

19-7357

No. _____

Supreme Court, U.S.
FILED

JAN 03 2020

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

CHRIS FORDHAM — PETITIONER
(Your Name)

vs.

C/O MANZOLA, ET. AL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Fourth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CHRIS FORDHAM
(Your Name)

Nash C.I. / POB-605
(Address)

Nashville, N.C. 27856
(City, State, Zip Code)

(Phone Number)

ORIGINAL

C. QUESTIONS PRESENTED

1. Whether the USDC-EDNC erred in deciding that Plaintiff-Petitioner failed to exhaust and dismissing without prejudice Petitioner's §1983 Complaint after Petitioner presented it with credible evidence showing Petitioner attempted to exhaust all administrative remedy procedures but prison officials thwarted all such efforts.
2. Whether the Fourth Circuit Court of Appeals erred in affirming the USDC-EDNC's decision dismissing PLT'F-Petitioner's §1983 Complaint without prejudice for failure to exhaust when Petitioner presented the COA with prior existing and credible evidence that was unavailable to present to the District Court and which showed Petitioner repeatedly [attempted]

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: C/o Manzola, C/o Steed, C/o Thomas, SGT Lee, Mr. W. Fox, Mr. Williams, RN Lewis, LPN AKuche

RELATED CASES

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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 "B" 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☒ is unpublished.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 "A" 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☒ is unpublished.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 9/5/2019.

☐ 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: 10/15/2019, and a copy of the order denying rehearing appears at Appendix "C".

☐ 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

42 U.S.C. § 1983

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

42 USC § 1997e (a)

"... [n]o action shall be brought with respect to prison conditions... by a prisoner confined in any jail prison, or other correctional facility until such administrative remedies as are available are exhausted

STATEMENT OF THE CASE

While this case seeks relief for an NCDPS prisoner-petitioner who filed a Title 42 U.S.C. §1983 Civil Rights Violation ~~in the~~ ^{in the} ~~NCDPS's~~ USDC-EDNC on about 4/15/16, alleging an assault and denial of timely, properly and adequately medical treatment by Respondents that occurred on 4/9~~1~~¹³/~~16~~, the issue ^{now} before this Supreme Court of the U.S. is whether PLT'F-Petitioner exhausted this Administrative Remedy Procedure ("ARP").

While being denied timely and adequate access to his then 18-boxes of legal property by Albemarle C.I. staff, PLT'F-P PET'R quickly altered the prisoner's §1983 Complaint form to fit his situation, check marked the space for exhaustion, verified his complaint and filed it with the USDC-EDNC 17-days before the 3-yr. deadline. Although the §1983 Complaint pleaded exhaustion and stated interference in his "ARP" process by prison staff, PLT'F-PET'R did NOT submit any copies of his grievances with the Complaint due to them being non-accessible to him.

With PLT'F-PET'R being ^{made} unable to request timely discovery, the case quickly moved into the summary

judgment phase and PLT'F-PET'R responded. However, before the USDC-EDNC could rule on the summary judgment motions, Respondent's Thomas filed a "motion for judgment on the pleadings" and "motion to dismiss" for failure to exhaust, and the USDC-DJ T. Boyles granted Respondent's Thomas' motions.

PET'R then timely filed Notice of Appeal to the U.S. Fourth Circuit Court of Appeals. The Fourth Circuit affirmed the USDC-EDNC's ruling and denied Petr's appeal. Thereafter, Petitioner timely filed a Petition For Rehearing En Banc on ____/2019, and the U.S. Fourth Circuit denied the Petition For Rehearing on 10/15/2019.

PET'R now seeks certiorari relief on behalf of himself and the thousands of other prisoners who suffered interference in their "ARP" process concerning exhaustion

REASONS FOR GRANTING THE PETITION

I. THERE ARE CONFLICTS IN THE COURTS OF APPEALS ON THE QUESTIONS PRESENTED

A. The Court of Appeals Have Reached Conflicting Decisions Concerning Whether A Prisoner Has Exhausted Administrative Remedies

While housed at NC DPS's Central Prison-Mental Health, Respondents subjected Plaintiff-Petitioner (hereinafter "PLT'F-PET'R") to an assault and a conspiratorious denial immediate medical treatment after the assault in an attempt to further hide the assault.

And, immediately thereafter, PLT'F-PET'R began "trying" to exhaust his "ARP process" by "submitting" a grievance on about 4/24/2013 complaining about the 4/24/2013 unprovoked staff assault, while seeking exhaustion as its remedy, see Dist Ct D.E.-67-2, herein App'x "D", however, said initial /first grievance was either lost, thrown away or NOT processed by CP-MH staff.

A few days later, after not getting his copy of the first Grievance, PLT'F-PET'R again "attempted to exhaust" his "ARP" by submitting a second grievance complaining about the assault and seeking exhaustion as its remedy. However, said 2^D-Grievance was DELAYED, see, Dist-Ct. D.E. _____ as herein App'x E _____, due to a prior grievance (whose number was NOT then listed) not completing "Step-2".

While still housed on CP-MH, CP-MH custody staff began retaliating against and harassing PLT'F-PET'R for his submitting of grievances and writing DC-138 statements against the assault and conspiratous denial of timely medical care by subjecting PLT'F-PET'R to intimidation with false/unwarranted write-ups, over-tight cuffing and verbal abuse, and ransack cell searches, thereby causing PLT'F-PET'R to stop submitting grievances for exhaustion of his "ARP process" while confined on CP-MH.

At the time of the violative incidents, the NCDPS's "ARP" process governing PLT'F-PETR's grievances Mandated/allowed for the following: ("ARP-A" herein)

- ... A 1-yr time limit for filing grievances
- ... Grievances could be DELAYED
- ... DELAYED Grievances were kept on file on the unit
- ... Only grievances completing STEP-3 were kept (maintained) on the Inmate Grievance Resolution Board (IGRB)
- ... The timeline/deadline for filing grievances and the rejection codes were listed on the front of the grievance form.

Petitioner submitted for filing two grievances seeking exhaustion under this "ARP-A" process. (See Dist. Ct D.E. 67-2 Pp. "1" & "2" of 11 / App'x-D+E)

About 6-weeks after the violative incidents, PLT'F-PET'R transferred to Alexander C.I. (hereinafter "Alex'r") While at "Alex'r" and without any prior notice to the inmate population, the NCDPS suddenly changed its "ARP" Grievance Forms and grievance procedure effective 7/1/13 to as follows: ("ARP-B" herein)

... The DC-410 "Grievance Forms" No Longer listed (1) the deadline for filing grievances, or (2) the rejection codes

... The ARP process's "Grievance-Filing-Deadline" changed from 1-yr to 90

... DELAYED Grievances No Longer existed

... The Grievance filing deadline and rejection codes were taken off the Grievance Form.

Despite the "NEW" and "Unannounced" change in the NCBPS's ARP-Grievance process and Grievance forms, PET'R again "attempted to exhaust" his ARP-process by "timely submitting a grievance within the new 90-day deadline using the NEW DC-410 Grievance Form, see, COA-D.E. (herein App'x "F")

complaining about the CP-MH staff assault on him to the Alex'r staff. However, Alex'r C.I. staff accepted said grievance but PLT'F-PET'R never got a response to it for any step from either Alex'r or CP-MH staff.

Given the above facts and below body of law Plaintiff-Petitioner contends and shows this Court that the lower courts' decisions conflicts with other circuits' and this Court's decisions concerning a prisoner's exhaustion of ARP's.

The Fourth Circuit, in Moore v. Bennette, 517 F.3d 717, 730 (4th-08), ruled that "dismissal for failure to exhaust administrative remedies improper because requiring Plaintiff to allege each component of punishment separately would have prevented fair and complete presentation of claim." The Sixth Circuit, in Risher v. Loppin, 639 F.3d 236, 240 (6th-11), ruled "dismiss for failure to exhaust administrative remedies improper when "Bureau Of Prisons" failed to respond to inmate's attempt to comply with grievance procedure." The Seventh Circuit, in Walker v. Sheahan, 526 F.3d 973, 979 (7th-08), ruled "dismissal for failure to exhaust administrative remedies improper because genuine issue of material fact remained as to whether inmate exhausted procedure when inmate claimed to have filed

grievance with social worker who subsequently lost it. Finally, in *Little v. Jones*, 607 F.3d 1245, 1249-50 (10th Cir. 2010), the Tenth Circuit ruled "dismissal for failure to exhaust administrative remedies improper because Administrative Review Body improperly prevented prisoner from completing grievance process."

In each case cited above, there exists a similar or exact disruptive situation that this PLT F-PETR went through concerning exhausting his "ARP" that warrants this Court's consideration.

Here, in this case, Petitioner's initial grievance that was submitted on about 4/24/2013 to custody staff went unprocessed due to either staff's loss or theft. see, Dist. Ct. D.E. - 67-2 Pp "1" & "2" of 11 herein App'x "D", compare, *Walker v. Sheahan*, 526, *supra*. PETR's second or third grievance submitted on about 4/30/2013 was wrongly DELAYED by CP-MH staff and later became void due to

the NCDPS's sudden unannounced change in "ARP"-process, see Little v. Jones, 607, supra; Davis v. Hernandez, 798 F.3d 290, 295 (5TH - 2015) & "Grievance procedures are unavailable... if correctional facility's staff misled the inmate as to the existence or rules of the grievance process so as to cause the inmate to fail to exhaust such process"; see, Dist. Ct. D.E. 67-2 Pg (herein App'x - "D+E"). And immediately thereafter "CP-MH" staff began a retaliatory harassment campaign against PET'R thereby intimidating him for writing said grievances and DC-138B Statement by Witnesses, see, Schultz v. Pugh, 728 F.3d 619, 620 (7TH - 2013) ("A remedy is NOT available, therefore, to a prisoner prevented by threats or other intimidation by prison personnel from seeking an administrative remedy."); Tuckel v. Grover, 660 F.3d 1249, 1252-1253 (10 - 2011), thus causing PLTF-PET'R to stop seeking exhausting his "ARP" for the said violations while housed at CP-MH. Finally, and

within the NEW 90-Day filing deadline for filing grievances, PET'R submitted his last grievance on about 7/ 12013. However, prison officials at "Alexr" and "CP-MH" never responded. see, Risher v. Lappin, 639, Supra; Davis v. Hernandez, 798, Supra; see, COA D.E.- (herein App'x-"F")

While the District Court and Fourth Circuit tend to overlook these authorities/cases, it is clear the Fourth Circuits decision is conflict with the correct majority concerning impediments to, and actual, exhaustion

II. THE FOURTH CIRCUIT'S DECISION IS ERRONEOUS

Here, PLT'F-PET'R contends, shows and explains to this Court that the District Court committed plain error in dismissing PLT'F-PETR's §1983 Complaint for "failure to exhaust" and the Fourth Circuit's decision upholding said dismissal was erroneous.

At the time PLT'F-PET'R filled out the §1983 Complaint, PLT'F-PET'R was being denied access to all of his stored legal property. In filling out the forms, PLT'F-PET'R altered the form to fit and explain his situation concerning exhaustion and then check-marked the blank space for exhaustion. see, Dist-Ct. D.E. - 1. Petitioner then later verified his Complaint and mail it. see Dist-Ct. D.E. - 1. However, due to being denied access to all his then store legal property,

PLT'F-PET'R was made unable to submit along with his complaint any of the copies of submitted/filed grievances concerning said violations.

As the case quickly moved into summary judgment phase and despite PLT'F-PET'R still being denied timely and adequate access to his stored legal property, PET'R was able to locate and submit to the District Court ONLY two of the several grievances he submitted for filing about said violations. see herein App'X-"D" + "E"

Given the fact that PLT'F-PET'R submitted a verified complaint saying he exhausted his "ARP", submitted two grievances that sought exhaustion as their remedy, the District Court was suppose to accept these facts as true and view them in a light most-favorable to the non-moving party and conclude PLT'F-PET'R did everything within his ability to fully exhaust his "ARP", thereby creating a genuine issue of dispute that

should only have been decided by a jury. Compare,
Walker v. Sheahan, 526 F.3d 973, 979 (7th - 2008)

§ Dismissal for failure to exhaust "ARP" improper be-
cause genuine issue of material fact remained as
to whether inmate exhausted procedures when in-
mate claimed to have filed grievance with social
worker who subsequently lost it. §

In making its decision that PLT'F-PET'R "Failed to
exhaust," the Dist. Ct. relied upon the Respondents'
submission of over 10-grievances submitted in over
3-yrs that completed Step-3 at the Inmate Griev-
ance Resolution Board (IGRB). PLT'F-PET'R then
appealed to the Fourth Circuit. While still be-
ing denied timely and adequate access to his stored
ransacked legal property during the early appel-
late phase, PLT'F-PET'R was able to minutely acc-
ess his legal property, locate a third grievance he
filed and then submitted it to the Court of Appeals.
Subsequently, and without any consideration of Pe-
titioner's last grievance or any explanation, the COA

affirmed the Dist.-Ct's dismissal of PETR's §1983 Compl. for failure to exhaust. Thereafter, PETR submitted a timely Petition For Rehearing En Banc which the COA denied.

In all Federal suits brought by prisoners challenging the conditions of their prison environment, the Prison Litigation Reform Act (PLRA) mandates exhaustion of all available remedies before filing suit. See, 42 U.S.C. §1997e(a). However, the PLRA also contains its own textual exception to its mandatory exhaustion rule. Under §1997e(a), the exhaustion requirement "hinges" on the "availability" of administrative remedies. An inmate, that is, must exhaust available remedies, but need not exhaust unavailable ones. See, *Ross v. Blake*, 578 U.S. (2016).

Here, PLT'F-PETR contends, shows and explains to this Court that his ARP-process was made unavailable to him because of the following:

- (1) PETR's first grievance (herein App'x "D") was either lost or stolen by CP-MH staff and was not processed, (2) PETR's second grievance was wrongly

DELAYED, see, (herein App'x-"E "), (3) The NCDPS changed its ARP-process grievance filing deadline from 1-year to 90-Days, and (4) PETR'S 3^D or 4TH grievance, see (herein App'x-"F "), (submitted under the new ARP-process barely before the 90-Day deadline) was also NOT properly processed due to staff mishandling. see (herein App'x-"F ")

The U.S. Sup. Ct. in Ross v. Blake, 578 US (2016) articulated 3-distinct occasion for when a prisoner's ARP is deemed unavailable to him/her. One, an administrative procedure is unavailable when it operates as a simple dead end - with officers unable or unwilling to provide any relief to aggrieved inmates; Two, an administrative scheme might be so opaque that it becomes, practically speaking, incapable of use. Finally, the same is true when prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation. In Woodford, we recognized that officials might devise procedural systems in or order to "trip[] up all

but the most skillful prisoners." 548 U.S., at 102. And Appellate courts have addressed a variety of instances in which officials "misled" or "threatened" individual inmates so as to prevent their use of otherwise proper procedures. As all those courts have recognized, such interference with an inmate's pursuit of relief renders the administrative process unavailable. And then, once again, §1997e(a) poses no bar.

Thus, the Fourth Circuit's upholding decision was erroneous. See *Wilcox v. Brown*, 877 F.3d 161, 167 n.4 (4th-2017) ("[T]o satisfy the exhaustion requirement, grievances generally need only be sufficient to 'alert[] the prison to the nature of the wrong for which redress is sought'" (quoting *Strong v. David*, 297 F.3d 646, 650 (7th-2002))).

III. THE QUESTIONS PRESENTED ARE RECURRING ISSUES OF NATIONAL PRISON IMPORTANCE THAT WARRANT COURT'S IMMEDIATE RESO- LUTION

The Fourth Circuit's holding in this case raises issues of great practical importance and constitutional significance meriting this Court's intervention. The issue of whether a prisoner-plaintiff has exhausted his/her [a]vailable Administrative Remedy Procedure (ARP) has again arisen and is likely to recur, with frequency. This Court acknowledged the importance of this issue in considering a prior petition for review of the Ross v. Blake 136 S. Ct. (2016) decision. Although this Court ultimately granted the writ of certiorari in the Ross v. Blake matter, see 578 U.S. (2016), substantial discord remains in the circuit courts on the issue of when has exhaustion occurred and what steps constitutes exhaustion for available remedies.

Resolving this issue is even more critical in the face of PLTF-PETR's allegations that Respondents, Respondents' ~~ex~~ employees and other prison staff at various prisons thwarted PLTF-PETITIONER'S "ARP" process. When Congress passes a law like the PLRA to allegedly protect both the prisoners' rights and the rights of prison staff, there must be equal and fair application and enforcement of such laws by the courts. There can be no doubt that prisoner-plaintiffs are harmed significantly by the thwarting of their "ARPs" as done here by Respondents, Respondents' co-employees and other prison staff. Even if a prisoner is harmed slightly, prisoners must be able to challenge these unethical and illegal practices.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Athen", is written over a horizontal line.

Date: Jan, 3^d, 2020 FBI