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ORIGINAL

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

DOUGLAS JACKSON

Petitioner,

v

LEAH BEREAN ET, AL;

Respondents.

**ON PETITION FOR WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

DOUGLAS JACKSON # 748757

Baraga Correctional Facility

13924 Wadaga Rd.

Baraga Michigan 49908

QUESTION(S) PRESENTED

A PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED WHERE BOTH THE U.S. DISTRICT COURT AND THE U.S. COURT OF APPEALS HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER. IN LIGHT OF THE GENEROUS STANDARD AFFORDED TO PRO SE LITIGANTS IN PLEADING THEIR CAUSES OF ACTIONS, HAINES, 404 U.S. 520, 521; 92 S CT 594, THE QUESTION BECOMES, SHOULD THE LOWER COURTS HAVE BEEN SO STRINGENT IN LIMITING ITS REVIEW TO ONLY ONE EXCEPTION OF FED, R. CIV. PROC. 60(B) IN DECIDING WHETHER TO GRANT RELIEF.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page

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No: _____

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

The Order of the U.S. Court of Appeals for the Sixth Circuit dated August 21, 2020 and appears at Appendix A to the petition.

The Order of the U.S. Court of Appeals for the Sixth Circuit denying Petitioners Motion for Reconsideration, dated October 5, 2020, appears at Appendix B to the petition.

The Order of the U.S. District Court, Case No: 1:18-Cv-1075, dated April 14, 2020, appears at Appendix C to the petition.

The Order of the U.S. District Court, Case No: 1:18-Cv-1075, dated March 27, 2020, appears at Appendix D to the petition.

JURISDICTION

On October 5, 2020 the U.S. Court of Appeals for the Sixth Circuit, Case no: 20-1296 issued an order denying petitioner Jackson petition for rehearing of that courts August 21, 2020 order affirming the district court's denial of his motion for relief from judgement.

This petition for writ of certiorari is filed within 150 days of the United States Court of Appeals for the Sixth Circuit.

The jurisdiction of this court is invoked under 28 U.S.C. 1257(a).

JURISDICTION

On October 5, 2020 the U.S. Court of Appeals for the Sixth Circuit, Case no: 20-1296 issued an order denying petitioner Jackson petition for rehearing of that courts August 21, 2020 order affirming the district court's denial of his motion for relief from judgement.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The U.S. Constitutional Amendment Freedom Of Religion, Press, Expression, holds:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, Or the press, or the right of the people peacefully to assemble and to petition the government for a redress of grievances

STATEMENT OF THE CASE

On May 31, 2018, Petitioner Douglas Jackson, hereafter "Petitioner", in pro se, was transferred from the Ionia correctional facility (ICF) to the Oaks Correctional Facility (ECF).

During all times relevant to this complaint, Petitioner was isolated at the Oaks correctional facility. Petitioner was and still is illiterate. He did not and still does not have a General Equivalency Diploma (GED) or a High school diploma. Petitioner does not have any training in the law. Petitioner is not represented by counsel. Petitioner's knowledge of the law was and still limited. Petitioner was not and still is not an experienced litigator in the Federal courts; nor is he a master of the law and Federal Rules of Civil Procedure.

Upon arrival at ECF, Petitioner immediately requested for legal writer services from the (ECF) law librarian, Leah Berean. Petitioner was assigned a legal writer.

On June 22, 2018 through September 21, 2018, Respondent Berean began to take adverse actions against Petitioner, because Petitioner filed a civil rights complaint against Michigan Department of Corrections (MDOC) prison officials. Petitioner had properly filed prison grievances against Respondent Berean, on his own behalf.

Law Librarian Berean intentionally sabotaged each action Petitioner attempted to meaningfully litigate. Petitioner was not, allowed physical access to the law library. Respondent Berean would not allow Petitioner access to the electronic law library. Respondent would not allow Petitioner legal reference materials from the law library. Petitioner would not provide Petitioner with legal writer program services from any other persons trained in the law; nor did Respondent Berean provide an alternative source of meaningful access to the court for Petitioner.

On October 31, 2018 the U.S. District Court, Western District of Michigan, Southern Division, filed Petitioner's first and only prisoner civil rights complaint utilizing a form supplied by the court regarding this matter. In relevant part, Petitioner alleged that Respondent Berean interfered with his fundamental right to access the courts, and his established right not to suffer retaliation for exercising his 1st am freedoms. None of the defendants were ever served a summons and the complaint against them. The courts record in this matter only consisted of Petitioners verified complaint and supporting affidavit.

On January 12, 2019, the Court dismissed a number of the defendants.

On March 19, 2019 the U.S. District Court determined that petitioner filed to state a retaliation claim against Respondent Berean. The action was dismissed with prejudice for failure to state a claim.

On April 2, 2019 Respondent Berean sent Petitioner a memorandum stating in part:

Inmate Jackson, Your legal writer assistance has been cancelled per Lansing: Based on the courts opinions in *Jackson v Berean*, U.S.D.C. no: 1:18-cv-1075, our obligation to ensure that the prisoner has access to courts, does not entitle that prisoner to be assisted by a legal writer. The Court opined in this case that prisoner Jackson is a very experienced litigator in the federal courts and he has demonstrated that he is fully capable of litigating cases without the assistance of a legal writer (opinion page 12)...because prisoner Jackson continues to engage in assaultive behavior towards the legal writer and in the interest of maintaining safety and security, prisoner Jackson's access to the legal writer should be suspended until further review. (emphasis in original) (review Bereans 4-2-19 memo attached as Exhibit "1").

Since then, Petitioner has been continually denied meaningful access to the courts as a result of Respondent Berean's April 2, 2019 memorandum. Respondent Berean's interference with Petitioner's access to the court was demonstrated by her intentional refusal to provide legal writer services. Petitioner's meaningful access to the courts, then and now, is in continued jeopardy,

Petitioner appealed to the U.S. Court of Appeals for the Sixth Circuit. That court affirmed the district court's dismissal and denied Petitioner's request for rehearing.

Petitioner had also filed a Petition for Writ of Certiorari to the U.S. Supreme Court that was subsequently denied on April 27, 2020.

On March 19, 2020, Petitioner filed a motion in the U.S. District Court to reopen the case.

The Court construing the motion for relief from judgement, the court denied relief on March 27, 2020

Petitioner filed a Notice of Appeal and on April 27, 2020.

The District Court granted his application to proceed in forma pauperis on appeal. On that same date, the Supreme Court of the United States denied Petitioner petition for writ of certiorari.

With respect to Petitioners' motion to reopen the case, Petitioner did file a motion for reconsideration of the denial of relief which the district court claims it denied on April 14, 2020

The Order of the U.S. District Court, Case No: 1:18-Cv-1075, dated April 14, 2020.

The Order of the U.S. District Court, Case No: 1:18-Cv-1075, dated March 27, 2020.

The Order of the U.S. Court of Appeals for the Sixth Circuit dated August 21, 2020.

The Order of the U.S. Court of Appeals for the Sixth Circuit denying Petitioners Motion for Reconsideration, dated October 5, 202.

REASONS FOR GRANTING THE PETITION

A petition for writ of certiorari should be granted where both the U.S. District Court and the U.S. Court of Appeals has departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

In light of the generous standard afforded to pro se litigants in pleading their causes of actions, Haines, 404 U.S. 520, 521; 92 S Ct 594, the question becomes, should the lower courts have been so stringent in limiting its review to only one exception of Fed. R. Civ. Proc. 60(b) in deciding whether to grant relief.

A Rule 60(b) Motion may be granted for one of 6 reasons, i.e. :

- (1) mistake, inadvertance, surprise, or excusable neglect;
- (2) newly discovered evidence;
- (3) fraud, misrepresentation or the like;
- (4) the judgement is void;
- (5) the judgement has been satisfied, released or discharged, or a prior judgement upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgement should have prospective application;
- (6) any other reason justifying relief from the operation of the judgement, when none of the first five enumerated examples of Rule 60(b) apply. Relief is available only when exceptional or extraordinary circumstances are present. Cincinnati Ins. co. v Byers, 151 F3d 574, 5878 (6th Cir 1998).

Petitioner is a layman in the law. He is currently, and was then confined to administrative segregation. Placement in segregation bars inmates physical to the law library, electronic law library computers, law books or other legal references.

Petitioner had previously been denied access to the legal writer program, preventing Petitioner from receiving assistance from the legal writer program. Petitioner is also, not an attorney, paralegal or trained in the law.

In accordance with Haines, the lower courts should have held their review to a less stringent standard and reviewed his Motion to see if he fit one of the six sections of the Rule 60(b), specifically, but limited to Rule 60(b)(3).

Petitioner asserts that he is entitled to relief under Rule 60(b)(3) based on the showing of misconduct by the Respondent Berean and whether the U.S. District Court correctly identified the facts and law under Rule 60(b).

TAKE NOTICE that the U.S. Court of Appeals, case no: 20-1296 on page 2 of its two page order, held in pertinent part:

Although [Petitioner] Jackson asserts that the law librarian committed misconduct in violation of Rule 60(b)(3) by preventing him from accessing the legal writer program, he has not offered any evidence that the law librarian interfered with his ability to prosecute his complaint.

In fact, the district court rejected [Petitioner] Jackson's access to the courts claim in part because he was able to prepare a coherent complaint without assistance from a legal writer program.

The presentation of a 1983 complaint form to the Courts is not the equivalent of being able to prosecute his complaint, when he was denied total access to the law library, legal assistance and legal research materials to effectively prosecute his case.

The U.S. District Court in this case, Jackson v Berean, U.S.D.C. W.D. case no: 1:18-cv1075 held in pertinent part, that the Courts obligation is to ensure that the prisoner has access to Court's does not entitle that prisoner to assistance by a legal writer. The U.S. District Court opined in this case that prisoner Jackson is a very experienced litigator in the Federal courts and he has demonstrated that he is fully capable of litigating cases without the assistance of a legal writer (Opinion: page 12). Additionally, there are other resources available to prisoner Jackson, such as the law library.

The U.S. District Court erred in that ruling, based on Petitioner Jackson had **absolutely no access to the law library** as addressed above, effectively depriving Petitioner Access to the Courts, in violation of his first amendment right.. As the U.S. Court of Appeals pointed out in its order: When reviewing the denial of a Rule 60(b) motion, we do not review the underlying judgement, instead, our "review is limited to whether the district court abused its discretion in denying the Rule 60(b) motion. Yeschick v Mineta, 675 F3d 622, 628 (6th Cir 2012).

In this case, the U.S. District Court clearly abused its discretion when finding that Petitioner Jackson had access to a law library, when he was in segregation and could **NOT** physically access the law library. Petitioner Jacksons complaint clearly noted he was in segregation and unable to access legal research materials. Thus his only way to access the courts was by way of the legal writer program. Or in the alternative provide him copies of legal reference material.

In Lewis v Casey, 518 U.S. 343, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996). the Supreme Court held that in order for a prisoner to maintain an action based upon a violation of the right of access to the courts, the prisoner must demonstrate actual injury in a specific case. Lewis v Casey, 518 US 343, 349; 116 S Ct 2174; 2180; 135 L Ed 2d 606, 618 (1996). Citing Bounds v Smith, 430 US 817; 97 S Ct 1491; 52 L Ed 2d 72 (1977), the Court stated that prison law libraries and legal assistance programs are not ends in themselves but only the means for ensuring a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights. Lewis v Casey, 518 US at 351. The actual injury requirement is not satisfied by just any type of frustrated legal claim. The actual injury must be in pursuit of a non-frivolous direct appeal from a criminal conviction, a habeas corpus petition or a civil rights action under 42 USC § 1983 to vindicate "basic constitutional rights." Lewis v Casey, 518 US at 354. The right of access to the courts recognized in Bounds is simply a right to bring a complaint to the attention of a court. Bounds does not require that the:

“state enable the prisoner to discover grievances and to litigate effectively once in court.” Lewis v Casey, 518 US 354.

It requires only the means for ensuring a “reasonably adequate” opportunity to present claimed violations of fundamental rights to the courts. Bounds did not create an abstract, free-standing right to a law library, litigation tools, or legal assistance. Lewis v Casey, 518 US 354.

To state a claim, an inmate must show that any *shortcomings in the library, litigation tools, or legal assistance* caused actual injury in his pursuit of a legal claim. Lewis, 518 U.S. at 351; Talley-Bey, 168 F.3d at 886; Kensu v. Haigh, 87 F.3d 172, 175 (6th Cir. 1996); Pilgrim v. Littlefield, 92 F.3d 413, 416 (6th Cir. 1996); Walker v. Mintzes, 771 F.2d 920, 932 (6th Cir. 1985). An inmate must make a specific claim that he was adversely affected or that the litigation was prejudiced. Harbin-Bey v. Rutter, 420 F.3d 571, 578 (6th Cir. 2005); Vandiver v. Niemi, No. 94-1642, 1994 U.S. App. LEXIS 34257, 1994 WL 677685, at *1 (6th Cir. Dec. 2, 1994). “Examples of actual prejudice to pending or contemplated litigation include having a case dismissed, being unable to file a complaint, and missing a court-imposed deadline.” Harbin-Bey, 420 F.3d at 578 (citing Jackson v. Gill, 92 F. App’x 171, 173 (6th Cir. 2004)).

As the U.S. Court of Appeals stated: Rule 60(b) provides for relief from a final judgement only in limited circumstances, including “mistake, inadvertence, surprise, or excusable neglect,” and “fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party. Fed. R. Civ. P. 60(b)(I) and (3).

Petitioner Jackson has demonstrated error on the lower courts behalf.

Based upon the foregoing points and authorities, the Petitioner respectfully requests this Honorable Court to grant the within writ and reverse the judgment of the court below. The petition for a writ of certiorari should be granted as Petitioner was denied his federal constitutional rights.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

S/DOUGLAS JACKSON

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FEBRUARY / NISSEVAN 18, 2021