

No. 20-8133

ORIGINAL

Supreme Court, U.S.
FILED

MAY 17 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

In re. SILAS WILSON JR. — PETITIONER
(Your Name)

vs.

KEITH C. REID et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF MANDAMUS

COURT OF APPEALS FOR THE TENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF MANDAMUS

Silas Wilson Jr., #668988
(Your Name)

NFCC, 1605 E. Main Street, FN-131
(Address)

Sayre, OK. 73662-3122
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Whether this court has jurisdiction to issue a Writ of Mandamus, directed to the court of appeals, on the basis that it has abused its discretion in declining to review *de novo*, a judgment from the district court's denial of, your pro se Petitioner's, Rule 60(b)(4) motion to set aside its judgment.
2. Whether a misreading of a motion, that result in the use of untrue facts, in a *ex parte* Rule 60(b)(4) motion hearing, to make a determination to set aside a judgment, constitute an inadequate and unmeaningful hearing. If yes
 - (a) Is an inadequate and unmeaningful hearing the same as no hearing at all. If yes
 - (b) If a proceeding conducted in the above noted manner, is that proceeding conducted "in a manner inconsistent with due process" of law.
3. Whether court of appeal abused its discretion by declining to review, pro se Petitioner's, due process of law claim, arising after opening appeal brief was filed, and arose during district court's *ex parte* hearing of a Rule 60(b)(4) motion to set aside judgment.

4. Whether the district court abused its discretion by declining to review de novo, pro se Petitioner's 42 U.S.C. § 1983 amended pleadings, during district court's *ex parte* hearing of a Rule 60(b)(4) motion to set aside judgment, alleging district court misreading of the amended factual allegations caused untrue facts to be used to conclude pro se Petitioner failed to state a claim upon which relief may be granted.

5. Whether the question of the validity of a judgment is a legal one requiring de novo review.

6. Whether the court of appeals is required to conduct a de novo standard of review, to determine if the district court misread pro se Petitioner's amended complaint, and used untrue facts in its determination of the voidness of its judgment, when a Rule 60(b)(4) motion to set aside judgment was properly before the district court.

7. Whether this court should exercise its discretion to issue a Writ of Mandamus to the court of appeals.

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:

1. CHUCK JORDAN
2. G.T. BYNUM
3. STANLEY GLANZ
4. SALLY HOWE SMITH
5. DON NEWBERRY
6. GERALD M. BENDER
7. G. CHRIS BENGE
8. TULSA COUNTY
9. CITY OF TULSA
10. OFFICE OF THE OKLAHOM SECRETARY OF STATE
11. OFFICE OF COURT CLERK TULSA COUNTY
12. UNKNOWN DEPUTY COURT CLERK TULSA COUNTY

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF **MANDAMUS**

Petitioner respectfully prays that a writ of **mandamus** 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 N/A; 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 N/A; 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 N/A to the petition and is

reported at N/A; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the N/A court appears at Appendix N/A to the petition and is

reported at N/A; 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 12/14/2020.

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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

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. § 1651(a).

Jurisdiction of this Court to issue writ of mandamus to the Court of Appeals for the Tenth Circuit, sought by your pro se Petitioner, is conferred on this Court by the provisions of 28 U.S.C.A. § 1651(a), and Rule 20 of this Court.

For cases from **state courts**: N/A

The date on which the highest state court decided my case was N/A. A copy of that decision appears at Appendix N/A.

A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

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. §

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Amendment

Fourth Amendment

Fifth Amendment

STATEMENT OF THE CASE

1. This petition is filed pursuant to the authority to issue extraordinary writs vested in this court by the provisions of 28 U.S.C.A. §1651(a), and Rule 20 of the rules of this court, to review the order the United States Court of Appeals for the Tenth Circuit ("court of appeals"), as follows:

- (a) declining to review *de novo* a judgment from the district court's denial of, your pro se Petitioner's, Rule 60(b)(4) motion to set aside its judgment.
- (b) declining to review *de novo* allegations of misreading a motion, resulting in the use of untrue facts, in a *ex parte* Rule 60(b)(4) motion hearing, to make a determination to set aside a judgment where the untrue facts was used in the district court's analysis to reach its conclusion and ultimately its decision to dismiss with prejudice.
- (c) declining to review, pro se Petitioner's, due process claim, that arose during district court's *ex parte* hearing of a Rule 60(b)(4) motion to set aside judgment.
- (d) declining to review district court's denial of review *de novo*, pro se Petitioner's 42 U.S.C.A. §1983 amended complaint during district court's *ex parte* hearing of a Rule 60(b)(4) motion to set aside judgment.
- (e) declining to conduct a *de novo* standard of review, to determine if the district court misread pro se Petitioner's verified amended complaint, and used untrue facts in its determination of the voidness of the district court's judgment.

2. Copies of the district court's opinion and order and of the court of appeals opinion and order are set forth in the appendix to this petition, the same not reported.

3. On 2-5-2019 the district court dismissed your pro se Petitioner's 42 U.S.C.A. § 1983 amended civil rights complaint ("amended complaint"), your pro se Petitioner timely filed, in the district court, his notice of intent to appeal and also filed his application for leave to proceed in forma pauperis and served all concerned parties. Further, your pro se Petitioner timely filed his "Appearance-Pro Se" in the court of appeals.

4. So on 4-15-2019 your pro se Petitioner again sought the ruling of the fact-finder and filed in the district court a Rule 60(b)(4) motion to set aside its judgment, that your pro se Petitioner may exhaust all his remedies in the district court.

5. On 6-11-2019 your pro se Petitioner filed in the court of appeals his opening appeal brief ("appeal brief"). In the above noted appeal brief, your pro se Petitioner advised the court of appeals of his Rule 60(b)(4) motion to set aside judgment was pending in the district court.

6. On 6-17-2019 your pro se Petitioner filed in the court of appeals his "Petitioner's Motion To Supplement The Record With The Correct Facts Material To Petitioner's Appeal" ("motion to supplement").

7. On 8-8-2019 the court of appeals sua sponte your pro se Petitioner's amended complaint as time-barred, thereby affirming the district court's decision on a different ground for the following reasons and grounds opined by the court of appeals as follows:

(a) "the affidavit caused his detention before legal process had begun"

(b) "Mr. Silas Wilson, Jr. alleges that he was illegally detained prior to trial because of an affidavit containing a forged signature"

(c) "We deny Mr. Wilson's motion to supplement the record [where] Mr. Wilson list factual allegations allegedly misstated or misrepresented by the district court. But the proposed supplementation would not affect our decision."

(d) "According to Mr. Wilson, the district court's misinterpretation of his factual allegations resulted in the erroneous dismissal of his illegal detention claim."

(e) "The district court apparently did misunderstand Mr. Wilson's factual allegations." "... that he was arrested 'without a warrant.' Dist. Ct. Doc. No. 18 at 5; see also *id.* at 13 (referring to his "warrantless arrest")."

(f) "Mr. Wilson also alleges that the affidavit served as the basis for his allegedly illegal [pretrial] detention."

(g) "A claim for unlawful [pretrial] detention prior to the institution of legal process is a Fourth Amendment false-imprisonment claim."

(h) "... Mr. Wilson contends that his factual allegations do state a Fourth Amendment claim." "... we consider the possibility that Mr. Wilson may be intending to assert a Fourth Amendment claim."

(i) The statute of limitations for such claims brought under 42 U.S.C. § 1983 "is dictated by the personal injury statute of limitations in the state in which the claim arose." McCarthy v. Gilchrist, 646 F.3d 1281, 1289 (10th Cir. 2011).

In this case, the claim arose in Oklahoma, which has a two-year limitations period for personal-injury claims. 12 Okla. Stat. tit. 12, § 95(A)(3); Meade v. Grubbs, 841 F.2d 1512, 1522 (10th Cir. 1988)."

(j) "We conclude that if he is intending to assert a Fourth Amendment claim, it would have been untimely."

(k) "At the latest, legal process justifying the imprisonment was instituted on May 11, 2012 (when Mr. Wilson was arraigned). ... From this date, Mr. Wilson had two years to bring his false-imprisonment claim. But Mr. Wilson began the suit on June 15, 2018—over six years after his arraignment.

Thus, a Fourth Amendment claim for false-imprisonment would have been untimely."

(1) "... dismissal with prejudice was appropriate only if amendment would have been futile." "... We conclude that amendment would have been futile." "This claim is a Fourth Amendment false-imprisonment claim. But even if Mr. Wilson has not disavowed such a claim, it would have been time-barred. See p. 5, above. Thus, amendment of the complaint would have been futile."

8. On 8-19-2019 Mr. Wilson filed a Motion, in court of appeals, requesting an extension of time to prepare and file his "Petition for Panel Rehearing" pursuant to and under the provision of Rule 40 et seq. Fed. R. App. P. and motion was granted.

9. On 9-20-2019 Mr. Wilson filed, in the court of appeals, and under Case No. 19-5017, his "Appellant's Petition for Panel Rehearing".

10. The record reflects in the above said Petition that Mr. Wilson pointed out to the court of appeals where it could find, both in Mr. Wilson's appeal brief and ~~amended~~ complaint, the extraordinary circumstance of a forged signature upon an affidavit, used as a *prima facie* showing that a Gerstein hearing was allegedly held, where Mr. Wilson had seen, for the very first time, the true signature of the named affiant and Mr. Wilson contended that without knowing, at any time before 6-18-2016, the true signature of the named affiant to the affidavit prevented him from filing a timely lawsuit.

11. Further the record reflects in the above said Petition that Mr. Wilson pointed out to the court of appeals, both in Mr. Wilson's appeal brief and *verified* amended complaint, where it could find that immediately after Mr. Wilson had cause to know on 12-26-2016 that the affiant's name had been allegedly forged that Mr. Wilson sent another *OOA* request to TPD for other documents containing the true signature of the named affiant to the affidavit Mr. Wilson received on 6-18-2016. And it was after Mr. Wilson had received the other documents request on 12-27-2016 that Mr. Wilson filed his lawsuit on 6-15-2018 when he finally received the other documents requested.

16. On 12-14-2020 the court of appeals "AFFIRMED" the district court's judgment denying your pro se Petitioner's Rule 60(b)(4) motion to set aside judgment.

REASONS RELIED ON FOR ALLOWANCE OF THE WRITS

1. The relief sought is available, and there is an adequate remedy, by way of a *de novo* appeal in the Court of Appeals for the Tenth circuit, and writ of certiorari to this Court. However the court of appeals denied your pro se Petitioner's appeal, a *de novo* standard of review, of the district court's judgment denying your pro se Petitioner's Rule 60(b)(4) motion to set aside a void judgment, claiming that:

(a). "Plaintiff appeals the order denying his motion, not the underlying judgement. Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991)" See Appendix A "Order and Judgment" at 3.

(b). "We review the district court's denial of a Rule 60(b) motion for abuse of discretion. Zurich N. Am. v. Matrix Servs, Inc., 426 F.3d 1281, 1289 (10th Cir. 2005) (citing Servants of Paraclete v. Does, 204 F.3d 1005, 1009 (10th Cir. 2000))." See Appendix A "Order and Judgment" at 3.

2. Your pro se petitioner is of the view, that the mandamus should issue to compel the court of appeals for the Tenth Circuit to review *de novo* the district court's denial of your pro se petitioner's Rule 60(b)(4) motion to set aside judgment as void, where your pro se petitioner alleged in his Rule 60(b)(4) motion that the district court misread his amended complaint which caused the use of untrue facts to enter into the district court determination process during its preliminary screening procedure.

3. The Court of appeals for the Tenth Circuit decision, contained in its Order and Judgment, not to review *de novo* the district court's judgment of your pro se petitioner's Rule 60(b)(4) motion to set aside judgment as void is a decision found to be in conflict* with the majority of the United States Courts of Appeals.

4. Where the Court of appeals for the Tenth Circuit recognized and acknowledged, in its order and judgment, that its pro se petitioner did in fact submitted and filed a Rule 60(b)(4) motion in the district court. See Appendix A Court of appeals "Order and Judgments" at 3.

5. Therefore Since the Court of Appeals for the Ninth Circuit reviewed a judgment denying a Rule 60(b)(4), motion to set aside a judgment as void, by a district court, *de novo*. see United States v. Holtzman, 762 F.2d 720 (9th Cir. 1985); see also Retail Clerks of Union Joint Pension Trust v. Freedom Food Center, Inc.

938 F.2d 136 (9th Cir. 1991) ("We review *de novo* denial of a

60(b)(4) motion to set aside a judgment as void, because the question of the validity of a judgment is a legal one."); see also Iala Peno Prop. Mgmt., LLC v. Dukas, 265 F.3d 506, 515 (6th Cir. 2001) ("[U]nder Rule 60(b)(4) a deferential standard of review is not appropriate because if the underlying judgment is void, it is per se abuse of discretion for a district court to deny a movant's motion to vacate the judgment under Rule 60(b)(4).").

6. With the exceptional character of the issues appearing to involve, in the course of the district court's preliminary screening process and procedure, the district court's misreading of Petitioner's amended complaint and the use of those misread incorrect facts in its analysis, conclusion and ultimately its judgment calls into question the fairness of the proceedings. Where the hearing appears to have been conducted in an inadequate and unmeaningful manner where the underlying judgment and/or the judgment is void.

7. The district court declining to review, as fact-finder, the record to make a determination whether or not the judgment it entered on 2-5-2019, dismissing your pro se Petitioner's amended complaint, was void and should be set aside, in accordance with the relief, your pro se Petitioner, sought through the filing of his Rule 60(b)(4) motion to vacate judgment filed on 4-15-2019 before, your pro se Petitioner's first opening appeal brief was filed in the court of appeals.

8. In continuing the exceptional character of the issues appearing to involve the district court merely restated, in its opinion and judgment (see Appendix B at 2), the misread incorrect facts from its analysis, and conclusion of its preliminary screening process and procedure. Your pro se petitioner also raised the issue before the court of appeals that the judgment entered by the district court, of your pro se petitioner's Rule 60(b)(4) motion to set aside judgment, was void.

9. In continuing the exceptional character of the issues appearing to involve the court of appeals for the Tenth Circuit deciding not to use the *de novo* standard of review to review a judgment, entered by the district court, denying a Rule 60(b)(4) motion to set aside a void judgment (see Appendix A at 3). The decision not to go by the standard of a *de novo* review by the court of appeals for the Tenth Circuit is in direct conflict with the court of appeals for the Ninth Circuit. See Retail Clerks of Union Joint Pension Trust v. Freedom Food Center, Inc. *supra*. *Id.*; see also United States v. Holtzman *supra*. *Id.*; and in conflict with the decision of the court of appeal for the Sixth Circuit. See Tala Peno Prop. Mgmt., LLC v. Dukas, *supra*. *Id.*

10. Where the record was misread to which the correct standard was applied this court granted certiorari in a case for the third time. See Yates v. Evatt, 500 U.S. 391, 111 S.Ct. 1884, 114 L.Ed. 2d 432; 498 U.S. 809, 111 S.Ct. 41, 112 L.Ed. 2d 18 (1990).

decision of the court of appeals for the Tenth Circuit as persuasive authority. Where un-suspected and un-learned pro se litigants may be denied *de novo* review where the law calls for it.

CONCLUSION

Wherefore, your pro se Petitioner prays that this Court issue a Writ of Mandamus to the Court of Appeals for the Tenth Circuit, directing it to review *de novo* the district court's denial of a Rule 60(b)(4) motion to set aside a void judgment.

Petition further prays that this grant your pro se Petitioner such much other and further relief as it may deem to be just and equitable.

Respectfully Submitted,

Date: 5-12-2021



PRO SE: Silas Wilson Jr. #668988
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