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IN THE

1-21-2021

SUPREME COURT OF THE UNITED STATES

DURWYN TALLEY
VS.

UNITED STATES DISTRICT COURT for the Southern
District of Illinois

14 Pages
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PETITIONER'S PETITION FOR REHEARING

In Support of his Petition for Rehearing, Petitioner - Durwyn Talley,
states as follows:

- 1) It appears that the clerk of the United States Supreme Court dismissed Petitioner's Petition for Writ of Certiorari by denying his leave to proceed in forma pauperis under Rule 39.8; which means that it was deemed frivolous or malicious.

yet this ruling is and was erroneous; further denies petitioner access to the Courts; and does not give petitioner the opportunity to pay the fee for the cost of the appeal, like the United States Court of Appeals, for the 7th circuit did after denying petitioner's motion to proceed in forma pauperis; Thus, treating petitioner different than those similarly situated who are given the opportunity to pay the costs for an appeal if their IFP motion is denied. So this issue is not frivolous or malicious. It deals with petitioner's Due

Process and Equal protection rights as well as his right of access to the Courts under the First, Fifth and Fourteenth Amendment Rights of the United States Constitution.

2) This case also deals with 28 U.S.C. § 1915 (g) Three strikes provision and imminent danger standard and exception being applied erroneously to a legal malpractice case that petitioner filed in State Court where 28 U.S.C. § 1915 (g) does not apply. Lewis v. Sullivan, 279 F.3d 526 at 7. Also, this case was against attorneys and not prison staff and officials. Another reason why § 1915 (g) does not apply.

3) Defendant attorneys removed the case from state court to federal Court and to the same court where they threw his case on the grounds of diversity jurisdiction. Petitioner objected to this removal and made the Court aware that he could not proceed in federal Court. Not under § 1915 (g). But the truth of the matter is that he should've been able to proceed in federal Court on appeal since the district Court granted the removal without requiring the parties to pre pay costs and filing fees or without requiring the parties to pay any fees at all. Petitioner was allowed to proceed as a poor person in state court before the case was removed to federal Court. So the granting of the IFP in state court, transferred to federal Court, yet, on appeal, the Prison Litigation Reform Act's

Three strikes Provision - imminent danger standards and exception was then applied. If it was not applied when the case was transferred from state court to federal court, at the district court lower level, then how could it be applied on appeal in The United States Court of Appeals, 7th circuit? And it is clear that not even giving petitioner the opportunity to pay the full cost of the appeal, even if erroneous, denied petitioner access to the courts.

4) Section 1915 (g) does not apply in state court, Howlett v. Rose, 496 U.S. 356; Lewis v. Sullivan, 279 F.3d 526 (7th Cir. 2002). The district court did not apply section 1915 (g) or the three strikes provision to petitioner's case when defendants removed it from state court to federal court; Had the district court done so, it would've been left with three choices: 1) Send the case back to state court because petitioner could not proceed in federal court unless he was in imminent danger of serious physical injury; 2) Have petitioner to pay the cost of the claim to proceed; 3) Have defendants to pay the costs since they are the ones who removed the case to federal court.

5) But no, the costs was not an issue. Because the district court knew already what it wanted to do with the case. Which was throw it out; And the district court knew that petitioner's IFP motion to proceed in state court had already been granted.

The goal was to have The Prison Litigation Reform Act's three strikes provision to petitioner once he tried to appeal the district court's erroneous decision dismissing his case. And then to further stop petitioner from appealing that conspiratorial-coverup-decision, the United States Court of Appeals, 7th circuit, did not give petitioner the opportunity to pay for the costs of the appeal. Which was about, or would've been about \$500.00. This closed the doors completely to petitioner. Denying him access to the Courts,

6) The 1st Amendment to the United States constitution states:

" 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 .

So this issue is not frivolous or malicious. It goes to the very heart and core of petitioner's constitutional and human rights, And Equal protection of the laws. See the following cases.

7) 28 U.S.C. § 1914 (a) (" The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of \$350..."), See, Hairston v. Blackburn, 2010 WL 145793, *1 (S.D. Ill. Jan. 12, 2010).

Which is the very same Court that did not require the parties to pay a fee after the case was removed from state court to federal court, U.S. District Court, Southern District of Illinois,

Carson v. Johnson, 112 F.3d 818, 821 (5th Cir. 1997), ("stating that the plaintiff still has the right to file suits if he pays the full filing fees in advance, just like everyone else"; holding that the Constitution requires waiver of filing fees only in connection with "fundamental" interests, which Court equates with the "atypical and significant" standard of Sandin v. Conner, 515 U.S. 472, 115 S.Ct. 2293 (1995)).

In the case of Petitioner, Talley, "fundamental interests" apply to waiver of fees throughout the proceedings, And petitioner's right to pay the full costs of filing fees was denied to him by the United States Court of Appeals, 7th Cir., see also, Bounds v. Smith, 430 U.S. 817, 822, 97 S.Ct. 1491, Bound v. Smith, 430 U.S. at 828.

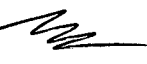
See, Matter v. Davis, 878 F.2d 211, 212-13 (7th Cir. 1989); Complete ban on in forma pauperis status or filings could deny right of access to the courts.

As stated, plaintiff was denied even his right to pay the cost of the appeal, also, Petitioner was ~~not~~ allowed to proceed IFP in state court before the case was removed to federal court. The federal district court had no problem with this and did not request petitioner to do an IFP application in order to proceed in federal court once the case

was removed to federal Court, nor did the district Court require Petitioner to pay any filing fees; or apply the PLRA's three strikes provision or imminent danger exception; yet, on appeal from the dismissal of Petitioner's case, not only was the PLRA's three strikes provision and imminent danger standard and exception applied, but plaintiff was denied ~~to~~ his constitutional right to even pay the costs of the appeal, even if, erroneous. Then, this Court, the United States Supreme Court, who is supposed to protect Petitioner's fundamental rights such as the aforementioned cited herein, denied Petitioner's Application to proceed in forma pauperis and dismissed the appeal as frivolous or malicious, clearly erroneous! This is truly a case for the Public Media, both, online and offline, to know about.

Wherefore, the foregoing reasons stated herein, Petitioner respectfully requests this Honorable Court to Grant his Petition for Rehearing in full and vacate and reverse its order dismissing the case. And decide the case.

I declare under penalties of perjury that I am mailing this Petition for Rehearing to the prison law library for copies on 1-21-2021.

respectfully Submitted,
Dwight To 
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