

23-5381

NO. \_\_\_\_\_

Supreme Court, U.S.

FILED

JUN 08 2023

OFFICE OF THE CLERK

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IN THE  
SUPREME COURT OF THE UNITED STATES

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DAVID LAMAR HARPER, (Bail Recovery Agent), *Pro Se* Petitioner

v.

WILLIAM PATRICK ADAMS, (Retired State Court Judge),

REBECCA GRIST (Solicitor General, Bibb County),

SHARELL FINCHER LEWIS, (Previous Chief Solicitor),

DAVID DAVIS (Sheriff, Bibb County),

TIMOTHY T. MOORE (Sergeant Deputy Sheriff, Bibb County),

LEE W. ROHRBACH (Deputy Sheriff, Bibb County),

, Respondents

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

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**PETITION FOR WRIT OF CERTIORARI**

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**ORIGINAL**

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## **QUESTION PRESENTED**

How can a 42 U.S.C 1983 lawsuit, based on a void judgment, be barred by a statute of limitations, *Huphrey v. Heck*, 512 U.S. 447 (1994), and government immunity when it is not permitted by law or case law?

## **CORPORATE DISCLOSURE STATEMENT**

In accordance with Rule 29.6, I acknowledge that I am proceeding as Pro Se and are not affiliated with any corporation.

### **LIST OF PROCEEDINGS**

1. State Court of Bibb County/405226, 405226/Order Denying Defendant's Motion to Recuse Judge William Adams/September 19, 2014
2. State Court of Bibb County/405226, 405226/Order Denying Defendant's Motion to Dismiss/February 10, 2015
3. Supreme Court of Georgia/S17C0199/Order Changing Notice Element From Express to Explicit/February 19, 2018
4. Georgia Court of Appeals/A16A1008/Order affirming and reinstating conviction/June 29, 2018
5. State Court of Bibb County/405226, 405227/Order Dismissing Defendant's Notice of Appeal (De Novo Investigation)/ November 5, 2018
6. State Court of Bibb County/405226, 405227/Order Denying Defendant's Motions to Vacate Based on Perjury and In Arrest of Judgment, November 7, 2018
7. State Court of Bibb County/405226, 405227/Order Denying Defendants Motion to Vacate Void Sentence/March 12, 2019
8. Court of Appeals/A19A2049/Dismiss Appeal of Motion to Vacate Void Sentence/July 15, 2019
9. Supreme Court of Georgia/S20C0015/ Denied Writ of Certiorari/ February 28, 2020
10. United States District Court of the Middle District of Georgia/ 22-11396/ Order Dismissing Plaintiff's Complaint/March 24, 2022

11. United States Court of Appeals for the Eleventh Circuit/ 22-11396/Affirmed  
Dismissal of Complaint/March 10, 2023

12. Supreme Court of the United States/ \_\_\_\_/Petition for Writ of Certiorari

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### **PETITION FOR A WRIT OF CERTIORARI**

Petitioner David Lamar Harper respectfully requests the Issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

### **DECISION BELOW**

The decision of the United States Court of Appeals for the Eleventh Circuit is not published but is included in the Appendix, page 19.

### **JURISDICTION**

The Eleventh Circuit entered judgment on March 10, 2023. The United States Supreme Court Clerk extended the time of file by 60 days according to Rule 14.5 on June 12, 2023. This Court's jurisdiction is invoked under 28 U.S.C. 1254 (1).

### **STATEMENT OF THE CASE**

In March of 2014, David Lamar Harper, working in the capacity of a Bail Recovery Agent, entered a rear door to a garage and captured a fugitive within the

residence. The homeowner called her brother, Sergeant Timothy Moore with the Bibb County Sheriff Department, and he came after Harper left with the fugitive. On the second day, the homeowner called 911 to make a report of criminal trespass. Deputy Leese responded to the location and concluded that nothing was to be done. On the third day, Deputy Lee Rohrbach submitted an incident report with the case number generated the previous day and obtained a warrant for the arrest of Harper. Harper was arrested three months later for damaging a doggie door and entering the residence without permission.

On June 26, 2015, Mr. Harper was convicted of two criminal trespass statutes that were unconstitutional prosecuted by Bibb County State Court in Macon Georgia. They were appealed to the Court of Appeals of Georgia, *Harper v. State*, 338GAApp.535(790 SE2d 552)(2016), and the Supreme Court of Georgia, *State v. Harper*, 303 Ga, 144 (810 SE2d 484)(2018). These decisions were erroneous and circumvented bail recovery law. Upon return, the state court moved to impose the sentence against Harper. A motion to vacate a void sentence based on no jurisdiction over the person or subject matter, O.C.G.A., 17-9-4, was submitted in state court on November 08, 2018. Harper was incarcerated four days later. Harper appealed a second time to the appellate courts, A19A20149 & S20C0015, and was denied by both. The last movement in the case was on February 28, 2020.

Harper filed his 1983 lawsuit against the state actors in Bibb County on November, 12, 2021. Through the Plaintiff's complaint and responses to the



Motions to Dismiss, enough facts were presented to show a reasonable expectation that discovery will reveal a void judgment. Instead, the District Court dismissed the claims on March 24, 2022 based on a FRCP 12(b)(6) motion stating that the claims are barred by the statute of limitations, *Heck v. Humphrey*, 512 U.S. 447 (1994), and/or the applicable immunity doctrines.

An appeal proceeded to the United States Court of Appeals for the Eleventh District. It was dismissed on March 10, 2023. (Appendix, pg19) The following arguments were made:

## **ARGUMENT**

### **I. A Void Judgment is not barred by a Statue of Limitation.**

A judgment void on its face may be attacked in any court by any person. O.C.G.A. 17-9-4 & 9-11-60(a)&(f). These statues except an attack on a void judgment from the bar of the statute of limitation. *Watson v. Watson*, 235 Ga. 136, 218 S.E.2d 863 (1975). Statutes of limitation have no application to this class of judgment, and there can be no bar, estoppel or limitation as to the time when a void judgment may be attacked. *Wasden v. Rusco Indus., Inc.* 233 Ga. 439, 211S.E.2d 733 (1975), overruled on other grounds, *Murphy v. Murphy*, 263Ga. 280, 430 S.E.2d 749 (1993). The void judgment is based on criminal procedure that says, "a bail recovery agent who enters the wrong property, causes damage to said property, or causes injury to anyone thereon is liable for all damages." O.C.G.A.17-6-58(d). Clearly, the person in the statute is a bail recovery agent and the subject matter is entry into property and damage. The conduct in the statute

is not described as a crime by the General Assembly. O.C.G.A.16-1-4. The statute states that only damages are a liability. Civil State or Superior Court would have jurisdiction depending on the dollar amount. The judgment of a court having no jurisdiction of the person or subject matter, or void for any other cause, is a mere nullity and may be so held in any court when it becomes material to the interest of the parties to consider it. O.C.G.A. 17-9-4. By not identifying Harper as a bail recovery agent, it is a violation of his 4th Amendment right.

## **II. A Void Judgment negates Heck v. Humphrey.**

Under Heck v. Humphrey 512 U.S.477, 486-87 (1994), the Supreme Court held that in order {for a 1983 plaintiff} to recover damages for an allegedly unconstitutional conviction or imprisonment or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, [he] 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. It is not necessary to take any steps to have a void judgment reversed, vacated, or set aside. But whenever it is brought up against the party, he may assail its pretensions and show its worthlessness. It is supported by no presumptions, and may be impeached in any action, direct or collateral. Shotkin v. State, 73 Ga. App. 136, S.E.2d 556 (1945), cert. denied, 329 U.S. 740, 67 S. Ct. 56, 91 L. Ed 638 (1946). A void judgment may be attacked at anytime and anywhere, because it is absolutely void. Even where the issue is not raised by counsel to the

superior court, if the judgment shows on its face that it is void, it may be attacked. Parker v. Bond, 47 Ga. App. 318, 170 S.E. 331 (1993). A void order is an order issued without jurisdiction by a judge and is void ab initio and does not have to be void by a judge to be void. Only an inspection of the record of the case showing that the judge was without jurisdiction or violated a person's due process rights, or where fraud was involved in the attempt procurement of jurisdiction, is sufficient for an order to be void. Potenz Corp. v. Petrozzini, 170 Ill. App. 3d 617, 525 N.E. 2d 173, 175 (1988). In instances herein, the law has stated that the orders are void ab initio and not voidable because they area already void.

### **III. A Void Judgment does not afford the privilege of Immunity.**

The United States Supreme Court has clearly, and repeatedly, held that any Judge who acts without jurisdiction is engaged in an act of treason. U.S. v. Will, 11 449 U.S. 200, 216, 101, S. Ct. 471, 66 L.Ed. 2d 392, 406 (1980); Cohen v. Virginia, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed 257 (1821). Due Process is a requirement of the U.S. Constitution. Violation of the United States Constitution by a judge deprives that person from acting as a judge under the law. He/She is acting as a private person, and not in the capacity of being a judge (and therefore , has no jurisdiction). The state Supreme Courts have held that those who aid, abet, advise, act upon and execute the order of a judge who acts without jurisdiction are equally guilty of a crime against the U.S. Government. In the same sense, crimes are committed against the citizen. Immunity is not afforded any state actors who violate constitutional rights of citizens. They are held liable under 42 U.S.C. 1983.

Conclusion For the reasons stated above, David Harper, requests that his action be reinstated to continue with his 1983 Claims. A review of the face of the record will show that the judgment was void. There are enough facts to raise a reasonable expectation that discovery will reveal evidence supporting the claims.

#### IV. Motion to Supplement the Record

In order show that the district court dismissed the complaint without considering evidence that supports a void judgment, Harper produced the Accusations for review. With the Inherent Equitable Authority of this court, Harper requested the court to consider the Accusations without assigning them evidentiary weight in determining whether the complaint should have been dismissed.

*Orthmann v. Apple River Campground, Inc.* 757 F.2d 909 (7<sup>th</sup> Cir. 1985); *Doug*

*Grant, Inc. v. Greate Bay Casino Corp.*, 232 F.3d 173 n. 2 (3d Cir. 2000);

*Highsmith v. Chrysler Credit Corp.*, 18 F.3d 434, 439 97<sup>th</sup> Cir. 1994). In support of

this motion, Harper respectfully submits the following: (Appendix, pg43, pg46)

#### ACCUSATION (405226)

OCGA 16-7-21(b)(2)

Comes Now, the undersigned prosecuting attorney, of the State Court of Bibb County, Georgia in the name and on behalf of the citizens of Georgia, who does hereby charge and accuse **DAVID LAMAR HARPER** with the offense of a misdemeanor, to wit: **CRIMINAL TRESPASS**, that **on or about the 12<sup>th</sup> day of March, 2014**, in Bibb County, Georgia, Defendant did enter onto the premises of Tina McDaniel, after receiving constructive/explicit notice from an authorized person that such entry was forbidden, to wit: entry was made by entering without permission into a locked garage, in violation of O.C.G.A. 16-7-21(b)(2).

ACCUSATION (405227)  
OCGA 16-7-21(a)

Comes now, the undersigned prosecuting attorney, of the State Court of Bibb County, Georgia, in the name and on behalf of the citizens of Georgia, who does hereby charge and accuse **DAVID LAMAR HARPER** with the offense of a misdemeanor, to wit: **CRIMINAL TRESPASS**, that **on or about the 12<sup>th</sup> day of March, 2014**, in bibb County Georgia, Defendant did intentionally damage the door, belonging to Tina McDaniel, without the consent or said property owner, which damage was of Five Hundred Dollars (\$500) or less, in violation of OCGA 16-7-21(a).

Notably, Accusation (405226) fails to charge that Harper “knowingly” and “without authority” which are essential elements of the offense set out in OCGA 16-7-21(b)(2). The absence of any of the three essential elements renders the accusation defective and void. As the Supreme Court of Georgia held, “to withstand a general demurrer, an indictment must: (1) recite the language of the statute that sets out all of the elements of the offense charged, or (2) allege that facts necessary to establish a violation of a criminal statute.” Jackson v. State, S16G0888, 2017 WL 2061685 (Ga. S. Ct. May 15, 2017). “If either of these requisites are met, then the accused cannot admit the allegations of the indictment and yet be not guilty of the crime charged.” Id. Also in Jackson, a charging document that neither alleges all of the elements of the statute nor the facts necessary to show that a criminal statute has been violated does not “proved the accused with due process of law in that it would not notify that accused of what factual allegations he must defend in court.” Id. Furthermore, given the total omission of “knowingly” and “without authority” from the accusation, how can

anyone know with any confidence that the jury convicted him for violating OCGA16-7-21(b)(2) rather than violating the accusation as drawn, which charges no crime at all? The failure to allege these critical elements renders the accusation fatally defective and Harper's conviction void.

In State v. Harper, 303 GA, 144 (810 SE2d 484)(2018), the court changed the notice element to explicit notice and said that a lock door is just that, explicit notice. As applied in this case, the change solidifies double jeopardy. The Double Jeopardy clause of the Fifth Amendment applicable to the states through the Fourteenth..."protects against a second prosecution for the same offense multiple punishments for the same offense. North Carolina v. Pearce, 395 U.S. 711, 717, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969). [Brown v. Ohio, 432 U.S. 161 164-65, 97S. Ct. 2221, 53 L. Ed. 187 (1977)]. It is prohibited by O.C.G.A 16-1-7(a)(1),

When the same conduct of an accused may establish the commission of more than one crime, the accused may be prosecuted for each crime. He may not, however, be convicted of more than one crime if: ... One crime is included in the other

By applying the Blockburger Test (the same act .... constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not. Blockburger v. United States 284 U.S. 299, 304, 52 S. Ct. 180, 182, 76L. Ed. 306 (1932). As you can see in the accusations above with the interpretation of the Supreme Court of Georgia, the locked door is an element (explicit notice) and the acts, damage and entry, happen simultaneously. By omitting the elements of knowingly and without authority, it is as if the two accusations are merged by MS Word cut and paste.

In State v. Harper, 303 GA, 144 (810 SE2d 484)(2018) and Harper v State 338 Ga App. 535 (790 SE2d 552)(2016), we find that criminal procedure (Title 17) was not followed. A bail recovery agent has implied authority to enter a third parties house through the following statute and case law:

OCGA 17-6-58(d) A bail recovery agent who enters the wrong property, causes damage to said property, or causes injury to anyone thereon is liable for all damages.

In Bennett v. State, 169 Ga. App. 85 (1983), when likening the bondsman's arrest authority to the authority of a police officer in Georgia:

As to the amount of force a bail bondsman or his agent may use in arresting his principle, we have found no state or federal cases dealing with this specific issue, beyond a general statement that a bondsman may break and enter the principle's home to affect his apprehension. See eg, Taylor v. Taintor, 83 U.S. (16 Wall) 366, 371 [ ]. A law enforcement officer has the same authority [as a bail recovery agent] to break and enter to apprehend an offender under an arrest warrant. O.C.G.A. 17-4-3

In reviewing OCGA 17-6-58(d), please note that "no conduct constitutes a crime unless it is described as a crime in this title [16] or in another statute of this state. OCGA 16-1-4. See Blackwell v. State, 237 Ga. App. 896, 897 (1999) "A well-established canon of statutory construction, *inclusio unius, exclusio alterius*, provides that the inclusion of one implies the exclusion of others"); see also O'Melveny & Myers v. Fed. Deposit Ins. Corp., 512 U.S. 79, 86 (1994). A bail recovery agent who enters that wrong property is only "libel" for damages. The acts of entry and damage are not described as a crime by the Georgia General Assembly. They are a liability and not a crime. The statute acknowledges that the

only time the state has jurisdiction over a bail recovery agent and the acts of entry and damage to property is when it is the wrong property. At that time, only a civil action can take place. Therefore, "the judgment of a court having no jurisdiction of the person of subject matter, or void for any other cause, is a mere nullity and may be so held in any court when it becomes material to the interest of the parties to consider it. OCGA 17-9-4.

### **REASONS FOR GRANTING THE WRIT**

Void judgments are rarely seen by this court. Unfortunately, Georgia does not want to follow the law in this case. Instead, it rather circumvent the law, commit crimes, violate constitutional rights, and oppress a citizen. It is logical to filter cases that have no merit but, the process does not apply here. The case before you should not have come to fruition. It grew from a rotten limb and doesn't withstand the test of validity. By allowing this case to be dismissed, state actors are capitalizing on improper means to gain a conviction. It is imperative to address this case to establish a new case law dealing with void judgments regarding a section 1983 lawsuit. As in the state of Georgia, void judgments are not barred by a statute of limitations, do not have to be reversed, and do not extend any type of immunity.

### **CONCLUSION**

For the reasons mentioned above, the case is deemed void at face value. The accusations are defective/void, new construction of the notice element along with



both acts occurring simultaneously incorporates one crime into another resulting in double jeopardy, and violations of criminal procedure/case law occurred. Again, a void judgment is not barred by a statute of limitations, Heck v. Humphrey, 512 U.S. 477 (1994), or various governmental immunities.

WHEREFORE, the Petitioner, David Lamar Harper, requests this Court to issue a Writ of Certiorari in an effort to maintain fairness, truth, and protect constitutional rights to due process.

Respectfully submitted this 11th day of August 2023



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NO. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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DAVID LAMAR HARPER, (Bail Recovery Agent), *Pro Se* Petitioner

v.

WILLIAM PATRICK ADAMS, (Retired State Court Judge),

REBECCA GRIST (Solicitor General, Bibb County),

SHARELL FINCHER LEWIS, (Previous Chief Solicitor),

DAVID DAVIS (Sheriff, Bibb County),

TIMOTHY T. MOORE (Sergeant Deputy Sheriff, Bibb County),

LEE W. ROHRBACH (Deputy Sheriff, Bibb County),

, Respondents

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PROOF OF SERVICE

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I, David Lamar Harper, do swear or declare that on this date, served three copies of the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI on each party to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and address of those served are as follows:

James-Bates-Brannan-Grover  
Atten: Spencer D. Woody and Duke R. Groover  
P.O. Box 4283  
Macon, GA 31208

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 11<sup>th</sup> day of August, 2023

A handwritten signature in black ink, appearing to read "David L. Harper". The signature is fluid and cursive, with the first name "David" and last name "Harper" clearly distinguishable.

By: /s/ David L. Harper  
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