

IN THE SUPREME COURT OF THE UNITED STATES

GARVESTER BRACKEN
Petitioner,

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
Respondent.

Case No: 18-9107

ON PETITION FOR REHEARING TO THE
SUPREME COURT OF THE UNITED STATES
FOR UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT

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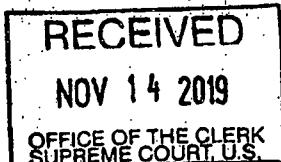
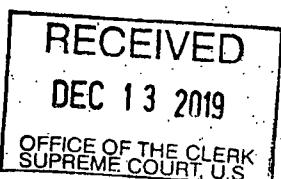


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JURISDICTIONAL STATEMENT

This court has jurisdiction to grant and issue this petition for rehearing pursuant to Article III of the United States Constitution, 28 U.S.C. 1651 and Rule 44.

CERTIFICATE OF GOOD FAITH

I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented and adjudicated.

STATEMENT OF CASE

The right to have redress in courts incorporates the right to petition "in forma pauperis" as an indigent person. Applying the "three strike rule" regarding state petitioners being granted "in forma pauperis" status would foreclose a state petitioner's access to the federal courts as would violate the First and Fourteenth Amendments. For example, if a state circuit court, court of appeals, and supreme court grants petitioner the right to proceed in forma pauperis the three strike rule would end all access to have a state action reviewed by a federal court, even if a federal question of law was necessary to decide a case or controversy in dispute, in such case would be repugnant to the Constitution and laws of the United States.

Case in point, the Supreme Court declared that "The right to access to courts for redress of wrongs is an aspect of the First Amendment right to petition...the petition clause protects the right of individuals to appeal to courts...for resolution of legal disputes." See *Borough of Duryea v. Guarnieri*, 564 U.S. 131 (2010).

ARGUMENT

As a matter of law it must be first noted that a writ of mandamus to this Supreme Court of the United States does not ask the Court to adjudicate the merits of a pleading but rather ask the Court to exercise within its supervisory capacity over lower courts when called for. In the case *Dickerson v. United States* the Court made clear that "the Supreme Court of the United States has supervisory authority over the federal courts. See *Dickerson*, 530 U.S. 428, 437 (2000).

As is here the court deciding to deny in forma pauperis the basis for which the petition for writ of mandamus was dismissed without cause is contrary to and would be in violation of the Constitution and the laws of the United States. "A violation is not simply an act or conduct, it is an act or conduct that is contrary to law." See *Richardson v. United States*, 526 U.S. 813, 818 (1999)

GROUND ONE

Section 28 U.S.C. 1915(g) states "in no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has on three or more occasions, while detained in any facility brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted."

Case in point it is settled law as announced in the case of *Duke v. Turner*, 204 U.S. 623, 631 (1907) that "a proceeding in mandamus is not a civil action," therefore making the requirements under section 28 U.S.C. 1915(g) inoperable in this instance. To

another point, the Courts below which granted in forma pauperis did not give an opinion and does not give rise or cause to draw inference on the grounds of frivolousness or maliciousness and should not be misconstrued otherwise if not stated in their conclusions therefore it cannot be considered as a "strike" against petitioner as a matter of law. The Supreme Court further announced that "In 1892, Congress enacted the *informa pauperis* (IFP) statute, now codified at 28 U.S.C. 1915 to ensure that indigent litigants have meaningful access to the federal courts. See *Bruce v Samuels*, 136 S. Ct. 627, 630 (2016); "that statute is intended to guarantee that no citizen shall be denied an opportunity to commence, prosecute, or defend an action, civil or criminal in any Court of the United States solely because his poverty makes it impossible for him to pay or secure the cost. See *Adkins v Dupont de Nemours & Co.*, 335 U.S. 331, 342 (1948).

The Court's conclusion reveals no plausible explanation or legal reasoning for its decision. In the ordinary course of legal proceedings it is the duty of the Court to explain its decision in order to bind the parties subject to be reviewed by a higher courts. Merely claiming that frivolousness or maliciousness exists in itself is not enough it must be a *prima facie* showing on the record spoken of to a legal certainty which is not the case here. Finally, it was made clear that "mandamus is a remedy to compel any person, corporation, public functionary, or tribunal to perform a duty required by law, where the duty sought to be enforced is clear and indisputable, and the party seeking relief has no other legal remedy." See *Riggs v. Johnson*, 173 U.S. 166, 193 (1867).

GROUND TWO

The court rejected granting "in forma pauperis" on a petition for writ of mandamus citing Rule 39.8, frivolous or malicious grounds for reaching its decision, however, did not state any content found to be supportive for its decision. See Rule 39.8.

First, on the ground that the writ of mandamus is frivolous fails because the facts averred in the petition are fully supported on the face of the record and documentary evidence appended to which the law is to be applied to as briefed. There is no evidence that the writ of mandamus filed contained any textual or written language rising to the level of frivolousness. "The frivolousness standard authorizing *sua sponte* dismissal of an "in forma pauperis" complaint" only if the petitioner cannot make any rational argument in law or fact which would entitle him or her to relief." See *Neitzke v. Williams* 490 U.S. 319, 323 (1989).

As to the first point the frivolous standard has not been met and petitioner should be allowed to proceed "in forma pauperis" status as a matter of law.

Second, on the ground that the writ of mandamus contained within malicious material fails because the writ is based on constitutional grounds which constitutes a deprivation of a legal right. The court points to no part of the writ of mandamus filed in support of its contentions made warranting dismissal.

CONCLUSION

It is therefore appropriate for this court to grant "in forma pauperis" status and issue mandamus in the interest of justice.