

6/21/93

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1992
No.

-----x
GEORGE SASSOWER,
 Petitioner,
 -against-
EDMUND SARGUS and JANET RENO,
(D.MICHAEL CRITES and WILLIAM P. BARR)
 Respondents.
For a Writ of Mandamus and Prohibition
-----x

x-----x
 PETITION FOR A WRIT OF CERTIORARI
 TO THE CIRCUIT COURT OF APPEALS FOR THE
 SIXTH CIRCUIT
x-----x
 x-----x
 -
 PETITION
 x-----x

PRELIMINARY STATEMENT

1a. This is the Third, of four, interrelated petitions for writs of certiorari, all addressed to the Sixth Circuit, intended to be consolidated and/or simultaneously considered, and wherever possible, repetition, law, fact and/or questions presented, will be avoided (see 92-8933/8934).

QUESTIONS PRESENTED

1. Where petitioner's petition sought to enjoin the respondents, the U.S. Attorney for the Southern District of Ohio and the Attorney General of the United States, from defending in civil money damage tort litigation, at federal cost and expense, federal judges who: (1) were being sued in their private capacities; (2) had not received Attorney General's 28 U.S.C. §2679[d] "scope certifications"; and (3) were conducting themselves for private benefit, and contrary to legitimate

federal interests, such as diverting monies payable "to the federal court", including monies paid on behalf of petitioner, to the private pockets of their cronies, should have petitioner's petition been accepted for adjudication?

2. Where the undisputed assertion by petitioner was that, except in an situation not here relevant (cf. 28 U.S.C. §547[31]), there was no statutory authority for a U.S. attorney to represent individuals, as distinguished from a United States substituted defendant (28 U.S.C. §2679[d]), should petitioner's petition been accepted for filing?

3. — Where a 28 U.S.C. §2679[d] "scope" certificate triggers a United States substitution and a loss of personal legal privileges and immunities, should have petitioner's petition been accepted for filing?

4. Where petitioner's petition requested the respondents to take such necessary action as might be necessary to recover monies payable "to the federal court" which were diverted to private pockets, which diverted monies included those paid on behalf of petitioner, should petitioner's petition been accepted for filing?

5. Where petitioner's petition requested the respondents, as representatives of the United States, to recover from their purported clients such costs and expenses incurred by them in their defense, should petitioner's petition been accepted for filing?

6a. Where all petitioner's assets have been "frozen" because of his resistance and exposure of judicial corruption, which assets include a contractually based, constitutionally protected money judgment in excess of \$50,000, did the District Court improperly refuse making demand upon petitioner's obligees for the filing fees, in lieu of in forma pauperis status, as petitioner requested?

b. Is the Court's refusal to resort to petitioner's contractually based, contractually protected, money judgment in order to satisfy the fees due the court, an impermissible monetary fraud upon the federal government?

7. Alternatively, was the Court judicially estopped from making a 28 U.S.C. §1915 analysis of petitioner's filing?

8. In view of this Court's recent holding in Denton v. Hernandez (504 U.S. , 112 S.Ct. 1728 [1992]), which holds that this dismissal does "not prejudice the filing of a paid complaint making the same allegations", and since, eventually, petitioner will have the funds for a filing, is any purpose served by this judicial dance?

THE PARTIES

GEORGE SASSOWER
Petitioner, pro se.
16 Lake Street,
White Plains, NY 10603
(914) 949-2169

U.S. Attorney EDMUND SARGUS
for the Southern District of Ohio
U.S. Courthouse,
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Columbus, Ohio 43215
(614) 469-5715

Attorney General JANET RENO
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Washington, D.C. 20530
(202) 514-2001

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Sixth Circuit Court of Appeals [3/25/93]	A-05

TABLE OF AUTHORITIES

Aliota v. Graham 984 F.2d 1350 [3rd Cir.-1993]	
Arbour v. Jenkins 903 F.2d 416 [6th Cir.-1990]	
Brennan v. Fatata 78 Misc.2d 966, 359 N.Y.S.2d 91 [1974]	
Denton v. Hernandez 504 U.S. , 112 S.Ct. 1728 [1992])	
Hardin v. Straub 954 F.2d 1193 [6th Cir.-1992]	
Kelley v. United States 568 F.2d 259 [2nd Cir.-1978] cert. denied 439 U.S. 830 [1978]	
Kentucky v. Graham 473 U.S. 159 [1985]	
Lundstrum v. Lyng 954 F.2d 1142 [6th Cir.-1991]	
Rivera v. U.S. 928 F.2d 592 [2nd Cir.-1991]	
Smith v. Swarthout 195 Mich. App. 486, 491 NW2d 590 [1992]	
Sullivan v. Freeman 944 F.2d 334 [7th Cir.-1991]	
Woods v. McGuire 954 F.2d 388 [6th Cir.-1992]	

JURISDICTION

28 U.S.C. §1254[1]

OPINIONS BELOW

The opinion of U.S. Magistrate Judge NORAH McCANN KING ["King"], granted petitioner in forma pauperis relief (A1-A2), without ruling on the prime contention asserted by petitioner in his application, to wit., resorting to petitioner's contractually based, constitutionally protected, money judgment of more than \$50,000 for the filing fee.

— However, the same day, Chief U.S. District Court Judge JOHN D. HOLSCHUH ["Holschuh"], in a patently suspect opinion, denied petitioner relief, asserting that "the legal theories and the factual contentions lack arguable basis" (A3-A4).

Upon petitioner's inability to pay the filing fee, the Circuit Court dismissed the appeal (A5-A6).

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. Article III of the U.S. Constitution provides:

"§1 The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time and ordain and establish. ... §2[1] The judicial power shall extend in all cases, in law and equity, arising under this Constitution and Laws of the United States"

2. Amendment V of the U.S. Constitution provides:

"No person shall ... , nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of ... liberty, or property, without due process of law ...".

3. 28 U.S.C. §2671 [Definitions] provides:

"As used in this chapter [28 U.S.C. §§2671 et seq.] and sections 1346(b) of this title, the term "Federal agency" includes the executive departments, the judicial and legislative branches, ..."

4. 28 U.S.C. §2679[d] provides:

"(1) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. ...

(3) In the event that the Attorney General has refused to certify scope of office or employment under this section, the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment. Upon such certification by the court, such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant.

(4) Upon certification, any action or proceeding subject to paragraph (1), (2), or (3) shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of this title and shall be subject to the limitations and exceptions applicable to those actions."

5. 28 U.S.C. §547. Duties

"Except as otherwise provided by law, each United States attorney, within his district, shall--- (1) prosecute for all offenses against the United States; (2) prosecute or defend, for the Government, all civil actions, suits or proceedings in which the United States is concerned; (3) appear in behalf of the defendants in all civil actions, suits or proceedings pending in his district against collectors, or other officers of the revenue or customs for any act done by them or for the recovery of any money exacted by or paid to these officers, and by them paid into the Treasury; (4) institute and prosecute proceedings for the collection of fines, penalties, and forfeitures incurred for violation of any revenue law, unless satisfied on investigation that justice does not require the proceedings; and (5) to make such reports as the Attorney General may direct."

6. 28 CFR §15.3 Removal and defense of suits.

"(a) The U.S. Attorneys are authorized to make the certifications provided for in 28 U.S.C. 2679(d) ... with respect to civil actions or proceedings brought against Federal employees in their respective districts. Such a certification may be withdrawn if a further evaluation of the relevant facts or the consideration of new or additional evidence calls for such action. The making, withholding, or removal and defense of, or the refusal to remove and defend, such civil actions or proceedings by the U.S. Attorneys shall be subject to the instructions and supervision of the Assistant Attorney General in charge of the Civil Division."

STATEMENT OF THE CASE

1. The plain language of the Federal Tort Claims Act, which the courts cannot modify (Smith v. U.S., U.S. , 113 S.Ct. 1178 [1993]), is to the effect that "scope" status triggers a United States substitution (28 U.S.C. §2679[d]), with the concomitant loss of official defenses and immunities (Kentucky v. Graham, 473 U.S. 159 [1985]; Rivera v. U.S., 928 F.2d 592 [2nd Cir.-1991]).

2a. The same day, without notice, reversal of the U.S. Magistrate Judge occurred less than one month after the contrary, controlling and less dramatic cases of Hardin v. Straub (954 F.2d 1193 [6th Cir.-1992]; Woods v. McGuire (954 F.2d 388 [6th Cir.-1992]; Lundstrum v. Lynq, 954 F.2d 1142 [6th Cir.-1991]) were rendered and/or published.

b. Woods v. McGuire (supra), is decisive, which arose from Chief Judge Holschuh's judicial district and where D. MICHAEL CRITES ["Crites"], as at bar, served as the U.S. Attorney.

c. — In Woods v. McGuire (supra), the "scope" certified defendants were substituted by the United States and received federal representation, while the defendant Edward Zipfel, who was not "scope" certified, was represented by his private attorney, presumably at his personal cost and expense.

d. The compelled conclusion from the totality of the events at the time that Chief Judge Holschuh had been "fixed" and "corrupted" was, at the time, clearly indicated, thereafter confirmed as an inescapable conclusion, by inter alia, the judicial admissions by Chief Judge Merritt.

3a. In any event, all cases, without exception, stand for the proposition, that without "scope" status the judge, official, employee and serviceman, defend at their own cost and expense (Aliota v. Graham, 984 F.2d 1350 [3rd Cir.-1993]; Hardin v. Straub, supra; Woods v. McGuire, supra; Lundstrum v. Lynq, supra; Sullivan v. Freeman, 944 F.2d 334 [7th Cir.-1991]; Arbour v. Jenkins, 903 F.2d 416 [6th Cir.-1990]; Kelley v. United

States, 568 F.2d 259, 264-265 n. 4 [2nd Cir.-1978] cert. denied 439 U.S. 830 [1978]; Smith v. Swarthout, 195 Mich. App. 486, 491 NW2d 590 [1992]; Brennan v. Fatata, 78 Misc.2d 966, 359 N.Y.S.2d 91 [1974]).

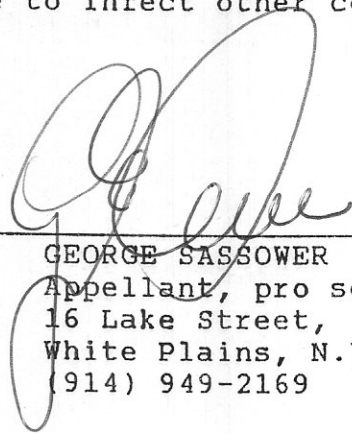
b. Corrupted federal judges who involve themselves in activities as egregious as diverting monies payable "to the federal court" to private pockets, are not exempt from 28 U.S.C. §2679[d].

5. The lack of arguable merit was concocted nonsense, nevertheless by "freezing" petitioner's assets, by denying him access to the courts, estops the judiciary from any 28 U.S.C. §1915 analysis.

REASONS FOR THE ISSUANCE OF THIS WRIT

This judicial scandal which originates in the Second Circuit, has metastasized into other circuits. Until it is aborted by this Court it will continue to infect other courts and circuits.

Dated: June 21, 1993

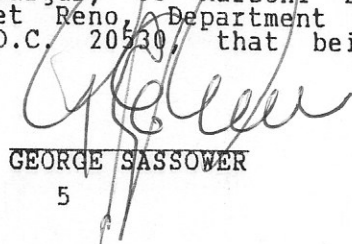


GEORGE SASSOWER
Appellant, pro se
16 Lake Street,
White Plains, N.Y. 10603
(914) 949-2169

CERTIFICATION OF SERVICE

On June 22, 1993 I served a true copy of this Petition by mailing same in a sealed envelope, first class, with proper postage thereon, addressed to Solicitor General of the United States, Department of Justice, Washington, D.C. 20530; U.S. Attorney Edmund Sargus, 85 Marconi Blvd., Columbus, Ohio 43215 and Attorney General Janet Reno, Department of Justice, 10th & Constitution Ave., Washington, D.C. 20530, that being their last known addresses.

Dated: June 22, 1993



GEORGE SASSOWER

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
KENNETH J. MURPHY
CLERK

92 FEB 19 PM 2:32

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

GEORGE SASSOWER,

Petitioner,

vs.

Civil Action

D. MICHAEL CRITES, et al.,

C2-92-151

Respondents.

JUDGE HOLSCHUH

ORDER TO PROCEED IN FORMA PAUPERIS ~~MA~~ ~~STRATE~~ JUDGE KING

This matter is before the Court on petitioner's motion for leave to proceed in forma pauperis. Upon consideration, the Court finds the motion is meritorious, and therefore, it is GRANTED.

WHEREUPON, IT IS ORDERED THAT the petitioner be allowed to prosecute his action without prepayment of fees or costs and that judicial officers who render services in this action shall do so as if the costs had been prepaid.

If any party seeks reconsideration of this Order, that party may, within ten (10) days, file and serve on all parties a motion for reconsideration by the Court, specifically designating this Order, and the part thereof in question, as well as the basis

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for objection thereto. 28 U.S.C. §636(b)(1); Rule 72(a), F.R. Civ.
Pro.; Eastern Division Order 91-3 (I)(F)(5).

Norah McCann King

Norah McCann King
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
KENNETH J. MURPHY
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C2-92-151
JUDGE HOLSCHUH

MAGISTRATE JUDGE KING

OPINION AND ORDER

Petitioner, proceeding without the assistance of counsel, brings this action for a writ of mandamus and prohibition, purportedly under 28 U.S.C. §§1331, 1343, 1361 and 2201. This matter is now before the Court on its own motion. 28 U.S.C. §1915(d).

Respondents are the United States Attorney for the Southern District of Ohio and the Attorney General of the United States. The body of the petition contains no mention of the respondents, but instead refers to generalized allegations of judicial misconduct within the Second Circuit and the reporting of judicial decisions in "the records of Lexis and Westlaw. ..." Petition, ¶6(b). The precise nature of relief sought by petitioner is not made express in the petition. Instead, petitioner asks only that a writ of prohibition and mandamus "be issued against the respondents together with any other, further and/or different relief as to this Court may seem just and proper in the premises.

..."

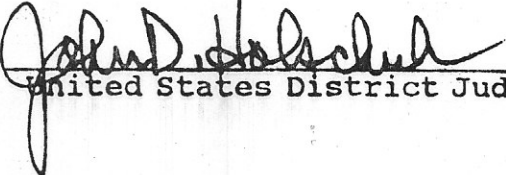
The allegations in the petition fail to state a claim for relief against the named respondents. The petition contains no allegation that the named respondents have engaged in any misconduct. Moreover, the petition contains no allegations that the named respondents have failed "to perform a duty owed to the plaintiff" sufficient to warrant the issuance of a writ of mandamus or prohibition. See 28 U.S.C. §1361.

Accordingly, the Court concludes that the legal theories and the factual contentions of the complaint lack arguable basis. See Neitzke v. Williams, 490 U.S. 319 (1989). The complaint is therefore frivolous within the meaning of 28 U.S.C. §1915(d).

The complaint in this action is hereby DISMISSED.

The Court further determines, pursuant to 28 U.S.C. §1915(a), that an appeal from this judgment would be frivolous and not taken in good faith.

The Clerk shall mail a copy of the complaint and of this Opinion and Order to the named defendants.


United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

MAR 25 1993

LEONARD GREEN, Clerk

GEORGE SASSOWER,
Plaintiff-Appellant,

v.

D. MICHAEL CRITES; WILLIAM P. BARR,
Defendants-Appellees.

ORDER

BEFORE: MILBURN, RYAN and SUHRHEINRICH, Circuit Judges.

George Sassower, a New York plaintiff, seeks review of this court's order denying his motion for leave to proceed in forma pauperis under Fed. R. App. P. 24(a).

Sassower alleged that he has a money judgment against Puccini Clothes, Ltd., whose assets, held in a judicial trust, were made the subject of larceny by a New York firm, Kreindler & Relkin, P.C., with the cooperation of state and federal judges. Sassower requested the district court to compel the release of funds from this trust in an amount sufficient to pay his filing fees. Sassower, who was initially granted leave to proceed in forma pauperis in the district court, reasoned that if his fees were paid, the underlying complaint could not be dismissed under 28 U.S.C. § 1915(d), nor would the appeal be subject to certification under 28 U.S.C. § 1915(a).

The district court determined that Sassower presented no arguable legal basis to justify his requests for relief. The motions to compel the release of funds and for reconsideration of

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the underlying dismissal were denied. The district court certified that an appeal would not be taken in good faith. 28 U.S.C. § 1915(a).

Sassower's subsequent motion for leave to proceed as a pauper was denied after it was determined that an appeal would be frivolous. Sassower was advised further that the failure to pay the filing fee within fourteen days of the entry date of that order would result in dismissal of his appeal for failure to prosecute.

Upon review, we conclude that the motion for pauper status was properly denied. Moreover, we note that Sassower failed to pay the requisite fee within fourteen days of entry of the earlier order.

Accordingly, it is ORDERED that the appeal is dismissed. Rule 8(b), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Leonard Green, Jr.
Clerk

In the
 SUPREME COURT OF THE UNITED STATES
 October Term, 1992
 No. 92-

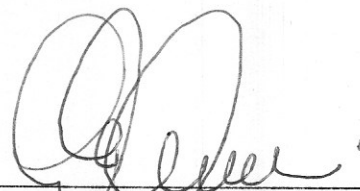
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 Respondents.
 For a Writ of Mandamus and Prohibition
 -----X

-----X
 PETITION FOR A WRIT OF CERTIORARI
 TO THE CIRCUIT COURT OF APPEALS FOR THE
 SIXTH CIRCUIT
 -----X

-----X
 MAILING AFFIRMATION
 -----X

Affirmant, under penalty of perjury, states that he mailed his Writ of Certiorari to the Supreme Court of the United States with Proof of Service on Tuesday, June 22, 1993 (Certified Receipt No. P 389 952 615) as shown by the attached photocopy.

Dated: June 23, 1993



GEORGE SASSOWER
 Petitioner, pro se
 16 Lake Street,
 White Plains, NY 10603
 914-949-2169

P 389 952 615

Receipt for
 Certified Mail

No Insurance Coverage Provided
 Do not use for International Mail
 (See Reverse)

Clerk - Dep. Clk. U.S. Street and City, State and ZIP Code Washington, DC 20043		Postage	\$ 2.90
		Certified Fee	1.00
		Special Delivery Fee	
		Restricted Delivery Fee	
Return Receipt Showing to Whom Delivered			
Return Receipt Showing to Whom Delivered, by Address			
Postage			\$ 3.90
Date			

PS Form 3800, June 1991