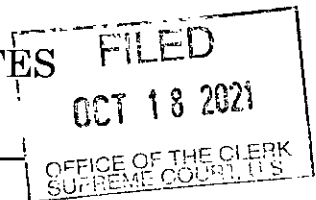


No. 21-6052

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



LAWRENCE E. MATTISON, PETITIONER

VS.

UNITED STATES OF AMERICA, RESPONDENT

Petition for Writ of Certiorari to the
FOURTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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The Federal Congress and The Department of Veterans Affairs, with the authority of the federal congress, created The Federal Torts Claims Act; 28 U.S.C. §2671 et seq 38 CFR §14.600 et seq. The Federal congress created 28 U.S.C. §2675 with a non-discretionary jurisdictional provision where the tort action complained of must be submitted to the Federal Agency---with a certified response--- prior to the initiation of Any Federal court processes, §2675 is commonly referred to as "Administrative exhaustion"(or "Executive exhaustion").

THE QUESTION PRESENTED:

1. Whether, and in what circumstances, the 4th circuit Appellate court may condone or ignore a tort claim that lacked Administrative exhaustion were lack of exhaustion was one main point for dismissal by counsel for the United States.

Related cases

- Mattison v. Virginia, 138 S.Ct. 2689 (Mem), 201 L.Ed.2d 1082, 86 USLW 3641 (June 2018, case 17-8868)
- Mattison v. Janie Willis, et al, 140 S.Ct. 2683 (Mem), 206 L.Ed.2d 830S. (April 2020, case 19-7669)
- IN RE: Mattison (Habeas corpus), 140 S.Ct. 2758 (Mem), 206 L.Ed.2d 929 (May 2020, case 19-7509)
- Mattison v. Denis McDonough, case 21-5850, (Pending)

List of Parties

Denis R. McDonough, Secretary Department of Veterans Affairs, Respondent

Brian H. Fletcher Solicitor General; United States Department of Justice

Mr. Richard A. Sauber; General Counsel, Office of the General Counsel Department of Veterans Affairs

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**In the
Supreme Court Of The United States
Petition for writ of certiorari**

Opinions below

- The 4th Circuit Appellate court ORDER denying rehearing/rehearing en banc is Unpublished without opinion, dated 8/02/2021 (Case 20-1429) is at enclosed App 1a.
- The 4th Circuit Appellate court Unpublished PER CURIAM OPINION, affirming the E.D.Va. court's Dismissal order is dated 03/09/2021 (case 20-1429) is at enclosed App 2a
- E. D. Va. dismissal order dated 02/24/2020 Only relevant portions therein related to Administrative exhaustion is at enclosed App 5a
- Counsel for the United State motion to dismiss with relevant portion therein related to Administrative exhaustion is at enclosed App 16a

JURISDICTION

The decision of the 4th Circuit Court of Appeals DENYING rehearing/rehearing en banc was issued August 2, 2021. Jurisdiction of this Court is proper pursuant to 28 U.S.C. §1254

RELEVANT STATUTORY PROVISIONS

- (1) 28 U.S. Code §2675. Disposition by federal agency as prerequisite; evidence
- (a) An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing

and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint, cross-claim, or counterclaim.

(June 25, 1948, ch. 646, 62 Stat. 983; May 24, 1949, ch. 139, § 126, 63 Stat. 107; Pub. L. 89-506, § 2, July 18, 1966, 80 Stat. 306.)

28 U.S.C. § 2675(a)

STATEMENT OF THE CASE

Petitioner (plaintiff in the initial action) requested Appellate review (case 20-1429) of Eastern District of Virginia ("E.D. Va.") dismissal order case 4:18-CV-61, a Federal Tort Claims Act ("FTCA") case under 28 U.S.C. § 1346, 28 U.S.C. § 2671, et seq. In the record was counsel for the United States requested dismissal under Fed. r. Civ. p. rule 12(b)(1) for lack of subject-matter jurisdiction over Abuse of Process, Intentional Infliction of Emotional Distress ("IIED") and Malicious Prosecution claims. *See App 17a*. Counsel for the USA acknowledged that petitioner never submitted those three claims to the Federal Agency. *See App 17a* The E. D. Va. ignored counsels' 12(b)(1) motion, condoned a violation of Federal Law related to the exclusive authority of the Federal Agency involved, then went on to dismiss Abuse of Process, Malicious Prosecution and IIED claims under Fed. r. civ. p. rule 12(b)(6). *See App 11a-14a* On March 9, 2021 the 4th Circuit ignored and condoned the E. D. Va. tactic and went on to acknowledge "We have reviewed the record and see no

reversible error". *See App 4a* On August 2, 2021 the 4th circuit denied rehearing/rehearing en banc. *See App 1a*

REASON(S) FOR GRANTING THIS PETITION

This "GVR" request is being made based on this court's holding in *McNeil v. United States*, 113 S. Ct. 1980, 1982-84 (May 17, 1993) (Holding: An FTCA action may not be maintained when the claimant failed to exhaust his administrative remedies prior to filing suit) This request for GVR intervention is because the 4th Circuit ignored a motion to dismiss for lack of subject-matter jurisdiction by counsel for the United States, then condoned the E. D. Va. court deliberately creating a dismissal order contrary (repugnant) to Federal law.

This Petition seeks this court's supervisory powers and requests the Hon. Justice John Roberts uses his supreme authority over the 4th Circuit to VACATE, submit a written Instruction to the 4th Circuit appellate court, without the need for additional briefs or hearing, REMANDING this case back to the 4th Circuit with instruction to: (1) determine whether the Record satisfies Administrative exhaustion for the Abuse of Process, Malicious Prosecution and IIED claims; (2) if Administrative exhaustion is not satisfied, REMAND the case back to the E. D. Va. court with instruction; (3) If Administrative exhaustion is satisfied, state this position clearly with cited legal authority.

ARGUMENT

Foot Notes were removed from the pages of the Appendix to prevent confusion of the issue presented here. I also ask this court read over argument 1(A) which is related to the question presented.

The Federal Agency involved is the Department of Veterans Affairs ("DVA") which also incorporates the provisions of the Federal Tort Claims Act ("FTCA").

Administrative exhaustion is a non-discretionary procedural requirement under Federal Law. The 4th Circuit deliberately ignored and condoned this non-discretionary procedural requirement condoning petitioner's injury under, *inter alia*, the FTCA. See Related cases @ ii. THE QUESTION IS:

- 1. Whether, and in what circumstances, the 4th circuit Appellate court may condone or ignore a tort claim that lacked Administrative exhaustion where lack of exhaustion was the main point for dismissal by counsel for the United States.**

Federal Law created for the Federal Tort Claims Act 28 U.S.C. §2675 states in relevant part:

28 U.S. Code §2675. Disposition by federal agency as prerequisite; evidence

- (a) An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as

may be asserted under the Federal Rules of Civil Procedure by third party complaint, cross-claim, or counterclaim.

28 U.S.C. §2675(a)

Based on this court's holding in McNeil v. United States, 113 S. Ct. 1980, 1982-84 (May 17, 1993) (Holding: An FTCA action may not be maintained when the claimant failed to exhaust his administrative remedies prior to filing suit) "The most natural reading of the statute indicates that Congress intended to require complete exhaustion of Executive remedies before invocation of the judicial process. Id; See *McNeil* @ 1982, 1984.

Here, Counsel for the United States filed a motion to dismiss @ App 17a. The relevant portions of that motion related to Administrative exhaustion is presented without distraction of footnotes. See App 17a The E.D. Va. acknowledged petitioner's submission to the Federal Agency @ App 9a and none of Petitioner's claims related to Abuse of Process, IIED, Interference With A Federal Employment Relationship or Malicious prosecution. See App 9a

The tactic used against petitioner (a pro se non-attorney) was to falsely claim the Federal Agency has authority to present DVA federal employee interests to a State court @ App 10a, then went on to dismiss the complaint under Fed. r. civ. p. 12(b)(6). See App 11a -14a

The 4th Circuit Appellate court condoned this tactic even though it alleged "we have reviewed the record and found no reversible error". See App 4a

WHEREFORE, since the E. D. Va. court lacked subject-matter jurisdiction over Abuse of Process, IIED and Malicious Prosecution, the 4th Circuit, after reviewing

the record, was required by §2675 to DISMISS in part and REMAND in part back to the E. D. Va. court with instructions to dismiss Abuse of process, IIED and Malicious Prosecution claims for lack of subject-matter jurisdiction.

A. **I ask this court's indulgence into this 2nd argument related to question 1, where there is a New tactic against pro se litigants on the Horizon in the 4th Circuit.**

It seems that a pro se non-lawyer litigant must be "witty enough" to catch-up with the tactics of the court and if notthey lose".

In my cases under "Related cases" @ *ii the 4th Circuit has either ignored or finagled federal law to the absurdity. The tactic used against me is to claim, without valid legal support, that the DVA and the State of Virginia "share authority" over DVA employee interests then dismiss my federal claims under this absurdity. In McNeil this court stated in dictum:

"Moreover, given the clarity of the statutory text, it is certainly not a "trap for the unwary". It is no doubt true that there are cases in which a litigant proceeding without counsel may make a fatal procedural error, but the risk that a lawyer will be unable to understand the exhaustion requirement is virtually nonexistent." See McNeil 113 S. Ct 1980 @ *1982,*1984.

In this case on Petition, the E. D. Va. ignored or finagled Federal law, ignored the exhaustion requirement, then the 4th Circuit Appellate court condoned it. These tactics used against a pro se litigant is a "trap for the unwary" related to the FTCA and its 'savings clause' which shows a New tactic on the horizon in effort to defend

the United States and its Federal Agencies. This increases the Hardship on pro se litigants, causing increased filings and responses by the Department of Justice to the lower court.

CONCLUSION

This petition should be GRANTED as a GVR request with the requested instruction because the E.D. Va. court and the 4th circuit appellate court ignored Administrative exhaustion as a "trap" related to the FTCA and its 'savings clause'.

Submitted to the U.S. Supreme court by


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On October 18, 2021