

No: 21-6337

ORIGINAL

IN THE
Supreme Court of The United States
Term 20

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

Kendall K. Magee,
Petitioner

Vs.

Gloria Perry et al.,
Respondent

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

PETITION FOR WRIT OF CERTIORARI

Kendall K. Magee
Counsel of Record
Pro se

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SUPREME COURT, U.S.

QUESTION PRESENTED

In a Prisoner's Civil Rights action Under 42 USC § 1983, Can or Do a Prisoner meet the Exhaustion Requirement of The PLRA, when he Receives the Relief Sought in his Grievance, and Does not Proceed to the final stage of the Grievance Process?

List of Parties To The Proceeding Pursuant To Rules 14.1(b) and 29.1

Pursuant to Supreme Court Rule 14.1(b), Petitioner, Kendall K. Magee Certifies that the names of all Parties to this Proceeding appear in the caption of this Petition for writ of Certiorari.

Pursuant to Supreme Court Rule 29.1, Petitioner certifies NO Parent Company Exist and NO subsidiaries or affiliates of MDOC have issued shares to the Public

Petition For Writ Of Certiorari

Petitioner Kendall K. Magee ("Magee") Respectfully Petitions this Court for a Writ of Certiorari to Review the Order of the Court of Appeals for the Fifth (5th) Circuit Granting Summary Judgment for the Defendants and Dismissing Magee's Lawsuit / Civil Action for failure to Exhaust his available Administrative Remedies

STATEMENT OF JURISDICTION

Magee Seeks Review of an order of the Fifth Circuit Court of Appeals issued on August 27, 2021

This Court has jurisdiction under 28 USC § 1254(c) to Review the Court of Appeals decision by writ of certiorari. The Court of Appeals had jurisdiction to issue the writ under the All Writs Act, 28 USC § 1651. The District Court has jurisdiction over this case under 28 USC §§ 1331, and 1338.

Constitutional Provisions and Statutes Involved

The following Constitutional Provisions and Statutes are involved In This Case.

United States Constitution, 8th Amendment

United States Code, 28 USC § 1915

United States Code 42 USC § 1983

STATEMENT OF THE CASE

The Case Underlying this Petition is an action for Compensatory, Declaratory, Injunctive and nominal Relief for the Denial of and/or Delay of adequate medical care. This Petition involves the Prison Litigation Reform Act (PLRA) and the interpretation of the Exhaustion Provision as to whether or not a Prisoner needs to go to the final step in a Grievance if he has Received the Relief he requested at an earlier stage in the Grievance Process.

In the underlying action, Respondent Gloria Perry, et al (Perry) alleges that Magee, did not Exhaust his available Administrative Remedies, prior to filing suit. Magee however maintains that he had in fact Exhausted his "available" Administrative Remedies, notwithstanding his failure to Proceed to the final stage of the MDOC Grievance Procedures

The District Court ruled on Summary Judgment that Kendall K. Magee did not Exhaust his available Administrative Remedies See Kendall Magee vs Gloria Perry, et al USDC Southern District of Miss. MD: 20-60349

The District courts ruling disposed of All of Magee's Claims

For relief and Dismissed all claims against the Defendants

Kendall Magee Petitioned the Court of Appeals for the Fifth Circuit to Review the District Court's Ruling by filing a Notice of Appeal. Without oral Arguments, the Fifth Circuit Denied the Appeal and affirmed the District Court's ruling.

SUMMARY OF ARGUMENT

The fifth (5th) Circuit held in this case that Petitioner Kendall Magee had not Properly exhausted his available Administrative remedies, when he received the Relief he Sought in the first stage and did not Proceed to the final stage of the Administrative Procedure or Grievance.

Magee Argued that because he had Received the Relief he Sought, that there was no other "available" Remedy for him to Seek, except Civil litigation to Address his alleged constitutional violations.

This Court's Ruling in no way hinged upon the Correct Application of the Prison Litigation Reform's Act Exhaustion Requirements.

Rather, the fifth (5th) Circuit's Decision rests entirely upon it's outright rejection of the legal theory that Exhaustion Do not require going through every stage in an administrative Grievance Process, but only requires Going as far as he Possibly can until he receives the relief Sought in the complaint.

The fifth Circuits decision "leave a wide path strewn with the carnage of cases declared over ruled or obsolete"

In addition, the (5th) fifth Circuits Decision has created a conflict with it's sister Circuits in areas outside of it's expertise in application of the Prison Liberation Reform Act. This case creates the type of conflict with other Circuits that warrants Supreme Court Review.

Reasons for Granting the Writ

This Court has repeatedly recognized the importance to the Public at large of resolving questions of major conflict. *Cardinal Chemical Co. v. Morton Int'l Inc.*, 113 S.Ct. 1967, 117 (1993) (citing *Blonder-Tongue Labs., Inc. v. University of Illinois Found.*, 402 U.S. 313, 336 (1971))

This case does not just affect Masee, but it affects the Public at large. Prisoners who seek judicial Review of and Redress for violations of their Basic Legal Rights, in this case the right to adequate medical care while in Prison

Unless corrected by this Court, The Fifth Circuit's Ruling will impose a significant burden on the resources of the federal Judiciary by requiring Exhaustion where it has never been required before. This burden will extend well beyond Prison cases. Departing from all precedents, the fifth (5th) Circuit relied on the fact that Masee did not go to the final step (2nd step). Not on the fact that Masee could not obtain more than he had already received in the first step and as such he had Exhausted all

Of his available Administrative Remedies. There is no Reason why or for this Court to refrain from definitely Resolving the Question Presented Now).

The Fifth Circuit's Decision Creates A Conflict Among The Circuits

Typically, the decisions of the 5th Circuit interpreting the substantive Prison Litigation Reform Act Law requirements do not create Circuit Conflicts. Because the fifth (5th) Circuit's decision creates a Circuit Conflict in areas well beyond the 5th Circuits exclusive Subject matter Jurisdiction This Court should grant Certiorari

Conclusion

The Fifth (5th) Circuit has Pronounced a Rule of Pressing national Importance. Its Ruling, requiring that a Plaintiff must go to the final stage, even when he has gotten all available relief he can at an earlier stage Directly conflicts with Precedent of this Court and the Circuit Courts. For each reason set forth above this Court should grant a writ of Certiorari to the Court of Appeals for the Fifth (5th) Circuit.

Date: 9/27/21

Respectfully submitted by:

/s/ Kendall K Magee

Kendall K. Magee