

No. **20-8302**

Supreme Court, U.S.
FILED

JUN 04 2021

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Calvin Gumbs, II

— PETITIONER

(Your Name)

vs.

Kelly Harrigan, et al.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of the Virgin Islands

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Calvin Gumbs, II

(Your Name)

Post Office Box 12013

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ORIGINAL

QUESTION(S) PRESENTED

- I. Did the Supreme Court of the Virgin Islands err in dismissing the Petitioner's appeal, being dismissed for lack of jurisdiction, considering that, pursuant to title 4, section 32(a) of the Virgin Islands Code, the Supreme Court of the Virgin Islands has jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court, or as otherwise provided by law?
- II. Based on the penultimate order given by the Supreme Court of the Virgin Islands, ordered, attested, and placed on record on July 31, 2020, did the Supreme Court of the Virgin Islands err in granting Respondent's motion to dismiss after ordering the parties shall file briefs (or letter) that shall only address whether [the Supreme] Court [of the Virgin Islands (VI)] has appellate jurisdiction over the order appealed by the Petitioner?
- III. In dismissing Petitioner's appeal, did both the VI Supreme Court and the Superior Court deny the Petitioner his due process rights, as provided in the First, Fifth, and Fourteenth Amendments to the United States Constitution?
- IV. As evinced in the submission of its final ruling, did the VI Supreme Court deny the Petitioner the timely filing of this Petition due to the fact that there is a two-month (59-day) period between the time of the order (January 5th, 2021) and the time of the attestation and recording (March 5th, 2021), i.e., did the Supreme Court of the Virgin Islands err in its untimely filing, in the interests of justice?

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:

Kelly Harrigan

Tina M. Koopmans (deceased)

University of the Virgin Islands

Henry V. Carr, Magistrate of the Superior Court of the Virgin Islands Small Claims Division

Superior Court of the Virgin Islands – Small Claims Division

RELATED CASES

The related cases in the lower courts, the court system of the Virgin Islands, are/were

Calvin Gumbs II vs Tina M. Koopmans, Kelly Harrigan & University of the Virgin Islands, No. ST-15-SM-0000522, Superior Court of the Virgin Islands Division of St. Thomas and St. John (Small Claims Division). Judgment entered Nov. 9, 2015 (scanned, submitted, and e-mailed Nov. 13, 2015).

Calvin Gumbs II vs Tina M. Koopmans, Kelly Harrigan, University of the Virgin Islands, Henry V. Carr, III (Magistrate) and Superior Court of the Virgin Islands Small Claims Division, No. ST-2017-CV-00342, Superior Court of the Virgin Islands

Division of St. Thomas and St. John. Judgment entered Feb. 27, 2020 but delivered by Virgin Islands Superior Court Marshal May 27, 2020.

Calvin Gumbs II vs Kelly Harrigan, Tina M. Koopmans, University of the Virgin Islands, and Henry V. Carr, III (Magistrate) & Superior Court of the Virgin Islands Small Claims Division, No. 2020-0041, Supreme Court of the Virgin Islands. Judgment entered Jan. 5, 2021 (attested, recorded, e-filed, and e-mailed Mar. 5, 2021).

These following cases are in no direct relation but share very similar interests to this and the aforementioned cases:

Calvin Gumbs II vs Tina M. Koopmans, Kelly Harrigan & University of the Virgin Islands, No. 2016-0034, Supreme Court of the Virgin Islands. Judgment entered Feb. 22, 2017.

Calvin Gumbs II vs Tina M. Koopmans, Kelly Harrigan & University of the Virgin Islands, No. ST-2016-CV-00233, Superior Court of the Virgin Islands. This case was reversed and remanded (reopened), as ordered by Case No. 2016-0034, Supreme Court of the Virgin Islands. This case has not moved (still open) as of this writing.

Calvin Gumbs II vs Kelly Harrigan & University of the Virgin Islands, No. ST-15-SM-0000202, Superior Court of the Virgin Islands Division of St. Thomas and St. John (Small Claims Division). This case was mediated Aug. 19, 2015 with a proposed settlement.

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	8
CONCLUSION	15

INDEX TO APPENDICES

APPENDIX A	Order of the Supreme Court of the Virgin Islands
APPENDIX B	Order of the Superior Court of the Virgin Islands
APPENDIX C	Order of the Superior Court Small Claims Division
APPENDIX D	Other Pertinent/Relevant Preceding Information
APPENDIX E	Other Pertinent/Relevant Documentation
APPENDIX F	Other Pertinent/Relevant Subsequent Information

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Bryant v. People, 53 V.I. 395, 400 (V.I. 2010)	8
Enrietto v. Rogers Townsend & Thomas PC, 49 V.I. 311, 315 (V.I. 2007).....	8
Goldberg v. Kelly 397 U.S. 254, 267 (1970).....	11
Lisenba v. California, 314 U.S. 219, 236 (1941).....	14 – 15
Marchant v. Pennsylvania R.R., 153 U.S. 380, 386 (1894)	12 – 13
Snyder v. Massachusetts, 291 U.S. 97, 105 (1934)	11

STATUTES AND RULES

18 U.S.C. § 1509.....	10
28 U.S.C. § 1254(1).....	2
28 U.S.C. § 1257(a).....	2
Code of Judicial Conduct/Code of Conduct for United States Judges.....	15
V.I. Code tit. 4, § 32	8, 9

OTHER

United States Constitution, Amendment I.....	3, 12
United States Constitution, Amendment V.....	3, 10, 12, 13
United States Constitution, Amendment VI.....	13
United States Constitution, Amendment XIV.....	3, 10, 12, 13

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 _____ 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 _____ 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 A to the petition and is

- ☒ reported at Judicial Branch of the U.S. Virgin Islands (www.vicourts.org); or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Superior Court of the Virgin Islands - St. Thomas & St. John Division appears at Appendix B to the petition and is

- ☒ reported at Judicial Branch of the U.S. Virgin Islands (www.vicourts.org); 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 _____

☐ 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 Jan. 5 or Mar. 5, 2021.
A copy of that decision appears at Appendix A.

☐ 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

United States Constitution, Amendment I:

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

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The 2019 US Virgin Islands Code Title 4 · Judiciary – § 32. Jurisdiction

The text of the [local] provision appears in the Appendix F.

STATEMENT OF THE CASE

On June 4th, 2014, Petitioner was approached by one of the Respondent(s), Kelly Harrigan, while the Petitioner was in the middle of sorting out paperwork. Said Respondent then proceeded with one of the most unprofessional and disrespectful statements ever made, according to Petitioner and countless others when reprising the incident:

"I know you are computer literate enough to understand what I am about to tell you. Romeo Richardson has placed thousands of dollars on your account. You are the reason we have to keep replacing our print cartridges. I am not going to revoke your account, but it now has a balance of zero and, if you want to print any further, you are going to have to put money in your account." [Appendix ("App.") at E01, E03]

That was what started it all. Not only did said Respondent make the false accusation and admitted to taking Petitioner's money by zeroing the account, but, had that tone been delivered in a much more business-friendly and professional standard, there would be absolutely no dispute to have been escalated to the Supreme Court level, let alone any dispute at all. The main theme(s) of the issue is/are Kelly Harrigan's attitude and ignorance, being that when Petitioner requested clarification, said Respondent instead feigned some threat, having Petitioner banned from the campus of the University of the Virgin Islands (from henceforth being known as "UVI") [App. at E02, E03].

Respondent Tina M. Koopmans joined in the fray mainly during the mediation period of the initial Superior Court of the Virgin Islands Small Claims case ST-15-SM-0000202. It was not unusual that Koopmans backed up Harrigan [as any 'boss' would do for his/her employee] even after making contradictory statements to Petitioner via telephone almost exactly one year prior [App. at E03 – E04]. The big surprises were the total defense of the derogatory statement made that started it all [App. at D08, E01, E03, E04] AND the deliberate action of both mentioned Respondent(s) trying to make Petitioner say he made a ridiculous deposit amount all the while dangling the possibility/potential of refunding Petitioner in the amount that was zeroed out; it was later discovered by the Petitioner that said latter act was classified as coercion [App. at D10, E02].

With the promise of a timely apology [App. at E04], Petitioner decided to maintain peace and comply with the terms of the settled agreement. However, the correspondence from Respondent Koopmans was both untimely and anything but the agreed-upon apology [App. at D07, D08, E04], potentially making it a Breach of Contract/Contractual Obligation [App. at E05, E10], and making Koopmans a named Defendant/Appellee/Respondent ever since. There were subsequent dismissals of Small Claims case ST-15-SM-0000522 [Appendix C] and the Superior Court of the Virgin Islands case ST-2016-CV-00233 where due process was not granted; the Supreme Court of the Virgin Islands reversed the ruling of ST-2016-CV-00233 and

remanded the case back to the VI Superior Court with their [Supreme Court] ruling of 2016-0034 [App. at E13, E14], primarily because of the Superior Court's violation of due process. Though ordered on February 22nd, 2017, there has been absolutely no movement on that [reopened Superior Court] case [...-CV-00233], particularly since the judge on record recused himself almost three years ago (June 7, 2018).

Case number ST-2017-CV-00342 was filed on July 31st, 2017 with the VI Superior Court after finding out the very Magistrate, Respondent Henry V. Carr, (along with Superior Court of the Virgin Islands Small Claims personnel) may have been, or appeared to have been, in violation of impropriety and conspiring with the other named Respondent(s), based on the language of his November 9th, 2015 order of Small Claims case ...-SM-0000522 [Superior Court claim: App. Starting at E05]. (Coming to light, that Small Claims case became the catalyst to this current claim.)

After numerous recusals from many judges in the United States Virgin Islands Court System, which themselves occurred after the 2017 Category-2 hurricanes that passed through the territory and months-long power outages, case ST-2017-CV-00342 was dismissed in part on February 27th, 2020 [Appendix B]; Petitioner did not get word or any information pertaining to the dismissal until a Virgin Islands Superior Court Marshal presented the order to Petitioner's home on May 27th, 2020 [App. at B04], a whole three months after the dismissal.

Case 2020-0041 with the Supreme Court of the Virgin Islands was immediately filed on June 26th, 2020 and just when a scheduling order was being set, the VI Supreme Court, on July 31st, 2020, issued a decree, where it was hereby

“...**ORDERED** that within fourteen (14) days of the date of entry of this Order the parties **SHALL FILE** briefs, which may be in the form of a letter in which the parties **SHALL ONLY ADDRESS** whether this Court has appellate jurisdiction over the order appealed...” [App. at E30]

It is important to note that while the Petitioner filed a brief and counsel for Respondent Magistrate Carr and the Small Claims Division submitted a letter, counsel for Respondent UVI and its two employees filed a motion to dismiss, which wasn't decreed in the VI Supreme Court's order. On March 5th, 2021, an order to dismiss for lack of jurisdiction along with an order to grant Respondent UVI and employees' motion to dismiss was attested and recorded, even though said order had shown a date of January 5th, 2021 [Appendix A].

On March 10th, 2021, Petitioner filed a motion to reconsider the dismissal order [App. at E31], and it has yet to be acknowledged. On March 15th, 2021, Petitioner filed a notice of appeal, but it was to the United States Court of Appeals, Third Circuit in Philadelphia, Pennsylvania since there was a lack of knowledge from several entities as to where an appeal was to go; somehow, the VI Supreme Court approved said appeal notice to the 3rd Circuit Court on April 14th, 2021.

Under advisement, Petitioner submitted a letter to the Chief Justice of the VI Supreme Court on March 25th, 2021 – neither the letter nor the motion to reconsider were responded to as of this writing.

REASONS FOR GRANTING THE PETITION

Section 32 of the United States Virgin Islands (from henceforth being known as “USVI” or, simply, “VI”) Code, under the title of Judiciary (Title Four) provides:

“(a) The Supreme Court shall have jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court, or as otherwise provided by law.”

Even though the VI Supreme Court stated in its July 31, 2020 order [App. at E28] that the final judgment rule “generally requires a party ‘to raise all claims of error in a single appeal following final judgment on the merits.’” *Bryant v. People*, 53 V.I. 395, 400 (V.I. 2010) (quoting *Enrietto v. Rogers Townsend & Thomas PC*, 49 V.I. 311, 315 (V.I. 2007))” - all claims of error *were* raised in this appeal [App. at E23-24], but the VI Court System appeared to have not dismissed the entire case to fashion some expiration of their statute of limitations for said case, particularly when:

- (a) the lower court (in this case, the Superior Court of the VI, from henceforth being known as “Superior Court”) has always had and continues to shield that very information they claim to request (according to its order [Appendix B]) from Petitioner [App. at E23 – E24], whether due to the past Category-2 hurricanes of 2017, the current COVID-19 pandemic, or other reasoning;
- (b) Superior Court had deployed their Marshal(s) to serve the copies of case ST-2017-CV-00342 to the Respondent(s) (formerly known as Defendant(s)) from July 2017 and one Marshal to serve Petitioner the February 27th, 2020 order

on May 27th, 2020, yet Superior Court (and, apparently, the Respondent(s) on the side of UVI, stated in their motion to dismiss in lieu of the VI Supreme Court-required letter or brief) chose not to acknowledge the actual existence of the Marshals' deployments, be it summons or service;

- (c) Superior Court granted a number of judges to recuse themselves from trying said case for the near-three years of its existence (2017-2020); and
- (d) Superior Court denied Petitioner the right to due process.

Hence, based on VI Code Title 4 Section 32, the VI Supreme Court did have, but should not have cited lack of, jurisdiction of its case 2020-0041 – they instead allowed an improper procedure to have taken place...

Contempt of court is defined as being any willful disobedience to, or disregard of, a court order or any misconduct in the presence of a court. It can also be in reference to an action that interferes with a judge's ability to administer justice or that insults the dignity of the court. When the VI Supreme Court issued an order of

“...the parties **SHALL FILE** briefs, which may be in the form of a letter in which the parties **SHALL ONLY ADDRESS** whether this Court has appellate jurisdiction over the order appealed...”
[App. at E30]

and one of the parties instead choose to file a motion to dismiss, which was not in the order handed by the [VI Supreme] Court, that party is in direct violation of the order, and deliberately breaching a court order may be in contempt of court.

notice, opportunity for hearing, confrontation and cross-examination, discovery, basis of decision, and availability of counsel. Petitioner feels procedural due process was not followed here, during his journey through these proceedings. Petitioner has never had an opportunity for hearing, confrontation and cross-examination, and barely any notice, particularly when counsel for one of the Respondent(s) submitted a[n illegal] motion to dismiss that was granted without having the opportunity to address and/or counter such motion due to the restrictions of the July 31st, 2020 order of the VI Supreme Court [App. At E30]. The basis of the VI Supreme Court decision was also affected by this motion, and Petitioner cites the not following of procedural due process in this instance as well.

Procedural due process is essentially based on the concept of "fundamental fairness." In the matter of Snyder v. Massachusetts, 291 U.S. 97, 105 (1934), this Court held that due process is violated "if a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." As construed by the courts, it "includes an individual's right to be adequately notified of charges or proceedings, the opportunity to be heard at these proceedings, and that the person or panel making the final decision over the proceedings be impartial in regards to the matter before them." Goldberg v. Kelly 397 U.S. 254, 267 (1970). Impartiality was not practiced when the Superior Court Small Claims Division ordered a dismissal citing it "will not allow [Plaintiff] to

inconvenience [Defendants]..." [App. at C03], when Superior Court ordered a dismissal in part (requesting Petitioner to provide information to Superior Court that Superior Court already had in their possession, just to waste time, efforts, and any statute of limitation for appeal) [App. at B03], or when the VI Supreme Court ordered dismissals without granting Petitioner the option to respond to counsel's motion to dismiss that should have never been granted to begin with [App. at A02]. In fact, none of the lower courts granted a hearing or any other facet of due process before their respective orders were given.

Due process deals with the administration of justice and thus the due process clause (as in the Fifth and Fourteenth Amendments) acts as a safeguard from arbitrary denial of life, liberty, or property by the Government outside the sanction of law (see page 3). Due Process is that which comports with the deepest notions of what is fair and right and just. Due process ensures the rights and equality of all citizens. It is, after all, a First Amendment liberty and constitutional right, as is the statement that "*Congress shall make no law ... prohibiting the free exercise thereof or abridging the freedom ... or the right of the people ... to petition the Government for a redress of grievances.*"

"When a [plaintiff] ... has the benefit of a full and fair trial in the ... courts of his own [state] whose jurisdiction he invokes, and where his rights are measured not by laws made to affect him individually, but by general provisions of law

applicable to all in like condition, ... the proceedings that so resulted were in "due process of law" as that phrase is used in the Fifth and the Fourteenth Amendments to the Constitution of the United States." *Marchant v. Pennsylvania R.R.*, 153 U.S. 380, 386 (1894)

A fundamental U.S. constitutional right is "the right to a speedy and public trial" (Sixth Amendment to the United States Constitution) – unfortunately, that specifically applies to the accused in criminal prosecutions; that doesn't mean it should only apply in criminal cases. What was done in Petitioner's previous cases in the lower courts could be justified as criminal, but is it, in fact, unconstitutional? Americans deserve a civil legal process that can fairly and promptly resolve disputes for everyone — rich or poor, individuals or businesses, in matters large or small — yet our civil justice system frequently fails to meet this standard. Americans rely on an impartial judge (or jury) to resolve conflicts according to a set of rules that govern everyone equally — this framework is still the most reliable path to justice and an affirmation that we live in a society where our rights are recognized and protected.

Citizens must be placed at the center of the system. They must be heard, respected, and capable of getting a just result, not just in theory but also in everyday practice. Courts must give each matter the attention it needs — no more, no less — and judiciously steer the cases our system faces. It should never have

taken a whole three months for Petitioner to receive an order from Superior Court, which in turn ordered documentation to be submitted within 30 days of its order, documentation that they've already had for almost three years prior [Appendix B]. It also should not have taken two months (59 days) for a signed order from the VI Supreme Court to be attested, recorded, and published on its judicial website [Appendix A]; it brings a very serious issue as to on when a limitation statute commenced, the 5th of January or the 5th of March?!!

Our legal system promises the just, speedy, and inexpensive resolution of civil cases, but it does not regularly live up to that promise. In the case of Supreme Court Small Claims number ST-15-SM-0000522, it took six days (four if you don't count the weekend) for an order [that was not just] to be delivered [Appendix C]. The lack of reasonable attempts to address problems in the civil justice system has prompted many to forgo legal remedies entirely and, as a result, public trust and confidence in the courts have decreased. The continued "shortcuts" of these lower courts, even before the COVID-19 pandemic, have caused continued frustration from many, such as this Petitioner, who wants to be seen and heard in court instead of fighting on paper, if one even has that chance to do so. Dismissing cases before they have opportunities to start is not what was envisioned by the founders of this nation and legal system!

"... denial of due process is the failure to observe that fundamental fairness

essential to the very concept of justice. In order to declare a denial of it . . . [the Court] must find that the absence of that fairness fatally infected [proceedings]; the acts complained of must be of such quality as necessarily prevents a fair [proceeding]." Lisenba v. California, 314 U.S. 219, 236 (1941)

The Code of Judicial Conduct (locally as the Virgin Islands Model Code of Judicial Conduct, institutionally as the American Bar Association Model Code of Judicial Conduct, and nationally as the Code of Conduct for United States Judges) is congruent throughout all of the levels/scales/scopes and not exempt among any sworn officer of justice!

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Calvin Dumbis II

June 4th, 2021

Date: _____