No. 23-6491

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

PEYTON HOPSON
— PETITIONER
(Your Name)

vs.

DEBORAH S. HUNT
— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

PEYTON HOPSON 662-444
(Your Name)

P.O. Box 540
(Address)

St. Clairsville, Ohio 43950
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

QUESTION (1)

Did the Sixth Circuit lose jurisdiction to proceed to review where the Sixth Circuit failed to comply with the Sixth Amendment requirement to appoint counsel to assist Petitioner in challenging the district court's denial of a certificate of good faith?

QUESTION (2)

Did Respondent (the Clerk of the Sixth Circuit) act in complete absence of jurisdiction where Respondent intentionally and knowingly deprived Petitioner of his Sixth Amendment right to the assistance of counsel in the challenge of the district court's denial of a certificate of good faith?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

RELATED CASES

- Hopson v. Stark Cnty. (Ohio) Sheriff's Office, No. 5:15-cv-992, U. S. District Court for the Northern District of Ohio. Judgment entered Oct. 16, 2015.
- Hopson v. Stark Cnty. (Ohio) Sheriff's Office, No. 15-4239, U. S. Court of Appeals for the Sixth Circuit. Judgment entered Dec. 30, 2015.
- Hopson v. Stark Cnty. (Ohio) Sheriff's Office, No. 18-4196, U. S. District Court of Appeals for the Sixth Circuit. Judgment entered Feb. 26, 2020.
- Hopson v. Deborah S. Hunt, No. 2:20-cv-4751, U. S. District Court for the Southern District of Ohio. Judgment entered Sept. 21, 2020.
- Hopson v. Deborah S. Hunt, No. 21-3101, U. S. Court of Appeals for the Sixth Circuit. Judgment entered May 30, 2023.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[X] reported at Hopson v. Hunt, 2023 U.S. App. LEXIS 13281
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[X] reported at Hopson v. Hunt, 2020 U. S. Dist. LEXIS 217250
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was May 30, 2023.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 9, 2023, and a copy of the order denying rehearing appears at Appendix B.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Sixth Amendment of the United States Constitution

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 defense.

STATEMENT OF THE CASE

In 2015, Hopson ("Petitioner") filed a 42 U.S.C. :1983 action against the Stark County (Ohio) Sheriff's Office. The district court dismissed the complaint on the grounds of failure to state a claim and on the grounds that a sheriff's office is not an entity subject to suit under : 1983. The district court certified that an appeal could not be taken in good faith. Hopson v. Stark Cnty (Ohio) Sheriff's Office, Case No. 5:15-cv-992. See Appendix D.

Petitioner filed a notice of appeal. Hopson v. Stark Cnty, (Ohio) Sheriff Office, No. 15-4239. Though Petitioner filed a motion for the appointment of counsel along with his notice of appeal Hunt ("Respondent") (Clerk of the Sixth Circuit) never docketed Petitioner's motion for the appointment of counsel. Subsequently, pursuant Sixth Circuit Rule 45(a) Respondent dismissed the appeal for want of prosecution for failure to pay the filing fee. The Sixth Circuit had not inquired into

the district court's denial of a certificate of good faith and had not afforded Petitioner the aid of counsel to assist Petitioner in challenging the district court's denial of a certificate of good faith. See Appendix E.

In 2018, Petitioner moved for relief from judgment under Federal Rule of Civil Procedure 60(b)(6), arguing that the district court had erred by dismissing his action without notice and an opportunity to amend the complaint, and by requiring him to pay the filing fee in installments without permitting him to litigate. The district court denied the motion. See Appendix F. The Sixth Circuit affirmed, reasoning that a Rule 60(b)(6) motion may not serve as a substitute for an appeal, that Petitioner could have raised his arguments in an appeal from the district court's prior judgment appeal No. 15-4239, and that he had missed his opportunity to do so when he failed to prosecute his appeal. Hopson v. Stark Cnty. Ohio, Sheriff's Office, No. 18-4196 (6th Cir. Feb. 26, 2020). See Appendix G.

Petitioner tendered a Rule 60(b)(6) motion to the Sixth Circuit alleging that Respondent had committed a fraud upon the court whereby Respondent did not appoint Petitioner the aid of counsel to assist Petitioner in challenging the district court denial of a certificate of good faith. Respondent did not docket or return the motion. However, Respondent recalled the Sixth Circuit mandate in No. 18-4196. See Appendix H.

Nevertheless, Respondent refused to reinstate the appeal. Petitioner tendered multiple motions to prompt Respondent to reinstatement appeal No. 18-4196 in accordance with Respondent's recall of the Sixth Circuit's mandate. See Appendix I. In response to Respondent's return of Petitioner's unfiled motions Petitioner filed suit against Respondent (the Clerk of the Sixth Circuit) seeking money damages, pursuant to the doctrine announced in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

The district court adopted the magistrate's recommendation dismissing the action for failure to state a claim on the grounds of judicial-immunity and on the grounds of Ohio's two-year statute-of-limitations. See Appendix B.

On appeal, Petitioner argued that (1) Respondent's failure to appoint counsel on appeal in No. 15-4239 to challenge the district court's denial of a certificate of good faith did not constitute a discretionary judgment entitled to quasi-judicial immunity because Petitioner had a right to the aid of counsel pursuant to this Supreme Court's mandate in *Johnson v. United States*, 352 U.S.565; (2) the complaint was timely under the discovery rule; (3) the dismissal of Petitioner's appeal in No. 15-4239 should be vacated because counsel was not appointed to aid Petitioner with his IFP motion and challenge to the district court's certification; and (4) the recall of the mandate in No. 18-4196 required the reopening of that appeal.

The Sixth Circuit decline to consider Petitioner 's arguments regarding his lack of appointment of counsel in No. 15-4239 and declined to address the recall of the mandate in No. 18-4196 contending that Petitioner raised the issues for the first time on appeal.

Furthermore, the Sixth Circuit found that the district court properly dismissed Petitioner's action against Respondent (Clerk of the Sixth Circuit) on the ground of judicial immunity. See Appendix A.

The Sixth Circuit denied Petitioner's petition for rehearing. See Appendix C.

REASONS FOR GRANTING THE PETITION

This writ should be issued on account of the importance of the jurisdictional questions involved and on account that the Sixth Circuit's failure to afford Petitioner the aid of counsel to challenging the district court's denial of a certificate of good faith in appeal No. 15-4239, conflicts with the decision of this Supreme Court held in *Johnson v. United States*, 352 U.S. 565 citing *Johnson* v. *Zerbst*, 304 U.S. 458.

QUESTION (1): HOLDINGS AND FACTS:

Question (1)

Did the Sixth Circuit lose jurisdiction to proceed to review where the Sixth Circuit failed to comply with the Sixth Amendment requirement to appoint counsel to assist Petitioner in challenging the district court's denial of a certificate of good faith?

Holdings:

This Supreme Court holds that "A court's jurisdiction at the beginning ... may be lost in the course of the proceedings due to the failure to complete the court ... as U.S. Const. amend. VI requires – by providing counsel for a defendant who is unable to obtain counsel, who has not intelligently waived his constitutional guaranty, and whose life or liberty is at stake. If this requirement of the U.S. Const. amend. VI is not complied with[,] the court no longer has jurisdiction to proceed. The judgment ... pronounced by a court without jurisdiction is void. A judge of the United States to whom a petition ... is addressed ...should be alert to examine the facts for himself when if true as alleged they make the [proceedings] absolutely void." See *Johnson v. Zerbst*, 304 U. S. 458, HN9.

In *Johnson v. United States*, 352 U.S. 565, this Supreme Court held, By the Act of June 25, 1910, 36 Stat. 866, as now enlarged in 28 U. S. C. § 1915, Congress provided for proceedings **[*566]** *in forma pauperis* on appeal unless "the [**551] trial court certifies in writing that it [the appeal] is not taken in good faith." Such certification is not final in the sense that the convicted defendant is barred from showing that it was unwarranted and that an appeal should be allowed. Of course, certification by the judge presiding at the trial carries great weight but, necessarily, it cannot be conclusive. Upon a proper showing a [****3] Court of Appeals has a duty to displace a District Court's certification. Moreover, a Court of Appeals must, under *Johnson* v. *Zerbst*, 304 U.S. 458, afford

one who challenges that certification the aid of counsel unless he insists on being his own. Finally, either the defendant or his assigned counsel must be enabled to show that the grounds for seeking an appeal from the judgment of conviction are not frivolous and do not justify the finding that the appeal is not sought in good faith. This does not require that in every such case the United States must furnish the defendant with a stenographic transcript of the trial. It is essential, however, that he be assured some appropriate means -- such as the district judge's notes or an agreed statement by trial counsel -- of making manifest the basis of his claim that the District Court committed error in certifying that the desired appeal was not pursued in good faith. See *Miller* v. *United States*, 317 U.S. 192, 198.

Since here the Court of Appeals did not assign counsel to assist petitioner in prosecuting his application for leave to appeal *in forma pauperis* and since it does not [****4] appear that the Court of Appeals assured petitioner adequate means of presenting it with a fair basis for determining whether the District Court's certification was warranted, the judgment below must be vacated and the case remanded to the Court of Appeals for proceedings not inconsistent with this opinion.

Furthermore, the Sixth Circuit has held, where a trial judge denies a certificate of good faith the court of appeals must inquire into the matter and appoint counsel to assist the petitioner in presenting the case to the court. See *Armstrong v. Bannan*, 272 F.2d 577 (6th Cir., 1959).

In *Cruz v. Hauck*, 404 U.S. 59, this Supreme Court explained, "to the extent that the nonfrivolity test [****9] is forcible elsewhere, our opinions in *Coppedge*, Supra, and *Hardy*, supra, have ... [required] the appointment of counsel ... for the preliminary purpose of ascertaining whether appeals would produce worthwhile issues. It is true, of course, that most of these decisions involved [*64] criminal appeals rather than civil appeals. [****11]. But the equal protection concept is "not limited to criminal prosecutions" and its protections extend as well to civil matters, citing *Johnson*, supra, and *Williams v. Shaffer*, 385 U.S. 1037, 1039 (1967).

Facts:

In 2015, Hopson ("Petitioner") filed a 42 U.S.C. :1983 action against the Stark County (Ohio) Sheriff's Office. The district court dismissed the complaint on the grounds of failure to state a claim and on the grounds that a sheriff's office is not an entity subject to suit under : 1983. The district court certified that an appeal could not be taken in good faith. Hopson v. Stark Cnty (Ohio) Sheriff's Office, Case No. 5:15-cv-992. See Appendix D.

Petitioner filed a notice of appeal. Hopson v. Stark Cnty, (Ohio) Sheriff Office, No. 15-4239. Though Petitioner filed a motion for the appointment of counsel along with his notice of appeal Respondent (the Clerk of the Sixth Circuit) never docketed Petitioner's motion for the appointment of counsel. Subsequently, pursuant Sixth Circuit Rule 45(a) Respondent dismissed the appeal for want of prosecution for

failure to pay the filing fee. The Sixth Circuit had not inquired into the district court's denial of a certificate of good faith and had not afforded Petitioner the aid of counsel to assist Petitioner in challenging the district court's denial of a certificate of good faith. See Appendix E.

Based on the holdings of this Supreme Court where in the matter of Hopson v. Stark Cnty (Ohio) Sheriff's Office, No. 15-4239 the district court had denied a certificate of good faith and the Sixth Circuit did not inquire into the matter and did not afford the aid of counsel to assist Petitioner in presenting the case to the Sixth Circuit the appeals court had no jurisdiction to proceed to review and the judgment pronounced in the matter is void. See *Johnson v. Zerbst*, supra.

QUESTION (2): HOLDINGS and FACTS:

Question (2)

Did Respondent (the Clerk of the Sixth Circuit) act in complete absence of jurisdiction where Respondent intentionally and knowingly deprived Petitioner of his Sixth Amendment right to the assistance of counsel in the challenge of the district court's denial of a certificate of good faith?

Holdings:

In *Rankin v. Howard*, 633F.2d 844at [**12] this Supreme court held, "when a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes or case law expressly depriving him of jurisdiction, judicial immunity is lost citing *Bradly v. Fisher*, 80 U.S. (13 Wall.) at 351 ("when want of jurisdiction is known to

the judge, no excuse is permissible"); *Turner v.Raynes*, 611 F.2d 92, 95 (5th Cir. 1980) ("Stump is consistent with the view that "a clearly inordinate [**13] exercise of unconferred jurisdiction by a judge –one so crass as to establish that he embarked on it either knowingly or recklessly- subjects him to personal liability.")

Facts:

Respondent has been the Clerk of the Sixth Circuit for some forty plus years. The ruling of this Supreme Court's in *Johnson v. United States*, supra, that a [****3] Court of Appeals must, under *Johnson v. Zerbst*, 304 U.S. 458, afford one who challenges the district court's denial of a certificate of good faith the aid of counsel unless he insists on being his own was issued in 1959, some forty-six years prior to Respondent's failure to comply with this Supreme Court's mandate in the matter of Hopson v. Stark Cnty (Ohio) Sheriff's Office, No. 15-4239 (2015).

It would therefore be within reason to conclude then that for some forty years Respondent, as the Clerk of the Sixth Circuit Court of Appeals, has routinely afforded to litigants who challenge the district courts' denial of a certificate of good faith the aid of counsel unless the litigants insisted on being their own in compliance with *Johnson v. United States*, supra, citing *Johnson v. Zerbst*, supra. This reasonable conclusion negates the idea that Respondent's mistakenly failed to afford Petitioner the aid of counsel in appeal No. 15-4239.

Respondent deprived Petitioner of the aid of counsel in the face of clearly valid case law expressly depriving Respondent of jurisdiction to do so. See *Johnson v. United States, supra*, citing *Johnson v. Zerbst*, supra. Therefore, judicial immunity was lost. See *Rankin v. Howard*, supra. The fact that it can reasonably be concluded that Respondent has routinely afforded the aid of counsel to litigants who challenge the district courts' denial of a certificate of good faith in compliance with *Johnson v. United States*, supra, citing *Johnson v. Zerbst*, supra, makes Respondent's inordinate exercise of unconferred jurisdiction in the face of *Johnson v. United States*, supra, citing *Johnson v. Zerbst*, supra, so crass that it establishes that Respondent embarked on the deprivation of Petitioner's right to the aid of counsel either knowingly or recklessly and is therefore subjects to personal liability. *Turner v. Raynes*, supra.

The Sixth Amendment guarantees that "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." This is one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty. Omitted from the Constitution as originally [****9] adopted, provisions of this and other Amendments were submitted by the first Congress convened under that Constitution as essential barriers against arbitrary or unjust deprivation of human rights. The Sixth Amendment stands as a constant admonition that if the constitutional safeguards it provides be lost, justice will not "still be done."

It embodies a realistic recognition of the obvious truth that the average defendant does not have the professional legal skill to protect [*463] himself when brought before a tribunal [***1466] with power to take his life or liberty, wherein the prosecution is presented by experienced and learned counsel. That which is simple, orderly and necessary to the lawyer, to the untrained layman may appear intricate, complex and mysterious. Consistently with the wise policy of the Sixth Amendment and other parts of our fundamental charter, this Court has pointed to " . . . the humane policy of the modern criminal law . . ." which now provides that a defendant ". . . if he be poor, . . . may have counsel furnished him...

The " . . . right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him." The Sixth Amendment withholds from federal courts, in all criminal proceedings, the power and authority [**1023] to deprive an accused of his life or liberty unless [****11] he has or waives the assistance of

counsel. See *Johnson v. Zerbst*, 304 458.

Since the Sixth Amendment constitutionally entitles one charged with crime to the assistance of counsel, compliance with this constitutional mandate is an essential jurisdictional prerequisite to a federal court's authority to deprive an accused of his life or liberty. When this **[*468]** right is properly waived, the assistance of counsel is no longer a necessary element of the court's jurisdiction to proceed to conviction and sentence. If the accused, however, is not represented by counsel and has not competently and intelligently waived his constitutional right, the Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life or his liberty. See *Patton v. United States*, 281 U.S. 276.

In *Ex parte Lange* (18 Wall. 163) it was ruled, after an examination of authorities, that when a prisoner shows that he is held under a judgment of a Federal court, given without authority of law, this court, by writs of habeas corpus and certiorari, will look into the record, so far as to ascertain whether that is the fact, and, if it is found to be so, will discharge him.

... when a prisoner is held by an order beyond the jurisdiction of an inferior Federal court to make, this court will, in favor of liberty, grant the writ, not to review the whole case, but to examine the authority of the court below to act at all.

The equal protection concept is "not limited to criminal prosecutions" and its protections extend as well to civil matters. See *Cruz v. Hauck*, 404 U.S. 59.

Furthermore, the decision of the Sixth Circuit creates a conflict that undermines congressional policy and the mandate of this Supreme Court in regards to the circuit courts failing to afford the aid of counsel to assist indigent persons in challenging the district court's denial of a certificate of good faith. See *Johnson v. United States*, supra citing *Johnson* v. *Zerbst*, sura.

CONCLUSION

Respectfully submitted,

Date: October 23, 2023