

20-5899

No. 2019-P-0465

FAR-27463

IN THE
SUPREME COURT OF THE UNITED STATES

Bodhisattva Skandha

— PETITIONER

(Your Name)

ORIGINAL

vs.

Massachusetts Appeals Court

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO **FILED**

SEP 15 2020

Massachusetts Appeals Court

OFFICE OF THE CLERK
SUPREME COURT, U.S.

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Bodhisattva Skandha

(Your Name)

MCI-Norfolk Box 43,

(Address)

Norfolk, MA 02056

(City, State, Zip Code)

None

(Phone Number)

QUESTION(S) PRESENTED

**#1: Whether The Trial Court Abused Its Discretion
By Dismissing The Case?**

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**#2: Whether The Defendant Denied The Plaintiff The
Right to Practice Pure Land Buddhism?**

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**#3: Whether The Appearance of Joan T. Kennedy
was Legal?**

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**#4: Whether The Massachusetts appeals Court Can
Overrule The United States Supreme Court?**

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LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[x] 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:

1. Massachusetts Appeals Court - Respondent
2. Bodhisattva Skandha, Plaintiff/Petitioner
3. William Bates, Food Services Director - Defendant

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regulations, or caselaw.

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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 _____ 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 is unpublished.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 _____ 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 is unpublished.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 "A" to the petition and is

reported at 97 Mass.App.Ct. 1113 (2020); 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 _____.

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 7/27/2020.
A copy of that decision appears at Appendix "B".

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

Article II, Massachusetts Constitution

Article XXX, Massachusetts Constitution

M.G.L. c. 12 §3

M.G.L. c. 127 §88

Mass.R.Civ.P. 8(a)(1)

Mass.R.Civ.P. 12(b)(6)

Mass.R.Civ.P. 56(f)

Superior Court Rule 3

Buddhist Pure Land The Teaching of Buddha,
Duties Of The Brotherhood (1996)

STATEMENT OF THE CASE

The petitioner is a prisoner at the Massachusetts Correctional Institution, Norfolk, who has worshipped Pure Land Buddhism since 2005, after converting from Catholicism.

The petitioner filed a Complaint For Declaratory Judgment in July 2015. [Appendix Three (App. C) 1-6]

In the complaint, the plaintiff alleged that for 3 years he was issued personal containers (PC) juices such as Orange Juice, Apple Juice, and Prune Juice which are 100% chemical-free and are uncontaminated extractions from the specific fruits on the labels. [App. C pp. 9, 10]

The petitioner objected to the appearance of Attorney Joan T. Kennedy because she is not an Assistant Attorney General. [App. C pp. 11, #9]

On March 3, 2016, the defendant, William Bates, through Attorney Joan T. Kennedy, filed a Motion To Dismiss. [App. C 11, #22] On March 4, 2016, the plaintiff's Motion For A PI/TRO was denied by the Court, Kelly, J., [App. C p 11 #22.5]

On April 1, 2016, the plaintiff filed an Opposition to the defendant's motion to dismiss. [App. C, 12, #28]

On June 1, 2016, the plaintiff filed a second motion for a PI/TRO to curb the defendant's serving contaminated drinks. [App. C 12, #32]

On June 15, 2016, the renewed motion for a PI/TRO was denied by the Court, Inge, J. [Id.]

On July 27, 2016, the plaintiff filed a Notice Of Appeal on the denial of the PI/TRO. [App. C, p. 13 #35]

The record was assembled for the interlocutory appeal, opened by the Appeals Court. [App. C, p. 13 #35.3]

On July 14, 2017 the Rescript came from the Appeals Court (on the interlocutory appeal), judgment affirmed. [App. C p. 14, #40]

On March 12, 2018, the Court, Davis, J., ALLOWED the defendant's motion to dismiss. [App. C, p. 14, #41.2]

On April 5, 2018, the plaintiff filed a Notice Of Appeal on the ALLOWED motion to dismiss. [App. C, p. 14, #45]

The record was assembled and the plaintiff was properly before the Appeals Court. [App. C, p. 15]

The petitioner/plaintiff received PC fruit juices for 33 months, issued by the defendant. [App. C, p 2 #4]

In February 2013, the defendant, without authorization from the Department of Correction's Religious Services review Committee, or the Central Office Dietician, stopped issuing the PC juices with no prior notice of the change. [App. C, p. 2 ##5,6]

The Religious Vegan Menu was created by the Department of Correction Central Office Dietician, at the behest of the Religious Services Review Committee in 2010. See, Religious Vegan Menu enclosed as App.C, pp. 15-20]

The tenets of the plaintiff's Pure Land Buddhism forbids him from eating any food made from a living being, or food contaminated by a living being. [App. C, p. 3, #7]

To practice his religion freely, the authorities who administer the prison are mandated to not offend the plaintiff's religious beliefs. [App.C., p. 3, #8]

The Department of Correction, through Attorney Richard McFarland, agreed to not send the plaintiff unsealed (in an open container) hot cereal. [App. c. p. 3, #9]

Without prior notice the defendant issued the plaintiff Good Solutions Drink Mix, which is offensive to the plaintiff as a practicing Pure Land Buddhist because it contains certain chemicals. [App. c. p. 3, #10-18]

There were no chemicals in the PC Juices. According to the plaintiff's personal religious beliefs, the Good Solutions is harmful to him as would be a hamburger. [App. c. p. 5, #19-21]

The plaintiff requested as relief for the Court to issue a Declaratory Judgment that the defendant's issue of Good Solutions drink mix infringes upon the plaintiff's sincerely held religious beliefs in the free exercise of the Pure Land Buddhist Religion. [App. c. p. 5, #5-6]

REASONS FOR GRANTING THE PETITION

Issue #1:

Whether the trial court abused its discretion by dismissing the case?

The petitioner (hereinafter "plaintiff"), pursuant to Superior Court Rule 9A(c)(3), requested a hearing. [App. C, p. 12, #30] No hearing was held. No discovery was allowed. [App. C., p. 12, ## 31, 31.1]

The Appeals Court ruled, procedurally, that the plaintiff could not file a second PI/TRO. Skandha v. Bates, 91 Mass. App. Ct. 1127 (2017)

According to Massachusetts law, the appellate court may affirm a judgment on the motion to dismiss on "any ground apparent on the record that supports the result reached in the trial court." Gabbidon v. King, 414 Mass. 685, 686 (1993) Conversely, this court may reverse the judgment on any ground that supports the plaintiff's claims.

The court will review the allowance of the motion to dismiss *de novo*. Merriam v. Demoulas Super Mkts., 464 Mass. 721, 726 (2013)

"[W]e accept as true the facts alleged in the plaintiff's complaint as well as any favorable inferences that can reasonably be drawn from them."

Galiastro v. Mortgage Electronic Reg. Sys.,
467 Mass. 160, 164 (2014)

In order to survive the defendant's motion to dismiss, a complaint must include factual allegations sufficient to raise a right to relief above the speculative level. Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008)

Here, the complaint [App. C, pp. 1-6], only fails if it appears beyond doubt the plaintiff can prove no set of facts which would entitle him to relief. See, Nader v. Cintron, 372 Mass. 96, 98 (1977)

Also, there were many references to matters outside the pleadings, where the court abused its discretion for not treating the defendant's motion as a Rule 56 motion.

The defendant is not authorized to change the plaintiff's official Religious Vegan Menu, issued by the Religious Services Review Committee via the Central

Office of the Department of Correction's Dietician.

The defendant would have had to give notice and hearing to both the plaintiff and the Committee. Board of Regents v. Roth, 408 U.S. 564, 570 (1972)

The defendant bears the burden of affirmatively showing there is no triable issue of fact, or that there is no controversy to be settled in a declaratory judgment. Boston v. Keane Corp., 406 Mass. 301 (1989)

The plaintiff afforded the defendant fair notice of what the claims are, and the grounds upon which they rest. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 563 (2007) Mass.R.Civ.P. 8(a)(1)

In Bell Atlantic, the court stated that:

"...asking for plausible grounds to infer an agreement does not impose a probability requirement at the pleading stage: it simply calls for enough fact to require a reasonable expectation that discovery will reveal evidence of an illegal agreement."

550 U.S. at 556. See, Mass.R.Civ.P. 56(f)

In allowing the defendant's motion to dismiss under Rule 12(b)(6) was an abuse of discretion. See, Erickson v. Pardus, 551 U.S. 89, 94 (2007)

Issue #2:

Whether the defendant denied the plaintiff the right to practice Pure Land Buddhism freely?

"...at the same time, they do not neglect to take care of their bodies, not because they wish to enjoy the physical pleasure of the body, but because the body is temporarily necessary for the attainment of wisdom and for their mission of explaining the path to others.

If they do not take good care of their bodies they cannot live long; if they do not live long, they can not practice the teaching personally or transmit it to others...if a man seeks to attain enlightenment he must take care of his body."

Buddhist Pure Land The Teaching of Buddha,,
Duties Of The Brotherhood (Kosaido Printing Co. Ltd.
1966)

The defendant did not dispute the plaintiff's Pure Land Vegan Menu (since May 2010) nor does he dispute that the Good Solutions Drink Mix, with all its chemicals, is offensive to the plaintiff in the practice of his religious beliefs. The defendant simply claims that it is "safe for human consumption."

To the plaintiff, this is not an incidental burden. The plaintiff either drinks Good Solutions Drink Mix or goes without. There is no alternative.

No alternative was offered. No legitimate government interest to discontinue the plaintiff's PC Juices was put forth by the defendant. Turner v. Safley, 482 U.S. 78, 90 (1987)

The defendant may be an expert in running the Food Services Department of the Norfolk Prison. That expertise does not justify the abrogation of the responsibility of the defendant put forth by the Massachusetts Legislature in M.G.L. c. 127 §88. Based on the statute, the defendant should not be awarded any deference in the arbitrary and capricious forcing of Good Solutions Drink Mix, with no showing the defendant lacks other means to respect plaintiff's religious tenets in practicing Pure Land Buddhism.

Here, there are questions of fact under the First Amendment which remain unanswered. All the procedural requirements placed on the plaintiff by the Religious Services Review Committee, and the Department of Correction have been fulfilled.

The plaintiff submitted his religious vegan meal requests to the Religious Services Review Committee who made a formal recommendation to the Commissioner

of Correction. The Commissioner approved the Religious Vegan Menu. [App. C, pp. 15-20]

The defendant, by issuing Good Solutions Drink Mix as a substitute for the 100% fruit juice, which the plaintiff receives every morning for breakfast, has put substantial pressure on the plaintiff to modify his behavior, which burdens his religious beliefs and practices to not contaminate his body, Thomas v. Review Bd. of Indiana Emp. Sec. Div., 450 U.S. 707 (1981), or coerce the plaintiff into acting contrary to his religious beliefs. Lyng v. Northwest Indian Cemetery Protective Ass'n, 485 U.S. 439, 450 (1988)

When assessing whether a burden on a particular religious exercise is substantial, the Court does not consider whether a claimant is able to engage in alternative forms of religious exercise; its focus remains on whether the burden on the specific exercise at issue is substantial. Trapp v. Roden, 473 Mass. 210, 2015) (quoting) Holt v. Hobbs, 135 S. Ct. 853, 862 (2015)

That the Good Solutions Drink Mix is found "safe" by other religions, or government entities, is not

the pivotal factor in this Complaint.

Restaurants all over Massachusetts serve a pork steak. The pork steak would not be "safe" to a Jewish person or a Muslim person.

The least restrictive means would be to serve the PC juice which is served at breakfast, on the lunch and supper meals as well. Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751, 2780 (2014)

The burden was always on the defendant to demonstrate a legitimate government interest in serving demonstrably different kinds of beverages between breakfast, lunch, and supper, and apply the least restrictive means for the plaintiff. Lovelace v. Lee, 472 F.3d 174, 192 (4th Cir. 2006)

There is no basis in this case for a court to declare the least restrictive means test satisfied without any substantive explanations from prison officials. Lovelace, 472 F.3d at 192.

Even though the plaintiff was denied a PI/TRO by the Superior Court, he should have received a "permanent injunction" from the Respondent, because the

plaintiff has complied with the four-factor test:

- 1) he has suffered an irreparable harm;
- 2) remedies available at law, including monetary damages are inadequate to compensate for his injury;
- 3) considering the balance of hardships between the plaintiff and the defendant, a remedy in equity is warranted;
- 4) the public interest would not be disserved by a permanent injunction.

Monsanto Co. v. Geerston Seed Farms, 561 U.S. 139, 156-157 (2010)

"[C]ongress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."

"Only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion."

Wisconsin v. Yoder, 406 U.S. 205, 215 (1972)

[cited in] Magazu v. Dept. of Children and Families, 473 Mass. 430, 443 (2015)

Because the defendant Food Services Director provided the PC Juices for 33 months consecutively,

it clearly must be assumed that it did not unduly burden the defendant to provide them. Warren v. Peterson, U.S. Dist. LEXIS 76453 (E.D. IL 2008); [citing] McEachin v. McGuinnis, 357 F.3d 197, 201-202 (2d Cir. 2004)

"And no subject shall be hurt, molested, or restrained in his person, liberty, or estate for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship."

Society of Jesus v. Boston Landmarks Commission, 409 Mass. 38, 41 (1990) Article II, Massachusetts Declaration Of Rights

Issue #3:

Whether the appearance of Attorney
Joan T. Kennedy was Legal?

The plaintiff objected to the appearance of Joan T. Kennedy to represent the defendant, as she is not an Assistant Attorney General. Superior Court Rule 3: Objections [App. C, 11]

If this Court chooses to apply the law to the facts, the Attorney General shall appear for the Commonwealth and for State departments, officers

and commissions in all suits and other civil proceedings in which the Commonwealth is a party or interested. Wilmington v. Dept. of Public Utilities, 340 Mass. 432, 438 (1960); Secretary of Administration & Finance v. Attorney General, 367 Mass. 154, 159 (1974); Commonwealth v. Kozlowsky, 238 Mass. 379, 389 (1921) (must get approval by the Governor to add a Special Assistant Attorney General (SAAG) to the case)

Mass.G.L. c. 12 §3:

"The Attorney General shall appear ~~for~~ the Commonwealth and for state departments, officers and commissions in all suits and other civil proceedings in which the Commonwealth is a party or interested."

The general and familiar rule is that a statute must be interpreted according to the intent of the Legislature, ascertained from all the words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied, and the main object to be accomplished, to the end that the purpose of its framers may be effectuated. Hanlon v. Rollins, 286 Mass. 444, 447 (1934)

The statute, G.L. c. 12 §3, is specific, Morton v. Mancari, 417 U.S. 535, 550-551 (1993), has mandatory language, Hashimi v. Kalil, 388 Mass. 607, 609 (1983), and any Executive or Judicial Branches of Government which would abrogate the statute will violate the Separation Of Powers Clause of Article XXX of the Massachusetts Declaration Of Rights. Opinion of the Justices, 365 Mass. 639, 640 (1974)

It is certain the Legislature had the power to enact the statute. Pielech v. Massasoit Greyhound, Inc., 441 Mass. 188, 193 (2004)

If the Executive Branch of Government is troubled by the force of the statute, G.L. c. 12 §3, it can always petition the Legislature to change the law, as the Legislature did not allocate its power to the State Agency known as the Department of Correction, and its Attorney, Joan T. Kennedy. Ellis v. Department of Industrial Accidents, 463 Mass. 541, 549-550 (2012)

Issue #4:

Whether the Massachusetts Appeals Court Can Overrule The United States Supreme Court?

In his appeal, the plaintiff cited Federal Law violations as delineated by the Federal Courts and

The United States Supreme Court. Courts in Massachusetts, according to the Supreme Judicial Court, are bound by those decisions. Commonwealth v. Masskow, 362 Mass. 662, 667 (1972):

"[W]e are of course bound by decisions of the Supreme Court on questions of Federal Law."

The plaintiff cited ten (10) United States Supreme Court cases in his appeal to the Respondent. [App. D, pp. i-14]

The Respondent, disrespectful of the Supreme Court's decisions on the issues on their collective Judicial desks, never ruled on the Federal Law which the plaintiff presented.

The Respondent is bound by the Supreme Court decisions:

1A Auto, Inc. v. Director of the Office of Campaign and Political Finance, 480 Mass. 423, 428 (2018);

State Oil Co. v. Khan, 522 U.S. 3, 20 (1997)
(Only the U.S. Supreme Court can overrule its precedents)

Shelby County v. Holder, 570 U.S. 529 (2013)(Same)

Mims v. Arrow Financial Services, LLC, 565 U.S. 368 (2012)(Same)

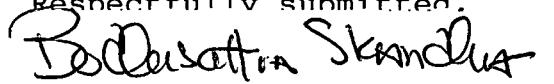
United States v. Locke, 529 U.S. 89 (2000)(Same)

Brown v. United Airlines, Inc., 720 F.3d 60 (1st Cir. 2013)(Same)

Conclusion

For the reasons stated above in fact and law, Certiorari must be granted and the Courts in the Commonwealth of Massachusetts mandated to conform their decisions according to United States Supreme Court law.

September 16, 2020

Respectfully submitted,

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