

No. 20-8483

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

APR 15 2021

OFFICE OF THE CLERK

Beryl Harris McCray
(Your Name)

— PETITIONER

vs.

FedEx Express

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for The Sixth Circuit

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

PETITION FOR WRIT OF CERTIORARI

Beryl Harris McCray
(Your Name)

6800 Meadow Chase LN
(Address)

Memphis, TN 38115
(City, State, Zip Code)

901-596-2515
(Phone Number)

QUESTION(S) PRESENTED

The EEO, and Title VII Act of 1964 makes it unlawful for an employee to discriminate against any employee or applicant, regardless of race, color, age, sex, religion or national origin.

- 1.) Whether the Plaintiff was provided notice timely of the Summary Judgement ruling?
- 2.) Whether plaintiff was provided a proper or fair chance to have her Motion to Dismiss Counsel and be properly represented?
- 3.) Whether the Six Circuit Court of Appeals should have denied Plaintiff the right to a fair Appeal after being informed of an untimely notice to the Plaintiff?
- 4.) Whether the Defendant provided reasonable accommodations for Plaintiff's Religious practice; Whereas, it eliminated all conflict between the employee's religious practice? And it did not cause a hardship on the department?
- 5.) In telling the Plaintiff she "would not" be considered except she exhaust all paid time off? Except Plaintiff be required to choose between whether she would rather have accrued vacation off or do religious work?
- 6.) Whether Religious Observance or services are limited to only one day off?
- 7.) Whether coercion of other members of Management and Human Resources is unlawful to prevent an employee from having Religious time off is unlawful?
- 8.) Whether Defendant should not consider and be governed by company policy that had been utilized for fifteen years in granting Religious Observance? Plaintiff be required to exhaust all days with paid vacation time or not be approved to take off without pay as stated by company policy?
- 9.) Whether the Defendant should have properly trained management for Sexual Harassment prevention and correction? Diversity? And Religious Observance; whereas it continued for two years?
- 10.) Whether the Defendant took reasonable steps to correct or prevent (2 counts) Sexual Harassment? (2 counts) Religious Observance? Should Plaintiff have been allowed to endure Sexual Harassment for more than a year?
- 11.) Should six clergymen be afforded better accommodation for religious services and pretices than one clergywoman?
- 12.) Whether it's right to deprive a U.S, citizen of her right to reasonable religious accommodations? And protection and prevention for sexual harassment?

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:

Beryl Harris McCray, Petitioner

vs

FedEx Express (Federal Express Corporation), Respondent

RELATED CASES

Kolainia Hettick & Jana Bryant vs. FedEx (2005)

Marilyn H. Williams vs. General Motors Corp., 187 F.3d 533 (1999): United States Court of Appeals, Sixth Circuit, Publication - Westlaw

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A

United States Court of Appeals For The Sixth Circuit

APPENDIX B

Copy of the Court of Appeals denial decision (denial to review)

APPENDIX C

*Copy of the United States District Court for The Western District
Judgment Summary granted to Respondent*

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Kolainia Hettick & Jana Bryant vs. FedEx (2005)

Marilyn H. Williams vs. General Motors Corp, 187 F.3d 553 (1999)
p. 1-19.

STATUTES AND RULES

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, sex, religion, national origin, age, disability or genetic information. It also prohibits retaliation against a person who complains of discrimination or participate in an EEO investigation.

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 _____ 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 November 16, 2020 (See letter from Bradley Gilmar * Notice to Plaintiff of Judgment of Clerk, U.S. Court of Western District of TN)

☐ 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 _____.
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

Federal Rule of Appellate Procedure 4

Federal Rules of Civil Procedure 54 and 58

STATEMENT OF THE CASE

This case presents a civil matter whereas Plaintiff was deprived of her Constitutional rights to have a fair trial. The Court will find that the Plaintiff was deprived of her rights, and a fair trial. The behavior of the Counsel Christopher L. Taylor and opposing Counsel, Barack Babcock obstructed the judicial process, offends the Court's pursuit of justice, and the oath to the Constitution. Plaintiff is a US citizen, a female member of clergy; claims that FedEx not only discriminated against her, but humiliated her, causing a hostile work environment, and the fear for her life.

Plaintiff endured two counts of unreasonable accommodations whereas, management required her to exhaust all of her paid vacation/personal days before she would be considered for Religious Observance. Plaintiff was mocked, and ridiculed because of her belief, as stated in the Defendant's Undisputed Material Facts in Support of Summary Judgement: "McCray is a self-professed ordained member of Clergy." What do you want to work with some oh prisoners for? The Defendant's policy, clearly states, unpaid time off could be allowed at the individuals discretion." The policy did not state, employees had to make a choice over Religious practice or services to reciprocate observance. The question was not a matter of imposing hardship on the department, but, mis-used authority, lack of training, and discrimination because I was a African American female. The Defendant afforded different treatment with better accommodations, shifts, and scheduling to six clergymen.

Plaintiff asserts, Counsel intentionally omitted two counts of Sexual Harassment claims because the Defendant failed to take reasonable steps to protect, impose proper accommodations to correct the discrimination, causing a hostile work environment, humiliation, and intentional infliction of emotional stress for more than a year, as in the case of Kolainia Hettick & Jana Bryant vs. FedEx, (2005).

Plaintiff was criticized, and reprimands unfairly, in front of co-workers she was told to get all of her things because she would not be coming back, then placed on suspension. A letter was overnighted to Plaintiff to contact management by March 14, 2017 or be terminated. After making several calls, with no response, I contacted Bryan Wilcher and discovered my manager (Robin Simpson) was off on sick leave. At this, I was afraid of being terminated, tired of being humiliated, and fearful of losing my pension; so, I submitted my retirement by email.

Respectfully,

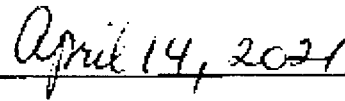
Beryl Harris McCray, Pro Se Plaintiff

CERTIFICATE OF SERVICE

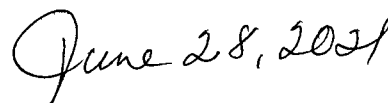
I, Beryl Harris McCray, hereby certify that a copy of the above Petition for a Writ Request Appointment of Counsel was served on Barack Babcock, or Lead Counsel for Federal Express (FEDEX) by first class mail postage prepaid at 3620 Hacks Cross, 3rd Floor, Bldg B, Road, Memphis, TN, 38125.



Beryl Harris McCray, Pro Se Plaintiff



Date



REASONS FOR GRANTING THE PETITION

Rule 10 of the Supreme Court Rules provides a guide to the Reasons the Court will grant a Petition for Writ of Certiorari. Pertinent to this case the Rule provides that a reason for granting such a Petition includes a situation where: a “United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; . . . or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.” Both of these are present in the instant case, and for these reasons the Court should grant the Petition. Further, this Court has the ability to right a wrong suffered by a party whose attorney failed to properly represent.

Petitioner filed a Notice of Appeal that was untimely as to the entry of a summary judgment order entered by the district court. As a result, the Court of Appeals dismissed the appeal. Petitioner's appeal should not have been dismissed as untimely because of the workings of Rules 54 and 58 of the Federal Rules of Civil Procedure, and the manner with which these Rules are generally enforced. This Court should grant Certiorari because the denial of the appeal as untimely, and the actions of the proceedings in the district court, conflict with how other appellate courts handle such matters. As a result, this Court's supervisory powers should be invoked.

To comprehend the reasons for granting the Writ, the Court must understand how Petitioner ended up filing Notice of Appeal that was deemed late. On May 4, 2020, 3 months prior to the district court granting summary judgment against her, Petitioner filed a motion to dismiss her counsel. The district court never ruled on this motion and

counsel is still, technically, counsel of record. The clerk provided the notice of the order against Petitioner only to her attorney, who did not provide it to Petitioner. Petitioner subsequently received notice of the Motion for Bill of Costs, her first notice of an adverse ruling against her, and filed her Notice of Appeal within 30 days of that notice.

The content of the Motion for Bill of Costs, and its workings with Rules 54 and 58 as well as Rule 4 of the Federal Rules of Appellate Procedure, are the reasons that this Court should grant Certiorari, however. Rule 4 of the FRAP, allows for an extension of time under Rules 54 if the district court grants an extension under Rule 58. This extension is generally done as a matter of course when a Motion for costs and fees is filed within the time for a Notice of Appeal. Such an extension should always occur where, as here, the party has attempted to remove her counsel and the court has not notified her of an order from which she must appeal. The reason that courts take such action is to promote judicial efficiency and to allow for an appealing party to only file one notice of appeal, and to allow for appellate courts to handle matters in one appellate action.

This should have been the case here as soon as the prevailing party filed its motion within the 30 day Notice of Appeal “window” of time. This is especially so when the party filing a Notice of Appeal is in limbo between having and not having an attorney. To hold such a pro se litigant, whose attorney has stopped communicating with her even though he is still the attorney of record in the case, to this standard is too strict a standard to apply where the rules are intended to benefit the courts and the parties.

Petitioner eventually filed a motion seeking an extension of time to file a Notice of Appeal, which the district court has still not ruled upon. The filing of this motion should have put the district court on notice to take action under Rule 58 and to enter an order extending the time for the appeal. The failure to take action, even at that late a juncture in the proceedings, represents yet another departure from accepted norms in proceedings and was erroneous.

For the reasons stated above, Petitioner respectfully requests that the Court grant this Petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Beryl Davis DeCra

Date: 4-14-2021

Beryl Davis DeCra
June 28, 2021