No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

PEYTON JOHN WESLEY HOPSON — PETITIONER
(Your Name)

vs.

STARK COUNTY, et al., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

PEYTON JOHN WESLEY HOPSON
(Your Name)

P.O. Box 540
(Address)

St. Clairsville, Ohio 43950
(City, State, Zip Code)

None
(Phone Number)

QUESTION(S) PRESENTED

Does the fact that the district court failed to state in writing its reasons for certifying that Petitioner seeking to proceed in forma pauperis could not be taken in good faith; along with the fact that the district court did not dismiss Petitioner's claim as frivolous; but for failure to state a claim amount to an erroneous certification of lack of good faith?

Was the district court's departure from any of the multiple and varying Federal Rules of Civil Procedure, as presented in this petition, contravening of an overriding policy resulting in manifest injustice?

Was the district court's failure to give Petitioner leave to amend his pro se complaint a manifest injustice rendering the court's judgment on the merits of the claim voidable?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Stark County, Ohio - Respondent

Harvey Emery - Respondent

~~Peyton~~ John Wesley Hopson - Petitioner

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[✓] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the United States district court appears at Appendix D to the petition and is

[✓] reported at 2016 U.S. Dist. LEXIS 58675; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[✓] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 11, 2017.

[ ] No petition for rehearing was timely filed in my case.

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 20, 2017, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. sec,1915 See App. G

42 U.S.C. sec,1983- Every person who, under color of any statue, ordinance, regulation, custom, or usage, of any State or territory of the District of Columbus, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any right, 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 the District of Columbia shall be considered to be of the District of Columbia.

FOURTEENTH AMENDMENT

EQUAL PROTECTION

Fourteenth Amendment requires that all persons subject to legislation shall be treated a like, under the circumstances and conditions, both in the privileges conferred and in the liabilities imposed when those who appear similarly situated are nevertheless treated differently, the Equal Protection Clause requires at lease a rational reason for the difference, to ensuer that all persons subject to legislation or

regulation are indeed being treated a like, under like circumstances and conditions. Thus, when it appears that an individual is being singled out by the government, the specter of arbitrary classification is fairly raised, and the Equal Protection Clause requires a rational basis for the difference in treatment (Roberts, ch.J., join by Scalia, and Thomas Beryer, and Alito JJ.

DUE PROCESS

All persons born or naturalized in the United States, and subject to the jurisdiction therof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws

STATEMENT OF THE CASE

Petitioner, Peyton John Wesley Hopson (Petitioner or Hopson), a State prisoner incarcerated in the Belmont Correctional Institution of Ohio, filed a civil rights action pursuant to 42 U.S.C § 1983, seeking $10 million in damages from the Stark County, Ohio Sheriff's Office and $1 million in damages from Stark County Deputy Harvey Emery, case claim, Hopson v. Stark Cnty. Sheriff's Dep't, N.D. Ohio, Case NO.:5:15-cv-992. Upon review pursuant to 28 U.S.C.§ §1915 (e) and 1915 A, the court determined the complaint suggested claims under Ohio law. The court granted Petitioner's motion to proceed in forma pauperis, ordering that full filing fee be paid by payments deducted from Petitioner's inmate account. The court then simultaneously (on the same day) dismissed Petitioner's claim for failure to state a claim on which relief may be granted without affording Petitioner advance notice of the summary judgment or an adequate opportunity to show why summary judgment should not be entered. App. D: Mem, Op. Order & Order, Case No.: 5:15-CV-992, October 16, 2015.

March 14, 2016 Petitioner refiled a cured version of the complaint, App. F: Hopson v. Stark Cnty et al., Case No.:5:15-CV-621, [redacted], [redacted] The district court barred the subsequent claim by the doctrine of res judicata. The court certified that an appeal from the decision could not be taken in good faith, pursuant, to 28 U.S.C. § 1915 (a) (3). However, the court failed to state in writing the reasons for its certification of lack of good faith, pursuant to 28 U.S.C. 1915 (a) (3) and Fed. R. App. 24 (a) (3) (A). App. B: Mem. Op.Order Case No.: 5:16-CV-621, May 3, 2016.

Petitioner timely appealed to the Sixth Circuit Court of Appeal.

April 11, 2017 the appeals court sanctioned the order of the district court. App. A:Order, No.: 16-3565. Petitioner timely filed a motion for reconsideration. June 20, 2017, the Court of Appeals denied the motion for reconsideration. App. C: Order, No.:16-3565, June 20, 2017.

Petitioner now seeks Writ of Certiorari of this Honorable United States Supreme Court.

REASONS FOR GRANTING THE PETITION

The United States court of appeals has entered a decision to sanction the district court's certification of lack of good faith where the district court's certification conflicts with Fed.R.App.P. 24(a)(3)(A) and with relevant decisions of this Supreme Court on the same important matter. The decision of the district court so far departs from the accepted and usual course of judicial proceedings as to call for an exercise of this Supreme Court's supervisory power.

The instant matter involves Petitioner's motion to proceed in forma pauperis on appeal of the district court's barring of Petitioner's subsequent claim by the doctrine of res judicata. In both the initial claim and the subsequent claim the district court certified that an appeal could not be taken in good faith pursuant to 28 U.S.C. 1915(a)(3), after having granted Petitioner's motion to proceed in forma pauperis with respects to the initial claim. However, in neither instance did the district court state in writing it's reasons for the certification as required by Fed.R.App.P. 24(a)(3)(A), nor had the initial claim been dismissed as frivolous by the district court, as required by this Supreme Court in Coppedge v. United States, 369 U.S. 438, 445, 82 S.Ct. 917, 86 Ed.2d 21 (1962).

Fed.R.App.P. 24(a)(3)(A) provides, in pertinent part, A party who was permitted to proceed in forma pauperis in the district-court action or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless: (A) the district court - before or after the notice is filed - certifies that the appeal is not taken in good faith...and states in writing the reasons for the certification... Whether purposely or inadvertently the district court contravened the policy of Fed.R.App.P.

24(a)(3)(A). Under 28 U.S.C. 1915(a)(3) "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing whether a request to appeal in forma pauperis is taken in good faith." McGore v. Wrigglesworth, 114 F.3d 601 (6th Cir. 1997). The good faith requirement must be judge by an objective standard. This Supreme Court has established frivolity as the objective standard. Coppedge v. United States, 369 U.S. 438, 445, 82 S.Ct. 917, 86 Ed.2d 21 (1962). "Good faith is (*10) demonstrated when the party seeks appellate review of an issue that is not frivolous." id. Petitioner's initial claim was dismissed for failure to state a claim, not as frivilous. The decision of the district court conflicts with this Supreme Court standard for "good faith".

The district court's failure to state in writing its reasons for certifying that Petitioner's appeal could not be taken in good faith; along with the court's omission to dismiss Petitioner's original claim as frivolous seems to amount to an erroneous certification of good faith that is voidable. App!x B: Mem. Op. Order, case no. 15:16-CV-621, May 3, 2016 and App'x D: Mem. Op. Order, case no. 5:15-CV-992, Oct. 16, 2015.

As stated above the instant matter involves the district court's barring of Petitioner's subsequent claim by the doctrine of res judicata. It is Petitioner's contention that the United States court of appeals has entered a decision that sanctions decisions by the district court which so far departs from the accepted and usual course of judicial proceedings where the important matter of the manifest injust application of the doctrine of res judicata is concerned as to call for an exercise of this Supreme Court's supervisory power.

First it is Petitioner's contention that his subsequent claim under 42 U.S.C. 1983, Hopson v. Stark County et al, Case No. 5:16-CV-621 should

not be barred by the doctrine of res judicata because the district court contravened Fed.R.Civ.P. 56(C) dismissing Petitioner's initial claim without advance notice and without giving Petitioner an opportunity to respond before dismissal. Petitioner contends that upon the district court's review of Petitioner's initial claim under 1983, pursuant to 28 U.S.C. 1915 the court granted Petitioner's motion to proceed in forma pauperis then simultaneously, at once, dismissed Petitioner's claim for failure to state a claim without giving advance notice of the dismissal nor providing Petitioner an oppertunity to respond. See App'x D: Mem. Op. Order, case no. 5:15-CV-992, Oct. 16, 2015.

The court of appeals has held, "It is permissible for the district court to enter a judgment sua sponte." Kistner v. Calfano, 579 F.2d 1004, 1006 (6th Cir. 1978). See generally, Capitol Films Corp. v. Charles Fries Productions, 628 F.2d 387, 390-91 (5th Cir. 1980). However, the court must still "afford the party against whom summary judgment will be entered advance notice as required by Rule 56 and an adequate opportunity to show why summary judgment should not be [entered]." Kistner v. Califano, supra at 1006. Fed.R.Civ.P. 56(C)(1)(B) provides, a party opposing the motion must file a response within 21 days after the motion is served or a responsive pleading is due, whichever is later.... The district court's contravention of the public policy involved herein seems to be a deprivation of the Fourteenth Amendment's Due Process Clause.

Also, Petitioner contends that the court deprived him of equal protection of the laws as established by the Fourteenth Amendment of the United States Constitution. Petitioner is a pro se litigant and was so at the time of filing the original claim. Hopson v. Stark County Sheriff's Dep't, N.D. Ohio Case no. 5:15-CV-992. The law required the court to read Petitioner's pro se complaint indulgently, see Haines v. Kermer, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972). In order to state a claim under 1983, a plaintiff

must plead and prove that he was deprived of a right secured by the Constitution or laws of the United States and that the deprivation was caused by a person acting under color of State law. 42 U.S.C. 1983; Christy v. Randlett, 932 F.2d 502, 504 (6th Cir. 1991). It has been the ruling of this Supreme Court that for a complaint to survive dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure in Ashcroft v. Iqbal, 129 S.Ct. 1937 1949-50, 173 L.Ed.2d 868 (2009), and in Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007), "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." See Iqbal, 129 S.Ct. at 1949. See Wolfson v. Carlucci, 232 F.App'x 849, 850 n.1 (10th Cir. 2007) (applying Wombly's dismissal standard to dismissal under 1915(e)2)(B)(ii); see also Mitchell v. Farcass, 112 F.3d 1483, 1490 (11th Cir. 2007) (applying Rule 12(b)(6) dismissal standards in reviewing dismissal (**6) under 1915 (e)(2)(B)(ii) because the language of the statue tracks the language of the Rule).

By the court's own recapitulation of Petitioner's original complaint the complaint sufficiently fulfilled the requirements of 1983 and Fed.R.Civ.P. 12(b)6) as applied to 28 U.S.C. 1915(e) and 1915A review to state a claim on which relief may be granted. 28 U.S.C. 1915(e) and 1915A statues require the court to dismiss any portion of the complaint that (1) fails to state a claim upon which relief can be granted, or (2) is frivolous. See Neitzke, 490 U.S. at 325.

> "Plaintiff alleges he was convicted of attempted rape in Mahoning County in 1990 and, in connection with this conviction, was classified and required under Ohio law to register once a year for ten years as a "sexually oriented offender". He alleges, however, that Deputy Emery subsequently "falsified" the charge of his registration and required him to comply with more stringent registration requirements than required by Ohio law. Specifically, he alleges that, upon his initial registration, Deputy Emery

> properly classified him as a sexually oriented offender but told him he was required under Ohio law to register every 90 days. Then, upon updating his registration in October 2004, he discovered that Deputy Emery "had changed the charge of [his] registration" from "attempted rape" to "rape" and told the plaintiff this was also required by law. (Doc. No. 1 at 4)"
>
> "Plaintiff alleges that "from October 13, 2004 [he] registered with Stark County Sheriff's Office as ordered by [Deputy Emery] every 90 days under the charge of 'rape'; while residing in Stark County", (id. at 5). On April 10, 2008, upon registering with the Sheriff's Office, Emery told him that the State had changed his registration status to a tier III habitual sexual predator and that he was required by law to register for a lifetime."
>
> "Based on these allegations, plaintiff alleges that Deputy Emery "had falsified his registration documents and requirements, shamming (sic) (him) into believing that the State of Ohio required a more strenuous registration regimen on [him], [and] disseminating falsified information on [him] throughout enforcement and throughout the judicial system." (id) "See App'x D: Mem. Op. Order, case no. 5:15-CV-992, par. 2-4.

Petitioner's original complaint did fulfill the requirements of the 1983 statue and the standard of Fed.R.Civ.P. 12(b)(6). The complaint clearly describes Deputy Emery as a person acting under color of law arbitrarily engaged in conduct which deprived Petitioner of Fourteenth Amendment due process and equal protection of the laws, fulfilling the 1983 requirements. In accordance with this Supreme Court standard for complaints to survive dismissal under Fed.R.Civ.P. 12(b)(6), according to the court's own recapitulation of Petitioner's complaint as cited above, the original complain contained sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." See Iqbal, 129 S.Ct. at 1949. The court had little choice but to accept the allegations of Petitioner's original complaint as true because Petitioner provided as exhibits copies of his registration forms signed by Deputy Emery showing where and when Deputy Emery falsified Petitioner's registration charged from attempted rape to rape. See App'x E: Sex Offender Registration Forms.

> Plaintiff's (initial) complaint does not allege a plausible claim against eiher defendant under 1983 because it does not allege a discernible constitutional violation. See App'x D: Mem. Op. Order case no. 5:15-CV-992, Oct. 16, 2015, par. 6.

As stated above, the allegations scream of Fourteenth Amendment due process and equal protection deprivations. The court failed to give a modicum of indulgence to the reading of Petitioner's complaint. See Haines v. Kerner, 404 U.S. 519, 92 S.Ct 594, 30 L.Ed.2d 652 (1972).

Also, Petitioner contends that it would be a manifest injustice were his second claim barred by the doctrine of res judicata because the court deprived Petitioner the pro se entitlement to amend his pro se complaint as established by Fed.R.Civ.P. 15(A)(2) which provides, in pertinent part, The court should freely give leave [to amend] when justice so requires. Also in accordance with the holdings of other courts. See Lopez v. Smith, 203 F.3d 1122, 1127-30 (9th Cir. 2000) (en banc) (holding that "The Court is required to grant leave to amend" if a complaint can possibly be saved" but not if the complaint "lacks merit entirely." Id. at 1129. "The court therefore should grant leave to amend if the pleading could be saved by the allegation of other facts or if it appears at all possible that the defect can be corrected." Id. at 1130. See App'x F: subsequent complaint Hopson v. Stark County et al., case no. 15-CV-621.

As relative to the curability of Petitioner's complaint though the court deprived Petitioner of an indulgent reading the court concluded that,

> "...plaintiff's allegations that Deputy Emery falsified" his registration documents and required him to adhere to more stringent registration requirements than Ohio law requires suggest, at the most, claims under Ohio law..." See App'x D: Mem. Op. Order case no. 5:15-CV-992, Oct. 16, 2015, par. 6.

Surely, the above indicates that the court did not find Petitioner's complaint to be entirely meritless. In fact, the above conclusion of the court indicates that the court found that Petitioner's original complaint did in fact state a claim. This would explain the court's granting of Petitioner's motion to proceed in forma pauperis. See App'x D: Order, Case

no. 5:15-CV-992, Oct. 16, 2015. It would seem that under the circumstances of Petitioner being a pro se litigant; the court having found that the original complaint did have merit; and, the fact that the court granted in forma pauperis status: deducting full filing fee payments from Petitioner's inmate account that "justice" very well required the court to freely give Petitioner leave to amend his original complaint pursuant to Fed.R.Civ.P. 15(a)(2). Also see, Church v. Attorney General of Virgina, 125 F.3d 210, 215 (4th Cir. 1997) (court erred in dismissing frivolous pro se complaint after accepting filing fee without offering opportunity to cure defect).

IN SUMMARY

In the course of dismissing Petitioner's original claim the court contravened Fed.R.App.P. 24(a)(3)(A) and 28 U.S.C. 1915(a)(3) having failed to state in writing its reasons for certifying why Petitioner's appeal pursued in forma pauperis could not be taken in good faith. Also the court contravened Fed.R.Civ.P. 56(c) failing to afford Petitioner advance notice of the summary judgment and an adequate opportunity to show why summary judgment should not have been entered relative to the original claim. Kistner v. Califano, supra at 1006. Also, the court deprived Petitioner of equal protection of the laws as established by the Fourteenth Amendment of the United States Constitution by failing to read Petitioner's pro se complaint indulgently, see Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972). As well, the court contravened Fed.R.Civ.P. 12(b)(6) coming into conflict with thye ruling of this Supreme Court and that of other courts as relative to standards for complaints to survive dismissal. See Iqbal, 129 S.Ct. at 1949; also Wolfson v. Carlucci, 232 F. App'x 849, 85 n.1 (10th Cir. 2007); also Mitchell v. Farcass, 112 F.3d 1483, 1490 (11th Cir. 2007)

(applying Rule 12(b)(6) dismissal standards in reviewing dismissal (**6) under 28 U.S.C. 1915(e)B)(ii) because the language of the statue tracks the language of the Rule). As well, the court contravened Fed.R.Civ.P. 15(a)(2) and came into conflict with the rulings of other courts by failing to freely give Petitioner leave to amend his original pro se complaint when justice so required. See Lopez v. Smith, 203 F.3d 1122, 1127-30 (9th Cir. 2000) (The court is required to grant leave to amend if the complaint can possible be "saved"). Also see Church v. Attorney General of Virgina, 125 F.3d 210, 215 (4th Cir. 1997) (court erred in dismissing frivolous pro se complaint after accepting filing fee without offering opportunity to cure defect), deprivation of equal protection.

The courts have held that "(n)either collateral estoppel nor res judicata is rigidly applied. Both rules are qualified or rejected when their application would contravene an overriding policy or result in manifest injustice". Tipler v. E.I. du Ponte de Nemours and Co., 443 F.2d 125, 128 (6th Cir. 1971). Bronson v. Board of Education, 525 F.2d 344 (6th Cir. 1975), cert. denied, 425 U.S. 934, 96 (**12) S.Ct. 1665, 48 L.Ed.2d 175 (1976). See also United States v. Lafatch, 565 F.2d 81 (6th Cir. 1977), cert. denied, 435 U.S. 971, 98 S.Ct. 1611, 56 L.Ed.2d 62 (1978); Ferguson v. Winn Parish Police Jury, 589 F.2d 173, 176 n.6 (5th Cir. 1979).

Petitioner has demonstrated that the court when deciding to dismiss his original claim contravened Fed.R.Civ.P. 56(c); and Fed.R.C.P. 12(b)(6); as well as Fed.R.Civ.P. 15(a)(2) conflicting with the rulings of other courts as relative to these Rules. "An arbitrary discrimination such as that suffered by Petitioner (as relative to the dismissal of his original claim), although traditionally classified under the rubric of denial of equal protection, may amount also to a deprivation of due process, since both

concepts stem "from our American ideal of fairness ***". Bolling v. Sharpe, 374 U.S. 497, 499, 74 S.Ct. 693, 694, 98 L.Ed. 884 (1954); cf. Wieman (**24) v. Updegraff, 344 U.S. 183, 191, 73 S.Ct. 215, 97 L.Ed. 216 (1952). "Whatever else it has come to mean, the due process concept has its deepest roots in the idea summarized centuries ago by the demand for adherence to "the law of the land". See ~~the Magna Carta, cls. 39~~ Buchalter v. People of State of New York, 319 U.S. 427, 429, 63 S.Ct. 1129, 87 L.Ed. 1492 (1943); In re Kemmler, 136 U.S. 436, 448-49, 10 S.Ct. 930, 34 L.Ed. 519 (1890). Random departures from the knowable law affording basic protections, whether they are effected purposely or "inadvertently", are patently offensive to this fundamental principle of our constitutional scheme. In sum, whether the conclusion rest upon the Equal Protection Clause, the Due Process Clause, or (justifiably) both, it is clear that in the particular circumstances of this case "prejudicial disparities" have been effected and "basic fairness" has not been achieved. The application of the doctrine of res judicata as relative to the subsequent claim would result in manifest injustice, paving the way for the deprivation of knowable laws affording basic protections where future pro se litigation is necessarily pursued.

CONCLUSION

Based upon the above demonstrated by Petitioner, justice would be best served by the granting of this petition for writ of certiorari and the relief which is appropriate.

Respectfully submitted,

Date: August 30, 2017

Peyton John Wesley Hoffman