

ORIGINAL

18-7959  
No. \_\_\_\_\_

FILED

JAN 18 2019

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SUPREME COURT, U.S.

IN THE  
SUPREME COURT OF THE UNITED STATES

Paul D. Maze — PETITIONER  
(Your Name)

vs.

Terrell, et. al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Sixth Circuit Court of Appeals  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Paul D. Maze, Reg. #25428-076  
(Your Name)

FCI Greenville, Po Box 5000  
(Address)

Greenville, Illinois 62246  
(City, State, Zip Code)

N/A  
(Phone Number)

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#### IV. QUESTION(S) PRESENTED

- 1) Does a prisoner's §1983 civil matter require a remand if a District Court wrongly equate the standard for frivolousness of a complaint under §1915(d) with the standard for failure to state a claim under F.R.Civ.P. 12(b)(6) ?
- 2) Violate a prisoner's Due Process by wrongly dismissing a valid §1983 complaint ?
- 3) Can Rule 12(b)(6) be based upon countenance dismissals on a Judge's disbelief of a complaint's factual allegations ?
- 4) Did the District Court inflate these standards in violation of prisoner's Due Process rights under PLRA, by the denial of an indigent Plaintiff of the practical protection of Rule 12(b)(6), Notice of a Pending Motion to Dismiss, and an opportunity to amend the complaint before the Motion was ruled, *sua sponte*, under §1915(d) ?
- 5) Does a civil matter, which a ruling under Appeal §1662 - effects of decision on other grounds, by invoking Neitzke v. Williams, [28 U.S.C. §1915(d)], by the District Court violate Due Process by its' failure to abide prevailing laws and legal standards, under F.R.Civ.P. Rule 59(e) and 60(b), Motion for Reconsideration, and a Motion to Reopen under a Showing of Mistake, based upon newly-discovered evidence ?
- 6) Can a District Court, upon official request by Petitioner, under F.R.Evid. §201(c)(2) refuse to take Judicial Notice of provided facts, and, under F.R.Evid. §201(e), also refuse to hold the entitled hearing on the propriety of refusal to accept said evidence as Judicially-Noticed, after a formal request to hold said hearing ?
- 7) Is it error for a District Judge to ignore the claim of Imminent danger exception, under §1915(g) in dismissal of a three-strike §1983 party ?
- 8) Is it failure to consider and determine dismissals of a pro Se indigent party under Haines v. Kerner, for standards of proper Motions ?

QUESTION(S) PRESENTED

- 10) Did the District Court violate PLRA litigant Pro Se status Petitioner by its' failure to literally construe his Pro Se litigant pleading?
- 11) Did the District Court fail to hold this PLRA Pro Se litigant Petitioner status, by not imposing the less stringent standard of review?
- 12) Did the District Court violate fundamental Federal Rules of Civil Procedure, Rule 12(b)(6), by its' dismissal, as, being under 28 U.S.C. §1915(d), frivolous?
- 13) Did the District Court's mistakes, analysed under Rule 60(b) constitute an obvious error of law, prior to the court's ruling?
- 14) Did the District Court's actions constitute an abuse of discretion?
- 15) Did the District Court's failure to review Pro Se litigant's EXHIBITS attached to the Rule 60(b) Motion violate Due Process to an evidentiary hearing?
- 16) Did the District Court violate the American with Disability Act?
- 17) Should the District Court be required to recuse the presiding Judge if he has shown bias in the proceedings?
- 18) Should the District Court be held liable for reimbursing Pro Se litigant's financial costs, for causing additional financial crisis?
- 19) Did the District Court violate Supreme Court precedents, cases Farmer v. Brennan, and Estelle v. Gamble; Ashcroft v. Iqbal, Neitzke v. Williams, Wilson v. Seiter, Hudson v. McMillan, and Gregg v. Georgia. ?

## 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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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**

**[X] 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 2018 US App. LEXIS 13714 (6th Cir.), 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 2016 US Dist LEXIS 127978 (6th Dist.), 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 May 23, 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: Aug. 21, 2018, and a copy of the order denying rehearing appears at Appendix N/A.

An extension of time to file the petition for a writ of certiorari was granted to and including 2/18/2019 (date) on 1/18/2019 (date) in Application No. 18A 575.

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).

TABLE OF AUTHORITIES CITED

CASE NAMES	PAGE
<u>Neitzke v. Willimas</u> , 480 US at 327, 109 S.Ct. 1948-50 104 L.Ed.2d 1338 (1989) .....	
<u>Ascroft v. Iqbal</u> , 556 US 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) .....	
<u>Farmer v. Brennan</u> , 511 US 825, 832, 114 S.Ct. 1970, 128 L.Ed.2d 688 (1944) .....	
<u>Alba v. Monford</u> , 517 F.3d 1248, 1252 (11th Cir. 2008) .....	
<u>Brown v. Johnson</u> , 387 F.3d 1344, 1348 (11th Cir. 2004) .....	
<u>Estelle v. Gamble</u> , 429 US 97, 104 (1976) .....	
<u>Wilson v. Seiter</u> , 501 US 294 (1991) .....	
<u>Hunt v. Reynolds</u> , 974 F.2d 734, 735 (6th Cir. 1992) .....	
<u>McGore v. Wrigglesworth</u> , 114 F.3d 601, 610-11 (6th Cir. 1997) .....	
<u>Vandiver v. Vasbinder</u> , 416 Fed. Appx. 560 2011 WL 1105652, at *3 (6th Cir. 2011) .....	
<u>Hudson v. McMillan</u> , 503 US 1, 11 S.Ct. 995, 117 L.Ed.2d 756 (1992) .....	
<u>Vandiver v. Prison Health Services, Inc.</u> , 727 F.3d 580 (6th Cir. 2013) .....	
<u>Gregg v. Georgia</u> , 428 US 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1975) .....	

111200 W. 1, Sept 2017

## X. CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Fifth Amendment - Due Process

Sixth Amendment - Confrontational Clause

Seventh Amendment - PLRA right to Jury Trial

Eighth Amendment - Cruel and unusual Punishment

Fourteenth Amendment - State Due Process rights

Judicial Board Committee Laws - Canons 1-4 [Judicial conduct]

### STATUTES

Rule 59(e)

Rule 60(b)

F.R.A.P. Rule 3(c)(1)(B)

F.R.Civ.P. Rule 72(b) Recharacterization

F.R.Civ.P. 15(a)

28 U.S.C. §144

28 U.S.C. §455

28 U.S.C. §1915A(b); (B)(ii); (d); (e); (g) PLRA rules

18 U.S.C. §16(b)

18 U.S.C. §924(e)

## OPENING STATEMENT OF ORAL ARGUMENT

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Appellant, Mr. Paul D. Maze would request oral argument on the following issues herein under Fed. R. App. R 3 (c)(1)(B).

Appellant Mr. Paul D. Maze previously filed several motions that were amended in accordance to Fe. R. cin. P. Rule 59 (e), and Rule 60 (b), in regards to his constitutional rights regarding the evidence, of his serious physical injury being repeatatedly denied by the District Court, for the Western District of Tennessee (Jackson Tru, Disision). In which there exist several plain errors of the laws, and the facts. Which has created an Abuse Of Discretion on the part of the district court, clearly erroneous judgement, which violated, Appellant, Mr. Paul D. Maze's constitutional rights, under the Due Process of The Law, toward his Sixth Amendment Right to Confrontational Clause, Seenth Amendment Roght to e heard, and to a Trial by Jury on the Merits.

### STATEMENT OF THE CASE

The District Court, located in the Western District of Tennessee had entered in a *sua sponte* dismissal order of Appellant, Mr. Maze's pro se litigant 1983 complaint for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii). This ruling was made by District Court Judge James D. Todd on 04-14-2015. Appellant/Petitioner Mr. maze had previously filed a motion to supplement Id. at 1983 complaint in order to confirm to the courts, that he had been finally "approved" to get a EMG test of his bilateral upper, and lower body based upon, an evaluation and recommendation from Dr. Dietz. M.D. Id. at 27. Whom it was the doctor at the West Tennessee Detention Facility. Upon Appellant, Mr. Maze's entry into the B.O.P.'s custody and transfer to the Federal Correctional Institution at Greenville, Il in August of 2014. Greenville Health services, Dr. Kruse M.D. and P.A.-C E. Mills, sent requests to the North-Central Regional Office Utilization Review Board (URC), in order to get a EMG test completed on Appellant, Mr. Maze's upper and lower extremities due to Dr. Dietz's evaluation and recommendation report, which was based upon the severe stiffness Mr. Maze's lower body, called spasticity of the lower extremities a potential Neurological disorder, which would require further testing by a Neurologist, Specialist in the study of the Nervous systems. Id. at 18. Dr. Dietz Id. at 18 evaluation/recommendation.

On 04-06-2015, Appellant, Mr. Maze filed a motion to supplement Id. at 18 to the District Court, which had the Memorandum from attached as an exhibit, in order to update the court, that he would be going outside to get a EMG test.

STATEMENT OF THE CASE

conducted on his upper and lower body to determine what was causing the severe stiffness in his lower body. This stiffness was causing extreme pain, and effecting his ability to walk normal and to function in any normal capacity, as he had previously before he was relocated to the Obion County Jail. The motion to supplement, also asked to have the portion of Appellant, Mr. Maze's 1983 claim, against Zoloft company etc. to be excluded, because it was a product liability claim, and needed to be filed as a class-action lawsuit. SEE: PAGE ID AT 27.

Judge Todd's Report and Recommendation in his *sua sponte* dismissal had granted Appellant, Mr. Maze's motion to supplement, but he stated on pages 3-4, the Dr. Dietz. M.D. had done an evaluation of Mr. Maze, and had recommended that he get a further neurological evaluation for Spasticity of the Lower Extremities and that Dr. Dietz. M.D. had got results from a back x-ray report, which suggested there was nothing wrong, other than early signs of arthritis, normal for Mr. Maze's age Id. ID AT 28, ECF No. 18-1 AT PAGE ID 83.

Judge Todd, then said Mr. Maze had been denied any outside testings or consultation, by the Health Services Department at FCI- Greenville, Id. at PAGE ID 85.

Appellant, Mr. Maze then filed a timely 59(e) motion for reconsideration, based on the District Court had plainly Erred its Report and Recommendation, concerning the doctor's evaluations and opinions toward Health Services at FCI- Greenville medical care about going outside to get a EMG test done. PAGE ID AT 107.

Appellant, Mr. Maze filed a timely 59(e) motion to alter or amend judgment, based upon facts that the District Court Judge Todd and Magistrate Bryant had plainly erred in the R&R report based upon Mr. maze had been taken outside to

STATEMENT OF THE CASE

Springfield,IL to St John's Hospital Clinic and had the EMG test done on his upper and lower extremities by a Neurologist, Dr. Narda Koteswara M.D. on 04-15-2015. The results and a copy of these findings were presented as an exhibit attached to the 59(e) motion to alter or amend in which Judge Todd denied this motion, without making any type of recommendation period about his mistakes or about the EMG test results, as he had done with DR. Dietz M.D.'s recommendation and evaluation in which he clearly erred, Appellant, Mr. Maze then filed approximately (5) more amended 59(e),60(b) motions for reconsideration and motion to re-open which Judge Todd summarily denied without taking into consideration the exhibits attached to all of these amended 60(b) motions that show the District Court had made several mistakes based upon every 60(b) motion contained exhibits showing new evidence of Appellant, Mr. Maze's on-going medical care treatment for a very serious physical injury, which confirmed his allegations in his statements of claim. *Id.* at *4 AND 15.*

**ALSO SEE: PAGE 2 OF STATEMENTS OF CLAIM, DOCUMENT 15, FILED 07/24/14, PAGE ID 57;  
NOTICE OF GRIEVANCE, ID AT DOCUMENT 63-1, FILED AT 06/11/14 PAGE ID 92;  
NOTICE OF GRIEVANCE, ID AT DOCUMENT 63-1, FILED AT 06-11-14, PAGE ID 92;  
DOCUMENT 63-1, FILED ON 06-11-14, PAGE ID 98.**

**VIII. OPINION BELOW**

(1) DISTRICT COURT'S ABUSE OF DISCRETION BASED UPON PLAIN ERRORS, DEMONSTRATED ACTUAL PREJUDICE, CONTRARY TO LAW, WHICH CREATED A MANIFEST OF INJUSTICE TOWARD APPELLANT/PLAINTIFFS DUE PROCESS, UNDER THE CONSTITUTION.

DISCRETION COURT ABUSE OF DISCRETION, Toward Appellant/Plaintiff, Mr. Maze's motion pursuant to Federal Rules Of Civil Procedure, Rule 59(e), 60(b)7,2,(6), motion for reconsideration, motion to re-open, be reviewed for Plain Error, Reversible Error on the merits.

Appellant/plaintiff would ask for a review of the filings made in accordance to Fed.R.Civ.P. Rules of Civil Procedure Rules 59(e), and 60(b), motions, as amended over a course of two years, which all 60(b) motions amended was consistently providing new information, as new evidence, that's Identified Mr. Maze's ongoing medical care treatments for a serious physical injury. Which in turn would automatically means the District Court had made mistakes, concerning its previous screening process, of the factual material presented in filings that were presented to the District Court, prior to its sua sponte dismissal ruling on 04-15,2015. Id., at 28

Confirm that he suffered from a very serious physical injury that has caused substantial damages to his upper and lower body, back, and spinal area, that is consistent with the medical reports, MRI's evaluation, findings that he has a degenerative bone disease, associated with several on-going complications to his health and body as a whole, which is supported as evidence of record, Id..

MEDICAL HISTORY OF RECORD, SUPPLEMENTAL HISTORY OF MEDICAL  
REPORT

Dismissal without conducting the necessary analysis of medical facts. Investigating further, by not prematurely dismissed, without reviewing pro se litigants claim. Specifically Mr. Maze would conclude that the District Court violated his rights under PLRA by

1. Prematurely dismissing his original pleading which contains allegations that were sufficiently plausible on its face. ID. at 28.

District Court persistent failures to recognize or acknowledge, Appellant-Plaintiff's Mr. Maze's objection to Magistrate Judge's Report and Recommendation, as an appealable source, District Court re-characterize Mr. Maze's objections to Magistrate Judge's Report and Recommendation in violation of the Fed.R.Civ.P. Rule U.S.C. 28 72(b).

District Court failure to do denied Appellant/Plaintiff Mr. Maze's application for appealability under the "Three-Strike" violation, sanction, that barred him from filing of any complaint, or appeal, ECF unless he is under imminent danger of serious physical injury, by certifying to the Sixth Circuit that any appeal by Mr. Maze that pertains to his civil matter. Or amended Rule 60 (b) motion would be objectively frivolous and therefore should not be permitted to proceed informa pauperis ECF.

Judge Todd's Failure to make specific finding of fact or conclusion, on Appellant/Plaintiff Mr. Maze's objections either with or without merit by certification that any appeal would be certified as objectively frivolous.

### XIII. CONCLUSION

## REASONS FOR GRANTING THE PETITION

Under existing precedent laws in this Court and the Circuit below, a clear error exists in the denial of this Petitioner's claim. The Petitioner, not responsible for the outgoing mail of the prison in which he is held, under Houston v. Lack, did file timely, and was not considered by the Court. Petitioner, with no training in the law, was to be considered liberally by the Courts, and not held to the stringent standards of a legal professional, and was not. The Petitioner's claim, if proven, held merit, and was not considered. Petitioner submitted new evidence, and it was not read at all by the lower Court.

Therefore, this Court should enforce upon the lower Court, the time-honored precedents it has set, and this matter should then proceed to its conclusion, as there is no relief to the Petitioner, and there exists, by law a remedy. As long as that exists, the matter may not be dismissed, but must be heard. The claim made is one of medical deliberate indifference, and Petitioner does have a viable claim. This Court should thus remand this issue for hearing upon the new evidence submitted to that Court.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mr. Paul D. Magee

Date: 01/17/2019