

No. 20-8351

Supreme Court, U.S.
FILED

FEB 01 2021

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IN THE
SUPREME COURT OF THE UNITED STATES

Kevin E. Herriott — PETITIONER

VS.

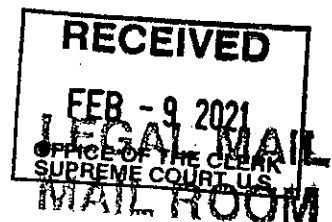
Mr. Joyner, et al. — RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO
United States Court of Appeals, Fourth (4th) Circuit

PETITION FOR WRIT OF CERTIORARI

Kevin E. Herriott
386 Redemption Way
McCormick, SC 29899

ORIGINAL



QUESTION(S) PRESENTED

- 1) DID THE COURT OF APPEALS IMPROPERLY REVIEW(S)
DE NOVO ISSUE OF LAW OF WHETHER DISTRICT
COURT HAD GAIN SUBJECT-MATTER JURISDICTION
OVER PARTIES §1983 CLAIMS?

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LIST OF PARTIES

Aaron Joyner, Damon Greene, Edward R. Tisdale, Jr.,
Sam Sharpe, Thomas Commander, S. Coaxum, Minor, Alfes,
and Jane Doe¹, Defendants.

Kevin E. Herrdott, Plaintiff, Appellant, Petitioner

RELATED CASES

Kevin Herrdott vs. Aaron Joyner, et al.

Case No: 6:19-cv-626-DEN-KFM

Appellate No.'(s): 19-6646

20-7098

¹ Jane Doe is known as "Ms. Walters".

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TABLE OF AUTHORITIES CITED

PG.(s)

CASES

Bell v. Hood, 327 U.S. 678, 66 S.Ct. 773, 13 A.L.R.2d 383, 90 L.Ed. 939.	11
Boise Corp. v. Consumers Union of United States Inc., 466 U.S. 485, 104 S.Ct. 1949, 80 L.Ed. 2d 502.	omit.
Care Choices HMO v. Engstrom, 330 F.3d 786, 788.	11
Doe v. Chao, 511 F.3d 461, 465 (4th Cir. 2007).	14
Invention Submission Corp. v. Dudas, 413 F.3d 411, 75 U.S.P.Q. 2d 1317 (4th Cir. 2005),	16
Pullman - Standard v. Swint, 456 U.S. 287, 102 S.Ct. 1789.	omit.
SEC v. Basic Energy & Affiliated Res. Inc., 273 F.3d 657, 665 (6th Cir. 2001).	11
Shaw v. AAA Engineering & Drafting Inc., 138 Fed. App. 62, 2015 WL 1349964.	10
State Farm Mut. Auto Ins. Co. v. Narvaez, 149 F.3d 1269, 1270-71 (10th Cir. 1998).	10
Steel Co. v. Citizens For A Better Env't, 532 U.S. 83, 94-95, 118 S.Ct. 1003, 140 L.Ed. 2d 210 (1998).	11
U.S. v. Certain Land Situated In City Of Detroit, 361 F.3d 305 (6th Cir. 2004).	11

STATUTES AND RULES

28 U.S.C.A. § 1253	
28 U.S.C.A. § 1292 (a)(1)	
28 U.S.C.A. § 2101 (c)	
28 U.S.C.A. § 2106	
42 U.S.C.A. § 1983	
FRAP Rule 52(a)	

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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 case from Federal Courts:

The opinion of the United States court of appeals at Exhibit C 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 at Exhibit C 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 November 24, 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: _____, and a copy of the order denying rehearing appears at Exhibit _____.

☐ 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S.C.A. Const. Amend. I provides :
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.
2. U.S.C.A. Const. Amend. VIII provides :
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
3. U.S.C.A. Const. Amend. XIV Section 1. provides :
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.

4. United States Code Annotated Title 28 Judiciary and Judicial Procedure §1253 provides:

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit, or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

5. United States Code Annotated Title 28 Judiciary and Judicial Procedure § 1292(a)(1) provides:

(a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court.

6. United States Code Annotated Title 28 Judiciary and Judicial Procedure § 2101 (c) provides:
(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

7. United States Code Annotated Title 28 Judiciary and Judicial Procedure § 2106 provides:
The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

8. United States Code Annotated Title 42, The Public Health and Welfare Civil action for deprivation of rights [Statutory Text & Notes of Decisions subdivisions I to IX] § 1983 provides:

Every person who, under color of any statute, ordinance,

regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

The Petitioner Kevin E. Herriott in Pro Se, is incarcerated within the South Carolina Department of Corrections (SCDC), an state prisoner that has brought an 42 U.S.C. § 1983, Civil Action Lawsuit Complaint against named Defendants Aaron Joyner, Damon Greene, Edward R. Tisdale, Jr., Sam Sharpe, and Thomas Commander.

The Petitioner has alleged various multiple constitutional violations against defendants subordinates that are too, to be considered liable under § 1983 such as S. Coatum, Minor, Alfas, and Jane Doe.¹ The Defendants created and/or subjected the Petitioner to harsh conditions of confinement causing irreparable harm without taking the necessary reasonable measured steps to correct or remedy the wrong-doing of their adverse conduct that has been identify as obduracy and wantonness for which is Forbidden by the First, Eighth, and Fourteenth Amendments of the United States Constitution of America.

The Petitioner was housed and placed on Lee Correctional Institution, Level 3 maximum security, restrictive housing unit (hereinafter RHU), administratively after fleeing Dormitory F3A side due to being pursued by gang affiliated inmates. When this action was filed, he was and still is in imminent danger, acting without counsel on or before March 4, 2019.

On March 12, 2019, the lower Court ordered the Petitioner to bring case into proper form because the court on its own had severance of claims the § 1983 original complaint into (3) three

¹ Officer Ms. Walters.

separate case actions. Instead of filing the blank proper form documents, the Petitioner filed a(n) preliminary injunction on March 21, 2019. The U.S. magistrate reviewed the injunction and adjudicated upon the merits denying injunctive relief.

On April 4, 2019, the Petitioner Herroff timely filed his objections (doc 19) to the U.S. magistrate's report and recommendations. (Herein after "RR") On April 16, 2019, the Petitioner appealed to the Fourth Circuit challenging the Court's order issued on the 11th Day of April, 2019. For it was issued in error and the Petitioner timely sought an interlocutory appeal. The Fourth Circuit, on July 19, 2019, denied the preliminary injunctive relief dismissing the appeal as moot upon rendering an Per Curiam and issuing an mandate.

On or before August 30, 2019, the district court (Norton, D.) lifted the stay of time, (doc. 53) that was entered sua sponte by the court. Then, immediately following the second U.S. magistrate engaged its judicial screening to the second § 1983 Amended Complaint that was brought by Petitioner on May 17, 2019. After, the U.S. magistrate had instructed Petitioner to file another amended complaint on May 2, 2019.

On December 12, 2019, the Defendants Aaron Joyner, Edward Tisdale, Sam Sharpe, Thomas Commander, and Damon Greene answered to the second Amended Complaint. On January 8, 2020, the Petitioner replied to Answer to second amended Complaint.

After March 10, 2020, the Defendants moved for summary judgment. On March 13, 2020, the Petitioner filed motion for summary judgment. On March 13, 2020, the Defendants moved for summary judgment. On March 13, 2020, the Petitioner filed motion for summary judgment.

of default judgment attaching affidavit and filed for sanctions. On April 10, 2020, the Defendants opposed Petitioner's motion for sanctions and on April 22, 2020, the Defendants opposed Petitioner's motion for default judgment.

On April 26, 2020, the Petitioner replied to opposition to Petitioner's motion for default judgment. On April 27, 2020, the U.S. magistrate entered R & R followed by a timely Objection by Petitioner raising the court lacked subject-matter jurisdiction on May 7, 2020.

On May 26, 2020, the Defendants replied in opposition to Petitioner's Objections. The Petitioner, in turn responded to the Defendants' ~~reply~~ in opposition to Petitioner's Objections.

On May 28, 2020, the U.S. Magistrate entry of the R & R granting Defendants' motion for summary judgment with its recommendation attach (doc. 147) On June 01, 2020, the Petitioner objected to the U.S. Magistrate R & R. On July 13, 2020, the district court entered order adopting the R & R's, denying Petitioner's motions and granting Defendants' ~~Motion~~ for Summary Judgment. On July 20, 2020, the Petitioner objected to the district court's order and appealed its decision and judgment to the Fourth Circuit.

On appeal, the Petitioner Herritt challenged the issue of law that the lower court's ruling hang. The Fourth Circuit ~~denied~~ the appeal accepting the legal conclusions of the lower courts and affirming the district court's judgment.

REASONS FOR GRANTING THE PETITION

The reason(s) for granting the petition are submitted hereto and attach herein below:

- 1) A United States Court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court.
- 2) The ways the decision of the lower court in Petitioner's case was clearly erroneous.

- DID THE COURT OF APPEALS IMPROPERLY REVIEW DE NOVO ISSUE OF LAW OF WHETHER DISTRICT COURT HAD GAINED SUBJECT-MATTER JURISDICTION OVER PARTIES CLAIMS?

The Petitioner Kevin E. Herrfott submits that the Court of appeals, improperly conducted what amounted to De Novo when reviewing issue of law of whether the district court had gained subject-matter jurisdiction over Petitioners' and that of defendants claims.

The record reflects that the Court of appeals in its charge reviewed the district court's legal conclusions de novo and its findings of fact for clear error, but failed to satisfy itself of its power to adjudicate at every stage of the proceeding. See *Shaw v. AAA Engineering & Drafting Inc.*, 138 Fed. App. 62, 2015 WL 1349964, citing *State Farm Mut. Auto Ins. Co. v. Narvaez*, 149 F.3d 1269, 1270-71 (10th Cir. 1998) (Holding the Court must satisfy itself of its power to adjudicate in every case and at every stage of the proceeding.).

The Petitioner not only challenged the act or the power of the district court disposing of his claims, but challenged their authority to hear and determine the case based upon the issue of law that's before this Court. For the district court did not gained subject-matter jurisdiction; therefore, the Court of appeals lacked jurisdiction.

This court is under an "independent obligation" to police its own jurisdiction, regardless of whether the parties challenged jurisdiction. See *U.S. v. Certain Land Situated in City of Detroit*, 361 F.3d 305, (6th Cir. 2004) quoting *SEC v. Basic Energy & Affiliated Res. Inc.*, 273 F.3d 657, 665 (6th Cir. 2001). See also *Steel Co. v. Citizens For A Better Env't*, 532 U.S. 83, 94-95, 118 S.Ct. 1003, 140 L.Ed. 2d 210 (1998) (holding that a federal court must always satisfy itself first that it does in fact have subject-matter jurisdiction before proceeding in any case, and that there is no such thing as "hypothetical jurisdiction.") quoting *Bell v. Hood*, 327 U.S. 678, 66 S.Ct. 773, 13 A.L.R. 2d 383, 90 L.Ed. 939.

Argument

The Petitioner Kevin E. Herriott submits that the lower court did not have subject matter jurisdiction and the Fourth Circuit lacked appellate jurisdiction. See *SEC*, supra, 273 F.3d 657, (Holding we lack appellate jurisdiction where the district court lacked subject-matter jurisdiction.) citing *CareChoices HMO v. Engstrom*, 330 F.3d 786, 788, "We review the district court's exercise of subject-matter de novo."

Here in this case action, on April 16, 2019, the Petitioner appealed to the Fourth Circuit challenging the district court's order that was issued upon entry on the 11th day of April, 2019, when denying

preliminary injunctive relief dismissing Petitioner's motion for preliminary injunction.

From the record, the Petitioner appealed to an higher sitting forum that consisted of a(n) three-judge panel once he was put on notice to appeal as of right. From April 11th 2019, and hence after, the district court lacked subject-matter jurisdiction. Pursuant to 28 U.S.C. A. §1292 (a) (1)

Once the Petitioner was on appeal to the Fourth Circuit and his appeal was dismissed as moot it was of nullity that the lower court to engage in opening the action to adjudicate upon the merits on August 30, 2019, because the Petitioner chose to have sought an even higher Court to determine questions of law. Pursuant to 28 U.S.C. s 1253.

Assuming arguendo, that a dismissal is not "final" until all discretionary appeals — including a petition for a writ of certiorari have been exhausted.

The Petitioner submits that this presents a two (2) fold issue. First, under 28 U.S.C. § 2101 (c), a party has ninety days "after entry of judgment or decree" to petition the Supreme Court for a writ of certiorari.

The Petitioner demonstrates that the ninety days run from the date of the entry of judgment or order sought to be reviewed and not from the issuance of the mandate controls the time to exhaust. So from July 19, 2019, when the court of appeals entered its judgment, the ~~expiring~~ of the dead-line to petition for writ of certiorari would end on October 17, 2019, in which is jurisdictional. But, the lower court moved to open the action without

giving the Petitioner time to exhaust his claims nor the time to run its course, and in doing so violates 28 U.S.C.A. § 2106.

The Petitioner contends that the lower court was not given an order to reopen its case and its absent from the record that the court of appeals' order, the issuance of the mandate says otherwise to which brings up the Second.

The Petitioner directs the Court's attention to the second, for which clearly shows that the court of appeals may have very well overlooked matters of finality or may have misunderstood the governing rule of law that jurisdiction was predicated upon.

The Petitioner submits that the court of appeals issued an mandate to which foreclosed the immediate issue now in controversy that was disposed of in the main litigation. The main issues were Petitioner's allegations of his mailing tamperings, mailing interferences, denial of direct access to the courts, and inter alia. For the alleged violations of the Constitution here aren't immaterial, relevant in discussion, but also form rather the sole basis of the relief sought.

The Petitioner submits that the lower court did not have supplemental jurisdiction because the Petitioner sought to exhaust his claims that was deemed moot, irrelevant, and immaterial to the subject-matter by seeking review from the U.S. Supreme Court. The Petitioner did not sought to stay the mandate because he submitted the rendering of his petition for writ of certiorari timely and due to the time in which runs from the entry of judgment not the mandate are to be considered.

The Petitioner demonstrates further that the court of appeals issued an mandate to which fore closed the immediate issue now in controversy that was disposed of in the main litigation. For the lower court overstepped its bounds assuming jurisdiction to decide whether the remaining allegations that state a cause of action on which the court can grant relief as well as to determine issues of fact arising in controversy.

In plain sight, the Court disregarded the language of the mandate that directed the district court to dismiss the injunction and on its face does not authorize the district court to open the case for further adjudication.

In Accordance to Doe v. Chao, 511 F.3d 461, 465 (4th Cir. 2007), "the mandate rule serves two key interests those of hierarchy and finality. The principle of hierarchy is no empty shell. It protects the very value and essential nature of an appeal. This is not to say that appellate courts are somehow superior or always correct, but only that our system has been served well by the availability of review and the need for appropriate review to be final."

As it pertains to the Petitioner within this case action, the Petitioner sought to appeal and then pursuing of his appeal he timely submitted writ of certiorari, but it was addressed to the wrong court for review. None theless, the writ was accepted with the court of appeals, then, later returned its materials stamped USMS and dated clocked-stamp upon given the Petitioner further instructions. (see Docket No. #19-6646 case history)

The Petitioner submits that upon further instructions by the court of appeals, the Petitioner complied to its instructions by submitting the writ of certiorari and (a) copy of an affidavit verifying that the Petitioner is indigent in status to not revoke his IFP (In Forma Pauperis Status) while addressing the contents this time to the U.S. Supreme Court within two (2) separate envelopes.

Moreover, the now missing writ of certiorari that were intended for the correct addressee was stolen by theft and passed to another Restrictive Housing Unit inmate within Lee Corrections hindering the Petitioner to pursue non frivolous claims. This act by an Prison Official was not remedied but cause further irreparable injury.

This writ of certiorari petition in particular not only has challenged the decision of the court of appeals dismissing the preliminary injunction, but also challenged the claims it was asserting within the preliminary injunction that the lower court had recommended to be dismissed (doc. 16). For the claims asserted were raised and presented on the legal premises of repetition. The reason so because the Petitioner was constantly being housed in several R/HU's as well as being placed around known enemies who were screening his mail without any relief available. (see Grievances attached)

The defendants in this action S. Coaxum, her supervisors Assoc. Warden Tisdale have actual knowledge of the Petitioner's living conditions that were the same when the Petitioner departed from Lee Corrections on July 27, 2018, and arriving back to its R/HU on August 13, 2019.

Meanwhile, after the court of appeals issued the mandate foreclosing these issues addressed on appeal that derived from the § 1983 Complaint and injunction, the lower court then decides to disturb the ruling, (doc. 57), by ordering the Petitioner to amend complaint twice and to also inform the court of all defendants conduct and names. This action by the Court was not consistent with the earlier judgment of the court of appeals. See *Invention Submission Corp. v. Dadas*, 413 F.3d 411, 75 U.S.P.Q. 2d 1317 (4th Cir. 2005) "The force of our prior mandate is governed well-established principles. In general, once a case has been decided on appeal and a mandate issued, the lower court may not deviate from that mandate, but is required to give full effect to its execution." See also 18B Charles Alan Wright, Arthur B. Miller, & Edward H. Cooper, *Federal Practice and Procedure*, § 4478.3 (2d. ed. 2002) This "mandate rule" is a more powerful version of the law of the case doctrine and is based on "the principle that an inferior tribunal is bound to honor the mandate of a superior court within a single judicial system."

The Petitioner submits that the court of appeals decisions what amounted to de novo standard of review prejudiced the Petitioner because the court failed to acquire jurisdiction and subject-matter jurisdiction of the lower court. Had not the court of appeals overlooked the material of law or fact in deciding this case and which had it been given consideration would probably brought about a different result.

Conclusion

Therefore, based on the above legal premises, the Petitioner asks that the Court grant vacation of judgment or any other relief to which petitioner may be entitled.

J. E. Herriott

I declare and verify under the penalty of perjury that the above aforementioned facts is true and correct and that this foregoing instrument was placed in the proper mailing system on 3/25/2021.

Executed (Signed) on January 04 2021.

131 *J. E. Herriott*
Kevin E. Herriott #313862

FSA#54

McCormick Corr Inst.

386 Redemption Way

McCormick, SC 29899

Pro Se Litigant.