SUPREME COURT OF THE UNITED STATES

No. 96–7171

RANDY G. SPENCER, PETITIONER *v.* MIKE KEMNA, SUPERINTENDENT, WESTERN MISSOURI CORRECTIONAL CENTER, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[March 3, 1998]

JUSTICE STEVENS, dissenting.

An official determination that a person has committed a crime may cause two different kinds of injury. It may result in tangible harms such as imprisonment, loss of the right to vote or to bear arms, and the risk of greater punishment if another crime is committed. It may also severely injure the person's reputation and good name.

In holding that petitioner's case is moot, the Court relies heavily on our opinion in *Lane* v. *Williams*, 455 U. S. 624 (1982) (STEVENS, J.). See *ante*, at 10–14. *Lane*, however, is inapposite. In *Lane*, the respondents did not seek to challenge the factual findings underlying their parole revocations. 455 U. S., at 633. Instead, they simply sought to challenge their sentences; yet because they had been released by the time the case reached us, the case was moot. *Id.*, at 631. "Through the mere passage of time, respondents ha[d] obtained all the relief that they sought." *Id.*, at 633.

In this case, petitioner challenges the factual findings on which his parole revocation was based. His parole was revoked based on an official determination that he com-

mitted the crime of forcible rape.[1] Assuming, as the Court does, that he had standing to bring that challenge while he remained in prison, the mootness question, as framed by the Court, is whether he continues to have "a personal stake in the outcome of the lawsuit" that is likely to be redressed by a favorable decision. *Ante*, at 5.[2]

Given the serious character of a finding that petitioner is guilty of forcible rape, that question must be answered affirmatively. It may well be true that many prisoners have already caused so many self-inflicted wounds to their good names that an additional finding of guilt may have only a *de minimis* impact on their reputations. I do not believe, however, that one can say that about a finding

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[1] Throughout the parole revocation proceedings, it was alleged that petitioner violated three parole conditions: Parole Condition #1, because he allegedly was guilty of rape; Parole Condition #6, because he allegedly used or possessed crack cocaine; and Parole Condition #7, because he allegedly used or possessed a dangerous weapon (*i.e.*, the screwdriver allegedly used during the rape). App. 60–64 (alleging violations of Conditions #1, #6, and #7); *id.*, at 72–76 (same); *id.*, at 112–114 (alleging violations of Conditions #1 and #6). Thus, when the parole revocation board declared, "after careful consideration of evidence presented," that petitioner violated Parole Conditions #1, #6, and #7, *id.*, at 55–56, it found that petitioner was guilty of forcible rape. See also Brief for Respondents 1 ("Spencer violated condition #1 by committing the crime of rape"). In addition, even apart from the rape finding, it is undisputed that the board found that petitioner used or possessed drugs, and that he used or possessed a dangerous weapon (which was only alleged to have been used during the rape). App. 55–56.

[2] The "personal stake in the outcome" formulation of the test, which has been repeatedly quoted in our cases, was first articulated in this excerpt from the Court opinion in *Baker* v. *Carr*, 369 U. S. 186, 204 (1962): "Have the appellants alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions? This is the gist of the question of standing."

that an individual has committed a serious felony.[3] Moreover, even if one may question the wisdom of providing a statutory remedy to redress such an injury, I surely cannot accept the view that an interest in vindicating one's reputation is constitutionally insufficient[4] to qualify as a "personal stake in the outcome."[5] Indeed, in light of

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[3]See, *e.g., Liberty Lobby, Inc.* v. *Anderson*, 746 F. 2d 1563, 1568 (CADC 1984) (Scalia, J.) ("It is shameful that Benedict Arnold was a traitor; but he was not a shoplifter to boot, and one should not have been able to make that charge while knowing its falsity with impunity. . . . Even the public outcast's remaining good reputation, limited in scope though it may be, is not inconsequential"), vacated and remanded, on other grounds, 477 U. S. 242 (1986).

[4]While an individual may not have a "property" or "liberty" interest in his or her reputation so as to trigger due process protections, *Paul* v. *Davis*, 424 U. S. 693, 712 (1976), that question is obviously distinct from whether an interest in one's reputation is sufficient to defeat a claim of mootness.

[5]As we have stated, "'[T]he individual's right to the protection of his own good name 'reflects no more than our basic concept of the essential dignity and worth of every human being– a concept at the root of any decent system of ordered liberty.'" *Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323, 341 (1974) (quoting *Rosenblatt* v. *Baer*, 383 U. S. 75, 92 (1966) (Stewart, J., concurring)); see also *Milkovich* v. *Lorain Journal Co.*, 497 U. S. 1, 12 (1990) ("'[H]e that filches from me my good name / Robs me of that which not enriches him, And makes me poor indeed'" (quoting W. Shakespeare, Othello, act III, sc. 3)); *Paul* v. *Davis*, 424 U. S. 693, 706 (1976) ("The Court has recognized the serious damage that could be inflicted by branding a government employee as 'disloyal,' and thereby stigmatizing his good name"); *Wisconsin* v. *Constantineau*, 400 U. S. 433, 437 (1971) (emphasizing the importance of "a person's good name, reputation, honor, [and] integrity"; holding that respondent was entitled to due process before notices were posted stating that he was prohibited from buying or receiving alcohol); *In re Winship*, 397 U. S. 358, 363–364 (1970) ("[B]ecause of the certainty that [one found guilty of criminal behavior] would be stigmatized by the conviction . . ., a society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt"); *Wieman* v. *Updegraff*, 344 U. S. 183, 190–191 (1952) ("There can be no dispute about the consequences visited upon a person excluded from public employment on disloyalty

the fact that we have held that an interest in one's reputation is sufficient to confer standing,[6] it necessarily follows that such an interest is sufficient to defeat a claim of mootness.[7]

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grounds. In the view of the community, the stain is a deep one; indeed, it has become a badge of infamy").

Indeed, vindicating one's reputation is the main interest at stake in a defamation case, and that interest has always been held to constitute a sufficient "personal stake." See, *e.g.*, *Paul*, 424 U. S., at 697 ("[R]espondent's complaint would appear to state a classical claim for defamation actionable in the courts of virtually every State. Imputing criminal behavior to an individual is generally considered defamatory *per se*, and actionable without proof of special damages"); *Gertz*, 418 U. S., at 349–350 ("We need not define 'actual injury'. . . . Suffice it to say that actual injury is not limited to out-of-pocket loss. Indeed, the more customary types of actual harm inflicted by defamatory falsehood include impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering"); L. Eldredge, Law of Defamation §53, pp. 293–294 (1978) ("There is no doubt about the historical fact that the interest in one's good name was considered an important interest requiring legal protection more than a thousand years ago; and that so far as Anglo-Saxon history is concerned this interest became a legally protected interest comparatively soon after the interest in bodily integrity was given legal protection").

[6] *Meese* v. *Keene*, 481 U. S. 465, 472–477 (1987).

[7] There are compelling reasons for a court to consider petitioner's challenge to the parole board's findings sooner rather than later. As we stated in a related context:

"The question of the validity of a criminal conviction can arise in many contexts, and the sooner the issue is fully litigated the better for all concerned. It is always preferable to litigate a matter when it is directly and principally in dispute, rather than in a proceeding where it is collateral to the central controversy. Moreover, litigation is better conducted when the dispute is fresh and additional facts may, if necessary, be taken without a substantial risk that witnesses will die or memories fade. And it is far better to eliminate the source of a potential legal disability than to require the citizen to suffer the possibly unjustified consequences of the disability itself for an indefinite period of time before he can secure adjudication of the State's right to impose it on the basis of some past action." *Sibron* v. *New York*, 392 U. S. 40, 56–57 (1968) (citation omitted).

Accordingly, I respectfully dissent.[8]

I also believe that, on the facts of this case, there are sufficient tangible consequences to the parole board's findings so as to defeat a claim of mootness.

[8]Given the Court's holding that petitioner does not have a remedy under the habeas statute, it is perfectly clear, as JUSTICE SOUTER explains, that he may bring an action under §1983.