

ORIGINAL

23-7034

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

NO. USAP3 23-2200

Michael Carter

Petitioner,

- Against -

Megan Hayes, et al.,

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE 3rd CIRCUIT

Michael Carter NR3968

SCI Mahanoy

301 Grey line Drive

Frackville, PA 17931

①

Question For Review

1. Should probation officer Hayes be protected by absolute immunity?

Petitioner Answered No.

2. Should the probation department be protected by sovereign immunity?

Petitioner Answered No.

3. Did MS. Hayes Forfeit Her Official absolute immunity by ^(Fraudulent) Fraudulent, willful misconduct in misleading the Court in a judicial proceeding?

Petitioner Answered yes.

4. Should the probation department sovereign immunity apply when its employee violates constitutional mandates?

Petitioner Answered No.

5. Should the "Continuing Violation doctrine" apply because once the effect of the violation accrued petitioner realized his rights had been violated?

Petitioner Answered yes.

6. Would this Complaint be Futile with Clear and Convincing evidence of a Constitutional violation?

Petitioner Answered No.

②

Parties

The Petitioner is Michael Carter, a prisoner at SCT Mahanoy Correctional Facility in Frackville, P.A. The respondents are Megan Hayes, a Probation Officer in Adams County located in Gettysburg, P.A and The Adams County Probation Department.

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Decision of the lower Court - A

Decision of the Superior Court - B

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Copy of Petition for Rehearing - D

Exhibit A - Drug and Alcohol evaluation attached

Exhibit B - Transcript Page 3 and 7 attached

Table of Authorities

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Reference To Opinion Delivered In The Courts Below

Decisions Below

The Court of Common Pleas of Middle District, Pennsylvania, per Judges Jordan, Porter, and Phipps judge, presided over 28 U.S.C. § 1983

The district Court's opinion and order entered is reproduced in Appendix A. The district Court's date 4-4-2023.

The Superior Court's opinion dated 11-6-2023, Affirmed the dismissal of the 28 U.S.C. 1983 Civil action is reproduced in Appendix B.

⑥

Jurisdiction

The judgement of the United States Court of Appeals for the 3rd Cir. was entered 11-6-2023. An order denying a petition for rehearing was entered 12-15-2023, and a copy of that order is attached as Appendix D to this petition. Jurisdiction is conferred by 28 U.S.C. 1254(1).

⑦

Constitutional And Statutory Provisions Involved

This Case involves Amendment XIV to the United States Constitution, Which provides:

Section 1. All persons born or naturalized in the United States, and Subject to the jurisdiction thereof, are Citizens of the United States and of the States Wherein they reside. No State Shall make or enforce any law which Shall abridge the privilege 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 law.

Section 5. The Congress Shall have power to enforce, by appropriate legislation, the provisions of this article.

The Amendment is enforced by Title 42, Section 1983, United States Code; Every person who, under color of any Statute, ordinance, regulation, custom, or usage, of any State or territory or the District of Columbia, subjects, or causes to be subjected, any Citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, Shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief Shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this Section, any act of Congress applicable exclusively to the District of Columbia Shall be considered to be a Statute of the District of Columbia.

⑧

Statement OF The Case

The petitioner's Complaint alleged that he's Suffered From the misleading and willfull misconduct of his probation OFFicer in a revocation proceeding. The petitioner's Probation OFFicer revoked the petitioner for a Failed Urine. The petitioner probation OFFicer offered the petitioner help which he excepted. The probation OFFicer ordered a drug and alcohol evaluation. During the Petitioner's revocation proceeding When the judge asked the Probation OFFicer Did she get a drug and alcohol evaluation For the petitioner, probation OFFicer said no. Which deprived the petitioner the rehabilitation he needed and also harmed the integrity OF the judicial process.

⑨

Basis for Federal jurisdiction

This Case raises a question of interpretation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The district Court had jurisdiction under the general Federal question jurisdiction conferred by 28 U.S.C. 1331.

Reason Belied upon For Allowance of Appeal

Reason For Granting The Writ/A Conflicts With decisions of other Courts

Parole and probation officials and employees like, prosecutors and those who work under them are entitled to absolute immunity for decisions to grant or revoke parole and for the conduct of parole and probation hearings. They also enjoy absolute immunity for the matters involving the judicial sentencing process. They are only entitled to qualified immunity when they perform administrative, or executive functions and investigating and initiating revocation proceedings.

The lower court's reason for wanting to dismiss this civil action is because Probation Officer Hayes is protected by absolute witness immunity, as she was offering testimony in the context of a judicial proceeding. *McArdle v. Tranetti*, 961 F.2d 1083, 1085 (3d Cir. 1992); See also *Briscoe v. Lathue*, 460 U.S. 325, 345 (1983).

Probation Officer MS. Hayes was performing her administrative or executive function (Executive relating to the enforcement of law and the conduct of affairs, designed for or related to carrying out plans or purpose). MS. Hayes made an un-announce visit to petitioner resident and requested a urine sample. The sample was positive for drugs. Petitioner was placed under arrest and on the way to the jail, probation officer MS. Hayes said to the petitioner, I see that you have never been to rehab, let me send you to rehab. After long consideration the petitioner decided to accept the help. MS. Hayes then ordered a drug and alcohol evaluation for the petitioner. (Exhibit A the drug and alcohol evaluation). (Employee who prepared and filed parole revocation charges was not entitled to absolute immunity); *Jones v. Moore*, 986 F.2d 251, 253 (8th Cir. 1993). MS. Hayes was performing her administrative or executive function. She was revocating the petitioner in judicial proceeding.

During the proceeding MS. Hayes had not said anything about the evaluation so the petitioner told his lawyer and the lawyer told the judge about the evaluation. Then when the judge ask MS. Hayes did you get a drug and alcohol evaluation for Mr. Carter MS. Hayes said No. (Initiation of Charges and presentation of evidence at revocation hearing by probation officer was not absolute immunity); Ray v. Pickett, 734 F.2d 374, 373-74 (8th Cir. 1984). (Exhibit B page #3 at the end of line #6 is where petitioner lawyer was interrupted you'll see two dots. That's where the judge ask MS. Hayes did you get Mr. Carter a drug and alcohol evaluation). Line #7 is where she said no. Page #7 of the transcript lines #5 and #6 is where petitioner lawyer is reassuring the judge that not only did MS. Hayes order the drug and alcohol evaluation but the evaluator said that MS. Hayes received it. An official can be held responsible if he or she knew (or should have known) that he or she was acting illegally. Supreme Court cases on this topic are Saucier v. Katz, 533 U.S. 194 (2001) and Harlow v. Fitzgerald, 457 U.S. 800 (1982).

On page #2 of the United States Court of Appeals opinion it say that petitioner (Mr. ^{Carter}) blames his probation officer for the Vehicle Homicide for which he is serving time for currently. The petitioner is not blaming MS. Hayes for the vehicle homicide because MS. Hayes did not make Mr. Carter drive that morning. Petitioner is suggesting that MS. Hayes is misleading the court and that her willful misconduct be address because if she had not willingly given the false statement Mr. Carter would not have been deprived of treatment. Herring v. U.S., 424 F.3d 384, 390 (3d Cir 2005). Fraud upon Court - Misled requires: (1) an intentional fraud (2) by an official of the court (3) directed at the court itself (4) fact deceives court "willful deception rather than simply reckless disregard for the truth." U.S. v. Sierra Pacific Industry, 862 F.3d (1152, 1172). If petitioner would have went to rehab the continuing effects of the violation would not exist. Fraud upon Court - Probation officer MS. Hayes violated her ethical responsibility as an officer of the court.

Heyward V. Harkins, :: February 23, 2022 "Fraud upon the Court regarding an alleged intentional misrepresentation of fact made during a judicial proceeding creates a fact on Probation Officer MS. Hayes bad Faith. The False Statement is the essential element of the due process violation."

The lower Court and appeals Court say that Adams County Probation department has Complete Sovereign immunity as an arm of the State. Haybarger V. Lawrence Cty Adult Probation and Parole, 551 F.3d 193, 198 (3d Cir. 2008).

Probation department - Probation Officer, 42 Pa. C.S.A. Sec. 8542, Exception to governmental immunity. (A) liability imposed: - A local agency shall be liable for damages on account of an injury to a person or property within the limits set forth in this SubChapter if both of the following conditions are satisfied and the injury occurs as a result of one of the acts set forth in SubSection (B):

(1) The damages would be recoverable under Common law or a Statute creating a cause of action if the injury was caused by a person not having available a defense under Section 8541 (relating to governmental immunity generally) or Section 8546 (relating to defense of official immunity); and

(2) The injury caused by the local agency or an employee thereof acting within the scope of his or her official duties with respect to one of the categories listed in Subsection (b). As used in this paragraph, "Negligent acts" shall include acts or conduct which constitute a crime, actual fraud, actual malice or willful misconduct.

2/2 Pa. C.S.A. Sec. 8550. Willful Misconduct

42 Pa. C.S.A. Sec. 8550. Willful Misconduct.

In any action against a local agency or employee thereof for damages on account of an injury caused by the act of the employee in which it is judicially determined that the act of the employee caused the injury and that such act constituted accrime, actual fraud, actual malice or willful misconduct, the provision of Section 8545 (relating to official liability generally), 8546 (relating to defense of official immunity) and 8549 (relating to limitation on damages) shall not apply.

In Support thereof, Petitioner additionally puts forth

The Pennsylvania Political Subdivision Tort Claim Act (PSTCA) Confers broad immunity to local agencies and their employees. 42 Pa. Cons. Stat. Sec. 8541. There are limited exceptions to the broad grant of immunity but the PSTCA states that employees do not qualify for immunity where the conduct amounts to willful misconduct. 42 Cons. Stat. Sec. 8550. The willful misconduct exception is a demanding standard that the Pennsylvania Supreme Court has defined as conduct whereby the actor desired to bring about the result that followed or at least was aware that it was substantially certain to follow, so that such desire can be implied. Willful conduct in the context of 42 Pa. Cons. Stat. Sec. 8550 of the PSTCA has the same meaning as the term intentional tort. *Brackbill v. RUFF*, 2022 U.S. Dist. LEXIS 60606 (M.D. Pa. Mar. 31, 2022). See also, Under 42 Pa. Cons. Stat. Ann. Sec. 8550 of the political subdivision claims act is the agencies and their employees are immune from suit; however, there are exceptions to this general rule which are found in 42 Pa. Cons. Stat. Ann. Sec. 8542, 8550. *Douris v. County of Bucks*, 2001 U.S. Dist. LEXIS 9282 (E.D. Pa. July 3, 2001). See also, "Pennsylvania political subdivision tort claims act does not immunize individual employees of a local agency if the employee cause the plaintiffs injury by an act constituting a crime, actual fraud, actual malice or willful misconduct. 42 Pa. C.S. Sec. 8550. Willful misconduct is synonymous with intentional tort." *Young v. Bethlehem Area Vo-Tech Sch.*, 2007 U.S. Dist. LEXIS 13531 (E.D. Pa. Feb. 28, 2007). See also, where it was alleged that a police officer acted willfully in failing to provide police protection services, the general rule against affixing greater liability upon a municipal employee that to the municipality was abrogated under 42 Pa. Cons. Stat. Sec. 8550. *Morris v. Musser*, 84 Pa. Commw. 120, 479 A.2d 937, 1984 Pa. Commw. LEXIS 462 (Pa. Commw. 1984). See also, *Petit v. Namie*, 931 A.2d 790, 2007 Pa. Commw.

LEXIS 462 (Pa. Commw. 2002). To establish willful misconduct, it must be shown that an employee intentionally committed a wrongful act.

The Appeals court also agreed with the lower court to dismiss because the statute of limitation had run out. See, Boughner v. University of Pittsburgh, 882 F.2d 74, 77-78 (3d Cir. 1989). The appeals court says that a continuing violation "is occasioned by continuing unlawful acts, not continual ill effects from the original violation." See, Montanez v. Secretary Pennsylvania Dept. of Corrections, 773 F.3d 472, 480-81 (3d Cir. 2014). Petitioner believes that the lower court misinterpreted the Continuing Violation Doctrine for this particular situation or it may be because petitioner is a pro se litigant he may not have explained correctly.

Petitioner (Mr. Carter) is saying the Continuing Violation doctrine (The intentional infliction of emotional distress). A cause of action under T.R.C. 7433 accrues when the petitioner has had reasonable opportunity to discover all essential elements of a possible cause of action. 26 C.F.R. 301.7433-1 (G). In addition, a statute of limitation begins to run once a plaintiff has knowledge that would lead a reasonable person to investigate the possibility that his legal rights had been infringed. "Code of Federal Regulation" Continuing Violation doctrine, A claim generally accrues when the harm it cause occurs. However, through no fault of their own parties do not discover the harm until well after it has occurred, courts often conclude that the claim does not accrue until the date of discovery. The discovery rule has been applied to a 26 U.S.C.S. 7433 wrongful tax collection action. See, Spencer v. United States, 98 A.F.T.R. 2d (RCA) 2006-7936, 2007-1 U.S. Tax (CH) 50146, 2006 U.S. Dist. LEXIS 91656 (N.D. Ga. Nov. 27, 2006). When the challenged action has continual collateral consequences, although its direct effect has ceased, the controversy may still remain alive because of the indirect effect of the action, and when other remedies are not moot the underlying issue may be decided. When other remedies remain moot the underlying issue must be decided.



The lower Court misinterpret Mr. Carter petition also saying that the petition can not challenge his incarceration. Petitioner knows that he can not file a 1983 for his incarceration that would fall under a Federal Court habeas corpus petition under 28 U.S.C. 2254. See, Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). The petition is challenging the violation of his Constitutional right that was committed by a officer working under color of State law that created continual collateral consequences. The willful misconduct and the fraud upon the Court created ill effect that petitioner continues to suffer from.

Concise Statement of The Case

B-Importance of the Question Presented

This case presents a fundamental question of the interpretation of this court's decision in *McArdle v. Tonnetti*, 961 F.2d 1083, 1085 (3rd Cir. 1992). The question presented is of great public importance because it affects the operation of the probation department and their employees and their system in all 50 States, the District of Columbia, and hundreds of City and Counties. In view of the large amount of litigation over probation revocation proceedings, guidance on the question is also of great importance to those who are on probation, because it affects their ability to receive fair decisions in court proceedings that may result in incarceration or harsh punitive confinement.

The petitioner emphasize that if the alleged act harmed the integrity of the judicial process it should be addressed. The United States Court of Appeals for the Ninth Circuit emphasize that not all fraud is fraud on the court. In determining whether fraud constitutes fraud on the court, the relevant inquiry is not whether fraudulent conduct prejudiced the opposing party, but whether it harmed the integrity of the judicial process. Fraud on the court must be an intentional, material misrepresentation. Thus, fraud on the court must involve an unconscionable plan or scheme which is designed to improperly influence the court in its decision.

Conclusion

Petitioner knows that the Supreme Court only chooses certain cases to hear. Petitioner prayfully hopes that this case be heard. It represents all the elements of a case that is heard by the Supreme Court. This case threatens the rights of persons in a judicial proceeding. It also threatens the integrity of the judicial process.

Petitioner put forth to this honorable court, that both probation officer and probation department of Adams County, are commonly known to be in a supervisory position of authority entrusted to oversee or delegate the daily operations of the probationary individuals in the Adams County district area.

The petitioner involved within this action has endured an assortment of collateral consequences and injuries, through the unreasonable violation of his civil rights, by the probation department and its agent that undoubtedly constitute a crime, actual fraud, actual malice or willful misconduct. I respectfully request that this honorable court send this case for trial. These violations, if not addressed, can be the difference between life or death. The probation department and probation officers have people's lives in their hands.

For the foregoing reasons, certiorari should be granted in this case.

Date: 2-22-24

Michael Carter

Michael Carter NR3968

501 Mahanoy

301 Grey Line Drive

Frackville, PA 17931



Wherefore, For all the aFore mentioned reasons Stated herein, Petitioner respectfully request this honorable Court to make an order to grant the petitioner allowance to persue this Civil action and grant relief:

(1) A declaration that the acts and omissions described herein Violated Plaintiffs rights under the Constitution and laws of the United States.

(2) Compensatory damages in the amount that the Court See Fit, Jointly and Severally.

(3) Punitive damages in the amount the Court See Fit against each Defendant.

(4) A jury trial on all issues triable by jury.

(5) Plaintiffs costs in this Suit.

(6) Any additional relief this Court deems just, proper and equitable.

Date: 2-22-24

Respectfully Submitted,

Michael Carter Michael Carter

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SCT Mahanay

301 Grey Line Drive

Frankville, PA 17931

(21)



Unsworn Declaration

In the Middle District of Pennsylvania

Appeal - No. 23-2200

District Court No. 1:23-cv-00312

Verification

I, Michael Carter, Proceeding Pro Se, do hereby verify that the information in the foregoing pleading is true and correct to the best of my personal knowledge, information and belief. I understand that any false statement herein are made subject to the penalties of 18 Pa. C.S.A. 4904 relating to Unsworn Falsification of Authorities.

Date: 2-22-24

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