

No. _____

21 - 5811

IN THE

SUPREME COURT OF THE UNITED STATES

~~ORIGINAL~~

HAZHAR A. SAYED

— PETITIONER

(Your Name)

FILED

SEP 19 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

VS.

LT. PAGE VIRGINIA: CAPT.
MICHAEL TIDWELL; & SGT.

— RESPONDENT(S)

ROBERT HRADECKY

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Tenth Circuit

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

PETITION FOR WRIT OF CERTIORARI

Hazhar A. Sayed, #133608

(Your Name)

Sterling Correctional Facility
P.O. Box #6000

(Address)

Sterling, CO. 80751

(City, State, Zip Code)

Unknown

(Phone Number)

RECEIVED

SEP 28 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

- 1) Do the mandates stated by this Court in *Ross v. Blake*, 136 S.Ct. 1850 (2016) require the U.S. Court of Appeals for the Tenth Circuit and U.S. Dist. Court of Colorado to find that there is no need for a plaintiff to seek relief labeled as clearly unavailable in a prison's administrative remedies prior to filing suit under 42 U.S.C. § 1983?

i.

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:

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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

[x] 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 is unpublished.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 is unpublished.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 is unpublished.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 is unpublished.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 April 13, 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: April 27, 2021, and a copy of the order denying rehearing appears at Appendix C.

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

42 U.S.C. § 1983:

"Every person who, under the color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's official capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered a statute of the District of Columbia."

42 U.S.C. § 1997e(a):

"No action shall be brought with respect to prison conditions under (42 U.S.C. § 1983)...or other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

STATEMENT OF THE CASE

This action stems from a retaliatory assault perpetrated against Mr. Sayed as the result of his filing a grievance against one of the named Defendants in 2015. The case has a long, tortuous history, however, the only issue before this Court is whether Mr. Sayed was required to seek punitive damages or declaratory relief under the Colorado Dept. of Corrections administrative remedies, when that regulation clearly prohibits the seeking of such relief? In other words, is a remedy unavailable under this Court's ruling in Ross v. Blake, 136 S.Ct. 1850 (2016) when a prison's administrative remedies disallow the seeking of said and the grievance officer finds prisoners have not exhausted such remedies if they seek this type of relief?

REASONS FOR GRANTING THE PETITION

- 1) Do the mandates of the U.S. Supreme Court in *Ross v. Blake*, 136 S.Ct. 1850 (2016) require the U.S. Court of Appeals for the Tenth Circuit and U.S. Dist. Court of Colorado to find that there is no need for a plaintiff to seek relief labeled as clearly unavailable in a prison's administrative remedies prior to filing suit under 42 U.S.C. § 1983?

The Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), requires that: "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." Id, see also, Ross v. Blake, 136 S.Ct. 1850, 1856 (2016). However, in 2002, prior to the issuance of the opinion of this Court in Ross v. Blake, supra, this Court, as noted by the Tenth Circuit Court of Appeals in its decision denying Mr. Sayed's appeal, this Court in Porter v. Nussle, 534 U.S. 516, 524 (2002) that: "Even when a prisoner seeks relief not available in grievance proceedings, notably money damages, exhaustion is a prerequisite to suit." Id, see also, Appendix A, pp. 4.

The question presented here is one of whether the edict that § 1997e(a) continues to require a prisoner to seek "unavailable relief" as defined in a prison's administrative remedy process is still viable; and/or whether when prison officials continually state that a prisoner has failed to exhaust his administrative remedies if he seeks said, should be considered machination?

In further defining the requirements of § 1997e(a), this Court in Ross v. Blake, supra, found that:

"Under 1997e(a), the exhaustion requirement hinges on the 'availability' of administrative remedies: An inmate, that is must exhaust available remedies but need not exhaust unavailable ones...As we explained in Booth, the ordinary meaning of the word 'available' is 'capable of use for the accomplishment of a purpose' and that which is accessible or may be obtained...Accordingly, an inmate is required to exhaust those, but only those grievance procedures that are 'capable of use' 'to obtain some relief for the action complained of.'"

Id, 136 S.Ct. at 1858-59 (internal cite omitted.)

Further, this Court, citing Booth v. Churner, 532 U.S. 731, 738 (2001), found that an administrative remedy is "unavailable" when it operates as a "dead end," i.e., when a "relief is either unavailable or the responding officers are unable or consistently unwilling to provide any relief to any inmate seeking such relief." See Ross v. Blake, supra, 136 S.Ct at 1859; see also, Valentine v. Collier, 141 S.Ct. 57, 59 (2020) (quoting Ross supra, and supporting the fact that "even if an internal process is on the books it is not available if as a practical matter it is not capable of use to obtain relief." (internal quotation marks omitted.))

Finally, in Ross, this Court held that: "when prison administrators thwart inmates from taking advantage of a grievance process through machination,

misrepresentation, or intimidation," administrative remedies also become unavailable, thereby eliminating a prisoner's need for exhaustion of said prior to bringing his suit. Id. 136 S.Ct. at 1859.

Mr. Sayed is housed in the Colorado Dept. of Corrections, whose administrative remedy process is governed by the C.D.O.C.'s administrative regulation 850-04. In relevant part, the C.D.O.C.'s Admin. Reg. 850-04(III)(C) defines available remedies as:

"Remedy: A meaningful response, action or redress requested by the offender grievant at step 1, 2 or 3 level, which may include modification of policy, restoration or restitution for property, or assurance that abuse will not reoccur. DOC employee, contract worker, or volunteer discipline/reprimand, damages for pain and suffering, and exemplary or punitive damages are not remedies available to offenders."

Id. (emphasis added.)

Given this clear definition set forth in this administrative regulation, Mr. Sayed did not seek such damages in his initial grievances prior to filing his § 1983 action for being retaliated against. This is true also because he was aware that others who had sought such damages were repeatedly told by the C.D.O.C.'s Step III grievance officer (the top grievance officer in the C.D.O.C.) that they had "not exhausted" their administrative remedies in the C.D.O.C.'s grievance procedure because they sought relief that was "unavailable." See attached exhibit.

The reasoning utilized by the C.D.O.C.'s Step III grievance officer was that the inmate grieving the issue had failed to follow the grievance procedures as he sought relief that was "unavailable." See attached exhibit. In other words, if a prisoner seeks relief defined as "unavailable" in the C.D.O.C.'s grievance procedure, according to the C.D.O.C.'s top official, he has failed to exhaust his administrative remedies as required by § 1997e(a) and cannot sue.

If this isn't true, then isn't the C.D.O.C.'s statement to the prisoner misleading and shouldn't that be considered machination as defined under Ross v. Blake supra?

Respectfully, the Tenth Circuit Court of Appeals in it's Order denying Mr. Sayed relief found otherwise when it held:

"Regarding that May 8 grievance, Sayed offers two arguments, both of which are unavailing. First, he contends it was unnecessary to seek the same relief in his amended complaint because the grievance process permits, but does not require the relief they seek. But the governing regulatory provision, Colorado Department of Corrections (CDOC) Administrative Regulation (Admin. Reg.) 850-04 § IV.D.6, expressly states that a grievance 'shall address only one problem or complaint and include a description of the relief requested.' R.Vol. 1 at 285. This provision plainly requires an inmate to include in the grievance a description of the relief requested. Indeed, the next section of the regulation, § IV.D.7, states that if an inmate fails to request a remedy, the remedy is waived..."

See Appendix A, pp. 5 (emphasis in original.)

So the question is one of whether an inmate is supposed to believe the clear provisions of 850-04(III)(c), and the statements of the Step III grievance officer, or whether the more general provision of A.R. 850-04 apply. Anyway you look at it, Mr. Sayed was clearly misled by grievance officials and thus the U.S. Court of Appeals for the Tenth Circuit's decision in this matter is incorrect, as it failed to follow the provisions set forth by this Court in Ross v. Blake supra. Moreover, the Tenth Circuit's statement that C.D.O.C.'s Admin. Reg. 850-04 "permits, but does not require the relief they seek," i.e. exemplary or punitive damages is incorrect, as Admin. Reg. 850-04(III)(c) specifically prohibits the seeking of such relief.

There is a clear miscarriage of justice that has occurred here given the fact that Mr. Sayed was assaulted through a retaliatory action by prison officials and now has no avenue within which to seek relief, as Defendants raised in their response to his amended complaint, a failure to exhaust defense, claiming he failed to seek damages which were "unavailable" to him through the prison's grievance process.

Mr. Sayed thus moves this Court most respectfully to grant certiorari on this claim and correct this injustice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Howard C. Saypol

Date: September 18, 2021.