ORIGINAL

No. 18-9212

In The
Supreme Court of the United States

Vincent McCrudden

Petitioner

v.

United States of America;
Lieutenant Joseph Anderson;
Four John Does

Respondents

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Can Courts systemically deny access to a jury trial in meritorious FTCA and Bivens Claims by making credibility determinations at the summary judgment level that is clearly the province of a jury as defined in Fed. R. Civ. Procedure Rule 56(a).
2. Can the District Court use one reasoning to grant summary judgment, and then the Appellate Court use another in a clear model of predisposition bias against a class of Appellants.
3. Can each Circuit use a different definition of "de minimis" force and are they allowed to come to that conclusion at the summary judgment level without resolving all the material disputed facts?

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Petition for Writ of Certiorari

Vincent McCrudden, a former inmate at MCI Fort Dix in New Jersey, acting as Pro Se, respectfully petitions this Court for Writ of Certiorari to review the judgment of the Third Circuit Court of Appeals.

Parties to the Proceedings

Petitioner Vincent McCrudden were Plaintiff's and Appellants below. Respondent Lt. Joseph Anderson, Four John Does and The United States of America were Defendants and Appellees below.

Opinions Below

The decision by the Third Circuit on a petition for Rehearing or En Banc was denied on April 10,2019. (Appendix C). The decision by the Third Circuit Court of Appeals affirming the District Courts Summary Judgment is reported as McCrudden v. Lt. Anderson et. al., 18-2343. (2-19-2019). (Appendix A). The decision by the District Court of New Jersey granting summary judgment is unpublished at 14-cv-3532. (6-11-2018). (Appendix B).

Jurisdiction

The Third Circuit entered its final judgment to deny Rehearing or En Banc on April 10,2019. The petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1), having timely filed this petition for a Writ of Certiorari within ninety days of the Third Circuits denial for rehearing.

Statutory Provisions Involved

This petition involves provisions of United States Constitution, Amendment XIII:

"*Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.*"

Federal Rules of Civil Procedure Rule 56(a):

"The Court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

Introduction

"The Federal Tort Claims Act (FTCA) waives the Government sovereign immunity from tort suits, but excepts from that waiver certain intentional torts, 28 U.S.C. § 2680(h). Section §2680(h), in turn, contains a proviso that extends the waiver of immunity to claims for six intentional torts, including assault & battery that are based on the "acts or omissions" of an "investigative or law enforcement officer", (Milbrook v. US, 133 S. Ct. 1441). (2013). So wrote Justice Thomas when this Court overruled the Third Circuit in a 9-0 decision. That case involved not only unlawful and criminal actions of law enforcement officials, but immoral and unethical conduct. Now, here we are again requesting this Court review blatant disregard of the law by the Third Circuit and indeed all other circuits that are systemically denying meritorious claims of FTCA and Bivens complaints.

This case involves yet again, the violation of the eighth amendment of cruel and unusual punishment by Federal law

enforcement officials of assault and battery. If the assault was conducted outside of the purview of the walls of a federal prison, it would be reported, investigated and prosecuted by authorities. Instead, free counsel, provided by the Bureau of Prisons and Department of Justice at taxpayer expense, sought to defend this criminal act rather than prosecute it.

Incredibly, and what should be of grave concern to this Court, is the deliberate disregard of the law established by this Court by once again the Third Circuit. A deliberate bias and predisposition by Federal Judges to disregard the law and deny a class of victims seeking their day in Court in front of a jury of peers. Quite simply, when you block and tackle for other Government employees by denying due process and collude in a "gang mentality", you then advance vigilantism instead of the rule of law.

Statement of the Case

Although this case was initiated by an assault against a single person, it represents a model of deliberate denial of justice at the BOP and Courts.

On August 31, 2012, the Petitioner was assaulted by Lieutenant Anderson and four BOP guards. The Petitioner

wrote details of the assault and emailed them to his sister the night of the assault. He requested maybe that the FBI be contacted because he believed he might have been a victim of a hate crime as the assault was executed by all black guards and conducted on Federal property. The Petitioners sister and family feared retaliation and advised the Petitioner to wait until release before contacting the FBI and file a complaint. When the petitioner was released a few months later, he then contacted three FBI offices to submit a complaint but was told, *"it wasn't their jurisdiction."*

The Petitioner researched the Administrative Remedies Process (ARP) 42 U.S.C. § 1997(e) and compliantly pursued accountability and justice. The Prison Litigation Reform Act (PLRA) of 1996 sought to suppress what Congress viewed were non-meritorious and frivolous lawsuits. (Compensatory Damages Are Not for Everyone: Section 1997(e) of the Prison Litigation Reform Act and the Overlooked Amendment, Notre Dame Law Review, Volume 92, Issue 5, Article 14) (2017). Although statistics are not published and indices are destroyed every three years by the BOP, it is widely held that almost all claims are denied within the BOP. A majority of those claims are denied as

"*untimely*". As witnessed in the Petitioners amended complaint, he started the ARP on 9/1/2012 and was systemically denied and frustrated into giving up until April 2014 when the investigating officer, Percy Johnson, conducted interviews, took sworn oath statements and concluded the case all on the same day.

District Court Unlawful Analysis

The Court rightfully stated the law on FRCP Rule 56(a), "*summary judgment is appropriate where the Court is satisfied there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.*" It further correctly stated; "*when the Court weighs the evidence presented by the parties, the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor.*" After completion of discovery, the Defense did not submit a single piece of evidence to show a dispute of material fact besides perjured testimony. (Celotex Corp. v Catrett, 477 U.S. at 325). "*Unsubstantiated arguments made in briefs are not considered evidence of asserted facts.*" (Versage v. Township of Clinton, 984 F.2d 1359, 1370 (3rd Cir. 1993).

The Court states in its analysis, "*In deciding the merits of a party's motion for summary judgment, the Courts role is not to*

evaluate the evidence and decide the truth of the matter, but to determine whether there is a genuine issue for trial." This would of course correspond with traditional roles of the Court to determine law while a jury determines fact. "*The Court should not weigh evidence or assess credibility of witnesses on a motion for summary judgment as these determinations are within the sole province of the jury."* (Hayes v. New York City Dep't of Corrections, 84 F.3d 614, 619, 2nd Cir. (1996).

Although the Court understood the law, correctly stated it, it then went on deliberately to abrogate it. It made credibility determinations on no submitted proof and then continued to triple down on unlawfulness by stating that the force used was "*de minimis.*" Incredibly the Court produced some series of 5 "tests" which were all credibility determinations and made those determinations without a single thread of submitted evidence. A disinterested observer, aware of all the underlying facts could only conclude that the Court were colluding with the Government and systemically denying a Constitutional right to a jury. There really can be no other logical explanation.

Even if it were the purview of the Court to decide whether or not the Defendants used de minimis force, which it's not, Courts across the land are split on deciding the definition they

want to use of whats de minimis and whats not. (Please Pass the Dictionary: Defining *De Minimis* Physical Injury Under the Prison Litigation Reform Act § 1997(e), 100 Iowa L. Rev. 803 (2015).

Additionally, the Court then cherry picked pre discovery pleadings by using the Petitioners amended complaint of not knowing exactly who assaulted him because he was protecting his head while being assaulted. The Court stated, "*Second, under Plaintiff's version of events, Lieutenant Anderson did not employ force against Plaintiff because he never physically touched him.*" This was in direct contradiction to evidence submitted by the Petitioner when the Defendant himself admitted in his deposition that: "*You were moving round, so I restrained you. And I stopped you by placing restraints on you.*" This statement contradicted the sworn testimony of witness CO James Morey who testified he was 20 feet away. And questioned exactly whom placed restraints on the Petitioner and where they were placed. This is just a single instance of material facts of dispute that can only be decided by a jury, not the Courts. It is also in contradiction of the record where the Investigating Officer, Percy Johnson, under sworn oath testified that he believed officers would lie to protect other

officers. The Court simply ignored the record. It is clear that the pleadings on their face would not allow for summary judgment, so the Court took liberty into disclosing disputed facts that fit into it's predisposition bias.

Third Circuit Court of Appeals Analysis

Evidence of clear error and abuse of discretion is best evidenced by the Courts reliance on submitted "evidence". In evaluating the law on dismissing the claims against the Four John Does, the Court simply states; *"the undisputed record indicates that there was no surveillance equipment in that area where McCrudden was allegedly assaulted."* Where was this established as undisputed? Because a BOP official stated there were no cameras, that means its deemed undisputed and fact? Defendant Anderson lied under oath and stated he *'didn't do it'*. Is that considered undisputed as well? The reliance on one side of the debate just proves the farce of granting summary judgment.

For the most part, the Appellate Court simply regurgitated the District Courts statement and correctly stated the burden of the movant in petitioning for summary judgment, but then relied on the same exact set of disputed facts to violate the law. What is most notable is that where the District Court relied on

making unlawful credibility determinations of the use of force as de minimis, the Appellate Court never once mentioned it? Why this is notable is that the Appellate Court knew they could not defend the District Courts analysis, and instead decided to present another justification of *respondeant superior.*

Typical, the Court tries to use the law to its own justification, but in this instance, it backfires. Respondeant Superior is the method to hold liable superiors and employers for the tortious conduct of its employees. The Court abused the fact that the Petitioner was getting assaulted and could not immediately identify his assailants. Since the Defendants destroyed video evidence of the campus, did not respond to a single Request for Interrogatories or Information, and helped obstruct justice, made getting the identity of the four John Does impossible. It was established after discovery, that Defendant Lt. Joseph Anderson was indeed one the four John Does. Initially, the Petitioner did try and hold accountable distant superiors by naming the Warden, BOP Commissioner and the FBI for not investigating. All those Defendants were removed by the Court as Defendants. However, based on a new Court case of *Jennifer Cox v. Evansville Police Department and*

the City of Evansville, Indiana Supreme Court, 185-CT-447. (Sept. 2018), the Court found that much like this Court's unanimous decision in Milbrook, it is the mere "*status*" of the officials or employees that determines liability of not only the offenders, but also their employer. Pursuant to 28 U.S.C. § 2679 (d)(1), the US Attorney certified that the Defendants in this case were employees acting within the scope of their employment which allowed the case to proceed to trial.

Respondeant Superior defense could have been challenged by the Petitioner when the Court dismissed claims against Warden Zickenfoose and BOP Commissioner Charles Samuels. However, the Courts defense of Defendant Anderson is just another example of the Courts deliberately bending over backwards to support violations of the Constitution. The Court cites *Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3rd Cir. 1988)* and names a few "tests" as compared to the Petitioners pre discovery Amended Complaint. The Court states that those tests like personal direction, actual knowledge and acquiescence removed liability when this defense is in complete contradiction to the record of the Defendant stating in his deposition that he indeed physically touched the Petitioner. The "*degree*" of physical interaction is the province of the jury

as it remained a material disputed fact The Court also totally ignores the Petitioner's complaint of all the verbal threats and direction the Defendant stated as he was assaulting him.

By going out if its way, cherry picking information, and trying to remove Lt. Anderson's liability under respondeant superior, not only shows clear error, but a systemic model of denial of meritorious claims. It also shows the Court not just basing its decision on the decision of the District Court's analysis of the law, but ignore the District Courts theory on de minimis force and come up with its own unlawful justification for denying access to a jury.

Reasons For Granting the Petition

1. The Courts have Departed so far from accepted and usual course of judicial proceedings

Each branch of Government has a role to play in the United States society. In this instance of systemic denial of meritorious claims, Congress did its part by passing the Federal Tort Claims Act to hold accountable bad actors in Government. But what good are the laws when the Courts are deliberately basterdizing and misinterpreting the law against a class of citizens and denying access to a jury? Subsequent from the passing of the PLRA in 1996 to try and suppress

complaints coincided with the dramatic increase of the prison population. Since felons are mostly restricted from voting, litigation in most case is their only way to hold accountable unconstitutional behavior. A simple cursory glance of cases in Courts one can quickly and obviously see a systemic denial of claims including medical cases and assault like this one.

On paper, there looks to be due process and accountability of Government and Court officials. But in reality, there is simply tyranny. If indeed Federal Judges are denying meritorious claims and violating their oath to uphold the Constitution, then the FTCA process becomes a farce. If someone then wants to hold a Judge accountable by filing a Judicial Conduct and Disability Act of 1980 complaint, it is barred as "merits related." This Court cannot stop corruption, but acts of omission and silence are just as guilty as the offenders.

2. Certiorari should be granted to provide guidelines to the Courts to resolve not only the numerous interpretations of "*de minimis*" force, but reauthorize when in the process that should be allowed.

The eighth amendment prohibits the "*unnecessary and wanton infliction of pain that violates contemporary standards of decency.*" Hudson v. McMillian, 503 U.S. 1, 8 (1992). The

details of that case are almost identical to this case and in fact both the District and Appellate Court cited it, but ignored that well established precedent. One has to ask themselves as to how the Courts can be aware and even cite the law, and choose to deny justice with almost the same exact set of facts? Justice O'Connor clearly explained the law in her opinion:

> *"'the degree of injury suffered by an inmate* is *one of several important factors in the Eighth Amendment claim of cruel and unusual punishment, but that the absence of 'significant injury" alone does not mean his rights have not been violated. Instead, the Court should consider whether the punishment inflicted was malicious and sadistic. When prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency are always violated. This* is *true whether or not significant injury is evident. Otherwise, the Eight Amendment would permit any physical punishment, no matter how diabolic or inhuman, inflicting less than* some *arbitrary quantity or injury. Such a result would have been as unacceptable to the drafters of the Eighth Amendment as it* is *today."*

This statement on its own resolves the meaning of de minimis force, but it also is in contradiction to the FRCP Rule 56(a) as to "**when**" the Courts can make that determination? Unless there were no material facts still in dispute in that case, Courts were prohibited from making that determination.

In the Petitioners case then, the law was clear. The Court prematurely made credibility determinations of the use of force, did so with a bias of no submitted evidence to refute the Plaintiff's version of facts in a violation of FRCP Rule 56(a),

and in doing so, deliberately and systemically denied the Petitioners rights against his Constitutional rights to be free from cruel and unusual punishment.

Unfortunately, this case is not the minority, but norm in denying meritorious FTCA and Bivens claims that needs to be addressed.

Conclusion

The Seventh Amendment to the Constitution of America states; "*in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.*" Where the Courts deliberately and systemically deny this right by basterdizing and misinterpreting the law for their own agenda outside the rule of law and due process against a class of Plaintiffs, only advances acts of retaliation and violence instead of redress in a civil Court. It's that simple. Human beings will continue to have conflict. The Courts obvious favor and bias, especially in favor of other Government agencies, officials and employees will only help lower the public confidence in the Courts which is detailed in its mandate. Without credibility, the Courts will

continue to erode the public's confidence and trust and civil disobedience and vigilantism will closely follow behind.

Submitted,

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