

18-7811

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
DEC 13 2018
OFFICE OF THE CLERK

Keenan Wilkins — PETITIONER
(Your Name)

vs.

Paul Gonzales et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Ninth Circuit Court of Appeal

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Keenan Wilkins - AN2387
(aka Nerrah Brown)

(Your Name)

California HealthCare Facility
P.O. Box 32290

(Address)

Stockton, CA 95213
(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

1. Does the Reasoning of this Court Asserted in *Buck v Davis* (2017) 137 S.Ct. 759 also apply to Civil Appeals? (i.e. When all is before the Court is whether to allow IFF Status on Appeal --- Can the Court decide the Merits of the unbriefed appeal, label it "Frivolous" and Count it as a Section 1915 Strike?).
2. Can Plaintiff's Appeal seeking to Challenge a District Courts dismissal of his entire complaint for alleged improper joinder of claims in which three of the Defendants are the same in each claim be called "Frivolous" under this Courts Standards held in *Neitzke v. Williams* (1989) 490 US 319?
3. Can this Court Settle the dispute among Circuits (Ninth, Tenth and Eleventh) on whether a dismissal for failure to prosecute counts as a Section 1915 Strike?

(Confer:

(*O'Neal v Price*, 531 F.3d 1146 9th Cir 2008)
(*Hafed v Fed Bureau of Prison*, 635 F.3d 1172 10th Cir 2011)
(*Daker v Com. GDOC*, 820 F.3d 1278 11th Cir 2016)

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:

Dr. Chai Ken
Lt. Couch
CCII. Hontz
Officer Jones
cc II Pulley
Dr. Swarthout
Dr. Vasquez

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Buck v Davis (2017)	137 S.Ct. 759
Neitzke v Williams (1989)	490 U.S. 319
United Workers v Gibbs (1966)	383 U.S. 714
Daker v Com. G.DOC	820 F.3d 1278 11th Cir 2016
Garity v Nat. Labor Org.	828 F.3d 848 9th Cir 2015
Hafed v Fed. Bureau of Prison	635 F.3d 1172 10th Cir 2011
O'Neal v Price	531 F.3d 1146 9th Cir 2008
Lopez v Smith	203 F.3d 1122 9th Cir 2000

STATUTES AND RULES

F.R.C.P. 18, 20 and 21

F.R.A.P. 24

28 USC 1915

OTHER

U.S. Const. 14th Amendment

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.

* Appendix C --- Copy of Extension Request Served 11/25/18

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 8-31-18.

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 _____.
** Extension Rule 22 Request Made on 11/25/18*

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.

** Extension Rule 22 Request Made on 11/25/18*
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 _____.
** Extension Rule 22 Request Made on 11/25/18*

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.
** Extension Rule 22 Request Made on 11/25/18*

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

1. U.S. Constitution 14th Amendment
(Due Process and Equal Protection)
2. 28 USC 1915
3. Fed. R. A. P. 24
(Appeal Jurisdiction)

STATEMENT OF THE CASE

- A. Plaintiff filed the instant Section 1983 Civil Complaint in the Eastern District of California. While this action was pending a District (Northern) Judge Asserted Plaintiff had 3 Section 1915 Strikes (Wilkins v Co. of Coco, No. CV-16-7016 JD).
- B. Plaintiff's family paid the filing fee so it precluded an Appeal on the disputed IFP issue.
- C. Defendant's in the instant case moved to Revoke Plaintiff's IFP Status in this action. The Hon. Magistrate Recommended that Defendant's Motion To Revoke be denied (* Appendix B-1).
The U.S. District Judge then granted the Defendant's Motion To Revoke asserting that two Cases the 9th Circuit dismissed for failure to prosecute were Section 1915 Strikes (* Appendix B-2).
- D. Plaintiff attempted to Appeal this Revocation of IFP Status but the Ninth Circuit denied IFP Status on Appeal and dismissed the Appeal for failure to prosecute (* Appendix A).
- E. To date Plaintiff has not been heard on the merits of his contention of Error in IFP Revocation.

REASONS FOR GRANTING THE PETITION

1. To settle a question in conflict between the Circuits --- Does an Appeal Dismissal for failure to prosecute constitute a Section 1915 Strike
2. To determine in light of this Court's holding in Buck v. Davis --- if the practice of the 9th Circuit of circumventing Rule 24 of F.R.A.P. by deciding the merits of a non-briefed appeal when the only issue before the Court is to grant or deny IFP status on Appeal.
(* Note: Plaintiff was statutorily authorized to seek an Appeal in IFP pursuant to Rule 24 as there was no "Bad Faith" Certification by the District Court. After filing the Notice of Appeal, the 9th Circuit requested the District Court to certify the appeal. The District Court certified the Appeal as "Bad Faith" for "unexplained" reasons as required by Rule 24. The 9th Circuit then called the appeal "frivolous" and ordered Plaintiff to pay the fee or be dismissed. When Plaintiff did not pay the fee the appeal was dismissed for "Failure to Prosecute" and now being counted as a Strike).
3. The Appeal clearly was not "frivolous" as defined by this Court in (* See Addendum)

REASONS FOR GRANTING THE PETITION
Addendum

Neitzke v Williams.

In C11-2704 LK, the District Court asserted that the Complainant improperly joined defendants and Clavis. Plaintiff stood upon F.R.C.P Rule 18 that joinder was proper due to same Defendants (3) were in each claim (See United Workers v. Gilebs (1966) 383 US 714; Garity v National Labor Org. 828 F3d 848, 9th C.R 2015). The District Court then dismissed the Entire Complainant without leave to amend in violation of 9th Circuit Authority (Lopez v Smith 203 F3d 1122 9th C.R 2000).

Plaintiff lawfully appealed these Non-Fr.ious issues pursuant to his Statutory Right in Rule 24. The District Court asserted Bad Faith for unstated reasons.

The 9th Circuit "decided" the appeal "without" jurisdiction --- labelled it "Fr.ious" and call it a strike. These erroneous strikes are now being used against Plaintiff to deny forever IFP status.

(Note: Plaintiff also received a strike for attempting to appeal the denial of a Rule 60 Motion that attempted relief from these same alleged errors. This Appeal was also denied for Failure to Prosecute),

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

K. W.

Date: 12/13/18