

Supreme Court, U.S.
FILED

JUN 08 2021

OFFICE OF THE CLERK

No. 20-1716

In the Supreme Court of the United States

Melvin Walker,

Petitioner,

v.

Governor of Pennsylvania, et al,

Respondent.

Petition for Writ of Certiorari to The United States
Court of Appeals for the Third Circuit Docket: 20-
2783

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Constitutional Question is the Governors Code of Conduct constitutional? 16AM Juris. 2nd Ed. Const. Law. Sect. 177 Declaratory Judgement Act

Commonwealth of Pennsylvania Governor's Office Code of Conduct, Executive Order 1980-18.

Is The Governor of Pennsylvania, and the Secretary of Transportation, defined as employees? Under Title VII Civil Rights Act of 1964.

WALKER v. WOLF et al, CASE #: 2:19-cv-04983-PBT

THE TITLE VII AND ADEA CLAIMS AGAINST DEFENDANTS ARE DISMISSED WITH PREJUDICE

liability cannot exist pursuant to Title VII. Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061, 1078 (3d Cir.1996) (en banc)."Congress did not intend to hold individual employees liable under Title VII." Id. at 1078.

4. As provided in 42 U.S.C. § 1981a(b)(1), "[a] complaining party may recover punitive damages ... if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1964".

Definitions subsection 2000(e) (f) the term "employee" shall not include any person elected to public office in any state...

The question presented is, can the District Court construe case law from the (3d Cir.1996) (en banc) to now include elected officials as employees. As the ground to DISMISS the plaintiffs VII and ADEA claims WITH PREJUDICE, MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, GRANTED. Siting congress intentions, and case law, out of context? The District Court ruling is an abuse of discretion. Title VII claims should not be dismissed as a matter of law. Also my Appeal has no jurisdiction if the constitutional question asked has never been answered. And dismissed without prejudice. As directed, it's not a final order. Melvin Walker v. Governor of Pennsylvania, et al. Third Circuit Court of Appeals Docket #: 20-2783 - While some claims were dismissed with prejudice, others were dismissed without prejudice, GENERALLY, AN ORDER WHICH DISMISSES A COMPLAINT WITHOUT PREJUDICE IS NEITHER FINAL NOR APPEALABLE. BORELLI V. CITY OF READING, 532 F.2D 950, 951 (3D CIR. 1976) (PER CURIAM).

PARTIES TO THE PROCEEDING

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 judgement is the subject of this petition is as follows:

Governor of Pennsylvania, Thomas Westerman Wolf and former Pennsylvania Secretary of Transportation Leslie Richards

RELATED CASES

Case Number: 20-2783 Melvin Walker v. Governor of Pennsylvania, et al UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT Judgement Entered 03/10/21 Chief Judge, MCKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY and PHIPPS, Circuit Judges)

WALKER v. WOLF et al, 2:19-cv-04983-PBT United States District Court Eastern District of Pennsylvania (Philadelphia) Judgement Entered 01/21/2021 Judge Patrice Tucker

2:17-cv-04720-PBT WALKER v. PENNSYLVANIA DEPARTMENT OF TRANSPORTATION United States District Court Eastern District of Pennsylvania (Philadelphia) Judgement Entered 06/03/21 Judge Tucker

Case Number: 19-2435 Melvin Walker v. Pennsylvania Department of Transportation UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT Judgement Entered 06/10/2020 Judge Ambro, GreenawayJr, Porter

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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

[X] For cases from federal courts:

The opinion of the United States Court of Appeals 3rd
Circuit appears at AppendixA..... to the petition and
is

[X] Reported atCourt of Appeals 3rd Circuit Docket #:
20-2783;

The opinion of the United States district court appears at
Appendix.....B..... to the petition and is

[X] reported at United States District Court Eastern
District of Pennsylvania (Philadelphia)

CIVIL DOCKET FOR CASE #: 2:19-cv-04983-PBT

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was.....1/21/21

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 3/10/21, and a copy of the order denying rehearing appears at AppendixA.....

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

**CONSTITUTIONAL AND STATUTORY PROVISIONS
INVOLVED**

As provided in 42 U.S.C. § 1981a(b)(1), “[a] complaining party may recover punitive damages .

Due process of law

STATEMENT OF THE CASE

I was sued by the Governor of Pennsylvania. As a state employee, I am under the governor's jurisdiction. The action was done through the PA Department of Transportation and it's agents. It started with the human resources department. And the action to punish me was defined in writing and then forwarded to several other employees whom are supervisors and managers. This libel act started the execution of a nonprocedural action. I was suspended for three days without pay. The VII Amendment reads matters over twenty dollars can get a jury trial. According to the rules of the common law. And a major work rule violation was entered on my permanent personnel file. Of an alleged violation of the Governors Code of Conduct. The alleged violation was driving a state car with an expired license. A major work rule violation. I was pulled over by the Harrisburg Police Dept. In my personal vehicle after work hours. Work policy states that if you have any interaction with law enforcement that results in an arrest. You are to inform your supervisor. And I did. And an internal investigation was done. After the investigation is completed. And the employee is not deemed dangerous. The employee is to work until the person goes to court, or suspended until the person goes to court, and the allegations are addressed. If you are not suspended until the outcome of a hearing in a court of law. And allowed to work until a trial. And then found guilty. The Department may take action appropriate to any guilty findings. Department actions are done on a case by case basis. Department actions may be to move an employee to a different location or job duty. Or suspend the employee, or terminate the employee. If found to have violated a major or minor work rule, penalties may be assessed accordingly.

The governors code reads if the court dismisses the alleged behavior. And the employee was punished with a suspension until trial. The violations shall be removed from the employees permanent personnel file, and the employee reimbursed money that was taken as a result of any suspension. In my case, I was not charged with an expired license, or tried in court for having an expired license.

But, I was charged by the HR Department for that infraction. As a criminal. And money taken or fined by the Department and not allowed due process.

*581 The Governor's Code of Conduct, 4 Pa. Code §§ 7.171-7.179, is not a statute. Instead, it was promulgated through Executive Order 1980-18 and has been codified in the Pennsylvania Code. Only executive orders that have been authorized by the Constitution or promulgated pursuant to statutory authority have the force of law which could establish a personal or property right in continued employment. *Pagano v. Pennsylvania State Horse Racing Commission*, 50 Pa. Commw. 499, 502, 413 A.2d 44, 45 (1980), affirmed, 499 Pa. 214, 452 A.2d 1015 (1982); *Shapp v. Butera*, 22 Pa. Commw. 229, 234-35, 348 A.2d 910, 913-14 (1975). While the Governor may issue executive orders absent such authority, these executive orders will not be enforced by the courts. *Pagano*, *supra* at 502, 413 A.2d at 45.

I was suspended for three days without pay. Not until my trial date. This is an arbitrary action. And this penalty is outside the options given by the governor's code of conduct. The Department did not follow the codes instructions by waiting for a trial. Or suspension until a trial's results. Ever since that day. I am being retaliated against, harassed, and suffering discrimination. By the Human Resources Department, supervisors, managers, and other employee whom are white. Other reasons I believe is because I fight the best I can for what I believe to be my rights. And these people know it. Prior to this incident I was a Engineering Tech. Paygrade 4. As a Tech I was in training to be a Construction Inspector pay grade 5. I passed my year long training and probation and was promoted to Inspector. I was later asked to come in to HR and pick a new job because its slow construction during the winter season. So, I picked Utility Relocation Tech. Also a pay grade 5. I chose to stay at that position and not return to Inspector after the winter season.

With the understanding as written. By the PA Civil Service Commission. If the Department Initiates a Transfer promotion rights will not be held against me. Before I came to PennDOT I went to college to learn drafting. I received a degree. A Highway Draftsman Designer position came available paygrade 6. So, I applied for the position and was hired. There was a conflict with the Civil Service Rules that prohibited me from getting a promotion from Utility Tech. paygrade 5 to Highway Drafter Designer paygrade 6. With different job class titles. So the position was down graded in pay to a paygrade 5 Highway Drafter. I was given a verbal understanding after my probation. The job would and could be upgraded back to a paygrade 6. And this would make me paid the same as white employees have been before me. From my knowledge there was one black female who had the position and was also a paygrade 6.

During my probation I was pulled over after work in my personal vehicle. I was told I will not get a promotion now by my supervisor and manager. And from that day the institutional discrimination has never seemed to stop. I have been denied job interviews where I clearly qualify. If a job reads next lower job title held. I never qualify. Example I was a Construction Inspector. Previous Job Title Held you qualify for an interview. It is always no not you. You don't qualify. I always ask why? Sometimes I get an answer. Sometimes I don't. You were not an inspector long enough sometimes is the reason. This is contrary to the rule of previous job title held. Which implies I know how to do the job. Or have the minimum required skills to perform the job. With training if needed. And promotion has been now held against me for over twelve years. I finally get a chance to at least be heard or considered as a candidate to be seen before this honorable court. For every job with this criteria that I meet I am systematically disqualified. I am now a Highway Drafter with Civil Service status with PennDOT for twelve years. There was a Designer position available paygrade 7. A two paygrade increase, within the same job class.

Not an issue from the PA Civil Service for rejection for promotion. The posting read if you were a Highway Drafter. You qualify under previous job titles held for an interview. I'm told no not you. I ask why? I am told you were not a drafter long enough. Apparently twelve years isn't long enough when all I trying to do, is at least get an interview. Under next lower job title held. I believe I am being retaliated against for something that didn't happen. That being a permanent major work rule violation on my record. By the time you try to appeal the job is always filled and my efforts are futile.

The Department denied me due process. And keeps causing irreparable harm. And the Department refuses to remove the infraction from my record or pay back the money from the suspension as the code directs. There are contracts that I signed. One with the union, one with the PA Civil Service, one with PennDOT, one with the Governor. I agreed to be governed within strict parameters. I have the right to contract my labor it's my property.

See *Lochner v. New York*, 198 U.S. 45 (1905) - right of freedom of contract under the Fourteenth Amendment's guarantee of liberty. I have the right to sell my labor as I see fit. I am a state worker. A state citizen under the fifth amendment and deserve equal protection of the law. Not discriminated against on an arbitrary and capricious manor. Or how HR and managers and supervisors of the Department see fit. I have been threatened with violence. I hear chatter around my desk "we chase down coons and hit them upside the heads with baseball bats." Talk by different employees "someone is going to get punched in the face after work." I have been poked in the chest with fingers. I have had my eyes water from hurt, humiliation, anger, and sorrow. I have been called boy. I am a 54 year old man right now tearing writing these atrocities. I do my best to keep composure. I'm told by lawyers they will not take my case because I haven't been fired. I have been denied equal protection of the law. Due process, and the right to face my accusers. Rights afforded all other state employees to contract under specific guidelines. In Pennsylvania under Title 13 Offer and acceptance. And extrinsic evidence of singed agreements.

I am the beneficiary of these contracts. Not to exclude the Pennsylvania Constitution where I should be free of Special Criminal Tribunals. The Governors code subjects me to that making the code unconstitutional. I am the clearly intended expressly designated beneficiary of the constitutions. And the constitutions should be liberally interpreted in my favor... The citizen 16AM Juris. 2nd Ed. Constitutional Law Section 97. And the courts are to safeguard liberty and security of both person and property. Note: 31 Bryers v US 273 us 28. And constitutional provision that confers a benefit should be construed in favor of the clearly intended beneficiary note 32 When an agency doesn't follow its own rules it can be questioned in a court of law. These rules are applied in an arbitrary and capricious manor. I signed a contract and was denied its provisions, and correct administration and suffered infringement. The governors code of conduct was used as a special criminal tribunal. Against me a state worker. As a Pennsylvania citizen, under the Pennsylvania Constitution Sect. 15 Special Criminal Tribunals are Prohibited.

The 1967 Civil Rights Act under Title VII reads elected officials are not employees under 2000e definition (f). The District court has over ruled Congress and said by its ruling the Governor and his appointee the Secretary of Transportation are employees and can not be sued under title VII discrimination and ADEA claims.

As part of the appeal, we affirmed the dismissal of Sheridan's supervisor at DuPont because "Congress did not intend to hold individual employees liable under Title VII." Id. at 1078.

United States Court of Appeals, Third Circuit. SHERIDAN v. NEMOURS AND COMPANY No. 94-7509. Decided: January 31, 1996 · Barbara Sheridan filed this action against her former employer, E.I. duPont de Nemours & Co., Inc. ("duPont"), and a duPont supervisory employee, Jacques Amblard, under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. During trial, the court dismissed the claims against Amblard on the ground that an employee cannot be sued under Title VII. The jury subsequently returned a verdict in favor of Sheridan and against duPont on her constructive discharge claim, but the jury found for duPont on Sheridan's remaining claims. The district court then granted duPont's motion for judgment as a matter of law (and in the alternative for a new trial) on the constructive discharge claim.

Also

The PA Secretary of Transportation has made a gender neutral policy. And said the word man is outdated. And we are no longer allowed to use the words, man, men, woman, women. Or the word man in inanimate objects. Such as the word manhole. A hole in the street that may allow a person access to underground utilities. The spirit of the policy is an attack on all things man. A man hole is not a biological entity and reveals the policy's intent. Not to include everyone but to exclude every man and woman. I claim this is a prior right given. And my freedom of religion. The U.S. Declaration of Independence reads that all men are created equal. And that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness" And title VII reads there are such things as men, and wombed men, or women. This policy makes everyone a thing. And without the words all men, and the common law. It has been said the constitutions could not be understood. 16 AM Juris. 2nd Ed. Const. Law Section 114. Common Law. And I claim this is sexual harassment. It is a right and a privilege. And that the gender-neutral policy is unconstitutional, overreaching and is trespass. And infringement of equal protection of the law. And my freedom of religion. All Men Are Created Equal Galatians 3:28. I believe that God created man, and woman. The common law also sees the right of a jury trial.

REASONS FOR GRANTING THE PETITION

When a person's constitutional rights are infringed upon, the encroachment has already happened. And you can't go back and fix it because it has already occurred. And this causes irreparable harm. And in my case this has happened because I was denied due process. And this is ongoing and continues to happen. Because I have a major work rule violation in my permanent personnel file. With the threat of termination. So it is ongoing. The only way for this ongoing encroachment to stop is to grant this writ. And rule it should be removed from my permanent record. When due process, and ongoing infringement is happening during trial. It is grounds for issuing a writ of Certiorari. The constitutional question was asked, is the governor's code of conduct constitutional as administered in my case? An Executive order that allows an Agency to ignore due process, through an executive order. And any contract in place. The union contract and civil service, contract that I am a part of. That infringes upon due process, perpetually. There is no remedy...

Clear Channel Communications, Inc. v. Murray, 636 So.2d 818 (Fla. 1st DCA 1994), and Saracusa v. State, 528 So.2d 520 (Fla. 4th DCA 1988). In each of those cases it had also been determined that no adequate remedy would exist upon final appeal for an alleged continuing violation of constitutional rights during the trial proceedings.

BELAIR v. DREW 770 So.2d 1164 (2000) The district court further reasoned that "[c]ourts are not wont to examine the constitutionality of a statute and especially reluctant to declare one unconstitutional if not faced with the duty unavoidably." Id. In so concluding, the district court certified conflict with Williams, which held that certiorari review should be granted where a party's constitutional rights may be abridged by the continuance of the proceedings below and, therefore, such abridgement could not be remedied on final appeal. See 719 So.2d at 1238-39.

There is a split between what congress defines as an employee, and what the Eastern District Court of Pennsylvania has construed case law to be an employee. Within regards to The 1964 Civil Right Act. Title VII 2000e definition (f)selected officials are not employees.

OTHER

Melvin Walker May 11, 2021

2024 Chestnut Street

Harrisburg, PA 17104

Dear Melvin Walker,

This letter is in reference to the Equal Employment Opportunity Discrimination Complaint (Docket #2019200647) you filed with the Office of Administration, Bureau of EEO Investigations. In complaint #2019200647 you allege that you have been discriminated against by Th*** W*** and Jason Bewley based on race and retaliation in the form of discipline and harassment.

Regarding allegations against Th*** W****. Based on the actions that occurred and the evidence gathered by testimony, the complaint of discrimination could not be substantiated.

Regarding allegations against J*** B. Based on the actions that occurred and the evidence gathered by testimony, the Bureau has concluded the underlying claims have been substantiated.

The case findings have been referred to the Agency for appropriate action to be taken.

If you are not satisfied with the outcome of the investigation you may file an appeal to the Office of Administration, Bureau of Policy and Appeals within 20 calendar days of the date of this letter. The appeal must be in writing and sent to the following:

Office of Administration

Bureau of Equal Employment Opportunity Policy and Appeals

222 Finance Building

613 North Street Harrisburg PA 17120

Phone: 717.783.1130

If you have any questions regarding this correspondence, please contact Lauren Hoag at 717.705.3888 or my email at lhoag@pa.gov

United States Court of Appeals, Third Circuit.

Tai Van LE, Mr. v. UNIVERSITY OF PENNSYLVANIA, A
Not-for-profit corporation and; Stanley Opella, an individual
(E.D. Civil No. 00-cv-00481)

As provided in 42 U.S.C. § 1981a(b)(1), “[a] complaining party may recover punitive damages if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.”

CONCLUSION

Judiciary Committee S-H 216 (Mike Lee) cspan (non quote)

Antonin Scalia: The doctrine of unconstitutional delegation of legislative authority which is a bad name for it because there is no constitutional delegation of legislative authority. When you give rule making to an agency how far can you go? Can congress just get together and say, the president, can do anything he wants and then adjourn? Of course not that has to be unconstitutional. Executive Authority when you give pure delegation of legislative power you are not authorizing an exec. To act like an executive but you are delegating executive power to a group that has no executive responsibility... Senator of course you have to make those constitutional decisions you take the very same oath I take. The only reason I can look at a federal statue and say I have to disregard this because, it does not comport with the constitution, is because... I have taken an oath to uphold the constitution. You take the same oath so we give deference to legislation on the assumption that the members of the senate and of the house have tried to be faithful to their oath... We don't strike down your laws... we ignore them it seems to be a law but really isn't. where your law doesn't comport with the constitution...the law not with standing.

The Pa Department of Transportation Employees have no oath of office to guard my rights from encroachment nor infringement. And proceed to violate with impunity. And regularity.

The petition for writ of certiorari should be granted.

Respectfully submitted,

Melvin Trest: Walker, Esq

Date: 6/8/21