

No. 19-6334

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IN THE  
SUPREME COURT OF THE UNITED STATES

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Jacques Paul Villafana -- Petitioner

vs.

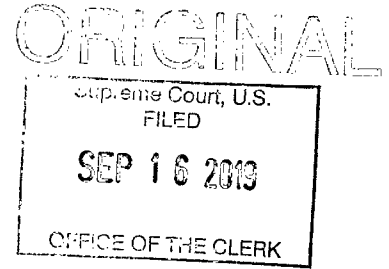
Henry Thomas Padrick, Jr. -- Respondent

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI

JACQUES PAUL VILLAFANA,  
CWCC -- P.O. Box 500  
Mitchells, Virginia 22729



## QUESTION PRESENTED

I. Courts of Appeals may exercise jurisdiction over collateral orders. Petitioner appealed a District Court's Memorandum Order under the collateral order doctrine. The Court of Appeals for the Fourth Circuit, however, denied review citing lack of jurisdiction. Did the Court of Appeals' decision conflict with opinions from this Court on collateral orders?

## LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

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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 judgment below.

OPINION BELOW

The opinion of the Court of Appeals (App., 1a-2a) was unpublished.

JURISDICTION

The judgment in the Court of Appeals was entered on June 25, 2019. A petition for rehearing en banc was also denied on August 13, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

Pertinent statutory provisions are reprinted in the appendix to this petition. App., 6a.

## STATEMENT OF THE CASE

In December 2018, Jacques Paul Villafana(Petitioner), a state inmate, brought a suit in equity against Henry Thomas Padrick, Jr.,-- a circuit court Judge for the City of Virginia Beach -- under 42 U.S.C. 1983. Petitioner's complaint alleged that Henry Thomas Padrick, Jr., while in his official capacity and acting under the color of state law, denied him his due process right on a state post-conviction motion.

But on January 9, 2019, the District Court for the Eastern District of Virginia(District Court) conditionally docketed Petitioner's 1983 complaint and issued a Memorandum Order(App., 3a-4a) for Petitioner to consent to partial payments to the filing fee in 30 days, or have his case dismissed on the merits.

Instead of complying, Petitioner filed an appeal in the Court of Appeals for the Fourth Circuit(Court of Appeals) on March 4, 2019, challenging the District Court's incorrect application of the Prison Litigation Reform Act(42 U.S.C. 1997(e)): Petitioner's appeal stated that its basis for federal jurisdiction fell under the collateral order doctrine because the filing fee was collateral to and seperable from the main action. Petitioner contended that the PLRA was enacted to control prisoners bringing civil actions about prison conditions, and Petitioner's complaint did not raise prison conditions.

The Court of Appeals, however, denied review stating that the "order [Petitioner] seeks to appeal is neither a final order nor an appealable interlocutory or collateral order." App., 1a-2a

Petitioner, on rehearing en banc, argued that the Court of Appeals' decision was contrary to decisions from this Court, as well as Circuit decisions on collateral order issues. But despite

Petitioner's argument, the Court of Appeals denied rehearing.

App., 5a.

#### REASON FOR GRANTING REVIEW

I. The Court of Appeals' decision is irreconcilable with this Court's opinions regarding a lower court's jurisdiction for collateral orders.

Congress established that Courts of Appeals may exercise jurisdiction only over final orders(28 U.S.C. 1291). There is, however, an exception to the final order rule. The collateral order exception permits an appeal of right from orders that adjudicate issues collateral to and clearly separable from the main action. See Cohen v. Beneficial Industrial Loan Corp, 337 U.S. 541, 545-46 (1949).

Petitioner's appeal argued that the District Court's Memorandum Order (App., 2a-3a) was conclusive, completely separate from the complaint and, the order could not be reviewed on appeal. Therefore, the Court of Appeals' decision that Petitioner's appeal is "neither a final order nor an appealable interlocutory or collateral order" conflicts with decisions from this Court. App., 1a-2a. In addition, prompt action from this Court is needed because denial of Petitioner's appeal also denies him his right to access the courts in his original complaint.

One of Cohen's progeny qualified what cases fall under the collateral order review. This Court said that an order must (1) conclusively determine the disputed question, (2) resolve an important issue completely separate from the merits of the action, and (3) be effectively unreviewable on appeal from final judgment. See Will v. Hallock, 546 U.S. 345, 349 (2006).

In addition, the court in Will also assessed that the " 'right

asserted [in the action] has always been a significant part of the analysis" for collateral orders. 546 U.S. at 352; quoting Laurolines s.r.l. v. Chasser, 490 U.S. 495, 502 (1989)(Scalia, J. concurring).

Well, Petitioner's appeal asserted that he had a right to present a claim of in forma pauperis, under 28 U.S.C. 1915(a)(1), without the prepayment of the filing fee because his claim was criminal, not civil in nature; and not allowing him to do so, violated his right to access the courts. Petitioner also alleged that the right would have been irreparably lost, if review had to await final judgment. Furthermore, irreparably losing that right by delaying review until the entry of final judgment would also "imperil a substantial public interest." Will, 546 U.S. at 352-53

Petitioner's appeal also alleged that his original complaint was not governed under the PLRA because the PLRA specifically targets actions brought by prisoners with respect to prison conditions. And since Petitioner's complaint was criminal, and not civil in nature, the in forma pauperis statute(28 U.S.C. 1915(b)) that mandated the prepayment of filing fees by prisoners did not apply. Therefore, the District Court's Memorandum Order(App., 3a-4a) met the first requirement in Will when it conclusively determined that the filing fee be prepaid, or it will dismiss Petitioner's case on the merits.

Next, the prepayment of the filing fee was completely separate from the merits of the action. The original complaint alleged that Henry Thomas Padrick, Jr., while in his official capacity and acting under the color of state law, denied Petitioner his due process right on a state post-conviction motion.



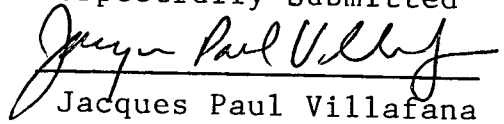
And finally, the Memorandum Order could not be reviewed on appeal.

#### CONCLUSION

The District Court's Memorandum Order fell within the so-called collateral order doctrine's guidelines, which gave the Court of Appeals jurisdiction to review Petitioner's appeal. The Memorandum Order effectively ended the litigation, was completely separable from the merits of the original complaint, and unreviewable on appeal. So, the Court of Appeals' decision to deny review of Petitioner's appeal for lack of jurisdiction is irreconcilable with previous opinions from this Court.

Therefore, Petitioner prays that this Court reverse the Court of Appeals' decision and remand Petitioner's appeal for plenary review.

Date: 09/16/2019

Respectfully Submitted  
  
Jacques Paul Villafana