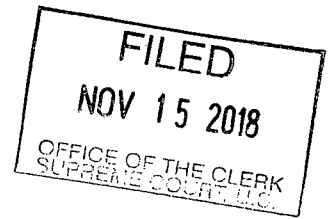


No. 18-7031

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

KACEY LEWIS — PETITIONER
(Your Name)

vs.

ANGEL QUIROS, WILLIAM MULLIGAN, — RESPONDENT(S)
CAPTAIN CLAUDIA, and JOHN DOE

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

KACEY LEWIS, PRO SE
(Your Name) PRISONER NO. 165460
MACDOUGALL CORRECTIONAL INSTITUTION

(Address) 1153 EAST STREET SOUTH

SUFFIELD, CT 06080
(City, State, Zip Code)

NONE
(Phone Number)

QUESTION(S) PRESENTED

DID THE COURT OF APPEALS ERR IN DENYING THE PETITIONER'S
MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS ?

DID THE COURT OF APPEALS ABUSE IT'S DISCRETION IN DISMISSING
THE PETITIONER'S APPEAL ?

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:

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OTHER

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☒ is unpublished.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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 JUNE 21, 2019.

☒ 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 NOVEMBER 19, 2016 (date) on SEPTEMBER 17, 2012 (date) in Application No. 18 A 272.

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. FIRST

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 PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES.

U.S. CONST. AMEND. FOURTH

THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES, SHALL NOT BE VIOLATED, AND NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION, AND PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED, AND THE PERSONS OR THINGS TO BE SEIZED.

28 U.S.C. 1915 (2)

ANY COURT OF THE UNITED STATES MAY AUTHORIZE THE COMMENCEMENT, PROSECUTION OR DEFENSE OF ANY SUIT, ACTION OR PROCEEDING, CIVIL OR CRIMINAL, OR APPEAL THEREIN, WITHOUT PREPAYMENT OF FEES OR SECURITY THEREFOR, BY A PERSON WHO SUBMITS AN AFFIDAVIT THAT INCLUDES A STATEMENT OF ALL ASSETS SUCH [PERSON] PRISONER POSSESSES THAT THE PERSON IS UNABLE TO PAY SUCH FEES OR GIVE SECURITY THEREFOR. SUCH AFFIDAVIT SHALL STATE THE NATURE OF THE ACTION, DEFENSE OR APPEAL AND AFFIANT'S BELIEF THAT THE PERSON IS ENTITLED TO REDRESS.

STATEMENT OF THE CASE

PETITIONER KACEY LEWIS (HEREINAFTER ALSO "MR. LEWIS") A PRISONER IN THE CUSTODY OF THE CONNECTICUT DEPARTMENT OF CORRECTION FILED THE CIVIL RIGHTS ACTION PRO SE IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT, PURSUANT TO 42 U.S.C. SECTION 1983. THE RESPONDENTS ARE ANGEL QUIROS, WILLIAM MULLIGAN, CAPTAIN CLAUDIA, AND JOHN DOE. AT THE TIME OF THE EVENTS AT ISSUE IN THIS CASE, THE RESPONDENTS WERE EACH ACTIVE MEMBERS OF THE STATE OF CONNECTICUT DEPARTMENT OF CORRECTION. IN HIS LAW SUIT, PETITIONER SOUGHT TO RECOVER COMPENSATORY AND PUNITIVE DAMAGES AND INJUNCTIVE RELIEF FOR THE RESPONDENTS ALLEGED DEPRIVATION OF MR. LEWIS' RIGHTS. IN HIS COMPLAINT FILED ON DECEMBER 12, 2017, MR. LEWIS ALLEGED THAT DURING HIS INCARCERATION AT THE MACDOUGALL CORRECTIONAL INSTITUTION IN 2017, THE RESPONDENTS ANGEL QUIROS, WILLIAM MULLIGAN, CAPTAIN CLAUDIA, AND JOHN DOE ENGAGED IN COLLECTIVE, WILLFUL AND UNLAWFUL ACTIONS WITH MALICIOUS INTENT TO PREVENT THE PETITIONER FROM OBTAINING ACCESS TO HIS LEGAL PAPERS, DESIGN TO PURPOSELY OBSTRUCT, ABRIDGE, DENY AND/OR VIOLATE PETITIONER'S FIRST AMENDMENT RIGHTS. SEE LEWIS V. QUIROS, ET AL, NO. 3:17-CV-2070-VLB (D. CONN. DEC 12, 2017), ECF NO. 1, P. 3, PARA 17. ADDITIONALLY, MR. LEWIS ALLEGED THAT THE RESPONDENTS COLLECTIVE, PURPOSEFUL AND UNLAWFUL ACTIONS WERE HARMFUL, AND RESULTED IN HIS APPEAL BEING DISMISSED WITH PREJUDICE ON SEPTEMBER 13, 2017. IN HIS PRO SE CASE IN THE CONNECTICUT APPELLATE COURT, KACEY LEWIS V. SCOTT SEMPLE, ET AL, AC 39864. Id. ECF NO. 1, PARAGRAPHS 18-25. ON DECEMBER 20, 2017, THE DISTRICT COURT ENTERED AN ORDER DISMISSING THE PETITIONER'S COMPLAINT WITHOUT PREJUDICE, STATING "PLAINTIFF HAS FAILED TO STATE A DENIAL OF ACCESS TO COURTS CLAIM AGAINST ANY DEFENDANT." (APPENDIX B at 8.

STATEMENT OF THE CASE

ON JANUARY 16, 2018, THE PETITIONER FILED A NOTICE IN THE DISTRICT COURT DECLINING TO AMEND HIS COMPLAINT, CONTENDING HIS COMPLAINT WAS SUFFICIENT TO SATISFY THE PLEADING PURPOSE. SEE LEWIS V. QUIROS, ET AL, NO. 3:17-CV-2070-VLB (D. CONN. JAN. 16, 2018), ECF NO. 9. ON FEBRUARY 2, 2018, THE DISTRICT COURT ENTERED AN ORDER DISMISSING PETITIONER'S CASE WITH PREJUDICE "FOR REASONS STATED IN THE INITIAL REVIEW ORDER." (APPENDIX B at 11. JUDGMENT ENTERED IN FAVOR OF DEFENDANTS ON FEBRUARY 5, 2018, (APPENDIX C). PETITIONER FILED HIS NOTICE OF APPEAL ON FEBRUARY 20, 2018, (APPENDIX D).

THE APPEAL

ON FEBRUARY 22, 2018, MR. LEWIS FILED A MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS IN THE COURT OF APPEALS. SEE LEWIS V. QUIROS, NO. 18-509 (CA 2 NY. FEB. 22, 2018), ECF NO. 7. IN SAID MOTION, MR. LEWIS CONTENDED THAT THE DISTRICT ERRED IN ITS ORDER(S) ENTERED IN THIS CASE; AND THE DISTRICT COURT'S DISMISSAL ORDER CONSTITUTES AN ABUSE OF DISCRETION, BECAUSE HIS COMPLAINT "SATISFIES THE PURPOSE OF A PLEADING, AND HIS COMPLAINT SUCCINCTLY ALLEGES A DENIAL OF A CONSTITUTIONAL RIGHT." Id. ON JUNE 21, 2018, THE COURT OF APPEALS ENTERED ORDER(S) DENYING MR. LEWIS' MOTION TO PROCEED IN FORMA PAUPERIS, AND DISMISSED HIS APPEAL STATING: "BECAUSE IT 'LACKS' AN ARGUABLE BASIS EITHER IN LAW OR IN FACT." (APPENDIX A). ON SEPTEMBER 7, 2018, THE PETITIONER MAILED A MOTION FOR EXTENSION OF TIME TO FILE WRIT OF CERTIORARI TO THIS COURT'S CLERK'S OFFICE. SAID MOTION WAS PRESENTED TO JUSTICE GINSBURG WHO ON SEPTEMBER 17, 2018, EXTENDED THE TIME TO AND INCLUDING NOVEMBER 19, 2018 FOR PETITIONER TO FILE HIS WRIT OF CERTIORARI. RE: LEWIS V. QUIROS, ET AL. APPLICATION NO. 18A272.

REASONS FOR GRANTING THE PETITION

THIS CASE IS APPROPRIATE FOR REVIEW (1) BECAUSE THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUITS ORDER(S) DENYING THE PETITIONER'S MOTION TO PROCEED IN FORMA PAUPERIS, AND DISMISSING HIS APPEAL CONFLICTS WITH THIS COURT'S DECISION REACHED IN NEITZKE V. WILLIAMS, 490 U.S. 319 (1989); (2) THE SECOND CIRCUIT DECISION CONFLICTS WITH DECISIONS OF OTHER FEDERAL APPEALS COURT'S; AND (3) THE FEDERAL IN FORMA PAUPERIS STATUTE DESIGNED TO ENSURE THAT INDIGENT LITIGANTS HAVE MEANINGFUL ACCESS TO THE FEDERAL COURTS IS THREATEN BY THE DECISIONS REACHED BY THE COURT OF APPEALS IN THIS CASE.

THIS COURT SHOULD GRANT THE PETITION AND REVIEW THE DECISION BELOW.

I. THE COURT OF APPEALS ERRED IN DENYING THE PETITIONER'S MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS.

THE FEDERAL IN FORMA PAUPERIS STATUTE, ENACTED IN 1892 AND PRESENTLY CODIFIED AS 28 U.S.C. SECTION 1915, IS DESIGNED TO ENSURE THAT INDIGENT LITIGANTS HAVE MEANINGFUL ACCESS TO THE FEDERAL COURTS. ADKINS V. E.I. DUPONT de NEMOURS & Co., 335 U.S. 331, 342-343 (1948). AS SUCH, SECTION 1915(a) PERMITS A LITIGANT TO COMMENCE A CIVIL OR CRIMINAL CASE IN FEDERAL COURT IN FORMA PAUPERIS BY FILING IN GOOD FAITH AN AFFIDAVIT STATING, *inter alia*, THAT HE IS UNABLE TO PAY THE COSTS OF THE LAWSUIT. THE PETITIONER IN THIS CASE DID THAT, BUT HIS MOTION TO PROCEED IN FORMA PAUPERIS WAS DENIED. (APPENDIX A). THE COURT'S ARE IN AGREEMENT THAT DISMISSALS FOR FAILURE TO STATE A CLAIM ARE REVIEWED *De Novo*. SEE LINER V. GOORD, 196 F.3d 132, 134 (2d Cir. 1999) (HOLDING THAT "28 U.S.C. SECTION 1915 A DISMISSALS ARE SUBJECT TO *de novo* review"); BARREN V. HARRINGTON, 152 F.3d 1193, 1194 (9th Cir. 1998) (HOLDING THAT DISMISSALS FOR

REASONS FOR GRANTING THE PETITION

FAILURE TO STATE A CLAIM ARE REVIEWED *de novo*); MCGORE V. WRIGGLESWORTH, 114 F.3d 601, 604 (6th CIR. 1997) (CONCLUDING THAT PROVISION REQUIRES DE NOVO REVIEW). THERE IS NOTHING IN THE SECOND CIRCUIT'S JUNE 21, 2018 DECISION THAT SHOWS A *de novo* REVIEW WAS DONE IN THIS CASE. IT APPEARING, THE SECOND CIRCUIT DID A WHOLESALE ADOPTION OF THE DISTRICT COURT'S DECISION, WITHOUT REVIEWING THE RECORD IN THIS CASE. IN THE END, IT CANNOT BE SAID MR. LEWIS COULD NOT MAKE A RATIONAL ARGUMENT ON FACTS AND LAW IN SUPPORT OF HIS CLAIMS. THUSLY, THE COURT OF APPEALS ERRED IN DENYING MR. LEWIS' MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS.

II. THE COURT OF APPEALS ABUSE IT'S DISCRETION IN DISMISSING THE PETITIONER'S APPEAL

"CLOSE QUESTIONS OF FEDERAL LAW, INCLUDING CLAIMS FILED PURSUANT TO 42 U.S.C. SECTION 1983, HAVE ON A NUMBER OF OCCASIONS ARISEN ON MOTIONS TO DISMISS FOR FAILURE TO STATE A CLAIM, AND HAVE BEEN SUBSTANTIAL ENOUGH TO WARRANT THIS COURT'S REVIEW, UNDER ITS CERTIORARI JURISDICTION, TO RESOLVE THEM." NEITZKE V. WILLIAMS, 490 U.S. 319 at 328 (1989). DISMISSAL IS NOT APPROPRIATE "UNLESS IT APPEARS BEYOND DOUBT THAT THE PLAINTIFF CAN PROVE NO SET OF FACTS IN SUPPORT OF HIS CLAIM WHICH WOULD ENTITLE HIM TO RELIEF." CONLEY V. GIBSON, 355 U.S. 41, 45-46, 2 L. Ed 2d 80, 78 S.Ct 99 (1957). IN NEITZKE V. WILLIAMS, *supra*, THIS COURT EXPLAINED THE TWO INSTANCES IN WHICH A DISTRICT COURT MAY DISMISS A COMPLAINT PURSUANT TO SECTION 1915 (d). FIRST, IT MAY DISMISS WHEN THE "FACTUAL CONTENTIONS ARE CLEARLY BASELESS," SUCH AS WHEN ALLEGATIONS ARE THE PRODUCT OF DELUSION OR FANTASY. *Id.* 109 S.Ct. at 1833. OR, SECOND,

REASONS FOR GRANTING THE PETITION

IT MAY DISMISS WHEN THE CLAIM IS "BASED ON AN INDISPUTABLY MERITLESS LEGAL THEORY." *Id.* NEITHER OF THESE INSTANCES APPLIED TO MR. LEWIS' COMPLAINT. THEREFORE, THE COURT OF APPEALS ABUSED ITS DISCRETION IN DISMISSING HIS APPEAL.

CONCLUSION

WHEREFORE, AND FOR THE FOREGOING REASONS, THIS COURT SHOULD GRANT THE PETITION AND REVIEW THE DECISION BELOW.

11/15/2018
DATE

RESPECTFULLY SUBMITTED,
THE PETITIONER

Kacey Lewis

KACEY LEWIS, PRO SE
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MACDOUGALL, CT
1153 EAST STREET SOUTH
SUFFIELD, CT 06080
TEL: NONE
FAX: NONE
E-MAIL: NONE

PROOF OF FILING AND SERVICE

I HEREBY DECLARE UNDER THE PENALTY OF PERJURY THAT ON NOVEMBER 15, 2018, I DEPOSITED ENVELOPES INTO THE U.S. MAIL, WITH POSTAGE PREPAID, CONTAINING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND PETITION FOR A WRIT OF CERTIORARI, PROPERLY ADDRESSED TO THIS COURT'S CLERK'S OFFICE AND TO THE FOLLOWING COUNSEL:

KIMBERLY P. MASSICOTTE
ATTORNEY GENERAL'S OFFICE
55 ELM STREET
HARTFORD, CT 06141

EXECUTED ON NOV 15 2018

Kacey Lewis
KACEY LEWIS