

No. 24-8

ORIGINAL

IN THE

Supreme Court of the United States

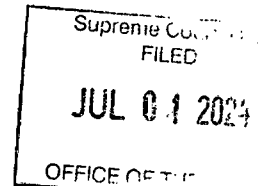
JOHN MEYER

Petitioner,

v.

JOHN PELLEGRIN

Respondent.



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

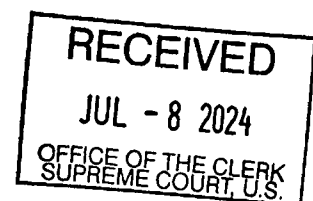
PETITION FOR A WRIT OF CERTIORARI

JOHN MEYER, PRO SE

8969 Applewood Dr.

Cincinnati, OH 45236

Petitioner



QUESTIONS PRESENTED

This case concerns a charge of theft (shoplifting) against the Petitioner and the failures of his criminal defense attorney that he hired. The Petitioner filed a suit against the Respondent for malpractice and breach of contract in the U.S. District Court for the Middle District of Tennessee, which was dismissed by the trial court. The U.S. Sixth Circuit Court of Appeals affirmed the dismissal. Both courts based their decisions on the Tennessee Supreme Court's decision in Gibson v. Trant, 58 S.W.3d 103 (Tenn. 2001), which requires that a Plaintiff show that he has won post-conviction relief and has been exonerated in order to prevail against his attorney, contrary to many other states.

- 1. Whether a criminal defense lawyer should be held responsible for his actions and inactions even if his client is guilty of a lesser offense.**
- 2. Whether all states should have the same requirements in order for a plaintiff to successfully sue their criminal defense attorney for their errors and omissions.**
- 3. Whether a Plaintiff's entire case should be dismissed, even when part of his case does not involve post-conviction relief.**

PARTIES TO THE PROCEEDING

Petitioner is John Meyer

Respondent is John Pellegrin

LIST OF ALL PROCEEDINGS

John Meyer v. John Pellegrin, No. 3:19-413,
U.S. District Court for the Middle District of
Tennessee. Judgement entered May 15, 2023.

John Meyer v. John Pellegrin, No. 23-5552,
U.S. Court of Appeals for the Sixth Circuit.
Judgement entered April 2, 2024.

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U.S Court of Appeals for the Sixth Circuit

Opinion in 23-5552

Issued April 2, 2024 ia

Middle District of the Tennessee District Court

Memorandum and order in 3:19-cv-00413

Issued May 15, 2023. 6a

TABLE OF AUTHORITIES

CASES	Page(s)
Gibson v. Trant, 58 S.W.3d 103 (Tenn. 2001)	2, 5, 6
Vahila v. Hall, 77 Ohio St.3d 421,674 N.E.2d 1168-69(1997)	6

DECISIONS BELOW

The district court's decision dismissing Petitioner's legal malpractice complaint against the Respondent is not reported.

The Sixth Circuit's ruling affirming the district court's decision is not reported.

STATEMENT OF JURISDICTION

On April 2, 2024, the Sixth Circuit issued its opinion affirming the district court's grant of dismissal to the Respondent. The district court had jurisdiction under 28 U.S.C. 1332, (diversity question) and the Sixth Circuit under 28 U.S.C. 1294(1). This Court has jurisdiction under 28 U.S.C. 1254(1).

PERTINENT CONSTITUTIONAL PROVISIONS AND STATUTES

INTRODUCTION

The Tennessee Supreme Court's ruling in *Gibson v. Trant*, 58 S.W.3d 103 (2001) has kept non-exonerated convicts from recovering for criminal legal malpractice claims for over 20 years, unless they win post-conviction relief.

Many other states vary in their requirements for a client to successfully sue their former criminal lawyer for malpractice. Some, such as the Petitioner's home state of Ohio, have no requirements other than the requirements for any other type of malpractice.

The Petitioner was sentenced to 9 months in the county jail, too short of a time to file and win post-conviction relief for anything but the return of \$8000 that he had on his person when he was arrested. All other grounds became moot after he was released from the jail.

STATEMENT OF THE CASE

A. Arrest of the Petitioner

On March 12, 2017, the Gallatin police arrested and charged the Petitioner, John Meyer, with theft(shoplifting) at a Walmart store in Gallatin, Tennessee. They also seized over \$8000 in cash that he had on his person. Meyer was released from the Sumner County Jail the following day, after his bail was posted.

He then proceeded to the Walmart to retrieve his brother's vehicle from the parking lot, but found it gone, because the Gallatin Police Department had impounded it. He then returned home to Cincinnati, Ohio.

The next day, the police executed a search warrant on the vehicle, obtained by misrepresenting the facts and lying to Judge Carter, and found 160 copies of TurboTax software. As a result, Meyer was charged with an additional misdemeanor count of theft and a felony count of theft. Meyer then hired the Respondent, John Pellegrin, to represent him on these charges for \$3500.

Meyer ask his attorney to subpoena all video from his arrest, at the Walmart, to prove that he had not made the statements, that the police claimed he made in their application for the search warrant, and that he move that the

Turbotax obtained with the search warrant be suppressed, since it was obtained illegally. He failed to do so.

Eventually, Meyer, was offered a plea deal in which he would plead guilty to the first misdemeanor charge, serve 9 months in the county jail and the other charges would be dismissed. He was also told by his attorney that he would receive 8 days per month "good time credit", Meyer believed that he would actually serve less than 9 months. He later found out, while in the jail. That the 9 months included the "good time credit". Further, the state wanted Meyer to agree to forfeit all of the cash that was seized by the police. Meyer explained to his lawyer that \$8000 of it belonged to his brother and that it wasn't his to give away. Pellegrin agreed that a person can't give away what he doesn't own.

At the sentencing hearing, there was no mention of the \$8000 forfeiture, by the Judge, the Prosecutor or anyone else. Meyer believed that he would be given all of the money that was taken from him, including the \$8000. Later while in the jail, he received a copy of the plea agreement. It stated the sentence that Meyer was to serve and the forfeiture of \$8000. It was not signed by Meyer or his attorney. Meyer has no knowledge of this form until then and had

never agreed to forfeit the \$8000. He did later receive a check for the balance between what was seized and the \$8000.

On the day of sentencing, Meyer brought with him a paperback textbook on graduate level statistics that he wished to read while serving his time. He also wanted to order paperback textbooks from publishers to read toward his MBA and JD degrees, but was told by jail management that they no longer allowed books to be mailed in, even from publishers, and that he could not do so, in violation of his 1st Amendment rights.

Meyer then applied and was accepted to a halfway house. There, he would be able to work and earn money, as well as have books sent in to read. Meyer contacted Pellegrin multiple times about it and was told that he would set a hearing for the Judge to approve it, but his attorney never filed for it. After 9 months the Petitioner was released and it became moot.

B. District Court proceedings

Petitioner filed suit against the Respondent in the federal courts for legal malpractice and breach of contract. That court dismissed the case after Meyer failed to win post-conviction relief citing *Gibson v. Trant* 58 S.W.3d 103

(2001). The only matter that was decided in the post-conviction hearing was the forfeiture of the \$8000. The other matters were now moot because Meyer had completed his sentence.

C. Sixth Circuit ruling

The Sixth Circuit affirmed, again citing *Gibson v. Trant* 58 S.W.3d 103 (2001).

REASONS FOR GRANTING THE WRIT

I. State courts are deeply divided on the questions presented.

The requirement that a criminal defendant win post-conviction relief and be exonerated in order to recover damages from his criminal attorney varies greatly from state to state.

11 states, including the Petitioner's home state of Ohio, have the same requirements for convicted and un-convicted plaintiffs to sue their attorneys (see *Vahila v. Hall*, 77 Ohio St.3d 421, 674 N.E.2d 1168-69 (1997)). 11 other states, including Tennessee, require post-conviction relief and exoneration in order to sue their attorney. 22 states vary in their approach, and 6 are undecided.

II. The Court should grant certiorari and clarify the requirements for a Defendant to sue his criminal attorney for malpractice in the various states.

An attorney has a duty to his client to do his best for that client regardless of what state he practices in. It is up to the plaintiff to prove duty, breach, causation and damages. An attorney should not be shielded from his mistakes and omissions just because his client is guilty.

III. This case is an ideal vehicle to resolve questions presented.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

John Meyer, Pro Se

June 28, 2024