

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

SAMUEL T. ROSS — PETITIONER
(Your Name)

vs.

CLERK OF COURTS, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court of Appeals For The Third Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Samuel T. Ross

(Your Name)

1600 Walters Mill Road

(Address)

Somerset, PA 15510

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

Whether a prisoner has a constitutional right of access to the courts to litigate civil claims unrelated to his/her sentence or conviction?

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:

CLERK OF COURTS OF THE COURT OF COMMON PLEAS OF PHILADELPHIA,
PA; D. JUGLE, PROTHONOTARY OF THE OFFICE OF JUDICIAL RECORDS;
C. FORTE, PROTHONOTARY OF THE OFFICE OF JUDICIAL RECORDS OF PA.

TABLE OF AUTHORITIES CITED

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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☐ is unpublished.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 B to the petition and is

☒ reported at 2017 U.S. Dist. LEXIS 189339; 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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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 June 08, 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: August 1, 2018, 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. § 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

U.S. Const. Amend. I -- Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U.S. Const. Amend. XIV -- All persons born or naturalized in the United States, and subject to the jurisdiction thereof, 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 to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983 -- 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 of law, suit in equity, or other proper proceeding for redress. 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.

STATEMENT OF THE CASE

On May 13, 2015, Petitioner filed a medical malpractice complaint seeking damages under the Pennsylvania Wrongful Death Act (42 Pa. C.S.A. § 8301) and Survival Act (42 Pa. C.S.A. § 8302) following the death of his father, Samuel E. Jones, who died from advance lung cancer on June 12, 2013.

Petitioner's complaint alleged that the University of Pennsylvania Health System, Katherine Fleming-Cohen and Kashyap Panganamamula, M.D. neglected to diagnose his father for lung cancer over a course of two years, to which upon seeking a second opinion, Temple University Hospital immediately diagnosed his father for advanced lung cancer and produced an x-ray showing that the cancer had spreaded through-out his body.

On July 7, 2015, the Defendants in the medical malpractice case filed a Notice of Intent to Enter Judgment of Non Pros for failure to file a Certificate of Merit pursuant to Pa. R.Civ.P. 1042.6. On July 11, 2015, Petitioner deposited a Motion for Extension of Time to File a Certificate of Merit in the prison mailbox to the CLerk of Court of the Court of Common Pleas. The Clerk of Court mailed the motion back to Petitioner with an attached sticky note informing him that he had to submit the motion to the civil division and contrary to the mandates of the law, (42 Pa. C.S.A. § 5103(c)), neither transferred the motion to extend to the proper division nor filed the motion.

On July 20, 2015, Petitioner re-deposited the motion to extend to the Office of Judicial Records. The Prothonotary, D. Jugle received the motion to extend on July 23, 2015 at

1:35 P.M., but did not enter it on the docket as filed and returned the motion to extend by mail because it did not include a cover sheet, which is contrary to the mandates of the law, (Phila. Civ. R. 205.2(b)). that the motion be filed and a grace period of 20 days be given for a completion of the cover sheet.

Despite the two mishaps, Petitioner still managed to re-deposit, for a third time, his motion to extend in the prison mailbox on August 3, 2015 in timely fashion. This time, the Prothonotary, C. Forte, received and time-stamped the motion to extend on August 6, 2015, but did not enter the motion on the docket as filed. Instead, the Prothonotary, C. Forte, entered a judgment of non pros against the will of the law and waited five days later to enter Petitioner's motion to extend on the docket as filed.

Petitioner filed multiple petitions to the Court of Common Pleas disclosing evidence that the Motion For Extension of Time to File a Certificate of Merit was three times in timely fashion and received three times in timely fashion by the defendants, thus tolling the time a certificate of merit had to be filed until the Court ruled upon the motion pursuant to Pa. R.Civ.P. 1042.3(d). The Court of Common Pleas refused to enforce the law with an even hand. The Appellate Courts found that the motion to extend was timely, but also refused to enforce the motion's tolling power provided by law.

On October 30, 2017, Petitioner filed this civil suit action pursuant to 42 U.S.C. § 1983 against the Clerk of Courts of

Common Pleas of Philadelphia and Prothonotaries D. Jugle and C. Forte, complaining that the defendants violated his right to access the courts under the First and Fourteenth Amendments secured by the Constitution of the United States by refusing to accept and file his timely Motion to Extend the Time to File a Certificate of Merit submitted in his medical malpractice suit that he filed on behalf of his deceased father.

On November 15, 2017, the District Court For the Eastern District of Pennsylvania dismissed Petitioner's civil rights Action without disposition or fact-finding for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii), because a petition for allowance of appeal was pending in regards to the Petitioner's medical malpractice suit. Petitioner appealed to the United States Court of Appeals For The Third Circuit on December 9, 2017. The United States Court for the Third Circuit denied the appeal on June 08, 2018. Petitioner filed a Petition For Rehearing En Banc. On August 1, 2018, the petition for rehearing by the court en banc was denied.

And now comes this Writ of Certiorari to the this Court.

REASONS FOR GRANTING THE PETITION

- I. WHETHER EXCLUSION OF A RIGHT TO ACCESS THE COURT FOR PRISONERS TO BRING CIVIL ACTION FOR DEPRIVATION OF RIGHTS NOT RELATED TO HIS/HER SENTENCE OR CONVICTION VIOLATES A PRISONERS RIGHT TO DUE PROCESS AND TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES.

The Third Circuit Court of Appeals' application of Lewis v. Casey, 518 U.S. 343, 351 (1996) to exclude prisoners from having a right to access the court to bring a 42 U.S.C. § 1983 civil rights action for deprivation of rights not related to his/her criminal sentence or condition of confinement presents a great conflict with other United States court of appeals on the same important matter.

Petitioner filed a civil rights action under 42 U.S.C. § 1983 (Civil Rights Act of 1871) asserting that the Clerk of Court of Common Pleas and the Prothonotaries of the Office of Judicial Records of Philadelphia, Pennsylvania, whom all are state officials acting under color of state law, wrongfully refused to accept his motion for extension of time to file a certificate of merit for filing each three times the motion was mailed and received in timely fashion.

Petition claims that he has documents that proves beyond a preponderance of the evidence that each defendant received his motion in timely fashion and each defendant refused to file and docket his motion in accords with the law, resulting in an actual injury in a judgment of non pros being entered against him by one of the defendants who received the motion in timely fashion.

The District Court of the Eastern District of Pennsylvania dismissed the claim without disposition or fact-finding because a petition for allowance of appeal was pending in regards to the medical malpractice suit in which the defendants in this suit interfered with access to the courts. Ross v. Clerk of Courts of the Court of Common Pleas of Philadelphia, Pennsylvania, et al., 2017 U.S. Dist. LEXIS 189339 (2017).

Petitioner appealed to the Third Circuit court of appeals, arguing that dismissal of his § 1983 civil rights action suit under 28 U.S.C. § 1915(e)(2)(B)(ii) without discovery and a fair hearing because he has a petition seeking discretionary review in state court is contrary to the sole purpose of 42 U.S.C. § 1983, Civil Action for Deprivation of Rights.

Petitioner relied upon this Court's ruling in Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473, 5 L. Ed.2d 492 (1961), explaining that one purpose of the Act is "[T]o provide a federal remedy where the state remedy, though adequate in theory, was not available in practice," 365 U.S. at 174; "This section gives to any person who may have been injured in any of his rights, privileges or immunities of person or property, a civil action for damages against the wrongdoer in the Federal Courts," 365 U.S. at 178; "the Civil Right Act, 42 U.S.C. § 1983 provides access to a federal forum for claims of unconstitutional treatment at the hands of state officials," 365 U.S. at 180; "It is abundantly clear that one reason the legislation was passed was to afford a federal right in federal courts because, by reason of prejudice

passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies," 365 U.S. at 180; and, "It is no answer that the State has a law which enforced would give relief. The federal remedy is supplementary to the state remedy and the latter need not be first sought and refused before the federal one is invoked," 365 U.S. at 183.

While awaiting a decision from the Third Circuit court of appeals, the petition for allowance of appeal was denied in state court. Thus, the basis for the District Court's denial was removed. To this, the District Court's decision should have been reversed and remanded.

To the contrary, the Third Circuit court of appeals misapprehended Petitioner's claim as based on an allegation that the defendants violated his right to access the courts under the First and Fourteenth Amendments by failing to timely mail a motion submitted by Petitioner pertaining to an ongoing medical malpractice suit. This error resulted in the Third Circuit court of appeals applying Lewis v. Casey to construe that a prisoner has no constitutional right of access to the courts to litigate an unrelated civil claim. (Op. pg. 2, June 8, 2018).

The Third Circuit court of appeals ruled that as a prisoner, Petitioner's right to access to the courts does not extend to his medical malpractice action and because his medical malpractice action was not related to his criminal sentence or condition of

confinement, he failed to state an access to the courts claim under § 1983 and affirmed the judgment of the District Court. Id.

Petitioner is confused as to how the Third Circuit court of appeals could misapprehend the facts considering (1) the caption of this case does not mention any prison officials; and (2) clearly claimed that the defendants wrongfully refused to accept (not mail) his motion. Petitioner filed a Petition For Rehearing En Banc contending that Lewis v. Casey, did not apply to the circumstances and facts of this civil rights action.

The Third Circuit court of appeals denied rehearing en banc and allowed their ruling to stand. This judgment clear conflicts with other circuit court of appeals.

A. Sixth Circuit: In John L. v. Adams, 969 F.2d 228 (6th Cir. 1992), the Sixth Circuit court of appeals stated, "First, .. . in order to assure that incarcerated persons have meaningful access to courts, states are required to provide affirmative assistance in the preparation of legal papers in cases involving constitutional rights and other civil rights action related to their incarceration ... Second, in all other types of civil actions, states may not erect barriers that impede the right of access of incarcerated persons." 969 F.2d at 235.

B. Seventh Circuit: In Snyder v. Nolen, 380 F.3d 279 (7th Cir. 2004), (PER CURIAM), the Seventh Circuit court of appeals said: 'In one line of cases, the Supreme Court has held that the fundamental right of access to the courts requires prison authorities to provide prisoners with tools necessary "to attack their

sentences, directly or collaterally, and in order to challenge the conditions of their confinement." *Lewis v. Casey* ..., However, the Supreme Court also held that the First Amendment right to petition the government includes the right to file other civil actions in court that have a reasonable basis of law or fact ... 380 F.3d at 290.

In *Snyder*, a prisoner alleged that he was deprived of his federal constitutional right of access to the courts under the First Amendment and Substantive due process when a Clerk refused to file his petition for a dissolution of marriage and for a temporary restraining order against his wife. *Id.*

The Clerk maintained that the petitioner was not deprived of a constitutional right because a prisoner's right of access to the courts is limited to actions challenging his conviction, sentence or conditions of confinement.

The Seventh Circuit court of appeals agreed that the Clerk's argument misconstrued the relevant Supreme Court precedent. *Id.*

C. Ninth Circuit: In *Smith v. Cobb*, 2018 U.S. Dist. LEXIS 34797 (March 2, 2018)(quoting *Silva v. Di Vittorio*, 658 F.3d 1090 (9th Cir. 2011), the Ninth Circuit has "traditionally differentiated between two types of access to court claims": (1) the right to assistance, such as access to law libraries, and (2) the right against unreasonable, active interference, described as "erect[ing] barriers that impede the right of access of incarcerated persons." *Id.* at 1102-03 (quoting *John L. v. Adams*, 969 F.2d 228, 235 (6th Cir. 1992). The Court will refer to former

category as "assistance" claims, and the latter as "impediment" claims. ... With respect to impediment claims, however, the Ninth Circuit has suggested that Lewis' limitation do not apply.

Petitioner contends that contrary to the Third Circuit court of appeals judgment in this case, the Sixth Circuit, Seventh Circuit, and Ninth Circuit has interpreted this Court's ruling to recognize a parallel development of two distinct types of access to court claims.

Petitioer is litigating an impediment claim, not an assistance claims. He has never asserted that a prison official failed to assist him in bringing legal action, has never mentioned anything about prison law library or prison legal assistance.

This Court explained in Christopher v. Harbury, 536 U.S. 403, 414, 122 S.Ct. 2179, 153 L.Ed. 2d 413 (2002) ("Whether an access claim turns on a litigating opportunity yet to be gained or an opportunity already lost, the very point of recognizing any access claim is to provide some effective vindication for a separate and distinct right to seek judicial relief for some wrong."

Petitioner asks this Supreme Court to resolve this conflict and clarify whether an incarcerated person has a constitutional right to access to the court to litigate civil claims unrelated to his/her sentence or conviction or condition of confinement.

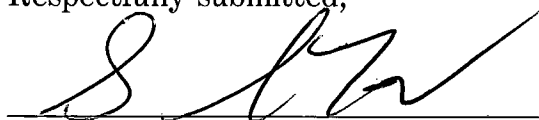
Provided this Supreme Court agrees with the Sixth Circuit, Seventh Circuit, and Ninth Circuit's interpretation of its ruling regarding prisoner's right to access the courts to litigate

claims unrelated to his sentence or conviction or conditions of confinement, then the Third Circuit court of appeals' judgment in this case is constitutionally infirm and Petitioner asserts that his civil rights action brought under 42 U.S.C. § 1983 should be heard by the District Court for the Eastern District of Pennsylvania according to the rights guaranteed by the First and Fourteenth Amendments to the United States Constitution. U.S. Const. Amend. I; U.S. Const. Amend. XIV.

CONCLUSION

Based upon the foregoing points and authorities, the Petition respectfully requests this Honorable Court to reverse the judgment of the Court below.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "S. L. W.", written over a horizontal line.

Date: August 19, 2018

CLD-165

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-3719

SAMUEL ROSS,
Appellant

v.

CLERK OF COURTS OF THE COURT OF COMMON PLEAS OF PHILADELPHIA,
PENNSYLVANIA; D. JUGLE, Prothonotary of the Office of Judicial Records;
C. FORTE, Prothonotary of the Office of Judicial Records Pennsylvania

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-17-cv-05012)
District Judge: Honorable Juan R. Sanchez

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
March 29, 2018

Before: CHAGARES, GREENAWAY, Jr., and GREENBERG, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted for possible summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on March 29, 2018. On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the judgment of the District Court entered November 16, 2017 be and the same hereby is affirmed. All of the above in accordance with the opinion of this Court.

"APPENDIX A"

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: June 8, 2018