23-6401

ORIGINAL

SUPREME COURT OF THE UNITED STATES

Wayne Johnson

Petitioner,

vs.

CONTRA COSTA COUNTY, CONTRA COSTA COUNTY CLERK-RECORDER, DEBORAH COOPER, COURT REPORTER, PATRICIA D. MALONE, CHIEF PROBATION OFFICER ESA EHMEN KRAUSE

Respondent.

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

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PETITION FOR A WRIT OF CERTIORARI

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I. Questions Presented

Whether a court reporter in a state criminal action is entitled to immunity for failing to record objections made by parties in a criminal preceding that effect his rights on appeal?

Whether a clerk in a state civil court proceeding is entitled to immunity for entering a constitutionally void restraining order in the court records.

Whether a clerk in a state criminal proceeding is entitled to immunity for failing to provide all the credit for time served to the sentencing judge thereby causing the defendant to serve extra days?

Whether a county probation officer is entitled to immunity for improperly encouraging a State to send a person released from prison to a dangerous remote location without food or shelter.

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V. Petition for Writ Of Certiorari

Wayne Johnson (Johnson) respectfully petitions this Court for a writ of certiorari to review the judgment in this case of the United States Court of Appeals for the Ninth Circuit in Wayne Johnson vs. The County of Contra Costa.

VI. Opinions Below

The decision by the District Court dismissing Petitioner's case is attached hereto to the Appendix as App-5.

The District Court's Screening Order of February 9, 2022 is attached hereto in the App-7

The District Court's Screening Order of December 9, 2021 is attached hereto in the Appendix as App-13.

The Ninth Circuit's Order of July 24, 2023, denying Petitioner's appeal is attached hereto in the Appendix as App-1.

The Ninth Circuit's Order of October 25, 2023 Denying Petitioner's Request for Rehearing En Banc is attached hereto in the Appendix as App-14.

VII. Jurisdiction

The jurisdiction of this Court is invoked under Supreme Court Rule 13.3.

VIII. Constitutional Provisions Involved

United States Constitution, Amendment V: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be

compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment VI: 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. [T]he right to assistance to counsel has been understood to mean that there can be no restrictions upon the function of counsel in defending a criminal prosecution in accord with the traditions of the adversary fact-finding process that is found in the Sixth and Fourteenth Amendments. (See ***Herring v. New York***, 422 U.S. 853, (1975) at 857)

United States Constitution, Amendment XIV: 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.

IX. Statement of The Case

This case presents a question thought long since decided by the Supreme Court of the United States in ***Antoine v. Byers & Anderson, Inc.,*** 508 U.S. 429, 430-431 (1993) and ***Forrester v. White***, 484 U.S. 219, 229 (1988). Those cases hold an officer is entitled to quasi-judicial immunity only if he or she is serving a function traditionally served by a judicial officer or is carrying out a lawful act at the direction of a judicial officer.

A. Court Reporter - During his criminal trial while alleged victim was testifying, she claimed someone at the hospital gave her a pellet that he or she had removed from her scalp. She produced only a photograph of the alleged pellet and she claimed she still had the pellet. Because she had never shown the object to the police or prosecutor and her medical records did not state anyone recovered a pellet or gave an object to anyone, defense counsel asked her to produce the actual pellet in lieu of the photograph. The condition of the actual object would have been relevant to disproving anyone gave her a pellet and would have therefore supported the defense's claim she fabricated the story about being struck that evening.

The trial judge instructed the witness not to produce the pellet. When Defense counsel objected to the trial judge's instruction, the judge ordered the court reporter not to record his objection, and she did not.

The court reporter was obligated to record the objection regardless because a court reporter's only job is to report accurately what takes place in the courtroom. Court reporters do not enjoy quasi-judicial immunity because recording testimony and objections is not a

judicial function, and has never been. The actual pellet was the best evidence and the judge had no legitimate excuse for manipulating the transcript by ordering the court reporter not to record that objection or interfering with the production of the pellet in court. Most importantly, the court reporter should not have followed his instruction.

1. A COURT REPORTER NEVER PERFORMS A QUASI-JUDICIAL FUNCTION AND IS NEVER ENTITLED TO QUASI-JUDICIAL IMMUNITY.

The Supreme Court in ***Antoine v. Byers*** expressed: "A court reporter is not absolutely immune from damages liability for failing to produce a transcript of a federal criminal trial. Respondents bear the burden of establishing the justification for the absolute immunity they claim, which depends on the immunity historically accorded officials like them at common law and the interests behind it, ***Butz v. Economou***, 438 U. S. 478, 508.

The United States Supreme Court has ruled that a court reporter in a federal court has a ministerial duty to record accurately what takes place in the courtroom, and it has cited various compelling reasons for its ruling, not to mention the integrity of the judicial process. (See ***Antoine v. Byers & Anderson, Inc.,*** 508 U.S. 429, 430-431 (1993).)

Reporting what takes place in a trial is not a judicial function. It is more similar to the functions of a tape recorder. Moreover, a court reporter's job requires no discretionary judgment and they are not entitled to immunity as part of the judicial function. See ***Imbler v. Pachtman***, (1976) 424 U.S. 409, 423, n. 20. Pp. 432-438.

The judges may not give orders that infringe upon a person's ministerial duties and judges may not order a person to perform an unconstitutional act for which he or she does not have jurisdiction.

In so far as the court reporter that failed to record objections and testimony and the clerk who entered a void five-year restraining order, those are ministerial acts they are required to perform, or not, and for that reason they are not entitled to immunity.

The court's order that the court reporter not accurately report what happened in court was not an enforceable order. Besides, alleged victim's statement someone gave her a pellet is hearsay in any event and it was not corroborated in her medical records or any other place. The actual pellet would have been inadmissible because of the break in the chain of custody. Furthermore, the photograph alone could not corroborate the existence of a weapon or alleged victim's subjective belief anyone discharged a weapon.[1]

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[1] 1) The prosecution failed to even allege facts that would support a finding of a domestic violence relationship. 2) alleged victim did not suffer an injury. Alleged victim visited the hospital on both occasions when she alleged violence and in neither instance did a medical examiners diagnosed her with any acute injuries; 3) Petitioner has to make a credible threat and there is no evidence he said anything or otherwise made a credible threat. Alleged victim testified he told her he would not harm her. 4) the restraining order was void from its inception. It was on appeal during the criminal trial and that court of appeal declared the restraining order to be null and void; however, only after the criminal trial; 5) No witness placed Petitioner on the scene of the alleged pellet gun attack; 6) no one ever claimed to see anyone with a pellet or any device whatsoever; 7) no evidence of a pellet was ever confirmed by anyone at the hospital, by any law enforcement personnel, or produced in court; and 8) Many of the allegations related to stalking are alleged victim's claims she saw Petitioner in public places where he was entitled to be and she did not allege he did or said anything to her.

Assuming arguendo such a device actually existed, nobody claimed to actually see any device so it is another huge leap to presume the device is a dangerous or deadly weapon without knowing whether there was a weapon or the assumed device's capability to deliver anything with sufficient velocity to cause harm.

Defendant contested the authenticity of the photograph, the existence of a pellet, a pellet gun, and he questioned whether the incident even took place. Petitioner also denied he was on the scene or that he possessed any device, and he denied having knowledge of or taking part in any of the alleged events.

If the Court Reporter had done her job there would have been no prosecution.

B. Court Clerk- Before the criminal trial began, the civil clerk entered a void domestic violence restraining order against Petitioner without anyone even attempting to serve him. In the case of

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Contra Costa County has a reputation for depriving Black people of their constitutional rights. An unsophisticated jury most likely was unaware a judge would deprive a person of his rights out of prejudice or sport.

Petitioner served the entire sentence before his appeal was completed. The Court of Appeal left it in the trial court's discretion whether to resentence Petitioner. The trial court did resentence Petitioner; however, even that was a farce because the trial judge only reduced one of the suspended sentences by one year, which had no impact whatsoever. It would not have mattered anyway because Petitioner had served the entire sentence by the time the Court of Appeal heard the arguments and they no longer had jurisdiction over him.

Petitioner maintains he would not have even been charged had those in Contra Costa County not manipulated the law and the facts. Not only is there insufficient evidence to support a verdict, the State violated all of the Constitutional rights to which defendants are entitled, including his right to bail, and denial of due process, effective assistance of counsel, Double Jeopardy, and Cruel and unusual punishment.

a Court Clerk, his or her job in this case involves entering only valid orders. In this case the Clerk knowingly entered a void restraining order in the record, i.e., one that is wrongfully issued against Petitioner who clearly did not have notice or an opportunity to be heard before the judge issued that 5-year restraining order, thus making the order void in is entirety from its inception. Neither the judge nor the Clerk have jurisdiction to declare a person served that was not served with process.

1. A COUNTY CLERK SHOULD NEVER KNOWINGLY ENTER A VOID RESTRAINING ORDER

In the case of the underlying void civil restraining order introduced in the criminal proceedings, the Ninth Circuit appears to be somewhat confused over the distinction between quasi-judicial functions and ministerial duties. Just because an event happened in court does not make it a judicial function.

That void order was the subject of an appeal before the criminal trial even began. Not only was the order void because the judge who ordered it was without jurisdiction to authorize it, it was on appeal and it would not have been a final order anyway.

The order was constitutionally void and void for all purposes because it was issued against the Petitioner without prior notice or opportunity to be heard. For that reason the Clerk in the civil case had a ministerial duty to not file or enter the void five-year restraining order and quasi-judicial immunity is not available to Clerks for failure to perform her ministerial duties. Moreover, a judge may not create jurisdiction by declaring a person to be served when she knows he was not.

The Clerk had independent ministerial duties apart and aside from the judge for which they can and should be held accountable. It is common knowledge that a person named in a temporary restraining order must be personally served and the Clerk's duties are clearly set forth on the DV-130 form. The check box under Service on the Restraining Order, Form DV-130 reads: "The person to be restrained was not present. Proof of service of form DV-109 and form DV-110 (if issued) was presented to the court." Clearly, the person must be either present in court or personally served. There are no exceptions to the rule, and the Clerk is fully aware a judge cannot rely upon a process server's invoice as a substitute for a proof personal service. Moreover, supposed due diligence is not a substitute for personal service.

A judge may not make any permanent order affecting the rights of a person over whom the court does not have jurisdiction, such as in the case of a person who was not served with process. (See ***Wright v. Beck***, (9th Cir. 2020) 981 F.3d 719, at 738, cited ***Zoretic v. Darge*** (7th Cir. 2016), 832 F.3d 639, 644, cited " ***Dellenbach v. Letsinger***, 889 F.2d 755," which relied upon ***Bradley v. Fisher***, 80 U.S. (13 Wall.) 335, 20 L.Ed. 646 (1872).)

The Contra Costa County Superior Court judge who issued the 5-year restraining order did not have authority over Petitioner and she could not enter an order affecting his rights. Because the issuing judge was without jurisdiction, the Clerk's authority was derivative so she did not have authority to enter or file the void order. That is not an administrative act. Moreover, a Clerk may not avoid liability for failure to perform her ministerial duties because she erroneously believes she has to follow an unconstitutional order.

In 2018, there was no exception to that rule. It was crystal clear that the person to be restrained had to be in court or someone had to produce a proof of personal service. The only issue was whether Petitioner was present in court or served and neither of those occurred.

In ***Bradley v. Fisher***, 80 U.S. (13 Wall.) 335, 20 L.Ed. 646 (1872), the Court held that even judges may be liable in civil actions for their judicial acts if they have acted in the "clear absence of all jurisdiction." ***Bradley***, 80 U.S. (13 Wall.) at 351; see also ***Stump v. Sparkman***, 435 U.S. 349, 356-57, 98 S.Ct. 1099, 1104-05, 55 L.Ed.2d 331 (1978) ("[T]he scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge. A judge will be subject to liability only when he has acted in the `clear absence of all jurisdiction.'"); ***Pierson***, 386 U.S. at 553-54.

Because judge Mockler was without jurisdiction, so too was the Court Clerk.

In ***Wright v, Beck***, the Ninth Circuit also rejected Defendants' contention that they are entitled to "derivative, quasi-judicial immunity" because, once the LAPD seized the contested firearms by warrant, "the City" acted as a court custodian subject to court orders.

That immunity extends to non-judicial officers "only if they perform official duties that are functionally comparable to those of judges, i.e., duties that involve the exercise of discretion in resolving disputes." (See ***In re Castillo***, 297 F.3d 940, 948 (9th Cir. 2002).)

The Court reasoned Edwards was not entitled to quasi-judicial immunity because he performed "purely administrative acts." See ***Id.*** at 952. That immunity applies when a non-judicial officer performs a "non-discretionary or administrative function . . . at the explicit

direction of a judicial officer." ***Zoretic v. Darge***, 832 F.3d 639, 644 (7th Cir. 2016).

In ***Wright***, Defendants appear to suggest that they are entitled to immunity under this theory because they complied with a court order to destroy the firearms. Defendants fail to cite any case, however, that shows that the immunity extends to state actors who sought and obtained the order improperly in the first instance. Also, Edwards exercised discretion in deciding when or whether to seek the order permitting destruction of the firearms. We thus reject this contention.

There is no case that holds a Clerk is entitled to the protection of quasi-judicial immunity for entering or filing an obviously unconstitutional restraining order that that was issued in excess of Petitioner's due process rights. There is nothing the Petitioner alleged in his complaint any of the defendants did that is comparable to the duties of a judge.

The second way of obtaining quasi-judicial immunity is engaging in a non-discretionary or administrative function, but at the explicit direction of a judicial officer. See, e.g. ***Dellenbach v. Letsinger*** , 889 F.2d 755, 763 (7th Cir. 1989) (court personnel shielded from liability in lawsuit over legality of transcript fees because they acted at direct request of judges). In short, when the deputies entered Zoretic's residence, they were not acting at the direction of a judge. And we have held that where officers are not acting pursuant to an enforceable order, they cannot receive quasi-judicial immunity. (See ***Dunn v. City of Elgin***, 347 F.3d 641 (7th Cir. 2003) (no quasi-judicial immunity when state officials attempted to enforce out-of-state custody.)

"[D]ue process is afforded only by the kinds of `notice' and `hearing' that are aimed at establishing the validity, or at least the probable validity, of the underlying claim against the alleged debtor before he can be deprived of his property . . .." (See ***Sniadach v. Family Finance Corp.***, supra, at 343 (Harlan, J., concurring). See ***Bell v. Burson***, supra, at 540; ***Goldberg v. Kelly***, supra, at 267. See ***Fuentes v. Shevin***, 407 U.S. 67, at 97 (1972).)

In this case, there is a huge distinction between waiving or issuing filing fees or ordering weapons destroyed and asserting jurisdiction over a party when none exists. Entering an unconstitutional restraining order or manipulating the trial transcripts is not an administrative function. The act non-discretionary act performed by an order of a judge must be a lawful and proper act.

For example, in the case of filing a restraining order the person to be restrained must have been properly served with the TRO or he must appear in court. Personal service of the temporary restraining order was critical to the court's jurisdiction and a judge cannot by proclamation create jurisdiction over a person who was never served with process. So, theoretically even the judge is not shielded by immunity.

The courts have repeatedly held that a person's job title alone does not determine whether the person is carrying out a quasi-judicial function. Nonetheless, the Ninth Circuit looked solely at Defendants' job titles in granting immunity. The Clerk's job was to follow the law, plain and simple.[2]

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[2] After being fully aware nobody served Petitioner with a TRO, Judge Terry Mockler inappropriately declared the process server's invoice as a declaration of due diligence. The process server's

The Ninth Circuit Court cited cases that are not on point and they do not relate to court reporters who have important functions apart and aside from following the orders of the judges. The clerk had an obligation to tell the judge she could not file the DV-130 form absent Petitioner's appearance or a proof of personal service, and the judge should not be so arrogant that she cannot accept proper legal instructions.

2. THE CLERK HAS A MINISTERIAL DUTY TO PROVIDE THE SENTENCING JUDGE WITH ALL THE DATES A PERSON SERVED PURSUANT TO THAT COURT'S ARREST WARRANT.

Moreover, in the case of the failure to give Petitioner the six days of credit to which he was entitled, the Court Clerk was not serving a quasi-judicial function when she failed to provide the six days credit to the court at Petitioner's sentencing. Causing a person to be falsely imprisoned for six days extra days is not an administrative function. That is a serious violation of Petitioner's constitutional rights. Not only that, the Clerk placed Petitioner's life on the line.

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declaration was not even intended by the process server to be a declaration of service of attempted personal service. The process server presented the invoice merely to itemize the work he performed in order to justify his bill.

Even still, the Court was fully aware that even if the process server intended his invoice to be a proof of service, a TRO could not be served by due diligence. The TRO would have had to be delivered directly into Petitioner's possession.

Moreover, what the process server described did not even qualify as due diligence, but that is beside the point and irrelevant. Petitioner's woes are the result of either racism, ignorance, or judicial incompetence that has no place in a court of law and the County should have to pay Petitioner for the invasions to his Constitutional rights.

The Clerk also failed to provide the sentencing judge with credit for all of the time he served which resulted in Petitioner being locked in a dangerous and COVID-19 contaminated prison for six days longer than the sentence. That is a violation of Petitioner's due process rights and cruel and unusual punishment.

Contra Costa County caused Petitioner to be arrested by issuing a warrant for Petitioner's arrest in December 2018. The United States Marshal executed the warrant on January 3, 2019. Petitioner bailed out two days later, but they did not release him until three days later. Those three days translated into six days credit of time in custody that the jail provided the clerk when it issued an order to appear. Because the warrant issued out of Contra Costa County, everyone, including the clerk knew Petitioner was in custody and how much credit he was entitled to receive.

However, the Contra Costa County Clerk did not provide the sentencing judge with any of the credit from that detention.

Instead of releasing Petitioner March 31, 2021, CDCR should have released him March 25, 2021, and ended supervision March 25, 2022 instead of March 31, 2022. Six unnecessary days in a violent madhouse during the COVID-19 epidemic is significant, especially for someone who had no previous criminal history and whose case was on appeal until April 2022.

Sadly, "Western Society" still uses barbaric places like prisons to try to force people into conformity. The State is aware that prisons do not force people to conform and that they are extremely dangerous places that even the government will not or cannot control. Even the people who work in prisons begin to behave as criminals because they

know judges do not care. They perpetuate violence and engage in smuggling. The notion of punishment is naïve and childish. Torture would be a better description of what takes place. Prisons will never encourage a healthy society, especially in this country.

Nonetheless, Petitioner underwent an extra six days of unnecessary torture under the threat of death from not only inmate and guard violence, but as a result of the COVID-19 virus that claimed the lives of about thirty people in San Quentin alone.

The Clerk had a non-discretional obligation to perform a ministerial act as required by law, that was to provide the sentencing judge with all the credits/days Petitioner earned as a result of being in custody relating to the underlying case.

All the Clerk had to do was look into the file and provide the date Petitioner was arrested and the date he was released on bail to the sentencing judge. Petitioner was supposed to receive two days credit for each day he was incarcerated, but he did not receive any credits for those days, which meant he was in custody for six extra days. To make matters worse people were needlessly dying in prison during the height of the COVID-19 pandemic.

C. County Probation Officer - With regard to the County Probation Officer, upon Petitioner's release California attempted to send Petitioner to Contra Costa County at the request of the Defendant probation office that provided false information to the CDCR that Petitioner had been a homeless resident of Contra Costa County.

Petitioner protested because had never resided in Contra Costa County and the written policy at that time was to attempt to send those

who were released to locations where they have family and a support system so they would be less likely to be recidivists.

When the Contra Costa County Probation officer learned Petitioner was about to be released to his true county of residence, she persuaded the CDCR to send Petitioner to Red Bluff, California, a location nearly 200 miles away from Alameda County, his county of residence. When he Petitioner arrived in Red Bluff they did not have any shelter, food, or programs him. That area was populated by people who are hostile to people of Petitioner's ancestry, which put Petitioner's life in jeopardy. Petitioner was without housing or food twenty-four hours a day for about two weeks.

The Probation officer was not acting pursuant to a court order or serving a duty traditionally served by a judge. The probation officer acted independently.

1. A COUNTY PROBATION OFFICER WITHOUT A LAWFUL STAKE IN THE PROCESS SHOULD NOT ENCOURAGE A PRISON TO SEND A PRISONER TO A DANGEROUS LOCATION UPON HIS RELEASE.

Finally, the Probation Officer was not serving a quasi-judicial function when she caused Petitioner to be sent to Red Bluff, California without any food, shelter, or means of Support.

In January 2021, CDCR proposed releasing Petitioner to Contra Costa County at the end of March 2021. The documentation falsely stated that they were returning Petitioner to his previous residence where he Petitioner had been a homeless resident at the time the alleged offenses were committed. Petitioner objected because he had never been a resident of Contra Costa County and Contra Costa County had no valid claim for his release to their jurisdiction.

CDCR rules required Petitioner be released to a county where the most recent offense was alleged to have been committed or Petitioner's county of residence. Contra Costa County was neither. Alameda County was the county where Petitioner last resided and where the last alleged offense was allegedly committed.

When Petitioner brought that to CDCR's attention, they changed the release location to Alameda County. Then according to CDCR, Contra Costa County Probation contacted CDCR and objected to CDCR releasing Petitioner to any location within thirty miles of alleged victim's residence or place of employment.

Contra Costa County's goal was to prevent Petitioner from returning to his place of residence once it discovered CDCR could not force Petitioner to go to Contra Costa County where they could continue to violate his Constitutional rights.

Petitioner grew up in a diverse community, Oakland, California, when Oakland, California had one of the highest per capita number of Black people west of the Mississippi River. Also, Petitioner attended schools, worked, and has numerous family, friends, and connections in the San Francisco Bay Area.

Red Bluff, California virtually has no Black people and Petitioner had no residence, family, friends, or opportunities. White people move to Red Bluff to get away from Black people and many of them display outright resentment and hostility towards Black people.

In Colin Kaepernick's Netflix documentary "Colin in Black and White," he identified Red Bluff, California as a hotbed of racism. He described some very troubling racial issues he experienced when he traveled to Red Bluff, California.

In addition, there was no support system for Petitioner in Red Bluff. There were no programs, housing, food, or means of basic survival. CDCR and Contra Costa County just sent Petitioner there to live or die on the streets.

Because the judiciary protects judges and prosecutor from virtually all civil and criminal liability for wrongs it commits in the line of duty, Petitioner is forced to seek redress from those who are not protected. Those who have no discretion and should know better than to do anything, but to follow the law should face the consequences of their blind allegiance to judges who behave as the fuehrer did in Nazi Germany. If Adolf Eichmann could not escape responsibility because he was just following orders neither should the defendants in this case.

The District Court mentioned the probation report because Defense counsel led her to believe that the false statements in that report are the basis for the present lawsuit. Even though that probation repot also contained ridiculous falsehoods those bogus statements in their sentencing report is not the basis of Petitioner's lawsuit. Petitioner objected because Petitioner is a resident of Alameda County and he had no ties to Contra Costa County.

Accordingly, when CDCR determined that they could not send Petitioner to Contra Costa County, Contra Costa County Probation went on a campaign to get CDCR to send Petitioner sent as far away from his family and support system as possible. That is the basis for Petitioner's lawsuit against them.

Because of Contra Costa Probation's acts, Petitioner was forced to survive nearly two weeks on the streets of Red Bluff without food or shelter.

Contra Costa County Probation had no authority involve itself in Petitioner's life, and they had no right to exert any influence over CDCR's decision to send Petitioner anywhere.

Even if the court mistakenly believed the County in completing a probation report has some bearing on the facts that belief is not well taken because Petitioner was never on Probation and no judge asked for or relied upon Contra Costa County's input for any purpose. So they cannot claim they acted according to a judge's instructions or were performing quasi-judicial functions.

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X. STATEMENT OF REASONS FOR WRIT OF CERTIORARI

The opinion of the Ninth Circuit is this case is: 1) court reporters; 2) county court clerks; and 3) county probation officers enjoy immunity as quasi-judicial officers of the court.

Petitioner requested en banc review; however, the Ninth Circuit denied Petitioner's request for en banc review.

The cases hold that certain entities may be immune from suit if they are: 1) performing a function traditionally served by judges; or 2) following a lawful order of a judge in a case where the act is not discretionary. In other words, acting as a lawful arm of the court.

The touchstone of this analysis is whether the officer is engaged in discretionary functions, such as "resolving disputes between parties, or authoritatively adjudicating private rights." ***Snyder v. Nolen***, 380 F.3d 279, 288 (7th Cir. 2004) (citing ***Antoine v. Byers & Anderson, Inc.***, 508 U.S. 429, 435, 113 S.Ct. 2167, 124 L.Ed.2d 391 (1993)); see

also ***Foster v. Walsh***, 864 F.2d 416, 417 (6th Cir. 1988) (issuing arrest warrant is a "truly judicial" act allowing quasi-judicial immunity); ***Thompson v. Duke***, 882 F.2d 1180, 1184–85 (7th Cir. 1989) (scheduling and conducting parole hearing is a quasi-judicial function). Not one of the Defendants was acting in that capacity.

Only two of the four acts alleged in Petitioner's complaint were taken at a judge's discretion, and neither of those acts was lawful or administrative. The other two were not discretionary and they were not quasi-judicial.

The quintessential question is whether the Court Reporter, County Court Clerk, and or the County Probation Officer are agents of the judge or whether they have independent ministerial duties not connected to the judge for which any of them may be held accountable.

Quasi-judicial proceedings are quite different from ministerial proceedings. To be ministerial, a decision must be one the decision maker itself is forced to follow. ***Friends of Westwood, Inc. v. City of Los Angeles*** (1987) 191 Cal.App.3d 259, 278; CEB California Land Use Practice, §1.51. Ministerial decisions cannot be a rule or standard established by the decision maker itself; i.e., they cannot be a result reached by the decision maker's exercise of its own discretion, or that the decision maker would have the authority to create its own immunity. ***Friends of Westwood, Inc., supra***, 191 Cal.App.3d at 278.

The Ninth Circuit erroneously relied upon the ruling in ***Wright v. Beck*** 981 F.3d 719, 738 (9th Cir. 2020), in taking the position that clerks, probation officers, and court reporters are immune from suit regardless of the actions they engage in, especially if they perform the acts at the direction of a judge.

Actually, ***Wright v. Beck*** held due process is not satisfied simply because judges have facilitated the deprivation of rights.

Wright v. Beck also held if the entity is relying upon the application of quasi-judicial immunity, the quasi-judicial function must be pursuant to an enforceable court order.

The Court in ***Antoine v. Byers & Anderson, Inc.,*** 508 U.S. 429, 430-431 (1993) and ***Forrester v. White***, 484 U.S. 219, 229 (1988) held an officer is entitled to quasi-judicial immunity if he or she is serving a function traditionally served by a judicial officer or carrying out a lawful act at the direction of a judicial officer.

XI. REASONS FOR GRANTING THE WRIT

A. To avoid erroneous deprivations of the right to due process and the right to counsel, this Court should clarify a court reporter's obligation to accurately record objections made in court, but not only to objections, but to all matters that take place in court that should be preserved for appellate purposes.

B. To avoid erroneous deprivations of the right to due process this Court should clarify a Clerk's responsibility to the public to not enter known void restraining orders that significantly impact a person's right to a fair trial

C. To avoid erroneous deprivations of the right not to be held without just cause for days after a person's sentence is completed.

D. To avoid erroneous deprivations to the right not to be subject to cruel and unusual punishment upon release from incarceration upon reentry into society.

ARGUMENT

I. WHERE THE LAW REQUIRES ABSOLUTELY THAT A MINISTERIAL ACT BE DONE BY A PUBLIC OFFICER AND HE NEGLECTS OR REFUSES TO DO SUCH AN ACT, HE MAY BE COMPELLED TO RESPOND IN DAMAGES.

The rule in the ***Amy v. The Supervisors***, 78 U.S. 136 (1870) case, which was issued over one hundred years ago, is "Where the law requires absolutely a ministerial act to be done by a public officer and he neglects or refuses to do such act, he may be compelled to respond in damages to the extent of the injury arising from such nonfeasance or malfeasance. A mistake as to what his duty is and honest intentions will not excuse him.

Ministerial act means an action performed in a prescribed manner imposed by law without the exercise of judgment or discretion as to the propriety of the action.

Liability for a ministerial act is not shielded by qualified immunity. (See ***Andrulonis v. U.S.*** (2nd Cir. 1991) 952 F.2d 652. See also ***Berkovitz v. U.S.,*** 486 U.S. 531 (1988))

"A discretionary act is one which requires 'personal deliberation, decision and judgment' while an act is said to be ministerial when it amounts 'only to ... the performance of a duty in which the officer is left no choice of his own.' " (***Morgan v. County of Yuba*** (1964 230 Cal. App. 2d 938, 942 [41 Cal. Rptr. 508], citing Prosser, Law of Torts (3d ed. 1964) p. 1015.) (See Hill, Gerald N. (2002). The people's law dictionary: taking the mystery out of legal language. New York, NY: MJF Books. ISBN 9781567315530;

Respondents argued Petitioner is limited to the false facts the probation officers submitted in the probation report. Petitioner is not referring to any of the false statements made in the probation report. Moreover, Petitioner may allege "any set of facts consistent with the allegations in the complaint." (See ***Ashcroft v. Iqbal*** (2009) 556 U.S. 662, 670.)

Petitioner's complaint alleges that when CDCR released him, Contra Costa County Probation contacted CDCR and provided CDCR with false information that caused CDCR to send him to Red Bluff. It is illogical to assume that Contra Costa County provided information in the probation report because CDCR had ostensibly already had that information at its disposal long before his anticipated date of release.

Moreover, The probation report was unnecessary. Plaintiff-Appellant did not request a probation report, and the court did not rely upon the probation report because the court could rely upon the evidence presented at the trial.

Moreover, the court may not assume Plaintiff-Appellant suggests the probation report was the only possible avenue Contra Costa used to deliver false information to CDCR. It is well established that "[c]ourts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss[.]" ***Dunn v. Castro,*** 621 F.3d 1196, 1205 n.6 (quoting ***Tellabs, Inc. v. Makor Issues & Rights, Ltd.***, 551 U.S. 308, 322 (2007)); ***Magulta v. Samples***, 375 F.3d 1269, 1274-75 (11th Cir. 2004) (when reviewing a motion to dismiss for failure to state a claim, courts should read the complaint in its entirety.)

XII. CONCLUSION

Because none of the Defendants were performing acts that were traditionally performed by judges, they are not entitled to quasi-judicial immunity.

Because the court reporter's sole responsibility is to make an accurate record of the proceedings, a judge can never order her to falsify the record to harm a Defendant's chances on appeal.

Because a clerk has independent responsibilities to the public to only enter legal orders, the judge's order to her to declare Petitioner served with notice of a temporary restraining order when it was clear he had no knowledge of the proceedings was unconstitutional. Clearly, the judge did not have jurisdiction to enter that order and an order entered without jurisdiction is not shielded by judicial immunity.

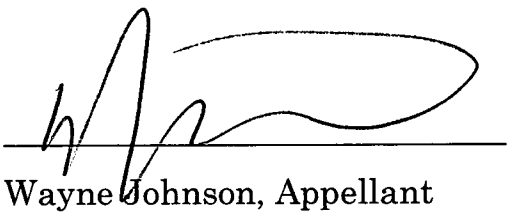
The clerk had a ministerial duty to provide the sentencing judge with all the time Petitioner served including the six days credit he was entitled to because he served that time.

The probation officer was not acting pursuant to court order and she had no business contacting CDCR regarding Petitioner for any purpose and encouraging them to place Petitioner's life in jeopardy by sending him to a racist environment as far away as possible from his county of residence.

For the foregoing reasons, Petitioner respectfully requests that the Court grant this petition for writ of Certiorari.

Dated: December 18, 2023

Respectfully submitted,



Wayne Johnson, Appellant