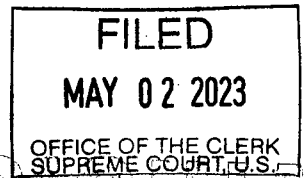


22-7522

No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM SIM SPENCER — PETITIONER
(Your Name)

vs.

COLONEL JOSEPH GASPER — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

William Sim Spencer
(Your Name)

P.O. Box 113
(Address)

Copemish, MI 49625
(City, State, Zip Code)

(231) 970-0810
(Phone Number)

QUESTION(S) PRESENTED

- I. Does the Sixth Circuit Court of Appeals extension of the § 1983 favorable habeas corpus termination rule announced in *Heck v Humphrey*, 512 US 477 (1994), to deny a non-prisoner's non-§ 1983 claim establish so far a departure from the accepted and usual course of judicial proceedings, or sanction such a departure by a lower court, as to call for an exercise of this Court's supervisory power?
- II. Is the 2001 state-judgment imposing lifetime sex-offender registration supported by adequate and independent state grounds which require: (1) notice of a specific accusation and evidence to connect the requisite elements of the alleged offence to both the criminal statute and the act alleged; and (2) a pre-guilty plea notice to the defendant that a direct consequence of his decision to plead guilty would be compelled lifetime registration on the sex-offender registry?

LIST OF PARTIES

- ☒ 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

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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

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A & B 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☒ is unpublished.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 United States district court appears at Appendix C & D to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ 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 8/09/2022.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 2/22/2023, and a copy of the order denying rehearing appears at Appendix A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

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

☐ 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. ____ A _____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

Fourteenth Amendment

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of 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.

STATEMENT OF THE CASE

A non-prisoner sought declaratory and injunctive relief from the requirement to register as a sex-offender for the rest of his life. He pointed to the state court record to show there was no accusation or evidence to establish a sex-crime which is indispensable to the state-court's authority to require sex-offender registration. Although he did not invoke 42 USC § 1983, the lower courts extended the favorable termination of habeas corpus proceedings rule to dismiss his declaratory and injunctive relief claim. Petitioner seeks a writ of certiorari to call for an exercise of this Court's supervisory power.

In First Person:

My claim for declaratory and injunctive relief against Colonel Gasper of the Michigan State Police under 28 USC §§ 1331 & 1343 was dismissed by the district court under the favorable termination rule announced in *Heck v. Humphrey*, 512 US 477 (1994). *Heck* applies a favorable habeas corpus termination requirement to 42 USC § 1983 damage claims.¹ I argued on appeal that *Heck* does not

¹ *Heck v Humphrey*, 512 US 477 (1994) at 477 ("In order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, *a § 1983 plaintiff* must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus.") (Emphasis added).

apply to *non-§ 1983* claims brought by a non-prisoner. The Sixth Circuit affirmed. My petition for certiorari asks the Court to determine whether due process is denied where the *Heck* favorable termination rule is extended by federal courts to dismiss a non-prisoner's *non-§ 1983* prospective relief claims.

In August 2001 the Oakland County Prosecutor initiated criminal proceedings against me under MCL § 750.520c – Michigan's CSC-II statute. The entire record of the criminal proceedings (*Appendices E to N*) contains no specific accusation or evidence to connect the requisite elements of MCL § 750.520c to either the CSC-II statute or to any alleged act by me. I was arrested at my home hours after the arrest warrant issued.

I declared my innocence and bail was set. Unable to pay the cash bond, which was set at over twenty times my annual income, I remained in the Oakland County Jail until I was transferred to the Michigan Department of Corrections in March of 2002. Meanwhile, as a pretrial detainee, I refused the Oakland County prosecutor's many offers to plead guilty. Criminal trial was scheduled for late October 2001.

In October of 2001, three days before the trial was set to begin, without notice to either me or my retained lawyer, I was transported by police from the jail to a new proceeding initiated by Oakland County to remove my children from their home until after my criminal trial was over. The record shows that my

children were of no interest to the criminal proceedings. I had not seen them since my arrest months earlier. Over my objections, the court appointed a lawyer to represent me at the removal proceedings. Appointed counsel advised me that the action to remove my children from their home would be withdrawn if I promised to plead guilty at the criminal trial. I capitulated, and was sentenced to 15 years.²

I knew nothing about the sex-offender registry when I pled guilty. After prison, I sought federal declaratory and injunctive relief from the requirement to register as a sex offender. The district court dismissed my claim stating that (1) “this action is not a proper basis to collaterally attack his state conviction”; (2) “Although plaintiff says that he only seeks prospective relief as to the effect, he is really seeking retrospective relief to invalidate his prior conviction”; and (3) My participation in an unrelated class action precludes prospective relief from the order that grants Colonel Gasper’s authority against me in the matter. (Appendix C ECF No. 35 at PageID 533 and 534).

The district court had jurisdiction over my Sixth and Fourteenth Amendment challenges under 28 U.S.C. §§ 1331 & 1343 to redress the deprivation, under color of State law, of my

² I became eligible for parole 5 years into my prison sentence. Pursuant to Michigan’s parole statute: MCL § 790.233e, I was always classified as “HIGH PROBABILITY OF PAROLE.” However, the parole board denied my annual parole applications for the next 10 years due to my refusal to renounce my innocence. I served the entire 15-year prison sentence and was discharged in August 2016.

rights secured by the Constitution. (ECF No. 23-1 at PageID.356). I also invoked the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. But my proposed amended complaint did not invoke 42 USC § 1983. Nonetheless, the district court applied the *Heck* favorable termination rule to dismiss my claims for declaratory and injunctive relief from unconstitutional procedures. The district court ignored my argument that *Heck* does not apply to *non-§ 1983* jurisdiction cases (Appendix C, ECF No. 35). The district court also ignored my argument, which I bring forward now, that the stipulated order granting class certification in an unrelated case establishes that I did not waive “any claims with respect to other causes of action or other forms of relief... not pled in this case.” (Appendix O, *Does#1-6 v Snyder*, E.D. Mich. Case 2:16- 13137, ECF No. 46, PageID.695).

I appealed to the Sixth Circuit. The Sixth Circuit relied on its unpublished *Hobbs v. Faulkner*³ opinion (Appendix P) to find that “this court has specifically applied *Heck* in a case involving a former prisoner.” (Appendix B, Case: 22-1412 Doc. 18-2, Page 3). In *Hobbs* the plaintiff sought damages under § 1983⁴ without seeking prospective relief under §§ 1331 & 1343. I did the exact opposite by seeking prospective relief under §§ 1331 & 1343 without seeking damages under § 1983. Despite the fact that my proposed amended

³ *Hobbs v. Faulkner*, No. 19-3303, 2020 WL 12933850, at *1

⁴ *Hobbs v Faulkner*, 6th Cir. Case 19-3303, Doc. 54-2, Page 2

complaint does not invoke § 1983, the Sixth Circuit affirmed stating that my “underlying § 1983 claims attack the validity of his conviction and are barred by *Heck*[.]” (Appendix B, Case 22-1412 Doc. 18-2, Page 3). My motion for rehearing *en banc* was denied. (Appendix A).

REASONS FOR GRANTING THE PETITION

One *direct* consequence of my plea was the requirement to register as a sex-offender for the rest of my life.⁵ The methods of implementing that lifetime registration requirement, like the costs imposed for the registration, are collateral consequences. The *punishment* is the requirement to register as a sex-offender for the rest of my life; while the methods and costs of implementing that punishment are not. They are more akin to *collateral* consequences of a plea⁶ than they are to a *direct* consequence that is “*part of the sentence itself*.”⁷ As collateral consequences, the trial court was not required to advise me of the means and costs of lifetime registration before accepting my guilty plea.⁸

Michigan classifies sex offender registration act (SORA) registration as a *punitive collateral consequence*.⁹ Therefore, I

⁵ *People v Cole*, 491 Mich 325 (2012) at 337.

⁶ *People v. Fonville*, 291 Mich App 363 (2011) at 385.

⁷ *People v Cole*, 491 Mich 325 (2012) at 335.

⁸ *People v Cole*, 491 Mich 325 (2012) at 335.

⁹ *People v. Nunez*, No. 356559 (Mich. Ct. App. July 21, 2022) (“Because SORA is a punitive collateral consequence for the conviction of certain crimes, a defendant must be informed of its

should have been informed of its imposition before I agreed to plead guilty.¹⁰ Nobody explained in 2001 that a direct consequence of a guilty plea would be a duty to register as a sex offender. Although state law requires that such registration be forwarded to the state police before sentencing, the registration was not “forwarded to the department” until 2016 ... when I was threatened by the warden on my last hour of prison that I would not be released from custody and would be arrested by state police immediately unless I signed the registration papers. Accordingly, the failure of the state court to adhere to the statutory notice requirement¹¹ prevents any lawful application of SORA to me.

The statute of limitations is not a bar to an attack against the proceedings that produced Colonel Gasper’s exhibit 1 – *the order to register*. “The jurisdiction of any court exercising authority over a subject may be

imposition before entering a guilty plea... Accordingly, the failure of the trial court to adhere to the statutory notice requirement and to include SORA registration in the judgment of sentence prevents any belated application of SORA to Nunez.”)

¹⁰ *People v. Fonville*, 291 Mich App 363 (2011) at 385.

¹¹ MCL § 28.724 (1) Registration ... **must** proceed as provided in this section. (5) [A]n individual convicted of a listed offense ... **shall** register before sentencing, ... The probation agent ... **shall** give the individual the registration form after the individual is convicted, explain the duty to register and accept the completed registration for processing... The court **shall not** impose sentence... until it determines that the individual's registration was forwarded to the department...”; and MCL § 28.726. “(1) The officer, court, or agency registering an individual ... **shall** provide the individual with a copy of the registration or notification at the time of registration or notice.” (*Emphasis added*).

inquired into in every other court where the proceedings of the former are relied on and brought before the latter by the party claiming the benefit of such proceedings.”¹² Colonel Gasper depends on the order to register to establish his statutory authority to apply the SORA to me. The court proceedings that produced Colonel Gasper’s evidence were irregular in nature where the entire record (*Appendices E to N*) contains no specific accusation or evidence to connect the requisite elements of MCL § 750.520c to either the CSC-II statute or to any alleged act by me. Accordingly, to the extent that Colonel Gasper claims the benefit of authority under the order to register, the jurisdiction of the court that exercised authority to create Colonel Gasper’s evidence may be inquired into now.

Courts do not use a direct / collateral consequence categorization scheme to decide ineffective assistance of counsel claims.¹³ Michigan has applied the *Strickland*¹⁴ test to conclude that the “failure to inform a pleading defendant that the plea will

¹² *Webster v Reid*, 52 US 437 (1850) at 451. (“When a judgment is brought collaterally before the court as evidence, it may be shown to be void upon its face by a want of notice to the person against whom judgment was entered.”)

¹³ *Lyons v. Jackson*, 299 F 3rd 588 (6th Cir. 2002) (“The Court does not use a direct/collateral consequence categorization scheme to decide ineffective assistance of counsel claims... the *Strickland v Washington* test provides sufficient guidance for resolving virtually all ineffective-assistance-of-counsel claims.” *Williams v. Taylor*, 529 U.S. 362 (2000) at 391.”); See, also, *People v. Fonville*, 291 Mich App 363 (2011) at 385

¹⁴ *Strickland v Washington*, 466 U.S. 668 (1984).

necessarily require registration as a sex offender affects whether the plea was knowingly made.”¹⁵

I received ineffective assistance of counsel where my lawyer waived bindover to circuit court for felony trial without any specific accusation or evidence to connect the requisite elements of MCL § 750.520c to either the CSC-II statute or to any alleged act by me. The prosecutor did not properly invoke the trial court’s jurisdiction when it failed to notify me of any specific accusation or evidence to connect the requisite elements of MCL § 750.520c to either the CSC-II statute or to any alleged act by me. My constitutionally deficient lawyer did not tell me: (a) that I was pleading guilty to overbroad facts that do not constitute a crime; (b) that the guilty plea would prevent me from both serving on a jury and holding political office and (c) that the guilty plea would necessarily require lifetime registration as a sex offender. I would not have pled guilty had my lawyer informed me of these facts.

¹⁵ *People v. Fonville*, 291 Mich App 363 (2011) (“[D]efense counsel must advise a defendant that registration as a sexual offender is a consequence of the defendant’s guilty plea. The failure to inform a pleading defendant that the plea will necessarily require registration as a sex offender affects whether the plea was knowingly made... we conclude that defense counsel’s performance was constitutionally defective when he failed to inform Fonville of the sex-offender-registration requirement. And we conclude that this failure prejudiced Fonville.”)

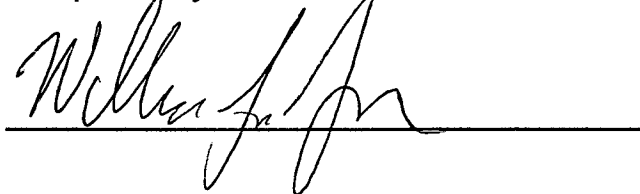
The order to register is not supported by adequate and independent state grounds where it is not based on state law which requires that registration be supported by: (1) a specific accusation and evidence to connect the requisite elements of MCL § 750.520c to either the CSC-II statute or to any alleged act by me; and (2) a pre-guilty plea notice regarding the direct consequence of lifetime sex-offender registration.

By extending the favorable termination rule of *Heck v Humphrey*, 512 US 477 (1994) to deny my claim for prospective relief, the Sixth Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William J. Smith", is written over a horizontal line.

Date: 5/04/2023