

18-8622

No. _____

Supreme Court, U.S.
FILED

MAR 26 2019

OFFICE OF THE CLERK

In The
Supreme Court of the United States

MARK GARRETT,

Petitioner.

vs.

THOMAS J. SPOTA,

Respondent.

ON PETITION FOR MANDAMUS
NEW YORK COURT OF APPEALS

Petitioner's affidavit or declaration in support of this motion is attached hereto.

PETITION FOR MANDAMUS

MARK GARRETT #00-A-3947
Petitioner, Pro-Se
Sullivan Correctional Facility
325 Riverside Drive
Fallsburg, N.Y. 12733-0116

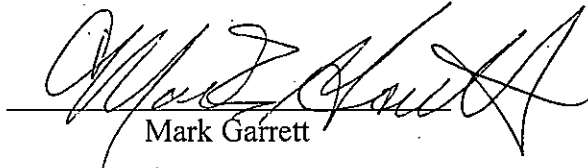
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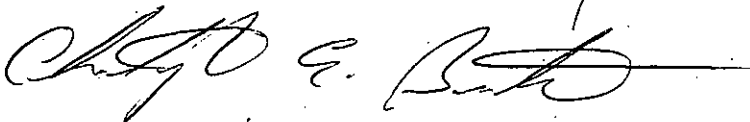
PETITION FOR MANDAMUS

In Re, Mark Garrett, respectfully petition for Mandamus to review and vacate the June 30th, 2014 Judgment of the Court of Appeals for the Second Circuit, pursuant to 28 U.S.C. § 16551 (A)

I declare under penalty of perjury that the forgoing is true and correct.

Execute on: 20th February, 2019


Mark Garrett



CHRISTOPHER E BARRETO
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01BA6382056
Qualified in Orange County
My Commission Expires October 15, 2022

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HOW THE PETITION WILL BE IN AID OF THE COURTS JURISDICTION

A. [ABSTENTION DOCTRINE]

Policy adopted by Federal Courts where by the District Court may decline to exercise it's Jurisdiction and defer to a State Court the resolution of Federal Constitutional question, pending the outcome in State Court Proceeding of State Law "Issues" that might avoid a serious Constitutional question.

B. The petition will be in aid of the Court's Jurisdiction to prevent the State Court from interfering with Supreme Court precedents impairing the Court's authority. The State Court Judgment presents a sufficient threat to the Constitution. The State Court had the same subject matter before this Court and disrupted the orderly resolution which would have resulted in a new trial.

C. The petition urges that there are specific conflicts and circumstances that are certainly not in accord with the decisions of this Court which findings of necessity requiring to justify "in aid of Jurisdiction" to the Supreme Court, where grave questions of Constitutionality must necessarily be determined. The petitioner hopes to exceed the limits fixed by the reasons for the rule of the state. Here, as in certain decisions of this Court, the petition falls within the class in which if the unconstitutionality of the act is shown equitable relief may be had. The 14th Amendment declares the judicial power of the United States shall not be construed.

1. Claims based merely upon assumed potential invasions of rights are not enough to warrant judicial intervention.

(A) Here a real and not an abstract right is to be determined.

(B) Here an actual not an assumed invasion of rights were violated.

WHAT EXCEPTIONAL CIRCUMSTANCES WARRANT THE
EXERCISE OF THE COURT'S DISCRETIONARY POWERS.

- (A) The importance of the Constitutional issues that are raised within the petition are violations of an identifiable right conferred by the Constitution. The United States Supreme Court's discretionary powers under Court Rule will vindicate a pretended or purported nugatory.
- (B) Human right violations are well entitled to the speedy attention of the exercise of the Court's discretionary powers of the U.S. Supreme Court of last resort.

WHY ADEQUATE RELIEF CANNOT BE OBTAINED IN
ANY OTHER FORM OR ANY OTHER COURT

- (A) The petitioner seeking issuance of the Writ has no other adequate means to attain the relief he desires. A condition designed to ensure that the Writ will not be used as a substitute for the regular appeal process.
- (B) The petitioner demonstrated that resort of State and District Courts was ineffective.

Appendix A.

(C) Petitioner has pursued all available applications 344 U.S. 443

(D) The petitioner's procedural history will satisfy the proof of burden of exhausted remedies

Appendix B.

All prerequisites have been met. Petitioner's relief necessarily depends on resolution by the U.S. Supreme Court.

JUDGMENT OR ORDER IN RESPECT OF
WHICH THE WRIT IS SOUGHT. Appendix C.

TABLE OF AUTHORITIES

U.S. v. CALHOUN, 726 F.2d 162 (4TH CIR 1984)
GRAHAM v. CONNOR, 490 U.S. 386 109-396-97 (1989) S.Ct. 1865
MONROE v. PAPE, 365 U.S. 167, 196 (1961)
U.S. v. McQUEENY, 674 F.2d 109 (1ST CIR 1982)
ROBINS v. HARUM 773 F. 2d 1004, 1010, (9TH CIR 1985)

STATUTES AND REGULATIONS

U.S.C.A. CONST. AMEND XIV, VIII, IV
DUE PROCESS AND EQUAL PROTECTION
SECTION 242 TITLE 18 OF THE UNITED STATES CODE

QUESTIONS PRESENTED

- (1) Whether when a citizen is questioned by law enforcement officers during an investigation, restrained, handcuffed and subjected to the use of a stun-gun is excessive force in effecting said investigation are governed by the Fourth Amendment to the Constitution of the United States?
- (2) Whether the United States Court of Appeals erred, because the Court of Appeals did not tie its Constitutional analysis to any particular provision of the Constitution in reversing the order of the Appellate Division?
- (3) Whether the Fourth Amendment's protection against unreasonable force applies "throughout the time that the arrestee is in custody of the arresting officer"?
- (4) Whether the petitioner proved the police acted "maliciously and sadistically" in order to obtain false confession?

LIST OF PARTIES

Mark Garrett - petitioner

Thomas J. Spota – Respondent

Suffolk County

District Attorney

JUDGES: Abdus – Salaam

Graffeo

Read

Pigott

Smith

Rivera

Lippman

INTEREST OF THE UNITED STATES

(A) This case requires the Court to determine the general Constitutional standard applicable in an action alleging that police officers used excessive force on a citizen.

(B) Here that question is presented in cases under 18 U.S.C. 242, which makes it a Federal crime to violate a person's Constitutional rights.

(C) The United States prosecutes numerous cases under 18 U.S.C. 242 that involve the use of excessive force (see) e.g. U.S. v. CALHOUN, 726 F. 2d 162 (4TH CIR 1984), GRAHAM v. CONNOR, 490 U.S. 386 109 -396-97, MONROE v. PAPE, 365 U.S. 167, 196 (1961) U.S. v. McQUEENY, 674 F.2d 109 (1ST CIR 1982), ROBINS v. HARUM, 773 F. 2d 1004, 1010, (9TH CIR 1985)

(D) In light of the foregoing, the judgment of the Court of appeals was not dependent upon a decision of any Federal question. In a case where preliminary motions addressed in the petition remain undisposed of and where the Writ can be deemed "in aid of this Court's Jurisdiction."

(E) This type of litigation entitles petitioner to the discretionary allowance from the highest Court in the nation. Mandamus has been held by this Court to be an appropriate procedure for fundamental questions of first impression, concerning the interpretation of those rules novel questions of criminal procedure clearly meets those criteria, too.

STATEMENT

Petitioner was convicted of three counts of Murder in the second degree, in June 2000. He was sentenced to two concurrent indeterminate terms of 25 years to life.

At the defendant's trial for Murder, the evidence against him consisted of his confession to police. At a Suppression hearing held in November 1999, before his trial, he contested, inter alia, whether his confession was voluntarily given. He took the stand at the hearing and testified that he signed the confession only after the detectives conducting the interrogation handcuffed him to a chair and, among other things, slapped him, hit him, and shocked him twice in the back with a stun-gun or teaser. He also presented the testimony of a nurse practitioner, who examined him at the Suffolk County Jail and testified that, approximately one week after the interrogation the defendant had two "healing round excoriations on his back, but she could not determine whether they were caused by a stun-gun. The Suppression Court credited the testimony of the People's witnesses, including detective Vincent O' Leary, that the defendant was not physically abused during the interrogation, and denied the defendant's Suppression motion. At trial defense counsel cross-examined O'Leary as to whether he had ever been involved in a case with a "false confession"? The trial Court sustained the prosecutor's objection to this line of inquiry.

The defendant was convicted and sentenced on June 13, 2000.

SUMMARY OF ARGUMENT

The Fourth Amendment prohibits police officers from using excessive force.

The Fourth Amendment's protection against unreasonable force applies "throughout the time that the arrestee is in the custody of the arresting officers" Robins v. Harum, 773 F. 2d 1004 1010 (9th Cir. 1985) deprivation of a Constitutional right (by officials misusing their authority) is significantly different from and more serious than a violation of a state right, Monroe v. Pape, 365 U.S. 167, 196 (1961). And therefore deserves a different remedy even though the same act may constitute both a state and the deprivation of a Constitutional right. Graham v. Connor, 490 U.S. 386, 109, 396-97 (1989) S.Ct. 1865

ARGUMENT

Ind. No. 1781-98

The only evidence connecting petitioner to the crime were statements written by detectives.

At the outset, petitioner made complaints to his attorney and to the Court that he was physically assaulted and there were no audio or visual video.

On July 31, 1998, at petitioner's arraignment, the Hon. Judge Braslow observed marks on petitioner.

The Hon. Richard M. Klein ordered a physical examination (Appendix D). Petitioner was physically examined by physician Judith O' Neil. (Appendix E) who determined there were several healing circular scars, less than 1/4 inch in diameter on petitioner's back and other parts of his body, from the use of a possible stun-gun.

Injuries -----

Marks to the upper back – to both ankles, outside of left and right sharp pain to upper back along spine --- spine midline tenderness on palpation of T1, T7, and T12 are --- midline along spiral processes palpable par vertebral muscle spasm to T1, T4 lateral to spine extend to medial scapula area – 0.5cm healing rounded excursion –0.3cm healing rounded excursion T3, area – T3 area w inches from midline spine – 0.2cm healing,, L4, area 1 inch from midline spine – 3cm x 1cm café aslait spot L4 area flank.....

In the presence of Daniel Rudansky, attorney for petitioner, Detective Eleite, and Lt, Manseau.

- (A) A police officer violates Fourth Amendment if he uses unreasonable force, as measured by an objective standard, when making an arrest or investigative stop.
- (B) The Fourth Amendment was implicated when the officers detained petitioner.
- (C) The Fourth Amendment enquires an objective standard of reasonableness.
- (D) Other Constitutional test for examining the force used should be examined.

JURISDICTION

The judgment of the state Court of Appeals was entered on June 30th, 2014. A copy of that order appears at appendix (C) A timely petition for rehearing was denied by the state Court of Appeals on the following date: 27th of August, a copy of that order 2015, appears at appendix (A)

The jurisdiction of this Court is invoked under 28 U.S.C. §1651 (A)

RULES INVOLVED

Section 242 Title 18 of the United States Code prohibits the willful deprivation of any rights, privileges, or immunities secured by the Constitution or law of the United States.

OPINIONS BELOW

County Court Denial to vacate conviction (appendix A)

Certificate Granting leave to appeal (appendix A)

Appellate Division Reversal of County Court (appendix A)

New York State Court of Appeals (appendix C)

Application for re-consideration to Court of Appeals (appendix A)

Court of Appeals Denial of reargument (appendix A)

District Court's mandates denying Habeas Corpus and application to file second successive Habeas (appendix A)

REASON FOR GRANTING THE PETITION

The essential facts in petitioner's application can be supported by Court records and documentary evidence, accompanied by exhibits that substantiate every fact essential to the petitions resolution, including facts demonstrating constitutional violation. The People supply no Court records or documentary evidence rendering petitioner's factual allegations implausible.

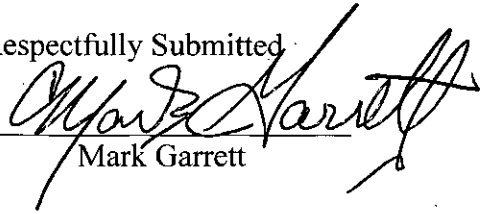
CONCLUSION

For the foregoing reasons, individually and cumulatively, petitioner respectfully request this Court vacate the conviction, have petitioner brought before it, that he may be discharged from his unconstitutional confinement and restraint.

And to grant such other relief as may be appropriate and to dispose of the matter as law and justice require.

Dated: 3/11 2019

Respectfully Submitted


Mark Garrett