

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Gregory Green — PETITIONER
(Your Name)

VS.

Horry County — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fourth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Gregory Green
(Your Name)

Ridgeland Correctional Institution
(Address)

P.O. Box 2039, Ridgeland, S.C. 29936
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Whether Heck v. Humphrey, favorable-termination rule bar petitioner from seeking relief for damages thru 42 U.S.C. 1983 civil suit, for unconstitutional conviction, where petitioner is no longer in custody on subject conviction.

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:

Jimmy A. Richardson, III; Scott ~~Hixson~~ ^(SP)

Hixson - correct spelling

- ① Horry County
- ② Jimmy A. Richardson, III, Solicitor Fifteenth Judicial Circuit.
- ③ Scott ^(SP) Hixson, Assistant Solicitor
Hixson

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STATUTES AND RULES

42 U.S.C.A. 1983

OTHER

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☒ is unpublished.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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 January 23, 2018.

☒ 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Fourteenth Amendment

" 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 laws."

42 U.S.C.A. 1983

1983 Civil action for deprivation of Rights.

" Every person who, under color of any statute, Ordinance, regulation, custom, or usage, of any State or Territory or District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereto 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

STATEMENT OF THE CASE

The case underlying this petition is a civil right suit pursuant to 42 U.S.C. 1983 seeking relief in damages for past confinement that resulted from an unconstitutional conviction.

In the underlying action petitioner initiated suit for relief in damages caused by the (5) five-years of incarceration that he served from July 20, 2006, thru July 1, 2011. Petitioner contends that Defendants violated his Constitutional right by amending his indictment during his guilty plea proceeding which denied him sufficient notice of the charge to which he ultimately pled to in state court.

Petitioner entered into a plea bargain with Defendants to plead guilty to a lesser-included offense of the offense charged in his indictment. During the guilty plea proceeding the prosecutor amended the indictment to charge a totally different offense. Petitioner asserts the amendment to the indictment denied him notice of the specific charge in violation of due process. Petitioner argues the amendment to the charge was highly prejudicial in regard to the numerous collateral consequences it entails and violated his Constitutional right under the Due process clause of the Fourteenth Amendment to the United States Constitution.

The Magistrate Judge recommended dismissal, without prejudice, because (1) Plaintiff seeks damages against defendants that are immune from such relief; (2) The complaint fails to state a claim upon which relief can be granted. App. C

Petitioner made objections to the report and recommendation on the grounds that (1) prosecutors are not immune from damages, and (2) the amendment to the indictment violated due process of law. The district Judge modified the report and recommendation to add that the claim for relief was barred by this Court's decision in Heck v. Humphrey, 512 U.S. 477 (1994). The District Judge ruled that "Heck bars Plaintiff's claims because success on them would necessarily imply the invalidity of his drug conviction and five-year prison sentence, which have not been overturned or otherwise called into question." App. B

Petitioner appealed the district Judge order on the grounds that Heck v. Humphrey, *supra*, was inapplicable because he is not "in custody" on the subject conviction, therefore he did not squarely fall under the Heck favorable-termination rule, citing Wilson v. Johnson, 535 F.3d 262 (4th Cir. 2008). The Fourth Circuit affirmed the district court ruling without elaboration. App. A Petitioner now seeks to review the Fourth Circuit's order affirming the district Court's ruling under Heck v. Humphrey. The Fourth Circuit has denied petitioner an avenue to seek relief in Federal Court, and absent the grant of this petition for writ of certiorari by this Court, the collateral consequences of the unconstitutional conviction will persist.

REASONS FOR GRANTING THE PETITION

The Circuits Are In Conflict As To Whether Heck's Favorable-Termination Rule Bar Petitioner From Seeking Relief In Damages For Wrongful Conviction Thru 1983 Civil Suit For Past Confinement.

A Criminal conviction has collateral consequences on an individual that negatively affects one's civil liberties. Sibron v. New York, 392 U.S. 40, 59 88 S.Ct. 1889, 1898-99 (1968) (the Court, will in fact presume that collateral consequences stem from criminal conviction even after release)

Petitioner argues that the unconstitutional conviction that is the subject of his underlying civil suit was used as a "Strike" in relation to the (3) three-strike law, and enhanced his potential sentence range on his current conviction from a mandatory-minimum of 7-25 years, to a "mandatory" 25 year sentence. See United States v. Morgan, 346 U.S. 502, 74 S.Ct. 247 (1954) (conviction had been used to increase petitioner's current sentence under state's recidivist law.)

Petitioner asserts that the Fourth Circuit's ruling affirming the District Court's order barring him from challenging his unconstitutional conviction thru 42 U.S.C. 1983 civil rights suit under Heck v. Humphrey, 512 U.S. 477 (1994), "favorable-termination rule," denied the only avenue to vindicate his Federal rights under the Fourteenth Amendment to the United States Constitution.

Heck was an inmate with a direct appeal from his conviction pending, who brought a 1983 action for damages against State officials who were said to have acted unconstitutionally in arresting and prosecuting him. Heck dealt with a prisoner who was still incarcerated, and thus where a remedy in habeas corpus was available.

Petitioner asserts his case is distinguishable from Heck in two critical respects. First, petitioner asserts he has completely served his sentence of (5) five-years from year 2006 thru 2011. Although petitioner is currently incarcerated on a subsequent conviction, (which was enhanced by this prior conviction) he is not "in custody" on the subject conviction. Second, while incarcerated on his prior conviction (the conviction that is the subject of this petition) he sought Federal habeas relief. See Green v. Knowlin, 2010 WL 569572.

Petitioner argues that he should be entitled to pursue his 1983 claim in Federal Court because he does not have any other avenue to invalidate the Unconstitutional Conviction. Petitioner asserts that this Court's concurring opinion in Spencer v. Kemna, 523 U.S. 1, 118 S.Ct. 978 (1998), supports his position.

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In Spencer, this Court considered whether a person who is no longer in custody for purpose of the habeas statute (but was in custody when the petition was filed) may maintain a habeas suit in order to fulfill the favorable termination requirement imposed by Hick to pursue a 1983 action. Spencer had filed a habeas petition while he was still in prison, challenging the revocation of his parole by the Missouri Board of Probation and Parole. By the time his petition was heard in the district court, he had been released from prison, and the district court dismissed his petition as moot. See 731 U.S. 118 S.Ct. at 982. The Eighth Circuit affirmed. See Spencer v. Kansas, 91 F.3d 1114 (8th Cir. 1996). This Court held the petition was apparently dismissed as moot because it did not present a case or controversy as required by Article III, 2, of the Constitution. Although this Court reaffirmed its precedents holding that a challenge to his conviction always meet Article III's case or controversy requirement, see e.g., Coronado v. La Valle, 391 U.S. 234, 237 88 S.Ct. 1556 (1968), the Court declined to extend this presumption to Spencer's challenge to the revocation of his parole. The majority opinion suggested in dictum, however, that 1983 might be available if Spencer challenged the procedures used by the Board of Parole, rather than its result, and if the alleged procedural defect did not "necessarily imply the invalidity of the revocation." Spencer, 118 S.Ct. at 988 (quoting Hick, 512 U.S. at 487, 114 S.Ct. 2364.)

The concurring opinions in Spencer also addressed the availability of 1983. JUSTICE SOUTER, writing for four concurring justices, stated:

"Heck did not hold that a released prisoner in Spencer's circumstances is out of court on a 1983 claim, and for reasons explained in my Heck concurrence, it would be unsound to read either Heck or the habeas statute as requiring any such result. For all that appears here, then, Spencer is free to bring a 1983 action, and his corresponding argument for continuing standing falls accordingly." *Id.* at 19, 118 S.Ct. 978 SOUTER, J., concurring.

JUSTICE STEVENS, who dissented on the issue of mootness, dropped a footnote stating:

"Given the Court's holding that petitioner does not have a remedy under the habeas statute, it is perfectly clear, as JUSTICE SOUTER explains, that he may bring an action under 42 U.S.C. 1983." *Id.* at 25 n. 8, 118 S.Ct. 978 (STEVENS, J., dissenting.)

In the present case petitioner cites Wilson v. Johnson, 535 F.3d 262 (4th Cir. 2008), where the Fourth Circuit considered whether a former prisoner's 1983 claim was cognizable where he had failed to satisfy Heck's favorable-termination requirement *Id.* at 263-64.

In Wilson v. Johnson, *supra*, the Fourth Circuit noted that there were a conflict among the circuits. The First, Fifth, Eighth, and Third Circuits regard the five justices plurality in Spencer as dicta, and continue to interpret Heck as barring individuals from filing virtually all 1983 claims unless the favorable-termination requirement is met. *Id.* at 267 n. 6.

On the other hand, the Seventh, Second, Ninth, Eleventh, and Sixth Circuits held that Spencer's plurality view allows a Plaintiff to obtain relief under 1983 when it is no longer possible to meet the favorable termination requirement via habeas corpus. Id. at 267, n.7. Cognizant of a Circuit split on the issue, the Fourth Circuit stated:

"If a prisoner could not, as a practical matter seek habeas relief, and after release was prevented from filing a 1983 claim, 1983 purpose of providing litigants with a uniquely federal remedy against incursions under the claimed authority of state laws upon rights secured by the constitution and laws of the Nations would be severely impeded." Id. at 268

Petitioner argues that under the logic stated by the Concurring Justices in Spencer and the Fourth Circuit in Wilson - he should be allowed to challenge his past confinement thru a 1983 civil suit. Petitioner reiterates that while in custody on his prior conviction he sought federal relief by filing a writ of habeas corpus, but was unsuccessful in getting a favorable termination. See Green v. Kinslin, supra.

Petitioner argues he is no longer in custody on the subject conviction, therefore he cannot petition the Court for permission to file a second petition for writ of habeas corpus in regard to his past confinement. A 1983 civil suit is petitioner's "only" avenue to challenge his past confinement due to the unconstitutional conviction.

Whether a prisoner whose not in custody on the subject conviction can challenge past confinement, for UnConstitutional Conviction, thru 1983 Civil suit is a question of National importance. This Court has yet to directly address this specific question. Petitioner has diligently tried to invalidate this UnConstitutional Conviction. Petitioner has only one avenue left to vindicate his Constitutional right in Federal Court — thru 42 U.S.C. 1983 Civil right suit. Because the Circuits are split on this very important issue, this Court should take the opportunity to resolve the conflict among the Circuits by granting a Writ of Certiorari to the Court of Appeals for the Fourth Circuit.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Gregory Green

Date: April 9, 2018