

No. 20-5298

IN THE
SUPREME COURT OF THE UNITED STATES

Rodney Andre Smith, Pro Se, — PETITIONER
(Your Name)

vs.

Susan Barker, et al, — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ORIGINAL

FILED
JUL 08 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

the united states 10th circuit court of appeals colorado
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Rodney Andre smiht Pro Se
(Your Name)

BCCF, 11560 county road FF.75
(Address)

Las Animas , Colorado 81054
(City, State, Zip Code)

NONE
(Phone Number)

QUESTION(S) PRESENTED

Whether dismissal of in forma pauperis complaint as frivolous is properly reviewed for abuse of discretion and it was error for court of appeals to review dismissal of complaint de novo.

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:
- Susan Barker; Jerry Roark; Nanette Thomas; Shawn Gonzales; Dianna Milenski;
Steven Salazar; Marshall Griffith; PPMU Mr. Cook; Sandra Brown; Anthony
A. Decesaro; Respondents.

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 A 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☒ is unpublished.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 B 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 March 16, 2020.

☒ 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: _____, 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. § 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

This case involves amendment XIV to the united states constitution which provides:

Section 1. All persons born or naturalized in the united states, and subject to the jurisdiction thereof, are citizens of the united states and of the state wherein they reside.

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the united states; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction to equal protection of the law.

Section 5. The congress shall have power to enforce, by appropriate legislation, the provision of this article.

The amendment is enforced by Title 42, section 1983, united states code:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory or the district of columbia, 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, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable, for the purpose of this section, any act of congress applicable exclusively to the district of columbia shall be considered to be a statute of the district of columbia.

STATEMENT OF THE CASE

In October 2010 Mr. Smith was convicted of various charges in Colorado and received an enhanced sentence based upon his prior convictions in Louisiana. Mr. Smith alleges that after starting his sentence, he repeatedly sought legal assistance from the Bent County Correctional Facility law library personnel regarding access to legal materials to attack the Louisiana convictions. Because the BCCF's law library did not possess the requested Louisiana materials, Mr. Smith filed grievances which were denied.

Mr. Smith filed numerous grievances against all the respondents in this petition challenging the prison law library legal assistant's rejection of his request for the desired legal materials for his research which at this time Mr. Smith exhausted all his administrative remedies.

After failing to obtain any legal materials to attack the five (5) prior Louisiana convictions, Mr. Smith filed his 42 U.S.C. 1983 civil rights action in the United States District Court for the District of Colorado alleging the state's failure to obtain specified legal materials that he requested violated his constitutional right to meaningful access to the courts. The matter was referred to the magistrate judge for recommendation. After review the magistrate judge recommended the action be dismissed as legally frivolous.

This matter was again before the judge who referred the case to the magistrate judge. Upon de novo review, the district court adopted the magistrate judge's report and recommendation and dismissed Mr. Smith's complaint with prejudice.

Mr. Smith perfected an appeal to challenge the district court's dismissal of his complaint as legally frivolous. Subsequently the United States Court of Appeals for the Tenth Circuit upon de novo review affirmed the district court's dismissal of the action as legally frivolous.

Mr. Smith timely filed with the clerk of this court his petition for a writ of certiorari to reverse the erroneous ruling dismissing his complaint after de novo review, rather than the proper standard of review of an *informa pauperis* prisoner complaint for an abuse of discretion pursuant to precedent of this court.

REASONS FOR GRANTING THE PETITION

A. Pursuant to supreme court rule 10.(a) and (c).

10.(a) Conflicts with decisions of other court of appeals.

10.(c) United states court of appeals for the tenth circuit has decided an important federal question in a way that conflicts with relevant decisions of this court.

The decision of the tenth circuit court of appeals decision conflicts with decisions of other court of appeals.

Here, Mr.Smith's amended complaint under the Petrick holding and analysis adequately satisfied the underlying claim of cause of action to pass the nonfrivolous inquiry. A legally frivolous claim is one i which the plaintiff asserts the violation of a legal interest that clearly does not exist or asserts facts that do not support an arguable claim. See Neitzke V. Williams, 490 U.S. 319,327-328 (1989).

Mr. Smith amended his 42 U.S.C. 1983 civil rights complaint, that being because as compared with Petrick, Mr.Smith's amended complaint specifically identified (1) his need for Louisiana convictions to use as legal material for a collateral attack of his enhanced Colorado sentence in state court of appeals (2) his request was not overly or excessively broad because he requested only certain louisiana prior convictions used to enhance his Colorado sentence (3) Mr. Smith even provided records to show he was legally entitled to have his out-of-state requested materials provided to him by the Colorado Department of Corrections policy AR 750-01 which provides: Ensure that all DOC employee's

, contract workers, and volunteers read, understand, and comply with the contents of this AR IV. Authority. H. Citing Petrick V. Maynard, 11 F.3d 991 (10th Cir. 1993) of which the 10th circuit analysis of the state of Oklahoma is the law of the case doctrine and the 10th circuit analysis of the Colorado decision to dismiss Mr. Smith's amended complaint as legally frivolous conflicts with the state of Oklahoma 10th circuit decision pursuant to Petrick V. Maynard, supra. See also AR 750-01 attached hereto as appendix D.

Therefore it is axiomatic that the petitioner's amended complaint cannot be deemed frivolous under the allegations he presented being similarly situated as Petrick V. Maynard and under the fourteenth amendment that no state shall deprive any person of life, liberty, or property, without due process of law, Nor deny to any person within its jurisdiction to equal protection of the laws.

Finally, the 10th circuit did not agree with the court's conclusions that Oklahoma met its constitutional duty under Bounds V. Smith. The 10th circuit further stated, the constitutional guarantee of adequate, effective, and meaningful access to the courts would mean little if a state could satisfy its affirmative duty by a mere attempt to accommodate an inmate.

Accommodation was not accomplished here because the effect of the district court's ruling was to disprove totally Petrick of his //

constitutional right to legal materials needed to ensure him meaningful access to the court's. Pursuant to supreme court rule 10. (c), the United States court of appeals for the 10th circuit of Colorado has decided an important federal question in a way that conflicts with relevant decisions of this case.

The holding of the United States District Court for the District of Colorado and 10th circuit Court of appeals has therefore reviewed the recommendation de novo in light of the file and record in this case. On de novo review the court concludes that the recommendation is correct. Accordingly it is ordered that the recommendation of the United States magistrate judge is accepted and adopted. It is further ordered that the amended prisoner complaint and action are dismissed as legally frivolous.

The 10th circuit court of appeals holding that upon de novo review the district court adopted the magistrate judge's report and recommendation and dismissed Mr. Smith's prison complaint with prejudice and it indicates it reviews of the district court's dismissal of Mr. Smith's complaint as legally frivolous de novo but the district court's dismissal of Mr. Smith's prison complaint as legally frivolous directly conflicts with relevant decisions of this court.

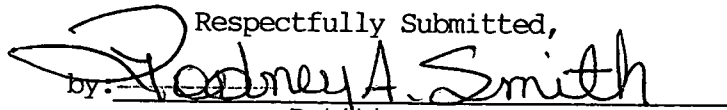
The United States supreme court, justice o'conner, held that dismissal of an in forma pauperis complaint on grounds of frivolousness is properly reviewed for abuse of discretion and it was error for court of appeals

to review dismissal of complaint de novo. Vacated and remanded.

Indeed, the statute's instruction that an action may be dismissed if the court is "satisfied" that it is frivolous indicates that frivolousness is a decision entrusted to the discretion of the court entertaining the *informa pauperis* petition.

Because the frivolousness determination is a discretionary one, we further hold that a 1915 (d) dismissal is properly reviewed for an abuse of discretion and that it was error for the court of appeals to review the dismissal of Hernandez (in this case Smith's) claims de novo. Denton V. Hernandez, 504 U.S. 25, 112 S.Ct. 1728, 1734 (U.S. Cal. 1992), see also FDIC V. United Pac. Ins Co; 152 F.3d 1266, 1272 (10th Cir. 1998).

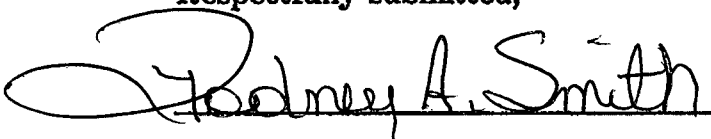
Pursuant to supreme court rule 13.1 this petition for writ of certiorari is timely filed with the clerk of this court within 90 days after entry of the judgment which in this case was March 16, 2020, see also Appendices A, B, and C attached hereto.

Respectfully Submitted,
by: 
Petitioner

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Rodney A. Smith

Date: 7-6-2020