

THE SUPREME COURT OF OHIO

Larry E. Ealy,

Appellant

S.Ct. 08-1656

: On Appeal from the Montgomery
: County Court Of Appeals
: Second Appellate District

: Appeals Case No. CA 21934
: Trial Case No. 2005CV6344

Rhine McLin
Appellees.

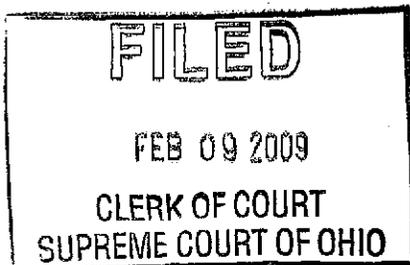
MOTION FOR REHEARING OF APPELLANT LARRY E. EALY

Respectfully submitted



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STATEMENT OF FACTS

This case raises a substantial constitutional question and is one of great importance whereas the second District Court of Appeals is in a full blown conspiracy that has misaligned the Appellants due process rights by ruling him a vexatious litigator after he sustained a malicious prosecution in the Dayton Municipal Courthouse spawned after he exposed the Dayton Police for assault and using the prestige of the U.S.D District Court in Dayton to redact the medical records from the assault, R.C. 2323.52 is nothing more than retaliation perpetrated by arbitrary agents of the State of Ohio.

ORC 2323.52 statute was a stratagem implemented to Obstruct the Appellants Constitutional Rights the Vexatious Litigator act is a tool of Fraud to use against Pro-se litigants whom have been wronged in the State of Ohio Early whom is Black have been conspired against by the White agents in the Montgomery and County Courts. See Georgia v. Rachel, 384 U.S. at 791. In Rachel 19 blacks were bared out of a public restaurant due to racial reasons. The State of Ohio has always and continues to deprive Blacks, poor and the aggrieved of their United States Constitutional Rights, and since the beginning and ending of slavery and ORC 2323.52 is a cover up in this case to hide behind the hidden racial discrimination, bias, prejudice, and impartiality in the minds of the Court and Ohio Constitutional law makers scheme to deprive. See Strauder v. West Virginia 100 U.S. 309-310.

STATEMENT OF CASE AND FACTS

This is how the branches of fraud were discovered; this is a long running overt act of conspiracy in Dayton, Ohio, the Appellant was charged with disorderly conduct and conduct at a commission meeting on August 13, 2003 wee as at the trial held on July 24, 2006bthe City of Dayton declined to try the Appellant for his word usage before Judge Larry Moore but tried him for his word usage before Judge John S. Pickrel wee he was tried without counsel and did not under the laws of the land but now he does and will break down the conspiracy in Dayton for the heist Court in this State.

The Appellant defeated criminal case No. 2003CRB09526 and moved for Federal Civil Rights violations in the Court of Common Pleas for Montgomery County Ohio based on the dismissal of the charges. On February 25, 2004 while the Appellant faced charges from September 3rd August 27, and August 13, 2003 Deidre Logan dismissed the August 13, charges after a 6 months malicious prosecution.

August 13, 2003 meeting were Logan and the City of Dayton ruled the Appellant out of order for defeating the word nigger from a Dayton Daily news article were the word nigger was used by the Dayton Police, and then and there the Appellant was charged with disorderly conduct and conduct at a commission meeting and obstruction of justice to wit, for using that of the words of the arbitrary agents.

The Police involved in the Appellants beating in 1990 used the very same words suggesting conspiracy in the judicial branches in Ohio Courts and in the minds of its Judges.

In the instant law suit on the defeated charges from August 13, 2003 and the case was assigned to visiting Judge Steven A. Yarborough who has been discovered as a coconspirator and now having had a complaint filed against him for conspiracy to intentionally deprive the Appellant of his due process rights.

The vexatious litigation ruling was an under cover scheme of Chief Trial Counsel John Danish and several unknown coconspirators I don't have to cite the law to this Court because you all ready know what it is.

Case No. 2005 CV6344 was set for trial December 11, 2006 the Appellees had filed an order on August 31, 2005 totally out dated to rule the Appellant a vexatious litigator.

The Court never made a ruling on the August 31, 2005 lawsuit; a ruling was never made by Judge Yarborough within the time allowed to rule the Appellant a vexatious litigator and to dismiss case No. 6344 because all Civil Complaints must be ruled upon within 28 days by the Court.

The request to rule the Appellant a vexatious litigator was based on the fact that Judge Pickrel found the Appellant guilty of obstruction of official business in case No. 9585/9655 but the those cases were totally dismissed by visiting Judge Larry Moore on July 24, 200 on remand. The reason the Appellant was found guilty of Obstruction of Official Business Judge Pickrel tried him without counsel on February 25, 2003 and allowed a citizen by the name of Mark Gessner to pass him notes this is the same Mark Gessner that was not allowed to enter the Ohio Supreme Court on May 4, 2007.

After Mayor Rhine McLin committed perjury when she stated under oath that she did not have the Dayton Police to arrest the Appellant and several other citizens Mark Gessner was arrested out of Pickrels Court room by former Sheriff Dave Vore and Pickrel stated that Gessner was trespassed out of the Dayton municipal Courthouse by another County Court but that was a false statement made by Pickrel.

The Obstruction charge was used down the road to establish ORC2323.52 to circumvent the Appellants 1983 claims that were in progress to be filed once the City Hall charges were defeated.

The Court of Appeals exceeded its jurisdiction and showed its bias and prejudice by wrongfully affirming that the Appellant was a vexatious litigator under RC.2323.52 because he didn't state any facts that declared he wasn't it was the Appellees job to prove that he was but they failed.

All of the cases concerning the City Hall issues have the same exact Actors acting under the color of authority who tampered with the testimony in case No. 2003CRB 9655/9585 App. 20462 and App. 21750 were both appeals transcripts were hacked up by the City of Dayton Chief Trial Counsel John Danish.

This act alone calls for the firing and criminal charges brought against John Danish and the City of Dayton et al. The ruling under 2323.52 is an act passion and prejudice it was an act of retaliation and reprisal, the Appellant was tried for disorderly conduct obstruction of official business and conduct at a commission meeting when he used the word nigger on September 3, 2003 the trial violated First Amendment under the U.S. Constitution. The City of Dayton violated Constitutional law by legalizing the word Nigger, the word Nigger was used while the Dayton Police beat the Plaintiff in 1990 as told to the Commission of Dayton et al.

The charges used to rule the Appellant a vexatious litigator stemmed from the words used by the Dayton Police after the Appellant told the Mayor and the sitting Commission what was said to him during his beating then the Appellant was charged on the dates of August 13, August 27, and September 3, 2003 with a....137.02-M2 OBSTRUCTION OF OFFICIAL BUSSINESS/30.06 (A)-(2) M4 CONDUCT AT A COMMISSION MEETING/30.06 (A)-(3) M4 CONDUCT AT COMMISSION MEETING/ 137.02 (A)-(1) M4 DISTURBING A LAW MEETING OBSTRUCTION/137.02 (A)-(2) M4 DISTURBING A LAWFUL MEETING OUT RAGE THE GROUP/137.01 (A)(2) M4 DISORDERLY CONDUCT.

Then on August 27, 2003 more charges were maliciously filed stemming from a 137.02 (A)-(1) M4 DISTRBING A LAWFUL MEETING/137.01 (A)-(2) M4 DISORDERLY CONDUCT/ 30.06 (A)(3) CODUCT AT COMMISSION MEETING; 137.02 (A)-(1) M4 DISTRBING A LAWFUL MEETING/137.01 (A)-(2) M4 and on August 13, 2003 for DISORDERLY CONDUCT/ 30.06 (A)(3) and for CONDUCT AT COMMISSION MEETING; The Appellant defeated each and every element of all charges brought by the City of Dayton et al thus calling for ORC 2323.52 to be abolished as police Brutality should be abolished in the United States of America. The Court of Appeals confirmed on page 8 of its ruling that the City could not established habitual conduct so how could this Court decline jurisdiction when the Appeals Court failed to follow its own rules, but still went against Constitution.

ARGUMENT IN SUPPORT OF OHIO STATE LAW;

The State actors had a specific intent to deprive the Appellant of a Federally Protected Right Guaranteed by the United States Constitution under the First Amendment that has kept the Appellant from freely speaking at the commission meetings while barring him from filing any proceedings concerning the above cause for violations under Title 42 1983.

Statute 2323.52 has been used as a tool to misalign the Plaintiff Federal Civil Rights as it sits the State can deprive the Appellant of a Federal Right and the Court of Appeals has continued to dismiss any action or legal recourse to right the wrong of the Appellant based on the vexatious ruling and not the merits of the cause depriving the Appellant under the Ohio Constitution Article 16, I. Mayor v. Bristow, Moldovan v. Cuyahoga Cty. Welfare Dept.(1986), 25 Ohio St. 3d 29325 OBR 343, 496 N.E. 2d 466; and Cent. Ohio Transit Authority v. Timson (1998), 132 Ohio App. 3d 41, 724 N.E. 2d 458,

The Court of Appeals had deprived the Appellant of his due process and equal protection. Atkins v. Grumman Ohio Corp. 1988), 37 Ohio St. 3d 80, 84 523 N.E. 2D 851 right to legal redress of injuries. Pfeifer J., Dissenting with Judge Abele.

Current Mayor Rhine McLin has violated the Appellants 1983 Federal Constitutional Rights in above matter. Current Mayor, City of Dayton et al, Montgomery County Court of Common Pleas, Court of Appeals, Court of Claims have come together with abuse of authority and have ruled the Appellant a vexatious litigator under 2323.52, without due process.

As affirmed by the Ohio Supreme Court 2323.52 is a valid claim, Gains v. Harmon 148 App.3d 357, 2002-2793. John C. Musto trial counsel for the City of Dayton cited this case and the Court of Appeals affirmed the ruling by State Court Judge Steven A. Yarborough and Administrative Judge Dennis Langer on August 3, 2007 but in this case it was used to deprive the Appellant of legitimate claims and shows that a black person in the City of Dayton and in Montgomery County are not afforded State and Federal Rights by State Officials. Strauder v. West Virginia 100 U.S. 309-310.

The appeals Court totally ignored Pisani v Pisani November 18, 1999) Cuyahoga App. No. 74799. Where the court reversed a vexatious litigator determination. In this case Judge Yarborough was sent to circumvent the Appellants Constitutional Rights thus showing that the Court of Common Pleas had no remedy at law for Appellant Ealy as have the appeals court demonstrated in this matter. 100 U.S. 309-310.

The appellate court ignored the fact that the appellant was successful in his criminal litigation brought against him by the State the prosecution has been exposed under 1983 for malicious prosecution concerning this case the action of the Appeals Court shows that there exist an inadequate remedy for the colored race in Montgomery County Ohio.

The appeals court determined that the action taken by the appellant was vexatious and constituted habitual and persistent conduct without reasonable grounds after it reversed the first trial showing its inconsistent and unwarranted rulings involving the Appellant. Contrary to the Second District Courts of appeals ruling the Tenth Appellate District Court has stated in its four or five case listed as in 2005CV6344 Ealy v. McLin as alleged against the Appellant do not amount to habitual and persistent conduct. Cent. Ohio Transit Auth. v. Timson (1988), 32 Ohio App. 3d. 41, 54 724 N.E.2d. 458. One does not reach the habitual prongs until the conduct is found to be vexatious i.e. unwarranted. But in CA-21750 the Mayor obstructed and tampered with the transcripts thus nolleing the entire proceedings.

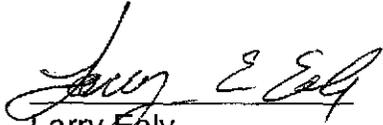
The City of Dayton Ohio et el cited Gains v. Harmon to establishing persistent conduct against the Appellant under 2323.52 unlike Ealy v. McLin, Harmon plead guilty to several criminal charges as for the Appellant he successfully defeated the State on each and every Element of 31 criminal charges brought to bar including the State charges in 21750 that the State failed to appeal the not guilty verdicts of visiting Judge Larry Moore.

CONCLUSION

For the reasons discussed above, this case involves matters of public and great general interest and substantial constitutional questions. The Appellant requests that this Court to reverse its prior determination and accept jurisdiction and compel the City of Dayton to show habitual conduct in this case were we have a clear case in controversy of law as well as facts and the reversal here will rectify the misappropriated other important issues involving the Appellant will be reviewed on the merits as well.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing will be served to Attorney John C. Musto Counsel for Appellees at 101 West Third Street Dayton Ohio 45402 by ordinary US. Mail within 3 days of this filing on this day of February ____ 2009.


Larry Ealy