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IN THE  
**Supreme Court of the United States**

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LEONARD E. DUNNING,  
*Petitioner,*

v.

NANCY M. WARE, DIRECTOR  
COURT SERVICES AND OFFENDER SUPERVISION AGENCY  
(CSOSA)  
*Respondent.*

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**ON PETITION FOR A WRIT OF CERTIORARI to  
the United States District Court of Appeals  
for the District of Columbia**

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**PETITION FOR WRIT OF CERTIORARI**

LEONARD E. DUNNING  
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## **QUESTIONS PRESENTED**

- I. Whether Appellate Court erred in denying Appellant's motion for reconsideration of the U.S. District Court ruling in issuing the granting of summary judgment and misapplied the ruling under McDonnell Douglas in finding that the Appellant did not provide sufficient evidence for a reasonable jury to find intentional discrimination?**
- II. Whether the Court properly considered Appellant's opposition to the motion for summary judgment and evidence presented demonstrating that the federal government mislead the parties and the Court and whether the Court abused its discretion in failure to consider appellant's uncontested evidence of pre-selection sufficient for a jury to "reasonably disbelieve" appellee's proffered reason?**

## **LIST OF PARTIES**

- (X)** 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 follow.

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(17-5146)**

**APPENDIX B    United States District Court for The District of Columbia  
(1:13-cv-00959-RJL)**

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☒ is unpublished.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 B to the petition and is

☐ reported at \_\_\_\_\_; 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 20, 2018.

☐ 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: \_\_\_\_\_, 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 AUGUST 18, 2018 (date) on JULY 10, 2018 (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 PROVISION INVOLVED**

**The Relevant provision are set forth in the Appendix**

## **STATEMENT OF THE CASE**

Appellant, Leonard Dunning initially filed an action in the United States District Court for the District of Columbia for violations of Mr. Dunning's civil rights by his federal employer, the Court Services and Offender Supervision Agency (CSOSA), under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. ("Title VII"), 42 USC § 2000e-3(a) Retaliation, and discrimination based upon age in Violation of the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. Section 633a, as amended. As noted in the initial filing, the same pattern of analysis developed under Title VII has generally been applied to age discrimination cases. See *O'Connor v. Consolidated Coin Caterers Corp.*, 517 U.S. 308 (1996). The District Court ruled that Mr. Dunning failed to refute the legitimate non-discriminatory reasons for CSOSA's decision, or even establish defendant's awareness of plaintiff's age. The Court concluded that upon defendant's motion for summary judgment, no reasonable jury could find that defendant intentionally discriminated against Dunning on the basis of his age. The U.S. Circuit Court of Appeals for the District of Columbia upheld the lower court's decision, indicating that Mr. Dunning did not present evidence sufficient to "permit an inference that" appellee's employment decision was based on age. The appellant, Mr. Dunning, disagrees and asserts that the lower courts failed to take all factors under consideration, including but not limited to the fact that CSOSA is designated as a federal law enforcement agency and the position applied for by Mr. Dunning was designated as a law enforcement position with specific age requirements.



## **REASONS FOR GRANTING THE WRIT**

The Court Services and Offender Supervision Agency (CSOSA) is a federal law enforcement agency, created by Congress pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997 (the Revitalization Act). The specific position of Supervisory Offender Processing Specialist, GS-0101-12 job announcement, which was included in Mr. Dunning's pleadings, asserted under BASIC QUALIFICATIONS for the position that the position was for a "primary law enforcement position." Paragraph 2 under BASIC QUALIFICATIONS of the job announcement, states "to determine your eligibility for a primary law enforcement position, indicate whether you meet the following age requirement: I am under age 37; OR, after subtracting the months of Federal service worked in a primary law enforcement position, I am less than age 37." The federal Agency's assertion in its request for Summary Judgment that it had no knowledge of Mr. Dunning's age was disingenuous. Not only did the Agency have reason to know the Appellant's age, but as a routine matter of evaluating all applicants' eligibility, the Agency routinely verified age and prior employment experience. Additionally, at the time of Mr. Dunning's application and interview for the position, he was employed in the very Unit that the Supervisory position was being advertised and his current position at the time was designated as "law enforcement." Further, as indicated by the Appellant's documents submitted to the Court for consideration, was the factor that the Agency, CSOSA, was created pursuant to the National Capital Revitalization and Self-Government Act of 1997, which permitted the combining of the probation agency, parole supervision services, and pre-trial services. Many employees similarly situated as Mr. Dunning was grandfathered in with law enforcement status regardless of exceeding the age requirement

of thirty-seven and granted credit in employment and retirement benefits as law enforcement officers when hired by the agency. CSOSA is fully aware of the age of all employees hired under law enforcement. The Agency at the time of Mr. Dunning's application, had less than 500 employees with the law enforcement designation. Mr. Dunning's age at the time of application was above age 37½; however, his specialized law enforcement experience, as noted by the Agency, made him eligible for the position.

Mr. Dunning asserts that the government failed to satisfy the threshold showing for summary judgment. The Federal Rules of Civil Procedure states, "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." In the instant case, the appellee, CSOSA, failed to demonstrate that there was no dispute in genuine facts and there is not any entitlement by law. The Agency actually attempted to mislead the Court in asserting that it lacked knowledge of Mr. Dunning and other applicants' age.

In the U.S. District Court of Appeal for the District of Columbia (Court), it states "appellant did not present evidence sufficient to "permit an inference that "appellee's employment decision was based on age.

#### **Support #1 (Qualifications of Campbell-Adams and Dunning)**

The Court must consider that the appellee (CSOSA or the Agency) is a law-enforcement agency where knowing the age of employees and applicants are a high priority. The ages of all six (6) candidates were known before the interview on June 30 and July 1, 2009 (26, 34, 39, 41, 54 and 55). The candidate that was selected was 39 years old, Campbell-Adams.

Additionally, information that was available during EEOC Discovery process included Campbell-Adams' resume. The resume did not include any "specialized experience" at the GS-11 Level as an Offender Processing Specialist of at least one (1) year as required in the job announcement. Also, his resume revealed no documented supervisory experience. Even though, management official – William Ashe – stated that Campbell-Adams "indicated that he had been given leadership responsibilities by his supervisors", and "that he was the unofficial team leader on his team in the absence of the supervisor". These duties and responsibilities do not qualify as "specialized experience" or supervisory experience for this job announcement.

The Appellant (Dunning), age 54, is a member of a protective class under TITLE VII and ADEA was not selected. The appellant's resume revealed 4 (four) years of specialized experience of which only 1 (one) year was required for the job announcement as a GS-11 Offender Processing Specialist. The resume also included 2 (two) years of documented supervisory experience in the Probation Drug Testing Unit, formerly known as "Acting Coordinator" for Probation Drug Testing Unit. Additionally, the resume included 2 (two) years as a Pre-Trial Service Officer and 2 (two) years as a Vocational Counselor at Hope Village Halfway House. Both positions required daily contacts or monitoring offenders' compliance or non-compliance with the Judiciary/U.S. Parole Commission. Management official – William Ashe – stated to the EEOC investigator that Mr. Dunning "looks good on paper" his application and responses to KSAs were good. It is clear, that the Appellant has a superior resume with unique skill sets.

### **Support #2 (Pre-Selection of Campbell-Adams)**

During the EEOC process, it was revealed that on May 20, 2009, Campbell-Adams was notified by letter indicating his selection as Supervisory Offender Processing Specialist with a start date of August 3, 2009. The interview was held on June 30 and July 1, 2009, even though Campbell-Adams was already selected for the vacant job announcement.

The Court asserted that the Agency proffered legitimate non-discriminatory reasons for its decision and the Agency was unaware of Mr. Dunning's age. Those reasons included:

1. It selected the most qualified candidate based on interview points
2. Campbell-Adams had significantly more supervisory experience than that of Dunning
3. Campbell-Adams had more Leadership skills than Dunning

The information proffered by the Agency was misrepresentation of material facts. The Pre-selection was intentionally to discriminate against a member (Dunning) of a protective class.

### **Support #3 (Summary)**

The above argument was known to the U.S. District Court and U. S. Circuit Court of Appeal (Court) for the District of Columbia. As a matter of fact, as part of its summary judgment in the Agency's favor, the Court stated that "the appellant has presented uncontested evidence of pre-selection sufficient for a juror to "reasonably disbelieve" appellee's proffered reason, Giles v. Transit Employees Federal Credit Union, 794 F.3d 1, 9 (D.C. Cir. 2015)". Even though the Agency conceded to pre-selection, the Court ruled that the appellant did not present evidence sufficient to "permit an inference that" appellee's employment decision was based on age. Id at

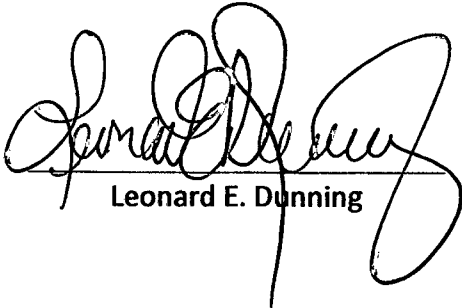
10; Jones v. Bernanke, 557 F.3d 670,679 (D.C. CIR. 2009) (“evidence of pretext is not per se sufficient to permit an inference of discrimination”).

## CONCLUSION

In deciding whether there is a disputed issue of material fact, the Court must draw all reasonable inferences in favor of the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,255(1986). Where the court finds that material to the outcome of the case are at issue, a case may not be disposed of by summary judgment. *Id* at 248. If, however, the facts in dispute are “merely colorable, or...not significantly probative, summary judgment may be granted.” *Id.* at 249-50 (internal citations omitted). A party opposing a motion for summary judgment “may not rest upon the mere allegations or denials of his pleading, but...must set forth specific facts *Farabett, Garrett & Dunner*,101 F.3d 145, 150 (D.C. Cir. 1996)

The petition for a writ of certiorari should be granted.

Respectfully submitted,

 ,pro se  
Leonard E. Dunning

Date: August 18, 2018