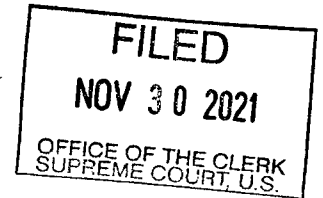


No. 21-6508

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

DANIEL JONES — PETITIONER
(Your Name)

vs.

ANDREW M. CUOMO, N.Y.S. — RESPONDENT(S)
GOVERNOR, et al.

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

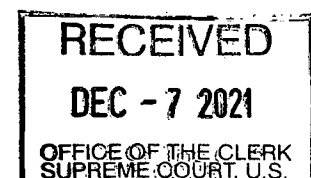
PETITION FOR WRIT OF CERTIORARI

Daniel Jones
(Your Name)

9005 River Road, P.O. Box 300
(Address)

Marcy, New York 13403-0300
(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

1. WHETHER THE SECOND CIRCUIT COURT OF APPEALS
DECISION ERR AS A MATTER OF LAW IN DISMISSAL
OF APPEAL PURSUANT TO 25 U.S.C. § 1915(e),
BASED SOLELY ON DENIAL OF MOTION FOR
APPOINTMENT OF COUNSEL

2. WHETHER THE SECOND CIRCUIT COURT OF APPEALS
DECISION CONFLICTS WITH OTHER CIRCUIT COURT
DECISIONS FOR DISMISSAL OF APPEAL BASED
SOLELY ON A MOTION FOR APPOINTMENT OF COUNSEL

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:

ANDREW M. CUOMO, NEW YORK STATE GOVERNOR,

BRIAN S. FISCHER, COMMISSIONER OF DEPARTMENT OF CORRECTIONS AND
COMMUNITY SUPERVISION,

SANDY HAMLIN, ADMINISTRATIVE ASSISTANT,

DONNA HALL, ACTING ASSOCIATE COMMISSIONER, OFFICE OF
MENTAL HEALTH,

COURTNEY BULTER, LICENSED CLINICAL SOCIAL WORKER, OFFICE OF
MENTAL HEALTH,

KATRINA COLISTRA, DOCTOR OF PSYCHOLOGY,

NAOMI HARRINGTON, DIRECTOR, OFFICE OF MENTAL HEALTH,

MELINDA BUCKEY, OFFICE OF MENTAL HEALTH,

ERIC T. SCHNEIDERMAN, NEW YORK STATE ATTORNEY GENERAL,

MULTI-DISCIPLINARY STAFF, OFFICE OF MENTAL HEALTH,

RECORD COORDINATOR, FISHKILL CORRECTIONAL FACILITY, DEPARTMENT
OF CORRECTIONS AND COMMUNITY SUPERVISION

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	5
REASONS FOR GRANTING THE WRIT	11
CONCLUSION.....	22

INDEX TO APPENDICES

APPENDIX A	<u>Jones v. Cuomo, et al., (2d Cir.)</u> June 22, 2021-Unpublished Decision
APPENDIX B	<u>Jones v. Cuomo, et al., (District Court, WDNY)</u> June 12, 2020, -Unpublished Decision
APPENDIX C	<u>Jones v. Cuomo, et al., (2d Cir)</u> September 2, 2020, Unpublished Decision
APPENDIX D	<u>Jones v. Cuomo, et al., (District Court, WDNY)</u> December 9, 2020, Unpublished Decision
APPENDIX E	<u>Jones v. Cuomo, et al., (2d Cir)</u> October 12, 2020, Motion for Assignment of Couse
APPENDIX F	<u>Jones v. Cuomo, et al., (2d Cir)</u> July 22, 2021, Petition for Rehearing & Hearing En Banc
APPENDIX	28 U.S.C. Section 1915
APPENDIX	Federal Rule Appellate Procedure 24
APPENDIX G	<u>Jones v. Cuomo, et al., (2d Cir)</u> October 26, 2021, Unpublished Decision

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Brown v. Collins</u> , 2020 U.S. App. Lexis 16486 (9th Cir. 2020)	9
<u>Coppedge v. United States</u> , 369 U.S. 438 (1962)	12
<u>Cooper v. A. Sargento Co.</u> , 877 F. 2d 170, 174 (2d Cir. 2006)	19
<u>Feliciano v. Selsky</u> , 205 F. 3d 585 (2d Cir 2000)	9
<u>Hodge v. Police Officer</u> , 805 F. 2d 58 (2d Cir. 1986)	15
<u>Jones v. Cuomo, et al.</u> , Unpublished Decision (2d Cir. June, 2021)	8, 13, 16
<u>Jones v. Cuomo, et al.</u> , Unpublished Decision (WDNY June, 2020)	6
<u>Jones v. Cuomo, et al.</u> Unpublished Decision (2d Cir. Sept., 2020)	10
<u>Jones v. Cuomo, et al.</u> , Unpublished Decision (WDNY, Dec. 2020)	8
<u>Jones v. Cuomo, et al.</u> , Unpublished Decision (2d Cir. , Oct 2021)	10
<u>Leonard v. Lacy</u> , 188 F.3d 181 (2d Cir. 1996)...	19
<u>Melendez v. Schneiderman</u> , 2014 WL 215436	7
<u>Mitchell v. Jemenez</u> , 2020 App. Lexis 26573 (9th Cir. 2020)	20, 21
<u>Neitzke v. Williams</u> , 490 U.S. 319, 325 (1989)	8, 16, 17, 18, 20
<u>Wright v. Goord</u> , 2006 U.S. App. Lexis 32729 (2d Cir. 1989)	20

STATUTE AND RULES

28 U.S.C. § 1915 (a)(2)(1)(3)(b).....	11, 12, 13, 17, 18, 20
28 U.S.C. § 1915 (e)	8, 12, 14, 16, 17, 20
42 U.S.C. § 1983	5
Federal Rules of Civil Procedure, Rule 12(b)(6)	17
Federal Rules of Appellate Procedure	
Rule 24(a)(1)(3)	8, 9, 11, 12, 14, 19, 20, 21

STATE STATUTORY PROVISION

New York State, Mental Hygiene Law, Article 10	2, 15
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OTHER

Prisoner Litigation Reform Act of 1995("PLRA") (1996)	8, 13
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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 "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 JUNE 22, 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: September 2, 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

In relevant part, 42 U.S.C. § 1983 provides in part:

Every person who, under 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....

In relevant part, U.S.C. §1915(a)(3):

An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith

In relevant part, U.S.C. § 1915(e)(1);(2)(A)(B)(i)(ii)(iii)

The court may request an attorney to represent any person unable to afford counsel

U.S.C. § 1915(2)(A)(B)(i)(ii)(iii)

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determined that

(A) the allegation of poverty is untrue; or
(B) the action or appeal

(i) is frivolous or malicious
(ii) fails to state a claim on which relief may be granted; or
(iii) seeks monetary relief against a defendant who is immune from such relief

In relevant part, Federal Rules of Appellate Procedure , Rule 24
Rule 23 - Proceeding in Forma Pauperis

(a) Leave to Proceed in Forma Pauperis

(1) Motion in the District court. Except as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court

(3) Prior Approval. A party who was permitted to proceed

in forma pauperis in the district-court action or who was determined to be financially unable an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court- before or after the notice of appeal is filed- certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and state in writing its reason for the certification or finding; or

(B) a statute provides otherwise

(4) Notice of District court's Denial. The district clerk must immediately notify the parties and the court of appeals when the district court does any of the following:

(A) denies a motion to proceed on appeal in forma pauperis

(B) certifies that the appeal is not taken in good faith; or

(C) find that the party is not otherwise entitled to proceed in forma pauperis.

STATEMENT OF THE CASE

Petitioner, Jones, was convicted after a jury trial of sexual abuse, and attempted rape and was sentenced to ten to twenty years. Petitioner throughout his imprisonment has maintained his innocence, even declining sex offender treatment because it was conditioned participation in the program upon his admitting responsibility for his criminal offense. Days before his scheduled release from prison on March 9, 2012, the New York State Attorney General petitioned the court for Jones's civil confinement under Article 10 of New York's Mental Hygiene Law ("MHL"). Jones has since been confined pursuant to that Petition.

At the time the State filed the Petition for civil confinement, Jones was still challenging his conviction in the state and federal courts. In 2016, after Jones's appeals were denied in state and federal court, he commenced a civil complaint pursuant to 28 U.S.C. § 1983, challenging the constitutionality of New York State Civil Management Statute respecting various aspects of the commitment proceeding and his subsequent confinement. Leave to proceed in forma pauperis was granted by the district court. Claims against the N.Y.S. Attorney General and its assistant were dismissed and the district court directed that the Court Clerk to cause the United States Marshall to serve the remaining defendants.

The Defendants moved to dismiss the Complaint on several grounds, including that the claims were time barred. Arguing that Jones's civil rights claims accrued when he knew or reasonably should have known of the injury in March of 2012 after the completion of his

2.

criminal sentence. Under the three year statute of limitations, they concluded that these claims were barred as of 2015. It was also their position that Jones suffered no continuing consequences so as to extend the accrual of the statute of limitations. That the other claims raised by Jones, including retaliation for not participating in sex offender management in prison was likewise time barred.

In opposition to Defendants' motion to dismiss, Jones argued that his claims were not barred by the doctrines cited by the defense. Submitted that the claims proffered were timely because Defendants were engaging in an ongoing continuous violation. Invoking equitable tolling or equitable estoppel of the statute of limitations.

The district court after much litigation from the parties in 2017, did not make a ruling on Defendant's motion to dismiss until June 15, 2020. The district court granted Defendant's motion to dismiss on the grounds that Jones's claims were time-barred. (Appendix "B"). Jones timely filed a notice of appeal of the district court's decision.

After filing the notice of appeal on July 9, 2020, Jones heard nothing further concerning his appeal until he received a Notice of Appearance from Defendants' counsel. Based there on he addressed several letters to the Court of Appeals concerning the status of his appeal. In response thereto, the Clerk for the Court of Appeals on September 8, 2020 informed him that his appeal was in default. Upon receiving the necessary forms to commence his appeal in the Court of Appeals, he completed them and returned them to the Court. By letters dated October 4th and 11th of 2020, Jones advised the court clerk as he was not an incarcerated prisoner and the Prisoner

7

Authorization Form was not necessary as the district court did not revoke his IFP status. To protect his right to appeal, Jones provided the clerk the signed form. ()

Jones prior to filing briefs on his appeal, submitted a motion on October 12, 2020 for assignment of pro bono counsel with supporting affirmation to represent him on appeal. Several factors were presented in his request, indigent, inability to obtain or retain counsel in the complexity of the appeal. Also that because of COVID-19 virus

the facility's law library had been closed and there was no date set for its re-opening, thus hindering his ability to litigate his appeal. Appendix "E"

Proffered in the affirmation for appointment of counsel, aside from the complexity of the litigation, required an attorney's expertise in the area of the statute of limitation. On that question to be raised centered around the tolling of the statute of limitation. It was Jones's position that it did not commence until November of 2016 after his state and federal appeals had been exhausted. Also that Melendez v. Schneiderman, 2014 WL 215436 that the district court relied upon in its decision was not applicable in his particular case at bar. Moreover the district court did not distinguish between a continuing consequences that he raised. Jones did not provided the issues that he would present also on appeal.

A motion was submitted to the district court regarding Jones's status as a prisoner and restoration of fees taken from his institutional account for filing fees in the Court of Appeals. The district court by Order dated December 9, 2020 (USDC, Dkt. No. 45),

deemed the matter moot or beyond the court's jurisdiction. Holding that the "Court did not determine that ^{this} the appeal was not taken in good faith or found that Plaintiff was otherwise not entitled to in forma pauperis status" Also that the prior approval and pursuant to Federal Rules of Appellate Procedure 24(a)(3), Plaintiff may proceed on appeal in forma pauperis without further authorization.

(Appendix "D").

Based on the district court's determination, Jones submitted a motion in the Court of Appeals seeking the restoration of fees extracted from his patient institutional account on January 25, 2021. In the attached affirmation explained that Plaintiff was not a prisoner as defined under PLRA, 28 USC § 1915(b). He was civilly confined under NYS Article 10 of MHL and the lower court did not determine that his appeal was not taken in good faith. Relief requested to issue an Order directing CNYPC desist in extracting funds from his institutional account and restoration of fees already taken.

On June 22, 2021, the Court of Appeals granted Jones's motion for restoration of fees deducted from his patient account and directed the Clerk of the Court to refund those fees and to cease further collections. (Appendix "A").

The Court of appeals also issued an Order dated June 22, 2021 that denied the motion for appoint of counsel, and dismissed the appeal because it 'lacked an arguable basis in law or in fact', citing Neitzke v. Williams, 490 US 319, 325 (1989); see 28 USC § 1915(e). (Appendix "A")

In response thereto, Jones sought and was granted an extension to file a petition for rehearing and/or hearing en banc. The motion

court had determined that the appeal was taken in good faith.

The Court of Appeal by Order dated September 2, 2021, denied Jones's motion for reconsideration and reconsideration en banc. (Appendix "C").

On October 26, 2021, the Court of Appeals Panel in Jones v. Cuomo, Sullivan, et al., Case No. 20-3496, denied Petitioner's motion to reinstate his appeal after the issuance of a mandate for failure to submit a Prisoner Authorization Form, as he did not present exceptional circumstances warranting the recall. The appeal was dismissed because it "lacks an arguable basis in law or fact" Neitzke v. Williams, 490 U.S. 319, 325 (1989); 28 U.S.C. § 1915(e)(2). Appendix "G"

The case before this Court, has similar facts and circumstances Petitioner is seeking certiorari review upon. In the aforementioned case Sullivan, Petitioner was granted IFP and the district court did not certify that the appeal would not be taken in good faith. Moreover, Petitioner's appeal was dismissed before he filed briefs of the issues to be raised. Also as he explained to the Circuit Court, he never received notice of failure to submit a Prisoner Authorization Form his appeal would be dismissed. The case before this Court; the lower court determined that because Petitioner was not a prisoner he was not required to submit the form. Yet, in the case of Sullivan, he was required to do so, which resulted in the dismissal of the appeal. A motion for reconsideration was rejected as the case was closed.

REASONS FOR GRANTING THE PETITION

1. THE SECOND CIRCUIT COURT OF APPEALS DECISION
ERRED AS A MATTER OF LAW IN DISMISSAL OF APPEAL
PURSUANT TO 28 U.S.C. § 1915(e), BASED SOLELY
ON DENIAL OF MOTION FOR APPOINTMENT OF COUNSEL

A. Statutory Scheme

Federal Rules of Appellate Procedure Rule 24(a)(3)

(a) Leave to Proceed in Forma Pauperis

(3) Prior Approval. A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court before or after the notice of appeal is filed-certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(B) a statute provided otherwise.

28 United States Code § 1915(a)(3)

(a)(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

When a party has been granted pauper status on appeal to proceed in the district court, he is entitled to appeal in forma pauperis without further authorization by the district court or court of appeals. However, the district court can strip a party of pauperis status by certifying that the appeal is not taken in good faith or by finding that the party is otherwise

not entitled to proceed. Fed. R. App. P. 24(a).

B. Petitioner Was Denied His Right To Proceed On Appeal Pursuant to Fed. R. App. P. Rule 24(a)(3) and 28 U.S.C. § 1915(a)(3).

The Court of Appeals erred as a matter of law, when Petitioner was denied his right to proceed on appeal pursuant to Fed. R. App. P. Rule 24(a)(3). The district court held that:

This Court granted Plaintiff leave to proceed in forma pauperis []. In dismissing this case this Court did not determine that this appeal was not taken in good faith or found that Plaintiff was not entitled to in forma pauperis status. With prior approval and pursuant to Federal Rule of Appellate Procedure 24(a)(3), Plaintiff may proceed on appeal in in forma pauperis without further authorization. Appendix "D"

Where as here, Petitioner was permitted to proceed in forma pauperis on appeal, as the district court, neither before or after the notice of appeal was filed certified that the appeal was not taken in good faith.

When an appeal is taken in good faith is an objective standard and "good faith" is demonstrated when an appellant seeks review of a non-frivolous issue. The district court in not certifying Petitioner's appeal would not be taken in "good faith" means that the issues he might proffer on appeal were not frivolous. Coppedge v. United States, 82 S. Ct. 917 (1962).

A presumption is given that the district court, the trier of fact, is presumed to be able to distinguish whether an appeal would be frivolous, and without merit, and a futile proceeding. Here, in the case at bar, the district court did not find that Petitioner's appeal was frivolous. Thus, it was err to dismiss

to proceed on appeal, in forma pauperis, as the district court did not certify that the appeal would be taken in bad faith. Based thereon, in accordance with Fed. R. App. P. 24(a)(4), Petitioner was not required to submit an application to proceed in forma pauperis on appeal or a motion and supporting affidavit stating the basis for the appeal. Petitioner never submitted an affidavit pursuant to Fed. R. App. P. 24(a)(4), hence he was denied his right to submit a brief showing the merits of the issues he would have raised on appeal. Based on the aforesaid The Court of Appeals denied Petitioner his right to appeal the district court's dismissal of his civil complaint.

C. Based Solely On Denial Of Motion For Appointment Of Counsel Does Not Warrant Dismissal Of Appeal.

The Court of Appeals determined that dismissal of Petitioner's appeal was warranted pursuant to 28 U.S.C. § 1915(e), based solely on his motion for appointment of counsel. Petitioner prior to submitting his appeal brief, filed a potentially dispositive motion for appointment of counsel.

Pursuant to 28 U.S.C. § 1915(e)(1), Petitioner requested pro bono counsel to represent him on his appeal. The basis for assignment of appointed counsel was that he was indigent and unable to afford or retain counsel to represent him in his complex litigation. He was civilly confined, and had limited access to the facility law library because of the COVID-19 virus. The law library at the facility had been closed and there was no time

5.
set when it would be re-opened. Hence his ability to research issues to raise on appeal was limited.

Further, Petitioner submitted the litigation was quite complex and would require expertise in the area of statute of limitation. In addition to the statute of limitation issue, also due process rights were violated and the First Amendment. Petitioner explained that defendants were acting on an ongoing policy and/or practice with automatic detention, no review process in order to coerce a plea agreement for detainees who would agree to being adjudicated with a mental abnormality to avoid being detained for years. Other issues, the unconstitutional practice of violating Petitioner's First Amendment, for refusing to forego his right of maintaining his innocence, resulting in de facto compulsion as he was still challenging in court the instant criminal conviction that formed the basis for the commencement of the Article 10 of Mental Hygiene Law proceeding. Thus Petitioner provided to the Court of Appeals a brief synopsis of the issues to be raised in the event that counsel was appointed to perfect his appeal. The issues presented were not designed to show the merits of the issues as they would be briefed on appeal. Appendix "E".

For appointment of Counsel the leading case in the Second Circuit Court of Appeals is Hodge v. Police Officer, 805 F.2d 58 (1986). Appointment of counsel is not required unless the case presents "exceptional circumstances". The existence of such circumstances will turn on, the type and complexity of the case, and the ability of the individual bringing it. Factors considered in the

in ruling on a request for appointed counsel:

- (1) type and complexity of the case
- (2) whether the indigent is capable of adequately presenting his case
- (3) whether indigent is in a position to investigate adequately the case, and
- (4) showing some likelihood of merit

The Court of Appeals prior to Petitioner submitting any issues of law or facts, dismissed his appeal because it "lacks an arguable basis either in law or fact". Citing Neitzke v. Williams, 490 U.S. 319, 325; 28 U.S.C. § 1915(e). Appendix "A"

It was the Court of Appeals determination before the issues raised in Petitioner's motion for appointment of counsel, was frivolous, even though the district court had determined that the appeal involved legal points arguable on their merits and the appeal could be taken in good faith. The Court of Appeals decision does not comport with the holding in Neitzke v. Williams, (supra) in dismissing Petitioner's appeal as frivolous. The Neitzke Court reviewed on certiorari a Court of Appeals denial to appeal as frivolous within the meaning of 28 U.S.C. § 1915(e). The question was whether a pro se plaintiff was being denied meaningful access to the federal court. The Court reviewed to determine whether a pro se plaintiff was denied the practical protections against unwarranted dismissal that is generally accorded paying plaintiff. Petitioner submits his case fall on similar grounds.

The frivolousness standard set by this Court, authorized sua sponte dismissal of an in forma pauperis complaint, "only if petitioner cannot make any rational argument in law or fact

7
which would entitle him or her to relief" Thus, unless there is "indisputably absent any factual or legal basis" the appeal should be dismissed. When a complaint raises an arguable question of law which the district court ultimately finds is correctly resolved against the plaintiff, dismissal on Rule 12(h)(6) grounds is appropriate but dismissal on the basis of frivolousness is not that. Neitzke v. Williams, at 490 U.S. 328. Here, in Petitioner's case, he was not even afforded the opportunity to brief factual or legal basis for the issues to be raised on appeal. Moreover, unlike Petitioner, the plaintiff in Neitzke, the district court dismissed the complaint sua sponte and plaintiff moved for leave to proceed in forma pauperis. Petitioner's IFP status had not been revoked and his appeal was permitted to proceed on appeal in good faith.

2. THE SECOND CIRCUIT COURT OF APPEALS DECISION
CONFLICTS WITH OTHER CIRCUIT COURTS DECISION
FOR DISMISSAL OF APPEAL BASED SOLELY ON A
MOTION FOR APPOINTMENT OF COUNSEL

The Court of Appeals Second Circuit erred as a matter of law as its decision conflicts with the United States Supreme Court and other Circuit Court for dismissal of an appeal solely on a Motion For Appointment Of Counsel.

As aforementioned, and the record supports that Petitioner did not make an application for leave to appeal in accordance with 28 U.S.C. § 1915(a)(1-3); Fed. R. App. P. Rule 24(a)(4).

He did not provide a motion or affidavit stating the issues he intends to present on appeal. The purpose, to provide an opportunity to submit a statement of the grounds for appealing so the court can make a reasonable assessment of the issue of good faith. A determination of "good faith" by the Court is required as the district court certified that an appeal is not taken in good faith. In the case at bar, the lower court did not certify that Petitioner 's appeal would not be taken in "good faith".

Appendix "D". The Court Clerk Docket Sheet notes that Petitioner was granted IFP status and reflects at Dkt. No. 21, his motion was for assignment of pro bono counsel. See, also Appendix "E" (assignment of counsel for appeal). Based on these facts the Court of Appeals stated that:

Appellant, pro se, moves for leave to proceed in forma pauperis ("IFP") and appointment of counsel. Upon due consideration, it is hereby ORDERED that the IFP motion is DENIED as unnecessary because the district court did not revoke Appellant's IFP status. See, Fed. R. App. P. 24(a)(3).
Appendix "A"

This Court and the Circuit Court are in agreement that an application for leave to proceed in forma pauperis is required when the district court certifies that an appeal is not taken in good faith. The leading case in the U.S. Supreme Court, Neitzke v. Williams, (supra), where the plaintiff moved for leave to proceed in forma pauperis. Circuit Courts has followed this Court's direction in denying leave applications to proceed on appeal when the lower court does not certify the appeal would be taken in good Faith.

Appellant in Wright v. Goord, 2006 U.S. App. Lexis 32789 (2d Cir. 2006) moved for leave to proceed in forma pauperis and appointment of counsel. The Circuit Court held that appellant was already granted in forma pauperis by the district court, yet dismissed certain claims that lacked arguable basis in fact or law. Citing Neitzke v. Williams; 28 U.S.C. § 1915(e). In this particular case, appellant did file a motion for leave to proceed in forma pauperis, thereby submitting sufficient substance by identifying various claims for his appeal. Of which the court rejected some and permitted other to proceed on appeal. Again Petitioner was not afforded the opportunity to provide sufficient substance of identifying with reasonable particularity the claimed errors for his appeal.

More importantly, Petitioner submits that the Second Circuit has continued to move the goal post for pro se appellant who have been granted in forma pauperis status and the district court has not certified that the appeal would not be taken in good faith. This position is contrary to the legislative intent of Fed. R. App. P. Rule 24. and 28 U.S.C. § 1915(a)(3).

The Ninth Circuit Court of Appeal contains numerous cases that are on point with the identical facts in Petitioner's case. This is especially true for their case law in the years 2019 and 2020. One in particular, but all follow the same language as in Mitchell v. Jimenez, 2020 U.S. App. Lexis 26573 (9th Cir. 2020). The language of Mitchell v. Jimenez states:

A review of the district court docket sheet reflects that the district court granted appellant leave to proceed in forma pauperis and that such permission has not been revoked. Accordingly, appellant's in forma pauperis status continues in this Court. See. Fed. R. App. P. 24(a)(3).

Appellant's motion to proceed in forma pauperis on appeal is therefore denied as unnecessary. Appellant's motion for appointment of counsel is denied.

Unlike the Second Circuit, the Ninth Circuit recognized that regardless of whether a party is proceeding in forma pauperis, Fed. R. App. P. 24(a)(3) superseded the leave application for in forma pauperis status. Based thereon, did not dismiss the appeal based on the motion to proceed in forma pauperis or denial of appointment of counsel.

While appellants the Ninth Circuit did seek leave to proceed in forma pauperis in the appellate court, they were permitted to continue their appeal in accordance with Fed. R. App. P. 24(a)(3). In Petitioner's case, he did not even seek leave to proceed in forma pauperis and the Second Circuit denied his appeal.

Based on the aforesaid, Petitioner respectfully request that this Court review this matter and bring clarity with respects to Fed. R. App. P. Rule 24(a)(3) and whether the request for appointed counsel negates appellant's right to proceed on appeal when IFP has not been rescinded and the district court has not certifieid that an appeal would not be taken in "good faith".

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Daniel Jones

Date: December 27, 2021