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19-7756

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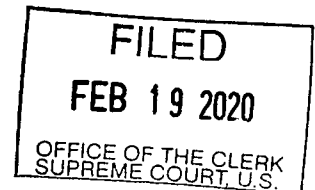
IN THE
SUPREME COURT OF THE UNITED STATES

“ *IN RE* [FRANK DEVILLE]”- PETITIONER

VS.

JAMES R. BLOCH ET. AL. - RESPONDENT(S)

On Petition For Writ Of Mandamus To The
California Supreme Court Of California



PETITION FOR WRIT OF MANDAMUS

Frank Deville
Po Box 535
Rancho Cucamonga Ca 91729
909-921-7053

Petitioner, Pro Se

QUESTION(S) PRESENTED

Is the Petitioner a victim in this case? Exide and the individual defendants willfully violated federal, state and local laws concerning hazardous waste, this judgement has imposed an unconstitutional violation concerning the Petitioner. The defendants and all of them did admit to such charges. Petitioner only amended the complaint once, where is the liberal right to amend? where a complaint can be corrected by an amendment how many chances should one receive to make corrections to prevent a violation of the law.

According to the law there should be liberal chances as long as it can correct the defects. (von Batch v. American Dist. Telegraph(1985) 175 Cal. App. 3d 1111, 1119).

The defendants signed the statement of agreement to illegal acts for over a decade. These acts exclude the defendants from exclusivity rule. The case set here now is indeed unique, a State court has rendered a decision of an important federal question of federal law that has not been, but should be, settled by this court 28 U.S.C. § 451. There is indeed a conflict of law that does exist.

This is a matter of allowing the petitioner to have a right to be heard in which it was taken away violating his due process rights.

The US Constitution has asserted the importance of Due Process and fair legal proceedings, which is very essential to our system of justice.

LIST OF PARTIES

Respondent:

Exide Technologies

Individual Defendant(s)

James Bloch

Phillip Damaska

John Hogarth

Ed Mopas

Paul Hirt Jr.

Petitioner:

Frank Deville

Self-Representing

ATTORNEYS FOR PARTIES:

Jason Levin

(Exide Technologies)

Jennifer Bonneville

Melane Ayerh

633 W. 5th street, suite 700

(213)439-9400

William W. Oxley

(individual Defendants')

Nathan McClellan

633 W. 5th Street, Suite 4900

(213)808-5700

PARTIES TO THE PROCEEDING

Petitioner, Frank deville were plaintiff in the trial courts. The petitioner was the appellant in the second district appeals court. Mr. Deville was the petitioner in the

California Supreme Court. **RULE 29.6 STATEMENT:**

The petitioner is a non-governmental corporation, nor has a parent corporation or shares held by a publicly traded company.

Docket No. 17 Deville v. James R. Bloch et al., BC624734, Los Angeles County Superior Court.

Judgement entered 6/25/2018.

Docket No 25, Deville v. James R. Bloch et al., BC624734, Los Angeles County Superior Court. Judgement entered 5/7/2018.

Deville v. James R. Bloch et al., B291099, California Court of Appellate District, Division 5, Judgement entered November 21, 2019.

Deville v. James R. Bloch et al., S258993, In the Supreme Court of California, Judgement December 11, 2019.

Deville v. James R. R Bloch et al., S260122, In the Supreme Court of California Denied Application for an untimely Petition for Certiorari. January 14, 2020. Unfortunately, it was filed on January 2, 2020 but the clerk did not respond until January 6, 2020 to inform the petitioner that corrections were needed. The clerk was not available until the deadline had expired. The document was filed under the wrong case number but they did not allow petitioner to correct the cover in time.

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**IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF MANDAMUS**

Petitioner respectfully prays that a writ of Mandamus issues to review the judgement below.

OPINIONS BELOW

[X] For cases from state courts:
The opinion of the highest state court to review the merits
Appendix B to the petition and is unpublished.

The opinion of the state trial court appears in Appendix
E & F, and is unpublish.

The opinion in the state appeals court appears appendix D
To consolidate case and is unpublished.

The opinion in the state appeals court appears appendix U,
To correct name by amendment to complaint.

The opinion in the state appeals court appears appendix V,
To correct name by amendment to complaint.

The opinion in the state appeals court appears appendix W,
To correct name by amendment to complaint.

The opinion in the state appeals court appears appendix X,
To add a doe 3 name by amendment to complaint.

JURISDICTION

[X] For cases from the state court:

The date on which the highest state court decided my case was
On December 11 2019. A copy of that decision appears at

Appendix B.

Since the decision was petition for mandamus the 90 days to file is based on November 21, 2019 decision date. The deadline of January 21, 2020.

This petition was Filed and returned on January 21, 2020 by The United States Supreme Court, for corrections which extends the deadline 60 days on April 21, 2020. This petition was timely And proper.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a) In addition this court if need be may by its own discretion may Issue All writs necessary or appropriate invoked under 28 U.S.C. 1651(a).

STATEMENT ON RULE 20.1

Petitioner, Frank Deville, pro se, moves this court to accept this case to aid this court's appellate jurisdiction, that exceptional circumstances in addition, warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or form any other court.

- I. To Aid This Court' Appellate Jurisdiction
This Case comes from the California Supreme Court of California due to the California Supreme Court refusal to file papers, motions, and or Petitions on a timely review taken in a Civil Case under 42 U.S.C. 1983 that clearly set forth a claim:
- II. Exceptional circumstances Warrant the Exercise of this Court's Discretionary Powers.
- III. Adequate Relief Cannot be Obtained in any other form or From Any Other Court.
- IV. While under review for mandamus the court will see that extraordinary circumstances do exist.

The Supreme Court of the United States Rules 10, 17 and 18 provide a provision to review decisions by an inferior court when an inferior court has

departed so far from the accepted and usual of judicial proceedings and has decided an important federal question in a way that conflicts with relevant decision of this court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner is a victim. Petitioner worked for 29 years at this company. Illegal hazardous handling occurred for over a decade. Petitioner constitutional rights were violated and continues to be violated. Defendants have committed willful acts which harmed the petitioner by his want of ordinary care of skills in the management of his person according to code § 1714(a). The Petitioner is a victim of fraud, according to 18 U.S.C. § 1345. The civil Division of the Department of Justice has actual and present authority to assert and compromise pursuant to 28 C.F.R. § 0.45(d). Any conduct other than the covered conduct is liable for relief.

Appendix K, Shows deliberate wilful acts toward Mr. Deville. They owed a duty of care for the safety of the petitioner. The equipment was giving a faulty reading which exposed petitioner to extreme high levels of lead and arsenic and other toxic chemicals for over almost 3 decades appears in appendix H. They were aware of the issues but petitioners were never worn about the high levels.

Defendants violated Hazardous Material Transportation laws, Health & Air laws & Water laws appeared in appendix R, Health and safety codes were violated. The state court has deprived the petitioner a right to be heard Violations violated constitutional laws, amendment 4th , 14th & 5th Constitutional Art. 1 . § 16. There is indeed A conflict of state and federal laws present in this case.

According to proposition 65 which protect californians from toxic exposure, which the defendants clearly violated which is the root cause of the shut down by ca-oshha appear in appendix J. The US Constitution has asserted the importance of

Due Process and fair legal proceedings, which is very essential to our system of justice. The civil rights is a federal statute, number 42 U.S.C. § 1983, title VII 1964 Civil Rights Act, which allows protection of a deprived persons rights relief. The doctrine of Dual Persona, states that due to a willful assault petitioner is eligible to exercise this doctrine under labor code 3602(b)(2) & 3602(b)(1) . An important federal question of federal law that has not been, but should be settled in this court (28 U.S.C. §1257(a)).

Morgan v. United States (1938) 304 U.S. 1 18, Held: The right to a full hearing embraces not only the right to present evidence, but an opportunity to know and respond properly.

STATEMENT OF THE CASE

The petition is a victim and he believes that this judgement that was imposed, imposed an unconstitutional violation concerning the petitioner. The Petitioner recited the federal issues in his original complaint and in its First amended complaint appears in Appendix Y pages 164,174 -182,190-196,203. In the court decision it stated that there was not enough evidence in the record but that was not true. The defendants were fined as a result of not properly having petitioner properly certified appears in Appendix K page 73-74, appendix L.

Petitioner has responded to every document and if given the proper opportunity to a right to a jury, which was demanded in the complaint in the lower courts. It is indeed difficult to properly rule on federal laws and state laws in the same jurisdiction. Petitioner is in the proper place to receive proper care. A Federal question sought to be reviewed were raised, the question was timely and properly raised and that this court has jurisdiction to review the judgement.

Petitioner timely filed his complaint, timely appealed the decision in the appeals court. Timely filed in the highest state court. Timely responded with this petition for the writ of Mandamus. A state court appeal has decided an important question of federal law that has not been, but should be, settled by this court, which conflicts with relevant decisions of this court.

Defendants have admitted to fraud conduct appear in appendix H page 40,, one case is still pending (Alan Salvador Aguirre v. James R. Bloch et al). If need be the petitioner should have been given the right to amend (Aubry v. Hospital Dist.

(1992). The defendants failed to report hazardous toxic(John-Manville Products v. Sup. CT. (1980) 27 Cal. 3d 465), (Bell v. Industrial Vangas, Inc., 16 Cal. App. 4th 1029), (Foster v. Xerox Corp., 40 Cal. Ap. 4t 1572), (Palestini v. General DynamicsCoro., (2002) 99 Cal. 3d App. 4th 80), Loritz v. Exide Technologies, et al United States District Court for the Central District of California 2014 WL 4058752, AT * 15 cd Cal. Aug. 7, 201 & (Barth v. Firestone Tire and rubber co., 673 F Supp. 1466). They signed the agreement appendix R page 100 see appendix G.

Defendants knowingly used faulty equipment and allowed the petitioner to work in an environment that could kill (Bingham v. CTS Corp., 231 Cal. App. 3d 56, 65). The individual defendants ratified these acts of conduct, Exide acting through the individual defendants. There has been a willful assault that has occurred. The defendants by concealment violated the law (Appendix I page 55,59,60, 61,62, 63,64) according to the labor code 3602 (Freeland v. County of Humboldt: and Paiestini v. General Dynamics Corp., (2002), (Younan v. Equifax Inc. (1980) 111 Cal., App 3d 498, 512.) This is a hazardous waste facility Appendix I page 55.

Defendants and all of them were engaged in ultra hazardous activity Appendix Y page 192, that caused petitioner lost. Exide was closed down due to hazardous violations by Cal-osh (Levenstein v. Yale University, 40 conn. Sup. 123, 126 (1984). This activity was not mere storage issues, defendants admitted to their illegal hazardous activity appears in appendix H page 42,44,45 & 52, I PAGES 55,[Connecticut Water co. v. Thomaston, Superior Court, Judicial District of Hartford, Docket no. 535590, 16 conn. L. Rptr. 213,216-17(1996)].

The defendants in oral argument, argument was based on some issues that was not proposed or briefed by any party(Kwikset Corp. v. Superior Court 246, p. 3d 877, 885, 889-91 (2011) 51 c4th: Nationwide Biweekly Admin., Inc. v. Superior Court 24 Ca5th, 438: Hasen v. Newegg.com Americas, Inc., 236 Cal. RPTR. 3d 61, 67, 71 Ct. app 2018) and also see Nunez v. Saks Inc.. The defendants did not follow the judge's order by consolidating the brief appear in appendix D. The defendants ignored the order, and filed two separate reply briefs. Replied falsely appendix N.

Many of the documents were available to view the department of toxic substance attached to the complaint should have raised a brow. Similar to Lozano v. Pacific Gas Electric Co. The defendants failed to timely respond to the opening brief. Petitioner believes that if the complaint was indeed perfect according to the law the judges would have still dismissed this case. This is a matter of allowing the petitioner to have a right to be heard in which it was taken away violating his due process rights see appendix O, M,R page 95-103. Operation ceased, see appendix S.

The unthinkable has occurred, the petitioner has alleged facts sufficient to state a cause of action (Aron v. U-Haul co. of California (2006). Petitioner only amended the complaint once not giving the petitioner a fair legal opportunity to be heard, denying the right to have a trial by jury is a violation of his rights(Cal. Consti., Art. 1 § 16.) Many documents were admitted in court revealing the admittance of illegal activity.

The documents were ignored violating the right to a fair trial. In addition, the appeals court has ordered petitioner to pay all attorney fees which makes this

impossible because the petitioner has not worked since 2015 and does not have any income. He is disabled and awaits benefits. Petitioner believes that because he filed for a petition for writ of mandate in the highest state court forcing a decision to come about. The Petitioner needs this judgement to be allowed careful collegial reflection by this court on the merits of this review before the judgement is enforced(Clay Worth Corp. v. Pfizer, Inc (2010).

Petitioner case was not timed barred was not diagnosed until 2016 (Samuels v. Mix(1999) 22 Cal. 4th 1, 14). The defendant's breach of care by their omission of facts that lead to harm to the petition(Polk v. City of Los Angeles, 26 Cal. App. 2d 519, 528), (Loritz v. Exide Technologies, et al., United States District Court of California) & (Alan Salvador Aguirre v. James R. Bloch et al., pending in civil courts. Petitioner right as a disabled person was violated, during oral argument petitioner has difficulty with memory and petitioner wife filed an accommodation request which was not authorized fully making it difficult to explain the issues, violating his due process rights.

The trial court entered a judgement of dismissal nunc pro tunc and allowing the defendants to recover their cost on appeal. This judgement caused a conflict and the constitutionality of a statute of a state is drawn into question. Federal questions sought to be reviewed were raised throughout the original and the first amended complaint and many responses throughout the course of the case many documents were attached to the complaint to raise a brow see appendix Q.

REASON FOR GRANTING THE PETITION

A writ of Mandamus is warranted when a party establishes that (1) the right to issuance of the writ is clear and indisputable, (2) the party has no other adequate means to attain the relief sought and (3) the writ is appropriate under the circumstances.. *Cheney v. United States Dist. Court*, 542 U.S. 367, 380-381 (2004). Mandamus is reserved for exceptional circumstances amounting to judicial usurpation of power.

It is everyone's right to be heard. The United States has long governed and asserted the importance of Due Process and fair legal proceedings as essential to our system of justice. A lack of knowledge should not be a reason for allowing a case to be judged by the merits when deceit and the failure to apply the law properly to every human being giving them the freedom to live and to be heard and the protection to do so without any respect of person.

It is clear that a state court of last result has decided an important federal question in a way that conflict with the decision of another court, The Federal law that has not been, but should be, settled by this court. The decision is erroneous and it is important that the United States Supreme Courts decide the question involved for the nation preventing further abuse of the system.

Many cases are being turned away but not on the merits that should not be, the nation desperately needs intervention because no one should have their due process rights violated according to the constitution of the United States Petitioner is reciting that 28 U.S.C. § 2403(b) and will serve on Attorney General of the

States of California. The town and many employees and those who lived around the facility were unprotected by the constitution. Petitioner believes that this is an urgent matter and has exhausted all court remedies and believes that if intervention petitioners rights will be violated without remedy..

CONCLUSION

The petitioner for Mandamus Writ should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Frank Deville", written over a horizontal line.

Dated: February 18, 2020

Frank Deville
Po Box 535
Rancho Cucamonga Ca 91729
(909) 921-7053

Petitioner, pro se