

369 U. S.

May 14, 1962.

The petition for certiorari must be denied. The decision below and the several prior actions in the Ohio courts indicate that petitioner is without a state remedy to challenge his conviction upon the federal constitutional grounds asserted. In these circumstances, *Darr v. Burford*, 339 U. S. 200, 208, is not applicable and a prisoner may, without first seeking certiorari here, file his application for habeas corpus in the appropriate United States District Court. 28 U. S. C. § 2254. *Massey v. Moore*, 348 U. S. 105; *Frisbie v. Collins*, 342 U. S. 519. Petitioner's allegations, if true, would present serious questions under the Fourteenth Amendment, and those allegations would therefore entitle him to a hearing. *Massey v. Moore, supra*; *Pennsylvania ex rel. Herman v. Claudy*, 350 U. S. 116.

MR. JUSTICE FRANKFURTER took no part in the consideration or decision of this case.

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BEST *v.* CITY OF TOLEDO.

APPEAL FROM THE SUPREME COURT OF OHIO.

No. 1048, Misc. Decided May 14, 1962.

Appeal dismissed; certiorari denied.

*James W. Cowell* for appellant.

*Louis R. Young* and *Lewis W. Combest* for appellee.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari is denied.

MR. JUSTICE FRANKFURTER took no part in the consideration or decision of this case.