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Dropped Charges Satisfy Favorable Termination for Malicious Prosecution

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Dropped Charges Satisfy Favorable Termination for Malicious Prosecution

By: Emily M. Puckett, Staff Editor, Vol. 111



A recent Supreme Court decision makes it easier for Section 1983[1] plaintiffs alleging malicious prosecution to survive a motion to dismiss. *Thompson v. Clark* is a substantial shift in civil rights litigation favoring plaintiffs after years of the formidable *Heck v. Humphrey* decision. In April 2022, the Court in *Thompson* held that to satisfy favorable termination of malicious prosecution, the plaintiff need only show “the prosecution ended without a conviction.”[2] For the 6-3 decision, Justice Brett Kavanaugh wrote the majority, including Chief Justice John Roberts and Justices Stephen Breyer, Sonia Sotomayor, Elena Kagan, and Amy Coney Barrett. Justice Samuel Alito, in dissent, along with Justices Clarence Thomas and Neil Gorsuch, contested placing malicious prosecution under the Fourth Amendment.

The decision in *Thompson* settled a circuit split where most circuits[3] followed a rule requiring plaintiffs to show their charges were dismissed with some indicia of innocence to satisfy favorable termination.[4] The Court first articulated the favorable termination standard as part of a complete cause of action in *Heck v. Humphrey*, where a § 1983 plaintiff challenged the validity of the underlying conviction.[5] Since 1994, *Heck* has been widely used by § 1983 defendants seeking dismissal. Before *Thompson*, the Court never addressed a case involving a malicious prosecution claim without a conviction.

The question presented in Thompson's writ of certiorari asked,

Whether the rule that a plaintiff must await favorable termination before bringing a Section 1983 action alleging unreasonable seizure pursuant to legal process requires the plaintiff to show that the criminal proceeding against him has "formally ended in a manner not inconsistent with his innocence," or that the proceeding "ended in a manner that affirmatively indicates his innocence." [6]

Along with other Amici, the United States filed a brief supporting Thompson stating, "The United States has a substantial interest in ensuring that constitutional rights are carefully safe-guarded." [7]

At oral argument, Thompson claimed the Second Circuit's rule requiring him to show the proceeding ended in a way that indicated he was innocent was at odds with the standard in a criminal case where the prosecution must establish "guilt beyond a reasonable doubt." [8] Further, because his charges were dismissed, he could not present evidence of his innocence. [9] During oral argument, Kavanaugh referred to the rule requiring indicia of innocence as an "upside down" rule. [10]

In the Court's opinion, Kavanaugh further explained,

requiring the plaintiff to show that his prosecution ended with an affirmative indication of innocence would paradoxically foreclose a § 1983 claim when the government's case was weaker and dismissed without explanation before trial, but allow a claim when the government's evidence was substantial enough to proceed to trial. . . . would make little sense. [11]

Thompson v. Clark is quickly garnering attention in the lower courts, proving its significance for civil rights plaintiffs. In an order denying a § 1983 defendant's motion to dismiss, a district court relying on *Thompson* identified the dismissal of pending petitions to extend parole as favorable terminations under *Heck*. [12] Citing *Thompson*, another district court justified their previous denial of a § 1983 defendant's motion for summary judgment where the plaintiff's habeas order did not establish his innocence. [13] In another, the defendants argued that the § 1983 plaintiff whose charges were dismissed did not satisfy favorable termination because they were dismissed due to the Assistant District Attorney's failure to meet the speedy trial time limits, but the court relying on *Thompson*, said this was a favorable termination. [14]

Mere months before *Thompson*, the Sixth Circuit held that a § 1983 petitioner failed to show favorable termination of his charges when they were dismissed by an agreement with the prosecutor. [15] The Court granted certiorari after *Thompson* was decided, vacated the Sixth Circuit's judgment, and remanded it to be considered in light of *Thompson*. [16]

A similar case in the Ninth Circuit considered a no contest plea stating the prosecutor would dismiss the charges if the defendant completed ten hours of community service with no breaches of the law for six months. [17] The § 1983 plaintiff, in his opening brief, argued this was a favorable termination under *Thompson* because the charges were ultimately dropped. [18] The judge did not cite *Thompson* in reaching a decision but said that because the plea was held in abeyance, it was not a conviction, so *Heck* did not apply, and the petitioner's § 1983 claims were wrongly dismissed. [19]

These decisions suggest *Thompson's* rule applies even where agreements and pleas are made, so long as the charges are dropped. Because agreements, pleas, and dismissals play a sizable role in prosecutions, *Thompson's* reach will prove seismic with time.

[1] 42 U.S.C. § 1983 ("Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof 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. . ."); see generally Ninth Cir. Jury Instructions Comm., Model Civil Jury Instructions 130 (2022), https://www.ce9.uscourts.gov/jury-instructions/sites/default/files/WPD/Civil_Instructions_2022_12.pdf (noting elements for § 1983 as "(1) the action occurred 'under color of state law' and (2) the action resulted in the deprivation of a constitutional right or federal statutory right.>").

[2] *Thompson v. Clark*, 142 S. Ct. 1332, 1341 (2022).

[3] *What Is "Favorable Termination" Where There Is No Conviction?*, Nahmod L., <https://nahmodlaw.com/2021/01/18/what-is-favorable-termination-where-there-is-no-conviction/> (last visited Mar. 18, 2023) (stating seven circuits, the First, Second, Third, Fourth, Sixth, Ninth, and Tenth Circuits, required some indicia of innocence for favorable termination where there is no conviction).

[4] Jonathan Halperin & Isaac McBeth, *A Clearer Path*, Trial Magazine, Sept. 2022, at 51.

[5] *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994).

[6] *Petition for a Writ of Certiorari at i*, *Thompson v. Clark*, 794 Fed. App'x 140 (mem.) (2d Cir. 2020) (No. 20-659), cert. granted, 141 S. Ct. 1513 (2021) (mem.).

[7] *Brief for the United States as Amicus Curiae Supporting Petitioner at 1*, *Thompson v. Clark*, 794 Fed. App'x 140 (2d Cir. 2020) (mem.) (No. 20-659).

[8] Howard M. Wasserman, *Favorable termination and indications of innocence in Section 1983 malicious prosecution claims*, SCOTUSblog (Oct. 10, 2021, 1:27 PM), <https://www.scotusblog.com/2021/10/favorable-termination-and-indications-of-innocence-in-section-1983-malicious-prosecution-claims/>.

[9] *Id.*

[10] Martin A. Schwartz, *The Supreme Court's Malicious Prosecution Decision*, N.Y. L.J. Online, (July 1, 2022).

[11] *Thompson v. Clark*, 142 S. Ct. 1332, 1341 (2022).

[12] *Alter v. San Diego*, No. 21-cv-01709-LL-KSC, 2022 WL 10756705, at *4–*5 (S.D. Cal. Oct. 18, 2022).

[13] *Gillispie v. Miami*, No. 3:13-cv-416, 2022 WL 4922659, at *7 (S.D. Ohio Oct. 4, 2022).

[14] *Francis v. Schenectady*, No. 1:20-CV-00703-LEK-TWD, 2022 WL 4619326, at *7 (N.D.N.Y. Sept. 30, 2022).

[15] *Al-Maqablh v. Heinz*, No. 19-5548, 2022 WL 1314395, at *2 (6th Cir. Jan. 4, 2022), *cert. granted, judgment vacated sub nom.*, 143 S. Ct. 71 (2022).

[16] *Al-Maqablh v. Heinz*, 143 S. Ct. 71 (Mem) (2022).

[17] *Duarte v. Stockton*, 60 F.4th 566, 569 (9th Cir. 2023).

[18] Appellant's Opening Brief at 11, *Duarte v. Stockton*, 60 F.4th 566 (9th Cir. 2023) (No. 21-16929).

[19] *Duarte*, 60 F.4th at 572–73.

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