

No. 23-530

In the
Supreme Court of the United States

TERRENCE R. YOAST,
Petitioner,
v.

POTTSTOWN BOROUGH, PENNSYLVANIA, ET AL.,
Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit**

BRIEF IN OPPOSITION

SHERYL L. BROWN
Counsel of Record
SLANA LAW LLP
941 Pottstown Pike, Suite 200
Chester Springs, PA 19425
(P): 610.321.5500
slbrown@sianalaw.com

Counsel for Respondents

QUESTIONS PRESENTED

1. Whether the Court should review a decision holding that *Heck v. Humphrey*, 512 U.S. 477 (1994) bars Petitioner's civil rights claims for false arrest, false imprisonment, malicious prosecution and for excessive bail where Petitioner was convicted on various offenses issued by interested parties?
2. Whether this Court should review a decision holding that Officers O'Neill, Martin and Ponto are entitled to Qualified Immunity?
3. Whether this case is a proper vehicle for review?

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STATEMENT OF THE CASE

The subject of the Petition is a February 3, 2020 Order entered by the District Court granting a motion to dismiss on behalf of the Borough of Pottstown and several of its officers, including a former Chief of Police. In granting the motion to dismiss, the District Court dismissed all federal claims, opting not to accept supplemental jurisdiction of state law claims as pled by Petitioner Terrence R. Yoast, herein after referred to as "Petitioner". As set forth in the Petition, Petitioner only asserts certain of the initially named defendants as parties at issue. Therefore, no request for certiorari exist as to claims asserted against Pottstown Borough, Officers Fisher, Schmalbach, Cascio and Cortis.

Petitioner's case against the interested parties stems from a series of citations, arrests and convictions related to interactions arising out of a landlord-tenant dispute.

On December 27, 2016, Petitioner was charged with *Harassment* (18 Pa.C.S.A. § 2709 (A3)) by Officer Fischer based upon a series of text messages Petitioner sent to his tenant, Aphrodite Hussain. On January 9, 2017, Petitioner was again charged with *Harassment* (18 Pa.C.S.A. §2709(A)(3) and (7)) (Course of Conduct with No Legitimate Purpose; Harassment – Comm. Repeatedly in Another Manner) by Officer Schmalbach. The charges by Officer Schmalbach were based on new complaints from Hussain that Petitioner sent her harassing text messages. The Harassment charge filed by Officer Fischer was withdrawn and added to the charges filed by Officer Schmalbach.

On January 13, 2017, Petitioner entered Hussain's unit for repairs and noticed an envelope from Hussain's attorney. Petitioner photographed the envelope and sent a copy to an attorney with the Montgomery County Housing Authority ("MCHA"). The attorney directed another MCHA employee to inform Hussain that Petitioner stole her mail. The Pottstown Police were informed that Hussain was a victim of mail theft. After interviewing the attorney and Petitioner, and requesting authority from Sergeant Ponto, Officer Portock issued a summary harassment citation against Petitioner. (18 Pa.C.S.A. §§2709(A3)).

On February 26, 2017, Petitioner entered Hussain's unit to install a new washing machine. While removing a broken washing machine from the basement, Hussain told Petitioner he was not allowed to be on the premises. Petitioner responded by berating Hussain, including calling her a "bitch," a "bum," and to "mind her own business" and other expletives. Hussain called the Pottstown Police for assistance.

Officer Martin arrived on scene, questioned Petitioner, and searched him. Corporal O'Neill and Sergeant Ponto arrived on the scene and ordered Petitioner to leave the premises. Officer O'Neill reviewed the matter with his supervisor, providing information of the three previous incidents, and informed Petitioner to gather his tools and leave.

Petitioner ignored the Officers' commands and reentered the basement to continue working. The Officers went into the basement and advised Petitioner he would be arrested if he did not leave. He refused and Officer O'Neill arrested Petitioner and charged

him with *Stalking* (18 Pa.C.S.A. §2709.1(A2)) and *Harassment* (18 Pa.C.S.A. §2709(A3), (A4) and (A7)). Petitioner was arraigned and bail was set at \$20,000 after which he was transported to Montgomery County Correctional Facility and held until his release.

On March 2, 2017, Petitioner then drove to the Hussain property, took pictures, and drove away. Officer Portock responded to the Hussain Property due to a disturbance, with complaints of a person kicking a vehicle and cursing. Witnesses advised Officer Cortis that Petitioner arrived at the Hussain Property, was angry and kicked Hussain's vehicle several times. The witnesses also provided that Petitioner was walking around the property taking photographs, yelling, being loud, and causing a disturbance; rummaging through garbage cans; and could be heard screaming "Mother Fucker". Hussain also called the police who heard Petitioner outside her apartment and witnessed him kicking her vehicle.

Officer Portock arrested Petitioner and he was charged with *Stalking* (18 Pa.C.S.A. §2709.1(A2)) and *Harassment* (18 Pa.C.S.A. §2709 (A3)). Bail was requested in the amount of \$1 million. Magistrate District Judge Price set bail at \$99,000, with no contact with Hussain and he was not permitted on the Hussain Property.

An Information charging Petitioner with seven charges of harassment and stalking were consolidated for purposes of trial, as approved by the District Attorney. A bench trial was held on September 27, 2017. Petitioner was found guilty of two (2) summary offenses of *Harassment* – one stemming from the

washing machine incident and the other from the car kicking incident. He was found not guilty on the remaining consolidated charges. Petitioner was found not guilty as to charges issued by Fischer and Schmalbach, who are not identified as interested parties by Petitioner. Therefore, no review is requested for the citations or resulting findings related to Officers Fisher and Schmalbach.

Petitioner filed a motion for post sentence relief denied on January 16, 2018, which the trial court deemed was without merit. (C.C.C.P. Montgomery County, No. CP-46-CR-0002236-2017, No. CP-46-CR-0002233-2017 and No. CP-46-CR-0002231-2017). He appealed to the Pennsylvania Superior Court which affirmed the judgment of sentence. *Commonwealth v. Yoast*, 2019 WL 4543118 (Pa. Super. Ct. Sept. 19, 2019)(Non-Precedential Decision). His *Petition for Allowance of Appeal* to the Pennsylvania Supreme Court was denied. *Commonwealth v. Yoast*, 227 A.3d 1271 (Pa. 2020).

Therefore, the two harassment convictions, based upon citations by Officers O'Neill and Martin, identified as interested parties herein, part of the consolidated charges, were not overturned and therefore lack a favorable termination as to Petitioner.

Petitioner filed a Complaint in the District Court for the Eastern District of Pennsylvania alleging violations of his civil rights. The District Court granted Respondents' Motion to Dismiss, dismissing certain claims as being barred by *Heck v. Humphrey* without prejudice, and dismissing the remainder of the Federal claims with prejudice. The Court declined

supplemental jurisdiction over the state law claims. (Petitioner's Petition, Appendix "C", A14-A75). The Third Circuit, following appeal, affirmed the District Court's Order dismissing the claims. (Petitioner's Petition, Appendix "B", A4-A10). A Sur Petition for Rehearing was denied. (Petitioner's Petition, Appendix "A", A1-A3).

REASONS FOR DENYING THE PETITION

A. PETITIONER'S CIVIL RIGHTS CLAIMS ARE BARRED BY *HECK V. HUMPHREY*, 512 U.S. 477 (1994)

Petitioner generally asserts that the District Court and Third Circuit Court of Appeals holdings that his civil rights claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994) are in error due to the holding being invalidated by *Wallace v. Kato*, 549 U.S. 477 (2007). This argument is flawed where *Wallace* did not invalidate *Heck*, requiring this Court to decline review.

Heck is long standing law which essentially provides that where a civil action would impugn a criminal conviction if successful, the civil action cannot be maintained until the conviction is invalidated. ("In order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions who's unlawfulness will render a conviction sentence invalid, a § 1983 Plaintiff must prove that his 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." *Heck* at 486.)

Wallace, decided 17 years after *Heck*, did not invalidate *Heck*, but rather addressed a statute of limitations argument, rejecting an argument that a false arrest claim only accrued when a conviction was vacated. *Wallace*, *supra*. It did not hold that false arrest claims or any other claims can never be barred by *Heck*.

As the Petitioner's premise and argument that *Heck* was overturned is wrong, this Court should not accept review.

B. OFFICERS O'NEILL, PONTO AND MARTIN ARE ENTITLED TO QUALIFIED IMMUNITY

Petitioner's final argument questions the District Court's granting of Qualified Immunity to Officers O'Neill, Ponto and Martin stemming from their entry into the basement of the apartment building. The District Court granted Qualified Immunity to the extent no constitutional violation was found. As noted in the District Court's Opinion, the police attempted to detain Petitioner, but he fled into the home. Furthermore, even if there was no consent, the officers are entitled to Qualified Immunity. (Petitioner's Petition, Appendix "C", A36); Also, see, *Stanton v. Sims*, 571 U.S. 3 (2013). The Third Circuit likewise relied upon case law that a resident lacks an objectively reasonable expectation of privacy in a common area of a multi-unit apartment building. *United States v. Correa*, 653 F.3d 187, 191 (3d Cir. 2011).

As the officers did not violate Petitioner's rights when entering the common area basement, they are entitled to Qualified Immunity. Therefore, review of this issue should likewise be declined.

C. THIS CASE IS NOT A PROPER VEHICLE FOR REVIEW

This case involves issues of long-standing law, based upon facts, including criminal convictions, which have not been overturned despite Petitioner's appeals. The facts and supporting law have been scrutinized many times including the Pennsylvania Superior Court affirming Petitioner's criminal convictions and sentencing; and the United States District Court and Third Circuit Court of Appeals, affirming that the Officers acted appropriately; some of whom were entitled to Qualified Immunity; and the majority of claims are *Heck* barred. Petitioner does not present a clear question of federal law that has allegedly been applied in error, or a circuit split that requires resolution. Therefore, this request is not worthy of certiorari. Respondents therefore ask the Court to refrain from intervening in this case under the circumstances presented.

CONCLUSION

For these reasons certiorari should be denied.

Respectfully submitted,

SHERYL L. BROWN
Counsel of Record
SIANA LAW LLP
941 Pottstown Pike, Suite 200
Chester Springs, PA 19425
(P): 610.321.5500
slbrown@sianalaw.com

Counsel for Respondents