

19-5461

ORIGINAL

Supreme Court, U.S.
FILED

MAY 02 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Anthony Pierce — PETITIONER
(Your Name)

vs.

Lisa Garrett — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States District Court Eastern District of Texas
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Anthony Pierce
Eastern District of Texas
(Your Name)

Michael Unit, 2664 FM 2054
San W. Elmer, Texas
(Address)

Tennessee Colony, TX 75886
Waco, Texas 76702
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1 ~~Can the court~~ ~~Can the court~~

Did the court err in allowing the magistrate to use non-merit issues to "twice" dismiss petitioner's action without prejudice, barring appeal;

Did the court err in adopting the magistrate's findings of petitioner's claims to be frivolous as a after thought where petitioner file to remove said magistrate from over-seeing his case after showing such facts of the unit's mail-room supervisor tampering and/or removing legal documentations;

Did the court err in totally disregarding the facts presented by petitioner showing the respondent's totally disregarded the Administrative Directive, which was covered up by the Unit Administration; and

Did the court err in over-looking the prima facie showing by respondent's having a fail mechanism in place simply to rule against petitioner's claim when no such frivolous findings were made in the previous two actions filed and/or the court ruling allowing petitioner to refile in state court but never mention what state court since petitioner had been barred for having been cited for time bar.

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:

A handwritten signature in dark ink, appearing to read "Anthony H. Pierce". The signature is stylized with loops and flourishes.

Anthony H. Pierce,
Petitioner.

vs.

Lisa Garrett, Susan Cunningham
Respondent(s)

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TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Lewis v. Casey, 518 U.S. 343 (1996)

Hudson v. Palmer, 468 U.S. 517, 533, 104 S. Ct.
3194, 3204, 82 L. Ed. 2d 393.

~~See~~ ~~Attached~~ ~~Enclosed~~

Thompson v. Steele, 709 F.2d 381, 383 (5th Cir. 1993).

Murphy v. Collins, 26 F.2d 543-44 (5th Cir. 1994).

Cruz v. Beto, 405 U.S. 319 (1972).

STATUTES AND RULES

~~See~~ ~~Process~~ ~~Administrative~~ ~~Directive~~ ~~03.72~~

Administrative Directive 03.72

~~See~~ ~~Attached~~ ~~Enclosed~~

OTHER

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 B to the petition and is

☐ reported at see Appended Complaint; 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 see Appended Complaint; 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 see Appended Complaint; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the see Appended Complaint court appears at Appendix _____ to the petition and is

☐ reported at see Appended Complaint; 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 _____.

☐ 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).

~~one Attached Envelope~~

☐ 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).

~~one Attached Envelope~~

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

~~On Attached Complaint~~

Due Process, U.S.C. A. Const. Amend. 14th
A.D. 03.72 Admin. Directives

STATEMENT OF THE CASE

~~See Attached Complaint~~
I.

Petitioner, Anthony L. Pierce, filed this action as a last resort when diplomacy didn't work nor didn't work nor did the mechanism in place, Administrative Directive 03.72, as was demonstrated by the enclosed grievances marked as Exhibits and reference.

II.

Petitioner sorted to file a Tort Claim after first being told that the place for filing was not known by the clerk in the Palestine District Court, see enclosed appendix, only to be told petitioner's filing was late.

III.

The response in the grievance attempted to only justify the confiscation by stating that the unit administration could determine a product unsafe though, for this to happen, a serious threat to the health of the staff and/or prisoner's have to be established then, an Inter Office Communication [IOC] has to be place to notify the prisoner's by the Head Warden giving the prisoner's time to depose the property, it doesn't justify the property officer to violate the Administrative Directive when she feel fit nor does it justify violating a decision made by the Head Administration regarding the possession of the confiscated item, and

IV.

In accordance with petitioner's Due Process Violation, no justification for confiscating petitioner's property appeared on the confiscation slip because no justification were found.

REASONS FOR GRANTING THE PETITION

The findings of petitioner's petition as frivolous is not withstanding because no such findings were made in petitioner's previous two [2] dismissals that petitioner found out was illegal yet, the appeals court seem too quick to deny petitioner the right to redress abuse of authority by prison authorities, rather than seek to allow petitioner's oral deposition, as requested by petitioner, to develop the facts, which the district court judge eluded to the fact that petitioner filed his complaint without offering any evidence when in fact petitioner submitted copies, marked exhibits etc., etc., and for reference to them throughout his argument however, those copies were removed by the former mail-room supervisor [Miller], if those copies were not amongst the complaint filed in this cause, as petitioner can show this current mail-room supervisor is doing the same thing and have done so with regards to a documentation sent by the Clerk of the court, which, petitioner can prove.

Under Federal Civil Procedure 2134 "To determine whether prison's complaint is frivolous under statute governing proceedings in forma pauperis [28 U.S.C. A. § 1915 (d)] , court must inquire whether there is arguable factual and legal basis, of constitutional dimension, for asserted wrong and this inquiry involves focusing precisely on prisoner's factual allegations, looking behind conclusory allegations. Petitioner's dismissal of this same complaint by the appointed magistrate was done due to petitioner's not paying a partial payment fee when petitioner showed the magistrate, via Certified Mail, that he sent in a withdrawal for the amount ordered by the magistrate though, intentionally with held by the former mail-room supervisor [whereas the unit was on an annual lock down status].

The second dismissal by the same magistrate, whom petitioner felt was looking for excuses to dismiss his complaint, was based on something else after petitioner's Mother paid the partial filing fee, even after petitioner filed to rescue the magistrate, did the frivolous ruling were made, said ruling petitioner don't have. However, petitioner's Tort Claim was, first held up by the clerk in the local district court, then dismissed via, time bar, while the appeals court;

doctrine of the Pratt/Hudson doctrine is misguided because the institutions post-deprivation remedy is merely for show because had it been enforced, petitioner would not had to seek public redress to right a proven wrong. If indeed the institutions post-remedy actually work as it is written, no civil actions would be filed nor do A.D. 03.72 grant rule violators qualified immunity. Petitioner see this mixed ruling by the court as nothing but a ploy to deny him Access To Court because of several reason[s] being; 1) the local magistrate tried other methods to dismiss petitioner's claim before issuing a partial payment order, and even though petitioner showed the magistrate judge his attempt to meet the magistrate's order, were hindered by the former mail-room supervisor, his complaint were dismissed without prejudice due to petitioner's lack of payment when in fact, petitioners case ~~can't~~ not be dismissed for lack of funds; 2) the district and appeals court ruling is also contradictory because it dismisses petitioner's complaint with prejudice as frivolous though granting petitioner the right to pursue his claim in state court, not identifying what state court, and/or disregarding the fact that petitioner expounded to the court that his attempt to file a Tort Claim in state court was barred for time; and 3) how is the court's ruling to barr me from filing in forma pauperis filings when petitioner's financial situation has not changed.

In fact, as previously argued in another case, petitioner find here too that, "The court(s) below are using an over board definition of frivolous and citing as the proponent for the State in dismissing, as frivolous, inmates pro se claims under 28 U.S.C. § 1915 contrary to Supreme Court precedent in *Weitzke v. Williams*, 109 S. Ct. 1822, definition of frivolous.

By moving to proceed in forma pauperis to the Court of Appeals, petitioner was required to show his appeal was taken in good faith, *Baugh v. Taylor*, 117 F.3d 197, ²²⁰ ~~202~~ [5th Cir. '93]. See Appx. A; Fifth Circuit Opinion. This test involves the 28 U.S.C. 1915 inquiry for frivolity. *Howard, Id.*

Attachment pg. 3.

at 220. Frivolous in either context and as defined in *Weitzke v. Williams*, refers to an indisputable meritless legal theory, or a "legal theory... or factual contention [that] lacks an arguable basis," *Weitzke*, Id. at 1828. This standard includes claims, for example, against defendant(s) that are clearly immune from suit or claims of infringement of a legal interest they clearly does not exist, Id. at 1829.

Issue's that are arguable verses those that are indisputable meritless are claims that the Fourteenth Amendment legal argument as opposed to claim lacking significant constitution basis. The facts were never attempted to be developed, obtain or proven via "oral deposition" as requested by petitioner and in light of the fact that petitioner offered the magistrate, [through Certified Mail], her order, ordering petitioner to pay a partial filing fee at a certain time were held up by the former mail-room supervisor, Miller, a rush to judgment were made in spite of this fact, plus the court's citing that petitioner's complaint were filed without proof should have been enough to warrant oral deposition in light of the fact that petitioner made references to the offered proof he marked as Exhibits, as he is doing with these exact copies he offer this Honorable Supreme Court for review.

The acts and omissions petitioner described herein clearly violated his right under the Constitution and laws of the United States whereas petitioner pray this Honorable Court will declare because the Baugh and/or ~~Booth~~ Parratt/Hudson doctrine do not qualify for status review regarding the issue's petitioner raised before the court and the proof in support, because in Conley v.

~~De~~ ~~Black~~ ~~Complaint~~

Gibson, 355 U.S. 41, 45-46 (1957) the Supreme Court said that in considering a motion to dismiss, a pro se complaint should be held to less strict standard than a motion drafted by a lawyer. The Supreme Court have also stated that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the petitioner can prove no set of facts in support of his claim which would entitle him to relief... see Cruz v. Beto, 405 U.S. 319 (1972).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Anthony Pierce

Date: April 4, 2019