

4. On August 4, 2005, petitioner pro se filed a CPL 440.10 to vacate his conviction on the ground that, during his trial evidence was improperly admitted, and that he was prohibited from calling and cross-examining witnesses. On December 2, the Court denied appellant's motion, and the Appellate Division denied him leave to appeal; 7 N.Y.3d 814, 822 N.Y.S.2d 489 (March 25, 2006).

5. On April 17, 2008, petitioner submitted his first Rule 60(b) Motion in the Eastern District of New York, challenging the District Court's Decision of his writ of habeas corpus No. 97-cv-6868 (JBW), 03 Misc. 0066; the Court appointed counsel and set a hearing date, 2008 WL 232338 (JBW); however, counsel never showed-up on the day of the hearing, and thus the hearing was postponed. New counsel was appointed and a hearing was held on July 31, 2009, which was also denied, 2009 Wl 2413400 (JBW).

6. Upon the denial of his Rule 60(b) motion by the District Court and the refusal to issue a COA, petitioner submitted a request for a Coertificate of Appealability from the Second Circuit Court of Appeals, which was also denied saying that petitioner's action was more an attempt to a second successive petition rather than a challenge to the integrity of his writ of habeas corpus

7. Next petitioner returned to the State Court by submitting a state writ of habeas corpus challenging his unlawfully obtained conviction. The Appellate Division, Second Department affirmed in People etc. ex rel. Lifrieri v. Lee, 116 A.D.3d 20, and leave to appeal denied; People ex rel. Lifrieri v. Lee, 24 N.Y.3d 952, (9/23/14), leave to appeal dismissed as untimely. Motion for reargument of motion to appeal denied, 24 N.Y.3d 1039 (11/24/14).

8. In 2015, petitioner submitted a CPL 440.10 motion on actual innocence which the trial court promptly denied, and the New York Appellate Courts denied as well, see People v. Lifrieri, 28 N.Y.3d 91, 43 N.Y.S.3d 259 (9/2/16). Appellate Division, Second Department 216 N.Y. Slip Op 74299(U) (Kings)

9. On October 19, 2017, petitioner moved for reconsideration of his Rule 60(b) motion rejected by the District Court in 2009, adding to his petition the actual innocence issue. The District Court appointed counsel for petitioner and held a hearing on March 20, 2018. At the hearing, petitioner's counsel only argued the trial court's failure to suppress the evidence obtained in the unlawful search of the automobile in violation of the Fourth Amendment, which set the basis of these proceedings. Please see Appendix "E"-"F"

10. On February 20, 2019, petitioner filed a motion in the District Court for Reconsideration of Judge Weinstein's March 18, 2018 Decision/Order of petitioner's Rule 60(b) motion, as a result of the evidence adduced at the hearing which supported petitioner's contention that his Fourth Amendment had been violated by the police and the trial court's refusal to suppress the unlawful evidence used against him, and the failure of appellate counsel to properly raise the issue on appeal; the motion was denied and dismissed on March 11, 2019. Appendix "F"

11. As a result, petitioner again moved in New York Supreme Court with a writ of error coram nobis to vacate his conviction on the ground of ineffective assistance of appellate counsel for failing to properly argue the Fourth Amendment violation on direct appeal. The Court denied the motion in March of 2020, People v. Lifrieri, 181 A.D.3d 715, and leave to appeal was denied, 36 N.Y.3d 930 (2020).

12. Subsequently, petitioner filed a new Rule 60(b) motion in January of 2021, regarding Judge Weinstein's denial of the Reconsideration motion, and the denial of his original writ of habeas corpus in 2003, when Judge Weinstein first dismissed the unlawful search violation of the Fourth Amendment, based on the decision in Stone v. Powell, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976).

13. It appears that petitioner's case was reassigned to Judge Ann M. Donnelly who construed the Rule 60(b) motion as a successive habeas petition, thus ruling that the District Court lacked juridiction and on May 21, she denied the petition; see Memorandum Decision and Order, No. 97-cv-6868(AMD). Appendix "E"

14. Petitioner only received Judge Donnelly's Decision on or about July 26, 2021, and that was only after he had written the Court to inquire on the status of his motion. Subsequently, realizing that the time to respond was running out, petitioner submitted an application for the extension of time to respond, but the Court rejected his application as well on September 10, 2021, never addressing the issue, or issuing a COA certificate. Please see Judge Donnelly's Orders on Motions Lifrieri v. Stinson, No. 1:97-cv-6868-AMD, Dated 9/10/2021. Appendix "C"

15. It appears that after petitioner filed a Notice of Appeal, and a request for a COA from the Second Circuit Court of Appeals, the issue was referred back to the District Court; thus, Judge Donnelly on January 7, 2022, issued an Order advising the petitioner that the Second Circuit "will not act on a request for a [COA] unless the district court has denied a COA", and therefore, Judge Donnelly denied the COA, saying that the petitioner had failed to make a "substantial showing of the denial of a constitutional right". Appendix "B"

16. On February 9, 2022, the Second Circuit Court of Appeals Denied and Dismissed petitioner's COA request No. 21-2467, because "Appellant had failed to show ... that his petition stated a valid claim of the denial of a constitutional right." On March 16, 2022, the Circuit Court issued the Mandate.
See Appendix "A"(1) and (2).

17. Petitioner, again wrote District Court Judge Donnelly another letter, which she construed it as a Reconsideration Motion under Rule 60(b) of the Federal Rules of Civil Procedure

In her March 15, 2022, Memorandum and Order, Judge Donnelly reaffirmed her position, that petitioner's reconsideration motion does not warrant relief because "petitioner has not identified any legal or factual issue." Judge Donnelly, however, is again ignoring the search and seizure issue, in violation of the Fourth Amendment that was discussed at length during the March 20, 2018 District Court hearing, which discussions again support petitioner's position. Please see Judge Donnelly's Memorandum and Order in Appendix "B".

18. On May 25, 2022, the Second Circuit Court of Appeals denied petitioner's request to recall the Mandate which he had already submitted with the Court, ahead of the Court's Decision and Order on No. 21-2467, denying appellant's Reconsideration or Reconsideration en banc. "A"

19. Petitioner has also included the section of transcripts from the April 1993 trial court hearing reflecting the suppression hearing with regards to the search and seizure of petitioner's automobile in violation of the Fourth Amendment, where the trial judge had clearly declared the search a "flagrant violation." Moreover, the court was fully aware of the search violation, when he also ruled it a "waiver" However, he also stated into the record, that the evidence could be "admitted at this hearing", but wasn't sure it could be used at the trial, being that the defense had also claimed 7.10 violation because the evidence also showed defendant already had counsel when he had made the statements. "H

20. Again, due to the delays in the mail delivery, petitioner was forced to request an extension of time from the United States Supreme Court, and on August 19, 2022, the Honorable Justice Sotomayor granted petitioner an extension of time to submit the Writ of Certiorari with the Supreme Court to and including October 24, 2022. Appendix "A"

Through out all the years of his incarceration, petitioner has been doing all he could to expose the facts of the case; hence why he has been putting so much time in trying to expose the injustice. At this time he is relying on this Honorable Court and respectfully asking that the Court look at all the facts involved in the case.

Appellant has been trying to get the assistance of the courts in every step of the way, even genuinely pleading with the courts to assign him counsel to represent him and assist him to make a cogent argument, after all he is only a layman with no legal experience other than what he picked up on his own. The facts make it clear that he has been a victim of the system and all he is asking for is a fair day in court.

There is no question that petitioner's argument revolves entirely around the trial court's Fourth Amendment violation, in refusing to suppress the unlawfully obtained evidence resulting from the search and seizure of the automobile legally parked in a private lot where defendant was still paying rent.

A pre-trial suppression hearing was held just before the start of defendant's trial in which it was proven that the police, after receiving a phone call on the tips hot-line two

days after defendant's arrest, informing them that the auto they had been searching for, was now parked at the designated location.

The police converged at the said location and observed the auto from the sidewalk; they gained access to the lot from one of the other tenants; the gained access to the car and broke into the trunk with a 'screwdriver', where they discovered two plastic bags that were partially covered with dirt; they cut open the bags and discovered the 'mummified' bodies of two females; the Coroner was called and the bodies were removed to the Medical Examiner's office, where they were tentatively identified, and defendant was charged with their murders.

In Collins v. Virginia, 138 S.Ct. 1663 (2018), a similar case to defendant's, involving a stolen motorcycle, the Supreme Court, the Honorable Justice Sotomayor, delivered the opinion of the Court saying:

"this case presents the question whether the automobile exception to the Fourth Amendment permits a police officer, uninvited and without a warrant, to enter the curtilage of a home in order to search a vehicle parked therein. It does not."

In the Collins' decision, the Court further stated:

"Any valid warrantless seizure of incriminating evidence" requires that the officer "have a lawful right of access to the object itself." Horton v. California, 496U.S. 128, 136-137, S.Ct. 2301, 110 L.Ed.2d 112 (1990).

("'[E]ven where the object is contraband, this Court has repeatedly stated and enforced the basic rule that the police may not enter and make a warrantless seizure'"):

G.M. Leasing Corp. v. United States, 429 U.S. 388, 354, S,Ct. 619, 50 L.Ed.2d 503 (1977)

("It is one thing to seize without a warrant property resting in an open area ... and it's quite another thing to effect a warrantless seizure of property ... situated on private premises to which access is not otherwise available for the seizing officer") A plain-view seizure thus cannot be justified if it is effectuated "by unlawful trespass." Soldal v. Cook County, 506 U.S. 56, 66, 113 S.Ct. 538, 121 L.Ed2d 450 (1992).

The Court continued:

"The ability visually to observe an area protected by the Fourth Amendment does not give officers the green light physically to intrude on it." U.S.C.A. Const. Amend. 4.

"So long as it is curtilage, a parking patio or carport into which an officer can see from the street is no less entitled to protection from trespass and a warrantless search than a fully enclosed garage." U.S.C.A. Const. Amend. 4.

Respectfully Submitted,

Dated: October 20, 2022

REASONS FOR GRANTING THE PETITION

Petitioner is very respectfully asking the Honorable Court that it consider granting him the relief requested, which is to vacate the Circuit Court decision and remand the case back to the lower courts for further proceedings.

Due to the extenuating circumstances enlisted in his petition, it is clear that the case in Stone v. Powell, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976), does not apply in this instance, because petitioner never had "the full and fair opportunity" in the State Courts, being that his case was never reviewed by the appellate courts of the State.

Petitioner has already served more than thirty years of an unjust conviction, clearly obtained through the use of the unlawfully obtained evidence. The trial court refused to suppress the unlawful evidence even after the police having admitted that they entered the private property and searched and seized the automobile without a warrant violating petitioner's right in several instances.

First, they entered the fenced-in parking lot without proper authorization. Secondly, they approached the auto and gained access to the trunk without a warrant. Lastly, they cut open the plastic bags also without a warrant and seized the evidence (the bodies) of the victims without a warrant.

The trial court ruled that there was absolutely no reason for the police not to obtain a search warrant, and there were no extenuating circumstances to justify the search. In fact, the trial court also ruled in its decision that the search was a

"flagrant violation", and therefore no valid rea could be justified.

However, in the end the trial court admitted the evidence under the guise that the defendant had relinquished ownership of the auto when he told the investigating detectives that the auto "had been stolen", and thus he had "waived" his rights to the auto.

Yet, at the same time, the trial court ruled that the defendant had "standing" to challenge the search because he had been paying the rent for the spot in the parking lot where the auto had been located. Please see Judge Kreindler decision in Appendix " "

Moreover, at the March 20, 2018, District Court hearing, Senior District Court Judge Jack B. Weinstein, also found that petitioner had not received the "full and fair opportunity" in the State Court, because appellate counsel had not presented and argued the issue in the direct appeal of defendant's case, saying "he didn't get a full and fair opportunity, if appellate counsel didn't bring it up." Therefore, the New York State Appellate Courts never reviewed the Fourth Amendment issue, regarding the unlawful search, neither in the Appellate Division, nor in the New York Court of Appeals, and therefore, Stone v. Powell does not apply in petitioner's case.

Petitioner has recently had the opportunity to view the case in Ethridge v. Bell, ____F.4th____(2022), 2022 WL 4350512 U.S. Court of Appeals, Second Circuit, September 20, 2022, in which Circuit Court Judge Bianco, held that, [1] District Court

erred in dismissing habeas petition sua sponte, and [2] motion for reconsideration was not adequate substitute for notice and an opportunity to be heard prior to dismissal.

The Court also said that, "A District Court, prior to dismissing habeas petition sua sponte, is generally required to provide petitioner with notice and an opportunity to be heard." 28 U.S.C.A. Section 2254.

Strangely, now there are two different Judges that are both saying, that petitioner's constitutional rights were violated. The trial judge saying that the search was a "flagrant violation" by the police; yet, he refused to suppress the unlawful evidence.

There is also a Senior District Court Judge, the Honorable Jack B. Weinstein, arguing with the District Attorney, "But he didn't get a full and fair opportunity in the State Court, not if there is an appellate lawyer who doesn't bring it up." He is also wondering to himself that he has "never certified a 60(b)"; "I certify it but what does it mean?"

In addition, he reminds the District Attorney, "You better take a look at this", and "would you agree that he did not get a full and fair opportunity in the State Court?" With the District Attorney replying, "No, he did. And the whether it was right or wrong it doesn't matter, as long as he got the opportunity."

At this point, petitioner is left to wonder, "What are the appellate courts for?" Therefore, he is very respectfully asking the Honorable Court to kindly take a look at this case. We have an Appellate Division that on August 6, 1996, reviewed and affirmed appellant's conviction saying that, "The cadaver dogs and their trainers were properly certified."

As for the remainder of appellant's issues, the Appellate Division would only say that "the rest of the issues are either unpreserved or without merit", with the Court of Appeals just rubber-stamping it "Denied." And then, of course, we have the District Court, where a Judge of the Eastern District of New York, would just repeat whatever her predecessor left off at, without actually considering the facts of appellant's case, but just adding that "Any appeal on this case would not be taken in good faith."

Finally, a Panel of Judges from the Second Circuit Court of Appeals just added the final touches by issuing an Order that "the motion is Denied and Dismissed because appellant has failed to show that (1) Jurists of reason would find it debatable whether the District Court abused its discretion... and (2) Jurists of reason would find it debatable whether the underlying habeas petition... states a valid claim of the denial of a Constitutional Right."

Appellant, very respectfully believes that he had more than just a showing that he was prejudiced by the denial of his Rule 60(b) motion by the District Court and the Second Circuit, by not fully considering the underlying issues that resulted in petitioner's Fourth Amendment Violation, which realistically formed the basis for petitioner's conviction.

"Motion for reconsideration was not adequate substitute for notice and opportunity to be heard prior to dismissal of federal habeas petition." Murray v, Noeth, 32 F.4th 154,157(2d Cir.2022)

In Murray, the Court reviewed the notice issue de novo, and said:

"We hold that a district court, prior to dismissing a habeas petition sua sponte under Stone, is required to provide a petitioner with notice and an opportunity to be heard. Here, the district court failed to comply with that procedure, and Ethridge's subsequent discussion of the Stone issue in the motion for reconsideration, which the district court then denied, did not provide him with the requisite notice and an opportunity to be heard." 28 U.S.C.A. Section 2254.

The Court further stated:

"That although sua sponte dismissals are warrented in certain circumstances, the general rule is that a district court has no authority to dismiss an action sua sponte without first providing a plaintiff with notice and an opportunity to be heard." See Perez v. Ortiz, 849 F.2d 793, 797 (2d Cir. 1988).

"In fact, we have emphisized that 'dismissing a case without an opportunity to be heard is, at a minimum, bad practice in numerous contexts and is reversible error in others.'" Catzin v. Thank You & Good Luck Corp., 899 F.3d 77, 82 (2d Cir. 2018).

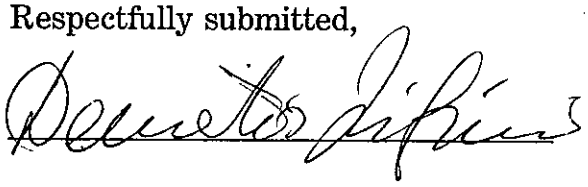
Moreover, a district court generally must provide the petitioner notice and an opportunity to be heard before dismissing the petition on procedural grounds, such as untimeliness, see Acosta v. Artuz, 221 F.3d 117, 121-22(2d Cir. 2000), or abuse of the writ based upon a failure to show cause for not raising the claim in a prior petition, see Lugo v. Keane, 15 F.3d 29, 31 (2d Cir. 1994).

"District Court erred by sua sponte dismissing pro-se federal habeas petition filed by petitioner convicted in New York State Court... without giving petitioner prior notice and an opportunity to be heard on whether he was precluded from litigating his Fourth Amendment claim in State Court because of unconscionable breakdown in state procedural mechanism." U.S. Amendment 4; 28 U.S.C.A. Section 2254.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: October 21, 2022