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23-5732

IN THE UNITED STATES SUPREME COURT

WAYNE HARRIS

PETITIONER

Vs.

UNITED STATES OF AMERICA

RESPONDEANT

On Petitioner for writ of Certiorari to the United States
Courts of Appeals to the 3rd circuit.

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.

QUESTION PRESENTED

Petitioner Wayne Harris was accused of selling drugs to a confidential informant following an investigation in Luzerne county Pennsylvania 2003 . The records reflect that Mr Harris was being investigated by Luzerne county officials for selling of drugs. Doing so a confidential informant was used to make a control buy for crack cocaine. Although the informant wore electronic device to record conversation of the drug sales the Recording did not reflect Mr Harris mentioning anything about drugs or the sale of drugs in any capacity. Although the Informant brought drugs to officials that he had allegedly purchased from Mr Harris, the arrest of Mr Harris occurred several days later, and there was no evidence that Mr Harris was found with the mark money used to make the control buy. During Mr Harris arrest he was assaulted numerous time and sustain bodily injuries, and once in custody he was deprived of medical attention that could serve as records of his injuries. Officials however seek to justify the assault charge Mr Harris with resisting arrest.

Once in custody Tara Rosengrant a Caucasian female hired an attorney Stephen Urbanski to advised Mr Harris to plead guilty. Failing to get Mr Harris to plead guilty Mr Urbanski abruptly quit the case reasoning Mrs Rosengrant has not paid him. Mrs Rosengrant had personal love interest into Mr Harris, Mr Harris however, was a married man and had no part to due with Mrs Rosengrant harassment. Once Mr Urbanski was excused from the case the court appoint Public defender John Danovan to represent Wayne Harris. The Public defender on numerous time attempt to advised Mr Harris to plead guilty and when Mr Harris refused He too like Mr Urbanski ask to be excused from the case arguing he had conflict of interest since he is also representing in a separate case the confidential informant who is the government sole witness against Mr Harris. The public defender realize that the confidential informant was charge with drug sales, and believe he would have to prove that either the CI was a drug dealer to exonerate Mr Harris which in turn would convict the CI on his unrelated drug offense. Once again Petitioner Wayne Harris was deprived of constitutional representation. Finally another attorney was appointed and he too advised Mr Harris to plead guilty.

None of the attorney advising petitioner to plea guilty advised him of the deportation consequences.

While in immigration custody Wayne Harris went to the Law Library where Dean McKenzie was working as a paralegal and law librarian. Wayne Harris request help and Dean McKenzie filed a motion to the Pennsylvania superior court to vacate the guilty plea knowing by doing so it would prevent Mr Harris deportation. Mr Dean M McKenzie also consider Mr Harris claims and conclude based on what he was told that Mr Harris was assaulted based upon his race, especially that the offense he was accused of did not warrant the excess use of force that had occurred.

Mr McKenzie on behalf of petitioner advised filing a discrimination law suit under 1983 however by the time the court began to serve the summons to all the defendants Mr Harris was removed from the United States to Jamaica. Not having any legal assistance in Jamaica nor financial means he was force to abandon all his legal battle, including not being served any government mail of the result of his filings. Mr Harris won his appeal to the Pennsylvania Superior court who agree that Mr Harris did not had effective legal representation according to the US constitution, and remand the case for the lower court to Appoint a counsel to resolve Mr Harris criminal matter.

The Superior court decision came too late however, since the state turn petitioner over to Immigration who remove him from the United States back to Jamaica.

As a result of the removal petitioner were never aware that he won, and only just of late he discovered the superior court rulings.

Although the court remand arguing the petitioner constitutional rights to counsel was violated, it did not effectively vacate his conviction. **Petitioner however contend** that to be forced into a guilty plea where his attorney was ruled constitutionally ineffective, automatically vacate the guilty plea, upon which his conviction was based and since the lower court did not prosecute the case and it is now statutory bar from doing so, his case become final , in his favor where there is no conviction, and with such decision he can sue under 1983 for Malicious prosecution.

August 2021 petitioner was home in Portland, Jamaica when he got a strange phone call from Mrs. Rosengrant still pursuing a relationship with petitioner. Mrs Rosengrant became angry that after all these years petitioner still advised he had no interest in her. She became vindictive and told petitioner ***"it was I who told my uncle to bust you up and prison you for sexually abusing me. And the judge he was also my cousin. I also told your wife I was pregnant for you, yea how you like that, it was I who ruin your marriage, I thought it was in the way, but now I find out you're just an asshole."***

Petitioner for the first time come to realize that this woman had set him up with lies, that the police who beat him up several years ago it wasn't because of racism it was because he believe petitioner sexually abuse his niece, and so petitioner's entire life has been ruin in a malicious prosecution which severely harm is U.S. citizen daughter after he was deported and also ruin his marriage. Having no legal knowledge and how to proceed. Petitioner begin to locate Paralegal Dean M Mckenzie and saw a picture of him on Facebook. Petitioner contact Dean and learn he was living in a different parish of Jamaica. Instantly petitioner relocate to Clarendon seeking the legal assistance once more From Mr McKenzie.

Mr McKenzie advise that due to the location of this evidence not only is it a Brady violation, which could prove malicious prosecution but it create an obvious excuse to the fact all claims would now be statutorily bar based on statue of limitation. Petitioner filed his suit, however he did not pursue as before a discrimination suit against the officials, but a malicious prosecution complaint instead based upon the new evidence. However he filed by informa pauperis.

The magistrate judge submit a motion to dismiss with prejudice petitioner suit in 2021 alleging the suit is re-litigated, B.) its time bar based on statue of limitation

C.) Petitioner plead guilty and based upon his guilty plea he cannot sue for malicious prosecution

On Nov. 5th 2021 the Magistrate report and recommendation was adopted and approve by the district court and petitioner's suit was dismissed with prejudice without forwarding a copy of either the magistrate report or recommendation nor

the judges decision in a timely manner. As a result that petitioner weren't given a copy to file any objection to the magistrate report and the judge made a decision on false or misleading facts petitioner request reconsideration however it was denied and ruled time bar as well. Petitioner submit a motion advising he is in a foreign country and their filings reach him in an unfair manner since it automatically cause all his filings to be time bar or late. That motion was dismissed likewise.

On Dec. 2, 2022 Petitioner appeal to the third circuit court questioning the validity of the district court decision, since it was rendered without either the district court nor the magistrate elaborating on the newly discovered evidence that trigger the suit in the first place and whether it doesn't create an excuse to the untimeliness

Petitioner likewise argue as to whether he has a valid conviction since the Pennsylvania superior court on appeal remand arguing that petitioner constitutional rights was violated during proceeding in the lower court where he was not provided constitutionally effective assistance of counsel during any of the guilty plea stages. And remand also that a counsel be appointed to address petitioner position of not enter into his guilty plea knowingly or intelligently.

On Feb. 14th 2023 the U.S court of Appeals for the 3rd circuit affirm arguing that 1.) petitioner guilty plea is still present despite what the Pennsylvania superior court ruled since the counsel was not appointed as ordered and the guilty plea did not effectively removed.

2.) that petitioner know of the new evidence, that he know or should have know that the police who beat him and charged him, was the uncle of a woman sexually obsessed with petitioner and that petitioner know that they team up to prosecute him for sexual assault on the woman.

3,) the court of appeals however dismiss without prejudice arguing that petitioner should first invalidate his guilty plea in the lower court before he can sue under sec. 1983.

Petitioner contended the court of appeal error and pray this court GRANT him a writ of certerierari .

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I. PETITION FOR WRIT OF CERTIORARI

Wayne Harris petitions the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

II. OPINIONS BELOW

The Third Circuit's published opinion denying Reconsideration & Failure to state a claim is attached as Appendix 1. The district court's order denying Petitioner's motion under Fed. 28 U.S.C, sec 1915 ©(2)(B) attached as Appendix 2.

III. JURISDICTION

The Third Circuit entered judgment on Feb 14th, 2023. See Appendix 1. This petition is timely filed pursuant to Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

IV. STATUTORY PROVISIONS INVOLVED

This case involves a hassle to understand finality of criminal matter in favor of an accused pursuant to sec. 1983 title 42 U.S.C. where the lower court on direct appeal of a criminal conviction has remanded arguing that petitioners constitutional rights to effective legal assistance of attorney was violated. And that counsel should be appointed to effectuate petitioners claims. And in which the lower court after remand did not choose to re-prosecute, wherein the last order that stand is that there is no legal conviction since petitioners counsel was ineffective. Hence an automatic vacation of petitioners conviction base upon an unknowing guilty plea cause by counsels ineffectiveness.

V. STATEMENT OF THE CASE

Introduction

Wayne Harris was beaten and arrested for allegedly selling crack to a CI, by Luzerne county officers in Pennsylvania 2003. after an involuntary guilty plea before judge Cunningham, he immediately was taken into immigration custody held in York county Pennsylvania facing deportation. He timely filed an appeal but to the wrong court, the Pennsylvania superior court instead of the county court seeking to revoke his guilty plea arguing that his counsel was constitutionally ineffective since he advised him to plea guilty and not instructing him of the deportation consequences. The Pennsylvania superior court reacted immediately to preserve Mr Harris appeal rights by contacting the appropriate court, with instruction. The superior court ruled that it is clear Mr Harris constitutional rights is violated, and that his counsel was ineffective for abandoning him immediately thereafter sentence without preserving his appeal rights issues.

The Superior court order the grant of an attorney and with instruction to have Mr Harris guilty plea properly remove. During the pendency of that appeal Mr Harris also filed a section 1983 suit against the arresting officers assault with claims of racial discrimination. During the process of the serving of the suit upon the defendants, the immigration remove Mr Harris from the United States to Jamaica. Since Mr Harris only legal assistance was a paralegal hired by the Immigration at York county Prison Mr Dean M McKenzie, Mr Harris had no legal assistance in Jamaica nor the financial resource to do so otherwise.

Mr Harris where about was further unknown to the authority of Pennsylvania and therefore they were unable to forward his legal mail to his Jamaica address. Mr Harris partial victory on his direct

appeal were unknown to him, and therefore he wasn't aware that he had a standing to even return to the United States based on the superior court decision. Furthermore as a result of being out of the country he was also prejudiced since the court order his suit non prosecute for his absence.

In August 2021 he discovered that Mrs Tara Rosengrant an obsessed Caucasian woman had told her uncle that Mr Harris a niger sexually assaulted her, and that she spitefully misled her uncle and other officers thereby causing them to take the abusive action complained of, followed by Mr Harris arrest as well as deportation. Mrs Rosengrant likewise saw Mr Harris wife during his court hearing and advised her that she was pregnant for Mr Harris solely to destroy their marriage believing this would give her a chance to pursue Mr Harris.

Discovering this new evidence Mr Harris locate paralegal Dean McKenzie on facebook, and relocate to another Parish in Jamaica where he was located for legal assistance to refile the law suit. The suit was filed arguing new discovered evidence however the claim was for malicious prosecution and not racial discrimination as before. On October 26, 2021 the magistrate judge submit a report and recommendation demanding that the district judge dismiss the suit with prejudice on several conditions. That A.) the suit is relitigated and time bar. B.) that the Plaintiff Mr Harris had plead guilty and cannot sue unless there was an acquittal. No copy of that report was presented to Mr Harris, the district court grant the magistrate request and dismiss with prejudice the suit on Nov. 5th 2021 r Harris received a late copy and submit a request for reconsideration citing that he did not get a copy of the report, and that there was no guilty plea since he recently learn that the superior court had ruled in his favor on direct appeal that his attorney who gave him an ill advise to plea guilty was rendered constitutionally ineffective. The request was ruled Untimely, and the reconsideration was denied. On Dec. 2, 2022 Mr Harris appeal to the Pennsylvania court of appeals to the 3rd circuit arguing that the dismissal with prejudice was error, and an abuse of discretion since he had no valid conviction and thus can sue under section 1983.

On Feb. 14th 2023 the court of appeal for the 3rd circuit affirm the order of the district court but agree that the district court should not have dismissed the suit with prejudice since Mr Harris can validate first the vacation of his conviction at the superior court, and stipulate that the decision of the superior court was not a final order. Of which Mr Harris disagree. This request for certiorari follows.

VI. REASONS FOR GRANTING THE WRIT

VII. WHETHER THE COURT OF APPEALS FOR THE THIRD CIRCUIT ERRED CONCLUDING THAT APPELLANT CONVICTION WASN'T INVALIDATED FOR SECTION 1983 MALICIOUS PROSECUTION CLAIMS.

VIII.

- IX. In THOMPSON v. CLARK, this court was faced with similar situation where the circuits struggle to understand what constitute a favorable termination of a criminal matter the bases of a malicious prosecution suit under section 1983. This court Held: To demonstrate a favorable termination of a criminal prosecution for purposes of the Fourth Amendment claim under §1983 for malicious prosecution, a plaintiff need not show that the criminal prosecution ended with some affirmative indication of innocence. A plaintiff need only show that his prosecution ended without a conviction. Thompson has satisfied that requirement here. Pp. 4–12. (a) To determine the elements of a constitutional claim under §1983, this Court’s practice is to first look to the elements of the most analogous tort as of 1871 when §1983 was enacted, so long as doing so is consistent with “the values and purposes of the constitutional right at issue.” *Manuel v. Joliet*, 580 U. S. 357, 370. Here, as most of the Courts of Appeals to consider the question have determined, the most analogous tort to this Fourth Amendment claim is malicious prosecution. Pp. 4–7. (b)
- X. To maintain that Fourth Amendment claim under §1983, a plaintiff such as Thompson must demonstrate, among other things, that he obtained a *favorable termination* of the underlying criminal prosecution. Cf. *Heck v. Humphrey*, 512 U. S. 477, 484, and n. 4 (1994). This case requires us to flesh out what a favorable termination entails. Does it suffice for a plaintiff to show that his criminal prosecution ended without a conviction? Or must the plaintiff also demonstrate that the prosecution ended with some affirmative indication of his innocence, such as an acquittal or a 2 THOMPSON v. CLARK Opinion of the Court

- XI. dismissal accompanied by a statement from the judge that the evidence was insufficient?
- XII. We conclude as follows: To demonstrate a favorable termination of a criminal prosecution for purposes of the Fourth Amendment claim under §1983 for malicious prosecution, a plaintiff need only show that his prosecution ended without a conviction.
- XIII. Appellant Wayne Harris is a pro se litigant and he retain assistance from a paralegal who once work for the INS assisting indigent immigrant facing removal from the united states. He filed a suit against the same set of defendants in 2004, with the assistance of the paralegal. However after he was removed from the United States based on the circumstances of being in a foreign country he had no legal assistance how to contact the courts. As a direct result of his unlawful removal, he did not receive a mail from the court that his suit was being dismissed for none prosecution nor were he aware that he had also won his pro se appeal to the Pennsylvania superior court seeking to vacate his guilty plea.
- XIV. Thus a series of constitutional rights has been violated due to his removal. The recent discovery of new evidence reveal all these development once appellant relocate the paralegal on facebook and he being to contact the court via telephone and the clerk. The driving issue present here however is whether the district court abuse its discretion dismissing appellant suit and whether the court of appeals erred in affirming in part by concluding that appellant conviction was not invalidated.
- XV. The situation is identical to clark in fact more than similar. The government simple did not obey a direct superior court order. Appellant request to the Pennsylvania superior court to have his guilty plea remove citing that counsel was constitutionally ineffective because he did not advised him of the deportation consequence of his guilty plea. Appellant had several attorney before this who also advised him to plea guilty and he denied those instruction. The sole witness against appellant according to the charges was a CI who was charged for being a drug dealer, wherein appellant know it could have been proven that the CI lied that he bought drugs from appellant. Moreover the excessive force used against appellant did not warrant the seriousness of the offense. The sentence and charges weren't so serious to warrant such assault and battery from the officers thus it raises question as to what could have been the true reason for his assault and arrest.
- XVI. The superior court investigate and conclude that appellant constitutional rights was violated and he was not given constitutionally effective attorney, and but not for the fact the appeal was filed premature that court would vacate the conviction itself. The superior court sent a copy of appellant appeal to the right court with instruction to have an attorney appointed, and that attorney prosecute appellant appeal to vacate his conviction since his attorney was ineffective.
- XVII. The lower court however took no action. The last judicial ruling on the matter was an order from the Pennsylvania superior court ruling appellant was deprive of constitutionally effective representation, and for which his unknowing guilty plea has

immigration consequences and therefore new counsel should have it removed. Since this is the last ruling, and it was in appellant favor, and the lower court did not follow the order of the higher court, and so much time lapse, the last ruling on this matter is that appellant constitutional rights has been violated due to ineffectiveness of counsel.

XVIII. This situation is similar to an event where a conviction has been remanded but the prosecutor refuse to prosecute the case. That order then remain final. If the superior court order wasn't final then, the statute of limitation now renders it final and in appellants favor. Whether or not appellant is guilty or innocent the last ruling was his constitutional rights was violated. It was based on an argument that his attorney ill advise to plea guilty without advising him of the deportation consequences was the basis of that decision. Its concrete that no guilty plea is valid if the attorney instruction lead to it, and counsel had not explain the consequences of such a plea. That being deportation. A guilty plea must being knowing intelligent and voluntarily, and in this case it wasn't and the superior court believe so and made and order.

XIX. Appellant conclude that this was a final order given the circumstances, and that this was a favorable conclusion of his charges where there is no conviction, base on the Superior court last ruling. Hence the lower court erred in dismissing his suit with or without prejudice.

XX. CONCLUSION AND PRAYER FOR RELIEF

XXI. Petitioner concludes that the circuit courts are at odds as to what favorable decision is, and how a favorable decision is a final one by statutory bar or statute of limitation. It appear the court of appeals for the third circuit realize that the lower court order is final but simple did not state or order the case final as a result of ineffectiveness of counsel. But it also appear the court of appeals has expose petitioner to a harm, by sending him to the lower court to open the door closed making the order final, that being the finality created by statute of limitation and seek to have petitioner himself take away the statute of limitation time bar that render the superior court decision a final one.

XXII. We hold these courts of appeal in esteem, and such a base tactic isn't or shouldn't be image of the United States. We seek

permission to present the issues of finality or flesh out the meaning of validity, as to when a decision becomes final. We therefore pray this court take into consideration that petitioner is a lay person and his legal aid is not an attorney, however the point of legal concern is one that will continue to effect other cases within the United States on issues of finality and validity.

CERTIFICATE OF SERVICE

I Wayne Harris here affirm and establish that I am serving a copy of this petition accordingly as indicated below April 25th 2023 by putting said into the Jamaican Mail box in downtown Kingston Jamaica.

The United States Supreme court
WASHINGTON D.C 20543-0001

11 Copy

U.S. COURT OF APPEALS
601 Market street
Philadelphia, Pa 19106

1 Copies

U.S. DISTRICT COURT JUDGES
601 Market street
Philadelphia, Pa 19106

1 Copies

As indicated and affirm by my signature

Wayne Harris
Wayne Harris

Date: April 25th 2023