No. 18-8377

IN THE

SUPREME COURT OF THE UNITED STATES

WALTER DELANEY BOOKER,JR(SHABAZZALLAH) - PETITIONER

vs.

S. JOHNSON,et al. - RESPONDENTS

On Petition for Writ of Certiorari to the

United States Court of Appeals for the Fourth Circuit

PETITION FOR REHEARING

Walter Delaney Booker, Jr. (Shabazzallah)
[1013836]
c/o St. Brides Correctional Center
701 Sanderson Road
P.O. Box 16482
Chesapeake, Virginia 23328

TO THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

Petitioner pursuant to U.S. Supreme Court Rule 44,respectfully requests a rehearing from the decision of this Court, rendered on April 15,2019 pursuant to Rule 39.8.

The petition is based on the following points:

1. The criteria used to deny Petitioner informa pauperis status is improper and results in the destruction of the discretionary redress to vindicate and have decided 42 U.S.C. § 1983 claims that were sufficient to state claims upon which relief could be granted. These substantial grounds to show that Petitioner did not meet the criteria was not previously presented, because he was granted pauper status in the lower courts and was not aware this case would be decided according to Rule 39.8.

2. There were genuine material facts in dispute on summary judgment and the lower courts decided those facts against Petitioner as the nonmoving party, even though what actully occured on the morning of June 13,2008 was never decided by a factfinder,in an evidentiary hearing nor trial but on summary judgment based upon hearsay. Those material facts were overlooked before the dismissal of the petition.

3. The lower courts adjudication of the law not being clearly established is in total conflict with this Court's precedent in Bailey v. United States, 568 U.S. 186, 133 S.Ct. 1031, 185 L.Ed. 2d 19 (2013),that was never presented to this Court and Hayes v Florida,470 U.S. 811, 105 S.Ct. 1643,84 L.Ed. 2d 705 (1985) and Dunaway v New York,442 U.S. 260, 60 L.Ed. 2d 824,99 S.Ct. 2248(1979), which was presented but not reviewed and overlooked, because of the Rule 39.8

being wrongly applied.

ARGUMENT

I. The Court applied Rule 39.8 to Petitioner, even though the Petitioner did not fall under any of those set of circumstances that would warrant such drastic measures.

This Court's Rule 39.8 is premised on the petition for a writ of cert. being frivolous or malicious. However for several substantial reasons,this cannot be applied to petitioner's case.

1. Over Petitioner's entire incarceration in the Virginia Department of Corrections dating back to December,2004,Petitioner has filed (5) petitions for writ of cert. in this Court,including the present petition and (1) petition for rehearing.

Those cases were:

(a) Walter D. Booker v Harold Clarke,Director of VDOC, No. 14-5668, decided October 6,2014(190 L.Ed. 2d 205,___U.S.____ 135 S.Ct. 279.

THe aboce case was to the 4th Circuit and dealt with criminal matters on a 28 U.S.C. § 2254 petition.

(b)Walter Delany Booker, Jr. v Harold Clarke,Director of VDOC, No. 15-5303, (136 S.Ct. 222,193 L.Ed. 2d 168) decided on Octber 5, 2015

The above case was to the Virginia Supreme Court and dealt with matters that were criminal in state habeas proceedings.

(c) Walter D. Booker v Harold W. Clarke,Director of VADOC, NO. 17-5253 (138 S.Ct. 234, 199 L.Ed. 2d 152),decided October 2,2017

The above case is a criminal proceeding pursuant to § 2254

A petition for rehearing was denied December 4,2017(2017 U.S. LEXIS 7108)

(d) Walter D. Booker v R. Timmons, et al. No. 17-8053,decided May 14,2018 (138 S.Ct. 1995; 201 L.Ed 2d 257)

The above case was a civil rights action under 42 U.S.C. § 1983 and The Religious Land Use and Institutionalized Persons Act, where only partial relief was afforded to Petitioner in the lower courts and he sought summary reversal on questions of mootness, declaratory relief on his religious exercise to wear a beard as a muslim and whether had he raised a legitimate retaliation claim after the filing of the original action.

2. This Court's own holdings and precedents establish that the criteria applied to Petitioner under Rule 39.8 was an erroneous application.

In Maryland v Baltimore Radio Show ,Inc,338 U.S. 912, 94 L.Ed. 562(1950), this Court stated,in as much therefore, as all that a denial of a petition for a writ of cert. means is that fewer than four members of the Court thought it should be granted, and that this Court has rigorously insisted that such a denial carries with it no implication whatever regarding the Court's views on the merits of the case which it has declined to review.

3. The criteria of frivolous and malicious have been defined by this Court and lower courts and based on the fact that , not only was Petitioner granted in forma pauperis status in the lower courts and also that his claims in the complaints and habeas petition were never deemed frivolous or malicious.

In Neitzke,the Court held that a complaint, containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis either in law or fact . Neitzke v Williams,490 U.S. at 328-29 104 L.Ed 2d 338,109 S.Ct. 1827 and described examples of those claims whose factual contentions are clearly baseless, as claims describing fantastic or delusional scenarious. Id at 328,104 L.Ed. 2d 338.

In Denton, this Court held an informa pauperis complaint may not be dismissed, however simply because the Court finds the plaintiffs allegations unlikely. Denton,504 U.S. at 33,some improbable allegations might properly be disposed on summary judgment, but to dismiss them as frivolous without any factual development is to disregard the age- old insight that many allegations might be strange, but true, for truth is always stranger than fiction.(quoting Lord Byron Donatuan, canto XIV, stanza 101(Steffan & W. Pratt eds. 1977)

Lower courts have defined malicious as a complaint abusive of the judicial process is properly typed malicious. Ballentine v Crawford,563 F. Supp. 627,629 (N.D. Ind. 1983). Complaints which merely repeat previously litigated claims may be dismissed as malicious. Clay v Yates, 809 F. Supp. at 427. A litigant may be deemed to act maliciously if his actions "import a wish to vex, annoy or injure another,or an intent to do a wrongful act and may consist in direct intention to injure, or reckless disregard of another's rights. Cain v Commonwealth of Virginia,982 F. Supp. 1132(1997),(quoting BLACKS LAW DICTIONARY Fifth Ed. at 863(1981). The court must assess the character of the allegations insofar as they indicate a motive on the part of the plaintiff to merely harass or vex the defendants rather than to seek redress for a legitimate legal claim. Daves v Scranton,66 F.R.D. 5,7 (E.D. Pa. 1975).

Petitioner's petition for writ of cert. was not a complaint , but an appeal within the discretionary jurisdiction of this Court and their are no substantial grounds that is listed by the Court,that is in conformance with its own policy to demonstrate Petitioner's appeal was frivolous or malicious as was never established in the lower courts for this case, nor any case he has filed.

4. The Court has used RUle 39.8 in a number of ways to prevent abusive filings which would be understandable under which the precedent upon which

Rule 39.8 was created for ,however that rule has no justification for being used in this above-styled case.

See Barbara Schwarz v Executive Office of the President,562 U.S. 122, 143, L.Ed. 2d 203,119 S.Ct. 1109(1999), the Court invoked Rule 39.8, because the petitioner had filed 35 petitions and on a single day had 4 petitions before it.

Justice Stevens dissented for the reasons expressed in Martin v District of Columbia Court of Appeals,506 U.S. 1,4, 121 L.Ed. 2d 305, 113 S.Ct. 397 (1992).

In Martin,the individual had filed 45 petitions with the United States Supreme Court over a 10-year period and 15 in the last 2 years alone with respect to 8 cases.

See Demos v Storrie(1993,U.S.) 122 L.Ed. 2d 636,113 S.Ct. 1231,the individual filed a total of 48 informa pauperis filings. In Witaker v Superior Court, (1995,US) 131 L.Ed 2d 324,115 S.Ct. 1446, individual had filed 24 petitions, 15 of which had been filed in four terms.

This is quite the consequence that Justice Stevens and Blackmon warned against in its dissent in Martin v District of Columbia Court of Appeals, because the application in those cases would certainly not meet application in Mr. Booker Shabazzallah's case.

5.Petitioner had initially mailed the petition for writ of cert. on July 1,2018. See(Docket). Then Petitioner inquired about why he had not received a case number on August 8,2018, October 30,2018, January 9,2019 and on February 10, 2019. After nearly eight months the petition was returned with a request to fill out the motion for informa pauperis, however there was only one problem that Petitioner complained about was the fact that the correspondence stated it had previously been returned to Petitioner and returned back once without complying with the request and Petitioner stated he had never received the

correspondence and petition back until February 19,2019. There was no record it had been sent and received by petitioner and then returned back without submitting the motion.

Petitioner's in forma pauperis and petition for writ of cert. cannot be dismissed for these reasons, when he has legitimate Fourth Amendment claims for redress under 42 U.S.C. § 1983 and he only was inquiring about when and why he had not received a case number. See(Docket).

II. Whether the lower courts applied the proper standard of proof for granting Summary Judgment to the Defendants even though genuine issues of material facts were in dispute.

Pages 5 through 14 of the Petition for Writ of Cert. state the facts alleged by Petitioner in the original 42 U.S.C. § 1983 complaint, the statements of the defendants, and the rulings of the court, however such rulings are in conflict with Tolan v Cotton, 134 S.C t. 1861,188 L.Ed. 2d 895 (2014), Celotex v Catrett, 472 U.S. 317,106 S.Ct. 2548 (1986) and Anderson v Liberty Lobby Inc , 477 U.S. 242,106 S.Ct. 2505 (1986),etc.

Facts are generally supposed to be viewed in light most favorable to the nonmoving party and all inferences which flow from the evidence presented and not hearsay.

III. Whether Petitioner detained beyond the vicinity of th crime scene, based on uncorroborated information from an unknown officer who never submitted a statement can provide probable cause to forcibly remove Petitioner from street, handcuff him and transport him to the police station for murder investigation questioning, without a warrant nor probable casue of a crime being committed.

Absent summary reversal or a clarification of the law announced in Dunaway v New York,442 U.s. 260(1979), Hayes v Florida ,470 U.S. 811(1985) and Bailey v. United States,568 U.S. 186(2013)., then allowing the rulings to stand gives the police free reign to pick up anyone on the street, especially because they are a felon and trnsport them to the police station any time they feel the urge to.

In Bailey, this Court noted that the risk that a departing occupant might notice police surveillance and alert others is insufficient safety rationale to justify expanding the existing categorical authority to detain so that it extends beyond the vicinity being searched. If extended in this way the rationale would justify detaining anyone in the neighborhood who could alert occupants that the police are outside.

Petitioner's case is even more bizarre because the ruling of the lower courts and this Court' basically upholding that decision would subject anyone who inquires as Petitioner did the status of people he knew who was inside a home where a shooting occured, to arrest for questioning when he was unaware of what transpired. However, under the guise of investigative detention,when there was no evidence establishing that he was involved or in the crime scene when it happens,extends Supreme Court precedent beyond which it has authorized.

CONCLUSION

To deny Petitioner informa pauperis on the merits, constitutes an unconstitutional or an unlawful or otherwise improper denial of justice or discrimination against indigent persons particularly when the issues of a type which clearly would be reviewed and determined by the Court on the merits in a comparable case presented by a non indigent.

Respectfully submitted,

By: Walter DeLaney Booker,Jr. Shabazzallah

Petitioner

No. 18-8377

IN THE

SUPREME COURT OF THE UNITED STATES

WALTER DELANEY BOOKER,JR (SHABAZZALLAH) - PETITIONER

vs.

S. JOHNSON, et. al. - RESPONDENTS

CERTIFICATION OF PARTY UNREPRESENTED BY COUNSEL

I,Walter Delaney Booker,Jr.(Shabazzallah) certify that this Petition for Rehearing is restricted to the grounds specified in Rule 44 and is submitted in good faith and not for delay pursuant to 28 U.S.C. § 1746 and Rules of the Supreme Court Rule 44.2.

Executed on the 9th day of May ,2019

Signed: Walter Delaney Booker,Jr.(Shabazzallah)

Petitioner, pro se

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

WALTER DELANEY BOOKER JR Shabazz #1 — PETITIONER
(Your Name)

VS.

S. Johnson, et al — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis.*

Please check the appropriate boxes:

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

U.S. District Court, Eastern Dist. of VA, Alexandria No. 1:14CV00833-JCC-TCB

U.S. Court of Appeals 4th Circuit No. 17-7378

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☒ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____

_____

☐ a copy of the order of appointment is appended.

(Signature)

AFFIDAVIT/DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

I, Walter Delaney Booker,Jr. Shabazzallah , am the petitioner in the Motion for Leave to Proceed In Forma Pauperis. In support of my motion to proceed in forma pauperis, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

Executed on the 8th day of May ,2019

Signed: Walter Delaney Booker,Jr. Shabazzallah

Petitioner