

No. _____

Supreme Court, U.S.
FILED

JUN 16 2021

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

In re RAY SCOTT HEID,
Petitioner,

21-5590

- against -

District Judge Algenon L. Marbley, et al.,
Respondents.

Petition on Writ of Certiorari to the United
States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

RAY SCOTT HEID
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ORIGINAL

I. QUESTIONS PRESENTED.

1. Was Petitioner denied due process by the district court when his complaint was dismissed as a failure to state a claim.
2. Was Petitioner denied due process by the district court when it certified that an appeal would not be taken in good faith.
3. Was Petitioner denied due process by the circuit court when his appeal was not allowed pursuant to FRAP 24.
4. Was Petitioner denied due process when his Amended Complaint and Rule 60(b) motion was denied an opportunity for a meaningful right to be heard.

II. PARTIES.

The petitioner is Ray Scott Held, a prisoner at Lebanon Correctional Institute (LECI) in Lebanon, Ohio.

The respondents are:

1. Algernon L. Markley, District Judge;
2. Elizabeth Preston Deavers, Magistrate Judge;
3. Karen Nelson Moore, Circuit Judge;
4. Ronald Lee Gilman, Circuit Judge;
5. Bernice Bowie Donzld, Circuit Judge;
6. Mindy Ann Worly, Assistant Ohio Attorney General; and,
7. Mike Davis, Religious Service Administrator.

Please note, Petitioner has previously and maintains concession that all parties but for Mike Davis should be dismissed due to the immunity doctrine.

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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 cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix 1 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☒ is unpublished.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 16 to the petition and is

☒ reported at 2020 U.S. Dist. LEXIS 122679; 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☐ is unpublished.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.

V. DECISIONS BELOW.

Pursuant to Rule 14 a copy of the judgment/order denying appeal for want of prosecution is attached as Appendix - 1. A copy of the decision of the U.S. Court of Appeals on reconsideration motion and to expand the issues on appeal is attached as Appendix - 2. A copy of the decision of the U.S. Court of Appeals to proceed In forma Pauperis is attached as Appendix - 5. A copy of the decision of the U.S. District Court (Doc. 27) denying jurisdiction to consider Plaintiff's Motion by Leave of Court to Correct Manifest Miscarriage of Justice is attached as Appendix - 7. A copy of the decision of the U.S. District Court (Doc. 25) denying jurisdiction to consider Plaintiff's Motion for Relief from Judgment is attached as Appendix - 9. A copy of the decision of the U.S. District Court (Doc. 22) denying Motion to Alter or Amend Judgment is attached as Appendix - 13. A copy of the decision of the U.S. District Court (Doc. 19) denying IFP status on appeal is attached as Appendix - 15. A copy of the Report and Recommendation to dismiss the action (Doc. 9) (2:20-CV-1512) is attached as Appendix - 19. Decision of Dist. Court dismissing the action (Doc. 16) is attached as Appendix - 16.

VI. JURISDICTION.

The judgment for the United States Court of Appeals for the Sixth Circuit was entered April 23, 2021 AD. Jurisdiction of this Court is conferred by Article III, United States Constitution; and 28 U.S.C. 1254 (1).

Pursuant to Rule 10, this Petition is in aid of the Court's appellate jurisdiction as the Supreme Court can hear appeals in civil cases. Blatt v. Brown, 339 U.S. 103, 106 n. 1, 70 S.Ct. 495, 94 L.Ed. 691 (1950); see 28 U.S.C. 1254 (1); see also 28 U.S.C. 2350 (a).

The reason this Court should review this Petition is because the United States Court of Appeals for the Sixth Circuit has so far departed from the accepted and usual course of judicial proceedings and sanctioned such a departure by the U.S. district court for the southern district of Ohio, so much so that their actions amount to a clear usurpation of power.

In this case, the district court improperly dismissed the action on screening pursuant to 28 U.S.C. 1915A, as a failure to state a

claim. From the outset Petitioner was denied fair review of his claims. Appendix-18, at ¶ 7-31. At the screening stage all well-pleaded facts were to be accepted as true. Appendix-18, ¶ 33. The district court disregarded its precedents and did not accept Petitioner's facts as true but, instead, made findings of fact without any evidence before the court that counters Petitioner's facts. The district court blatantly stated that "although [Petitioner] asserts in his objections that other religious groups (such as Rastafarians, Black Hebrew Israelites, the Nation of Islam, and the Moorish Science Temple of America) were afforded congregational worship services when he was not (3, ECF No. 12), these groups do not hold the supremacy of a particular race as a fundamental tenet. These groups are therefore not similarly situated to the CSC in relevant respects." Appendix-16, at *7.

This finding was used to dismiss the equal protection claim; and to establish an unproven and unprovable assertion that the CSC holds the supremacy of a particular race as a fundamental tenet. Which it does not. Such a finding by the district court is in violation of due process.

Appendix-12, ¶8-18. And conflicts with this Court's mandates in *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009). As well as disregarding its own precedents: *Watson v. Ohio Dep't of Rehab. & Corr.*, 167 F.Supp. 912, 923 (S.D. Ohio 2016). See Appendix-12, ¶17.

The district court then disregarded the established standards to state a conspiracy claim. Appendix-12, ¶19-27. Again rejecting to accept Petitioner's facts as true.

The circuit court thereafter sanctioned the district court's departure of accepted usual judicial procedure. In that the circuit court denied Petitioner's Motion to Proceed in IFP (Appendix-5). The circuit court concluded "that it appears there is no arguable basis in law for [Petitioner]'s appeal of the dismissal of his conspiracy and equal protection claims against Worly and Davis." Appendix-5, p. 4, ¶¶19-21. In order to reach this conclusion, the circuit court had to disregard the facts asserted by Petitioner and draw all the inferences in favor of the Respondents. See Appendix-6, ¶10-31. The denial of leave to appeal in forma Pauperis status was the same as a dismissal.

Where the court knew that Petitioner could not afford the \$505.00 filing fee. Which directly resulted in the dismissal for want of prosecution.

Because the judgments rendered by the lower courts departed from the standards of 28 U.S.C. 1915A and failed to accept the Petitioner's facts as true, and draw all reasonable inferences in Petitioner's favor, this Court should use its discretionary powers for an exercise of its supervisory power. See, e.g., Tolan v. Cotton, 572 U.S. 650, 134 S.Ct. 1861, 188 L.Ed. 2d 895, 901-903 (2014) (per curiam) (granting certiorari and reversing summary judgment, because court below "improperly weighed the evidence and resolved disputed issues in favor of the moving party... reflecting a clear misapprehension of summary judgment standards in light of our precedents").

In addition, Petitioner sought to correct the district court's improper application of 28 U.S.C. 1915 by submitting a Motion for Relief from Judgment (Appendix-12). The district court departed from the usual judicial procedure in ruling on FRCP 60 (b) motions when an appeal is pending. See Appendix-8, ¶ 11-13. Yet

the court denied Petitioner of this benefit of the normal judicial practices. And then the circuit court used their power of authority to keep the issue out of court. Where Petitioner sought to expand this issue on appeal (Appendix - 3) but the circuit court disregarded its own precedents and denied that motion. (Appendix - 2).

Secondly, exceptional circumstances exist to warrant the exercise of the Court's discretionary powers. This case presents an extraordinary case. The actions of the lower courts demonstrate a clear judicial usurpation of power where they acted as an adversarial party to combat ethno-religious worldviews they find unfavorable.

For instance, the circuit court's Order (Appendix - 5) makes much of the fact that Petitioner's beliefs appeal to his ethnicity. (Appendix - 5, p. 1, second paragraph, first sentence.). What Petitioner identifies as is irrelevant to the duty of the court to accept the facts as true. Instead the circuit court used the appeal to ethno-religious beliefs to spin the Petitioner's well plead facts into a scenario that the facts are insufficient to state a claim for relief on. Clearly abusing their power to

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address and apply the rule of law to the facts alleged.

Had Petitioner alleged, for example, that he was a bully as a child. And now some of the kids he bullied works within the government. One as a judge; and the other as a case worker with Children services department. And that the latter orchestrated a false complaint against the Petitioner so as to remove Petitioner's child from him. Then when appearing in court the Petitioner proved the case worker's allegations to be false.

But unfortunately the Petitioner's arguments were before a presiding judge who was also bullied by the Petitioner in times past. The judge, in tacit agreement with the agent case worker, uses his power to oppress his childhood bully's rights by making factual findings on the court record which mischaracterize and alter the statements made by the Petitioner so as to comport with the false allegations of the case worker. Ultimately upholding the fraudulent removal of the Petitioner's child. Such allegations would support a conspiracy claim!

In this case that's the exact scenario that

played out. Except it was* a child that was taken but the protection of Constitutional rights; it wasn't a child custody case worker but a Religious Service Administrator for the Ohio Department of Rehabilitation and Corrections (ODRC); and instead of a "bully" it is an ideological viewpoint that the judges in this action, counsel and the ODRC find unfavorable and view as an old time ideology of hate, i.e., "white supremacy." So the judges, defense counsel and Respondent Davis joined together in the course of litigation coming to a tacit agreement to orchestrate a legal way to defeat the Petitioner's claim. Whereby the Respondents, in concert, changed the factual context of Petitioner's request into one fatally flawed. There are sufficient facts alleged by Petitioner to state a conspiracy claim. (See, e.g., Appendix-12, Mot. for Relief from Judgment, ¶ 19-27). *not

Where these judges are permitted to turn a blind eye to the rule of law because it would otherwise protect the civil rights of Aryan Americans, Petitioner is left without remedy, and his Constitutional rights without meaning. No wonder a civil war is on the horizon.

If allowed to stand, it will set the precedent that judges are permitted to enter as a partisan defender to combat instances of racial imbalance they do not agree with.

Freeman v. Pitts, 503 U.S. 467, 487 (1992)

("Where resegregation is a product not of state action but private choices, it does not have Constitutional implications. It is beyond the authority and beyond the practical ability of the federal courts to try to counteract [racial imbalance]."); Will v. United States, 389 U.S. 90, 95, 88 S.Ct. 269, 19 L.Ed. 2d 305 (1967) ("only exceptional circumstances amounting to a judicial 'usurpation of power' will justify the invocation of this extraordinary remedy").

As Petitioner has shown above, he pursued relief in every remedy available to him as he knows it. Those avenues are no longer available to provide remedy. This is the only Court available to remedy the wrongs committed by the lower courts in departing from the screening standards of 28 U.S.C. § 1915 and standards of neutrality.

Notably, the egregious actions of the lower courts have created a grave miscarriage

of justice. In this case the lower courts have denied Petitioner the right to be heard and to be heard by an impartial judge. Acts that demonstrate a clear judicial usurpation of power. A greater or more demonstrable showing of a miscarriage of justice cannot be found.

VII. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

This case involves Amendment I and XIV to the United States Constitution, which provides in relevant part:

First Amendment: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

The first Amendment religious exercise clause is protected by Title 42, Section 2000, United States Code:

Section 3. (a) General Rule - No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 2 of the Civil Rights of Institutional Persons Act (42 U.S.C. 1997), even if the burden results from a rule of general applicability, unless the government demonstrates that the imposition of the burden on that person -

- (1) Is in furtherance of a compelling government interest; and,
- (2) Is the least restrictive means

of furthering that compelling governmental interest.

Fourteenth Amendment: Section 1. 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.

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Section 5. The Congress shall have powers to enforce, by appropriate legislation, the provisions of this article.

VII. STATEMENT OF THE CASE.

The Petitioner's original complaint alleged that the district judge Algenon Marbley, Mindy Worly, and Mike Davis had a conspiratorial agreement to defeat Petitioner's action. They actively engaged in altering the facts as alleged by Petitioner so as to create a fatally flawed claim. Each one of these individuals took an objective act in furtherance of the agreement to alter the facts. The judge, Algenon Marbley, going a step further, constructed a sufficient legal argument for the defendants of case no. 2:15-cv-2757, after the defendants failed to defeat Petitioner's legal argument. That is, the only claim remaining in case "2757" was under 42 U.S.C. § 2000cc, RLUIPA. And the defendants summary judgment argument rested solely on the first Amendment "reasonable" standard under the Turner test; instead of the strict scrutiny analysis demanded under RLUIPA.

Judge Marbley constructed a RLUIPA argument for the defendants after the parties had submitted their arguments and rebuttals, and then granted summary judgment for the defendants.

Thereafter, the circuit court judges joined the conspiracy to defeat Petitioner's action. Where they created a post hoc legal theory and impermissably weighed evidence so as to defeat Petitioner's legal argument on appeal.

The specific facts alleging the actions taken by each individual was alleged in full, when accepted as true, shows how these individuals carried out the conspiracy objective and injured the Petitioner in the exercise of his religion. Appendix -12, ¶ 22.

Admittedly, every person involved in the conspiracy but Mike Davis has judicial immunity. At the circuit court stage on appeal, Petitioner sought relief on claims only against Mike Davis.

Instead of permitting Petitioner's claims to proceed, the judges in this action have usurped the power of authority granted them to deprive Petitioner of actionable rights when making false findings of facts in their dispositions holding Petitioner did not state a claim. A cursory review of the Petitioner's pleadings will show those holdings to be false. (Appendix -12, ¶ 19-27).

The Petitioner made numerous attempts to amend to correct the supposedly "deficient" pleadings (Appendix -10 and 17) but no matter the facts alleged before the courts of the Sixth Circuit, they were predisposed to rule against Petitioner. Denying the most basic right of fundamental fairness.

The Sixth Circuit has maintained a practice of depriving the application of the law in those cases where the Christian Separatists faith would be favored by the proper application of the law.

IX. BASIS FOR FEDERAL JURISDICTION.

This case raises a question of interpretation of the Free Exercise Clause and the Establishment Clause of the first Amendment, as well as the Due Process and Equal Protection Clauses of the fourteenth Amendment to the United States Constitution. The district court had jurisdiction under the general question jurisdiction conferred by 28 U.S.C. §1331.

X. RELIEF SOUGHT.

Petitioner requests the Court to do the following:

1. Reverse the dismissal of this action and order the lower court to permit the claims to be litigated in accordance with the law; and,
2. Recuse the judges involved with the judicial usurpation of power.

XI. REASONS FOR GRANTING THE WRIT.

This Court should grant the Writ because the lower courts denied Petitioner's right of fundamental due process. Where judicial bias on each part of the judges involved in this action resulted in an unconstitutional application of 28 U.S.C. § 1915, i.e., a clear usurpation of power to improperly dismiss an action that would otherwise secure rights owned by Christian Separatists religionists under the Constitution.

Furthermore, the dismissal of this action sanctioned acts of judicial bias and conspiratorial objectives that deny an entire class of religionists of the Constitutional right to not be discriminated against by state and federal actors. If this Court allows the current unconstitutional judgments to stand, this entire class's Constitutional rights will remain unjustifiably denied. And such a decision will sanction the appearance of partiality. Where the government can wield its power to grant favorable ethno-religious practices while abusing that power to deny disfavored ethno-religious practices. Even where those denials come by legal means (a judge's decision)

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to accomplish an illegal act (deprivation of Constitutional rights). Such a sanction runs afoul of both the Establishment Clause and Equal Protection Clause.

In sum, the lower courts have disregarded the fundamental rights of due process. And have sanctioned the practice of the government that holds that an entire class of religionists are not entitled to the same civil rights afforded other American citizens on the basis of race. This practice permits the government to pick and choose among religions, on the basis of race, to decide who is entitled to Constitutional protections. That is, the lower courts have intentionally oppressed the civil rights of only Aryan American citizens who choose to remain true to their ethnos (to include race, religion, culture and heritage). Yet any other race of American citizens who desire to remain true to their ethnos are provided full protections of the Constitution and case precedents by the same lower courts. This case strongly suggests that the courts of the Sixth Circuit are acting as enemy combatant courts to carry out the current Zeitgeist to cancel culture; instead of applying the rule of law in a fair and evenhanded manner.

Thus, as shown within the body of this Writ and attachments, the lower courts went afoul of the Constitution by using their power of authority to combat racial imbalance within a government institution. The government is clearly oppressing and suppressing the rights of an entire class of religionists they disfavor; while approving, e.g., African Americans to their racist religious practices, such as the Rastafarians who teach that the White race is an evil civilization, for the same privileges being denied herein to Petitioner and Aryan Americans.

This Court must use its supervisory powers to correct the sanctioned discrimination of the lower courts; and make it clear that Aryan Americans are entitled to the same rights and privileges secured to other ethno-religious groups of this Country's institutions.

XII. CONCLUSION.

for the foregoing reasons, this Petition for Writ of Certiorari should be granted. It is so prayed.

Respectfully submitted,

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Mr. Ray Scott Heid

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