

No. 20-6627

IN THE SUPREME COURT OF THE UNITED STATES

On Petition for Writ of Certioraria to the
Fourth Circuit Court of Appeals
19-2037 (3:18-cv-01874-PJG)

Clarence B. Jenkins, Jr.....Petitioners,

v.

S.C. Department of Employment and Workforce; S.C. Budget and
Control Board and Office of South Carolina Governor..... Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

WHETHER THE COURT MAY DISMISS AN ACTION FOR FAILURE TO COMPLY WITH THE LIMITATIONS PERIOD SET FORTH IN TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 WHERE THE PLAINTIFF FILED SUIT ALMOST FOUR (4) YEARS AFTER NOTICE OF THE RIGHT TO SUE.

JURISDICTION

The Court of Appeals for the Fourth Circuit entered its judgment on August 10, 2020. Petitioner did not petition for rehearing. The petition for writ of certiorari dated October 8, 2020, was received by the Office of the Clerk of Court for the United States Supreme Court on October 15, 2020. The petition for writ of certiorari was filed on December 4, 2020. The jurisdiction of this Court is invoked under 28 U.S. § 1254(1).

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Clarence Jenkins, alleges violations of Title VII of the Civil Rights Act of 1964 against Respondents, the South Carolina Department of Employment and Workforce (“SCDEW”), the Office of the South Carolina Governor (“Governor’s Office”), and the South Carolina Budget and Control Board (“SCBCB”) (hereinafter collectively referred to as “Respondents”).

By way of background, Petitioner alleges that between 2010 and 2013, SCDEW discriminated against him on the basis of his race in falsely applying “Barred from Applying” and “Nepotism” labels on his application resulting in him being rejected for several positions of employment. Petitioner alleges to have filed a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”) on August 17, 2011. Thereafter, Petitioner alleges that he continued to be rejected for employment positions and filed another Charge of Discrimination with the EEOC on July 3, 2013, against SCDEW alleging that he was being retaliated against because of filing a charge with the EEOC as evidenced by rejection letters and because SCDEW’s representatives told him not to contact or apply for open positions with SCDEW because of what it deemed to be harassing conduct on the part of the Petitioner. After a review of both charges, on December 9, 2014, the EEOC issued its Notice of Right to Sue as to both charges. Petitioner received the Notice of Right to Sue on December 12, 2014.

Petitioner filed an action in State court against Respondents on May 21, 2015; however, the action did not assert any claims under Title VII or other federal law. The State court dismissed Petitioner's action with prejudice on October 12, 2015.

Petitioner filed the underlying action against Respondents on July 9, 2018, alleging discrimination on the basis of race, sex, and disability under Title VII for failure to hire, retaliation, and "deprivation," and a claim under 42 U.S.C. § 1983. The Magistrate Judge reviewed Petitioner's Complaint and issued a Report and Recommendation on August 14, 2018, summarily dismissing the SCBCB and the Governor's Office as Petitioner failed to allege any facts that either agency committed acts in violation of Title VII. Further, the Magistrate Judge dismissed and any purported claim under 42 U.S.C. § 1983. The District Court issued an Order finding that only Petitioner's Title VII claims against SCDEW were viable.¹

On September 12, 2018, SCDEW filed a Motion to Dismiss Petitioner's claims, in part, on the basis that such claims were barred as Petitioner failed to file his lawsuit within ninety (90) days of receiving his Notice of Right to Sue. On January 4, 2019, the Magistrate Judge issued an Order summarily dismissing the Governor's Office and the SCBCB without prejudice and service of process and

¹ Pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, the matter was referred to the Magistrate Judge to conduct all proceedings and enter a final judgment in the matter on October 2, 2018.

Petitioner's Title VII claims against SCDEW for failure to state a claim upon which relieve can be granted. Petitioner filed a motion for reconsideration which the district court denied on August 28, 2019.

Petitioner filed a notice of appeal to the Fourth Circuit Court of Appeals challenging the dismissal of his claims on January 24, 2019. Petitioner's informal brief cited allegations of judicial misconduct and lack of due process; however, Petitioner failed to address the Magistrate Judge's rulings dismissing the Governor's Office and the SCBCB and that Petitioner's Title VII claims were untimely, thereby, justifying dismissal of the action.

On August 10, 2020, the Court of Appeals issued an Order finding no evidence of judicial misconduct or misconduct by Respondents during the proceedings. Additionally, the Court of Appeals found that Petitioner forfeited appellate review of the Magistrate's Judge's decision as Petitioner failed to challenge the grounds of the Magistrate Judge's ruling in his informal brief. Accordingly, the Court of Appeals entered judgment affirming the Magistrate Judge's Order. Petitioner now requests a review by this Court.

REASON FOR DENYING THE PETITION

Petitioner fails to show a conflict between the Fourth Circuit Court of Appeals and decisions of this Court or of any other federal circuits or state court of last resort, neither does Petitioner assert an important federal question. Petitioner

presents unsupported allegations of misconduct by Respondents and the lower courts in objection to the dismissal of his claims. The Fourth Circuit Court of Appeals correctly ruled that Petitioner's claims were barred as Petitioner failed to comply with the filing deadlines set forth in Title VII.

Title VII requires a plaintiff to bring a civil action within ninety (90) days of receiving the notice of right to sue. 42 U.S.C. § 2000e-5(f)(1). A plaintiff who fails to file a complaint within the 90-day statutory time period forfeits his right to pursue the claims. Baldwin Cty. Welcome Ctr. v. Brown, 466 U.S. 147, 149-151 (1984).

It is undisputed that Petitioner received his Notice of Right to Sue on December 19, 2014 and filed the instant action on July 9, 2018—almost four (4) years after receiving his Notice of Right to Sue, well beyond the 90-day requirement. Additionally, Petitioner failed to present any evidence justifying the tolling of the limitations period. To that end, Petitioner's claims are untimely. The Magistrate Judge correctly concluded that Petitioner failed to timely file his suit and properly granted Respondent's Motion to Dismiss.

Petitioner failed to address the timeliness of his suit before the Fourth Circuit Court of Appeals or otherwise challenge the Magistrate Judge's decision. Accordingly, the Fourth Circuit correctly affirmed the dismissal of Petitioner's claims.

CONCLUSION

This case does not present any compelling questions of law or conflict among the federal circuits. The Fourth Circuit Court of Appeals' ruling adheres to applicable law regarding the exhaustion of administrative remedies and filing requirements set forth in Title VII. Accordingly, the petition for writ of certiorari should be denied.

Respectfully submitted,

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