

No. 21-1301

The Supreme Court of the United States

HECTOR M. JENKINS,

Petitioner,

v.

HOUSING COURT DEPARTMENT,
CITY OF BOSTON DIVISION, A SECTION OF THE TRIAL
COURT OF THE COMMONWEALTH OF MASSACHUSETTS, ET
AL.

Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the First Circuit**

PETITION FOR REHEARING

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July 8, 2022 *PETITIONER HECTOR M JENKINS.*

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INTRODUCTION

The plaintiff filed his petition for a writ of certiorari to review the First Circuit holdings in the plaintiffs' claims retaliation, hostile environment, and ADA/Rehabilitation Act. The defendants did not respond, and this Court denied a hearing.

The Plaintiff hereby in good faith files these other grounds not previously presented in order to assist this court in making a just decision and because the First Circuit holdings are, of:

- a) National significance,
- b) might harmonize conflicting decisions in the federal circuit courts,
- c) have precedential value.

With all due respect, the plaintiff asserts that based on the record, the First Circuit opinion has no basis in the facts or the law.

REASONS FOR GRANTING REVIEW

1. THE FIRST CIRCUIT IS ERRONEOUS FOR UPHOLDING THE DISMISSAL OF 42 U.S.C 1981, 1985,193 CLAIMS FOR A LACK OF EEOC RIGHT TO SUE LETTER; THEN DISMISS THE HOSTILE ENVIRONMENT CLAIMS BY IGNORING THE EEOC INVESTIGATION.

A. Both Claims of 42 U.S.C 1981 and Title VII Claims Must Be Allowed to Proceed on Same Track Since EEOC Issued Right to Sue Letter.

In its summary of the plaintiffs' complaints the District Court held:

"a reasonable person reading plaintiffs complaints based on...discrimination i,e he was not promoted because he was Black that the chief judge promised an investigations into those complaints and that the investigation of complaints of racial discrimination was used as a basis for plaintiff's retaliatory termination,,, " (JA-214) .

From the very start the District Court severely erred, and the First Circuit upheld, when it dismissed with prejudice the 42 U.S.C 1981, 1985, 1983 claims, and only granted leave to amend the Second Amended Complaint (SAC) limited to correcting deficiencies under Title VII claims.(JA 102). This unjustifiable exempted the non-employers like Maura Healey and the Office of the Attorney General, The Massachusetts Trial Court (Carey and Spence JA 669) and its Human Resource Department (HR) personnel (Conlon, Gill, Day, Celestine) (JA638-639)from scrutiny and accountability, against the allegations of Intentional Discrimination and the lack of equal rights and intentional discrimination in the enforcement of contracts, among others.(JA 673-688). The aforementioned is a critical mistake that illegally forecloses the plaintiffs ability to recover damages under 42 U.S.C 1981, for example, if he is unable to under Title VII claims.

Due to the prejudicial nature of this misapprehension of the applicable law here, its ability to set bad precedent that can only delay and deny justice, the Supreme Court should, on the 42 U.S.C. 1861,1985, 1983 claims, over- rule the First Circuit.

2. The EEOC Considered and Reviewed the Allegations in The FAC, And Other Documents, Before Issuing the Right to Sue Letter.

The right to sue letter was obtained in time because the plaintiff filed his complaint with the court five (5) days after receiving the termination letter by Chief Justice of the Housing Courts Timothy Sullivan (JA 671-672), making the termination effective July 22, 2016. At oral argument, however, the defendants counsel argued in support of the dismissal of the hostile environment claim, and the First Circuit agreed, that the EEOC would've had no reason to investigate the FAC since it was already filed in court. First, the EEOC is not some unsophisticated consumer that could not have known that those dismissed Title VII allegations were without prejudice, until a EEOC Right to Sue letter is issued. Second, the District Court found that the EEOC investigated and did consider the FAC (JA-18) before issuing its right to sue letter. In any event here is what the EEOC itself said on the subject, in issuing the right to sue letter:

"Based on its investigation, the EEOC is unable to conclude that the information obtained establishes violation of the statute. This does not certify that the respondent is in compliance with the statutes and no finding is made as to other issues that might be construed as having been raised by this charge" (JA-77).

The EEOC also stated the reason why it could not investigate the allegations of denial of promotions and hire based on race was because their statute of limitations on that issue expired March 3, 2016. (JA-75). (The Trial Court/HR concealed the initial report dated December 25, 2015, from the plaintiff, until June 17, 2016).

Because the First Circuit completely ignored the facts in dismissing the hostile environment claim, this Court should also overrule the First Circuit on this claim.

II. THE FIRST CIRCUIT OPINION WRONGFULLY ALLOWS EMPLOYEES TO BE TERMINATED FOR INSUBORDINATION TO NON-EMPLOYEES.

A. The Defendants' Insubordination Claim Has No Basis in Law.

In dismissing the complaints against the Massachusetts Trial Court and the office of Attorney General and their officers, the District Court held:

"[Plaintiff] served as an appointed officer and mediator in the Housing Court Department of The Boston Housing Court...based on plaintiffs' own allegation the defendants were not his employers" (JA-94)

Moreover, even HR investigator Day (JA432/439/467), in her report, made the point that the plaintiff could not be held insubordinate by them. For example, when the plaintiff refused to meet with them to receive a report on March 15, 2016 due to recorded hostility (JA-467), they had to get Neville. (JA 479) to order the plaintiff to meet with them. (JA-480-481). For the aforementioned reason the Supreme Court should reverse this fatal error of law, by finding the plaintiff insubordinate to hostile non employer personnel.

B. The Defendant was not insubordinate by the facts either

According to HR legal counsel, the plaintiff could still complain to supervisors, or to their supervisors if the complaint was against a supervisor, but not to contact the Supreme Judicial Court directly. (JA 362). The facts show that is exactly what the plaintiff did. First, the plaintiff had a right to complain about the investigation itself, and the illegal disciplinary process that arose out of it. (JA 307/327) Second, the plaintiff did not email the SJC after HR March 15, 2016, request. The email was sent to Celestine and Burke to hand deliver to the SJC, per Gill's recommendation. (JA492). While the plaintiff did state on March 15, 2016, meeting that he would have to notify the SJC that the investigation was corrupt and try to preempt the retaliatory termination. For that he was removed by two court officers and Burke on March 17, 2016, it was while on this leave the plaintiff reached out to Carey and Spence supervisors to prevent the obvious incoming retaliatory termination. (JA492). The Plaintiff manintains that complaint against a

conflict of interest and corrupt investigation are protected.

Based on the obvious facts the plaintiff was neither insubordinate by them, thus this Court should reverse the First Circuit finding that plaintiff was insubordinate to non-employer personnel based on these facts too.

III. THE FIRST CIRCUIT IGNORED THE DEFENDANTS TIME IN ANSWERING ANY COMPLAINT YET PUNISHES THE PLAINTIFF FOR HIS DELAY IN SEEKING LEAVE TO AMEND.

A. It Took the Defendants Almost Two Years to Answer Any Complaint, That Is Why It took The Plaintiff That Time to Seek Leave to Amend.

The defendants would have suffered no prejudice if the amendment had been allowed because in opposing leave be granted their concerns were addressed and thus, they would have not had to do anything else. (JA 223-225). It was explained that the claim under ADA/Rehabilitation act was; a) being filed in the alternative because of the humiliation and harassment due "to their perception that plaintiff was mentally ill", b) it was not futile because the defendant receives federal funds in the use of employment, c) it was not undue delay because the plaintiff was fending off the defendants attempts to have his claims dismissed. But, nevertheless, the First Circuit finally agreed that it was not an abuse of discretion to deny leave because the plaintiff had an opportunity to amend and took two years to request leave. First, the court ignores that the plaintiff received limited leave to amend the SAC (JA-102). Second, the plaintiff filed his original complaint on 07/27/16 (JA-4), and the defendants first answer to any complaint was 07/27/18, exactly two years later. Because this result is also so patently unfair and had the bad precedent of getting time in a vacuum, this court should also reverse the First Circuit on the Denial of Leave to Amend ADA/Rehabilitation Claim.

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CONCLUSION

Based on the foregoing Petition for Writ of Certiorari, and this voluminous record and this Petition for Rehearing, a review should be granted.

Respectfully Submitted,



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July 8, 2022.

CERTIFICATE OF PETITIONER

Pursuant to Rule 44., Petitioner certifies that the Petition is restricted to the grounds specified in the Rule with substantial grounds not previously presented.

Petitioner certifies this Petition is presented in good faith and not for delay.

Signed under pains and penalty on this 5 day of July 2022, by;



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