

No. 24-5773

---

**In the Supreme Court of the United States**

---

Sedric Q. Sutton

*Petitioner,*

vs.

State of Mississippi

*Respondent.*

---

**PETITION FOR REHEARING**

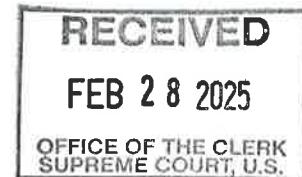
---

Sedric Q. Sutton

*Pro Se, Petitioner*

1019 W. Ohea' Street

Greenville, MS 38701



## TABLE OF CONTENTS

APPENDIX TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
TABLE OF STATUTES.....	iv
PETITION FOR REHEARING.....	1
REASONS FOR GRANTING REHEARING.....	1-8
CONCLUSION.....	8
Certificate of Pro Se Petitioner.....	10

## TABLE OF AUTHORITIES

Barrett v. Miller, 599 So. 2d 559, 566 (Miss. 1992) .....	3
Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971), and 42 U.S.C. § 1983.....	5
Cook v. State, 159 So. 3d 534, 541 (Miss. 2015) .....	6
Conn v. State, 170 So. 2d 20, 24 (Miss. 1964) .....	5
Eaddy v. State, 63 So. 3d 1209, 1216 (Miss. 2011) .....	6
<i>Estelle v. Gamble</i> , 429 U.S. 97 (1976) .....	7
<i>Heck v. Humphrey</i> , 512 U.S. 477 (1994) .....	8
Johnson v. State, 81 So. 3d 1020, 1026 (Miss. 2011) .....	6
<i>Lawlor v. National Screen Service Corp.</i> , 349 U.S. 322 (1955) .....	7
Logan v. State, 773 So. 2d 338 (Miss. 2000) .....	5,6
<i>Ramirez v. Butte-Silver Bow County</i> , 298 F.3d 1022 (9th Cir. 2002) .....	5
<i>Rawe v. Liberty Mut. Fire Ins. Co.</i> , 462 F.3d 521, 529–30 (6th Cir. 2006) .....	7
Trejo v. State, 76 So. 3d 684, 690 (Miss. 2011) .....	6
<i>United States v. Lacy</i> , 119 F.3d 742, 746 n. 7 (9th Cir. 1997) (quoting <i>Coolidge v. New Hampshire</i> , 403 U.S. 443, 467, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971)) .....	5
<i>United States v. McGrew</i> , 122 F.3d 847, 850 (9th Cir. 1997) (emphasis removed) .....	5
<i>United States v. Sayakhom</i> , 186 F.3d 928, 934 (9th Cir. 1999) .....	5
<i>Wallace v. Kato</i> , 549 U.S. 384 (2007) .....	7
White v. State, 735 So. 2d 221, 224 (Miss. 1999) .....	6

## TABLE OF STATUTES

Mississippi Code Section 41-29-139.....	2,4
Mississippi Code Section 99-19-83.....	2
Mississippi Code Section 99-19-81.....	3
Mississippi Code Sections 11-44-1 to -15.....	3,4
42 U.S.C. § 1983.....	4

## PETITION FOR REHEARING

Pro Se Petitioner Sedric Sutton, respectfully petition for rehearing of this Court's January 13, 2025, Order denying his petition for a writ of certiorari.

Pursuant to Rule 44 of the Rules of this Court, Petitioner Sedric Sutton respectfully submits this Petition for Rehearing of the Court's decision.

## REASONS FOR GRANTING REHEARING

Petitioner requests this Court to reconsider its decision on the grounds that the decision of the Courts is contrary with existing laws and holds substantial change in relevant circumstances. This Petition is filed in good faith, not for purposes of delay, and is necessary to address critical issues affecting the Rights of the People of the United States, Rights to be free from Unreasonable Searches and Seizures in violations of the Petitioners Fourth Amendment Rights of the United States Constitution which led to incarceration and being wrongfully convicted of a misdemeanor posed as a felony while denying and ensuring adequate medical treatment for known ailments as a detainee.

**Mississippi Supreme Court found that there was a violation of Sutton's Fourth Amendment Constitutional Rights of the United States Constitution when officers Donham and Smith led a team of officers into executing an invalid search warrant, which failed to adequately describe the things to be seized.**

On July 15, 2014, a confidential informant (CI) informed law enforcement officers at the Washington County Sheriff's Office that stolen items were located at 331 Muscadine Street in Greenville, Mississippi. Based on this information, Officers Dwight Donham and Charlton Smith prepared an Affidavit for Search Warrant and presented it to Washington County Justice Court Judge Laverne Holmes-Carter. Judge Holmes-Carter subsequently issued a search warrant for stolen items at the address.

That same day, law enforcement officers, including Officers Smith and Donham, led a team in executing the search warrant on the Muscadine property. Upon entering the premises, the officers detained and searched for Sedric Sutton. The search yielded sixty prescription pain pills, \$4,995 in cash, a handgun, and two digital scales. During a safety check, Officer Christopher Surf conducted a pat-down of Sutton and discovered sixty small, yellow pills in a clear plastic bag. Sutton, testifying in his own defense at trial, admitted possession of the pain pills but asserted they were for personal use. Officer Smith also testified to discovering a 9

mm handgun in a black holster located inside the wall between the threshold of the dining room and the living room area. Investigator Cedric Adams corroborated that the handgun was in plain view.

Following the search, Sutton was taken into custody and charged with possession of a controlled substance under Mississippi Code Section 41-29-139(c)(3)(A), a misdemeanor since he possessed less than 100 pills. A Washington County grand jury indicted Sutton as a habitual offender for possession of a controlled substance with intent under Mississippi Code Section 41-29-139(a)(1) and for possession of a firearm by a convicted felon.

Pretrial, Sutton moved to suppress the evidence obtained from the search warrant's execution. He challenged the warrant on grounds that the underlying facts and circumstances were unreliable and that the warrant failed to sufficiently describe the property to be seized. The trial court denied Sutton's motion to suppress. Officer Donham testified that the CI had informed him that the Muscadine house served as a warehouse for stolen goods, and that the CI had personally sold stolen items there. According to Donham, the CI claimed to have seen the stolen items in the house two days prior to the warrant's execution. Sutton's counsel cross-examined Officer Donham during the hearing.

Q. Now, [the CI] did not give you any specific items whatsoever at Mr. Sutton's address, did he? Isn't that correct.

A. He said there were numerous things there.

Q. Numerous things. A warehouse of stolen stuff?

A. Right.

Q. But he did not give you a single itemized piece of stolen property, did he?

A. No

Officer Donham also claimed the CI had given him reliable information in the past and that the CI had personal knowledge unknown to the public of a number of local, recent house burglaries. In its written order, the trial court found that the information in the affidavit seeking stolen property in the warrant "described the things to be seized with sufficient particularity to satisfy the Fourth Amendment." Sutton was tried before a jury on May 26, 2016. At trial, Sutton stipulated his status as a felon and the State amended the indictment to charge Sutton as a habitual offender, that if he was to be found guilty, he would receive a mandatory natural life sentence under Mississippi Department of Corrections pursuant to Sections 41-29-139(b)(4)(C) and 99-19-83.

. The jury found Sutton guilty of the first count, possession with intent, and acquitted him of the second count, possession of a firearm by a convicted felon. On June 1, 2016, the trial court sentenced Sutton to a term of fifteen years under MS Code 99-19-81 in the custody of the Mississippi Department of Corrections.

He appealed his conviction and sentence. On March 15, 2018, the Mississippi Supreme Court found that all the State's evidence in the case stemmed from an unconstitutional search pursuant to an invalid warrant, which failed to adequately describe the property to be seized by the executing officers. The Court ruled that the description "stolen property" was insufficient. For property other than what is illicit or contraband, the items to be seized must be described with particularity." Conn v. State, 170 So. 2d 20, 24 (Miss. 1964) (citing 79 C.J.S. Searches and Seizures § 81c (1952)). "Descriptions in search warrants need not be positively specific and definite but are sufficient if the places and things to be searched are designated in such a manner that the officer making the search may locate them with reasonable certainty." Barrett v. Miller, 599 So. 2d 559, 566 (Miss. 1992). In 2018, the Mississippi Supreme Court reversed and remanded Sutton's conviction and sentence, concluding that "all of the State's evidence in the case stemmed from an unconstitutional search pursuant to an invalid warrant which failed to adequately describe the property to be seized by the executing officers." Upon remand, the trial judge entered an order of nolle prosequi.

In 2019, attorney Rhonda Cooper filed a pro bono claim on behalf of Sedric Sutton to reclaim his property taken in July 2014, alleging Sutton's Constitutional Rights were violated leading to illegal incarceration in Mississippi. Judge Richard Smith of Washington County Circuit Court ruled against Sutton on November 10, 2020, stating he failed to show evidence that he did not commit a felony. Sutton then filed a wrongful conviction and imprisonment complaint under Mississippi Code Sections 11-44-1 to -15. The court granted the State's motion for summary judgment, concluding Sutton did not prove he didn't commit the felony.

The Mississippi Supreme Court upheld this judgment, noting Sutton's conviction was reversed due to "legal insufficiency" rather than innocence, and found no merit in his defense regarding possession of hydrocodone pills for medical reasons.

On July 26, 2022, Sutton filed a federal lawsuit based on the same events as his state-court case. He alleges: (1) Deputy Sheriffs Smith and Donham violated his Fourth Amendment rights with an illegal search and seizure; (2) Judge Carey-McCray and Attorney General Fitch denied him medical treatment, violating his Eighth Amendment and due process rights under the Fourteenth Amendment; (3) compensation claim against Attorney General Fitch under Mississippi's wrongful conviction statute.

Mississippi Code Section 11-44-1 provides that “in light of the particular and substantial horror of being imprisoned for a crime one did not commit; the Legislature intends by enactment of the provisions of this chapter that innocent people who are wrongfully convicted be able to receive monetary compensation.” Miss. Code Ann. § 11-44-1. In part (1) In order to present an actionable claim for wrongful conviction and imprisonment under this chapter, a claimant must establish by documentary evidence that:

- (a) The claimant has been convicted of one or more felonies and subsequently sentenced to a term of imprisonment and has served all or any part of the sentence.
- (b) On grounds not inconsistent with innocence:
  - (ii) The judgment of conviction was vacated and/or reversed.
- (c) If there was a vacatur or reversal, either the accusatory instrument was dismissed or nol prossed; or if a new trial was held, the defendant was found not guilty:
- (d) The claimant's claim is not time-barred by the provisions of this chapter; and

**Whether the United States Court of Appeals for the Fifth Circuit made an error in granting the Motion for Summary Judgment, thereby denying Sedric Sutton damages in the case Sutton v. Smith No. 23-60393 related to claims of illegal search and seizure and entitlement to compensation for wrongful conviction**

On January 5, 2024, the United States Court of Appeals for the Fifth Circuit ruled that Sutton did not challenge the district court's decision that his claim was barred by res judicata and time-barred, merely reiterating Constitutional and Wrongful Conviction Claims.

In Sutton v. Smith No. 24-5773, Officers Smith and Donham led a team executing an invalid search warrant, resulting in Sutton being charged with felony possession with intent to distribute a Schedule III controlled substance, despite the amount qualifying as a misdemeanor.

The lower court found Sutton failed to demonstrate a genuine issue of material facts regarding his felonies. The court determined officers violated Sutton's Fourth Amendment right due to the inadequate search warrant. This ruling contradicts *Wallace v. Kato*, where it was held that the statute of limitations for a § 1983 claim starts when the plaintiff knows or should know of the injury, which in Sutton's case was 2018. Thus, the lawsuit is timely, presenting an important federal law issue on the proper application of the statute of limitations in § 1983 actions. This case

requires correction to ensure those with constitutional rights violations can seek redress.

### **Was there a Fourth Amendment Constitutional violation against Sutton?**

Sutton contends that the search and seizure were highly unreasonable. Conversely, the officers assert that they were conducting a search for stolen property, which the Officers Smith and Donham alleged Sed possessed. However, this alleged stolen property is not referenced or documented in the records.

Quoting as in, *Ramirez v. Butte-Silver Bow County*, 298 F.3d 1022 (9th Cir. 2002), the court addressed The Ramirez's sued the officers under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971), and 42 U.S.C. § 1983, for violation of their Fourth Amendment rights where it was determined that to satisfy the Fourth Amendment, a search warrant must describe with particularity the place to be searched and the items to be seized. U.S. Const. amend. IV; *United States v. Sayakhom*, 186 F.3d 928, 934 (9th Cir.1999). The particularity requirement protects the individual from a "general, exploratory rummaging in [his] belongings." *United States v. Lacy*, 119 F.3d 742, 746 n. 7 (9th Cir.1997) (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 467, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971)). It does so both by "limit[ing] the officer's discretion" and by "inform[ing] the person subject to the search what items the officers executing the warrant can seize." *United States v. McGrew*, 122 F.3d 847, 850 (9th Cir.1997) (emphasis removed).

The Mississippi Supreme Court ruled that evidence seized under an invalid warrant could not be purged of the illegal search's primary taint, thus invoking the exclusionary rule. The warrant was so deficient that officers could not assume its validity, providing no way to differentiate stolen items from legitimate property. Officers Smith and Donham executed a defective warrant lacking specific details on the items to be seized, leading to Sutton's wrongful incarceration. They cannot claim qualified immunity, as established in *Ramirez v. Butte-Silver Bow County*, 298 F.3d 1022 (9th Cir.), where executing a facially invalid warrant precluded such immunity.

### **MISDEMEANOR POSSESSION V. FELONY POSSESSION WITH THE INTENT**

#### **Is the illegally obtained evidence of misdemeanor possession enough to sustain Sutton's felony possession with intent conviction?**

Sutton argues that the evidence used to convict him was illegally obtained and should be excluded under the exclusionary rule. He claims the quantity of hydrocodone with acetaminophen found was not enough for felony possession or

intent to sell, as the State's evidence did not show intent to sell or deliver. The amount he possessed was only a misdemeanor.

The evidence was obtained via an invalid search warrant aimed at "stolen property", which lacked probable cause for drug-related searches. The Mississippi Supreme Court found the warrant invalid due to its vague description of stolen goods.

The exclusionary rule applies, prohibiting the use of materials seized during an unlawful search. The good-faith exception, which allows the use of evidence if officers relied on an invalid warrant reasonably, does not apply here because the warrant's deficiencies were obvious.

The State admitted the warrant targeted "stolen items", making the exclusionary rule applicable and barring the use of the seized evidence.

The majority of the Justices concurred in their opinions that "all of the State's evidence in this case originated from an unconstitutional search conducted under an invalid warrant, which failed to adequately describe the property to be seized by the executing officers." They stated that without the illegally obtained evidence, the State's case could not succeed. Consequently, there is no appropriate remedy other than rendering a judgment in Sutton's favor. The Mississippi Supreme Court has held repeatedly that, when evidence against a criminal defendant is insufficient to sustain a conviction in the absence of the admission of illegally obtained evidence, the correct remedy is to reverse and render. See *Cook v. State*, 159 So. 3d 534, 541 (Miss. 2015) ("Without the evidence gathered as a result of the stop, the evidence against Cook is insufficient to sustain a DUI conviction . . . . As such, we reverse and render a judgment of acquittal."); *Eaddy v. State*, 63 So. 3d 1209, 1216 (Miss. 2011) ("Since the evidence against Eaddy is insufficient to sustain a conviction for possession with intent to distribute without admission of evidence of the illegally obtained cocaine, we reverse and render."); *Johnson v. State*, 81 So. 3d 1020, 1026 (Miss. 2011) ("Because the State failed to present sufficient evidence to support a finding of constructive possession, we reverse the Court of Appeals' and the trial court's decisions and render judgment in favor of Johnson."); *Trejo v. State*, 76 So. 3d 684, 690 (Miss. 2011) ("As noted by the Court of Appeals, without the cocaine, there is no remaining evidence to uphold Trejo's conviction. 'Therefore, we affirm the Court of Appeals' judgment to reverse and render Trejo's conviction and sentence.'"); *White v. State*, 735 So. 2d 221, 224 (Miss. 1999) ("We hold that the search in this case was improper and unlawful. The evidence obtained thereby was 'fruit of the poisonous tree' and therefore inadmissible. Without this evidence, the conviction cannot stand."). In the present case, had the trial court sustained the defendant's motion to exclude the wrongfully seized evidence, that court also should have dismissed the charge with prejudice, as the State had adduced no other evidence of his guilt. Accordingly, nothing remains for the trial court to do and the proper course for this Court is to reverse and render judgment for the defendant.

## **Due Process Violations which led to Eighth Amendment Constitution Violation**

Sutton claims he was denied due process during his trial because the court did not allow him to seek medical treatment, affecting his defense. He compares his situation to *Estelle v. Gamble*, where detainees' Eighth and Fourteenth Amendment rights were addressed. Sutton argues his Eighth Amendment rights were violated due to inadequate medical care before and during his trial and imprisonment. Despite notifying the court of his conditions and requesting treatment, he alleges his care was stopped and denied.

The case will determine if officials showed deliberate indifference to Sutton's serious medical needs, as established in *Estelle v. Gamble*. Both cases highlight the need for constitutional protection against cruel and unusual punishment and adequate medical care in detention. Sutton's claim will be assessed under the Eighth and Fourteenth Amendments. The focus is on the officials' deliberate indifference to detainees' and prisoners' health and safety, stressing the importance of protecting their rights and well-being. Sutton informed the court and prison officials of his need for medical care but received no response.

**This claim is within the statute of limitations, as it was filed in January 2019. Sutton discovered the violation of his Constitutional Rights upon his release in April 2018.**

As the Supreme Court explained more than 50 years ago in *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955), res judicata does not bar a suit if it involves new facts or a worsening of earlier conditions, even if it pertains to the same course of wrongful conduct as alleged earlier. This principle is further supported by the court's ruling in *Rawe v. Liberty Mut. Fire Ins. Co.*, 462 F.3d 521, 529–30 (6th Cir. 2006), which states that unripe claims cannot later serve as a basis for res judicata.

Sutton claims that his case involves ongoing misconduct by officers who executed an invalid search warrant for stolen property. He states that the officers seized property belonging to him and his family without sufficient justification or reasonable belief that the property was stolen. After his release from prison, Sutton attempted to retrieve his property but found that some items were either damaged or not returned.

In *Wallace v. Kato*, the Supreme Court noted that the statute of limitations for a §1983 claim begins to run when the plaintiff has a "complete and present cause of action." However, the Court also recognized that the accrual of a claim may be delayed if the plaintiff is unaware of the facts underlying the violation. *Wallace v. Kato*, 549 U.S. 384 (2007).

In *Heck v. Humphrey*, the Supreme Court held that a §1983 claim for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated. This indicates that the statute of limitations does not begin to run until the plaintiff has a factual basis to assert a constitutional violation. *Heck v. Humphrey*, 512 U.S. 477 (1994).

Sutton claims he was unaware of the constitutional violations leading to his wrongful conviction until the Mississippi Supreme Court overturned it in 2018, resulting in his release. The court found that the evidence against him was obtained through an unconstitutional search with an invalid warrant. Since Sutton became aware of these violations when the court reversed his conviction, it is argued that the statute of limitations for his claim should start from this point.

## CONCLUSION

For the foregoing reasons, and those stated in the petition for a writ of certiorari and review the judgement below. Alternatively, the Court should hold the petition pending the filing of a petition for certiorari by Pro Se Petitioner Sedric Sutton, then consider both petitions together.

Respectfully submitted,  
**Sedric Q. Sutton**

represented by **Sedric Q. Sutton, Pro Se**

1019 W. Ohea St.

Greenville, MS 38701

Email: [suttonsedric9090@gmail.com](mailto:suttonsedric9090@gmail.com)

### **Defendant**

**Lynn Fitch**

*Attorney general of Mississippi*

represented by **Wilson Douglas Minor**  
Mississippi Attorney General's Office  
Civil Litigation Division  
P.O Box 220 Jackson, MS 39205

601-359-6279  
Fax: 601-359-2003

Email: [Wilson.minor@ago.ms.gov](mailto:Wilson.minor@ago.ms.gov)

**Charlton Smith**

*Deputy Sheriff of Washington County, Mississippi*

represented by **Robert J. Dambrino, III**

GORE KILPATRICK & DAMBRINO

Grenada

662-226-1891

FAX: 662-226-2237

Email: [rdambrino@gorekilpatrick.com](mailto:rdambrino@gorekilpatrick.com)

**Dwight Donham**

*Deputy Sheriff of Washington County,*

*Mississippi*

represented by **Robert J. Dambrino, III**

GORE KILPATRICK & DAMBRINO

Grenada

662-226-1891

FAX: 662-226-2237

Email: [rdambrino@gorekilpatrick.com](mailto:rdambrino@gorekilpatrick.com)

**Hon. Margaret Carey-McCray**

*Circuit Court Judge of Washington County, Gore Kilpatrick & Dambrino*

*Mississippi*

represented by **Robert J. Dambrino, III**

Grenada

662-226-2237

FAX: 662-226-2237

Email: [rdambrino@gorekilpatrick.com](mailto:rdambrino@gorekilpatrick.com)

## **CERTIFICATE OF COUNSEL**

As Pro Se Petitioner Sedric Sutton, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2

Sedric Sutton

Sedric Sutton