

No. _____

In The Supreme Court Of The United States

Marlon L. Watford

Petitioner

vs.

Case No. _____

Erik Fossum, et al.

Respondents

On Petition For A Writ Of Certiorari To

United States Court Of Appeals

For The District Of Columbia Circuit

Petition For Writ Of Certiorari

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Question(s) Presented

Is a Petitioner's 14th Amendment due process of law right violated when a District Court denies his § 1983 complaint on lack of subject-matter jurisdiction grounds pursuant to Fed. R. Civ. P. Rule 12(h)(3), based off a finding that the Respondents' official duties for the U.S. Supreme Court qualifies them for absolute judicial immunity?

Namely, does the Respondents' failure to perform the non-quasi-discretionary ministerial task of docketing the Petitioner's change of address notification letter — in contravention of Supreme Court Handbook Rule 29.2 — qualify them for absolute quasi-judicial immunity?

List Of Parties

Scott S. Harris

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Opinions Below

The opinion of the United States Court Of Appeals For The District Of Columbia Circuit appears at Appendix A to the petition and is an unpublished opinion. The opinion of the United States District Court appears at Appendix B and C to the petition and is an unpublished opinion.

* * *

Jurisdiction

The date on which the United States Court Of Appeals For The District Of Columbia Circuit decided the Petitioner's appeal was April 12, 2018 (see Appendix A). No petition for rehearing was filed. The jurisdiction of this Supreme Court is invoked under 28 U.S.C. § 1254 (1).

(1)

Constitutional And Statutory Provisions Involved

42 U.S.C. § 1983 reads as follows:

"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. . . ."

Statement Of The Case

The United States District Court For The District Of Columbia had subject-matter jurisdiction over the Petitioner's Civil Suit Petition pursuant to 28 U.S.C. § 1331, 42 U.S.C. § 1983, and 42 U.S.C. § 2000. Said petition was timely filed on March 17, 2017 per the mailbox rule (see 28 U.S.C. § 1746).

The underlying facts that gave rise to the filing of said petition are as follows:

On or about May 6, 2015 the Petitioner filed in the United States Supreme Court a Writ Of Certiorari Petition presenting an issue of first impression concerning whether or not statute 18 U.S.C. § 3582(c)(2) invest a District Court with authority to modify the subordinate features of a federal prisoner's (viz: Petitioner's) sentence in accordance with the Fair Sentencing Act of 2010—— who has been

subjected to an unconstitutional 21 U.S.C. § 851(c) (2) enhancement — when giving § 3582(c)(2) a straightforward reading (see Doc. 1 (viz: Appendix D)). Namely, does 3582(c)(2) give a District Court power to modify the subordinate feature of the Petitioner's sentence from 85% to 50% and modify the consecutive feature of his federal sentence to concurrent in connection to his state term of imprisonment (see Id.).

On June 11, 2015 the Petitioner sent to the U.S. Supreme Court, by way of prepaid first class postage, a change of address notification letter and some additional exhibits in support of his Writ Of Certiorari Petition (see Doc. 1 (viz: Appendix E of Appendix C)). Said letter: 1) gave notification that the Petitioner's address has been changed to N.B.C. Stateville Correctional Center, P.O. Box 112, Joliet, IL 60434; 2) the Petitioner was a Muslim practicing

the Religion of Al-Islam via the letter heading; and 3) the opposing party had been served a copy of said exhibits (see Doc. 1 (viz: Appendix C of Appendix C)).

Since July 1, 2013 the U.S. Supreme Court's Rule 29 states that special notifications shall be deemed timely filed "if sent to the clerk through the United States Postal Service by first-class mail, postage prepaid, and bearing a postmark". See Rules of the Supreme Court of the United States Handbook, Rule 29.2 (P.37-38).

On June 22, 2015 the U.S. Supreme Court denied the Petitioner's Writ Of Certiorari Petition (see Doc. 1 (viz: Appendix D of Appendix C)). On June 23, 2015 Respondent Erik Fossum and Scott S. Harris allegedly received the Petitioner's June 11, 2015 change of address notification letter and refused to file the same and sent

it back to him (see Doc. 1 (viz: Appendix C of Appendix C)). On July 23, 2015 the Petitioner sent to the U.S. Supreme Court a Motion For Equitable Tolling concerning the filing of a petition for rehearing (see Id. (viz: Appendix C)). And on August 12, 2015 Respondent Erik Fossum and Scott S. Harris refused to file the Petitioner's Motion For Equitable Tolling and sent it back to him (see Id.).

In the Petitioner's Civil Suit Petition he named the Respondents as Defendants and sued them in their official and individual capacity (see Doc. 1). The Petitioner's said petition alleged in tantamount that he was a devout Muslim practicing the Religion of Al-Islam and that the Respondents refusal to perform the ministerial task of timely filing his June 11, 2015 change of address notification letter violated his RLUIPA and First Amendment rights.

to freedom of religion, Fourteenth Amendment due process of law and equal protection of the law rights, Eighth Amendment right to be free from cruel and unusual punishment, and First Amendment right to access to the courts (see Doc. 1 (viz: P. 1-9 and 37)). Said petition further alleged that as a result of said violations the Petitioner suffered the injuries of: 1) not having his change of address notification letter filed; 2) not timely receiving the denial order to his Writ of Certiorari Petition; 3) loss of his right to timely file a petition for rehearing; 4) aggravating his H. Pylori scar tissue and I. B. S. condition; 5) mental and emotional distress; and 6) his additional exhibits not being filed (see Doc. 1 (viz: P. 29-38)). Based off these injuries the Petitioner demanded a jury trial and requested compensatory and punitive damages, and injunctive relief (see Id. (viz: P. 37-41)).

On May 10, 2017 the District Court dismissed the Petitioner's Civil Suit Petition for lack of subject-matter jurisdiction pursuant to Fed. R. Civ. P. Rule 12(h)(3) on the ground that the Respondents enjoy absolute (judicial) immunity "based on actions . . . that fall within the scope of their official duties" and because the "Supreme Court has inherent [and exclusive] supervisory authority over its Clerk" and employees. Therefore, "a lower court may not compel the Clerk of the Supreme Court to take any action" (see Appendix B and C).

Absent from the District Court's order is the specific fact being noted that the Respondents' inaction of not performing the obligatory U.S. Supreme Court Rule 29.2 ministerial task of docketing the Petitioner's June 11, 2015 change of address notification letter does not fall within the scope of the

Respondents' official duty and is a nondiscretionary action that makes absolute judicial or quasi-judicial immunity unavailable to the Respondents (see Id.).

The Petitioner timely filed a notice of appeal on June 5, 2017 per the mailbox rule (see Doc. 7). After his case was dismissed the Petitioner sent to the District Court on July 24, 2017 and August 28, 2017 two change of address notification letters that the clerk of the court filed (see Doc. 11 and 13).

On appeal the Petitioner argued that the Respondents did not qualify for absolute judicial immunity because: 1) docketing his change of address notification letter was a non-judicial act or a ministerial task that did not lead to the resolution of his Writ of Certiorari Petition, 2) filing said letter was not a quasi-judicial discretionary function, and 3) the Respondents were acting contrary to Supreme Court Rule 29.2 and outside the scope of their judicial

capacity and the jurisdiction of the U.S. Supreme Court rules when they refused to file said letter (see 28 U.S.C. § 1746). Consequently, the District Court abused its discretion for dismissing the Petitioner 1983 complaint because the District Court had jurisdiction over the Respondents due to their ineligibility for absolute judicial immunity and due to the U.S. Supreme Court having no safeguards or corrective remedy in place to fix injuries, harms, and prejudice suffered by litigants at the hands of their court personnel. Thus, judicial immunity did not prevent the lower court (e.g., District Court) from issuing an injunctive order or an award of money damages against employees of a higher court (e.g., U.S. Supreme Court): Namely, the Respondents. See e.g., Pulliam v. Allen, 466 U.S. 522 (at 538) (Occasionally, however, there are "really extraordinary causes" and, in such cases, there has been no suggestion that judi-

cial immunity prevents the supervising court from issuing the writ (see also Footnote 19). (see Id.)

On April 12, 2018 in summary fashion the Court of Appeals For The District Of Columbia Circuit affirmed the District Court's dismissal of the Petitioner's 1983 Civil Suit Petition on the ground that "the district court correctly held that . . . damages claims against the Clerk of the Supreme Court and one of his employees are barred by judicial immunity" (see Appendix A). Said Court of Appeals further held that "the district court lacked authority to compel them (viz: U.S. Clerk and his staff) to accept" the Petitioner's change of address notification letter (see Id.).

Reasons For Granting The Petition

It is the Petitioner's position that this Court's body of cases addressing the issue of quasi-judicial and the Doctrine of Absolute Judicial Immunity does not cover the wide range of various claims that have given rise from the discourse of § 1983 litigation.

In being specific, it does not cover the extraordinary circumstances of: 1) whether a U.S. Supreme Court employee's failure to perform an obligatory non-judicial act (viz: ministerial task) — where his quasi-judicial discretion is not called upon to be exercised — qualifies or entitles that employee to absolute quasi-judicial immunity; and 2) does a U.S. District Court lack jurisdiction and authority to compel a higher court (i.e., U.S. Supreme Court) employee who is a party to a 1983 complaint to take a particular

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action per a valid injunctive order on the premise that the Doctrine of Absolute Judicial Community automatically applies due to the conflict of hierarchy authority structure of the American judicial system notwithstanding the fact that Congress has given district courts such power pursuant to 42 U.S.C. § 1983?

In the case at bar, Respondent Erik Fossum failed to perform the ministerial task of filing the Petitioner's June 11, 2015 change of address notification letter. Which subsequently made the Petitioner suffer the prejudice of not receiving his Writ of Certiorari Petition denial order at his current N.R.C. Stateville address and being unable to file a petition for rehearing pursuant to U.S. Supreme Court Handbook Rule 44.

The Respondent had an affirmative / peremptory duty to file the Petitioner's change of address

notification letter per Supreme Court Rule 29.2. Had the Respondent discharged that duty, the Petitioner would have timely received his writ denial order (see e.g., Appendix D and E); and consequently, he would have been able to file a timely petition for rehearing.

By the Respondents not obeying and following Supreme Court Rule 29.2 means that they were acting outside the scope of their judicial capacity and the jurisdiction of this Court's rules. Thus, the Petitioner had a lawful right to sue them pursuant to 42 U.S.C. § 1983 for them denying him access to the courts and violating his freedom of religion rights, etc. — by refusing to file his change of address notification letter.

This Court has concluded that judicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in her judicial capacity.

See Polliam v. Allen, 466 U.S. 522 (at 541-42).

Naturally, by judicial immunity not being a bar to prospective injunctive relief against a judicial officer acting in her judicial capacity——then, even more so, judicial immunity should not be a bar for a subordinate of a judicial officer performing non-judicial acts. See *Id.* Namely, the Respondents not performing the administrative/ministerial task of filing the Petitioner's change of address notification letter made the Respondents ineligible for absolute judicial immunity. This is a reasonable and rational deduction to reach when applying the above Federal Law to the facts of the case at bar.

However, in spite of this fact, the Court of Appeals For The District Of Columbia Circuit held in tantamount that the District Court correctly

found that the Respondents were entitled to absolute judicial immunity for: 1) failing to perform the non-judicial act (viz: ministerial task) of filing the Petitioner's June 11, 2015 change of address notification letter (which ultimately denied him access to the U.S. Supreme Court); and 2) due to the extraordinary circumstance of a lower court being authoritatively unable to compel a higher court employee to take any action (see Appendix A).

Such a finding runs counter to this Court's above cited Federal Law and is a valid reason to grant certiorari to extent this Court's case law to cover and address the important federal question of whether U.S. Supreme Court employees are entitled to judicial immunity for administrative acts and non-quasi-judicial discretionary acts that do not lead to the resolution of a case.

Because ideally, Congress was well aware of the hierarchy authority structure of the American judicial system when it empowered district courts with 42 U.S.C. § 1983 authority dealing with the violation of civil rights. Thus, since Congress didn't place a bar on the authority and jurisdiction of district courts to resolve civil disputes between a citizen and an employee of a higher court based off said authority structure——tends to clearly suggest that it wasn't Congress' intent for such a bar to exist making higher court employees exempt or immune from being a party to a 1983 suit due to the hierarchy authority structure of the American judicial system.

In addition to that, there is a split among the circuits of the Court of Appeals regarding whether a clerk of court or court personnel are entitled to judicial immunity for non-judicial acts that do not call for the

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exercise of their quasi-judicial discretion and when a judge's order is not involved like in the case at bar.

On being specific, the Eighth Circuit has determined that clerk of courts enjoy absolute judicial immunity when acting pursuant to a judge's order. See McCaw v. Winter, 745 F.2d 533 (at 534) (8th Cir. 1984).

That is to say, acting contrary to a judge's order or performing non-judicial acts a clerk of the court does not qualify or enjoy absolute judicial immunity.

The D.C. Circuit has determined that clerk of courts and court personnel qualify for absolute judicial immunity for non-judicial acts. See Sindrom v. Suda, 986 F.2d 1459 (at 1461) (D.C. Cir. 1993) (. . . immunity applies to all acts of auxiliary court personnel that are basic and integral parts of the judicial function. . .). See also In re Marin, 956 F.2d 339 (at 340) (D.C. Cir. 1992).

The Seventh Circuit has held that clerk of courts and their employees enjoy absolute judicial immunity when carrying out directives of the court or functioning within the scope of their quasi-judicial discretion. See Panko v. Rodak, 606 F.2d 168 (at 170-171) (7th Cir. 1979).

That is to say, implicitly——that operating outside the scope of their quasi-judicial discretion or contrary to a judge's order clerk of courts and their employees do not enjoy absolute judicial immunity.

The Sixth Circuit has held that administrative acts and legislative acts are not judicial acts and as a result judicial immunity is not available to a judicial officer or his subordinates. See Morrison v. Lipscomb, 877 F.2d 463 (at 465) (6th Cir. 1989).

The foregoing authorities clearly establish that there is a conflict among the circuits of the Court of Appeals notwithstanding the fact that this Court

has clearly defined judicial acts through a functional analysis and that a person's job title does not make an act judicial. See Forrester v. White, 108 S. Ct. 538 (at 544). Thus, Respondent Fossum's "job title" as U.S. Supreme Court case analyst does not automatically make him eligible for absolute judicial immunity and does not protect him from suit under § 1983: and it was clear error for the Court of Appeals for the D.C. Circuit to so conclude (see Appendix A). See e.g., Pulliam v. Allen, 466 U.S. 522 (at 541) (". . . Congress intended § 1983 to be an independent protection for federal rights and find nothing to suggest that Congress intended to expand the common-law doctrine of judicial immunity to insulate . . . judges completely from federal collateral review.).

In furtherance, this Supreme Court has held that the Doctrine of Judicial Immunity is designed to protect discretionary decisionmaking.

only. See Antoine v. Byers + Anderson, Inc., 508 U.S. 429 (at 435). Judges are not entitled to absolute immunity when acting in their administrative capacity - See Id. (at 435).

Likewise, the Doctrine of Judicial Immunity is unavailable to Respondent Fossum for refusing to perform the non-discretionary ministerial task of filing the Petitioner's said change of address notification letter. See Id. (at 436) (When judicial immunity is extended to officials other than judges, it is because their judgments are "functionally comparable" to those of judges—that is, because they too, "exercise a discretionary judgment" as a part of their function.).

That is to say, court clerks and other court personnel are not entitled to absolute judicial immunity for non-discretionary acts and conse-

quently are not protected from 1983 damages claims. See e.g., Morrison v. Lipscomb, 877 F.2d 463 (at 468) (6th Cir. 1989) (Since the clerk acted in a ministerial . . . capacity . . . the defense of qualified immunity is not available to the clerk.).

Therefore, Respondent Fossum's refusal to file said letter is a clear violation of the Petitioner's clearly established First Amendment right to have access to the courts for which the Petitioner could seek relief pursuant to § 1983 for damages and injunctive relief——and, Respondent Fossum's "job title" alone is insufficient for the invocation of the Doctrine of Judicial Immunity.

So the District Court for the District of Columbia clearly erred in dismissing the Petitioner's 1983 complaint for lack of subject-matter jurisdiction on the ground of job title / official duty entitled the

Respondents to Absolute Judicial Immunity (see Appendix B + C).

Accordingly, the D. C. Circuit Court of Appeals' affirmance of the District Court's said ruling is clearly erroneous because the Respondents were not entitled to absolute judicial immunity based off their job title "and" because Respondent Fossum's refusal to file said notification letter was not a judicial act that called for the exercise of his quasi-judicial discretion (see Appendix A: "The district court correctly held that appellant's damages claims against the clerk of the Supreme Court and one of his employee's are barred by judicial immunity."). See e.g., Morrison v. Lipscomb, 877 F.2d 463 (at 466) (6th Cir. 1989) (A government official performing a discretionary function (only) is entitled to qualified immunity from a suit for damages "if the official has not violated "clearly established constitutional rights of which a reasonable official would have known." (cit-

ing Harlow v. Fitzgerald, 102 S. Ct. 2727 (at 2738);
and Anderson v. Creighton, 107 S. Ct. 3034)).

isn't paramount, by the D.C. Circuit Court of Appeals' decision being in conflict with some of its sister circuits and/or there being a split among the circuits over whether absolute judicial immunity applies to clerk of the courts and other lower level court personnel when performing non-judicial acts that do not call for the exercise of their quasi-judicial discretion warrants that certiorari be granted.

Also, certiorari should be granted because it will lead to the proper development of the law concerning absolute judicial immunity and quasi-judicial immunity so that it covers U.S. Supreme Court personnel and district courts' 1983 subject matter jurisdiction over such parties whom happen to be employees of a higher court.

Conclusion

In conclusion, if certiorari is not granted the Petitioner, and others like him, will be deprived of their congressional § 1983 right to independent protection of his federal constitutional right to access to the courts, etc.

THEREFORE, the Petitioner, Marlon L. Watford, prose, respectfully request the above entitled Court grant his Writ of Certiorari Petition.

Date: June 16, 2018
Signed under 28 U.S.C.
1746118 U.S.C. § 1621.

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