

18-8563
No. _____

Supreme Court, U.S.
FILED
OCT 17 2018
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Melvin Grayer — PETITIONER
(Your Name)

vs.
James Tilligan et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States District Court for the Southern District
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Melvin Grayer
(Your Name)
South Mississippi Correctional Institution
S.M.C.I. P.O. Box 1419
(Address)

Leaksville, Mississippi 39451
(City, State, Zip Code)

NA
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

(1)
Why under the Prison Litigation Reform Act, pursuant to 28 U.S.C. 1915(a)(1) States that any court may authorize the commencement, prosecution or defense of any suit or appeal therein, without the prepayment of fees, which the lower courts are prone to go by.

(2)
Why was the petitioner Referred By the U.S. District Court to Challenge the finding of their decision pursuant to "Baugh", V. Doyle, 117 F. 3d 197 (5th Cir. 1997) By filing a separate motion to proceed IFP on appeal with the court of appeals for the fifth circuit, which the petitioner Challenged, pursuant to (Baugh), which States upon notification that the prisoner has filed a Motion Challenging the Certification decision, the District Courts shall Enter an appropriate order under 28 U.S.C. § 1915(B) assessing the initial partial filing fee and ordering payment of the remainder of the filing fee as directed By the PLRA. After this order is Entered, appellate review will commence

"See Attachment"

(3.)

Why pursuant to *Payne v. Lynaugh*, 843 F.2d 177 (1988)
under the same circumstance as the petitioner, I.F.P.
was Granted; Vacated and Remanded.

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:

- (1) James Tilligaw;
- (2) Ronald King;
- (3) Jewarsai Mallet;
- (4) Jerry Williams;

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- # *Baugh V. Taylor*, 117 F.3d 197 (5th Cir. 1997) ... pg. 2, 11, 12,
- # *Heck V. Humphrey*, 512 U.S. 477, 486-87 (1994) ... pg. 12,
- # *Payne V. Lynaugh*, 843 F.2d 177 (5th Cir. 1988) ... pg. 3, 13, 9,
- # *Moore V. Ruth*, 556 So. 2d 1059 (Miss. 1991) ... pg. 19,
(See Attachment)

STATUTES AND RULES

- # 28 U.S.C.S. § 1915(a)(1) ... pg. 2, 13,
- # 28 U.S.C. § 1915(B) ... pg. 2.

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- # Prison Litigation Reform Act. ... 2, 13,

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- # Cruz v. Harck, 404 U.S. 59, 30 L.Ed 2d 217, 92 S.Ct. 313 (1971) pg. 9,
- # Jackson v. Dallas police Dept. 811 F.2d (5th cir. 1986) pg. 9,
- # Wright v. Dallas County Sheriff Dept. 660 F.2d 633 (5th Cir 1981) . . . pg. 9,
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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

[] 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 NA; 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+C to the petition and is

[] reported at NA; 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 9-10-18.

☒ 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: _____, 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 2-1-19 (date) in Application No. ____ A _____.

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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. 1915(a)(3) and 28 U.S.C. 1915(b)(1) the two Rules is ambiguous as to whether it applies to one or both, applying them to a pro-se plaintiff IFP statute is in conflict with each other. *Cruz v. Hauck*, 404 U.S. 59, 30 L. Ed 2d 217, 92 S. Ct. 313 (1971) contends that even in the civil context the constitutional right to due process of the 5th amendment process require an appellate court to review de novo to trial courts certificate that an IFP appeal is not taken in good faith (Douglas J. concurring)

Payne v. Lynough, 843 F.2d 177 (5th Cir 1988) *Jackson v. Dallas Police Dept.* 811 F.2d (5th Cir 1986). *Wright v. Dallas County Sheriff Dept.* 660 F.2d 633 (5th Cir. 1981).

upon notification that the prisoner has filed a motion challenging the certification decision the District Court shall enter an appropriate order under 28 U.S.C. 1915(b) assessing the initial partial filing fee and ordering payment of the remainder of the filing fee as directed by the (P.L.R.A.) Prison Litigation Reform Act; After this order is entered, appellate review will commence (See) *Morgan v. State*, 112 F.3d 788 (5th Cir. 1997)

STATEMENT OF THE CASE

in the Supreme Court of the United States

Melvin Gray

petitioner

No. _____

versus

James Tilligow, et al

respondents

Petition For Writ of Certiorari :

"See Attachment"

Com now Melvin Droyer, petitioner pro-se pursuant to Rule 10 of the Supreme Court of the United States, and respectfully requests this Court issue a writ of Certiorari for review of the final decision By the Mississippi Court of Appeals in this case, and in support thereof would most respectfully show:

- (1) The Mississippi Court of Appeals issued a final decision on the 10th day of Sept. 20 18, denying the Appellants Motion IFP on appeal and dismissed as frivolous.
- (2) Droyer respectfully submits that Certiorari review is required in this case, wherein the Mississippi Court of Appeals Erred in denying Droyer's IFP on appeal, this decision is in conflict with the Courts holding in *Baugh v. Taylor*, 117 F.3d 197 (5th Cir. 1997)
- (3) Droyer's Challenged the Order of the United States District Court for the Southern District of Mississippi, which dismissed the 42 U.S.C. § 1983 complaint for said reason,

That the appeal was not taken in good faith, The U.S. District Court also stated in their decision that Drayer hadn't Exhausted His State Court remedies, pursuant to Heck v. Humphrey, 512 U.S. 477, 486-87 (1994).

(4.) Drayer then filed a timely Habeas Corpus petition in their court on the 13th day of Sept. 20¹⁷, which the U.S. District Court never Entertained, nor responded to. By doing so, Drayer was denied the right to meet His Exhaustion, which is in Conflict with the Courts holding in Heck; The application for leave to proceed in forma pauperis on appeal was denied.

(5.) Drayer filed an Separate motion to proceed IFP on appeal with the Clerk of Courts, U.S. Court of Appeals for the fifth circuit, pursuant to Baugh v. Taylor, 117 F.3d 197 (5th Cir 1997) Challenging their Decision;

(6.) Drayer included in His Brief the reason why the District Court denial of IFP was wrong. The fifth circuit Court of Appeals ignored the Contents of Drayer's Challenge, and held the dismissal of the Southern District Court.

Citing *Payne v. Lynaugh*, 843 F. 2d 177 (5th Cir. 1988) which the appeal court is also in conflict with the comprehension of the intended rule is Essential to the ability to allow an indigent inmate to proceed in their claim, pursuant to 28 U.S.C.S. § 1915(a)(1) Prison litigation reform act, provides that any court may authorize the commencement, prosecution or defense of any suit, or appeal therein without the prepayment of fees, or security thereof.

(7) Dwyer contends without being able to have proceeded IFP as an indigent inmate was a denial of due process and his rights to go forward in his Complaint.

Dwyer respectfully requests this Court grant his petition for writ of Certiorari in this case.

Wherefore, premises considered, Dwyer prays that this Court will issue a writ of Certiorari review and reverse the decision of the Court of appeals, and remand this case petitioner's prisoner's Request to proceed in forma pauperis because the District Court did not provide sufficient evidence of petitioner's financial position on the record for the court to consider petitioner's request.

Respectfully Submitted

Melvin Droyer
petitioner pro-se

Signed, this the 26 day of Feb. 2019.

REASONS FOR GRANTING THE PETITION

- (1.) Is that the U.S. District Court abused its Discretion, whereas when a prisoner is proceeding pro-se the Court should have taken the facts into account and in its Discretion's Credits not so well pleaded allegations to the end that a prisoner's Meritorious Complaint may not be lost, because it was inartfully drafted. Pursuant to *Moore v. Ruth*, 556 So. 2d 1059 (Miss. 1991)
- (2.) The District Court abused their Discretion, when it failed to treat a pro-se plaintiff §1983, Complaint for a writ of Habeas Corpus Relief, because although the pro-se plaintiff did not style his Complaint for writ of Habeas Relief, the §1983 Complaint should have been treated as such, because the plaintiff was clearly not challenging any pre Con-incarceration only his time being expired.
- (3.) The District Court abused their Discretion, for denying the pro-se motion for Rehearing En Banc.
- (4.) The District Court abused their Discretion, for denying the pro-se plaintiff motion for Extension of time to file a notice of Appeal.
- (5.) The District Court abused their Discretion, for denying the pro-se plaintiff motion for notice of Appeal.

The Southern District Court as well as the Fifth Circuit Court of appeals, has confused the petitioner as a pro-se plaintiff as to what to do: The petitioner respectfully submits that the foregoing warrant the Grant of this writ for certiorari and requests that this Court withdraw the original opinion + judgments, handed down on the 10th day of Sept. 20 18, By the Fifth Circuit courts of appeals, + Substitute a new judgment Reversing the petitioner's dismissal and Remanding His case to the lower Courts for trial, in the interest of justice.

CONCLUSION

The petition for a writ of certiorari should be granted. For the presented reasons; wherefore, premises considered, Gray respectfully request that the Supreme Court Grant this writ and remand it.

Respectfully submitted,

Alvin Gray

Date: 2-26-19