

18-8659
No. _____

Supreme Court, U.S.
FILED

DEC 21 2018

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

(IBEABUCHI, IKEMEFULA CHARLES) PETITIONER
(Your Name)

vs.

AMY M. WOOD — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

(COURT OF APPEALS, NINTH CIRCUIT)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

(IBEABUCHI, IKEMEFULA CHARLES)
(Your Name)

(ADC NO. 177007, P.O. Box 3200)
(Address)

(Florence, Arizona, 85132-3200)
(City, State, Zip Code)

(N/A)
(Phone Number)

ORIGINAL

Cover-Page

QUESTION(S) PRESENTED

1. Whether or not, the lower Court, committed a reversible error in dismissing the Pro Se litigant's Complaint, for failure to state a Claim?
2. Whether or not, the lower Court, abused its discretion, by its Evidentiary Rulings, as a matter of Form 550/555, Second Amended Complaint, required, and Proof of \$280.00 WAIVER FEES?
3. Whether or not, the lower Court, exceeded its Jurisdiction by falling short of declaring a statutory Certification for frivolousness of Appellant's Complaint, 28-U.S.C. ss. 1915 (d) ?

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:

IKEMEFULA CHARLES IBEABUCHI,
AKA Charles Ikemefula Ibeabuchi,

Plaintiff-Appellant,

V.

AMY M. WOOD, Clerk of the Court of
Appeals, Div. One, Court of Appeals State
of Arizona

Defendant-Appellee

FILED

DEC 4 2018

NO. 18-16650

D.C. NO. 2:17-CV-04592-

JAT-JZB

District of Arizona

Phoenix

ORDER

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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 _____; 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☐ is unpublished.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 _____; 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☐ is unpublished.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 DEC 4 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: _____, 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. § 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

THE UNITED STATES CONSTITUTIONAL AMENDMENT, ONE
USCA, I ; RIGHT TO PROPERTY

THE UNITED STATES CONSTITUTIONAL AMENDMENT
FOURTEEN,

- USCA, XIV ; RIGHT TO EQUAL PROTECTION

THE UNITED STATES CONSTITUTIONAL ARTICLE
THREE, (U.S.C Art. 3)

(42 U.S.C. SS 1983) CIVIL RIGHTS COMPLAINT
BY A PRISONER

STATEMENT OF THE CASE

On December 4, 2018, the Ninth Circuit Court of Appeals, by Circuit Judges CANBY, TASHIMA, and FRIEDLAND, ruled that the Pro Se Indigent Appeal, of the Petitioner, was frivolous, because,

1. "The district Court Certified that this appeal is not taken in good faith," and had revoked appellant's in forma pauperis status, accordingly. See 28 U.S.C. § 1915(a).
2. That, "On September 10, 2018, the Court Ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. See 28 U.S.C. § 1915(e)(2) (Court shall dismiss case at any time, if Court determines it is frivolous or malicious)."
3. That, "Upon a review of the record, response to the Court's September 10, 2018 Order, and opening brief received on October 2, 2018, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 3) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2)."
4. That, "All other pending motions are denied as moot."
5. "DISMISSED."

1 The Jurisdiction to review Appeals, from the Fed-
2
3 eral Courts of Appeals, is vested to the Supreme
4
5 Court, pursuant to 28 U.S.C. § 1254(C), and by the
6
7 United States Constitution, Article III, and in pari
8
9 materia, to the raised issues on Appeal, that were
10
11 dismissed as frivolous in the Court of Appeals.
12

13 Accordingly, this Court has Jurisdiction to
14
15 review the egregious, and erroneous, Appellate
16
17 Decision, before it, now, at-law.
18
19

20 The Court of Appeals, Ninth Circuit, seemed to
21
22 had issued a Procedural Order, Carelessly, mini-
23
24 cking the ORDERS, it issued on Cases, NO. 18-15-
25
26 222, NO. 18-15726 and NO. 18-15981, respectively,
27

1 and without considering the Merit, associated
2
3 with the Individual Cases, which, infelicitously
4
5 was unconstitutional, as the Causes Of Actions,
6
7 differ in the individual Cases, therein, at-law.
8
9

10 In this Appeal, the Petitioner's Complaint in the
11
12 District Court, was dismissed, after Leave To
13
14 Amend, for the First, was Considered, and for
15
16 failure to state a claim, therein.
17

18 District Judge, Senior United States District
19
20 Judge James A. Teilborg, dismissed, on the 29th
21
22 day of August, 2018, the Petitioner's Complaint for
23
24 failure to state a claim and Certified, that, "an Ap-
25
26 peal would not be taken in good faith for the rea-
27

1 sons stated in the Order and because there is no
2
3 arguable factual or legal basis for an appeal." But,
4
5 the District Court, did not expressly, "revoked
6
7 appellant's in forma pauperis status." (Citing,
8
9 Appendix, A.) (Incorporated by reference, to Appe-
10
11 llant's Informal Brief, at Page 24 of 47), which
12
13 error is thereby, reversible by this Honorable Court.
14
15

16 The Certification of the District Court was
17
18 strictly for the, "there is no arguable factual
19
20 or legal basis for an appeal."
21

22 The Court of Appeals, further erred, in its fai-
23
24 lure to review, in its entirety, the Appellant's
25
26 Informal Brief, which the "Pilot Project," Program failed
27

1 to transmit, effectively, before the Panel's Review of
2
3 the Appeal. Appellant's Informal Brief, the Premise
4
5 of the Decision of the Court of Appeals, ORDER
6
7 was submitted for (47 of 47, pages) and Not the
8
9 12 pages, Received by the Court on, October 2,
10
11 2018, (Citing, Index no. 7 of Docket Entry, 9-2 of the
12
13 Court of Appeals,) which fact, concludes that, the
14
15 Order of the Court of Appeals was a Procedural
16
17 Order, which did not Ken the Merit of the Petiti-
18
19 oner's Informal Brief, and thereby, formed the basis
20
21 for Dismissal, therein.

22
23 And, this Court has ruled in, "The Review of Courts
24
25 Opinion regarding Disimissal of Pro se Complaints, in
26
27 Haines V Kerner 404 U.S. 519 92 S.Ct. 594, 30 L.Ed.2d

652 (1972), that, it cannot say with assurance that
under the allegations of the pro se complaint, which
we hold to less stringent standards than formal pleadings drafted by lawyers, it appears "beyond
doubt that the plaintiff can prove no set of facts
in support of his claim which would entitle him
to relief"

Because, the Dismissal of the Court of Appeals,
of the Appeal, pursuant to a Certification by the
District Court, in 28 U.S.C. § 1915(a), is not the
standard as reflected in, *In forma pauperis*,
statute, 28 U.S.C. § 1915(d) which predicates the
frivolousness of the Action, therein, e.g., under
Neitzke v. Williams, 490 U.S. 319, 109 S.Ct. 1827 104

1 L. Ed. 2d 338 (1989). And, therefore, the Petitioner's
2
3 Complaint filed, in forma pauperis is not automa-
4
5 tically frivolous within the meaning of § 1915(d)
6
7 because it fails to state a claim. which Proof
8
9 Sufficed the Tenet, of Defective Procedural
10
11 Order, issued by the Court of Appeals, Ninth Circuit.
12
13

14 Again, although, the Court of Appeals has the
15
16 discretion to issue Order to Show Cause, it, in-
17
18 variably denied the requisite Application, wa-
19
20 ranted to the Direction, therein, i.e., it should
21
22 had been the Defendant, accordingly, who should
23
24 be burdened to show Cause, why the Appeal
25
26 should not be ruled in light most favorable for
27

1 the Appellant. Noting, in, *Gomez V. Toledo*, 446 U.S.
2
3 635 (1980) 100 S.Ct. 1920 64 L.Ed.2d 572, that, "in
4
5 a section 1983 action against a public official
6
7 whose position might entitle him to qualified
8
9 immunity, a Plaintiff need not allege that the Offi-
10
11 cial acted in bad faith in order to state a claim
12
13 for relief; burden is on defendant to plead
14
15 good faith as an affirmative defense."

16
17 Yet, the Court of Appeals, decided the Appeal
18
19 without, the Axiomatic and/or, Corollary, Requisite,
20
21 of the Respondent's Response, whose Error was a
22
23 Manifest Injustice, and the Abuse of Discretion,
24
25 as exhibited of the Evidentiary Ruling, therein.
26

27 The Structural Error, Construed for Frivolous

1 Order of the Court of Appeals, warrants the de novo
2
3 Review, of the Petitioner's, militated, STATEMENT THAT
4
5 APPEAL SHOULD GO FORWARD, the underpinning, le-
6
7 gal Sufficiency, overruled by the Court of Appeals,
8
9 to its Frivolous Decision. (See, Docket Entry, 4. of the
10
11 Court of Appeals).
12

13 The Frivolousness Standard, by the way, is un-
14
15 less there is "indisputably absent any factual or legal
16
17 basis for the wrong asserted in the Complaint, and
18
19 the Trial Court, "in a Close Case", should permit
20
21 the Claim to proceed at least to the point where respon-
22
23 sive pleadings are required." Neitzke Supra, at 319.
24
25 Therefore, the District Court, erroneously Certified
26
27 the Dismissal under Federal Rule of Civil Pro-

1 cedure, 12(b)6, and 28 U.S.C. ss. 1915(d), for 28 U.-
2
3 S.C. ss. 1915(a), and which, thereby, formed the ba-
4
5 sis for the Excess of Jurisdiction, as alleged in the
6
7 Questions Presented, at Number 3, herein.
8
9

10 Petitioner's Appeal was not intended to cause
11
12 A Frivolous Submission, because, there is an "argu-
13
14 able factual or legal basis of the Claims, by the
15
16 Petitioner, in his \$280.00, as Property, withheld by
17
18 the Respondent, and the Petitioner's Right to,
19
20 amend his Complaint for the Second-Time,
21
22 in-accordance with the District Court Form
23
24 550/555, to state a plausible Claim, for which
25
26 A Relief, may be granted, to him, at-law.
27

REASONS FOR GRANTING THE PETITION

The Reason for granting this Petition is the expounded Merit of this Honorable Court's Jurisdiction, in the Case of Haines V. Kerner, 404 U.S. 519 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), regarding Dismissal of Pro se Complaints, wherein, the United States Supreme Court ruled that, "We Cannot say with assurance that under the allegations of the pro se Complaint, which we hold to less Stringent Standards than formal pleadings drafted by lawyers, it appears 'beyond doubt' that the plaintiff can prove no set of facts in support of his Claim which would entitle him to relief."

"Accordingly, although we intimate no view whatever on the merits of Petitioner's allegations, we Conclude that he is entitled to an opportunity to offer proof. The judgment is reversed and the Case is remanded for further proceedings Consistent herewith."

"See, also in Conley V. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102 2L.Ed.2d 80 (1957), and in, Dioguardi V. Dunning, 139 F.2d 774 (CA2 1944). Concurring with... Plaintiff can prove no set of facts in support of his Claim, which would entitle him to relief."

This Petition should be granted for the Reason of

the granted In forma pauperis status by the District Court to the Petitioner on, April 9, 2018, consequently, provoking the Law of Collateral Estoppel, to nudge the Tenet of Review, therein. See, In Neitzke v. Williams, 490 U.S. 319, 109 S.Ct. 1827 104 L.Ed.2d 338 (1989). In regards to In forma pauperis Complaint, dismissed as frivolous.

Stating that, "According opportunities for responsive pleadings to Indigent Litigants commensurate to the opportunities accorded Similarly situated paying plaintiffs is all the more important because Indigent Plaintiffs, so often proceed pro se and therefore may be less capable of formulating legally competent initial Pleadings"¹⁹ We therefore hold that a

1 in the premises and the law, therein. (Citing, Appen-
2
3 dix, A, and Appendix, B, herein, as Proof for Review)

4
5 AS, emphasized, under Neitzke supra, at 319,
6
7 the Court of Appeals Ninth Circuit, this time, wron-
8
9 gly equated the standard for failure to state a
10
11 claim, which applied to the Petitioner's Complaint,
12
13 not for the more lenient approach in frivolousness
14
15 under § 1915(d), nor, under Rule 12(b)(6), both of
16
17 which measures permit dismissals only if a peti-
18
19 tioner cannot make any rational argument in
20
21 law or fact entitling him to relief. Rather the
22
23 Court of Appeals, Ninth Circuit, dismissed Appeal
24
25 as frivolous pursuant to the Contrasting or Con-
26
27 flicting Certification by the District Court, after

1 its' grant of In forma pauperis to the Petitioner, here
2
3 in, at-law. Therefore, this Court must reverse and
4
5 remand, in accordance with Neitzke Supra, at,
6
7 320, and 323.

8
9 The Per curiam - by Justice Marshall, of the
10
11 Supreme Court, recites as, "The question presen-
12
13 ted is whether a Complaint filed in forma pauperis
14
15 which fails to state a claim under Federal Rule
16
17 of Civil Procedure 12(b)(6), (as this Case was, in
18
19 the Certification, in-reality) is automatically frivolous
20
21 within the meaning of 28 U.S.C. § 1915(d). The
22
23 answer, we hold is no."

24
25 The frivolousness Standard, is unless there is
26
27 "Indisputably absent any factual or legal basis' for

1 the wrong asserted in the Complaint. But, when a
2
3 Complaint raises an arguable question of law which
4
5 the District Court ultimately finds is correctly resol-
6
7 ved against the plaintiff, dismissal on Rule 12(b)(6)
8
9 grounds is appropriate, but dismissal on the basis
10
11 of frivolousness is not. See, Brower v. County of
12
13 Inyo, 489 U.S. 593, 109 S.Ct. 1378 103 L.Ed. 2d 628
14
15 (1989), That, frivolousness in the § 1915(d) context
16
17 refers to a more limited set of claims than does
18
19 Rule 12(b)(6) accords, moreover with the under-
20
21 standing articulated in other areas of law that,
22
23 not all unsuccessful claims are frivolous.

24
25 See, also, in Coppedge v. United States, 369 U.S.
26
27 438, 447, 82 S.Ct. 917, 922, 8 L.Ed. 2d 21 (1962); see

1 also H.R. Rep. No. 1079, 52d Cong., 1st Sess., 1 (1892).

2
3 "Under Rule 12(b)(6), a Plaintiff with an arguable
4
5 Claim is ordinarily accorded notice of a pending
6
7 motion to dismiss for failure to state a claim and
8
9 an opportunity to amend the Complaint before the
10
11 motion is ruled upon.

12
13 These procedures, (the Court stated) alert him to
14
15 the legal theory underlying the defendant's challenge
16
17 and enable him meaningfully to respond by opposing
18
19 the motion to dismiss on legal grounds or by clari-
20
21 fying his factual allegations so as to conform with
22
23 the requirements of a valid legal cause of action.

24
25 As, stated, herein, the District Court did not
26
27 avail the Petitioner, the Requirement of Second Lea-

1 ve To Amend Complaint, which legal theory comp-
2
3 ares to the Motion To Dismiss, by the Defendant. A
4
5 Procedural Error, which this Court should grant the
6
7 Petition, for, and at-law
8

9 The Petition should be granted, because the
10
11 Court of Appeals, abuse of discretion in withholding
12
13 the Content of the Petitioner's, Appellant's Informal
14
15 Brief, of 47 pages, to review upon 12 pages, at-
16
17 law. See, In, Hoffman V. Halden, 268 F-2d 280
18
19 (1959) 2. Fed R. 2d. 241 at 31, 35, holding that the
20
21 reviewing Court is bound by the record (Conclusi-
22
23 veness and impeachment) Matters which do not appear
24
25 in the record may not be considered on appeal.
26

27 This Petition should be granted for the lack of

1 Responsive Pleading on the part of the Respondent.

2
3 Citing, in, Gomez v Toledo, 446 U.S. 635 (1980) 100 S.-

4
5 ct. 1920 64 L.Ed.2d 572, which stated that, "in a

6
7 Section 1983 action against a public official whose

8
9 position might entitle him to qualified immunity, a

10
11 Plaintiff need not allege that the official acted

12
13 in bad faith in order to state a claim for relief;

14
15 burden is on defendant to plead good faith as

16
17 an affirmative defense"

18
19 Respondent, did not defend her action aga-

20
21 inst the Petitioner, and this Court should grant

22
23 Petition to enable her to do so, at law.

24
25 Finally, this Petition should be granted pursu-

26
27 ant to the District Court's Assertion, that, the, "Res-

pendent is protected by absolute quasi-judicial immunity from damages for civil rights violations, when they perform tasks that are an integral part of the judicial process," (See, citing at Appendix, B. page, 3 of 7-8.)

Although, in *Curry v. Castillo* (In re Castillo), 297 F.3d 940, 952 (9th Cir. 2002) (quasi-judicial immunity extends to "Court Clerks and other non-judicial officers for purely administrative acts")

It is not absolute, as the District Court erroneously, concluded, accordingly this Court must grant Petition. See, in, *Snyder v. Nolen*, 380 F.3d 279, 288-89 (7th Cir. 2004) (Court Clerk not absolutely immune for refusing to file Pleadings when

1 acting absent judicial direction.) Concurring with
2
3 Pulliam v. Allen, 466 U.S. 522, 541-44 (1984) "(Judicial
4
5 immunity does not bar prospective injunction
6
7 against judge who imposed bail on individuals
8
9 charged with non-jailable offenses)" Accordingly,
10
11 Courts have granted absolute immunity to prosecu-
12
13 tors, judges, and other officials performing duties
14
15 in connection with judicial acts. 43 GEO. L.J. ANN.
16
17 REV. CRIM. PROC 1147-48 (2014). Like the Judge
18
19 Judicial Immunity does not bar prospective injun-
20
21 ction against the Respondent, whose function is
22
23 as other official performing duties with Judi-
24
25 cial Acts. Because in re Castillo, Supra, there is
26
27 no absolute, immunity, therein, as such, this Court

1 Should grant the Petition to Correct the erroneous
2
3 application of the District Court in, re-Castillo.
4
5

6 The incontestably Supreme factors, as enume-
7
8 rated in this Petition, to-wit; the Doctrine of Colla-
9
10 teral Estoppel, governing the granting of the Infor-
11
12 ma Pauperis Status to the Petitioner by the Dist-
13
14 rict Court, and the Collateral Enjoyment, therein,
15
16 as now, required to comport with Neitzke Case
17
18 Law, the Frivolousness Standard of Equation of
19
20 the Federal Statute, under Neitzke Supra, and
21
22 the Quasi-Judicial Immunity in-re-Castillo, as
23
24 Corrected, herein, all of which factors should form
25
26 the basis of granting the Petition, herein, at-law.
27

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ceula Cibeabuchi

Date: 12/21/2018