

IN THE SUPREME COURT OF THE UNITED STATES

March Term, 2018

FRANKIE L. MCCOY, SR. Pro-se

Petitioner

v.

DAYENNA CORCORAN, Ex-Warden, Etal
OFFICER SGT M. FISHER, OIC
MD. DEPT OF CORRECTIONAL SERVICE,

Respondents

No. _____

ON PETITION FOR A WRIT OF CERTORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Petition for A Writ of Certiorari

Frankie L. McCoy, Sr., *pro se*
172986
Maryland Correction Institution-Jessup
P.O. Box 549
Jessup, Maryland 20794

I. QUESTIONS PRESENTED

A. Did the trial court Circuit Court of Appeals for the Fourth Circuit erroneously abuse its discretion in dismissing the instant case brought by a multiple physically impaired inmate requiring dry-cell-flood and railing to support his (daily-modility) rather than being trapped in a lock-cell flooded with (4) inch ankle-deep wastewater for at least 1 ½ hour, causing the multiple physical impaired inmate to fall (2) times sustain (2) head, face, jaw, neck (L) shoulder concussion against “metal foot-locker and cement flooded floor”, etc. while duly seeking fair-due-process at schedule “IGO” held proceeding-hearing before “DOC” Administrative Law Judge, Peza on (December 4, 2014), Dana Gunn, “IGO” representative on “Record” transcript of proceeding at page’s (163) state asked Administrative Law Judge ask that you don’t consider any regards to (personal-injury’s) as we’re unprepared to defend ourselves in that matter!!! Clearly, prejudice the Plaintiffs rights fundamental-fair due-process. See: (Transcript of proceeding’s) equal protection of Law. And other requirements under the “ADA and Rehabilitation, Act; pursuant Pennsy Dept. of Correction v. Yeskey, 66 USHW 4481, 1998 WL 20906 Decided June 15, 1998. Bragdon v. Abbott, 118 S. Ct. 2196 (1998) (ADA) City of Cleburne v. Cleburne Living Couter, 473 N.S. 432, 444 (1985)?

B. Did the Court of Appeals for (4th) Circuit erroneously ignore Petitioner’s existing medical evidence and genuine disputes of material facts (5) sworn (Affidavit’s) as to the claims which Petitioner is still raising?

C. Did the Appellate Court below continue abuse its discretion in affirming Petitioner, had duly “Exhausted his Administrative Remedies” despite, the Plaintiff’s having provided the District Court and the Appellate Court with “Documented credible proof” of at less (364/37) “IGO” Exhibits as well copies of “IGO” Transcripts of proceedings held: December 4,

2014 and Judicial-Review proceedings also held: April 14, 2014. Notwithstanding, also:

“Petitioner Memorandum of Law in Response under: Md. Rule 7-207 (A.) filed: July 15, 2015,
“Exhaustion” of (all) known “State Administrative Remedies, pursuant: Kiss v. Blake, U.S. 136
S.Ct 1850 (2016) before, finally filing a Sec 42, USC 1983 complaint (January 14, 2016). See:
Attached (Exhibit’s).

D. District Court and Appellate Court erroneously – erra and ignored the material-facts presented by the Petitioner, namely that the Petitioner was (only) raising fiction against:
“Md. Dept, of Correctional Service Ex-Warden, Deyenna Corcoran, and Sgt. M. Fisher, OIC”.
See: Attached-(Medical-Exhibit’s) Records sustained (Injuries) on “January 21, 2013” (2)
“Concussion’s head, face, blurred-vision, dizziness, poor-limited vision, (L) shoulder and loss of
Peripheral-vision”, neck, numbness feet/leg’s, undergoing out-patient treatment/care at Bon
Secour Hospital... Presently, under-going P.T/O.T. Treatment/care at “University of Md.
Rehabilitation and Orthopedic Institute Out-Patient Hospital.” Those “Injuries” sustain on:
January 21, 2013, exacerbated other chronic-impairment’s requiring more serve follow-up
Treatments/care...etc.

E. Did the District Court repeatedly denied/deprive Petitioner despite (his) multiple
sustained “injuries” and pain/suffering to his constitutional (6th) Amendment right to “Legal
counsel” on Record?

II. LIST OF ALL PARTIES

The Petitioner before this Court is Frankie L. McCoy Sr., a 72-year old multi-disabled inmate.

The Respondents are Dayenna Corcoran-Ex-Warden, Etal, Officer-Sgt. M. Fisher, OIC, Maryland Department of Correctional Service.

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V. PETITION FOR WRIT OF CERTIORARI

The Petitioner *pro-se*, respectfully petitions this Honorable Court to issue a writ of certiorari to the Circuit Court of Appeals for the Fourth Circuit to review their decision below and asks Leave to file the attached Petition for Writ of Certiorari without prepayment of costs and to proceed in forma pauperis because of my poverty, not being able to pay the cost of said proceeding or to give security in which the Petitioner believes he is entitled to redress.

VI. OPINIONS BELOW

The opinion of the United States District Court for the District of Maryland, the Honorable Frederick J. Motz, presiding, issued on July 28, 2017.

VII. JURISDICTION

1. The decision of the Fourth Circuit was entered on July 28, 2017. The jurisdiction of the Court is invoked under 28 U.S.C. 1915(e)(20).
2. The Petitioner is appealing the decision of the United States District Court for the District of Maryland (Northern Division), the Honorable Frederick J. Motz presiding.
3. The Petitioner is appealing the summary dismissal made by the District Court on its own initiative after a summary review of the complaint by way of a memorandum and order filed July 28, 2017.
4. The Petitioner filed a timely notice of appeal to the Fourth Circuit Court of Appeals on August 7, 2017.

VIII. JURISDICTION

42 U.S.C. 1983

Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of

the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. 12132

Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

IX. STATEMENT OF CASE

Petitioner Frankie L. McCoy, Sr. proceeding (*Pro-se*) (with only legal assistance of a fellow inmate (see generally, Johnson v. Avery, 393 U.S. 483 (1969), a 73-year old vualble Elderly Inmate with (poor-limited vision) due to two (2) concession on head, face, neck, (L) shoulder and due to severe (glaucoma) in both eye's other physical impairments due to his "Painful-Accident" on January 21, 2013.

The Petitioner, in (good-faith) filed this Constitutional Action on (January 14, 2016) *pro-se*, 42 USC 1983 against the Md. Dept, of Correctional Service, etal Ex-Warden Dayenna Corcoran, and Sgt. M. Fisher, so to be afforded access "Inmate Accidents Claims Committee" for "Personal-Injuries" (he) sustained on morning of January 21, 2013, as a result of a busted over head water poured tons of water into his cell at least (4) inches' "Ankle-foot-deep" along with damage personal-property as I awoke stepping down from my (bed) trapped in locked cell: DW-142 for at least (1 ½) hour's banging and calling for help! While stepping forward sustaining (2) Head, face, (L) shoulder (concussion) against metal-locker and (2) fall's upon" flooded cement cell-floor", (witness) by at less (3) three other Inmate's whom submitted signed

Sworn – Affidavits and Testimonies along with (Testimony) of Institutional Plumber Sgt. M. Harmon, of chain of events at Scheduled “IGO” Administrative-Hearing held (December 4, 2014) on merits of my claims, which I did prevail on merits until Ms. Dayna Gimm, “IGO” Representative told Administrative Law Judge, Peza, said “Office of Attorney General” said to tell the (Administrative-Law) not to afford me; Plaintiff any award of (Personal-Injuries) clearly stated on “Record” of held “Transcript of proceeding” on page (163).

When Petitioner sustain permant/partcial injuries’ on the morning of January 21, 2013; he was medically evaluated/diagnose by the following named-Expert Clinical Specialist: Dr. Summerfield, Dr. Green, Dr. Ross Cushing, and Dr. K. Ternesqen, MD, Dr. Gerry S. Jennings MD, Dr. Harry M. Mushlin, MD, Dr. Lawrence A. Manning, MD, Dr. Christopher Cook, MD, which deem necessary follow-up Clinical-Specialist Treatment care... warranted yet, significantly-delayed by Md. Dept. of Correctional Service, etc. See: Attached – (Exhibits) Expose more “Constitutional – Injustice”.

X. ARGUMENT IN FAVOR OF PETITION

The Petitioner, in (good-faith) filed this Constitutional Action on (January 14, 2016) *pro-se*, 42 USC 1983 against only Md. Dept, of Correctional Service, etal Ex-Warden Dayenna Corcoran, and Sgt. M. Fisher, so to be afford access “Inmate Accidents Claims Committee” for “Personal-Injuries” (he) sustained on morning of January 21, 2013, as busted over head water poured tons of water into his cell at least (4) inches’ “Ankle-foot-deep” along with damage personal-property as Petitioner awoke stepping down from his (bed) trapped in locked cell: DW-142 for at least (1 ½) hour’s banging and calling for help! While stepping forward sustaining (2) Head, face, (L) shoulder (concussion) against metal-locker and (2) fall’s upon” flooded cement cell-floor”, (witness) by at less (3) three other Inmate’s whom submitted signed Sworn –

Affidavits and Testimonies along with (Testimony) of Institutional Plumber Sgt. M. Harrmon, of chain of events at Scheduled "IGO" Administrative-Hearing held (December 4, 2014) on merits of his claims, which the Petitioner did prevail on the merits of his claims until Ms. Dayna Gimm, "IGO" Representative told Administrative Law Judge, Peza, said "Office of Attorney General" said to tell the (Administrative-Law) not to afford me; Plaintiff any award of (Personal-Injuries) clearly stated on "Record" of held "Transcript of proceeding" on page (163) clearly is obstruction of Justice, prejudice, and constitutional-violation of Petitioner 1st, 5th, 8th, 14th Amendment-Rights to fair Due-process and Equal Protection of Law... After the Plaintiff had in "good-faith" (Exhausted) all (his) known State-Judicial and 'IGO' Administrative-Remedies'. See: Attach (Exhibit's) pursuant: Rosss v. Blake, U.S. 136 S.Ct 1850 (2016).

All of Petitioner submitted "Medical-Evidence-Records" at "IGO" hearing held (December 4, 2014) supporting his sustain (Injuries') on January 21, 2013 at hands and various liability of staffers named Md. Dept. of Correctional Services pursuant: Damico v. California, 389 U.S. 416 (1967). There the District Courts decision (granting) Summary Judgment or dismissing original complaint is erroneous erra and this Honorable Appeal Court Decision dismissing the Informally Brief Appeal (5) Sworn-Affidavits over looked important issues that in the judgment prejudice-statements of "IGO" representative Dana Gunn, on (Record) page: 163 Informal Brief Petitioner material-facts set forth which give rise to substantive (Due-process) violations. Appellant seeks protective safeguards of the (5th) Amendment (Due-process) standing supra 404 F. supra at 1057 (A)n Eligible injured inmate has a legitimate claim of entitlement to remuneration for his sustained related injuries permanent/partical are protected by relevant constitutional restraints.

In the instant case, the requirements of Due-process have not been fulfilled. See Walker v. Harris, 642 F. 2d. 712, 713, (4th Cir. 1981) (claimants inability to participate effectively in her hearing before Administrative Law Judge, lack of Counsel and Administrative Law Judge's failure to explore facts relevant to her claims of disanlity provide sufficient grounds to remand, this claim for new-hearing). Mash v. Harris, 632 F. 296, 300 (4th Cir 1980) (where absence of counsel created clear prejudice or unfairness to claimant, remand is proper) (where pro-se claimant unable to articulate legal and/or factual basis for his or her claims and was not affirmatively assisted by Administrative Law Judge in developing claim, remand or de-novo hearing warranted). Pupic Power Council v. Johnson, 674 F. 2d. 791, 793 (4th Cir. 1982) under the unique circumstances of this case, concerning an Indigent pro-se prisoner claimant whose (permanent or partial) disabilities, may not have objectively manifested itself until after his release from state custody. It is submitted that Due-process requires that this Court (and the Inmate Accident Compensation System). See: Attached (Exhibits) to consider Plaintiff's hitherto-unavailable-evidence and give (him) a hearing on his claim.

Appellant, Mr. McCoy specified in his complaint that he was missing a claim under: American with Disabilities Act, (ADA) Liability under the "ADA" may be premised on "Respondent Superior Doctrine pursuant to: Rosen v. Montgomery County Maryland."

XI. CONCLUSION

The interests of justice are served by granting this petition for issuance of writ of certiorari and granting any further relief the Petitioner's cause may require.

XII. AFFIDAVIT

I AFFIRM under penalty of perjury the foregoing is true to the best of my knowledge, and belief.

May 10, 2018.


Frankie L. McCoy