

NO. 18-

UNITED STATES OF AMERICA
SUPREME COURT

2018

JERRY ANDERSON II

Petitioner

V

REX MILLER

MELODY WALLACE

RICHARD RUSSELL

Defendants

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE 6th CIRCUIT

9-27-18

Respectfully submitted
~~Jerry Anderson II~~

Jerry Anderson II

In Pro Per

Gus Harrison Correctional

2727 E. Beecher St

Adrian, MI 49221

QUESTION PRESENTED

DID DISTRICT COURT ERR WHEN **IT** DISMISSED
PLAINTIFFS CLAIM FOR FAILURE TO STATE CLAIM
WITH PREJUDICE WITHOUT AFFORDING PLAINTIFF
A OPPORTUNITY TO OFFER EVIDENCE ON SUCH?

List of Parties

JERRY ANDERSON II

Petitioner

v

REX MELLER

MELODY WALLACE

RICHARD RUSSELL

Defendants

Citations of Official reports

Anderson v Miller, 2018 US App lexis 10404

Rehearing En banc Anderson v Miller, 2018 US App lexis 18014

Basis of Jurisdiction

The Court of Appeals denied Relief on 4-24-18

Timely rehearing En banc was denied on 6-29-18

This petition is timely filed under Rule 13

Constitutional provisions involved in this case

U.S Const Amend I "to petition the Government for a redress of grievances"

U.S Const Amend V "Nor be deprived of life, liberty, or property, without due process of law"

U.S Const Amend XIV "Nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within it's jurisdiction the equal protection of the laws"

Facts

Petitioner filed a 42 USC §1983 suit against defendants because; Defendant Wallace sent a memo to defendant Miller who used this memo to deny petitioners copies of form MC 203, but more importantly his hand written "Complaint for habeas corpus" on 5-20-17.

Petitioner grieved the 5-20-17 denial of the photocopies and on 7-28-17 he was sent a Step III denial from defendant Russell.

Petitioner has asserted that the denial of the photocopies of his "complaint for habeas corpus" has deprived him of meaningful access to the courts because he can not file his complaint in the court and that constitutes a actual injury.

Petitioner asserts that based on the above facts, the lower courts decision to dismiss his complaint with prejudice and without affording plaintiff leave to amend was erroneous.

When liberally read petitioners complaint should not have been dismissed for a failure to state a claim and the decision has thus created conflict with Another U.S Circuit Court of Appeals and also with this court.

Petitioner asks this court to settle the dispute.

Reasons For Granting Certiorari

A United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter; also A United States Court of Appeals has decided an important Federal question in a way that conflicts with relevant decisions of this Court

QUESTION PRESENTED

DID DISTRICT COURT ERR WHEN IT DISMISSED PLAINTIFFS CLAIM FOR FAILURE TO STATE CLAIM WITH PREJUDICE WITHOUT AFFORDING PLAINTIFF A OPPORTUNITY TO OFFER EVIDENCE ON SUCH?

STANDARD OF REVIEW

Denied Complaints are reviewed De Novo
Haines v Kerner, 404 US 519, 521 (1972)
Shomo v City of New York, 579 F3d 176, 183 (2d Cir 2009)

ARGUMENT

The District court dismissed Plaintiffs claim with prejudice and without granting leave to amend at least once where a liberal reading of the complaint gives indication that a valid claim might have been stated. The 6th Circuit Court of Appeals then affirmed the judgment despite this known/alleged error. see Shomo v City of New York, 579 F3d 176, 183 (2d Cir 2009)

This creates conflict, a conflict between the 2nd Circuit Court of Appeals and the 6th Circuit Court of appeals on the same important matter.

This decision of the 6th Circuit also conflicts with an important Federal question relevant to decisions of this court and its precedence.

Haines v Kerner, 404 US 519 (1972)

Together the lower courts have concluded that "MDOC's directive prohibiting copies of form MC 203 had no effect on Anderson's ability to file a state habeas petition." & "Did not cause actual injury."

However both courts completely ignore that my complaint also stated that I was also denied copies of my "Complaint of habeas corpus" (which is a handwritten document on line paper) and submitted a copy of the photocopy disbursement showing that the denial was directly related to the MDOC Directive. See exhibit

Because the complaint was dismissed for failure to state a claim, we must take as true its handwritten, pro se allegations. See Estelle v Gamble, 429 US 97, 99 (1976)

When liberally read my complaint shows a claim to relief that is plausible on its face.

Ashcroft v Iqbal, 556 US 662, 678 (2009)

I alleged that I was denied photocopies of my "complaint of habeas corpus" which is required to be served to the Michigan Court of Appeals and to the defendants in order to start the non frivolous claim. see MCR 3.301, 3.303, 7.206

Because I was denied photocopies I have not been able to file my complaint with the courts or the defendants and this is a denial of the meaningful access to the courts that inmates are Constitutionally entitled to.

Giles v Tate, 1995 US Dist Lexis 18553, 5 (1995) see Bounds v Smith, 430 US 817, 823 (1977); Also see Lewis v Casey, 518 US 343, 350-351, 354, 356, 368, 380, 384 (1996)

It is "needlessly draconian" to force an inmate to hand copy the court documents when photocopy equipment is available and the inmate is willing to pay. Giles v Tate supra

Actual injury is shown where Plaintiff has not been able to file his complaint in court. Harbin-Bey v Rutter, 420 F3d 571, 578 (6th Cir 2005)

RELIEF REQUESTED

Wherefore it is respectfully requested that this court resolve all conflicting decisions and reverse the lower court decisions that dismissed Plaintiffs claim.