

No. 19A372

IN THE  
SUPREME COURT OF THE UNITED STATES

FILED  
SEP 30 2019  
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SUPREME COURT, U.S.

ROBERT T. JOHNSON, III,

Petitioner

v.

OCEANS 6 RS, LLC DBA FIREWATER SALOON,

Respondent

JOHN LOUIS WIGENT, AND DOES 1 TO 21,

Defendants

On Application for Extension of Time to file Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Ninth Circuit

APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF  
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH  
CIRCUIT

ADDRESSED TO THE HONORABLE  
ELENA KAGAN, ASSOCIATE JUSTICE OF THE  
SUPREME COURT OF THE UNITED STATES  
AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT

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To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States, and Circuit Justice for the Ninth Circuit:

Pursuant to 28 U.S.C. 2101(c) and Rule 13.5 of the Rules of this Court, Petitioner Robert T. Johnson, III prays for a 60-day extension of time to file his petition for certiorari in this Court at least to and including December 6, 2019 (day 60 is a Saturday). While he has read legal advice from a legal reference stating it may be best to pray for a 30 day extension, with the potential opportunity, depending on if this application is granted or denied, to seek the remaining additional 30 days later again upon a, likely again stronger due to imminent deadlines, showing of good cause, he does believe that he will badly need the full 60 days extension to properly prepare a petition; which includes any time he believes he can afford to confirm that it was, in actuality, just lost, when he constantly has no where near the time he needs to make any attempt to properly represent himself, attend to basic and essential personal care, attend to any personal care which is not basic and/or essential, or do anything else except essentially needing to attempt to litigate 24/7 (which obviously includes time needed extremely badly to be spent attempting to seek an unknown, and at this point, potentially unlimited amount of counsel). Aside from other essential human biological needs, petitioner must sleep. He does always attempt to manage his time the best he can and has constantly been required to attempt to continue to manage it ever more efficiently, doing less and less other than attending to basic personal care and the legal work, throughout this litigation. He is getting to the point where he has less and less he even can possibly attempt to take time from.

1. ARGUMENT FOR GRANT OF APPLICATION/GRANT OF REVIEW  
FOR (FUTURE) PETITION

Petitioner is not a licensed attorney, and he has not voluntarily chosen to litigate; he is forced to litigate due to the unfortunate circumstance, which never should have even occurred, of being turned into a victim by the criminal acts of the defendants, such criminal acts which were not prosecuted by the District Attorney either. A civil lawsuit is the only other legally prescribed method for criminal prosecution of the defendants and redress (as well as civil liability for any defendants not guilty of criminal conduct) that petitioner has. This is not something like a simple contract dispute, potentially likely only just about the money involved, this is about far more than just money, although at least the money will do something to benefit petitioner's life, although he continues to lose more and more while forced to continue to seek it, in some attempt to offset what he has had to suffer and endure at the hands of the defendants, which includes turning his life into some kind of concept of a nightmare, as he not only has to suffer injuries due to the criminal acts of the defendants, he is then forced to litigate (while still suffering from some of those injuries) his grievances himself with absolutely no legal training in a court system which expects and essentially demands representation from a professional attorney due solely to apathy from the legal profession concerning providing representation, just to seek redress for the acts and injuries he has had to suffer by the hands of the defendants. Petitioner hesitates to use the term, is extremely reluctant, knows the term does not truly apply fundamentally due to the statistical concept of the gaussian, or normal, distribution at the 100 percentile, because you can always find a worse one, or a worse situation, or more

adverse circumstances, fundamentally based on something like some concept of entropy, yet he will state it; "living hell". Although he counts his blessings and the things he does have while he still has them for sure; some of which that will eventually disappear, some of which is literally about the only reason he has any ability to even have the time he does have to make any attempt even to properly represent himself. He certainly does not want to find a worse one. Certainly human conditions, like paralysis or blindness, quickly appear.

Although, he was facing at least some chance of paralysis (and brain damage) due to the criminal acts of the defendants. One must question, given the situation and circumstances he finds himself in, how would he represent himself if he was completely paralyzed, or had enough brain damage to no longer be able to function at any level even remotely close to the legal capacity of a professional attorney? Of course, it is an assumption, although seemingly an apparently good assumption, that then this litigation would likely be worth so much money in damages, whatever one might make of what money is truly worth in such situation, as it is likely a long day away before the medical profession can "cure" or reverse such conditions, that he would have been able to find an attorney that would agree to provide representation, potentially quite quickly. Although it is an assumption, one petitioner has constantly proven incorrect when he has contacted potential counsel, that he should be able to find an attorney for what amounts to a very simple and straightforward assault and battery case. What if, for sake of argument, if one that can not represent themselves, although forced self-representation is obviously an absurd comparison to representation by a professional attorney, at any reasonable ability

could not find an attorney that would agree to provide representation, especially with concern, as petitioner found, concerning the legal concept of the statute of limitations?

Petitioner will not be proceeding in forma pauperis. He, at least currently, has enough financial resources he certainly would think he would not be able to be allowed by this court to proceed that way. He will not be attempting to proceed that way. At least for right now, he can pay the fees associated for his petition. Although legal services are obviously expensive, he has enough financial resources to pay for at least some reasonable quantity of legal services. Personal injury attorney's, and this is certainly a personal injury case, generally work on contingency as well. Although petitioner is sure it is still to their benefit, he conjectures one of the reasons is so that financial resources are not a barrier for a personal injury lawsuit. The only reason the Superior Court of California, County of San Diego, gives concerning self-representation is that you must self-represent if you can not afford to pay an attorney. While petitioner will admit his financial resources are still limited, just like most litigants who are represented by counsel most likely are, and his resources can obviously, and potentially even quickly, be exhausted, he likely has more resources than some, or even a reasonable amount of people, and also likely far less resources than some other people as well. Again, he has enough money to pay for at least a reasonable amount of legal services. Certainly enough to pay for more than no legal services. He can not pay attorneys for their legal services that simply refuse to provide those services in exchange for pay under some type of standard, or perhaps even non-standard, legal contract. It is the exact opposite situation, instead of representation being unavailable because the (potential) litigant can not pay the money to secure legal services,

where those legal services would then be provided to that litigant, petitioner can not secure legal services because the providers of those legal services refuse to work for the money that petitioner can pay them for their legal services. Certainly the statement, "you are just not injured enough to pay an attorney to sue" should not apply to a criminal assault and battery lawsuit. Petitioner should not have had to even suffer 0.01 cent in damages from the defendants, and he is not in small claims court, with a \$10,000 limit, for a reason. Sadly, and also infuriatingly, he is injured more than enough to want and warrant redress for both his injuries and for what he had to suffer by the hands of the defendants. One clear reason he believes his petition should be granted, is that (and for sake of argument assuming his petition is granted), is that either a petitioner is represented by counsel, they are voluntarily choosing to proceed pro se for whatever reason (petitioner is not), a petitioner proceeding in forma pauperis at this point would be given counsel, so the only petitioner that would be without counsel, aside again from any voluntarily choosing to proceed pro se, would be a petitioner in this petitioner's circumstances (no counsel they contact will agree to provide representation, although of course that means time must be continually spent seeking counsel). That though then has become the problem petitioner is always faced with since the start of this litigation, only filed pro se due to the statute of limitations, to guarantee his grievances would be viewed as legally valid and therefore then heard by the court. Perhaps he would be given additional time from this court to seek counsel, and certainly would motion for it, although he attempted to do that in the Court of Appeal and his motions were denied. However, he then would have 45 days to file his brief. Certainly at a minimum, he must provide for basic and essential personal care in those 45 days. So how many of those 45 days can he

afford to spend seeking potential counsel, potential counsel which may very well continue to refuse to provide representation, and how many of those 45 days are needed to prepare his brief? Especially, which is the situation he is always faced with, he likely badly needs far more than 45 days to make any attempt to properly prepare and file his brief! Let alone any other task he must still do, and he is not a machine that can work tirelessly solely on this litigation to the exclusion of all else aside from basic personal care. Petitioner needs trained, and prepared counsel that can work under the deadlines given by the court, because he can not.

With respect, as an aside (although this paragraph is now out of order and inconsistent), the issue with the District Attorney clearly shows why, under some legal framework, private citizens should have the legal right to bring criminal charges against another if the District Attorney abdicates and forsakes his sworn duty and refuses to do so. Petitioner does not know the exact reason, but he has heard it generally is often just due to a perceived probability of obtaining a conviction by the District Attorney. Petitioner is prevented from bringing criminal charges himself against another as a legitimate victim of crime, simply because the District Attorney doesn't believe that he has a high enough probability of a conviction?

The question also exists, if a petitioner is forced to self-represent because the legal profession, at least the percentage of it he has contacted (the real metric truly being what percentage of the legal profession within the appropriate practice area would provide representation, and what percentage of the legal profession within the appropriate

practice area will not provide representation), then how does that petitioner support themselves financially while they do? How would this petitioner be working, likely under a requirement of full-time employment, to provide for their own financial support, yet still have even close to any amount of the time needed to make any attempt to properly represent themselves?

Although this may not be the best ordering, and unfortunately petitioner is growing tired, and nearing his filing deadline, although he was attempting to make the best attempt he could to make a completed, well written, and timely filing, back to the first paragraph; any extra time under the 60 day extension prayed for, and potentially just lost if he continues to be turned away by potential counsel that refuses to provide representation, would be to either actually obtain counsel, if he is finally able to do so (although at this point he has to at least consider, and likely will experience, continued trouble), or at least strengthen the fundamental, and cornerstone, legal argument of his petition if representation continues to be refused by all of the potential counsel he contacts, all, with only few exceptions, being the type of counsel in the appropriate legal domain for this litigation. 28 U.S.C. § 1654 states "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." Petitioner should not be forced to go without counsel because all counsel he contacts refuses to provide representation.

## 2. DESCRIPTION OF INCIDENT

A brief description of the incident giving rise to this litigation is as follows. Robert Johnson returned to the bar, FireWater Saloon, operated by Oceans 6 RS, LLC, after patronizing the bar earlier in the evening and doing nothing unusual, different, or abnormal as considered by a reasonable person during his time in the bar. He showed his ID to defendant Doe 1 and was let in the bar. Immediately after entering the bar defendant Wigent physically motioned him back outside the bar through the entryway he had just used. Robert Johnson complied with the physical direction, and once outside, defendant Wigent stated that they had received complaints that Robert Johnson was taking pictures of female customers in the bar. Robert Johnson does not know if this was also falsely alleged by defendant Wigent, or if malicious complaints that were falsely alleged were received by defendant Wigent. Robert Johnson did not take pictures while he was in the bar and there is no reason any reasonable person should have thought otherwise. Simply visual observation on the part of defendant Wigent would have shown that Robert Johnson was not taking pictures.

Robert Johnson was cooperating with defendant Wigent and answering his questions concerning this. Right before Robert Johnson was just going to turn around and leave, for no reason and with no justification, defendant Wigent started to push him backwards downhill in front of the bar. Defendant Wigent did not first make a verbal request for Robert Johnson to leave the premises, and Robert Johnson did not also then refuse to leave the premises after any such nonexistent request. Defendant Wigent does not have a defense of property argument and therefore this immediately became an illegal act of battery by defendant Wigent.

Defendant Wigent pushed Robert Johnson backwards for approximately twenty feet, during this time Robert Johnson made a few verbal statements to attempt to get defendant Wigent to stop his illegal battery. Finally, since defendant Wigent was not stopping and since Robert Johnson was starting to fear for his own safety, he gave defendant Wigent a verbal ultimatum to stop his assault (sic). Defendant Wigent did not, so Robert Johnson was left with no choice but to use some type of force in lawful self-

defense to stop defendant Wigent's illegal battery. Robert Johnson swung in front of defendant Wigent's face as a warning shot, meaning no attempt was made to hit defendant Wigent, as a final attempt to negotiate. Defendant Wigent pushed Robert Johnson down to the ground in a very hard fall after the swing. Robert Johnson was then pushed back down to the ground by defendant Doe 1 and defendant Doe 21 as well.

Robert Johnson called 911 after being attacked by defendant Wigent, defendant Doe 1 and defendant Doe 21. He attempted to press charges against all three of his attackers, although defendant Doe 21 was not found and defendant Doe 1 was not arrested by the officers. Defendant Wigent was arrested by Robert Johnson by citizen's arrest and after this defendant Wigent arrested Robert Johnson by citizen's arrest with a falsely alleged claim of being assaulted by Robert Johnson during defendant Wigent's illegal act of battery.

Robert Johnson delayed bringing suit in significant part due to concern over injuries. Some of his injuries that did heal took significantly over a year to heal. He was referred to a personal injury attorney by his criminal defense attorney which he had hired due to defendant Wigent's citizen's arrest. At around three months before the expiration of the statute of limitations, about when he finally was going to hire an attorney, he had a massive issue with ants that interfered with his plans. He contacted the attorney he was referred to about 1.5 months before the statute of limitations expired. Unfortunately, this attorney stated he did not have time he needed to provide representation. Robert Johnson then contacted many other attorneys that did not want to provide representation or stated they did not have time due to the statute of limitations. Essentially, his claim was already barred by the statute of limitations since he could not hire an attorney to provide representation near the statute. Two weeks before the expiration of the statute of limitations he attempted to learn how to file a lawsuit himself to guarantee his grievance would be preserved under the statute of limitations. He has not been successful hiring an attorney after filing his complaint either. From memory, he has now contacted thirty attorneys which all have refused to provide representation for this entire lawsuit.

3. CONTINUED ARGUMENT FROM SECTION 1 (PREVIOUSLY MAILED TO THE  
COURT ON 09/28/2019)

The final judgment of the Fourth District Court of Appeal, Division 1 for San Diego County, as part of the Ninth Circuit was filed on April 22, 2019. A petition for review to the California Supreme Court was denied on July 10, 2019. Petitioner's time to petition for certiorari in this Court expires on October 8, 2019. This application is filed 10 days before that date.

Copies of the Order from the Trial Court granting the respondent's motion per C.C.P. § 425.16, the Opinion from the Court of Appeal, the Order from the Court of Appeal denying rehearing, and the Order from the California Supreme Court denying the petition for review are attached hereto. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

Aside from the actual act of criminal assault and battery by defendant John Louis Wigent, defendant Doe 1, and defendant Doe 21, this case involves the baseless criminal charge for assault defendant John Louis Wigent made by citizen's arrest against Robert T. Johnson, III due to defendant John Louis Wigent's own criminal act of battery, which forced Robert T. Johnson, III to act in lawful self-defense. Respondent Oceans 6 RS, LLC dba FireWater Saloon filed a special motion to strike the second cause of action for malicious prosecution in Robert T. Johnson, III's complaint per § C.C.P. 425.16. As shown by the Opinion, the court has ruled that malicious prosecution is the incorrect tort for the

grievance, the correct tort apparently then being false arrest, as false imprisonment.

Robert T. Johnson, III argues for his legal and constitutional rights concerning the ability to be represented by counsel. He is not purposely choosing to represent himself, yet has contacted at least thirty potential counsel, all of the potential counsel he has been able to yet contact, who have refused to provide legal representation. He was forced to file a complaint by the statute of limitations, C.C.P. § 335.1, in order to guarantee that the court will hear his legitimate legal claims and legitimate grievances, yet no counsel he contacted before the statute of limitations ran would agree to provide representation. Now his time to seek counsel is extremely limited by the demand from the court to make legal filings, which he is already always struggling to attempt to make within the extremely short deadlines given by the court, and the continued apathy from the legal profession concerning agreeing to provide representation, leaving Robert T. Johnson, III continually forced to continue to represent himself, contrary to both his legal and constitutional right to choose to be represented by counsel, while needing to spend potentially an unlimited amount of time seeking counsel as well. This is a constitutional issue as well as an extremely important issue of public policy, as it concerns fundamental access to the court system. Robert T. Johnson, III is essentially being denied access to the court system, as self-representation is obviously no comparison to representation from a licensed, and professional attorney, which is the expectation and essentially the demand as well of the court system. He argues under the due process and equal protection clauses of the Fourteenth Amendment, Section 1, all well as all other related clauses.

The Fifth Amendment, made by the case giving guarantee to counsel for criminal trials, always interpreted as counsel will be provided without requiring pay, also can be interpreted as guaranteeing counsel for a defendant charged with a crime, even if they can pay for counsel, as all counsel, perhaps due to the heinousness of the alleged crime, simply refused to provide representation. How then would the criminal trial continue? Petitioner will pay for legal services under standard legal agreements. Petitioner should have the right to counsel, counsel he pays for, for civil cases. This should be no different than that aspect would be for criminal cases (i.e. no counsel will agree to provide representation, even with the ability to pay that counsel).

[PLACEHOLDER : Cite Proper Case]

He also is arguing against the constitutionality of C.C.P. § 425.16 due to the criminal conduct of defendant John Louis Wigent. If C.C.P. § 425.16 is viewed as constitutional apart from the "alleged" criminal conduct because malicious prosecution is the "wrong" tort, then he is arguing against the constitutionality of an award of attorney fees, under the due process and excessive fines clause of the constitution.

He also argues that C.C.P. § 425.17 should apply, and that there is conflict between the Opinion and another decision from another Court of Appeal concerning if C.C.P. § 425.17 applies only due to the aspect of "promoting sales".

He asks for the additional time due to the fact that the remittitur, issued on July 11,

2019, was not stayed so that he had the time he needed to make this petition. He had intended to seek the stay but remittitur issued before he could make the motion. This is one more legal aspect that he lost legal rights and status due to the fact that he did not know how to perform the procedure correctly. Since the denial by the California Supreme Court concerning the petition for review, he attempted to seek reconsideration of that denial, then attempted to seek a recall of the remittitur so that the issuance may be stayed for this petition, was served a motion for attorney fees by the respondent on August 23, 2019 requiring an attempt to file opposition and is seeking a stay/continuance from the trial court by ex parte application, rescheduled from September 17, 2019 now to September 24, 2019 which he is still struggling to be properly prepared for. He also made a motion for reconsideration of the denial of the recall of remittitur to attempt to make a showing of fraud, and due to concern of a petition for review to the California Supreme Court concerning this denial, including concern of seeking a stay from this court. He also had termite fumigation of his home scheduled by his HOA that he had no control over on August 14, 2019 and is still attempting to situate his home back to the same approximate living situation as it was in prior to the fumigation. He has not even really had the time to attempt to perform the legal research needed to prepare the petition for certiorari to this court, and asks for the additional time so that he can attempt to do so and prepare a proper petition, complying with all of the rules of this court, concerning the issues he has mentioned above.

DATE: September 30, 2019

Respectfully Submitted,

By Robert T. Johnson III

Robert T. Johnson, III

Self-represented

Petitioner