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IN THE SUPREME COURT OF THE UNITED STATES

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No.

KING GRANT-DAVIS, PETITIONER,

vs.

SOUTH CAROLINA OFFICE OF THE GOVERNOR; SOUTH CAROLINA VOCATIONAL REHABILITATION DEPARTMENT, RESPONDENTS.

Original

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ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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## PETITION FOR WRIT OF CERTIORARI

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

## OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix A and is unpublished.

The opinion of the United States District Court appears at Appendix B and is unpublished.

## JURISDICTION

The date on which the United States Court of Appeals decided

JURISDICTION
(Continued)

this case was October 02, 2018. No petition for rehearing was filed in this case. Mandate was filed on October 24, 2018.

Jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

## 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 follows:

The Respondents are represented by:

Carmen V. Ganjehsani, Esquire
C/O: Richardson, Plowden & Robinson, PA
171 Church Street, Suite 150
Charleston, S. C. 29401
(843) 805-6550

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(Reasons For Granting The Petition)

## QUESTIONS PRESENTED

1. Whether an individual with a disability (as that term is defined in 29 U.S.C. Section 705(20)) who has entered into an Individualized Plan for Employment (I.P.E.) agreement for driver training to improve his marketability in the job market and find employment as a light package delivery driver (remunerative occupation) and actively participated in such training by a driving school through his State vocational rehabilitation program, had a "protected liberty or property interest" to such services (see, Rehabilitation Act of 1973, 29 U.S.C. Sections 701, 722, and 723; South Carolina Code of Laws (Vocational Rehabilitation), Section 43-31-60?

2. After a qualified individual with a disability is already participating in his I.P.E. training, and prior to the completion of such training, is there a denial of substantive and procedural "due process", that the designated State unit (Vocational Rehabilitation Department) usurped the procedural "mandatory language" of the Rehabilitation Act of 1973, 29 U.S.C. Section 722(c)(7), by abruptly discontinuing the client's training before a decision by a mediator, hearing officer, or reviewing officer?

3. Where, prior to discontinuing a client's vocational rehabilitation training, the designated State unit ignored its duty under 29 U.S.C. Section 722 to provide the client with timely "Notification" of any of his entitled "Rights and Assistance", should they (the dSu) prevail on an "equitable tolling" issue?

QUESTIONS PRESENTED
(Continued)

4. Did the designated State unit violate the visually impaired petitioner's substantive and procedural due process rights by citing his lane driving errors, after failing to ever provide the additional services (clip-on rearview mirror) suggested for the petitioner by the state department of motor vehicles (see the Rehabilitation Act of 1973, 29 U.S.C. Section 723(a)(6)(D); the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12103))?

5. Did "collateral estoppel and res judicata" barred the Respondents from re-litigating their claims to "permissible discretion" , et cetera, in defense of their actions (in the Renewed Motion for Summary Judgment), after the District Court denied those claims in their original Motion for Summary Judgment and they failed to "appeal" that ruling?

6. Was the petitioner's lawsuit under 42 U.S.C. Section 1983 against the Governor's Office Director of Administration and Executive Policy and Programs headed by Gary Anderson (Michelle Dhunjishah reviewed for Anderson) who was the "final policymaking authority " and sanctioner of the policy actions applied by the designated State unit to stop the driver training, properly brought against the State government entities?

7. Should petitioner's lawsuit for violation of his federal law (Individualized Plan for Employment) rights, as a "contract dispute" have been properly subject to a "three year" filing statute of limitations?

QUESTIONS PRESENTED
(Continued)

8. Did the evidence (and law) presented by the petitioner in this case demonstrate genuine issues of material fact to properly preclude the entry of summary judgment for the Respondents?

9. Did the petitioner make showings of "good cause" (Federal Rules of Civil Procedure 16(b)(4) and that "justice so required" (Federal Rules of Civil Procedure 15(a)(2) for the of his motion to make a "Second Amendment" to the Complaint?

10. Did the three judges of the United States Court of Appeals for the Fourth Circuit properly fulfilled their duty to apply and adhere to an "independent" de novo review of the case disputes in the District Court?

LIST OF PARTIES

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

## STATEMENT OF THE CASE

Eligibility For Vocational Rehabilitation Services:

1. Petitioner was age 53, totally blind in left eye, visually impaired in right eye, and diagnosed with post-traumatic stress disorder, and spinal nerve damage when he applied for services at South Carolina Vocational Rehabilitation Services, Charleston (i.e. the designated State unit or "dSu") on June 07, 2005.

2. On 6-28-2005 vocational rehabilitation counselor John Ollif wrote to petitioner stating that after review of petitioner's medical records, it was expected that he would be eligible for services from the South Carolina Commission for the Blind (i.e. the "Commission"). Thereafter, the Commission found petitioner eligible. A couple years later, without ever providing petitioner any job training or job placement services, the Commission referred petitioner back to the dSu for such services. The dSu found the petitioner eligible in all respects for such services.

Assistance Provided to Petitioner in 2008 and 2009:

3. During this period, petitioner was counselled, examined and encouraged in his vocational and employment goals by vocational counselor Norm Napier, vocational counselor IV Russell Woods, and vocational assessment and career exploration specialist Jennifer Jerome. Two seperate efforts to obtain employment were unsuccessful. Due to his spinal condition, petitioner decided on seeking a vocational outcome for driver training to become employed as a light package delivery driver. Napier, Woods, and Jerome backed that proposal. However, Ms. Morgan Fancher, Charleston Area office

STATEMENT OF THE CASE
(Contnued)

supervisor would not approve it.

Woods did not give up on that objective. He asked vocational counselor Gerald Sealey, who would takeover petitioner's case, to give the case a new look and make a new request for the driver training.

Driver Training Vocational Objective in 2009-2011:

4. When Counselor Sealey and the petitioner first met, they discussed the fact that everytime petitioner signed up for work at temporary employment agencies the application was passed over when it was noted that the petitioner was not a driver. Sealey stated that he wanted to assist the petitioner to rectify that void. They agreed that petitioner would increase his efforts with his medical and mental health providers and successfully complete the "work keys" course, Sealey would renew the driver training vocational objective. After numerous follow-ups on petitioner's efforts, Sealey deemed that petitioner complied with his obligations.

5. On October 20, 2010 petitioner chose an Individualized Plan for Employment, as a delivery driver of light packages, in Sealey's presence. On March 04, 2011 Sealey and petitioner cosigned the I.P.E. At that moment Sealey told petitioner their endorsement of the I.P.E. was a "contract." No one else participated in this I.P.E. The contract was for the petitioner to receive training that would prepare him to the driver certification (license) test.

6. Lord Ashley Driving School ("Lord Ashley") instructor Jo Ann

STATEMENT OF THE CASE
(Continued)

Linsey was in charge. Although Lord Ashley and other driving school offers an eight hours classroom session to start the with, Lindsey skipped the initial classroom lesson and had petitioner get behind the wheel and operate the company vehicle rightaway. Lord Ashley student instructor Record required an instructor to teach a student twenty-four (24) training items for that student to gain enough proficiency to effectively operate a motor vehicle. Lindsey took petitioner on ten (10) training sessions of which she scheduled once a week over a six (6) months period. She did not work with petitioner on nine (9) of the required 24 items. Of the 15 items she presented, she did not complete several. Lord Ashley President Ray Scott, and instructor James Breen admitted that Ms. Lindsey scheduled petitioner's lessons with too long time period between the lessons for petitioner to retain the skills a week later. When petitioner last saw lindsey on November 22, 2011, she told petitioner that she and Lord Ashley would advise the designated State unit that it needed to order more training for petitioner. During the 10 lessons with Lindsey, petitioner drove the vehicle without ever coming close to having an accident.

Respondents' Failure To Notify, Inform, or Advise Petitioner of Any Legal Rights, Privileges, or Protections Under Federal And State Laws And Regulations at Any Time:

7. From the time when the petitioner first visited the Respondent dSu office through the eventual "Fair Hearing" on July 17, 2013, absolutely no one apprised petitioner of his substantive and procedural rights, privileges, or protections that were available to him pursuant to the provisions of the Rehabilitation Act of

STATEMENT OF THE CASE
(Continued)

1973, South Carolina Vocational Rehabilitation law, Federal or State Regulations, or South Carolina "State Plan." The Respondent dSu was aware of the fact that petitioner did not even know that such laws, regulations, or policies existed. That is the reason the Respondents were able to employ the steps, means, and tactics they used to stop petitioner's training and I.P.E.

the Steps, Means, And Tactics that Respondents Used to End Petitioner's Training And I.P.E.:

8. Before Counselor Sealey could initiate a request for further driving lessons, the dSu informed him that he would soon be getting transferred to another area dSu office. Subsequently, Sealey set up an appointment with petitioner for the last time, along with the Area Client Services Manager, Shannon H. Reed for February 02, 2012. That would be the first time that Ms. Reed and the petitioner ever met each other.

9. Despite of the fact that Sealey and petitioner never had an instance where petitioner was "arrested" or missed any lessons, when Sealey told Reed the petitioner needed further lessons toward his I.P.E., Reed commented that based upon petitioner's 1970s felony convictions, petitioner probably could not get a job anyway.

10. In efforts to try and have his lessons resumed , petitioner talked by telephone to Reed five times between 02-23-2012 and 05-22-2012, with Area Supervisor, Ms. Morgan Fancher on 03-19-2012, with Lord Ashley seven times between 03-20-2012 and 04-24-2012, including Ray Scott, President on 04-02 and 04-11, with the "Client Assistance Program" in the Governor's Office three times between 03-22-2012 and 04-26-2012 (then Director Marjorie Butler), wrote

STATEMENT OF THE CASE
(Continued)

to agency Commissioner, Barbara G. Hollis, and received a telephone call from Patricia Green, Area Development Director, Lower South Carolina, in response to the letter to Ms. Hollis.

11. On 5-29-2012 , Reed called petitioner by telephone and told him to stand by his telephone on June 05, 2012 at 11:00 a.m. for a "Conference Call" involving Marjorie Butler and Cindy Popenhagen of the C.A.P. office, Shannon H. Reed and Morgan Fancher of the local Charleston dSu office, and Ms. Alfreda King (Director of Community and Client Relations) and Ms. Rachael Richardson (Client Relations Specialist) of the agency Commissioner's office.

12. During that Conference Call, Butler, Ms. King and Fancher cited the petitioner's age (then 59), disabilities (blind left eye, mental health problems, and lower back problem), and 1970s criminal record (sex offense conviction, etc.) mainly as justification for stopping the driver training. They did mention Lord Ashley's lessons Record on petitioner. All of the other six participants believed that the petitioner would not be able to obtain employment. The only thing that Butler said in petitioner's defense was when she asked Ms. King whether she would consider the fact that petitioner's lessons were spaced by too long periods apart for petitioner to effectively retain the skills, and allow petitioner to resume the lessons with shorter between each session. Ms. King answered "No." None of the other six participants considered sight condition as a mitigating circumstance in his favor. See Amended Complaint, paragraphs 18 and 19 (Re-signed and Filed March 14, 2016).

13. Butler put her conclusions unfavorable to petitioner in a

STATEMENT OF THE CASE
(Continued)

letter of June 12, 2012, and Ms. Fancher put Ms. King's position in a letter of June 13, 2012. On 06-15-2012 petitioner wrote to Hollis requesting review. Instead of providing review or a fair hearing, it was Ms. King responding by letter of July 09, 2012. Ms. King's 7-09-2012 letter to petitioner was designed to eradicate the 3-04-2011 I.P.E. contract. Ms. King listed numerous new demands and conditions for petitioner to fulfill that were unsubstantiated by the dSu's relationship history with petitioner, and in disharmony with the good faith efforts that petitioner showed Counselor Sealey and Instructor Lindsey. Therefore, petitioner refused to endorse it or respond to it.

14. Throughout the entire letter of 7-09-2012, clearly they did not indicate any commitment by the dSu to assist petitioner with enough training to acquire "driver certification" (license) in accordance with the I.P.E. contract that petitioner and Sealey agreed to. Ms. King used the following words: ". . . consider granting your request for additional driver training. . ." According to the context and language of the agreement of 3-04-2011 for "driver certification" the "consideration" for the needed training was made already (on 3-04-2011). No one in the dSu can legally demand that petitioner stand by for a "conference telephone call" so that they could make their forcible conclusion to breach the I.P.E. without the consent of a mediator or due process hearing officer.

15. On July 26, 2012, Richardson who works under Ms. King in the dSu's Main offices)along with Reed of the local dSu office called

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(Continued)

petitioner by telephone. Richardson asked petitioner as follows: "Do you want the driver training?" Richardson and Reed further stated, "If you do want the additional lessons, you must show up and sign a letter dated today (i.e. 7-26-2012). If you do not sign today's letter to move forward, we will close your entire case with this agency!" Before signing that letter, petitioner wrote two verticle statements and a horizontal statement in the bottom area of the letter, repeating his comments from the 6-05-2012 conference call, in defense of the I.P.E. agreement. They effectively applied forcible tactics to obtain a signature from petitioner. They never obtained an agreement from petitioner to the conference call and 7-09-2012 actions taken against the petitioner. No one in the dSu ever reached a meeting of the minds with petitioner by either the 6-05-2012 Conference telephone call or their 7-09-2012 and 7-26-2012 letters to petitioner.

16. On August 07, 2012, dSu Client Services Specialist, Ms. Ali Cato prepared a Comprehensive Review with the employment goal to remain "Driver". Cato and petitioner cosigned it on 8-08-2012 for petitioner to participate in a "driving evaluation" as sought by Lord Ashley. On or about 8-27-2012, the dSu agreed to allow the evaluation. On or about 8-30-2012 a new instructor, James Breen conducted the evaluation. The technique and guidance that Breen provided while petitioner was operating the vehicle were more effective than those of Lindsey. Breen seemed to be a superior teacher than Lindsey.

17. On or about October 10, 2012, Breen reported the results of

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(Continued)

that evaluation to the dSu. In his report, Breen said that the petitioner responded well behind-the-wheel, but that the time elapse between lessons need to be shorter for better retention by the student. Breen further said: "I would like to start with 6 lessons and see how far I can get him in terme of habits and knowledge. He will likely need more more lessons after that 6. I will be able to give a more definite lessons. He needs more lessons than an average teen driver."

18. On March 12, 2013, Ms. Cato prepared another Review without an amendment to the employment goal, in which the dSu agreed to provide the "6 evaluation sessions" recommended by instructor Breen on or about 10-10-2012. Prior to that agreement, on 10-16-2012 petitioner was "arrested" on unclassified (lowest level) misdemeanor shoplifting charge. His attorney in the case, Benjamin C. Lewis advised him to "not discuss the charge with anyone other than defense counsel.

19. On 3-26-2013 Cato called and informed petitioner that the dSu recently arranged for the 6 evaluation sessions by Lord Ashley. On April 08, 2013, petitioner called Shannon Reed and informed her that attorney Lewis asked for advice concerning resolving the charge. On May 06, 2013 petitioner called and informed Reed that Lewis and the prosecutor offered to relove the charge by a "nolo contendere plea" . Despite being told that, Reed then instructed petitioner to call Lord Ashley and schedule some of the 6 sessions with Lord Ashley, and then call her office and leave the dates of the scheduled evaluations on her voicemail. That same day, Lord

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(Continued)

Ashley member Mr. Braxton scheduled three lessons for May 23, 29, and 30, 2013, and petitioner called Reed's phone number extension and left that information on her voicemail. On 5-16-2013, Reed called petitioner abd notified him that she had Lord Ashley cancel the lessons they scheduled on 5-06-2013. Reed stated that Ms. Cato and assistant commissioner Linda Leiser authorized her to cancel them. She said that the reason for cancelling them was the nolo contendere plea to shoplifting. That decision was made based upon paragraph 2d. of Ms. King's letter of 7-09-2012 where she makes the following forceful demand to petitioner: "You will refrain from ... , criminal activities, . . ." Ms. King is not a client counselor and not a local office caseload staff member. Ms. King had never met petitioner nor spoken to him prior to speaking by telephone on 7-09-2012 (Conference Call) against the completion of petitioner's training. She has illegally attempted to arbitrarily, unnecesarily , and irrationally impose such counterproductive demands on access to education and training for petitioner who did not pose a crime problem during or before participating in his driver training when Sealey was his counselor. During petitioner's enrollment in driver training, he at no time missed a session for any reason.

Fair Hearing Stage:

20. On June 15, 2012, petitioner wrote an 8-Page letter to dSu's Commissioner Hollis requesting a "Fair Hearing" review by her of the stopping and cancellation of petitioner's lessons (between 02-02-2012 and 5-16-2013). Petitioner thought Commissioner Hollis

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was the "hearing officer" who performed the review when a client requests an administrative/fair hearing. The dSu never notified petitioner about the correct persons to file "complaints to, where to request a hearing officer, that a client was entitled to request intervention by a mediator in such disputes, that a client was entitled to "notification" from dSu officials of his or her rights, privileges, and protections codified by Congress, and listed in "regulations" and policies of the federal and State governments, and rights and privileges codified by the South Carolina General Assembly on vocational rehabilitation. No one in the dSu ever informed petitioner of the existence of the federal civil rights (i.e. Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, etc.) which applies to these matters. The persons within the dSu who dealt with petitioner in this case were fully aware that petitioner did not know about his various rights(substantive and procedural). That is why Ms. King left the petitioner out of any input in the selection of a hearing officer and did not afford him the option of a mediator.

21. On 6-18-2013 Ms. King wrote to petitioner and informed him of the scheduled date and time of the Fair Hearing, and the name of the person she exclusively chose as the hearing officer. Only after reading the hearing officer's July 30, 2013 "Decision" did petitioner become aware of some of the aforementioned laws.

22. As stated in Ms. King's letter, Dr. David Staten was the hearing officer. During the hearing, Ms. Reed admitted that at her first meeting with petitioner in the presence of Counselor Sealey

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she said that because of petitioner's criminal conviction in the 1970s the training should not be continued and it would not help. John E. Batten, IV, General Counsel for the dSu spoke in favor of agency officials. The petitioner testified that he followed the agreement signed by Sealey and himself, he conducted himself in a decent manner at all times, he never came even close to having an accident, and that, even though Lindsey was prompt to let him know when he made any errors, the predominant remark that Lindsey repeated to him when he drove was:"Good, very good!" Staten. The petitioner spoke about the contacts between himself, Lord Ashley, and the Agency concerning his efforts and goals. Petitioner asked Staten to allow him to forward numerous pertinent records to the office of Staten for his consideration. Staten agreed, and later that same date the petitioner mailed those papers to Staten. Staten did not address the legitimacy of the dSu's twice abrupt stoppings of petitioner's lessons (i.e. 2-02-2012 by Reed, and 5-16-2013 by Reed) before intervention by a mediator or hearing officer. Nor did Staten address the fact that the second (clip-on) rearview mirror required for petitioner by the Department of Motor Vehicles, was never provided. Nor did Staten mention at the hearing that a policy action used against petitioner by the dSu was provided to him (i.e. written form: SCVRD's Fees, Codes and Procedures Policy, Section 6.5.1.1.) at the hearing before the petitioner arrived.

23. Staten's "Decision" consisted on his position as to what the

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dSu had already done and what he deem they shall not do for the petitioner. While Staten's Decision indicated that a request for an "impartial review" (Administrative review) of his decision may be made to an official of the Office of the Governor, he did not specify what official. In early August 2013, petitioner made a telephone call to the Client Assistance Program and asked new Director Denise Riley who should he address the request for review to. Riley advised petitioner to write his request for review to Gary Anderson, Director of Executive Policy and Programs, South Carolina Office of the Governor.

Office of the Governor Review:

24. In his letter of 8-14-2013 to Gary Anderson requesting review petitioner covered indepth the steps and actions taken by the dSu and by Staten in the case. Petitioner also attached a number of material records thereto. On September 05, 2013, petitioner sent Anderson another record material to the case, as was suggested by Anderson during a telephone call by petitioner on 8-21-2013. In that telephone conversation, Anderson and petitioner talked for over thirty (30) minutes thoroughly about the issues.

25. On September 11, 2013, Michelle Dhunjishah signed a brief "Final Decision". In her "Conclusions of Law" Dhunjishah did not discuss any of the disputed acts or omissions by the dSu or Staten , yet concluded that: "...there is not clear and convincing evidence to show that the Hearing Officer's Decision was clearly erroneous". She affirmed the Decision of Staten. Neither the dSu

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nor the Governor's Office notified petitioner of his next option to request review in the case. At that point, subsequently, the petitioner believed that the Governor's Office review was the last possible step.

Request To dSu Commissioner For Reconsideration:

26. After pondering the situation over a period of time, the petitioner felt that, since the Commissioner had not herself made any judgment in the case, it would be logical to request that she reconsider the case. On December 31, 2013, petitioner wrote the request to Commissioner Hollis. Although petitioner mentioned the decisions of Staten and Dhunjishah to Hollis, he did not ask her to specifically overrule them. After presenting a thorough recap of the material facts and circumstances in the case, petitioner listed five (5) general questions that she could consider from facts and circumstances previously discussed by dSu officials and petitioner, yet were not previously the focus of the earlier rulings.

27. On January 16, 2014, Hollis wrote her response. She stated that she had received and reviewed the request. She advised that in accordance with applicable regulations and law, there is no administrative procedure for reconsideration once the matter has been reviewed by the Office of the Governor. Hollis did not notify petitioner of any further legal option for possible review.

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28. During petitioner's search to learn more about the legal and vocational rights of persons with disabilities, petitioner saw a publication describing the role of the United States Department of Education, Office for Civil Rights, in early March 2014. The petitioner contacted that federal agency.

29. On March 06, 2014, petitioner prepared and submitted his case in a Discrimination Complaint to the Officer for Civil Rights (i. e. OCR). Copies of petitioner's submission of 3-06-2014 (the Discrimination Complaint), their Dismissal Letter of March 14, 2014, petitioner's Appeal Letter of April 08, 2014, and their May 27, 2014 Response to the Appeal were all filed with the District Court on May 22, 2017 as Exhibit 4 of the Response To Defendants' Renewed Motion For Summary Judgment.

30. The OCR declined to investigate the Complaint. They disposed of the Complaint on the 180 calendar days for filing in their officefrom the last act of alleged discrimination. They noted that the last alleged discriminatory act by the dSu occurred on May 16, 2013 (by Ms. Reed), and the 180 calendar days for filing with the OCR ended on September 12, 2013. That untimeliness obviously was due to the failure of the dSu officials to ever provide petitioner with notification regarding his post-agency review rights (which includes the persons and offices to whom the client must file for review). Furthermore, although petitioner his Request for review to the Governor's Office in August 2013, Ms. Dhunjishah issued their Final Decision 9-11-2013 (one day before the expiration of the 9-12-2013 end of the 180 calendar days for filing with the

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Office of Civil Rights.

31. On June 23, 2015, petitioner filed a "Verified Complaint" in United States District Court for the District of South Carolina, Charleston Division, on forms provided by the Court. The form included instructions as follows:"Do not give legal arguments or cite any cases or statutes. Therefore, on the CIVIL COVER SHEET the petitioner, at Cause Of Action wrote Title 42 U.S.C., Chapter 21, Section 1983, and Vocational Rehabilitation drivers education training. Under CIVIL RIGHTS, petitioner checked off "AMER. w DISABILITIES." In the Complaint petitioner states, at paragraph 7 that Counselor Sealey and the plaintiff signed the I.P.E. contract on March 04, 2011. Indeed petitioner continues to litigate this case as a controversy involving a breach of contract and violation of petitioner's rights (including civil rights, Constitutional rights, and statutory rights).

## REASONS FOR GRANTING THE PETITION

Congress Intent For Passing The Rehabilitation Act of 1973:

32. Congress did not pass the Rehabilitation Act of 1973 to create a set of mere statutes providing for vocational rehab. services for disabled persons in which the State agencies exercise predominance, unrestricted permissible discretions and complete control regarding interruption, or stoppage of approved training for a qualified individual with a disability. Indeed that law is a "civil rights law" meant to subject violators thereof to comparable liability.

33. A motivation for the "Act": "Congress finds that--individuals with disabilities constitute one of the most disadvantaged groups in society." See 29 U.S.C. Section 701(a)(2). Another motivation for the Act:"The purposes of this chaper are--to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society, through--training". See, 29 U.S.C. Sec. 701(b)(1)(D).

A Client Who Has Cosigned An Individualized Plan For Employment And Has Started Participation In Training Therefor Has A Protected Liberty Or Property Interest:

34. Training is a form of schooling(lessons). On 5-16-2013, the Respondent stopped petitioner's training based upon alleged guilt of minor shoplifting whereof petitioner pled "no contest." Under this Court's ruling in Paul v. Davis, 424 U.S. 693, 710 (1976) such educational activity is protected by a liberty or property interest.

Each Time The Respondents Abruptly Stopped The I.P.E. Training Before A Decision By A Mediator or Hearing Officer They Denied Petitioner Substantive/Procedural Due Process:

35. Literally at every stage of client eligibility and I.P.E. (development, components, procedures, notification, mediation, hearings, impact on provision of services) Congress uses the mandatory "shall" (at least sixteen times). See, 29 U.S.C. Sec. 722. It is in that context that Sec.722 requires that the dSu continue to adhere to the approved I.P.E. training in situations disputes arise and the dSu seeks to have the training services officially discontinued. The Section commands as follows:"Unless the individual with a disability so requests, . . . , pending a decision by a mediator, hearing officer, or reviewing officer under this subsection, the designated State unit shall not institute a suspension, reduction, or termination of services being provided for the individual, ..., unless such services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual..." See, 29 U.S.C. Sec. 722(c)(7). This issue was raised by petitioner in the courts below. See, Response To Defendants' Renewed Motion For Summary Judgment, paragraph 10, page 7. The "Condition" that Congress set is that the Decision of the mediator, hearing officer, or reviewing officer must precede the interruption of the I.P.E. training services. That violation by the Respondents is clearly a "structural error" which tainted the proceedings that followed in favor of the dSu.

The dSu Ignored It's Duty To Provide To Petitioner Essential Notice of The Existence of The Federal Civil Rights Laws, and The South Carolina Laws On The Client's Rights To Protection and Assistance Through Due Process and Fairness, and The Should Not Have Prevailed On An Equitable Tolling Issue:

36. As stated in paragraph 7 supra, From the time when the petitioner visited the Respondent dSu office through the eventual Fair Hearing of July 17, 2013, no one in the dSu ever apprised petitioner of his substantive and procedural rights, privileges, or protections that were available to him pursuant to the provisions of the Rehabilitation Act of 1973, the South Carolina Vocational Rehabilitation law, the State Plan, or that such laws (including the Americans with Disabilities Act of 1990) and the implimenting regulations and policies even existed. The Respondent dSu officials were aware that the petitioner did not know about such rights, privileges, and protections. That is the reason the Respondents were able to deny petitioner his right to choose a mediator or hearing officer before they ever interrupted his I.P.E. training, to provide hearing officer Staten with a copy of SCVRD Policy 6.5.1.1., and not provide it to petitioner, and keep the petitioner without knowledge (and timely) of the federal agency that petitioner needed to seek civil rights review of his Complaint about the vocational training violations. Because of the dSu and Office of the Governor failures to properly and timely notify the petitioner regarding the appropriate contact persons and procedures , the petitioner was unable to know how and when to timely file his Complaint with the Office fo Civil Rights, and with the U.S. District Court. The implementing federal regulations uses the mandatory "shall" requiring the Respondents to provide such timely "Notice" to the client. See, 28 CFR Ch. 1, Section 42.505(f).

37. The Respondents' failure to notify petitioner, after the Governor's Office Final Decision, that his next remedy was not with

SCVRD Commissioner for reconsideration, and that petitioner could seek timely review by either the U.S. Department of Education, Office for Civil Rights, or by the U.S. Equal Employment Opportunity Commission, effectively induced petitioner to miss both the 180 calendar days deadline for filing with the OCR, and the one year deadline for filing a petition or complaint in the U.S. District Court for review of the Rehabilitation Act's proceedings. This case demonstrates that this litigant has pursued his rights dilligently, to the point that he filed a defective request for reconsideration with the SCVRD Commissioner , but that the Respondents caused some extraordinary circumstance that prevented him from bringing a timely action. See, Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005). This equitable tolling issue should have been ruled in favor of petitioner. The courts below were presented this issue. See, Response to Defendants' Renewed Motion for Summary Judgment, paragraphs 4 thru 6.

The dSu Officials violated Petitioner's Substantive and Procedural Due Process Rights when They Failed to Ever Provide the Second Leftside (Clip-on) Mirror that the S.C. D.M.V. Required for Petitioner's Driving, Yet They Cited Petitioner's Lane Driving Errors.

38. During petitioner's examinations for Driving Beginner's permits (atleast twice) the South Carolina Department of Motor Vehicles personnel told petitioner that he needed a second (clip-on) leftside rearview mirror put on the vehicle in order for him to drive. Petitioner informed the dSu officials and Lord Ashley driving instructor Jo Ann Lindsey of that requirement each time. The reasons for the second mirror were petitioner's total blind

left eye, visually impaired right eye, and obvious loss of some visual range. During the June 05, 2012 Conference telephone call that petitioner was required to participate in along with six dSu and C.A.P. officials, petitioner was criticized for his sight condition, as well as his age and 1970s criminal record, as reasons that he should not receive further driving training. Ms. Lindsey negatively critiqued, and the C.A.P. ans dSu officials criticized petitioner's lane driving when they discussed whether petitioner should be provided the remainder of his driving lessons. However, neither of them ever provided the clip-on second mirror. The second mirror was a reasonable auxiliary or modification request. See, the "Act", 29 U.S.C. Sec. 723(a)(6)(D) , and the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12103. For these reasons, the Respondents violated petitioner's substantive and procedural due process rights. This issue was raised in the courts below. See, Response To Defendants' Renewed Motion For Summary Judgment, paragraph 20.

**Collateral Estoppel And Res Judicata Barred The Defendants From Rasing Permissible Discretion, Etc. In Their Renewed Motion For Summary Judgment:**

39. In their initial "Motion For Summary Judgment" Memorandum Of Law the Respondents argued that they possessed "permissible discretion" for their forceful actions in abruptly stopping the petitioner's I.P.E. training and breaching the I.P.E. contract. They also argued from a standpoint that petitioner's lawsuit was an "appeal" and sought to have it processed as an appeal. See, their Memorandum of Law, May 17, 2016, pages 14 thru 21. In the

"Response To Summary Judgment" of June 13, 2016, paragraphs 10, 15 -16, and 22-23, petitioner contrdicted Respondents' arguments. In her "Report And Recommendation" of January 30, 2017, Magistrate Judge Mary Gordon Baker rejected the Respondents' such arguments. Baker recommended that the motion be denied, and that the Respondents be allowed to file "additional dispositive motions" in the case. In his one-page "Order" of February 17, 2017, District Judge Patrick Michael Duffy adopted Baker's R & R, denied the Respondents' motion, adopted Baker's recommendation to give the parties time to submit additional dispositive motions. The Respondents did not appeal Duffy's Order to the U.S. Court of Appeals.

40. Petitioner submits that, since the Respondents failed to appeal the decision of the Court , that ruling became the "law of the case", and barred the Respondents from rearguing (or presenting again) those same factual or legal arguments in the case. Yet, the Respondents subsequently filed the "Renewed Motion For Summary Judgment" on on April 18, 2017, and at pages 14 thru 21 thereof, reargued the exact same factual and legal issues already denied by the Court on their previous motion. The doctrines of collateral estoppel and res judicata prevents the Respondents from being allowed to accomplish that. This issue was raised in the courts below. See, Response To. Defendants' Renewed Motion For Summary Judgment, paragraph 1.

**Petitioner's Lawsuit brought Under 42 U.S.C. Section 1983 Against The State Government Entities Responsible For The Policies Used To Abruptly Stop Petitioner's I.P.E. Training Was Properly Brought Against The Government Entities:**

41. As stated at paragraph 11 supra, dSu local office client services manager Shannon Reed called petitioner by telephone and instructed him to be at his telephone to participate in a Conference Call on 6-05-2012. Ms. Reed was contacting petitioner on behalf of dSu director of community and client relations Alfreda King, who arranged a policy action by the dSu to have herself and the other five officials debate with petitioner, and afterwards the six could vote as to whether petitioner should receive further training. On the date of the eventual Fair Hearing (i.e. 7-17-2013) dSu officials submitted Policy 6.5.1.1. (which would limit to a certain number the hours allowed for driver training. On July 09, 2012 Ms. King instituted the policy action by a letter breaching the I.P.E. training contract of 03-04-2011. They are policies employed by the dSu and Office of the Governor, Director of Executive Policy and Programs is the final policymaking entity of those policies. They are not federal policy actions. Those policies were the moving forces of the violations raised by petitioner. Therefore, petitioner properly sued the SCVRD entity and the Office of the Governor entity. Monell v. Department of Social Services, 436 U.S. 658, 694 (1978). This issue was raised in the courts below. See, "Informal Brief" of May 17, 2018 in the U.S. Court of Appeals, 4th Circuit, paragraph 8(b) thereof.

This Lawsuit for Violation of Petitioner's I.P.E. Contract Should Have Been Subject To South Carolina Three-Year Statute of Limitations for Breach of Contracts:

42. This case makes it clear that the central dispute involves the

repeated abrupt stopping of petitioner's I.P.E. training by dSu officials without a decision by a mediator, hearing officer, or reviewing officer, in violation of mandatory language procedures. On the date petitioner cosigned the I.P.E. Counselor Sealey told him that it is a contract. Throughout the litigation petitioner asserted that the Respondents breached that contract several times. South Carolina Code of Laws have more than one statute of limitations analogous to the context of the Rehabilitation Act of 1973. In situations where a qualified individual with a disability brings a lawsuit for damages for a defendant's breach of an I.P.E. contract, in violation of mandatory procedural protections, the more appropriate one is the breach of contract three-year statute of limitations.See, S. C. Code, Section 15-3-530(5). South Carolina Human Affairs Law, S.C. Code, Sections 1-13-90(d)(7) and (8), (e) and (f) becomes more appropriate in situations where a plaintiff brings an "appeal" to U.S. District Court from mere discretionary actions of State officials. The petitioner asked the District Court to apply the State breach of contract three-year statute of limitations to the current dispute. Judge Duffy refused to do so. See, Informal Brief (in U.S. Court of Appeals, 4th Cir.) at paragraph 8(a) thereof.

The Evidence Presented By Petitioner In This Case Demonstrate Genuine Issues of Material Facts;

43. The petitioner filed a "verified" Complaint in District Court based on personal factual knowledge on 6-23-2015. Petitioner filed a "verified" Amended Complaint on March 14, 2016 (the change was only in the relief sought in damages). Petitioner filed a detailed

Response To Renewed Motion For Summary Judgment, along with a supporting "Affidavit" based on personal knowledge. The legal arguments in this case: that the Respondents' failure to provide essential and mandatory "notices" to a client who they knew did not otherwise was informed of the law and his rights and was unaware of a one-year statute of limitation for filing the lawsuit ; that on the July 26, 2012 letter signed in the presence of Ms. Reed, the petitioner did not consent to the policy action by Ms. King in her 7-09-2012 letter; that the Respondents' repeated abrupt stopping of petitioner's training with first a decision authorizing such action violated the federal "Act"; etc., all presented the District Court with genuine disputes of material facts entitled to some belief if viewed in the light most favorable to the nonmoving party.

Petitioner Made The Necessary Showing In District Court In Support of His Motion To Make A Second Amendment To The Complaint:

44. As already stated at paragraph 39 supra, the District Court allowed the Respondents to file their Renewed Motion For Summary Judgment. In the Renewed Motion the Respondents raised a threshold defense that petitioner did not name a "person" when he named the State entities as liable in the lawsuit. In addition to his Response To Renewed Motion For Summary Judgment, petitioner filed a Motion For Permission To Make A Second Amendment To The Complaint inorder for him to name the persons responsible for the violations in their official capacities. Each of the new defendants were very involved in the violations and the investigation and defense for

the Respondents. To name these persons would not unduly prejudice them. Each of them have been repeatedly identified in filings submitted by petitioner. The theory of the case would not change by such an amendment. When viewed with reason the motion clearly satisfied the interests of justice and the requirement of good cause. See, Informal Brief in the Court of Appeals, at pages 15 and 16 thereof.

The Judges of The U.S. Court of Appeals, 4th Circuit Did Not Fulfill Their Duty To Apply and Adhere To Independent De Novo Review of The Case:

45. The Courts of Appeals review "de novo" questions of law and mixed questions of law and facts predominated by law issues. Under such reviews, the Courts considers the issues independently as if the matter had not been previously considered, and does not accord any deference to the lower courts opinions.

46. In the case at bar, petitioner submits that the three-judge panel did not adhere to the proper standard of review, and that they merely rubberstamped the lower court ruling entirely, even on law and predominate law issues. In affirming the judgment of the District Court in a "Per Curiam" unpublished decision, the Court simply stated as follows:

> "King Grant-Davis appeals the district court's order denying leave to amend his amended complaint and adopting the magistrate judge's recommendation and granting summary judgment to Defendants in King Grant-Davis' civil action. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. Grant-Davis v. S.C. Office of the Governor, No. 2:15-cv-02521-PMD (D.S.C. Mar. 21, 2018). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process."

46. Numerous issues of law were presented to the Court of Appeals and the District Court, as indicated in the above reasons for granting the Petition. Indeed ". . . some require courts to expound on the law, particularly by amplifying or elaborating on a broad legal standard. When that is so--when applying the law involves developing auxiliary legal principles of use in other cases... ." U.S. Bank N.A. v. Village at Lakerridge, LLC, 583 U.S. ____ (2018) Slip Opinion, page 8, Justice KAGAN for a unanimous Court.

47. Before the courts below were crucial law questions, such as: Congress' intent for the mandatory language it employed in 29 U.S. C. Section 722(c)(7) concerning the "impact on services" pending a decision by a mediator, a hearing officer, or a reviewing officer regarding disputes surrounding a client's I.P.E. training; whether whether the SCVRD after totally failing to provide a client with essential mandatory notices throughout different phases of the vocational process, were entitled to prevail on the equitable tolling defense; whether a client's training pursuant to the I.P.E. is a protected liberty or property interest; whether the lawsuit brought against the Respondents employed the "policy" actions agaist the petitioner's further training were properly named in their official capacities; etc., in the foregoing arguments. Other than this instant argument, both of the Courts below were presented with the foregoing issues, however inartfully drawn they may be.

Conclusion at following page.

## CONCLUSION

For the foregoing reasons, King Grant-Davis requests that the Court grant this Petition for writ of certiorara.

Respectfully Submitted,
King Grant - Davis

King Grant-Davis*
3210-A Meeting Street
North Charleston, S.C. 29405
(843) 746-9543 (Landline)

*Petitioner, Pro se

Dated: December 29, 2018
(Saturday)

ORIGINAL



IN THE SUPREME COURT OF THE UNITED STATES

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No.

KING GRANT-DAVIS, PETITIONER,

vs.

SOUTH CAROLINA OFFICE OF THE GOVERNOR;
SOUTH CAROLINA VOCATIONAL REHABILITATION
DEPARTMENT, RESPONDENTS

---

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

---

PETITIONER'S NOTICE OF MOTION AND MOTION
FOR LEAVE TO FILE ADDENDUM OR SUPPLEMENT
TO THE PETITION
(This Motion under Supreme Court Rule 21)

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Hearing: Before The Court or The Circuit
Justice
On the Pleadings: No oral Argument
requested.
Date and Time: To be Determined by
The Court or a Justice Thereof

KING GRANT-DAVIS
3210-A Meeting Street
North Charleston, S.C. 29405-7968
Telephone:843 746-9543 (Landline)

Petitioner, Pro se

TO THE RESPONDENTS AND THEIR COUNSEL:

PLEASE TAKE NOTICE that on a date and time to be determind by the Supreme Court of the United States, the petitioner will move the Court for leave to file an Addendum or Supplement to the Petition for Writ of Certiorari under Rule 21 of the Court, with no oral argument.

The Motion shall be based on this Notice, the Memorandum of Point and Authorities, and the Lower Courts' Records in this case, and any other material the Court shall deem just and proper.

Dated: January 17, 2019

Very truly,

King Grant-Davis

King Grant-Davis,
Petitioner / Movant, Pro se

M O T I O N

IF IT PLEASES THE COURT, Petitioner King Grant-Davis hereby requests leave to file the following "Addendum" or "Supplement" to the Petition for Writ of Certiorari dated December 29, 2018.

MEMORANDUM OF POINT AND AUTHORITIES

INTRODUCTION

In the Petition to this Court, one of the Questions Presented relates to the appropriate "statute of limitations" for filing the lawsuit (i.e. Complaint under 42 U.S.C. Section 1983, the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990, as amended). See, Petition at paragraph 7 page (i) 2 of 3. That "statute of limitations" argument in the "Reasons For Granting The Petition" is at paragraph 42, pages 22 and 23 of the Petition. Therein, petitioner argued that South Carolina's "three-year" statute of limitations, S.C.Code Ann. Section 15-3-530, for breach of contract actions should have been applied in this case. In drafting the Petition, petitioner intended to raise the correlated reason the Section 15-3-530 three-year limitation period applies in this case. Actions upon a contract are covered under subdivision (1) of Section 15-3-530. Section 15-3-530 is also the "General / Residual Personal Injury Statute of Limitations in South Carolina."

STATEMENT OF FACTS AND ARGUMENT

1. In their "Renewed Motion For Summary Judgment" dated April 18, 2017, the Respondents challenged petitioner's bringing Section 42 U.S.C. 1983 to enforce his federal rights. In support of that

position they cited lower federal courts rulings.See pages 32-34 of that Motion.

2. In petitioner's "Response To Renewed Motion For Summary Judgment" he disputed the Respondents' assertions that Section 1983 cannot enforce his federal rights. See paragraph 21 at pages 15-16 of the Response.

3. In her "Report And Recommendation" dated January 26, 2018, Magistrate Judge Mary Gordon Baker focused on her reasoning that petitioner could not sue the Respondents in their official capacities. See R & R at pages 9 and 10.

4. In his "Objections To Report And Recommendation" dated February 09, 2018, the petitioner argued that the Respondents breached his I.P.E. "contract" and South Carolina's "three-year limitations period for breach of contracts actions should apply in his case. See "Objections" at paragraph 9, pages 4-5. Also, petitioner objected upon the ground that the I.P.E. "contract" is a right covered under 42 U.S.C. Section 1981. See, "Objections" at paragraph 18, pages 10-11.

5. In his "Order" dated March 21, 2018, Judge Patrick Michael Duffy focussed on his reasoning that a one-year limitations period apply to A.D.A. Title II, and Rehabilitation Act Section 504 causes of action.

6. On direct Appeal in the U.S. Court of Appeals, 4th Circuit , the petitioner argued that this Court's holding in Owens v. Okure, 488 U.S. 235, 249-250 (1989), that the State's general / residual personal injury actions limitation period ,S.C.Code 15-

3-530(5) was applicable under 42 U.S.C. Section 1983, and that the I.P.E. contract breach claim also had a three-year limitations period under S.C.Code Sec. 15-3-530(1). See, petitioner's "INFORMAL BRIEF", at paragraph 8(a), pages 12-13 dated May 17, 2018 (filed 05/21/2018 in the U.S. Court of Appeals).

7. The grounds being raised in the U.S. Supreme Court now were properly raised in each of the lower federal courts earlier. The Court of Appeals, in its per curiam decision, like Magistrate Judge Baker and Judge Duffy, was silent on these points of law raised by petitioner.

WHEREFORE, petitioner prays that ths Court grants the within Motion for Leave to File an Addendum or Supplement to the Petition For Writ Of Certitorari.

Dated January 17, 2019

Respectfully submitted,

King Grant-Davis

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