

No. **21 - 5331**

IN THE
SUPREME COURT OF THE UNITED STATES

Zachary Rusk

(Your Name)

— PETITIONER

VS.

Fidelity Brokerage Services, Fidelity Investments

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

10th Circuit Court of Appeals

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

PETITION FOR WRIT OF CERTIORARI

Zachary Rusk

(Your Name)

211 N 10th Ave

(Address)

Bozeman MT 59715

(City, State, Zip Code)

435-557-1570

(Phone Number)

ORIGINAL

FILED

JUL 24 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. Did the 10th circuit apply the law incorrectly?
2. Did the 10th Circuit fail to consider evidence and pleadings that show that Petitioner did present all necessary information for a favorable decision?
3. Did the 10th Circuit and US District Court of Utah's judges interfere with this case by delaying purposefully and making false statements?
4. Is there an issue with the ability of Petitioner to be timely in his Rule 11 motion?
5. Was jurisdiction lost as to the US District Court to consider a rule 11 motion within the time frame which is allegedly required, when Rusk filed his original rule 60 motion, and appealed to the USSSC and then the 10th Circuit as directed by this court?
6. Did these courts unduly delay and cause the issue with timelines to occur through judicial interference?

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:

RELATED CASES

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PÉTITION 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☐ is unpublished.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☐ is unpublished.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 June 15 2021.

☒ 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

Rule 11, ADA, Title VII, E.O. 11246

STATEMENT OF THE CASE

Plaintiff contends that FBS officials discriminated against him by passing over him for promotions, around twelve different times, around eight various roles, because of his disability and religion. Plaintiff further asserts that this occurred throughout his time at FBS where he was not provided certain ADA requests, Sundays off, certain schedule adjustments, and that FBS retaliated against him for filing an EEOC claim about such discrimination. Plaintiff claims that FBS created a hostile working environment for him, caused him to suffer major depression, anxiety and PTSD, failed to provide certain reasonable accommodations, punished him for using medical leave to obtain treatment for work induced maladies, and finally, terminated his employment when their discrimination & retaliation caused him incapacity. In addition, FBS can be seen and shown to have blacklisted Mr Rusk from the industry for which Mr Rusk possesses professional licenses, thus barring Mr Rusk from obtaining gainful employment, let alone employment in general through the defendants pretext to hide their discriminatory and retaliation animus in way of defamation of character.

This suit was brought by a former employee (hereinafter referred to as “Mr. Rusk” or “Rusk” or “Plaintiff”) of Fidelity Brokerage Services, LLC (“Fidelity”), under Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §2000e et seq.; the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. 12101, et seq.; the Family Medical Leave Act (“FMLA”), 29 U.S.C. §§ 2615 and 2617; 42 U.S.C. § 1981 (“§1981”); and through the Court’s pendent jurisdiction for claims arising from Mr. Rusk’s employment at Fidelity. Plaintiff Zachary R.E. Rusk initiated this employment discrimination civil rights action in December 2015.¹ On April 30th 2019, the court entered an Order dismissing Rusk’s Third Amended Complaint² and entered Judgment in favor of Fidelity.³ On May 22, 2019, the court overruled Objections to the Order and Judgment Rusk had lodged on May 13, 2019.⁴ On November 19, 2019, the court denied a Motion Rusk brought on October 23, 2019 pursuant to 60(d)(3).⁵ While all of the below were unopposed by opposing counsel, their firm/GC office, and the defendant in this matter, on September 30, 2020, the court entered an order advocating for the defendant, the opposing counsel and it’s firm, by effectively making a case (based on another circuit split issue) for them in lieu of denying practically all of the following:

1. Objection/Point of information and Request for Clarification re: Order on Plaintiff’s Rule 60 Motion.⁶
2. Ex-Parte Notice of [United States Supreme Court] Letter and ex parte Motion for Extension to File Appeal/Notice of Appeal to [United States Tenth Circuit Court of Appeals],⁷
3. Request to Submit for Decision, or Recuse,⁸
4. Rule 11 Motion,⁹
5. An Affidavit,¹⁰
6. An email,¹¹ 7. Return of Service,¹²
8. Request to Submit for Decision Rule 11 Motion,¹³
9. Ex-parte request for Status Update,¹⁴ and
10. Notice of New Information.¹⁵

- 1 Dkt.4.
- 2 Dkt.266.
- 3 Dkt.267.
- 4 Dkts.271(Objections) and 273(Order).
- 5 Dkts.281(Motion)bandn282(Order).
- 6 Dkt.286.
- 7 Dkt.289.
- 8 Dkt.290.
- 9 Dkt.291.
- 10 Dkt.292.
- 11 Dkt.293.
- 12 Dkt.294.
- 13 Dkt.295.
- 14 Dkt.269.
- 15 Dkt.297.

REASONS FOR GRANTING THE PETITION

1. On August 11th 2020, Zachary Rusk, pursuant to 28 U.S.C. § 1746, based on his personal knowledge, made the following declaration:
 1. I am a natural person residing in the United States at 870 N 600 E A-G14 Logan Utah 84321. 2. Over the last few months, I have consulted with the Office of Professional Conduct and other attorneys about Ballard Spahr's Partner Jason Boren.
 3. In these communications, Rusk showed the above noted parties evidence of Jason Boren's false statements and misrepresentations to the court. For pretty much the first time, they officially stated (and thus, Rusk first learned) that the way to fix this, was through a Rule 11 motion.
 3. Jason Boren's false statements and misrepresentations to the court yielded dismissal of the above noted case.
 4. As a result, the case was not decided on the merits.
 5. The false statements were not only mischaracterized, but expressly misrepresented.
 6. The statements are inconsistent with the evidence.
 7. Some of the statements were completely false.
 8. Some of the statements even had zero evidence to support them.
 9. As the Court (in it's orders) and Jason Boren (in his ISO, etc., motions) noted, the vast majority of emails were settlement related.
 10. If the vast majority of emails were settlement related, they must be seen as rule 408 communications.
 11. Rule 408 communications are inadmissible as to the rules of evidence.
 12. Thus, first and foremost, the vast majority of emails used as foundation to issue the June and May 2019 orders, are thereby inadmissible.
 13. While those emails are inadmissible, they cannot be counted in the numbers the court uses to determine the grounds for the order.
 14. Furthermore, Jason Boren provided practically zero evidence of any other communications that cannot be construed as settlement related communications, inadmissible evidence, etc., as to the inflated, clearly unsupported, falsified number calculations used to issue the foundation for the order.
 15. Jason was well aware and provided evidence early on as to the other issues with the order, stemming from his misrepresentations to the Court about other cases, et cetera.
 16. Should it even be needed, this declaration is mainly intended to be used as an affidavit to support the attached Exhibit A of this declaration showing that I had provided Jason Boren at least 21 days, before filing the Rule 11 motion.
 17. The exhibits of the Exhibit A's July 8th 2020 email/demand/notice/chance to resolve, include much, if not all of the same information and exhibits as to that of which was submitted in my Rule 11 motion and corresponding exhibits on August 1st.

12 Dkt.294.

13 Dkt.295.

14 Dkt.269.

15 Dkt.297.

The 10th circuit applied the law incorrectly.

The 10th Circuit failed to consider evidence and pleadings that show that Petitioner did present all necessary information for a favorable decision. The 10th Circuit and US District Court of Utah's judges interfered with this case by delaying purposefully and making false statements (as noted in the hearing transcript from April 30th 2019).

There an issue with the ability of Petitioner to be timely in his Rule 11 motion due to judicial interference.

Jurisdiction was lost as to the US District Court to consider a rule 11 motion within the time frame which is allegedly required, when Rusk filed his original rule 60 motion, and appealed to the USSC and then the 10th Circuit as directed by this court.

These courts unduly delay caused the issue with timelines to occur through judicial interference.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: July 23rd 2021