

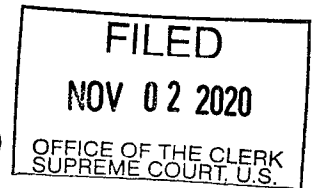
No. 20-616

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Stephen Durr, Pro'se — PETITIONER
(Your Name)

vs.
Department Of Army — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court Of Appeals, Washington-DC
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

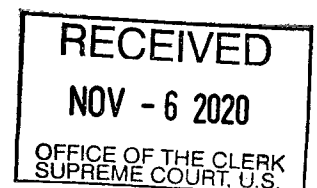
PETITION FOR WRIT OF CERTIORARI

Stephen Durr, Pro'se
(Your Name)

435 W. Oakdale Ave, Unit 2e
(Address)

Chicago, IL 60657
(City, State, Zip Code)

312-218-7974
(Phone Number)



QUESTION(S) PRESENTED

- Did The U.S. District Court (Washington, DC), Also The U.S. Court Of Appeals (Washington, DC) Abuse Discretion In The Denial Of The Petitioner Motion For Vacation Of Judgement, Petitioner Amendment To Statute (Initial) Appeal Brought Under, Also The Petitioner Supplemental Statement On Motion To Vacate Judgement (Appendices A-F)? (Under FRCP 60(b)(1))

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:

RELATED CASES

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INDEX TO APPENDICES

Index To Appendices Contained In Separate Packet

TABLE OF AUTHORITIES CITED

CASES

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- Tippet v. U.S., 28 Fed. Appx. 942 (2001)
- Dilley v. Alexander, 627 F. 2nd 407 (CA DC, 1980)
- Diamond v. U.S., 427 F. 2nd 1246 (Ct. Cl., 1970)
- Gearinger v. U.S., 188 Ct. Cl. 512 (1969)
- Smith v. U.S., 2 Ct. Cl. 206 (1866)

STATUTES AND RULES

- 10 USCA 1558(F)(3)(A)-(D), Armed Services Administrative Procedure Act
- 10 USCA 1552, Armed Services Correction Of Military Records Statute (Administrative Claims Statute)
- Federal Rules Of Civil Procedure 60(b)(1), (6) - Relief From A Judgement Or Order

OTHER

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 October 13th, 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

- The Due Process Clause, OF 5 USCA
- 10 USCA 1203 (b)(3), Governing Criteria For Separations, Militar
- Army Regulation 635-40, Chapter 7-11a(2)(b)
- Army Regulation 40-501, Chapter(s) 7-1 thru 4

STATEMENT OF THE CASE

1. THAT The Petitioner Files This Petition For Writ Of Certiorari To A Decision Of The U.S. Court Of Appeals (Wash. D.C.) (Appendix A) Affirmance Of Lower Tribunal (U.S. District Court) Decision Of Denial Of The Petitioner Motion For Vacation Of Judgement (Appendix B) Of The Lower Tribunal Dismissal Of Initial Appeal (Of Adverse Administrative Decisions) Of Respondent Board For Correction Of Military Records Of 2014 + 2019) (Appendix C)
2. THE PETITIONER STATE THAT The Lower Tribunal (U.S.D.C.) Had Failed To Consider (Along With The Motion For Vacation Of Judgement, Appendix D), The Petitioner Amendment To Statute Appeal Brought Under (Appendix E), Also The Petitioner

Supplemental Statement On Motion To Vacate Judgement (Appendix F), Showing Sufficient Cause For Lower Tribunal Grant Of Motion For Vacation Of Judgement (Of The Petitioner), Under Federal Rules Of Civil Procedure (FRCP) 60(b)(1) - Mistake (Error), Or Excusable Neglect (clauses) 5

3. ALSO, That The Petitioner Amendment To Statute Initial Appeal Brought Under (Appendix E), The Lower Tribunal Misconstrued As A Notice Of Appeal And Thus Forwarded The Document (Along With The Court File) To The U.S. Court Of Appeals (Wash. D.C.); The Court Of Appeals Made Remand To The Lower Tribunal For The Adjudication Of The Petitioner Motion For Vacation Of Judgement (Appendix G)

See Also, Lower Tribunal (U.S.D.C., Wash. D.C.) Court Docket, Items #25 - #27 (Appendix H)

4. THE PETITIONER FURTHER STATE THAT In The Petitioner Amendment To Statute Initial Appeal Brought

Under, Also In The Petitioner Supplement To Motion⁶
For Vacation Of Judgement (Appendices E, F);
THAT The Petitioner Had Shown Good Cause For
Vacation Of Judgement (Motion Of The Petitioner
Being Granted By Lower Tribunal), Specifically That
The Petitioner Had Made Acknowledgement Of
Error (Mistake) In The Petitioner Bringing
Initial Appeal Under The Federal Administrative
Procedure Act (APA, OF 702 + 706); The
Petitioner Made Correction To Statute To
State The Armed Services Administrative
Procedure Act, OF 10 USCA (558 (F) (3) (A) - (D));

5- AND THAT THE Lower Tribune Had Unreasonably
Refused, And Thus Rejected The Petitioner
Showing Of Cause, Under Fed. R. Civ.
Procedure 60(b)(1); That The Lower Tribunal
Made Abuse Of Discretion In Denial Of The
Petitioner Motion For Vacation Of Judgement

7
6. IN ADDITION, Being That The Petitioner Presents A Nonfrivolous Appeal (Before The Lower Tribunal) Supported By Information (Facts), Also Evidence, Documentary, Of Record, That The Lower Tribunal Could Also Had Granted The Petitioner Motion For Vacation Of Judgement, Under FRCP 60(b)(6)

7. NOW THE PETITIONER DEMONSTRATES The Merits(s) Of The Initial Appeal (Of The Lower Tribunal), Stated As Follows:

8. THAT IN The Lower Tribunal, The Petitioner Had Made Appeal To 2 Adverse Administrative Decision(s) Of Respondent Board For Correction Of Military Records, Of 2014 (Appendix I), Also 2019 (Appendix J)

9. THAT IN THE 2019 Decision (Appendix G), The Petitioner Had Shown (His) Being Wrongfully Separated From Military Service, By Way Of Presenting The Army (Respondent) Regulation Containing An Unconstitutional, Also A Discriminatory Clause That Allow For Respondent To Involuntarily Separate Servicemembers From Service Whose Medical Condition Are Not Stabilized & Disability Percentage Rating Are Less Than 10% (Appendix K)
10. AND THAT THIS Unconstitutional And Discriminatory Additional Clause, Are Contrary To Federal Governing Law, OF 10 USCA (203(b)(3))
11. THE PETITIONER Were Involuntarily Separated From Military Service Under Such Clause, By Respondent Physical Evaluation Board (PEB), On August 25th 1994 (Appendix L), Upon

9

Respondent Review Of A Previous Board (Medical Evaluation Board-MEB) Determination (Appendix M)

• See Also, Appendix J, Page 54 (Respondent Board Upholding The Unconstitutional & Discriminatory Additional Clause In Respondent Regulation As Basis For The Petitioner Separation (Wrongful) From Military Service

12. MOREOVER, That The Unconstitutional And Discriminatory Clause In Respondent Regulation (AR 635-40, Chapter 7-11, Paragraph a(2)(b)) Are With Direct Violation To Federal Governing Law Of 10 USCA 1203(b)(3), Also The Due Process Clause, Of 5USCA

13. THAT AS OPPOSED TO The Petitioner Being (Wrongfully) Separated Under The Above-Stated Regulatory Statute (Clause), That Respondent

Should Have Been Reinstated To Military Service 10
Under Medical Restrictions (Physical Profile), Under
Respondent Regulation AR 40-501, Chapter 7-1
Thru 7-4 (Appendix N)

14. THAT FOR PURPOSE OF The Petitioner Seeking
Continuation Of Proceedings By Way Of The
Petitioner Motion For Vacation Of Judgement
(Appendix D), The Petitioner Amendment To
Statute Appeal Brought Under (Appendix E),
Also The Petitioner Supplement To Motion For
Vacation Of Judgement (Appendix F);

15. THAT The Statute Authorizing (Conferring)
Jurisdiction Of The Lower Tribunal To Review
The Petitioner Initial Appeal Of Adverse
Administrative Decisions Of Respondent (10 USCA
1558(F)(3)(A)-(D)), THAT The Term "Special
Board" Applies To The Petitioner Appeal To

The Adverse Administrative Decision(s) Of 2014, Also¹¹
2019 Of The Involuntary (Also Wrongful)
Separation Of The Petitioner, As Defined In
10 USC 1558(b)(1)(B) (See Appendix O,
Paragraph 6), As The Term "Selection Board"
(As Defined In 10 USC 1558(b)(2)(A)) Applies
To The Respondent Physical Evaluation Board
(PEB) Decision (Appendix L), That Made The
Involuntary, Also Wrongful Separation Of The
Petitioner From Military Service

REASONS FOR GRANTING THE PETITION

1. The Petitioner State That This Court Should Grant The Petition Because The Petitioner Showed Sufficient Cause For The Lower Tribunal Grant Of The Petitioner Motion For Vacation Of Judgement, And
2. That The Petitioner Presents A Nonfrivolous, Thus A Valid, Also A Meritorious Appeal, Substantiated By Information (Facts), Also Documentary Evidence (Of Record)
3. THAT The Aformentioned Issues Of The Petitioner Initial Appeal, Are Of Public (Military) Importance, FOR The Issue(s) Involve Matters, Of Which Members Of All Service Branches May Had Been, Are, Or Will Become Subject To, And Will Need For Resolution To Such, Also Similar And Other (Matters)

CONCLUSION/RELIEF SOUGHT

13

THE PETITIONER ASK THAT THIS COURT CONDUCT A REVIEW OF The Lower Tribunal (U.S. Court Of Appeals) Affirmance Of The Lower Tribunal (U.S. District Court) Denial Of The Petitioner Motion For Vacation Of Judgement (Appendix A), Also The U.S.D.C. Denial (Order) Of The Petitioner Motion (Appendix B), Along With The Petitioner Motion, Amendment, Also Supplement (Appendices D, E, F); AND AFTER REVIEW OF DOCUMENTS, That This Court Find That The Petitioner Showed Sufficient Cause For Granting Of The Petitioner Motion For Vacation Of Judgement, THAT This Court GRANT The Petition For Writ Of Certiorari, And Adjudicate The Petitioner Initial Appeal On Its Merits; ALSO THAT IF This Court Conclude That The Petitioner Presents A Valid Appeal, That This Court GRANT The Petitioner All

Relief Requested In Appeal (Appendix P),

(4)

Under Rules, Sup. Ct. 42, 45

ALSO REMAND TO Lower Tribunal For The Implementation
OF Relief

Respectively Submitted,

- *St Dr* 10/28/20

Stephen Durr

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312-218-7974

— PROOF OF SERVICE —

THAT I, The Petitioner, Certify That (1) Copy Of This
Petition, Also Appendix, Have Been Furnished To
Respondent Via Email, To The Following Address:
jeremy.haugh@usdoj.gov

- *St Dr* 10/28/20
Stephen Durr
Petitioner Pro Se