

TA
NO. 18-7899

SUPREME COURT OF THE UNITED STATES

RAMIREZ D. DENIBERRY V. THIRD CIRCUIT COURT OF MICHIGAN

CERTIFICATION OF GOOD FAITH / PROOF OF SERVICE

RAMIREZ DEMARCO DENIBERRY, PETITIONER, PRO SE
SAGINAW CORR. FAC.
9625 PIERCE RD.
FREELAND, MI 48623

FILED

MAY 07 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

THE INCLUDED PETITION FOR REHEARING IS RESTRICTED TO THE GROUNDS
SPECIFIED IN SUPREME COURT RULE 44.2, AND IS PRESENTED IN
GOOD FAITH AND NOT FOR DELAY.

DUE TO THE CONDITIONS OF DISCIPLINARY SEGREGATION AT THE FACILITY
WHICH THE PETITIONER IS HOUSED, THE PETITIONER CANNOT COMPLY
WITH RULE 29.05, AND OTHER RULES, WITHOUT THE RISK OF SUBMITTING
AN UNTIMELY PETITION. HOWEVER, THE PETITIONER HOPES THAT
THE CLERK OF THIS COURT MAY MAKE SERVICE UPON THE RESPONDENT,
IF POSSIBLE, AT THE FOLLOWING ADDRESS:

• THIRD CIRCUIT COURT OF MICHIGAN, RESPONDENT
1441 ST. ANTOINE
DETROIT, MI 48226
(313) 224.2520

RECEIVED

MAY 15 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Ramirez Demarco Deniberry

RAMIREZ DEMARCO DENIBERRY
PETITIONER, PRO SE

NO. 18-7899

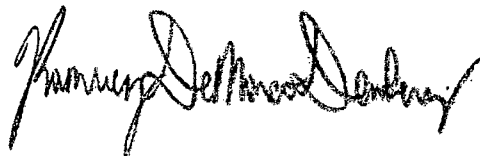
SUPREME COURT OF THE UNITED STATES

RAMIREZ D. DENBERRY V. THIRD CIRCUIT COURT OF MICHIGAN

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

RAMIREZ DEMARCO DENBERRY, PETITIONER, PRO SE
SAGINAW CORR. FAC.
9625 PIERCE RD.
FREELAND, MI 48623

1. THE MOVANT IS PRESENTLY HOUSED IN DISCIPLINARY SEGREGATION AT THE ABOVE INSTITUTION, AND FOR THAT REASON HAS NO ACCESS TO NOTARY SERVICES (RULE 39.01) OR STAPLES (RULE 33.02; RULE 39.02).
2. LEAVE TO PROCEED IN FORMA PAUPERIS WAS SOUGHT IN THE DISTRICT COURT, THE COURT OF APPEALS, AND IN THIS COURT; LEAVE WAS GRANTED, DENIED, AND GRANTED, RESPECTIVELY.
3. LEAVE TO PROCEED IN FORMA PAUPERIS IS SOUGHT FOR THE PURPOSE OF FILING THE INCLUDED PETITION FOR REHEARING.
4. THE MOVANT IS AWARE THAT THIS MOTION DOES NOT MEET ALL THE REQUIREMENTS OF THIS COURT'S RULES, BUT ASSERTS THAT SUCH FAILURE IS ATTRIBUTED TO THE CONDITIONS OF DISCIPLINARY SEGREGATION AT THE INSTITUTION, AND IS NOT DELIBERATE NEGLIGENCE ON THE PART OF THE MOVANT.
5. THE MOVANT IS CONSTRAINED TO TAKE ACTIONS THAT HE BELIEVES ARE NECESSARY TO SUBMIT A TIMELY PETITION FOR REHEARING, AND PRAYS THAT THESE DOCUMENTS, IF THEY ARE NOT GRANTED, WILL AT LEAST BE RETURNED IN ACCORDANCE WITH RULE 44.06 SO THAT THE MOVANT MAY ATTEMPT TO CORRECT THEM.



RAMIREZ DEMARCO DENBERRY
PETITIONER, PRO SE

NO. 18-7899

SUPREME COURT OF THE UNITED STATES

RAMIREZ D. DEWBERRY V. THIRD CIRCUIT COURT OF MICHIGAN

PETITION FOR REHEARING

RAMIREZ DEMARCO DEWBERRY, PETITIONER, PRO SE
SAGINAW CORR. FAC.
9625 PIERCE RD.
FREELAND, MI 48623

A. THE GROUNDS FOR THE ~~PETITION~~ PETITION

ON OCTOBER 1, 2018, THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT DISMISSED THE PETITIONER'S CAUSE FOR "WANT OF PROSECUTION." ON PETITION FOR WRIT OF CERTIORARI, THE PETITIONER SOUGHT REVIEW OF THE DISMISSAL. ON APRIL 15, 2019, THIS COURT DENIED CERTIORARI. PURSUANT TO SUPREME COURT RULE 44.2, THE PETITIONER SEEKS TO APPRISE THIS COURT OF "OTHER SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED" WHICH JUSTIFY APPLICATION OF THE ESTABLISHED DOCTRINE THAT THE INTEREST IN FINALITY OF LITIGATION MUST YIELD WHERE THE INTERESTS OF JUSTICE WOULD MAKE UNFAIR THE STRICT APPLICATION OF SUPREME COURT RULES. SEE *GONDECK V. PAN AMERICAN WORLD AIRWAYS, INC.*, 382 U.S. 25.

B. THE ARGUMENT

WHETHER THE COURT OF APPEALS' DISMISSAL CAN STAND DEPENDS ON WHETHER IT WAS "WITHIN THE PERMISSIBLE RANGE OF THE COURTS' DISCRETION" OR WHETHER IT "AMOUNTED TO AN ABUSE OF DISCRETION." SEE *LINK V. WABASH R. CO.*, 370 U.S. 626, 633.

IN DETERMINING WHETHER A COURTS' DISMISSAL WAS WITHIN THE PERMISSIBLE RANGE OF THE COURTS' DISCRETION OR AMOUNTED TO AN ABUSE OF DISCRETION, THIS COURT SHOULD - AS IT DID IN *LINK V. WABASH R. CO.*, FOREMENTIONED - TAKE THE FOLLOWING FACTORS INTO CONSIDERATION: (1) WHETHER THE PETITIONER CAN ADEQUATELY EXPLAIN THE WANT OF PROSECUTION; (2) WHETHER IT COULD REASONABLY BE INFERRED THAT THE PETITIONER HAD BEEN DELIBERATELY PROCEEDING IN A DILATORY FASHION; (3) WHETHER DISMISSAL OF THE PETITIONER'S CAUSE IMPOSES AN UNJUST PENALTY ON THE PETITIONER; (4) WHETHER THE COURTS' FINDING ALONE JUSTIFIES A DISMISSAL IF THE RECORD SHOWS NO OTHER EVIDENCE OF DILATORINESS ON THE PART OF THE PETITIONER.

[CONTINUED]

(5) WHETHER THERE IS ANYTHING IN THE RECORD TO INDICATE THAT THE WANT OF PROSECUTION WAS OTHER THAN DELIBERATE OR THE PRODUCT OF NEGLIGENCE, AND (6) WHETHER THE WANT OF PROSECUTION WAS DUE TO INABILITY FOSTERED NEITHER BY THE PETITIONER'S OWN CONDUCT NOR BY CIRCUMSTANCES WITHIN THE PETITIONER'S CONTROL. SEE 370 U.S., AT 633-636.

THE PETITIONER CONTENDS THAT THE ORDER OF THE COURT OF APPEALS DISMISSING HIS CAUSE HAS NO SOUND BASIS IN LAW, IN FACT, OR IN JUSTICE. THE PETITIONER, AFTER BEING GRANTED PAUPER STATUS, BROUGHT AN ACTION UNDER TITLE 28 SECTION 2201 OF THE UNITED STATES CODE SEEKING A DECLARATORY JUDGMENT AGAINST THE RESPONDENT'S VIOLATION OF HIS FOURTEENTH AMENDMENT RIGHTS. SUBSEQUENTLY, THE COURT OF APPEALS DISMISSED THAT ACTION AFTER THE \$505 FILING FEE WAS NOT PAID. THIS COURT'S DENIAL OF CERTIORARI AND REHEARING WILL EFFECTIVELY END THE PETITIONER'S LAWSUIT AND PREVENT HIS FOURTEENTH AMENDMENT RIGHTS FROM PREVAILING AGAINST THE RESPONDENT.

BY SUCH DENIALS, THIS COURT EFFECTIVELY UPHOLDS THE COURT OF APPEALS' DISMISSAL ORDER UPON THE GROUND OF "WANT OF PROSECUTION" - WITHOUT TAKING ANY OF THE FACTORS DETERMINED IN *LINIC V. KIABASH RO, CO.*, FOREMENTIONED, INTO CONSIDERATION. THE PETITIONER CONTENDS THAT THERE IS NOTHING IN THE RECORD TO SUPPORT THE DISMISSAL OF HIS CAUSE FOR "WANT OF PROSECUTION", AND BELIEVES THAT THIS COURT IS IN ERROR WHERE ITS DENIAL OF CERTIORARI AND REHEARING SUGGESTS ITS APPROVAL THAT A PETITIONER'S INABILITY TO PAY A FILING FEE JUSTIFIES A DISMISSAL FOR "WANT OF PROSECUTION".

THE COURT OF APPEALS' DISMISSAL RESTS NOT UPON ANY GENERAL WANT OF PROSECUTION BUT INSTEAD WHOLLY UPON THE PETITIONER'S INABILITY TO PAY THE FILING FEE. FROM THIS, THE PETITIONER CONTENDS THAT IT IS CLEAR THAT THE COURT OF APPEALS DISMISSED THE CASE NOT FOR ANY "WANT OF PROSECUTION" BUT SOLELY AS A SANCTION FOR THE PETITIONER'S INABILITY TO PAY THE FILING FEE.

THE PETITIONER BELIEVES THAT THIS COURT'S UPHOLDING OF THE DISMISSAL IN THIS CASE UPON THE GROUND OF "WANT OF PROSECUTION" WOULD BE WRONG BECAUSE THIS CASE HAS BEEN A VERY LIVE ONE FROM THE DATE IT WAS FILED RIGHT UP TO THIS VERY MOMENT. FROM AUGUST 22, 2017, THE DATE THE PETITIONER WAS GRANTED PAUPER STATUS TO PROCEED IN FORMA PAUPERIS, TO OCTOBER 1, 2018, THE DATE OF DISMISSAL, MOTIONS AND ACTIVITIES OF VARIOUS KINDS BY THE PETITIONER ALONE WERE TAKING PLACE IN THE COURTS. THE PETITIONER BELIEVES THAT IF WANT IS TO BE PLACED UPON ANY PARTY, IT MUST BE PLACED UPON THE RESPONDENT AND THE LOWER COURTS. THE RESPONDENT HAS NOT FILED A SINGLE DOCUMENT OF ANY KIND IN DEFENSE FROM OR RESPONSE TO THE PETITIONER'S FOURTEENTH AMENDMENT CLAIM AGAINST IT. BOTH THE DISTRICT COURT AND THE COURT OF APPEALS HAVE GONE SO FAR AS TO PURPOSELY MISCONSTRUCT THE PETITIONER'S CLAIM.

[CONTINUED]

SO AS TO RENDER IT INSUFFICIENT WHERE IT WOULD OTHERWISE BE SUFFICIENT IF GIVEN PROPER CONSTRUCTION. AT THIS STAGE, THE CLAIM HAS BEEN DEFEATED BY ERRONEOUS RULINGS MADE IN ABUSES OF DISCRETION. YET THIS COURT HAS BEEN UNWILLING TO REVIEW THE RECORD IN THIS CASE SO THAT THIS INJUSTICE MAY BE CORRECTED. TO THE PETITIONER, IT IS AS IF THE RESPONDENT AND THE FEDERAL COURTS HAVE A COVENANT BY WHICH THE FEDERAL COURTS FUNCTION TO INSULATE THE RESPONDENT FROM ANY ACCOUNTABILITY TO THE PETITIONER.

FURTHERMORE, THE PETITIONER'S INABILITY TO PAY THE FILING FEE SHOWS NO INCLINATION ON THE PART OF THE PETITIONER TO ABANDON HIS LAWSUIT, FOR HE PERSISTS, BY BOTH HIS PREVIOUS PETITION FOR WRIT OF HABEAS CORPUS AND THE PRESENT PETITION FOR REHEARING, IN THE LITIGATION OF HIS FOURTEENTH AMENDMENT CLAIM AGAINST THE RESPONDENT. THE PETITIONER'S INABILITY TO PAY A FILING FEE CANNOT BY ANY STRETCH OF THE IMAGINATION BE MADE TO INDICATE THAT THE PETITIONER HAS PROCEEDED IN THE WAY PEOPLE DO WHO LET THEIR LAWSUITS DIE FOR "WANT OF PROSECUTION". THE PETITIONER HAD PLACED HIS TRUST IN THIS COURT THAT IT WOULD NOT APPROVE DISMISSAL OF HIS CASE ON SUCH GROUNDS AND CIRCUMSTANCES.

UNDER THE FOREGOING FACTS, THE PETITIONER CONTENTS THAT IT INFLECTS THE GROSSEST KIND OF INJUSTICE UPON HIM FOR THIS COURT TO UPHOLD DISMISSAL OF HIS CASE ON THE GROUND THAT IT WAS NOT BEING PROSECUTED. THE PETITIONER HAS BEEN DOING THE BEST THAT HE CAN TO SUCCESSFULLY LITIGATE HIS FOURTEENTH AMENDMENT CLAIM - WITHOUT THE BENEFIT OF COUNSEL, ANY FORMAL EDUCATION IN THE PRACTICE OF LAW, OR ADEQUATE FINANCIAL RESOURCES; AND WHILE ONLY BEING ALLOTTED ONE HOUR A DAY, FOUR DAYS A WEEK, TO CONDUCT LEGAL RESEARCH AT THE CORRECTIONAL FACILITY IN WHICH HE IS HOUSED. FAR FROM SHOWING A "WANT OF PROSECUTION", THE PETITIONER CONTENTS THAT THE RECORD WILL SHOW THAT THE CASE WAS BEING ACTIVELY PROSECUTED AND THAT THE GREATER PART OF THE CASE CONSISTS OF THE STEPS THAT WERE BEING TAKEN BY THE PETITIONER IN FURTHERANCE OF THE LITIGATION.

THE PETITIONER FILED A 28 USC 2201 ACTION IN COURT, AS WAS HIS RIGHT, CLAIMING THE VIOLATION OF HIS FOURTEENTH AMENDMENT RIGHTS BY THE RESPONDENT FOR WHICH HE SOUGHT RELIEF. HIS CASE WAS INITIALLY DISMISSED BECAUSE OF THE TRIAL JUDGE'S MISCONSTRUCTION OF HIS CLAIM AND THE ERRONEOUS RULING ON A QUESTION OF THE SUFFICIENCY OF THE CLAIM WHICH RESULTED, A RULING WHICH, BECAUSE IT HAS NOT BEEN REVERSED, HAS FRUSTRATED THE PETITIONER'S RIGHT TO A TRIAL ON THE MERITS. THE PETITIONER CONTENTS THAT SUCH A MISCONSTRUCTION SHOULD NEVER HAVE OCCURRED, FOR IT IS PLAINLY INCONSISTENT WITH THE FEDERAL RULES OF CIVIL PROCEDURE RULE 8(C). DESPITE THIS INCONSISTENCY, THE COURT OF APPEALS, FOLLOWING ITS DEFERENCE TO THE DISTRICT COURT'S MISCONSTRUCTION AND RESULTING ERRONEOUS RULING, THEN THREW THE PETITIONER OUT OF COURT BECAUSE OF HIS INABILITY TO PAY A FILING FEE.

THE PETITIONER CONTENDS THAT THERE CAN BE NO DOUBT THAT WHEN THE FEDERAL AND STATE GOVERNMENTS BRING CIVIL AND CRIMINAL SUITS AGAINST A DEFENDANT SIMILARLY SITUATED AS HE, THE RESPECTIVE COURTS DO NOT GO TO SUCH LENGTHS, AS IN THIS CASE, TO DEFEAT THE CAUSES OF THE GOVERNMENT, WITH WHOM THEIR LEGAL INTERESTS RESIDE. THE RESULT ACTUALLY REACHED IN THIS CASE, HOWEVER, IS THAT THIS COURT, THIS FAIR, HAS CONDONED A SITUATION IN WHICH THE COURTS HAVE GONE TO GREAT LENGTHS TO DEFEAT THE CAUSE OF AN IMPRISONED PETITIONER PROCEEDING PRO SE, IN FORMA PAUPERIS, WHO BROUGHT A SUIT AGAINST THE GOVERNMENT. THE RESULT HERE CANNOT BE SQUARED WITH THE CONSTITUTION.

THE PETITIONER HAS BEEN INDEBTED TO PAY A FILING FEE WHICH THE COURTS HAVE ALREADY CERTIFIED THAT HE CANNOT AFFORD TO PAY, THEN BEEN THROWN OUT OF COURT - BY THE COURTS THEMSELVES - FLAT ON HIS POOR, BLACK ASS FOR NO OTHER REASON THAN HIS INABILITY TO PAY THE FILING FEE. WHY AND HOW HAS THIS HAPPENED? "[T]HE VERY PURPOSES FOR WHICH COURTS WERE CREATED [ARE] TO TRY CASES ON THEIR MERITS AND RENDER JUDGMENTS IN ACCORDANCE WITH THE SUBSTANTIAL RIGHTS OF THE PARTIES." (QUOTING MR. JUSTICE BLACK, 370 U.S., AT 648) INSTEAD, HERE THIS COURT HAS UPHOLD THE SACRIFICE OF THE PETITIONER'S FOURTEENTH AMENDMENT RIGHTS AT THE EXPENSE OF JUSTICE.

MR. JUSTICE BLACK HAD FOREWARNED THIS COURT NEARLY SIX DECADES AGO, IN *LINK V. WABASH R. CO.* "..... ANY ATTEMPT [AT] DISMISSING MERITORIOUS LAWSUITS IS DOOMED TO FAIL LITIGANTS WITH MERITORIOUS LAWSUITS ARE NOT LIKELY TO ACCEPT UNFAIR RULINGS OF THAT KIND WITHOUT EXHAUSTING ALL AVAILABLE APPELLATE REMEDIES. CONSEQUENTLY, ANY [THING] ACCOMPLISHED BY SUCH DISMISSALS WILL BE MORE THAN OFFSET BY THE INCREASED BURDEN ON APPELLATE COURTS." 370 U.S., AT 649. ACCORDINGLY, THIS PETITIONER SOLEMNLY VOWS THAT HE WILL NOT ACCEPT THE UNFAIR DISMISSAL OF HIS CAUSE AND WILL EXHAUST ALL AVAILABLE APPELLATE REMEDIES UNTIL HIS CAUSE IS PROPERLY CONSIDERED SO AS TO DO HIM THE JUSTICE HE IS DUE, BUT SHOULD ALL AVAILABLE APPELLATE REMEDIES PROVE TO BE EMPTY FORMALITIES, AND SHOULD THE COURTS PROVE THAT THEY ARE UNFIT TO BE ENTRUSTED WITH THE PRESERVATION AND PROTECTION OF THE PETITIONER'S RIGHTS, THEN THIS PETITIONER WILL FOLLOW THE EXAMPLE SET BY THE FOUNDING FATHERS OF THE UNITED STATES, AND WILL RISK HIS LIFE AND LIBERTY AND THE PRESERVATION AND PROTECTION OF THEM INTO HIS OWN MEANS.

BY DENYING THIS PETITION FOR REHEARING, THIS COURT WILL HAVE PUT AN UNJUST END TO THIS CAUSE WITHOUT THE MERITS OF THE CAUSE HAVING EVER TRULY BEEN REACHED. THE END RESULT OF THE ENTIRETY OF THE LEGAL PROCEEDINGS IN THIS CASE WILL BE THAT MUCH TIME AND MANY RESOURCES HAVE BEEN WASTED AND YET NO JUSTICE HAS BEEN DONE - AND THIS COURT WILL HAVE EFFECTIVELY PLACED ITS STAMP OF APPROVAL UPON SUCH A PROCESS.

C. THE CONCLUSION

BUT FOR THE PETITIONER BEING DENIED HIS DAY IN COURT - AND, THEREBY, AN OPPORTUNITY TO SUBSTANTIATE HIS CLAIM AGAINST THE RESPONDENT BY BEING HEARD IN ARGUMENT - THE INTERESTS OF JUSTICE MAY HAVE PREVAILED IN THIS CASE. INSTEAD THE FEDERAL COURTS' INTERESTS IN FINALITY ^{OF} ~~AND~~ LITIGATION AND SPEED IN ADMINISTRATION HAVE SUPERCEDED THE INTERESTS OF JUSTICE, AND THE PETITIONER'S CAUSE HAS BEEN DISMISSED WITHOUT HAVING EVER BEEN TRIED ON ITS MERITS. WITH THIS COURT'S APPROVAL, THE LEGAL PROCESSES ESTABLISHED BY THE FEDERAL LAWS AND RULES FOR THE PURPOSE OF SATISFYING THE INTERESTS OF JUSTICE ARE INSTEAD BEING USED TO UNDERMINE JUSTICE BY DEPRIVING LITIGANTS OF THEIR DAY IN COURT, AND PREVENTING THE FAIR AND JUST DETERMINATION OF LAWSUITS BY A TRIAL ON THE MERITS.

TO QUOTE MR. JUSTICE BLACK: ".....IT IS OF VERY GREAT IMPORTANCE TO EVERYONE IN THIS COUNTRY THAT WE DO NOT ESTABLISH THE PRACTICE OF THROWING LITIGANTS OUT OF COURT". 370 U.S. 649. HOWEVER, DESPITE MR. JUSTICE BLACK'S REPEATED AND PROPHETIC WARNINGS, THE PRACTICE HAS BEEN WELL-ESTABLISHED IN THE FEDERAL COURTS. SEE, E.G., SANTANA V. UNITED STATES, 385 U.S. 848, MR. JUSTICE BLACK, DISSENTING; BEAUFORT CONCRETE CO. V. ATLANTIC STATES CONSTR. CO., 384 U.S. 1004, MR. JUSTICE BLACK, DISSENTING; LORD V. HELLMAN DOLLAR, 383 U.S. 928, MR. JUSTICE BLACK, DISSENTING; ~~RE~~ BLESS V. MURCHISON, 383 U.S. 946, MR. JUSTICE BLACK, DISSENTING; LINK V. WABASH R. CO., 370 U.S. 626, 636, MR. JUSTICE BLACK, DISSENTING.

IS THIS COURT WILLING TO TURN A BLIND EYE TO INJUSTICE IN THE INTERESTS OF SPEED IN ADMINISTRATION AND FINALITY OF LITIGATION, YET UNWILLING TO FULFILL ITS RESPONSIBILITY OF PRESERVING AND PROTECTING THE RIGHTS OF THE PEOPLE IN THE INTERESTS OF JUSTICE? THE PETITIONER'S CAUSE IS ONE OF MERIT - EVEN IF HE IS UNABLE TO ARTICULATE THE MERITS OF HIS CAUSE IN TERMS OF LEGALESE. YET, WILL THE PETITIONER AND HOW MANY OTHERS BE MADE TO LANGUISH IN PRISON OR OTHERWISE BE DENIED RELIEF?

THE PETITIONER PRAYS THAT THIS COURT WILL GRANT THIS PETITION FOR REVIEWING, IN THE INTERESTS OF JUSTICE IF NOT IN THE PETITIONER'S LEGAL INTERESTS.


RAMIREE DEWBERRY, PETITIONER, PRO SE