

20-6081

9-27-2020

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

OCT 05 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

DURLWYN DEVON TALLEY — PETITIONER
(Your Name)

vs.

BRIAN LAFLAMME, et al., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The merits of the case has never been ruled on.

United States Court of Appeals, Seventh Circuit

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

PETITION FOR WRIT OF CERTIORARI

DURLWYN DEVON TALLEY
(Your Name)

Pontiac Correctional Center, P.O. Box-99
(Address)

Pontiac, IL 61764
(City, State, Zip Code)

NA
(Phone Number)

QUESTION(S) PRESENTED

- I. Whether the United States court of appeals, 7th circuit decision denying Petitioner access to the court and his right to file any motions against such decision conflicts with the decisions of all other State and federal courts, and violates Petitioner's First and Fourteenth amendment rights, of access to the courts, due process and Equal protection rights, to the United States constitution. Totally barring Petitioner from federal Court.
 - II. Whether the United States Court of appeals, 7th circuit, deliberately and inappropriately applied the Prison Litigation Reform Act's (PLRA) three strikes provision to Petitioner's legal malpractice claim against his former attorneys, and to a case filed in state court, but removed to federal court by defendants. A decision that conflicts with all state and federal courts.
 - III. Whether the United States Court of appeals, 7th circuit, denied Petitioner access to the court by failing to give him the opportunity to proceed In forma pauperis or to pay the required filing fee for the appeal.
-

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:

1. Defendant Robert F. Summers
2. Defendant Ronald M. Compton
3. Defendant Stephen L. Wells.

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A- Petition for Rehearing, order on Rehearing - U.S. Court of appeals, order dismissing case. U.S. Court of Appeals. Petitioner's mandamus filed in U.S. Court of appeals, order denying mandamus.

APPENDIX B Defendants motion to dismiss. Petitioner's response to motion to dismiss. Defendants Amended notice of removal. Petitioner's response to notice of removal. Several district Court orders, including order dismissing case, Petitioner's motion to reconsider, order denying such, complaint, motions for PLA-1, counsel, notice of appeal.

APPENDIX C

Docket in district Court. Defendants draft bill and records on work. case law case, order recruiting counsel. 4th Amended Complaint, motion to photograph. By defendants. Attorney-client contracts.

APPENDIX D

8 summons forms to defendants from sheriffs, 2 for each defendant on 2 different dates.

APPENDIX E

Petitioner's unfiled writ of mandamus to U.S. Court of appeals, 7th circuit based on refusal to decide Petition for Rehearing by Judges.

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Lewis v. Sullivan, 279 F.3d 526	5, 11
IDX sys. corp. v. Epic Syst. corp., 285 F.3d 581	5, 12
E.g. Mitchell v. Brown and Williamson Tobacco group, 294 F.3d at 1317	6, 10, 12
Dunphy v. McKee, 134 F.3d 1297 (7th cir. 1998)	7
Stanciel v. Gramley, 267 F.3d 575 (7th cir. 2001)	7
Castro v. U.S., 775 F.2d 399 (1st cir. 1985)	9
Iwachio v. New York state Dep't of Motor vehicle, 396 F.3d 525 (2d cir. 2005)	9
In Re Chapman, 328 F.3d 903 (7th cir. 2003);	9
Kolo Cotronis v. Morgan, 247 F.3d 726 (8th cir. 2001)	9
Oftman v. Thomas, 99 F.3d 807 (6th cir. 1996)	9
Matter v. Davis, 878 F.2d 211 (7th cir. 1989)	10
Carter v. U.S., 733 F.2d 735 (10th cir. 1984)	10
In Re Green, 669 F.2d 779 (D.C. cir. 1981)	10

STATUTES AND RULES

Prison Litigation Reform Act's § 1915 (g)	11, 12, 13
735 ILCS 5/2 - 701	12
735 ILCS 5/5 - 105	12, 13

OTHER

TABLE OF AUTHORITIES CITED - CONTINUED

CASES	PAGE NUMBER
Abdullah V. Gatto, 773 F.2d 487 (2d Cir. 1985)	10
Matthew V. Eldridge, 424 U.S. 333, 96 S. Ct. 893 (1976)	10, 14
Regional Martin Agency, Inc. V. Consec Medical Ins. Co 460 F. Supp. 2d 915	12
Quintana V. Baca, 233 F.R.D. 562 ;	12
Armstrong V. Manzo, 380 U.S. 545, 85 S. Ct. 1187	14
Dent V. West Virginia, 129 U.S. 114, 9 S. Ct. 231	14

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 an order. Do not know if it is published or not.

☐ 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 an order. Do not know if it is published or not.

☐ 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 NA _____; 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 August 31, 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: August 1, 2020, and a copy of the order denying rehearing appears at Appendix A.

☐ 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 NA.
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

- 1) First Amendment right of Access to the Courts, - U.S. Constitution.
- 2) Fourteenth Amendment right under the Due process and Equal protection clauses.
- 3) 28 U.S.C.A. §. 1915 (g)
- 4) PLRA - Prison Litigation Reform Act and three strikes provision.

STATEMENT OF THE CASE

Petitioner filed a legal malpractice complaint against his former attorney (s) who threw his civil case in federal court, in state court. Defendants removed the case to federal court, where they had thrown his case. They then filed a motion to dismiss, which was granted. The federal courts then applied the PLRA's three-strikes provision to plaintiff's state law - legal malpractice claim and prevented Petitioner from appealing in forma pauperis. Petitioner filed a mandamus because the 7th circuit refused to file his notice of appeal and record. The federal court did not allow Petitioner the opportunity to pay a filing fee. They denied him total access to the court.

REASONS FOR GRANTING THE PETITION

The federal court has not only denied Petitioner his right to appeal his case, which was filed in state court, but they erroneously applied to PLRA three strikes provision to his case, which the PLRA did not cover. They then, did not correct the ~~error~~ error. And they did not give Petitioner the opportunity to pay the filing fee at all. Nor did they decide his mandamus or Petition for Rehearing on such. This violated Petitioner's First and Fourteenth Amendment Rights to the U.S. Constitution.

STATEMENT OF FACTS

Petitioner Durwyn Talley filed his complaint against his former attorneys in this case for legal malpractice, in State Court, in the circuit court of Randolph County, Chester Illinois; In that complaint - Exhibit B9 Petitioner alleged that defendant - attorney Brian Laflamme of Summers Compton Wells, deliberately threw his case by failing to get or try to get any discovery on the tainted water claim that he was allowed to proceed on and, in fact, Laflamme had tried to convince Talley not to pursue the water claim because it would open Menard correctional center to thousands of lawsuits. Laflamme also ~~did~~ failed to obtain any other discovery from defendants in that case of Talley vs Butler, et al; no. 14-cv-976, even though the court had ordered the parties to confer on discovery and that if a discovery dispute arises, to contact the court. Petitioner also argued in his complaint that Laflamme totally left out the water claim in the fourth amended complaint that he filed; added false claims to that complaint that would easily be proven false; and prepared the complaint where Petitioner would lose all claims. See, C5; A copy of the fourth amended complaint. See, _____; A copy of the last complaint prepared by Petitioner, Pro se. See, C1, A copy of the docket, Pages 10 and 11.

Petitioner made complaints to the court about his attorney trying to throw his case by the way he prepared the fourth amended complaint which left out the water claim. C5. and by Laflamme's failure to obtain any discovery on the water claim and other claims. And by Laflamme trying to talk Talley out of pursuing the water claim. See, _____ . _____ . letter of Talley's to Laflamme. And Petitioner's motion for substitution of counsel.

Eventually Laflamme was allowed to withdraw. Standby counsel, who was limited to assist Talley at trial in a very limited way was appointed. And the court "closed" discovery. Any discovery Petitioner was not allowed to obtain as a pro se inmate, that counsel could've gotten, was over. C7.

Because of the aforementioned, Petitioner alleged that he lost his case at trial. On September 13, 2019 Petitioner filed a legal malpractice - Breach of Duties complaint against Brian Laflamme and defendants Summers, Compton and Wells. Defendants quickly removed the case to the United States District Court, Southern District of Illinois, East St. Louis, Division, in the very same court where he was allowed to throw Talley's case which resulted

in the legal malpractice complaint. A Court where Laflamme knew that the Petitioner had acquired three strikes, and would not be able to proceed ~~±FP~~ In forma pauperis unless he was under imminent danger. And unless the complaint was filed under imminent danger,

Laflamme filed a motion to dismiss on December 13, 2019. Talley filed his response on February 27, 2020. On May 08, 2020, the Court granted defendants motion to dismiss, which argued that discovery was closed already, in the case that plaintiff had lost, when he was appointed. On May 21, 2020, Talley filed an objection - motion to Reconsider the erroneous dismissal of his case. B7. It was denied on June 10, 2020. Talley filed his notice of appeal on July 09, 2020; B-11. A motion for appointment of counsel on January 24, 2020; And a motion to proceed as a poor person according to state law on appeal. on July 13, 2020. All were denied on May 08, 2020.

The United States Court of appeals returned short record and notice of appeal as unfiled due to Durwyn Talley's restricted filer status in USCA-7. B-11.

Talley filed a Mandamus in the United States Court of appeals arguing that the PLRA - did not apply to his case. A3.

On August 18, 2020, his mandamus motion was denied as unnecessary, believably by clerks. A4. Talley filed a Petition for Re hearing which was denied without Court action, on August 31, 2020, A1 and A2.

ARGUMENT I.

Whether The United States Court of Appeals, 7th Circuit's Decision Denying Petitioner Access To The Court and His Right To File Any motions Against Such Decisions Conflicts With The Decisions Of All other State And Federal Courts, And Violates Petitioner's First And Fourteenth Amendment Rights, of Access To The Courts, Due Process And Equal Protection Rights, To The United States Constitution. Totally barring Petitioner from federal Court.

In Lewis V. Sullivan, 279 F.3d 526 at 7 (7th Cir. 2002), the Court held " that a plaintiff who had three strikes, could sue in state court, for § 1915 (g) does not apply in state court.

See, IDX Sys. Corp V. Epic Sys. Corp, 285 F.3d 581, 586 (7th Cir. 2002) " noting that" "our task is to implement state law as state courts would implement it.

See, e.g. Mitchell V. Brown and Williamson Tobacco group, 294 F.3d at 1317, the court held, " PLRA prohibition on damages for mental or emotional injury without physical injury does not apply to prisoner's lawsuit unrelated to prison conditions filed in state court based solely on state law and removed by defendants to federal court on diversity jurisdiction.

In the case of Petitioner Talley, who filed his case in state court based solely on state law for legal malpractice, breach of duties and negligence and not deliberate indifference, state law should've governed the case. And the PLRA- Prison Litigation Reform Act and its three strikes provision did not and does not apply, yet, the federal courts stopped Petitioner's right to appeal, applying the PLRA's three strikes restricted filer status to his case against his former attorneys. Then, the U.S. Court of Appeals, failed to give Talley an opportunity to pay a filing fee at all, on top of denying him leave to proceed in forma pauperis unless he was in imminent danger. Talley filed a mandamus in the 7th circuit. It was denied as unnecessary. Talley then filed a Petition for Rehearing. It or no Court

action was taken on it even though a decision was made about the mandamus not needing to be decided as unnecessary.

A1, A2, A3, A4.

Talley's complaint was against his attorneys and was not against prison staff and officials or prison conditions, so the PLRA - did not apply to his case or to his appeal, which he did not get.

In Dunphy v. McKee, 134 F.3d 1297 (7th Cir. 1998) at 1 and 2, the court held, "The hapless client with an appointed lawyer should be remitted to his legal malpractice action, just as his counterpart with a retained lawyer is.

See also, Stanciel v. Gramley, 267 F.3d 575 at 7 (7th Cir. 2001).

"The proper remedy for inadequate representation in a civil action or civil case lies not in dragging the opposing party through another trial, but rather in a malpractice action against the offending attorney.

In Talley's case, the federal courts allowed the case to be removed to federal court from state court by defendants, where they knew Talley had three strikes and was a restricted filer, against Talley's wishes as he argued in B4; The district

Court knew that Talley could not proceed in federal court under the Prison Litigation Reform Act, because he made this clear in his Response to defendants Amended notice of removal. 84. So the very act of allowing Talley's case to remain in federal Court, yet not apply state law to the case, was all a sham to deny Talley access to the courts. Talley was granted access in State Court. If the federal courts knew that Talley was a restricted filer, then they should've denied defendants motion to remove the case.

" Congress shall make no law respecting an establishment of religion, or prohibiting the exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to Petition the government for a redress of grievances. - United States Constitution - USC - First Amendment.

All persons born or naturalized in the United States, and subject to 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~~ 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 the Equal protection of the laws.

It is clear. the law is clear. In denying Talley access to the Courts. Both state and federal. The federal Courts have violated Talley's 1st and 14th Amendment rights to the United States constitution. As well as by not giving Talley the opportunity to pay a filing fee or to file documents in court to challenge such unconstitutional rulings, decisions, decrees or orders.

Castro v. U.S., 775 F.2d 399, 410 (1st Cir. 1985); holding that injunctions should be narrowly drawn to fit the specific vice encountered in order to avoid impermissible infringement on the right of access to the Courts.

Iwachiw v. New York State Dep't of Motor Vehicle, 396 F.3d 525, 529 (2d Cir. 2005); In Re Chapman, 328 F.3d 903, 905-06 (7th Cir. 2003); Kolo Cotronis v. Morgan, 247 F.3d 726, 728 (8th Cir. 2001); Ortman v. Thomas, 99 F.3d 807, 811 (6th Cir. 1996); absolute bar on suit about particular subject is overbroad; litigant can be required to show

that a proposed lawsuit is not frivolous or vexatious before filing.

Matter V. Davis, 878 F.2d 211-213 (7th Cir. 1989); filings could be controlled by reviewing them as they are submitted; complete ban on in forma pauperis filings could deny right of access to courts.

Carter V. U.S., 733 F.2d 735 (10th Cir. 1984); holding that total preclusion from IFP-status unduly impairs appellants Constitutional right of access to the Courts; In Re Green, 669 F.2d 779, 786 (D.C. Cir. 1981) - same as Carter.

Abdullah V. Gatto, 773 F.2d 487-88 (2d Cir. 1985); litigant could not be barred from all IFP filings concerning a particular subject; He could be required to seek leave of court before filing them.

Petitioner Talley has been barred from all IFP filings "unless" he is under "imminent danger", even in cases not covered by the PLRA- Prison Litigation Reform Act; and cases filed in state court, but removed to federal court for "diversity jurisdiction reasons", and that's solely governed by state law. e.g. Mitchell, 294 F.3d at 1317, Mathew, 96 S.Ct. 893 at 4 (1976)

ARGUMENT II.

Whether The United States Court of Appeals, 7th Circuit, Deliberately and Inappropriately Applied The Prison Litigation Reform Act's (PLRA) Three Strikes Provision To Petitioner's Legal Malpractice claim Against His Former Attorneys, And To a Case Filed in State Court, but Removed To Federal Court By Defendants; A Decision That Conflicts With ALL STATE AND Federal Courts.

In Lewis v. Sullivan, 279 F.3d 526 at 7 (7th Cir. 2002), the Court held that a plaintiff could sue in state court, if he had three strikes; for §. 1915 (g) does not apply in state court.

Petitioner's case was filed in state court against his former attorney (s) for legal malpractice, breach of duties and negligence. It was not a case against prison staff and officials on prison conditions. So defendants having the case removed to federal court in order to influence the court to apply §. 1915 (g) of the Prison Litigation Reform Act and its three strikes provision, and the courts doing so was erroneous; denied Talley access to the courts. Violated his due process and Equal protection rights. U.S.C. Amend. 14.

Attorney-client privilege determined by state law. Reginal Martin Agency, Inc. v. Consec Medical Ins. Co. 460 F. Supp. 2d 915; see also, Quintana v. Baca, 233 F.R.D. 562, 566; damages for state law tort claim governed by state comparative negligence rule; see also, IDX Sys. Corp. v. Epic Sys. Corp. 285 F.3d 581, 586 (7th Cir. 2002); noting that, "our task is to implement state law as state courts would implement it," see also, e.g. Mitchell v. Brown and Williamson Tobacco group, 294 F.3d at 1317. ~ And Pursuant to 735 ILCS 5/2-701, Jurisdiction lies in state court. B4.

Petitioner was allowed to file his complaint in state court and he was allowed to proceed in former pauperis - as a poor person and to have fees waived pursuant to 735 ILCS 5/5-105. Even if the case was removed to federal court, state law should've governed and controlled the proceedings. And 735 ILCS 5/5-105, should've governed Talley's in former pauperis status or coverage on appeal and not 28 U.S.C.A. § 1915 (g) or the PLRA- three strikes provision. And Talley

at minimum, should've been allowed the opportunity to pay a filing fee. As well as filed any and all documents pertaining to his case and his appeal.

ARGUMENT III.

Whether the United States Court of Appeals, 7th circuit Denied Petitioner Access to The Courts By Failing To Give Him The Opportunity To Proceed In Forma Pauperis or To Pay a Filing Fee For The Appeal.

Petitioner was allowed to proceed in state court in his legal malpractice, breach of duties and negligence claim against his former attorneys, as a poor person and without payment of fees pursuant to 735 ILCS 5/5-105.

Defendants removed the case to federal court and the court erroneously applied §. 1915 (g) of the Prison Litigations Reform Act and its three strikes provision. But not as soon as the defendants removed the case to federal court; But after defendants motion to dismiss was granted and

Petitioner filed his notice of appeal in the matter. An appeal he would've clearly won had his appeal been decided on the merits.

The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner, Matthew v. Eldridge, 424 U.S. 313, 96 S. Ct. 893 at 4, citing, Armstrong v. Manzo, 380 U.S. 545, 552, 85 S. Ct. 1187, 1191. see also, Dent v. West Virginia, 129 U.S. 114, 124-25, 9 S. Ct. 231, 234.

The U.S. Court of Appeals, clerks, also failed to give Petitioner a copy of the Appellate record in this case as well as copies of all filings made in the appeals made in this matter. Stamped & filed copies. This too violated Petitioner's due process rights under the 14th Amendment to the United States Constitution.

CONCLUSION

The lower courts decisions should be vacated and reversed.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Duyn Tally

Date: 9-26-2020

I declare under penalties of perjury that I am mailing this Petition to the prison law library for copies on 9-27-2020. And I am mailing copies to the U.S. Supreme Court and to Attorney Jill Rembusch as soon as I get those copies back on, _____.

Duyn Tally
9-27-2020