No. 20-7625

SUPREME COURT OF THE UNITED STATES

ORIGINAL

JAMES ARTHUR ROSS – PETITIONER

VS.

JOHN MYRICK, et al. - RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JAMES ARTHUR ROSS S.I.D.#12599830
TWO RIVERS CORRECTIONAL INSTITUTION
82911 BEACH ACCESS RD.
UMATILLA, OR 97882

QUESTION(S) PRESENTED

1. Did the District Court error by ignoring Oregon's Wildcard Exemption Rule announced in ORS 18.345(1)(o)(2011) and in Schlunt v. Nooth, 261 Or. App. 866, 326 P.3d 1289(Or. App., 2014) and Schlunt v. Nooth, 355 Or. 668, 330 P.3d 27 (Or., 2014)?

2. Did the District Court error in not allowing the plaintiff to proceed to trial to present evidence to a jury that the defendants were actively pursuing legislation to bypass the Oregon Property Exemption Rules and law announced in Schlunt v Nooth, thus, showing they were knowing of issues relating to the manner in which monies were being withdrawn from Prisoners' bank accounts to pay towards such outside liens?

3. Did the District Court error in determining that that the scope of this case was simply resolved by determining that prison officials have the right to collect monies from a Prisoner's bank account to pay towards debts and that such determination outrightly barred any litigation of any kind on the matters?

4. Did the District Court error in not allowing a pro se litigant any discovery or expert witness?

5. Did the District Court error in determining that the defendants had met their threshold to satisfy summary judgment, especially before shifting the burden onto the plaintiff?

6. Did the District Court error in determining that Plaintiff's case had no genuine issues of fact suitable for trial?

7. Did the District Court error by not appointing counsel to represent the plaintiff in this complex case? Alternatively, did the District Court abuse it's discretion in not even requesting the appointment of counsel? Alternatively, does a District Court have "inherent authority" to appoint counsel regardless of §1915?

LIST OF ALL PARTIES

*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:

*John Myrick, Superintendent of TRCI;
*B. Culp, Supervisor, Central Trust Office;
*D. Myers, Business Office, TRCI;
*Oregon Department of Corrections;
*State of Oregon;

(Please Note: That the titles listed above may have changed since the time of incident.)

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TABLE OF AUTHORITIES CITED

STATUTES AND RULES

OTHER

There is more in depth arguments and facts to this case, with Statutes, Rules, Constitutional and Statutory Provisions and Case Laws to cite, however, petitioner believes all of that is for the briefing process and thus, petitioner was afraid as he does not know this process and is trying to do his best to just have this Honorable Court accept this case for further proceedings.

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

Federal Courts:

The opinion of the United States Court of Appeals appears at Appendix B to the petition and is:

[x] reported at: *Ross v. Myrick,* (9th Cir. 2020).
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States District Court appears at Appendix D to the petition and is:

[x] reported at: *Ross v. Myrick,* (D. Or. 2019).
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

Federal Courts:

The date of which the United States Court of Appeals decided my case was August 21st, 2020:

[ ] No petition for rehearing was timely filed in my case
[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October 05th, 2020, and a copy of the order denying rehearing appears at Appendix A.
[ ] An extension of time to file the petition for 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. § 1245(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Amendment to the United States Constitution

Fourteenth Amendment to the United States Constitution

Oregon Constitution Article 1, Section 10

Oregon Constitution Article 1, Section 20

My rights to be free from illegal search and seizure, cruel and unusual punishment, equal protections and reformation, due process of the law, Privileges or Immunities Clause, the Oregon Poverty Rules, the Oregon Property Exemption Rules ORS 18.345(1)(o)(2011) and ORS 18.375,, O.D.O.C. Rules And Policies on their Mission, Codes of Conduct, Codes of Ethics, Rules 20.1, 20.2, 20.3, and to be free from forms of slavery as guaranteed to me by and through the Oregon Constitution Article 1 § 10, 16, 20 and the United States Constitution Amendments 5th, 8th, and 14th and I have suffered prejudice as a result.

STATEMENT OF THE CASE

On January 07th, 2016, Petitioner's P.R.A.S.(Program Recognition Award System)/Pay in the amount of $77.90, which he receives for being enrolled in work programming in the Oregon Department of Corrections, was posted to his Bank Account.

Then, on January 11th, 2016, which just happened to be the Petitioner's Birthday, and, before he was afforded the chance to go to the Institution's Commissary line(Institution's store), an amount of $49.65 was taken as a partial payment towards a post-conviction relief filing fee that was placed as a 'lien' against his bank account. This action was performed by one D. Myers of the Two Rivers Correctional Institution's Business Office whom manages AICs'(Adults In Custody) bank accounts at TRCI.

On February 04th, 2016, and pursuant to the rules and timelines of OAR 291-158-0065, petitioner filed for an 'Administrative Review' of the stated deduction at the Two Rivers Correctional Institution.

On February 10th, 2016, petitioner received a response dismissing his administrative review by one B. Culp, Supervisor, Central Trust Office.

Immediately after which, petitioner filed a 'Notice of Tort', which was also denied to no avail on September 18th, 2016.

On December 28th, 2017, petitioner filed his §1983 Civil Suit in the District Court of Oregon raising his constitutional claims of violation for the unlawful, without statutory authority and unconstitutional deductions as described above from his bank account and the denial of his administrative review.

On December 26th, 2018, United States Magistrate Judge Youlee Yim You issued her Findings and Recommendations to grant the Defendants' motion for summary judgment and dismiss the case.

On April 18th, 2019, United States District Judge Marco A. Hernandez, issued a 3 page Order

Adopting in Part Magistrate Judge You's F&R and ultimately dismissing the case.

On May 15th, 2019, petitioner filed his appeal to the 9th Circuit Court of Appeals, which was denied on August 21st, 2020.

On September 03rd, 2020, petitioner filed a timely Petition for Rehearing, which was denied on October 05th, 2020.

(Please Note: The above described actions have continued to this day. At some points, Petitioner's bank account has been 'zeroed' out, leaving him nothing and having to beg his friends and family members for monies to afford the necessities for him to adequately make it through the work week, month, year, etc., which he should never have had to do. This especially so, if O.D.O.C. is truly practicing what it preaches in rehabilitation and treating it's prisoners as 'Adults In Custody' rather than 'inmates' or mere 'prisoners', 'slaves' and 'low lives' of society.)

REASON(S) FOR GRANTING THE PETITION

Good morning your honors and may it please the court.

The case before you today is going to highlight a few "errors" in the justice system that amounts to grave miscarriages of justice, which would justify this most Highest and Honorable Court's intervention and articulation:

From my own experiences in pursuing Civil Rights Litigations, one brightline fact is that lower federal courts continuously deny pro se and incarcerated individuals the appointment or assistance of counsel. They do not even attempt to try and assist a pro se and incarcerated litigant in obtaining the assistance of counsel. Every time Courts always give the same response that "the petitioner can adequately articulate his/her claims to the court".

However, the problem is that these denial orders are all carbon copy denials. I can literally provide this Honorable Court with several such denial orders from several different federal judges out of the Oregon/9th Circuit Courts if my case is allowed to proceed.

Yet, after denying the plaintiffs any discovery, expert witnesses or anything of the kind, the courts will always dismiss stating that "the plaintiff has failed to show or prove to this court his/her claims", which always happens in a summary judgment proceeding. Pro se and incarcerated individuals representing themselves do not get the benefits of any trial proceedings. Let's face it, the summary judgment stage is their trial proceeding as they a far to often forced to prove their case beyond a reasonable doubt to a judge in such a preliminary proceeding and always without the assistance of counsel or any discovery, expert witnesses or any real resources that would even give them a standing while facing off with such a massive entity as a State.

This is the epitome of everything wrong with the system. The defendants, usually prison officials, are given the full and relentless force of the power of the State for representation, while denying the plaintiff, whom's claims are to be taken as true, at least initially, no representation, resources, nothing at all, which is an impossible task for pro se and incarcerated litigants.

A prisoner cannot get a class representing him or herself. Cannot get any documents as they are related to "security" protections of the prison, and, cannot get the court to allow any discovery, witnesses or representation. This especially so when moving from the initial screening stage into to the discovery and trial stages, which the summary judgment has become the new trial stage, especially for unrepresented and incarcerated litigants.

It is my intention to show to this court the unconstitutionality of this and the fact that regardless of §1915, courts have an inherent authority to appoint one of their officers to help assist in the advancement of the case, and, if the court, in the very least, does not try to assist a party in obtaining counsel willing to serve for little or no compensation, it's failure to do so amounts to an abuse of discretion.

Just as the Court noted in *Naranjo v. Thompson*, 809 F.3d 793, 799 (5th Cir. 2015):

> 3) When a pro se litigant proceeds to trial after having been denied appointed counsel, his performance at trial is affected by that denial, and the denial is held erroneous on appeal, the ordinary remedy is remand for retrial with the assistance of recruited pro bono counsel. Similarly, where a denied motion for appointment of counsel is followed by a denied motion to amend the complaint, the Eleventh Circuit has indicated that a plaintiff should be afforded a renewed opportunity to amend his complaint on remand with the aid of counsel;
>
> AND,
>
> 5)Because summary judgment's consequences are so severe, courts must always guard against premature truncation of legitimate lawsuits merely because of unskilled presentations.

Thus, taking into consideration that the summary judgment stage has become the pro se and incarcerated litigant's trial stage, denying counsel or in the bare minimum, refusing to even attempt to assist the pro se litigant in obtaining counsel willing to serve for little or no compensation, is an abuse of discretion, which does substantially affect the outcome of the proceeding.

However, it does not simply stop there. The issues are even bigger as the District Court further refused to acknowledge Oregon's own rules and prior court rulings on the matters. This has become another injustice and miscarriage of justice carried out by the federal courts.

It appears to be a trend in Oregon and the 9th Circuit Courts as of late where courts are citing

other cases of similar natures to completely override the specific issues in any other individual complaint based on other issues or aspects of the issues.

For example, the Oregon/9th Circuit Courts continuously use the case of *Bahrampour* to dismiss all claims and complaints against Oregon's mail rules on sexually explicit material. Yet, the ruling in *Bahrampour* merely holds that Oregon's mail rules on such are constitutional.

However, if you try to raise a complaint that Oregon is not following their own rules, the complaints are still dismissed citing *Bahrampour.* There are several cases that can be cited to this fact as proof in briefing.

And, just like this case at hand is not about a Prison's ability to withdraw funds from an AIC's prison bank account that he or she may or may not have agreed to. Nor is it about the ability to have such liens applied to an AIC's prison bank account.

This case is about how, when, how much at a time and how often can said withdrawals to pay towards such debts that have been attached as liens against their bank accounts can occur. It is mor like an issue of when a sentencing court goes to impose multiple convictions or sentences. It is not an issue of whether the judge has the authority to do so, rather it is an issue of the rules in place that he or she must follow when doing so in order to not violate a persons constitutional rights. As a sentence imposed without statutory authority is void, unlawful and unconstitutional. Just as the actions are of prison officials whom collect monies from an AIC's bank account outside the scope authorized by law or statute, in this case is ORS 18.345(1)(o)(2011) and ORS 18.385(1) and further clarified as applying to an AIC's bank account in Schlunt v. Nooth, 261 Or. App. 866, 326 P.3d 1289(Or. App., 2014) and Schlunt v. Nooth, 355 Or. 668, 330 P.3d 27 (Or., 2014).

Yet, courts, as has happened in this case, will continuously cite other cases that refer to a Prison's ability to do so, or, the ability for the lien to be placed against your bank account and cite your agreement to it, etc., rather than pay attention to the core of your concerns and claims, which again, counsel would of been of a great benefit in being able to do that.

Instead, these facts that prison officials are bound as to the manner in which they withdraw the monies are overlooked. In Oregon, this is the Oregon Property Exemption Rules announced in ORS 18.345(1)(o)(2011) and ORS 18.385(1) that were recognized as applying to a Prisoner's Bank Account in Schlunt v. Nooth, 261 Or. App. 866, 326 P.3d 1289(Or. App., 2014) and Schlunt v. Nooth, 355 Or. 668, 330 P.3d 27 (Or., 2014), which were upheld through the Oregon Court of Appeals and Supreme Court.

These rules and clarifications clearly point out that when a prisoner, or, any Oregonian for that matter, has $400 or less in their bank accounts, no funds can be collected to pay towards any debts except restitution.

Furthermore, being that the very defendants in this case are the very defendants that lost in the cases of Schlunt v. Nooth, 261 Or. App. 866, 326 P.3d 1289(Or. App., 2014) and Schlunt v. Nooth, 355 Or. 668, 330 P.3d 27 (Or., 2014). They knew full well that continuing such actions weighed heavily on the lines of unconstitutional. This was also another reason why I wanted counsel as it is clear from 2013 on, that the defendants were actively engaged with the legislature here in Oregon trying to get legislation approved to bypass this ruling. Accumulating such evidence was outside of my capabilities as a pro se and incarcerated litigant.

In fact, the Department of Corrections after the filing of this suit changed some of it's rules to be more in line with that of the Federal Rules on collecting such debts as in 20% payments of the previous months total income, which they are still doing wrong as they are just taking 20% of everything that comes in violating their own new guidelines.

However, the point is that I wanted to present this to a jury to show that they were knowing and actively trying to bypass their wrongdoings by getting legislation passed to the contrary, which would also prove against qualified immunity claims.

Yet, the district court in a grave miscarriage of justice that was compounded by the 9th Circuit Court of Appeals, completely manipulated my case into the single issue of whether prison officials had

the right to collect monies or not from my bank account, which was not at issue in my case.

Therefore, it is my hope to prove this to this most honorable court and hopefully get clarification that courts should not use other cases to completely squash another issue or case unless the issues at issue have been raised in both cases. That doing so is like creating a "blanket" ban on the issues no matter if they are related or not and despite the circumstances of the individual case and issues before it.

And, to resoundingly clarify that just because the law does not bar any particular action such as withdrawing funds from a prisoners' bank account, does not mean that they can ignore the statutes controlling the manner in which they do so.

Also, I would pray for this honorable court to recognize the need to clarify an importance of lower courts to fully vet the need for assistance of counsel in a case involving a pro se and incarcerated litigant, especially, for the summary judgment proceeding, which has truly become the pro se and incarcerated litigant's trial proceeding. As lower court judges are setting an extremely high standard in which pro se and incarcerated litigant's have to basically prove their case before ever being allowed to present such to a jury, which extremely prejudices the litigant as doing so allows the defendants to see every aspect of a litigant's case before even proceeding to trial, which further compounds the miscarriage of justice and fairness of the proceedings.

Furthermore, it is my hope that I may be able to show this court that a lot of the issues that face pro se and incarcerated litigants can be resolved by simply assuring that courts are using a more clarified and specific fact checker as detailed in this writ when determining to, in the very least, assist pro se and incarcerated litigants in obtaining counsel.

This especially so where the court refuses or denies a pro se and incarcerated litigant discovery, expert witnesses or any other meaningful resource while demanding them to proceed to defend their cases from the very severe consequences of summary judgments.

Let's face it, an unrepresented pro se and incarcerated litigant does not actually get his or her

day in court. In such a case, only the "paperwork" that cannot object or bring a court's attention to a clarification or misunderstanding does. The difference is that after courts render their decision, they do not "reconsider" their decisions.

Therefore, issues that could actually be raised in a hearing proceeding when represented by counsel are lost and not afforded to pro se and incarcerated litigants trying to represent their cases in a very severe environment of a summary judgment proceeding.

The reality here is that there is "a lot of meat on the bones" per say in this case before this Honorable Court to be able to bring some understanding to all States of the United States of America and it's litigants, especially incarcerated ones, which is very important, especially during these times.

I am a pro se litigant whom was not only denied the assistance of counsel, however, the Court refused to even request the assistance of counsel for me. This is after the Court's initial screening of the case, which the court passed and allowed to proceed to further proceedings, in this instance, summary judgment proceedings. At which point, the court failed or refused my motions for discovery, ultimately, denying me any resources whatsoever to defend myself or even present my case through the summary judgment proceedings, see *Simmons v. Jackson*, 2016 U.S. Dist. LEXIS 146942 (Oct. 24th, 2016): A court abuses its discretion by not considering a "series" of factors when determining whether there are exceptional circumstances to justify the appointment of counsel. See *Ulmer*, 691 F.2d at 212.

In determining whether to appoint counsel for an indigent plaintiff, the court must consider: (1) the type and complexity of the case; (2) whether the plaintiff can adequately present the case; (3) whether the plaintiff can adequately investigate the case; and (4) whether the evidence will consist in large part of conflicting testimony so as to require skill in the presentation of evidence and cross examination. *Pinson*, 2015 U.S. Dist. LEXIS 27787, 2015 WL 1000914, at *1 (citing *Ulmer*, 691 F.2d at 213).

See also, *SEC v. Stanford Int'l Bank Ltd*, 2018 U.S. Dist. LEXIS 135690 (May 10th, 2018): In determining whether to exercise its discretion to appoint counsel for an indigent person, a court must

consider: (1) the type and complexity of the case; (2) the indigent person's ability to present and investigate her case; (3) the presence of evidence that will largely consist of conflicting testimony so as to require skill in the presentation of evidence and in cross-examination; and (4) the likelihood that appointing counsel will benefit the parties and the court by shortening the trial and assisting in a just determination.

And, *United States v. 30.64 Acres of Land*, 795 F.3d 796 (1986): A federal court has a duty under 28 U.S.C.S. ⊏ 1915(d) to assist a party in obtaining counsel willing to serve for little or no compensation. The court does not discharge this duty if it makes no attempt to request the assistance of volunteer counsel or, where the record is not otherwise clear, explain its failure to do so.

Therefore, it appears that there is actually five(5) factors for determining the appropriateness for appointment of counsel in this case: (1) the type and complexity of the case; (2) the indigent person's ability to adequately present his or her case; (3) the indigent person's ability to adequately investigate his or her case; (4) the presence of evidence that will largely consist of conflicting testimony so as to require skill in the presentation of evidence and in cross-examination; and (5) the likelihood that appointing counsel will benefit the parties and the court by shortening the trial and assisting in a just determination.

Furthermore, it appears that these precedent cases, in determining to appoint or not appoint counsel in any specific case, set out their facts and conclusions somewhat "categorically" as listed in the previous paragraph, none of which happened in this case.

Even this Honorable Court has ruled in *Beard v. Banks*, 548 U.S. 521, 530-33, 126 S.Ct 2572 (2006) that "it is not inconceivable that a Plaintiff's counsel, through rigorous questioning of officials by means of depositions, could demonstrate genuine issues of fact for trial." 548 US at 536.

However, it does not stop there, another aspect of this has arisen since District Courts have recently ruled and the States are mixed on this, that even if the FRCP does not give authority to the

courts to appoint counsel, that courts nonetheless, have inherent authority to do so and in the very least, if a court fails to even try and request counsel to accept appointment, it abuses it's discretion in that failure, See, *Garcia v. Davis*, 2018 U.S. Dist. LEXIS 192801 (Nov. 09th, 2018): *Naranjo v. Thompson*, 809 F.3d 793, 802 (5th Cir. 2015) (Federal courts' inherent powers undoubtedly encompass the appointment of counsel).

The Court noted in *Naranjo v. Thompson*, 809 F.3d 793, 799 (5th Cir. 2015):

> 1) The federal courts have inherent authority to order attorneys to represent litigants without pay. Simply by virtue of having been created, federal courts are vested with inherent power to take action essential to the administration of justice;
>
> 2) Accordingly, courts have (at least in the absence of legislation to the contrary) inherent power to provide themselves with appropriate instruments required for the performance of their duties. Action taken by a federal court in reliance on its inherent powers must somehow be indispensable to reaching a disposition of the case;
>
> 3) When a pro se litigant proceeds to trial after having been denied appointed counsel, his performance at trial is affected by that denial, and the denial is held erroneous on appeal, the ordinary remedy is remand for retrial with the assistance of recruited pro bono counsel. Similarly, where a denied motion for appointment of counsel is followed by a denied motion to amend the complaint, the Eleventh Circuit has indicated that a plaintiff should be afforded a renewed opportunity to amend his complaint on remand with the aid of counsel;
>
> 4) During discovery, a pro se plaintiff's lack of resources and his unfamiliarity with discovery rules and tactics put him at a significant disadvantage;
>
> 5)Because summary judgment's consequences are so severe, courts must always guard against premature truncation of legitimate lawsuits merely because of unskilled presentations.

If you compile this with other issues listed above, especially pertaining to the appointment of counsel, I would pray that there is enough here in this instant case for this Honorable and Highest Court of our nation to take interest in considerations for some of it's lowest citizens, America's Prisoners and at least find one issue to address to bring some light and justice to us.

Therefore, I pray that this Honorable Court will find merit in hearing this case. Even if the ruling turns out to not be in my favor, it would still be valuable to the United States as a whole to know this Court's opinions on some of these matters.

Finally, I pray for this most Highest and Honorable Courts' understandings as to any errors that I have made in trying to present these Constitutional issues to this Court. I am trying to give enough information on this case without actually briefing the entire case at the same time as I believe that is appropriate for further proceedings if I am allowed to proceed.

Again, I do not know and am most humbly at the mercy of this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

DATED this 05th day of March, 2021.

Respectfully Submitted By:

James Arthur Ross, Pro Se'
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