

20-8324

No. _____

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| Supreme Court, U.S. |
| FILED |
| JUN 04 2021 |
| OFFICE OF THE CLERK |

IN THE
SUPREME COURT OF THE UNITED STATES

Ricardo Valdez — PETITIONER
(Your Name)

vs.

Walker — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

9th Cir Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Ricardo Valdez
(Your Name)

R.J. Donovan Prison, 480 AHA R.D.
(Address)

San Diego, CA 92179
(City, State, Zip Code)

619-661-6500
(Phone Number)

QUESTION(S) PRESENTED

- 1.) Can Fed. Rule. Civ. Proc 60(b)(6) be use For The Purpose Of obtaining Relief From The operation Judgement, When Exceptional Circumstances existed, such as in: (Klaerott v. U.S. 335 U.S. 601, 613 (1949)) ("Civil defendant who was ill, penniless and incarcerated and Therefore Unable To Appear and defend its case, granted relief")
- 2.) If The Answer is Yes on Question above, I would Then like To know if 9th Cir Court of Appeal errd when it Ignored my Contention of Fed R. Civ Pro 60(b)(6) where I Contended That Exceptional Circumstances existed in Case because Plaintiff didn't speak English; was Illiterate; had a GPA of 2.0 citizens (Gil v. Vosilano 131 F.3d 486, 494 (S.D.N.Y. 2001)) ("relief Granted because Plaintiff did not understand Procedures due To its language difficulties"). Dist Court Ignored Plaintiff's Contention, and Granted ~~Defendant~~ Respondent relief, when Such ~~Contention~~ of Respondent didn't Address Fed R. Civ. Proc 60(b)(6) it address Contendings That Plaintiff was using Fed R. Civ. Proc 60(b) as a 2nd Appeal". When Plaintiff at No Point was Using Fed R. Civ. Proc 60(b) To Attack Underlyings Judgement.
- 3.) Did Courts errd when it Avoided To Address Prison Mail Box Rule (Houston v. Lack 487 U.S. 266 (1980)) Through Fed R. Civ. Proc 60(b)6 Motion. At which if Address They would of agree That Plaintiff Not was Consider File Timely when Siven To officer For Mailins To Court

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:

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Exhibit G Plaintiff's 60(b) Motion Submitted 10-9-2012 (ECF 62). Evidence of Plaintiff been Illiterate.

Exhibit H - Dist. Court & 9th Cir Court Of Appeals - Summary Duckets.

TABLE OF AUTHORITIES CITED

CASES

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STATUTES AND RULES

Fed R. Civ. Proc. 60(b)(6)

OTHER

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 A 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 B 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 _____ 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 _____ 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.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Nov 12, 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: March 4, 2021, and a copy of the order denying rehearing appears at Appendix C.

[] 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 _____. A copy of that decision appears at Appendix _____.

[] 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

14th Amendment of The U.S. Constitution.

Fed. R. Civ. Proc. 60(b)(6)

STATEMENT OF THE CASE

Plaintiff's claim is a procedural issue, not a substance of underlying claim issue as how defendant contends and 9th Cir ruled on.

In 8-22-2008 Plaintiff filed claim here in question. Due to Plaintiff been Illiterate (cant read or write) another prisoner requested for court to appoint bilingual counsel (ECF 7) but District Court never heard it.

4-27-2011 Plaintiff requested appointment of counsel (ECF 38) but court denied such motion (ECF 42). Summary judgement was enter on defendants behalf and court closed case (ECF 58). Within 30 days after summary judgement, Plaintiff submitted a NOA together with pre-trial statements on separate envelopes. But by looking at dockets only the pre-trial statements were documented (ECF 60, 61). Pre-trial statements and NOA were documented on 6-6-2012. Due to summary dockets not revealing that NOA was received. Plaintiff submitted and file another NOA and request for COA through a Fed R. Civ. Proc 60(b) excusing delay for reasons out of Plaintiff's control. It was filed on 10-9-2012 (ECF 62). The 9th Cir Court dismissed case due to delay in submitting NOA (ECF 66). (11-8-2012).

In 2-3-2020 and 3-30-2020 Plaintiff filed 2 motions through Fed R. Civ. Proc 60(b) 6 asking court to reopen case and appoint counsel. The request was based that due to Plaintiff unable to read or write English, Dist Court Abuse Discretion when it didn't appoint counsel. By not appointing counsel, Plaintiff rely on another inmate who didn't litigate and wrote what Plaintiff would of want to write on opposition to summary judgement. Which cause Plaintiff to not be able to survive summary judgement.

Plaintiff also raised on his 60(b) 6 motions and to 9th Cir Appeal Brief the contention that Plaintiff NOA should be consider file timely when Plaintiff file the NOA to Corrections officer for mailing within the 30 days after summary judgement. That NOA did not arrived to court, such shouldn't be held against Plaintiff.

Plaintiff also argue that Dist Court shouldn't have treated the motion 60(b) filed 3 months after denial of summary judgement as a NOA, see (ECF 62) because it was a motion asking court to consider in treating such motion as COA as NOA because due to Plaintiff disability's he is unable to proceed by himself. ~~But Dist Court~~

Respondent treated Plaintiff 2 motions as a 2nd Appeal. When it wasn't a second appeal because it wasn't attacking the substance of underlying claim. It was attacking the procedure. And requesting court to make a finding if Plaintiff should be allowed to have his case re-open and appointed counsel when initially court should have had appointed counsel to a person like Plaintiff who can't read or write English.

REASONS FOR GRANTING THE PETITION

#1 Petition Should be Granted because It will Make Courts not To Ignore The Proceedings That need To be carry out when Plaintiff Submits a Motion under Fed R. Civ. Proc 60(b)(6).

This will also help a wide range of Prisoners similar situated as Plaintiff where he was obliged To So on To litigate his Case on his own when Dist Court should have Appointed Counsel when Evidence reveal Plaintiff Can't read or write English and has a G.P.A. of 2.0. A Prejudicial Results when Plaintiff is obliged To seek help by Prisoners. Prejudicial because Prisoners Ruin his Case, and Plaintiff don't know because he Can't read. He would only Find out until a Honest Prisoner like me happens To read his Case. Fed R. Civ. Proc 60(b)(6) is made For The Evaluation of This Kind of issues. It don't have a Time limitation To be raised. And Dist Courts shouldn't easily Avoid in Addressing The Issue by Claiming That Plaintiff is raising a 2nd Appeal.

#2 Next Reason - Is To make Valid The Prison Mailbox Rule That Says That A NOA should be Consider file on date given To Prison officer regardless if NOA doesn't make it To Court. (Houston v. Lack 487 U.S. 266, 270 (1988); Huizar v. Carey 273 F.3d 1220, 1223 (9th Cir 2001)). Here Plaintiff raise That NOA was given To officer at same date as Pre-Trial statements were submitted but for Unknown reasons only The Pre-Trial statements were file (ECF 60, 61). They all were submitted Timely (with in 30 days after Summary Judgement decision).

#3 Next Reason - Is To make Dist Court To Analyze claims of 60(b)(6) where Plaintiff allege That his Motion 60(b) Submitted on 16-9-2012 should have been Treated as a 60(b) Motion and Not as PNOA. If Treated as a 60(b) Dist Court would have had To determine if Plaintiff lack of knowledge To Law and other ~~excuseable~~ excusable neglect errors Could have cause for his NOA Given To officer Timely Could have been The Cause for NOA not To have been file in Court As how Pre-Trial statements were.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ricardo Valdez

Date: 6-3-2021

In addition, The current Petition was made with The
help of Raul Arellano

I Raul Arellano declare under Penalty of Perjury That I help
Ricardo Valdez (Petitioner) in Preparing Current Petition due To him
Unable To read and write.

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Ricardo Valdez — PETITIONER
(Your Name)

VS.

Waller — RESPONDENT(S)

PROOF OF SERVICE

I, Ricardo Valdez, do swear or declare that on this date,
6-3-2021, 2021, as required by Supreme Court Rule 29 I have
served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS
and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding
or that party's counsel, and on every other person required to be served, by depositing
an envelope containing the above documents in the United States mail properly addressed
to each of them and with first-class postage prepaid, or by delivery to a third-party
commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Misha D. Igra (Sup. Dep. Att. Gen.)

1300 I st # 125

Sacramento, CA 94244-2550

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 6-3, 2021

R. Valdez

(Signature)