

IN THE
22-6301
SUPREME COURT OF THE UNITED STATES

RELONZO PHILLIPS, * CASE FILE NO.

Petitioner * v

Supreme Court, U.S.
FILED

DEKALB COUNTY SHERIFF *

DEC 06 2022

MELODY MADDOX, et al., *

OFFICE OF THE CLERK

Respondent(s) *

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
LEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Relonzo Phillips, Pro Se
4425 Memorial Drive
Decatur, Georgia 30032

QUESTION(S) PRESENTED

- 1.) Whether a state criminal prosecution brought “in bad faith”-i.e. “a prosecution that has been brought without a reasonable expectation of obtaining a valid conviction” (if the state officials prosecutes with the knowledge that there is no lawful basis for the prosecution) and/or “without probable cause,” itself satisfies the requirement of irreparable injury to enjoin state proceedings as set out in Younger v Harris, 401 U.S. 37, 91 S.C.T. 746, 27 L.Ed. 2d (1971)
- 2.) Whether the United States Court of Appeals, Eleventh circuit erred in denying Petitioner’s motion for reconsideration
- 3.) Whether the United States Court of Appeals, Eleventh circuit erred in failing to consider Petitioner’s motion to supplement the record (addition of City of Doraville police body and patrol car cam footage which affirmatively illustrates Petitioner’s illegal arrest made without probable cause which was not available to Petitioner until August 24, 2022)

LIST OF PARTIES

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

RELATED CASES

- 1.) Dekalb County Superior Court: Writ of Habeas Corpus (case file no. 21-CV-1450-3)
- 2.) Supreme Court of Georgia: Application for Discretionary Appeal (case file no. S21D0772; Appeal- case file no. S21A0938)
- 3.) Supreme Court of the United States: Writ of Certiorari (case file no. 21-5033)
- 4.) United States District Court Northern District of Georgia: Writ of Habeas Corpus (case file no. 1:21-CV-04455-WMR-CMS)
- 5.) United States Court of Appeals Eleventh Circuit: Appeal No. 22-1137-G

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and City of Doraville police body and patrol car dash cam footage)

OPINIONS BELOW

For cases from Federal Court

The opinion of the United States Court of Appeals at Appendix A to the Petition
and is unpublished

JURISDICTION

For cases from Federal Court

The date on which the United States Court of Appeals decided my case was June 29, 2022; out-of-time motion for reconsideration granted on September 15, 2022; motion for reconsideration denied on September 15, 2022

The Jurisdiction of this court is invoked under 28 U.S.C. section 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 1.) **United States Constitution Amendment IV; Art.I, Sec. I, Par. XIII of the Georgia Constitution of 1983:** 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 warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.
- 2.) **United States Constitution Amendment XIV; Art. I, Sec. I, Par. I of the Georgia Constitution of 1983:** Nor shall any State deprive any person of life, liberty, or property, without due process of law
- 3.) **O.C.G.A. section 9-14-1(A): Who may seek writ of habeas corpus:** Any person restrained of his liberty under any pretext whatsoever, except under sentence of a state court of record, may seek a writ of habeas corpus to inquire into the legality of the restraint
- 4.) **28 U.S.C. section 2241(c)(3)- Power to grant writ of habeas corpus:** The writ of habeas corpus shall not extend to a prisoner unless--he is in custody in

violation of the constitution or laws or treaties of the United States

5.) **28 U.S.C. section 1651(A)-Writs:** The Supreme Court and all courts established by act of congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

6.) **28 U.S.C. section 2242- Application:** It may be amended or supplemented as provided in the rules of procedure applicable to civil actions

7.) **28 U.S.C. section 2283- Stay of state court proceedings:** A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by act of congress, or where necessary in aid of its jurisdictions, or to protect or effectuate its judgements

8.) **Federal Rules of Civil Procedure, Rule 15(A)(2)- Amended and supplemental pleadings: Other amendments-** In all other cases, a party may amend its pleadings only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires

STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

On March 12, 2020, Petitioner was arrested for the offense of Robbery pursuant to O.C.G.A. 16-8-40 without probable cause by City of Doraville police in Dekalb County Georgia. (arrest was also made without an arrest warrant). On March 13, 2020, city of Doraville police officer A. Aponte acquired arrest warrant no. 20-W-004387 in violation of the fourth amendment to the United States Constitution-i.e. failed to supply magistrate with sufficient information for an independent determination that probable cause exists for the warrant. On October 2, 2020, Petitioner filed a writ of habeas corpus in the Superior Court of Dekalb County (case no. 21-CV-1415-3). The court dismissed Petitioner's petition without a hearing concluding that "Petitioner is imprisoned under lawful process issued from a court of competent jurisdiction." On February 19, 2021, Petitioner filed an application for discretionary appeal in the Supreme Court of Georgia. The Court denied Petitioner's application on March 9, 2021. On June 23, 2021, Petitioner filed a writ of certiorari in the Supreme Court of the United States. The Court denied Petitioner's petition on October 4, 2021. On October 27, 2021,

Petitioner filed his writ of habeas corpus in the United States District Court Northern District of Georgia. The Court denied Petitioner's petition on March 15, 2022. (the Court also denied Petitioner a certificate of appealability). On April 13, 2022, Petitioner filed his application for a certificate of appealability in the United States Court of Appeals, Eleventh Circuit. On June 29, 2022, the Court denied petitioner's application, thus, Petitioner now files his petition for writ of certiorari in the Supreme Court of the United States.

REASONS FOR GRANTING THE PETITION

A. STANDARD OF REVIEW/ LEGAL STANDARD

In Younger v Harris, 401 U.S. 37, 91, S.CT. 746, 27 L.Ed 2d 699 (1971), and its companion cases, Samuels v Mackell, 401 U.S. 66, 91, S.CT. 764, 27 L.Ed 2d 688 (1971); Boyle v Landry, 401 U.S 77, 91 S.CT. 758, 27 L.Ed. 2d 696 (1971); Perez v Ledesma, 401 U.S. 82, 91 S.CT. 674, 27 L.Ed. 2d 701 (1971); Dyson v Stein, 401 U.S. 200, 91 S.CT. 769, 27 L.Ed. 2d 781 (1971); and Byrne v Karalexis, 401 U.S. 216, 91 S.CT. 777, 27 L.Ed. 2d 792 (1971), the Supreme Court of the United States reexamined the principles governing federal judicial intervention in pending state criminal cases, and unequivocally reaffirmed the fundamental policy against federal interference with state criminal prosecutions. 401 U.S. @ 46, 91 S.CT. @ 751. This policy of restraint, the court explained, is founded on the basic doctrine of equity jurisprudence that courts of equity should not act, and particularly should not act to restrain a criminal prosecution, when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief. Id. @ 43-44, 91 S.CT. @750. When a federal court is asked to interfere with

a pending state prosecution, established doctrines of equity and comity are reinforced by the demands of federalism, which require that federal rights be protected in a manner that does not unduly interfere with the legitimate functioning of the judicial systems of the states. *Id.* @44, 91 S.CT. @ 750. Accordingly, the court held that in the absence of exceptional circumstances creating a threat of irreparable injury “both great and immediate,” a federal court must not intervene by way of either injunction or declaratory judgement in a pending criminal prosecution.

Although, the cost, anxiety, and convenience of having to defend against a single criminal prosecution alone do not constitute irreparable injury in the special legal sense of that term, *id.* @ 46, 91 S.CT. @ 751, the court in Younger left room for federal equitable intervention in a state criminal trial where there is: 1) a showing of “bad faith” or “harassment” by state officials responsible for the prosecution, *id.* @ 54, 91 S.CT. @ 755, where: 2) the state law to be applied in the criminal proceedings is “fragrantly and patently violative of express constitutional prohibitions,” *id.* @ 53, 91 S.CT. @ 755, or: 3) where there exist other extraordinary circumstances in which the necessary irreparable injury can be

shown even in the absence of the usual prerequisites of bad faith and harassment. *Ibid.* In companion case of Perez v Ledesma, 401 U.S. 82, 91 S.C.T. 674, 27 L.Ed. 2d 701, the court explained that only in cases of proven harassment or prosecutions undertaken by state officials in bad faith and without hope of obtaining a valid conviction and perhaps in other extraordinary circumstances where irreparable injury can be shown is federal injunctive relief against pending state prosecutions appropriate. *Id.* @ 85, 92 S.C.T. @ 677. See Mitchum v Foster, 407 U.S. 225, 230-231, 32 S.C.T. 2151, 2155-56, 32 L.Ed. 2d 705 (1972).

The policy of equitable restraint expressed in *Younger v Harris*, in short, is founded on the premise that ordinarily a pending state prosecution provides the accused a fair and sufficient opportunity for vindication of federal constitutional rights. See Steffel v Thompson, 415 U.S. 452, 460, 94 S.C.T. 1209, 1216, 39 L.Ed. 2d 505 (1974). Only if extraordinary circumstances render the state court incapable of fairly, and fully adjudicating the federal issues before it, can there be any relaxation of the deference to be accorded to the state criminal process. The very nature of extraordinary circumstances, of course, makes it impossible to anticipate and define every situation that might create a sufficient threat of such

great, immediate, and irreparable injury so as to warrant intervention in state criminal proceedings. But whatever else is required, such circumstances must be extraordinary in the sense of presenting a highly unusual factual situation.

B. PETITIONER'S INITIAL POLICE-CITIZEN ENCOUNTER/DETENTION BASED UPON AN ALLEGED REASONABLE ARTICULABLE SUSPICION RIPENED INTO AND ILLEGAL ARREST IN VIOLATION OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND PRIOR TO ANY "SHOW-UP IDENTIFICATION" MADE BY THE ALLEGED VICTIM

Pursuant to Terry v Ohio, 392 U.S. 1, 88 S.C.T. 1968, 20 L.Ed. 2d 889 (1968), there are three (3) tiers of police-citizen encounters: 1) communications between police and citizens involving no coercion or detention and therefore without the compass of the fourth amendment; 2) brief seizures that must be supported by reasonable suspicion; and 3) full-scale arrests that must be supported by probable cause.

The United States Supreme Court recognized the difficulty in defining "the elusive concept of what cause is sufficient to authorize police to stop a person," and concluded that the essence of the elusive concept was to take the totality of the circumstances into account and determine whether the detaining officer

1. The 1960s saw a large increase in racial violence throughout the country. (tag 2)
2. The Civil Rights Act of 1964 prohibited racial discrimination in the workplace.
3. The Civil Rights Act of 1964 prohibited discrimination in public accommodations.
4. The Civil Rights Act of 1964 prohibited discrimination in voting.
5. The Civil Rights Act of 1964 prohibited discrimination in the military.
6. The Civil Rights Act of 1964 prohibited discrimination in education.
7. The Civil Rights Act of 1964 prohibited discrimination in employment.

(tag 2)

8. The Civil Rights Act of 1964 prohibited discrimination in public accommodations.
9. The Civil Rights Act of 1964 prohibited discrimination in employment.
10. The Civil Rights Act of 1964 prohibited discrimination in education.
11. The Civil Rights Act of 1964 prohibited discrimination in voting.
12. The Civil Rights Act of 1964 prohibited discrimination in the military.
13. The Civil Rights Act of 1964 prohibited discrimination in the workplace.
14. The Civil Rights Act of 1964 prohibited discrimination in public accommodations.
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26. The Civil Rights Act of 1964 prohibited discrimination in public accommodations.
27. The Civil Rights Act of 1964 prohibited discrimination in employment.
28. The Civil Rights Act of 1964 prohibited discrimination in education.
29. The Civil Rights Act of 1964 prohibited discrimination in voting.
30. The Civil Rights Act of 1964 prohibited discrimination in the military.

has “a particularized and objective basis for suspecting the particular person stopped of criminal activity.” United States v Cortez, 449 U.S. 411, 417-18, 101 S.C.T. 690, 695, 66 L.Ed. 2d 621 (1981). “This demand for specificity in the information upon which police action is predicated is the central teaching of the Supreme Court’s fourth amendment jurisprudence.” Terry, *supra*, 392 U.S. @22 n.18, 88 S.C.T. @ 1880, n. 18. Whether reasonable suspicion exists to make a stop “must be measured by current knowledge, i.e.- at the moment the stop is made and not in hindsight.” Lewis v State, 233 Ga. App. 560, 561(1), 504 S.E. 2d 732 (1998).

“There is no hard and fast line to distinguish permissible investigative detentions from impermissible de facto arrests. Instead, the issue is decided on the facts of each case, with focus on whether the police diligently pursued a means of investigation reasonably designed to dispel or confirm their suspicions quickly, using the least intrusive means reasonably available under the circumstances. The court should apply the principles in Terry when analyzing the fourth amendment that the scope and duration of the intrusion conducted during a stop must be reasonable under the circumstances. State v Williams, 264 Ga.

App. 199, 590 S.E. 2d 151 (2003) citing Vansant v State, 264 Ga. 319, 443 S.E. 2d 474 (1994). It is significant the facts known to the officers in determining whether their actions went beyond those necessary to effectuate the purpose of the stop, that is, to quickly dispel or confirm suspicions of criminal activity." Florida v Royer, 460 U.S. 491, 500, 103 S.Ct. 1319, 75 L.Ed. 2d 229 (1983).

Petitioner argues that he was arrested without probable cause and not merely detained, because the City of Doraville police's actions exceeded the scope set out in Terry by approaching Petitioner at tazor/gun point, made Petitioner lay face down on the ground, handcuffed Petitioner, and subjected Petitioner to a full pocket and/or clothing search (see body cam: @ 00:25-1:11/19:07; @ 03:04-04:30/19:07; @ 00:26-1:11/27:13)(see patrol car dash cam: @03:19-04:30/11:50) before the alleged victim's show-up identification. See United States v Carranza-Ontiveros, no. 1:19-CR-155-MLB-JKL-2(N.D.GA. 2020) citing United States v Chaidez-Reyes, 996 f.supp. 2d 1321, 1336(N.D.GA. 2014)(finding that search into suspects pockets ripened suspect's detention into an arrest) ; Clark v State, 208 Ga. App. 896, 899-900(2), 432 S.E. 2d 220 (1993)(same); Corley v State, 236 Ga. App. 302, 512 S.E. 2d 41 (1999)(same). The

City of Doraville police officer cannot show that it could reasonably be believed that anything he felt might be a weapon or any “other hidden instrument for the assault of the police, which is generally required before an officer can search beyond the outer clothing and go into a suspect’s pockets. Terry, 392 U.S. @29. (the City of Doraville police officer’s search of Petitioner started with him going into Petitioner’s pockets and not a “pat-down search or frisk” see patrol car dash cam footage: @ 03:17-04:43/11:50) rendering the Petitioner’s police-citizen encounter an illegal arrest.

C. PETITIONER’S PROSECUTION WAS BROUGHT BY STATE PROSECUTING OFFICIALS IN “BAD FAITH”-i.e. WITHOUT A REASONABLE EXPECTATION OF OBTAINING A VALID CONVICTION (WITH KNOWLEDGE THAT THERE IS NO LEGAL BASIS FOR THE PROSECUTION) AND/OR WITHOUT PROBABLE CAUSE

The instant case reveals that the state has been in possession of exculpatory evidence-i.e. City of Doraville police body and patrol car dash cam footage which affirmatively displays police seize the Petitioner, a seizure which ripened into an unlawful arrest made without probable cause.

Arrest warrant no. 20-W-004387 was issued in violation of the fourth amendment to the United States Constitution-i.e. sufficient information was not

provided the issuing magistrate for his independent determination that probable cause exists for the warrant. See Flowers v Seki, 45 f. supp. 2d 794, 805(1998) citing Kugler v Helfant, 421 U.S. 117, 126 n.6, 95 S.C.T. 1524, 44 L.Ed. 2d 15 (1975); Nobby Lobby, Inc., v City of Dallas, 970 f.2d 82, 88(5th cir. 1992); Whitely v Warden, 401 U.S. 560, 564 (1971).

D. PETITIONER'S UNLAWFUL ARREST AND EXTENDED RESTRAINT OF LIBERTY IN VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION ESTABLISHES "IRREPARABLE INJURY" BOTH GREAT AND IMMEDIATE WHEREAS PETITIONER'S ARREST AND "BAD FAITH" PROSECUTION CAN NOT BE ADEQUATELY ADDRESSED IN HIS DEFENSE TO HIS STATE CRIMINAL PROCEEDINGS

"It has long been established that the loss of constitutional freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v Burns, 427 U.S. 347, 373, 96 S.C.T. 2673, 49 L.Ed. 2d 547 (1976); Melendres v Arapaio, 695 f.3d 900, 1002(9th cir. 2012). The only area of constitution jurisprudence where the eleventh circuit has said that an on-going violation constitutes "irreparable injury" is the area of first and fourth amendment (right of privacy jurisprudence), see N.E. Fla. Chapter of Ass'n of General contractors of

Am. v City of Jacksonville, 896 f. 2d 1283, 1285-86(11th cir. 1990) quoting Cate v Oldham, 707 f.2d 1176, 1189(11th cir. 1983).

The harm posed by bad faith prosecutions is both "great and immediate," and defending against state proceedings would not be an adequate remedy at law because it would not ensure protection of Petitioner's federal constitutional rights, Collins v County of Kendall, Ill., 807 f.2d 95, 98(7th cir. 1986) citing Juidice v Vail, 430 U.S. 327, 339-4097 S.C.T. 1211, 1219-20, 51 L.Ed 2d 376 (1977). The threat to Petitioner's federally protected rights must be one that cannot be eliminated by his defense against a single criminal prosecution. Younger v Harris, 401 U.S. 37, 46, 91 S.C.T. 746, 751, 27 L.Ed. 2d 669 (1971).

E. THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF GEORGIA AND THE UNITED STATES COURT OF APPEALS ELEVENTH CIRCUIT ERRED IN ITS DECISIONS TO DISMISS PETITIONER'S WRIT OF HABEAS CORPUS AND SUBSEQUENT CERTIFICATE OF APPEALABILITY

On October 27, 2021, Petitioner filed his writ of habeas corpus in the United States District Court Northern District of Georgia whereas the Magistrate Judge rendered a report and recommendation on December 15, 2021, which cited several deficiencies in Petitioner's petition. The Magistrate concluded that:

1) Petitioner's challenge to his arrest warrant and probable cause is not a claim in which redress can be sought pursuant to 28 U.S.C. section 2241; 2) Petitioner faces no injury other than that normally faced in defending against a criminal prosecution, and pre-trial federal habeas corpus relief is not available; 3) Petitioner failed to show that section 2283 allows injunctive relief in his case; 4) Petitioner does not meet the Younger standard as his challenge to probable cause can be adequately addressed in his defense to his state criminal prosecution; 5) Petitioner does not show extraordinary circumstances that warrant federal interference in his stat proceedings and does not show that the relief he seeks is available under section 2241; and 6) Petitioner must pursue and exhaust his claim through the regular trial, appeal, and collateral review process."

Following the Magistrate's report and recommendation, Petitioner filed two (2) supplemental amendments which sought to cure the deficiencies listed by the magistrate (docs. 9 and 11). The interest of justice required that the District Court "freely give leave to amend" the habeas corpus. An application for a writ of habeas corpus may be amended or supplemented as provided in the rules of procedure applicable to civil actions. 28 U.S.C. section 2242. See also Burgess v

United States, 874 f.3d 1292(11th cir. 2017)(once a party seeks to amend its pleadings, the Fed.R.Civ.P. instruct District Courts to “freely give leave to amend when justice so requires”. Fed.R.Civ.P.15(A)(2)). On March 15, 2022, the District Court did not consider Petitioner’s supplemental amendments (docs. 9 and 11) which were filed well in advance of its order, which labeled them as miscellaneous and futile, and adopted the Magistrate’s recommendation of dismissal and denied a certificate of appealability. The United States Court of Appeals Eleventh Circuit followed suit on June 29, 2022 when it denied Petitioner’s application for a certificate of appealability. (for the record, Petitioner’s supplemental amendments (docs. 9 and 11) were not futile or miscellaneous)

F. PETITIONER PRESENTS QUESTION(S) TO THE UNITED STATES SUPREME COURT WHICH ARE OF IMPORTANCE TO THE INTEREST OF THE PUBLIC

The question(s) presented are of importance to the public since it involves the appropriate relationship of federal to the state courts. Beal v Missouri Pac Corporation, 312 U.S. 45, 48, 61 S.CT. 418, 85 L.Ed. 577 (1941)

CONCLUSION

Based upon the foregoing arguments and citations of authority, Petitioner, Relonzo Phillips respectfully requests that this honorable court grant the foregoing Petition for Certiorari.