ORIGINAL

No. 24-5094

Supreme Court, U.S.
FILED
JUN 18 2024
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

KENYATTA QUINN MITCHELL — PETITIONER
(Your Name)

vs.

PAUL BONNETT; et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

NINTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kenyatta Q. Mitchell
(Your Name)

K.V.S.P P.O. BOX 5103
(Address)

Delano, CA 93216
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- Did the Ninth Circuit and the district court properly apply all the necessary elements that apply to the petitioner's 42 U.S.C. Section 1983, 1985, & 1986 claims?
- Did the Ninth Circuit and the district court properly consider the merit of the 42 U.S.C. Section 1983, 1985, & 1986 claims made by the petitioner?
- Did the Ninth Circuit and the district court improperly apply statue of limitations to the 42 U.S.C. Section 1983, 1985, & 1986 to an action that was complete and present at the time of the Filing?
- Did the Ninth Circuit and the district court improperly apply the Eleventh Amendment Immunity provision to the defendants even for actions outside of their Functional operation?
- Did the Ninth Circuit and the district court improperly review matters concerning State law establishing the liability of the defendants, even from a constitutional perspective according to U.S. Supreme Court precedents?

- Did the Ninth Circuit and the district court improperly apply a Heck v. Humphrey analysis to the 42 U.S.C. Section 1983, 1985, + 1986 that the petitioner did not raise?

- Did the Ninth Circuit and the district court overlook the actual injury prerequsite of the PLRA as applied to the 42 U.S.C. Section 1983, 1985, + 1986 that the petitioner did raise?

- Did the district court unnecessarily request the petitioner amend the complaint when there was merit to the claims already made?

- Did the Ninth Circuit and the district court improperly review the petitioner's Fourteenth Amendment claims regarding State law that provides procedural safeguards in order to protect ones liberty, and that a deprivation of these procedural safeguards infringed on the petitioner's liberties?

- Did the Ninth Circuit and the district court improperly deny the petitioner a preliminary injunction?

LIST OF PARTIES

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

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Paul Bennett - Supervising Parole Officer,
Chula Vista Parole Office
Bonnie Dumanis - San Diego District Attorney
Claudia Plascencia - Deputy District Attorney
Patricia Taitano Valdovinos - San Diego Public
Defenders
Angel Nunez - San Diego Adult Probation
Officer
Bethany Hogge - Supervising San Diego
Adult Probation Officer
Jane Doe - Parole Officer,
Chula Vista Parole Office

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- Tom Bane Civil Rights Act Civ. Code 52.1
- Gov. Code 945, 820.2, 815.6, 815.2
- California Penal Code 3000, 1203.11
- Civ. Code 1708.6; Fam. Code 6227
- 43 Ca. Jur Limitations of Actions 83
- Tarasoff Standard

OTHER

- 42 U.S.C. Section 1983, 1985(c), 1986

Heard v. Sheahan 253 F.3d 316, 320 (7th Cir. 2001); Hensley v. City of Columbus 557 F.3d 693, 697 (6th Cir. 2009)

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

[ ] reported at ______________________; or,
[✓] 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

[ ] reported at ______________________; or,
[✓] 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 3-29-24.

[✓] 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: ____________, 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. § 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).

STATEMENT OF THE CASE

On 7/12/22 the petitioner Filed a 42 U.S.C Section 1983, 1985(c), 1986 civil rights action against the named defendants. The initial complaint was amended to provide more details and upon request From the court. The district court over-looked several different aspects of the petitioner's complaint. On 6/14/23 the district court improperly dismissed the complaint For Failure to state a claim in which relief can be granted and statue of limitations. The district court Failed to exercise it's discretion by not applying the law to each claim properly On 6/26/23 the petitioner Filed a notice of appeal From that judgement with the 9th circuit court of appeals. The 9th circuit also overlooked the merit to the petitioner's claims. Since the district court and the 9th circuit did not ad-judicate the claims applying U.S. Supr-eme precedents, the petitioner appeals to this court by writ of certiorari. The district courts reason for the dismissal of the complaint was based on both sta-ute of limitations and immunity pro-visions. First the statue of limitations is subject to the discovery rule and accruement, so dismissal on this ground is incorrect. The petitioner's complaint involved what is known as the continuing wrong element that involved a series of events. Second the immunity provisions although complex do not apply in every situation. Immunity provisions do not apply to individuals that conspire to deprive any citizens of their right to equal protection of the laws, or anyone who does so after a meeting of the minds. It does not extend to appointed counsel who intentionally provides ineffective assistance of counsel. Or to law enforcement personnel while under the guise of law enforcement cause injury then conspire to cover it up. It does not extend to prosecutors that intentionally withold exculpatory evidence in order to maliciously prosecute an individual. The petitioner's complaint was brought as soon as reasonably possible after his conviction and direct appeal, upon discovery of that wrong.

While the petitioner was free around June 2016, two parole officers; Defendants Paul Bennett and Jane Doe acted outside their authority intentionally torting the petitioner, which lead to physical, mental, and emotional injuries, after failing to enforce a required protection order. That order was for the petitioner's girlfriend in whom he was in a dating relationship with. Shortly after this continuous tort, the petitioner was arrested for an alleged crime relating to the June 2016 incident. Once in jail the petitioner was arraigned on PC211 charges, charges he could have been exonerated of. Several different factors ensued that lead up to the continual wrong. First after the appointment of counsel the lawyer intentionally provided ineffective assistance of counsel by failing to investigate and obtain exculpatory evidence, for the petitioners defense. Several times counsel tried to coerce the petitioner into taking a plea deal. As a result the petitioner went pro per prior to trial. Even at that point no exculpatory evidence had been obtained; Defendant Patricia Taitano Valdovinos. The prosecution Claudia Plascencia and Bonnie Dumanis in this case maliciously went after the petitioner through-out the entire proceedings. During Preliminary the petitioner testified on his own behalf, giving light to exculpatory evidence. The petitioner was denied his right ~~to~~ a continuance and the compulsory process at that time, in order to properly secure the attendance of a witness by subpoena. The meeting of the minds occurred after this to facilitate a plea deal as a cop-out to counsel providing actual effective assistance. Counsel chose to provide ineffective assistance outside the basic rules for professional conduct. The conscious disregard for the petitioner's defense did not ~~meet~~ meet any logical choice to not provide effective assistance of counsel. Probation; Defendants Angel Nunez and Bethany Hogge also met with the petitioner after Preliminary to write an investigative report about June 2016. In that report there was numerous defamatory reference to the petitioner's criminal record. That same report went to the prosecutor, to aid in the malicious prosecution. It contained unaccurate factual information about June 2016 incidents stating the petitioner had violently attacked the alleged victim, when in fact the petitioner had been in duress because of the individual violating the restraining order. The petitioner had been attacked himself, which is the cause for bringing this suit. The delivery of this investigative report to the prosecution and the revocation of the petitioner's probation was done to conspire to deprive the petitioner of his due process, both substantively and procedurally. This constituted a meeting of the minds, while invidiously discriminating against the petitioner and his rights in the trial court. Parole and probation are similar in their functions, it is part of the guise of law enforcement. Once the prosecution found out parole may have caused a tort, they immediately tried to cover-up their counterparts negligence by maliciously prosecuting the petitioner.

Probation had a say in the sentencing which the prosecutor readily agreed-ed with. Counsel abandoned their client after they realized the petitioner would not be tricked into signing a plea deal. This created a conflict of interest in which the petitioner asked for counsel to be relieved. These types of deprivations are a violation of the petitioners civil rights. The petitioner is not challenging his conviction, but the malfeasance committed under the guise of law enforcement, which led to the injury, prior to the conviction and after. The petitioner was injured by the artbitrary interference with his due process, the right to be secure in his person and to have equal protection of the laws. It was also a violation of state law under Tom Bane Civ. Code 52.1 to use coercion in order to get the petitioner to do something he would not normally do. Then subject the petitioner to criminal liability, without providing him a meaningful opportunity for effective assistance of counsel or a reasonable chance to defend himself. The petitioner's initial 42 U.S.C. Section 1983, 1985(c), 1986 meets all of the requirements for those provisions. The district court and the 9th Circuit wrongfully dismissed the petitioner's claim by failing to apply the law of the state and constitution according to U.S. Supreme Court precedents.

MEMORANDUM OF POINTS AND AUTHORITIES

The subject matter before the court is a civil rights action, that involves various civil rights law, including state law and constitutional law. The 42 U.S.C. section 1983, 1985(c), 1986 brought by the petitioner is properly before the court. The claims raised by the petitioner are more of a broader and generalize claim to address the tort that led to further constitutional violations. [Tort; a wrongful or illegal act, injury: A wrongful act other than a breach of contract that injures another and for which the law imposes civil liability; a violation of duty (as to exercise due care) imposed by law as distinguished from contract for which damages or declaratory relief (as an injunction) may be obtained Merriam-Webster DIC. OF Law]. In June 2016 the petitioner who was on probation at San Diego County Adult Probation was torted by Chula Vista Parole, Defendants Paul Bennett, Jane Doe (AOR); (Owens v. Baltimore City States Attorney's Office 767, F.3d 379, 402-04 (4th Cir. 2014) municipality could be liable for constitutional violation because evidence made it plausible that defendants witheld exculpatory information during a criminal trial pursuant to unofficial policy.) The actions by the defendants are not coincidential, these actions were intentional deprivations of the petitioners rights. (Bd. of Cty. Comm'rs v. Brown 520 U.S. 397, 404 (1997); plaintiff must show that the municipal action was taken with the requisite degree of culpability and demonstrate a direct causal link between the municipal action and the deprivation of Federal rights) There was a failure to trian by the Chula Vista Parole, in that the two named defendants didn't exercise due care upon torting the petitioner. The petitioner in his own defense has decided to pursue civil remedies to address these wrongs. This is the norm for these particular defendants. The invidious discrimination by these defendants occurred in joint participation, while under color of state law. Abbott v. Latshaw 164 F.3d 141, 147-48 (3rd Cir. 1998); private party acted under color of state law when conspiring with state actors to deprive another of constitutional rights.) Upon the arrest of the petitioner Further constitutional violations occurred in the trial court. (Brady v. Maryland 373 U.S. 83 (1963)). This included but not limited to violations of due process, right to the compulsory process, right to effective assistance of counsel, right to a Fair trial, right to equal protection of the laws. We know that this was malicious prosecution because of the rights affected [malicious prosecution is the groundless institution of criminal proceedings against the plaintiff The petitioner is not challenging his conviction as defined by Heck. [Heck v. Humphrey 512 U.S. 477, 486-87, 490 (1994) This rule should not apply to the petitioner because he was not in custody at the time of the tort, this is a continuing wrong. [Montgomery v. DeSimone 159, F.3d 120, 126 (3rd. Cir 1998) 1983 claim for malicious prosecution, False arrest, and False imprisonment accrued at time of violation.] Morrow v. Fed. Bureau of Prisons 610, F.3d 1271, 1272 (11th Cir. 2010) 1983 Claim exempt From Heck Favorable termination requirement when plaintiff not in custody and Favorable result does not imply invalidity of underlying conviction.) The actions by the defendants Angel Nunez and Bethany Hogge San Diego Adult Probation, were conspiratorial in nature. The Fabrication of investigative reports was intentional and constituted deliberate indifference, meant to deprive the petitioner of his rights in the trial court. The actions by the defendants Claudia Plascencia and Bonnie Dumanis were conspiratorial as well and involved invidious discrimination. Witholding exculpatory evidence in order to maliciously prosecute the petitioner was an intentional deprivation meant to cause further injury. (Lisker v. City of Los Angeles 780 F.3d 1237, 1242-43, (9th Cir. 2015); police officers not absolutely immune for allegedly Fabricating investigative reports and evidence.) The defendants gross negligence caused injury, gross negligence meaning; Gross Negligence - negligence that is marked by conduct that presents an unreasonably high degree of risk to others and by failing to exercise even the slightest of care in protecting them from it and that is sometimes associated with conscious and willful indifference to their rights. Counsel's actions were conspiratorial as well when they intentionally failed to provide an affirmative defense for the petitioner. The discovery was readily available, including mentioned exculpatory evidence counsel failed to obtain. (Tower v. Glover 467, U.S. 914, 919-20 (1984); appointed counsel may have acted under color of state law when they conspired with state officials to deprive client of constitutional rights.) Instead of counsel trying to put on evidence that could have exonerated the petitioner they tried to get him to plea guilty. (Powers v. Hamilton Cty. Pub. Defender Comm'n 501 F.3d 592, 612-13 (6th Cir 2007); public defender acted under color of state law when failing to request indigency hearing because such conduct was administrative and systematic, sents an unreasonably high degree of risk to others and by failing to exercise even the slightest of care in protecting them from it and that is sometimes associated with conscious and willful indifference to their rights. Counsel's actions were conspiratorial as well when they intentionally failed to provide an affirmative defense for the petitioner. The discovery was readily available, including mentioned exculpatory evidence counsel failed to obtain. (Tower v. Glover 467, U.S. 914, 919-20 (1984); appointed counsel may have acted under color of state law when they conspired with state officials to deprive client of constitutional rights.) Instead of counsel trying to put on evidence that could have exonerated the petitioner they tried to get him to plea guilty. (Powers v. Hamilton Cty. Pub. Defender Comm'n 501 F.3d 592, 612-13 (6th Cir. 2007); public defender acted under color of state law when failing to request indigency hearing because such conduct was administrative and systematic, serving the interest of the state rather than client's interest or societal interest in judicial Fairness.) Had the petitioner Known he was being deprived of his rights, he could have protected himself. (43 Ca. Jur. Limitations of Actions 33; An important exception to the general rule that a cause of action accrues when the allegedly wrongful result occurs is the discovery rule. This rule may be expressed by the legislature or implied by the courts. The common-law discovery rule where applicable, postpones accural of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action. This rule ameliorates the harshness of the general rule, under which a cause of action accrues on the date of the injury, in cases in which it is manifestly unjust to deprive a plaintiff of a cause of action before the plaintiff is aware of the injury.) There was no way for the petitioner to possibly bring this suit, when the cause of action was not complete in all it's elements, until now.

Heard v. Sheahan 253 F.3d 316, 320 (7th Cir. 2001); adopting continuing wrongs rule for 1983 suits; Hensley v. City of Columbus 557 F.3d 693, 697 (6th Cir. 2009) (continuous violation exists if (1) the defendants engage in continuing wrongful conduct. (2) injury to the plaintiffs accrues continuously and (3) had the defendants at any time ceased their wrongful conduct, further injury would have been avoided. (Heard v. Sheahan 253 F.3d 318; A violation is called continuing signifying that a plaintiff can reach back to its beginning even if that beginning lies outside the statutory limitations period, when it would be unreasonable to require or even permit him to sue separately over every incident of the defendants unlawful conduct.

The gross negligence that caused injury, gives the petitioner the right to sue in the state of California (Gov. Code 945); a public entity can sue or be sued. (Monell v. Dept. of Soc. Servs. 436, U.S. 658, 690 (1978); In order to be liable under 1983 there must be a direct causal link between deliberate municipal action and the deprivation of Federal rights.) The defendants actions caused further injury after the tort. Even though the defendants are being sued in their individual capacities, some of them work for municipal entities required to protect due process, as part of it's functions, including in the criminal court. The district court should have exercised it's supplemental jurisdiction in this case, but did not which was error by the court. For example the petitioner initially brought up in his 42 U.S.C. section 1983, 1985(c), 1986 a state law known as the [Tom Bane Civil Rights Act Civ. Code 52.1 which states if a person or persons, whether or not acting under color of State law, interferes or attempts to interfere, by threats, intimidation or coercion with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the constitution or laws of this state, the Attorney General, or any district attorney or city attorney is authorized to bring a civil action for injunctive and other appropriate equitable relief in the name of the people of the State of California, in order to protect the exercise or enjoyment of the right or rights secured. Existing law also allows an action brought by the Attorney General, or any district attorney or city attorney to seek a civil penalty of $25,000. Existing law also allows an individual whose exercise or enjoyment of rights has been interfered with to prosecute a civil action for damages on their own behalf.] This claim was not brought as a denial of relief on a state law claim, but for the 14th Amendment deprivation of the petitioner's rights. Due to the fact the defendants torted the petitioner

Using coercion, show there was a conscious disregard for his rights. The 8th Amendment violation brought by the petitioner also has merit because of the injury sustained by the defendants negligent actions. The petitioner also amended the complaint after the court requested he do so. The amended complaint was not necessary, but the petitioner did so anyway. The district court ruled out on other amendments based on some invalid statue of limitations, in regards to the tort and constitutional deprivations they were not complete by that time to raise a claim about that last cause of action. The 5th Amendment violation brought by the petitioner also has merit because of the due process violations that occurred in the trial court after the tort, including appointed counsel forfeiting an affirmative defense and the conspiring done during the meeting of the minds involving the plea deals and investigative reports.

In addition to the Tom Bane Civ. Code
52.1 claim brought by the petitioner,
there are several other state law pro-
visions involving different policies
and procedure establishing liability
that this court should consider. For
example Gov. Codes 820.2, 815.6, 815.2 in
California these codes establish vaca-
rious liability of public employees
that act outside of their discretion
in their individual capacities. Another
code is penal code 3000 of the Californ-
ia penal code, which states parole has
a ministerial duty to supervise in the
interest of public safety. Then you
have penal code 1203.11 which states a
probation or parole officer or parole ag-
ent of the Department of Corrections
may serve any process regarding the
issuance of a temporary restraining
order or other protective order again-
st a person committed to the care of
the probation or parole officer or parole
agent when the person appears for an
appointment with the probation or par-
ole officer or parole agent at their off-
ice. This means that the defendants
18 Knew and had reason to Know a restra-

ining order was in effect and there was a ministerial duty to ensure it was not being violated. The petitioners right to sue is also clarified under Civ. Code 1708.6; A person injured as the result of domestic violence is not limited to the protective orders and associated remedies provided under the Family Code, but may also pursue a civil action for damages [Fam. Code 6227] The Civil Code provides for bringing suit for the tort of domestic violence. Under California law the two defendants that were working for the Chula Vista Parole are also liable under the Tarasoff Standard. This standard states; A duty of care may arise from either (a) a special relation between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or (b) a special relation between the actor and the other which gives to the other a right of protection. All of the defendants acted in joint participation to deprive the petitioner of his constitutional rights. For these
19 reasons the petition for Certiorari

should be granted. The questions presented are of constitutional dimension and required this courts review de novo.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted, Kenyatta Quinn Mitchell
In ProSe

Kenyatta Q. Mitchell

Date: June 18, 2024