

23-5092 ~~NO.~~ ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

NOEL L BROWN - PETITIONER

-against-

COMMONWEALTH OF PENNSYLVANIA, Wayne County; SHARON PALMER, TPR, OF Honesdale Barracks; MICHAEL BROWN, TPR, of Honesdale Barracks; MICHAEL JEZERCAK, CPL, of Honesdale Barracks; WAYNE COUNTY SHERIFF DEPARTMENT: SGT, KREMPASKY, of Wayne County Sheriff's Department; WAYNE COUNTY PUBLIC DEFENDER'S OFFICE; WAYNE COUNTY DISTRICT ATTORNEY'S OFFICE; WAYNE COUNTY CORRECTIONAL FACILITY; KEVIN BISHOP, Warden, WCCF; LT. RIVARDO, WCCF; MONROE COUNTY; TPR. TOM O'BRIAN, of Swiftwater Barracks; DIEHL, TPR, of Swiftwater Barracks; PENNSYLVANIA STATE POLICE, Honesdale Barracks, Swiftwater Barracks, Fern Ridge Barracks; PENNSYLVANIA DEPARTMENT OF CORRECTIONS; BROADHEADSVILLE POST OFFICE, Monroe County, PA; CAMP HILL SCI; DAYS INN, Tannersville Hotel; CAMILO JACER, Days Inn Hotel Manager

- RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES SUPREME COURT

(NAME OF COURT THAT LAST RULED ON THE MERITS OF THIS CASE)

(UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT) (No. 22-1506)

Petition for Writ of Certiorari under 28 U.S.C. §1254(1).

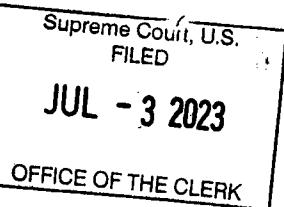
NOEL L. BROWN -MW0387

SCI. SOMERSET 1590 WALTER MILL ROAD SOMERSET, PA 15510

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SUPREME COURT, U.S.



QUESTIONS PRESENTED

1. Does the substantial holding in case on point Heck v. Humphrey, and Amaker v. Weiner, because the suit may be reinstated should plaintiff's conviction be "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." require the Third Circuit reviewing court to remand the case for the District Court to modify its judgement to reflect that Appellant's false-arrest claims should only be dismissed without prejudice?
2. Does the favorable termination of charges leading to appellant's arrest during trial proceedings by Wayne County Sheriff Department; SGT. Krempasky, require the Third Circuit to remand the case under Fed. R. Civ. P. 60(b), due to the District Court's Mistake, inadvertence, surprise, or excusable neglect; and favorable termination of false arrest criminal complaint incident number OTN T859968-4 Docket No.CR-212-2016?
3. Did the District Court incorrectly dismissed Appellant's false-arrest claim? Suggested Answer: YES!
4. Does the District Court judgment reflect that Appellant's false-arrest claim is dismissed without prejudice? Answer: NO!
5. Did the false-arrest by the defendants which were resolved with favorable termination of charges leading to arrest, defame the appellant because of it's slander, libel, by the defendant SGT. Krempasky, to a third person that harmed the appellant's reputation during his criminal trial? Suggested Answer: YES!
6. Was it an abuse of process, and discretion by the Third Circuit decision that appellant's petition for rehearing by the Court en banc, be denied. Because "Judge Nygaard's vote is limited to Panel Rehearing only"? Suggested Answer: ABSOLUTELY AND POSITIVELY YES!

LIST OF PARTIES

A list of all parties to the proceedings in the court whose judgement is the subject of this petition for a Writ of Certiorari is as follows:

1. Gerard J. Geiger, Esq.

P.O. Box 511

712 Monroe Street

Stroudsburg, PA 18360.

2. UNITED STATES COURT OF APPEALS THIRD CIRCUIT

21400 U.S. COURTHOUSE

601 MARKET STREET

PHILADELPHIA, PA 19106.

TABLE OF AUTHORITIES CITED

CASES:

AMAKER V. WEINER, 179 F.3d 48, 52 (2d Cir. 1999).

HECK V. HUMPHREY, 512 U.S.477, 486-87(1994).

STATUES and RULES CITED:

28 U.S.C. §1254(1).

FRAP 35, 40 (a)(1).

Fed.R.Civ.P.60(b).

Fed.R.Civ.P.59(b)(3).

OTHER AUTHORITIES CITED

Whistleblower Status.

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APPENDIX (A): COPY OF THE UNITED STATES COURT OF APPEALS THIRD CIRCUIT DECISION AND ORDER.

APPENDIX (B): COPY OF THE DISTRICT COURT MIDDLE DISTRICT OF PENNSYLVANIA DECISION/ORDER.

IN THE SUPREME COURT OF THE UNITED STATES

FOR WRIT OF CERTIORARI

Petitioner Noel L. Brown, respectfully request that a writ of certiorari be issued to review the error of law judgement below.

OPINION/ORDER

The opinion of the highest Federal Court to review the merits in this civil case appears at appendix (A), to this petition, and is reported at the United States Court of Appeals for the Third Circuit, on May 11th 2023, and June 5th 2023.

The opinion of the District Court Middle District of Pennsylvania, appears at appendix (b).

JURISDICTION

The date on which the United States Court of Appeals Third Circuit decided my case appears at appendix (A).

The Jurisdiction of the United States Supreme Court, is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Pursuant to FRAP 40(a)(1), petition for rehearing en banc, must be filed within 14 days after entry of judgment, and require the judges who participated in the decision of the court and all the other available circuit judges of the circuit in regular active service, to review the panel's fact finding.
2. A favorable termination of charges leading to a false arrest, should be construed as a legal causation on false arrest claims. HOWEVER, whether or not the district court correctly/incorrectly dismissed Appellant's false-arrest claim. Under case on point Heck v. Humphrey, and Amaker v. Weiner, the court must specify that its dismissal was without prejudice. Because the suit may be reinstated should plaintiff's conviction be "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." (citing Heck at 487.). That said, appellant false arrest claim upon the SGT. Krempasky, of Wayne County Sheriff's Department, has been declared invalid by a state tribunal authorized to make such determination.
3. Leave is necessary to resolve the myriad of issues raised by said determination declaring the arrest invalid. WHEREIN, appellant was harm by the defamation, slander, label, of said defendants intentional abuse of power.
4. Petitioner now seeks for Whistleblower Status within his petition for writ of certiorari.

STATEMENT OF THE CASE

This case was brought to be considered on the records from the United States District Court for the Middle District of Pennsylvania, and was submitted to the Third Circuit LAR 34.1(a) on March 15, 2023. Based on the error of law dismissal by the lower District Court.

On consideration whereof, the Third Circuit ordered and adjudged affirmed the District Court's dismissal not specifying dismissal was without prejudice. FURTHERMORE, appellant had established good faith cause both extraordinary and exceptional circumstances the tribunal authorized to declare an arrest invalid, had done so. Requiring the suit to be reinstated. The burden of proof undisputable to establish why the matter should be reinstated.

ADDITIONALLY, on appellant's petition for rehearing en banc, the Third Circuit did commit an abuse of process, in it's decision to not allow for rehearing en banc. (citing: "no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, Judge Nygaard's vote is limited to Panel Rehearing only. The petition for rehearing by the Court en banc, is denied.")

FURTHERMORE, the appeal against the many defendants had at least an arguable basis in the law. Including allegations against respondent's attorney untimely brief, which contains the following omission statement, ("SGT. Krempasky statement was true which by definition, is not defamation"). HOWEVER, Stare Decisis, now require redress by the reviewing court. That said, the Third Circuit error in law, and abuse the court's discretionary power by not strike an undisputed untimely filed brief on behalf of appellee's. Upon a timely motion by appellant to strike untimely filed brief for respondent. In accordance with FRAP. (Service by mail is complete on mailing, thus the time for filing an answer runs from that date, not the date the petition/court filings was

actually received).

In Sum, under Rule 59(b)(3) fraud (whether previously called intrinsic or extrinsic) justifies relief, in the form of a remand for further proceedings, including trial by an impartial jury. As was requested by appellant.

²NOTE MENTIONING:(A motion to extend the time to file the appellee's brief or to seek other relief was never filed.)

REASON FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

Due process requires procedural protection. A fundamental fair process including redress upon a showing of extraordinary or exceptional circumstances, and or a showing of good cause. FURTHERMORE, no judgement should be allowed to rest at a placed it should not be rest. The limited vote of a United States Court of Appeals Circuit Court Judge maybe construed as conspiracy per se, even interpreted as procedural and constitutional error. Or at least an arguable basis in error of law.

CONCLUSION:

The petition for Writ of Certiorari should be GRANTED. For this Court to address a novel issue(en banc, the court as a whole. All of its judges) that is not currently before it. ADDITIONALLY, A controlling question of law exist as to which there is a substantial ground for a difference of opinion and an immediate appeal from the order may materially advance the outcome of the case.

In Sum, the Supreme Court of the United States, as an exercise of discretion, may GRANT the Petition for a Writ of Certiorari. Thank You.

7/4/2023.

Respectfully Submitted,



COMBINED CERTIFICATION

I, Noel Brown, do hereby certify that the grounds incorporated within this petition for writ of certiorari, are limited to intervening circumstances of substantial and controlling effect.

I, Noel Brown, further certify that the petition for writ of certiorari is presented in good faith and not for any other frivolous reasons.

DECLARATION OF SERVICE

I, Noel Brown, pursuant to 28 U.S.C. §1746, declares under penalty of perjury as follows; that on 7/4/2023 he mailed the attached petition to respondents via the United States Postal Service to the following addressees: Gerard J. Geiger, esq. P.O. Box 511, 712 Monroe Street Stroudsburg, PA 18360.

To United States Court of Appeals for the Third Circuit 21400 U.S. Courthouse 601 Market Street Philadelphia, PA 19106.

I declare under penalty of perjury that the foregoing is true and correct. Executed 7/4/2023.

Yours Truly,

