

Anthony Derone Richardson

Appellant,

Case No.2014-002532

V.

Jackie Swindler, Chief of Police

Newberry Municipal Police

Respondent.

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DEC 03 2014

SC Court of Appeals

APPELLANT'S MEMORANDUM

On November 3, 2014 and the Respondent was tried in the NEWBERRY COUNTY Court of Common Pleas before the Honorable (Frank Addy) for an alleged violation of (Trespass after notice), (description of offense as indicated on the complaint). Following the civil trial the Respondent was granted Summary Judgment for Appellant failure to file a direct Appeal and the case is barred under Heck v Humphrey . Appellant appeals from this judgment.

Before the Court in this 42 U.S.C. § 1983 action is Defendants 'was granted Summary Judgment under Heck V. Humphrey. Respondent motion addresses one of Plaintiff's two claims in that this case is govern under Young V. Harris. Younger v. Harris, 401 US 37 - Defendants claim that Mr. Richardson claim is barred because Plaintiff did not direct appeal in criminal proceeding and this case is barred by Heck v. Humphrey, 512 U.S. 477 (1994). Defendants' motion is GRANTED, and Respondent shall be DISMISSED from this action.

Count 1 is against Respondent because the same case which is the Post- conviction sentence in which the same judge Frank Addy denied because the appeal was file the sentence he impose in the same case was still pending appeal, therefore this case is not barred because the appeal sentence pending this case is govern under Young v. Harris.

Count 2 is against Respondent. Respondent claim that Mr. Richardson is barred by Heck v. Humphrey, 512 U.S. 477 (1994). Defendants' motion is GRANTED, and Responder Summary Judgment shall be DISMISSED and granted in favor of the Appellant or stay the case until the appeal is completed.

Count 3 is against A threat of this nature might be shown if the state criminal statute in question were patently and flagrantly unconstitutional on its face, ante, at 53-54; cf. Evers v. Dwyer, 358 U. S. 202, or if there has been bad faith and harassment —official lawlessness—in a statute's enforcement, ante, at 47-49. In such circumstances the reasons of policy for deferring to state adjudication are outweighed by the injury flowing from the very bringing of the state proceedings, by the perversion of the very process that

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is supposed to provide vindication, and by the need for speedy and effective action to protect federal rights. Cf. *Georgia v. Rachel*, 384 U. S. 780. Appellant argue that On the other hand, "claims that do not call into question the validity of conviction or comparable decision remain viable under § 1983." *Nance v. Vieregge*, 147 F.3d

Respondent Mr. Swindler defendant which is a chief of; police violated the plaintiff right of the seventh amendment and the code 14-25-45 in impose sentence upon Plaintiff within these limits singularly. Appellant alleged that the prosecution which is the Respondent was brought in bad faith to harass him. His constitutional contentions may be adequately adjudicated

589, 591 (7th Cir. 1998).

Count 4 Respondent a state law enforcement officer is someone acting under "color of law" even though he may be misusing his authority. *Monroe v. Pape*, 365 U. S. 167. And prosecution under a patently unconstitutional statute is a "deprivation of . . . rights, privileges, or immunities secured by the Constitution." "Suit[s] in equity" obviously includes injunctions and that trial able issue exist and the issue should have went before the Jury to decide.

Count 4 the Respondent state criminal proceeding, and federal intervention at his instance was therefore improper because a Chief of police which is the respondent conducted.

Count 5 Appellant argue the same Judge Frank Addy conducted the post –conviction relief conducted the civil trial and I think it is a conflict of interest because he denied both cases fir the same reason.

FACTS AND PROCEDURAL HISTORY

Just to lay out some of the facts of the case, this matter comes before the Court when Mr. Richardson is suing Mr. Swindler for violation of my Seventh Amendment reflects the need for monetary damages as part of the controversy. U.S. Const. Amend. VII and *Seventh Amendment* guarantees the *right to trial by jury*. Mr. Swindler the defendant waived the plaintiff right to have a jury trial and case rise to the level of a constitutional violation and questions of fact. The right to confront my witness, the right to question my witness, be tried by impartial jury, was violated after plaintiff requested in writing for jury trial before the judge frank partridge, and then latter on tried by Mr. Swindler defendant which is a chief of; police violated the plaintiff right of the seventh amendment and the code 14-25-45 in impose sentence upon Plaintiff within these limits singularly. According to Exhibit A and impose a sentence upon the plaintiff after a jury trial was requested result in been waive by the defendant rights in criminal court and in all courts. The defendant will agree according to the Exhibit A beside my name that there is the Mr. Swindler initials and that I pled guilty to the Mr. Swindler constitutes a impose sentence bench trial been conducted by Mr. Swindler without the present of a judge, court reporter. State court are bound by the seventh amendment jury trial and to be sentence by a judge. I will prove that the Plaintiff pled guilty before the Mr. Swindler the Chief of Police in his office and impose a sentence at a bench trial an agreed by defendant on 2/20/2013. And I will prove Mr. Swindler prepared a sentence sheet in which Mr. Swindler initials his name beside the plaintiff name constitutes impose bench trial sentence with fact-finding because he found me guilty. Mr. Swindler waive the Plaintiff rights

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in sentencing me at the bench trial according to Exhibit E. the Appellant in which i will prove by the evidence I intend to show the jurors, and later on the defendant sought a bench warrant to have Plaintiff arrested is a impose sentence and a result of arrest. Mr. Swindler will argue that there was no jury trial taking place and the jury selection is not a trial, however it is a impose sentence or a bench trail conducted by Mr. Swindler rather than a judge. But the request for a jury trial was in writing by the plaintiff in which i intend to show the jury. When a plaintiff request a jury trial the only person that can waive his/her rights is the plaintiff in this case. I will prove to the court that the defendant in this case undisputed evidence that the defendant have not yet showed proof that the plaintiff waive his rights to a jury trial or even prove why the plaintiff did not get a jury trial after requesting a jury trial in writing and been sentence by defendant in a bench trial. A bench trail consist of the judge and the court reporter, clerk of court, however in this case it's the chief of police conducting a bench trial after he admit to initial his name beside my signature. I will prove to the court the defendant violated the plaintiff rights at his bench trial. The Appellant Monetary relief for ordinary compensatory damages is fundamental to legal relief subject to the right to a jury trial. Indeed, the text of the Seventh Amendment reflects the need for monetary damages as part of the controversy. U.S. Const. Amend. VII and *Seventh Amendment* guarantees the *right to trial by jury*. State court are bound by the seventh amendment. This is where Mr. Swindler decided to impose sentence o conduct a bench trial upon plaintiff, and waive plaintiff right to confront his witness, or accuser without consent of the plaintiff in which I will prove that according to the Exhibit C there was not a trial after Mr. Swindler initial a bench trial and impose sentence at bench trial is clearly a waiver of the plaintiff rights under the seventh amendment in which all state court are govern by. Mr. Swindler waive the right according to the Exhibit after he initial his name beside my name is clearly a bench trial been conducted Mr. Swindler. Plaintiff suffered because Mr. Swindler had violated plaintiff right to jury trial, and defendant impose sentence upon plaintiff and Mr. Swindler sought a bench warrant to have plaintiff arrested in front of the Judge Frank Partridge without the plaintiff been present and without the Plaintiff consent. During the discovery process, the Plaintiff acknowledged that he initial the impose sentence sheet rather than sign it beside the plaintiff name. According to Exhibit A,B,C Your Honor, that Mr. Swindler admitted to signing his initials and not signature on the plea agreement in which he prepared is then certainly that would be a disputed fact for a fact finder to look at, Your Honor. If the Court finds some weight to the Defendant's motion that the Plaintiff lacks standing in this matter, certainly that wouldn't be a summary judgment. That would be a motion to dismiss, Stay Pursuant to Federal Rule of Civil Procedure Rule 56(f)

Appellant Arguments:

Appellant argues that if Respondent motion is not denied, it should be continued so that Appellant may conduct discovery to oppose the motion fully.

Fed.R.Civ.P. 56(c); plaintiffs' complaint for the reasons stated in respondent Motion for Summary Judgment, which is being filed simultaneously herewith. The Plaintiff was arrested on December 11, 2012 for trespass after notice. However, because the Plaintiff appeal still pending, there has been no final decision as to whether the Plaintiff was entitled to jury trial, however according to Exhibit A,B,C that the Plaintiff is entitled to a Jury Trial after the request is writing , and that Mr. Swindler has no document on record showing that the Plaintiff waive his Jury trial request and that it is undisputed that Mr. Swindler initial on the Exhibit beside my name is clearly a bench trial been conducted by Mr.

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Swindler the chief of police rather than the Municipal Judge. Accordingly, civil cause of action has accrued.

Respondent summary judgment should be denied on Appellant claim. Respondent' enforcement actions violated the conviction or sentence has been reversed on *direct appeal*, expunged by executive..... *Heck v. Humphrey* does *not* bar Appellant request for prospective because the case is govern by *YOUNG v, Harris* because Young provide a remedy to avoid court ruling on the same matter at the same time while the appeal is pending.

Appellant argue that the judge err in dismissal of his civil claim because he did not file an appeal in criminal in reference to the same case is a err because civil the Appellant can raise constitution claims even if he appeal or not because the criminal case does not totally affect the outcome of a civil claim because you can raise the issue in the civil.

Appellant argue that the Judge err in granting the Respondent Summary Judgment while both case of the same case was running parallel of each other, the Judge err in ruling because the same case in the PCR was pending appeal, and he refuse to stay the but rather grant Respondent Summary Judgment.

Appellant argue the judge err in ruling this case is govern by *heck v. humprey* because pending case which is the post-conviction sentence in which the same judge impose was pending appeal which result as state action was pending however *younger v. Harris* decided that the case should be stop and not dismiss.

Appellant ague that *Heck v. Humprey* the defendant was sentence by a Judge and not a chief of police because this case the Appellant was sentence by police rather a judge the Respondent violated S.C. code 22-3-550 which is mandatory for judge to defendant in all court however the judge err in ruling Motion of Summary Judgment when there is trial able issue that exist.

Appellant was not appoint attorney to represent the Plaintiff or even was there any hearing conducted to secure the right of the Plaintiff as provided under the constitution under the sixth amendment therefore is no way the Appellant could have known to appeal without attorney.

Appellant argue this case is govern under the *Young v. Harris* because the post-conviction relief of the sentence impose by Judge Frank Addy was pending appeal and the summary judgment granted while the appeal was pending in reference to the same case has jeopardize the outcome of summary judgment was granted in favor of the Respondent in the same case sentenced by the same Judge Frank Addy who denied this case in the Post-conviction relief. Because the same case was running parallel of this case and the case should have been stayed rather than dismissed.

Appellant argues summary judgment in Appellant favor is appropriate because Mr. Swindler has pled various affirmative defenses, any of which, if successful, would seriously violate the code of law of south Carolina code 14-25-45 in impose sentence upon Plaintiff within these limits singularly and the seventh amendment *Seventh Amendment* guarantees the *right to trial by jury*.

Appellant argue that the judge err in granting summary judgment is not appropriate were further inquiry into facts of the case is desirable to clarify the application of the law and should not be granted even when there is no dispute. Lanham 349 s.c at 362

Appellant argue violation of his due process right to a trial by jury is not barred

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Appellant sole argument in his Notice of Appeal petition was that this case is not govern under Heck V. Humphrey and rather the same Judge Frank Addy denied Plaintiff the right to hear the case but dismissed this case without prejudice is govern this case under Humphrey v, Heck. Which is incorrect because this Humphrey v. Heck does not provide a remedy for the same case running parallel of each other. Humphrey v. Heck only deal with cases that have been resolve, therefore provided no remedy for case pending appeal in two separate court dealing with the same

Appellant argue under Young Harris because there is a pending appeal in the criminal case for the same identical case or reference to the same case Trespass after notice. Since the criminal case was pending appeal Heck does not provide a remedy for this case because the criminal case is identical running parallel with the civil, however Young v. Harris which provide a remedy to rather stay the case rather dismissed the case.

Appellant also argue the Judge err in dismissing this case because no direct appeal was file but a post-conviction relief was filed within a timely and there was merits and the same Judge Frank Addy conducted the post-conviction relief and the civil trial and denied both because there was no direct appeal.

Appellant ague that there was merits because it was a involving a constitution violation and there was trial able issues the Judge avoided the issue.

Appellant argue that Judge Frank Addy was unprofessional conduct, undermines the Court's confidence in the outcome of trial in denying the PCR, in making remarks in the denial of post-conviction relief that he threat to sanction me with my dirty little hands.

Appellant argue that the since the respondent conducted a fact-finding that he did not appoint Appellant attorney in the criminal procedure so therefore the Plaintiff was not protected under the sixth amendment which entitled a criminal to be represented, and there is no proof on record I waive my right to attorney. The plaintiff could not have known that he could appeal because the he was not appoint attorney to advise me in criminal court. When a magistrate or municipal judge calls a criminal case for disposition and determines that a prison sentence is likely to be imposed following a conviction, the accused, if unable to retain counsel due to financial inability, is entitled to a court appointed attorney upon proof of indigence. (Rule 602(a), S.C. Appellate Court Rules). The court may appoint the public defender or any other member of the local bar it designates. (Op. Att'y Gen. dated November 7, 1979). Once appointed, the attorney must represent the accused as far as the case is pursued in South Carolina's courts unless he is permitted to withdraw for good cause. (Rule 602(e)(1), SCACR). Appointed counsel's "necessary expenses" are reimbursed from a special fund established by the legislature upon application by voucher to the Office of Indigent Defense. If there is no defender corporation in a county, appointed counsel may apply to the Office of Indigent Defense for the payment of a fee. If a defender corporation has been established in a county, appointed counsel cannot apply to the Office of Indigent Defense for the payment of a fee, but must seek payment from some other source such as the defender corporation or the county. (Rule 602(f), SCACR). Presently, there are public defender corporations, some with multi-county service, established for all 46 counties with a portion of the funds for the corporations supplied by the Defense of Indigents program. Criminal indigence appeals are generally handled by the Office of Appellate Defense which operates under the direction of the S.C. Commission of Appellate

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Defenses. C. Code Ann. § 40-5-80 allows a citizen to prosecute or defend his own cause, if he so desires. Act No. 307 of 2002, effective June 5, 2002, amended Section 40-5-80 and deleted the authority of a citizen to defend the cause of another under certain conditions. By Order of the Supreme Court dated September 21, 1992, businesses may be represented by a non-lawyer officer, agent or employee, including attorneys licensed in other jurisdictions and those possessing Limited Certificates of Admission pursuant to Rule 405, SCACR, in civil magistrate's court proceedings. Such representation may be compensated and shall be undertaken at the business's option, and with the understanding that the business assumes the risk on any problem incurred as the result of such representation. The magistrate shall require written authorization from the entity's president, chairperson, general partner, owner or chief executive officer, or in the case of a person possessing a Limited Certificate, a copy of the certificate, before permitting such representation.

Appellant argue that Respondent lacked the jurisdiction to sentence but the Appellant was sentenced by the respondent as the Prosecutorial misconduct which in this case is the Respondent--failure to provide me a criminal defense attorney to advise a client to preserve my rights..

Appellant argue the trial court did not appoint me attorney to advise me the rights to appeal or even how many days to file appeal and after a written request to have a jury trial.

Ann. § 17-27-45(A), In this case, Anthony claims that he was denied his right to appeal which was a procedural error preventing his fair "bite" at the apple

Appellant argue Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or "one bite at the apple." *Aice v. State*, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991). This "bite includes an applicant's right to appeal the denial of a PCR application, and the right to assistance of counsel in that appeal. See *Aice*, 305 S.C. at 448, 409 S.E.2d at 392.

Appellant argues the PCR judge erred by summarily dismissing his First PCR application which asserted a valid claim to an evidentiary hearing on his right to appellate review under *Austin v. State*.

Appellant argue he was not advice of no appeal because the court did not appoint attorney to evidentiary hearing on his right

Appellant argue Under Rule 56 it's proper for a party to make a motion of summary judgment if there are no facts in dispute. Now, when evaluating and determining the validity of forcibility of this restricted covenant, the law is well established, however there is facts in dispute.


Appellant feels the conviction should be reversed or the sentence modified, including references to statutes, rules and cases.

The appellant therefore prays that the order of Motion for Summary Judgment against Appellant may be reversed and appropriate Relief granted to the appellant.

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Certificate of Proof

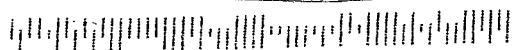
I certify that Anthony Derone Richardson sent the Memorandum for the Notice of Appeal in mail to Morrison Law Firm 7453 Irmo Drive, Suite B Columbia, South Carolina 29212 on this day December 1, 2014.

.....Date.....12/1/2014

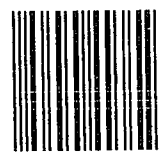
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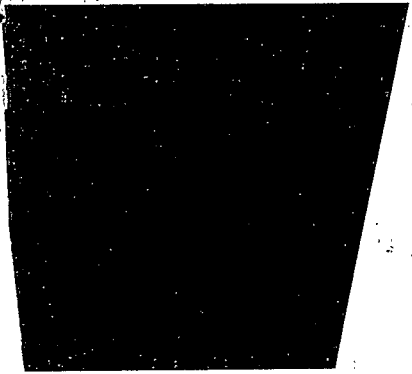
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