

U.S. SUPREME COURT RULES THAT FAVORABLE TERMINATION FOR FOURTH AMENDMENT MALICIOUS PROSECUTION CLAIM NEED NOT SHOW AFFIRMATIVE INDICATION OF INNOCENCE

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Thompson v. Clark

United States Supreme Court

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In a ruling today, the United States Supreme Court held that a Fourth Amendment claim under § 1983 for malicious prosecution does not require that the plaintiff show that the criminal prosecution ended with some affirmative indication of innocence. The Court resolved a circuit split on the issue with its holding.

In this case, Larry Thompson was charged and detained for two days and later released from jail after being charged with obstructing governmental administration and resisting arrest. The charges against Thompson were dismissed before trial without explanation by the prosecution or trial court judge. Thompson then brought suit under 42 U.S.C. § 1983 for damages against the police officers, including a Fourth Amendment claim for malicious prosecution. Under Second Circuit precedent, he was required to show some affirmative indication of his innocence. Because he could not, the district court dismissed his case and the Second Circuit affirmed the dismissal on the same basis.

The U.S. Supreme Court granted review in order to resolve a circuit split on the requirements of “favorable termination” for a Fourth Amendment malicious prosecution claim. It explained that in order to determine the elements of this claim, it had to first look at the elements of the most analogous tort as of 1871 when § 1983 was enacted, as long as doing so was consistent with the values and purposes of the constitutional right at issue. The Court reviewed the practice of American courts in 1871 to determine the elements of malicious prosecution. After a lengthy historical analysis, it concluded that courts in 1871 largely agreed that a “favorable termination” meant the prosecution ended without a conviction, but did not require anything more.

Applying this standard, the Court found that the plaintiff satisfied the requirement that his criminal prosecution – which the prosecution had moved to dismiss – ended without a conviction. As a result, the Court reversed the judgment of the Second Circuit and trial court’s determination that he could not bring a malicious prosecution claim. However, it left open a number of questions for remand, including: whether the plaintiff was ever seized as a result of the alleged malicious prosecution, whether he was charged without probable cause, and whether the defendant was entitled to qualified immunity.

Prior to this decision, federal courts in Arizona generally followed Arizona state law on malicious prosecution, which usually required a plaintiff to show some affirmative indication of innocence (not just a voluntary dismissal by a prosecutor). Going forward, federal courts will have to follow *Thompson* and will only require a plaintiff show that their prosecution ended without a conviction. It also left open a number of other viable defenses to a 1983 malicious prosecution claim, such as probable cause and qualified immunity.

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[Justin Ackerman](#) represents clients in federal and state appellate matters in cases involving excessive force, wrongful death, personal injury, bad faith, and premises liability. After graduating as the valedictorian of his class from Phoenix School of Law, Justin worked as a law clerk for the Hon. Michael J. Brown in Division One of the Arizona Court of Appeals. Justin has successfully represented clients and argued before the Arizona Court of Appeals, Arizona Supreme Court, and Ninth Circuit Court of Appeals.

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