

AUG 07 2021

OFFICE OF THE CLERK

No. 21-5594

IN THE
SUPREME COURT
OF THE
UNITED STATES

DANIEL J. HEFFLEY – PRO SE PETITIONER

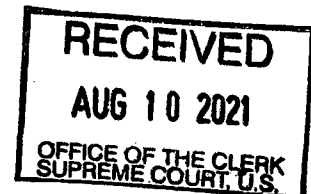
vs.

Commonwealth of Pennsylvania et. al. – RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Daniel J. Heffley
6911 Perrysville Avenue
Pittsburgh, PA 15202
412-761-9939



ORIGINAL

QUESTIONS PRESENTED

1. Does the Federal Court have an obligation to follow the spirit and letter of the ADA and 504 of the Rehabilitation Act?
2. Does the lower courts failure to accommodate the disabled Petitioner rise to the level of deliberate indifference and discriminatory intent?
3. Has the lack of disability accommodation impacted due process?

LIST OF PARTIES

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:

The Commonwealth of Penna.

Office of the Governor
508 Main Capital Building
Harrisburg, PA 17120

The Supreme Court of Penna.

601 Commonwealth Ave
#4500
Harrisburg, PA 17120

The Judicial Conduct Board of Penna.

601 Commonwealth Ave.
Suite 3500
P.O. Box 62525
Harrisburg, PA 17120

The Court of Common Pleas of Allegheny County (Pittsburgh)

414 Grant St.
Pittsburgh, PA 15219

RELATED CASES

Heffley v. Steele, et al. 17-1624

USCA Case: Heffley v. Steele, et al. 19-3446

Heffley v. Commonwealth, et al. 18-1150

USCA Case: Heffley v. Commonwealth, et al. 20-1804

Heffley v. JudgeJBubash, et al. 18-000098J

USCA Case: JHeffley v. JudgeJBubash 18-1398J

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APPENDIX A – Opinion and Judgement of the Third Circuit Court of Appeals

APPENDIX B – Opinion and Order of the District Court

APPENDIX C – Denial of Petition for Rehearing

APPENDIX D – Memorandum Request for Appointment of Counsel

Please note: The fact that the Petitioner is disabled is well established in the District Court and Court of Appeals as evidence of that disability was saliently presented in the cases that ran simultaneously with this case now being presented to this court.

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

It is not reasonable for the court to have expectations of a disabled litigant to shepherdize and reference that information being requested here.

Neither can the Petitioners, duly appointed facilitator, do the same.

All occasions where it appears that the Petitioners facilitator has shephardized has been a result of gleaning, copying and pasting from other writings.

STATUTES AND RULES

Americans with Disabilities Act (ADA)

Sec. 504 of the 1973 Rehabilitation Act

Civil Rights Act of 1961

Parental Rights and Civil Rights as defined in the First, Fifth, Ninth and Fourteenth Amendments

OTHER

- **United Nations Convention on the Rights of Persons with Disabilities Resolution Adopted by the General Assembly**
- **Various International Treaties the United States is signatory to (yet to be defined)**
- **Article from the Seattle Journal of Social Justice**
 “The ADA: One Avenue to Appointed Counsel before a Full Civil Gideon”
 Brodoff, McClellan, Anderson Vol 2 Issue 2 Article 30
 <https://digitalcommons.law.seattleu.edu/sjsj/vol2/iss2/30/>

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

The opinion and judgment of the United States Court of Appeals appears at Appendix A to the petition and is docketed as document 24-1 & 24-2 in Case 20-1804 in the Third Circuit.

The opinion and order of the United States District Court appears at Appendix B to the petition and is docketed as document 32 & 33 in Case 2:18-cv-01150 in the Western District Court

JURISDICTION

The date on which the United States Court of Appeals decided my case was February 10, 2021

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: March 11, 2021

That denial is included here as Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Americans with Disability Act (ADA)

"Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subject to discrimination by any such entity."

42 U.S.C. § 12132 - Title II of the ADA prohibits state and local government entities from discriminating against individuals with disabilities in their programs, services and activities.

42 U.S.C. § 12133

The remedies, procedures and rights set forth in § 505 of the Rehabilitation Act of 1973 (29 USC § 794a) shall be the remedies, Procedures and rights this title provides to any person alleging discrimination on the basis of disability in violation of § 202 (USC 12132).

29 U.S.C. § 794

The Rehabilitation Act, (§ 504)

No otherwise qualified individual with a disability...shall solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance....

29 U.S.C. § 794(a)(2)

The remedies, procedures, and rights set forth in Title VI of the Civil Rights Act of 1964...shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 504 of this Act.

28 C.F.R. § 35.160(a)(1)

(1) A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.

28 C.F.R. § 35.160(b)

(1) D public entity shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.

(2) the type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length and complexity of the communication involved; and the context in which the communication is taking place, in determining what types of auxiliary aids and services are necessary a public entity shall give primary consideration to the requests of individuals with disabilities.

28 C.F.R. § 35.164

This subject does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program or activity or in undue financial and administrative burdens....

28 C.F.R. § 35.104

Auxiliary aids and services include – (1) Qualified interpreters on-site or through video remote interpreting (VRI) services; real-time computer-aided transcription services; written materials; exchange of written notes...

28 C.F.R. § § 35.130(b)(1)(ii), (b)(7) - A public entity cannot provide individuals with disabilities an unequal opportunity to participate in its programs, services and activities and must make reasonable modifications in its programs and must make reasonable modifications to insure equally effective participation.

STATEMENT OF THE CASE

Please Note: **THE APPELLANT IS COMMUNICATING WITH THE HELP OF A FACILITATOR. THE FACILITATOR IS NOT THE PRO SE LITIGANT BUT RATHER AN ADJUNCT WHO HAS DOMAIN KNOWLEDGE OF THE APPELLANT AND THOSE ISSUES THAT ARE IMPORTANT TO HIM. WHILE THE APPELLANT IS SELF-REPRESENTED, HE IS DISABLED AND INCAPABLE OF READING, WRITING, AND EXECUTING THIS AND OTHER DOCUMENTS IN HIS HAND. FULLY INTELLIGENT THE APPELLANT CAN REASON WHEN PROVIDED THE OPPORTUNITY AND SUFFICIENT INFORMATION ON WHICH TO BASE HIS DECISIONS.**

Daniel J. Heffley initiated a complaint in District Court on December 15, 2017. Initially the complaint was inclusive of state actors to include the judge who was presiding over divorce proceedings in the Court of Common Pleas – Pittsburgh, PA.

The District Court removed the state actors citing Judicial Immunity. The Petitioner never heard of Judicial Immunity and thought the path to prosecuting the Judge was too difficult to be comingled with the original complaint and initiated a separate action against the judge on January 23, 2018. (Case 18-0098)

That action was terminated by the District Court on February 23, 2018. Appealed to the 3rd Circuit on February 27, 2018, who listed the case 18-1398. 3rd Circuit terminated that case on April 1, 2018.

Not quite sure how to move forward to the Supreme Court the Petitioner dropped the issue opposed to the judge and instead initiated a complaint against the Commonwealth et al. The Petitioner asked the District Court to include the defendants listed in this case to be part of original complaint 17-1624 (presently being reviewed in SCOTUS as 20-8301)

The request to add the Commonwealth et al. to the list of defendants over in 17-1624

was made on August 29, 2018. Not receiving a response from the District Court Petitioner sent a 2nd motion on April 16, 2019, again requesting that the original complaint be amended to be inclusive of Commonwealth et al.

However, on June 17, 2019, the petitioner was informed that the Commonwealth et al. was docketed as 18-1150 in district court. For a period of ten (10) months the Petitioner was under the impression that the original complaint was amended to be inclusive of what is now the issue before this court.

Follows is a flow chart outlining this confusion. It is not offered to aid this court but rather it is a necessity, as the Facilitator has a difficult time sorting all of this out. In effect the monkeys are running the circus over here and it is necessary to sort this out in order to explain it to the Petitioner.

Appendix **D** to this pleading is a Memorandum to the Western District defining accommodations would be appropriate. Beginning at line 76 the petitioner lists the numerous requests for the available and appropriate help.

We are not here to address the deficiencies in the pleadings, as defined by the lower courts. However, we are here to suggest that the deficiencies are a product of District Courts failure to recognize its obligation to provide accommodations to a disabled plaintiff.

The district court was fully aware that the Plaintiff had a communications disability. Knowing this the district court invited the Plaintiff to stumble about the court room unaided and un-accommodated.

Summary

Both the district court and the third circuit court have gone into great detail defining errors. Daniel J. Heffley will not argue the deficiencies here, but he will argue the fact that none of the deficiencies would have occurred had the court followed the letter and spirit of the ADA and 504.

Here we might add that, by virtue of indigency, the petitioner had the added consideration of being *pro se*. The lower court seemed to argue that neither *in forma pauperis* nor *pro se* are circumstances that would excuse discrepancies. At the same time both lower courts purposely ignored the fact the petitioner is disabled and unable to read, write, speak or understand language unless he is provided accommodations. Some may argue that the court provided accommodations by allowing the petitioner to have a facilitator. However, the facilitator was not provided by the court but rather the ADA statute itself. The Facilitator in this case has explained to the court that he himself needed an advisor to interpret the courts language so that he could in turn help the petitioner execute his pleadings.

Flow Chart

DISTRICT COURT

17-1624
HEFFLEY V. STEELE

12-15-17
Original Complaint
Appropriately cited § 1983
(Included State Actors)

1/22/18
First Amended Complaint
(FAC)
Remove State Actors

18-0098
HEFFLEY V. JUDGE
BUBASH

1-23-18
18-00098

Suit against State Actors

Filed Seperate from original Complaint

Filed seperately opposed to Judge

2-23-18
18-00098
Terminated

8-29-18
Filed to include 4 New State Actors
1) Commonwealth, 2) St. Supr. Crt, 3) Jud. Rev Br. &
4) Common Pleas

Note: The Plaintiff *reasoned* that if the judge had immunity someone somewhere must be responsible for the Judge's *conduct and performance* and therefore filed against the State.

4-16-19
Motioned for 2nd time the request
to include State Actors

6-17-19
Informed that request was denied
and request of 8-29-18 was given
its own nomenclature of 18-1150

10/11-19
17-1624
Heffley v. Steele
Terminated

10-16-19
Notice of Appeal
of 17-1624

6-17-19
Dist. Crt. Informed Plaintiff
of the existance of
18-1150
HEFFLEY V. COMMONWEALTH

1-9-20
18-1150
Dismiss & Terminated

3RD CIRCUIT

2-27-18
18-1398
Appeal of 18-00098

4-1-19
18-1398
Terminated

Now THE SUBJECT
OF THIS WRIT

1-16-20
Appealed
~~No Case # Yet~~

Now 20-8301 IN
SCOTUS

10-24-19
19-3446
Heffley v. Steele

12 of 23

REASONS FOR GRANTING THE PETITION

The Petitioner, Daniel J. Heffley, is disabled and as such is due certain considerations and accommodation's as outlined by the ADA and 504 of the Rehabilitation Act. The only accommodation requested was defined as a member of the clerk's office or anything suggested by the court.

The disability here being referenced is communications. Understanding that which the court is communicating. Such communications lend themselves to interpretations based on the understanding of the litigant being communicated with.

Both lower courts applied professional standards to the various pleadings and did so exclusive of the best practices generally recommended by other courts when dealing with indigent, *pro se* litigants. Add to this mix the fact that the Petitioner is disabled.

We have reasoned that the lower courts may have considered that they have "allowed" the Petitioner to utilize his Facilitator and that in itself is an accommodation. It is not, as the Facilitator is provided by the statute not an appointee of the court. Further, the Facilitator is primarily the care giver and father of the Petitioner and not lettered in the law.

CONCLUSION

The complaint filed in District Court cited violations of Civil, Parental and Disability Rights and outlined the role that each defendant played in those infringements. However, due to ineptness and inexperience the complaint did not survive the pleading stage.

A failure to communicate for sure but not on the part of the Petitioner and his Facilitator but rather on the part of the court. The Petitioner simply needed a translator to accommodate his disability of aphasia.

The court denied a *pro bono* attorney and opined at the expense that such an attorney would represent.

Nowhere above can the Petitioner and his Facilitator see where he is to place a "Prayer of Relief."

The desired outcome is:

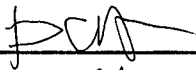
1. That this court recognize that the lower court could have and should have provided the smallest of accommodations in terms of an advisor/interpreter.
2. That this case be sent back down the line and allow deficiencies to be corrected.
3. That the case begins anew and that it be married to Case 20-8301 already being evaluated by this court.

The Petitioner has been denied the relationship and love of his two children since

February 5, 2014. The Petitioner is desperately seeking a path back to his children. The initial filing of the complaint in the district court was the first step.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 8/6/21