

APR 06 2022

OFFICE OF THE CLERK

No. 21-7837IN THE
SUPREME COURT OF THE UNITED STATES

OMAR S. FOLK

Petitioner,

v.

Bop, Employees and Medical Staff, et al.,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

OMAR S. FOLK PRO-SE
FCI Allenwood Medium
P.O. Box. 2000
White Deer, PA. 17887

ORIGINAL

QUESTION PRESENTED

1. Whether the Pending Supreme Court Case Egbert v. Boule, Case No. 21-147(Cert. Granted Nov. 5, 2021) Should be Held In Abeyance until outcome of Supreme Court decision?
2. Whether the Third Circuit Erred Affirming District Court Dismissal For Failure To Filew"COM" When other Circuit Court's Are Split To Not Dismiss FTCA?
3. Whether the Third Circuit Abuse Their Discretion By Affirming Appointment of Counsel To Cure Rule 8 Violation?

PARTIES TO PROCEEDING

The parties to the proceeding in the court whose judgment is sought to be reviewed are as follow:

1. FBOP, et al, United States
2. Omar S. Folk

RELATED CASES

Egbert v. Boule, Case No. 21-147 (Cert. Granted Nov. 5, 2021)

TABLE OF CONTENTS

| | |
|--|------|
| QUESTION PRESENTED..... | i, 4 |
| PARTIES TO PROCEEDING..... | ii |
| RELATED CASES..... | ii |
| TABLE OF CONTENT..... | iii |
| INDEX OF APPENDICES..... | iv |
| TABLE OF AUTHORITIES..... | v |
| DECISION BELOW..... | 1 |
| JURISDICTION..... | 1 |
| RELEVANT STATUTORY PROVISIONS..... | 2 |
| STATEMENT OF THE CASE..... | 3 |
| A. Background..... | 3 |
| B. Appeal..... | 3 |
| C. Post-Appeal..... | 3 |
| REASONS FOR GRANTING THE WRIT | 4 |
| 1, IN LIGHT OF THIS PENDING COURT'S CERTIORARI GRANT IN EGBERT V. BOULE, Case No. 21-147(Nov. 5, 2021) SHOULD BE HELD INABEYANCE UNTIL SUPREME COURT DECISION..... | 4 |
| 2. CERTIORARI IS WARRANTED BECAUSE IT'S A SPLIT IN OTHER CIRCUITS UNDER FAILURE TO FILE "COM" CANNOT DISMISS FTCA.4 | 4 |
| 3. THIS COURT SHOULD GRANT CERTIORARI BECAUSE THE THIRD CIRCUITS REASONING AFFIRMING APPOINT OF COUNSEL WAS ABUSE OF DISCRETION?..... | 6 |
| CONCLUSION..... | 7 |

INDEX OF APPENDIXES

| | |
|---|----------------------------|
| Judgment and Opinion, United States Court of Appeals For the Third Circuit, Folk v. BOP et al., No. 21-1543 (3d Cir. August 11, 2021..... | Petitioner Appendix A.8-12 |
| SUR Petition For Panel Rehearing United States Court of Appeals for the Third Circuit, Folk v. BOP et al., No. 21-1543 (3d Cir. November 26, 2021..... | Petitioner Appendix B.13 |
| Exhibit C..... | 14 |
| Exhibit D..... | 19 |
| Exhibit E..... | 23 |

TABLE OF AUTHORITIES

Cases

| | |
|---|------------------|
| Egbert v. Boule, Case No. 21-147 Cert. granted 11/5/21..... | i, ii, iii, 3, 4 |
| Folk v. Bureau of Prison, 2021 U.S. App. Lexis 23798 No. 21-1543 3d Cir. Aug. 11, 2021)... | iv, 5 |
| Fulton v. City of Philadelphia, 141 S.Ct. 1868; 240 L.Ed. 2d 137; 2021 U.S Lexis 3121 No. 19-123 June 17, 2021).... | 6 |
| Pledger v. Lynch, Case No. 18-2213, 2021 U.S App. Lexis 21587(4th Cir. July 21, 2021. 5 | |
| Gallivan v. US, 943 F.3d 291,294(6th Cir. 2019)..... | 5 |
| Young v. US, 942 F.3d 349, 351(7th Cir. 2019)..... | 5 |
| All Plaintiffs v. All Defendants, 645 F.3d 329, 337(5th Cir. 2011). 5 | |
| Shields v. US, 436 F. Supp. 3d 540, 543-44)(D. Conn. 2020).... | 5 |
| Shady Grove Orthopedic Associates P.A. v. All State Insurance Co., 559 U.S. 393, 130 S.Ct. 1431, 176 L.Ed 2d 311(2010)..... | 5 |
| Bilinski v. Wills Eye Hosp., 2019 U.S. App. Lexis 1046; <u>Fed. Appx. No. 16-4298 3d Cir. 1/11/19.</u> 6 | 6 |
| In Pioneer INV. Servs. Co. v. Brunswick Assocs, Ltd. Partnership, 507 U.S. 380. 395(1993)..... | 5 |
| Haines v. Kerner, 404 U.S. 519(1972)..... | 7 |
| Corley v. US, 2021 U.S. App. Lexis 25504 2d Cir. 8/25/21)..... | 6 |
| Haines v. Kerner, 404 U.S. 519(1972)..... | 7 |
| Carlson v. Green, 100 S.Ct. 1468(4-22-81)..... | 5 |
| Constitutional Provisions | |
| U.S. Const. Amend. I,V,VI and VIII | 2,4 |

Statutes and Rules

| | |
|--------------------------|-----|
| 18 U.S.C. § 3231..... | 1, |
| 28 U.S.C. § 1291..... | 1, |
| 18 U.S.C. § 3742(a)..... | 1, |
| 28 U.S.C. § 1254(1)..... | 1, |
| Rule 8..... | 6,7 |
| Rule 26..... | 6 |

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES
JUNE TERM, 2022

OMAR S. FOLK

Petitioner,

v.

BOP, Employees and Medical Staff, et al
Respondent.

PETITION FOR A WRIT OF CERTIORARI

Petitioner Omar S. Folk respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

DECISION BELOW

The United States Court of Appeals for the Third Circuit affirmed Petitioner's District Court dismissing his claims and ruling on several motions with Non Precedential Opinion issued on August 11, 2021. Petitioner's Appendix ("Pet. Appx. A"). Rehearing Denied ("Pet. Appx. B") On 11-26-21.

JURISDICTION

The United States District Court For the Middle District of Pennsylvania (MD. PA. No. 3:cv-18-2252) exercised jurisdiction over the federal criminal case pursuant to 18 U.S.C. § 3231. The Third Circuit of Appeals (No. 21-1543) had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). The United States Court of Appeals for the Third Circuit entered judgment on Aug. 11, 2021 Pet. Appx. A. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). This

petition is timely filed within 135 days of the entry of judgment, as extended by the Court on Nov. 26, 2021(Pet. Appx. B), under Rehearing Denied, making the the petition due on or before April 10, 2022.

RELEVANT STATUTORY PROVISIONS

The Sixth Amendment to the Constitution of the United States provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. CONST. AMEND. VI.

If a Plaintiff overcomes this threshold hurdle, other factors to be examined are:

- (1) the plaintiff's ability to present his or her own case;
- (2) the difficulty of the particular legal issues;
- (3) the degree to which factual investigation will be necessary and the ability of the plaintiff to pursue investigation;
- (4) the plaintiff's capacity to retain counsel on his or her own behalf;
- (5) the extent to which the case is likely to turn on credibility determinations; and
- (6) whether the case will require testimony from expert witness.

STATEMENT OF THE CASE

A. Background

On or about Nov. 23, 2018, Folk initiated an action in the District Court. District Court filed order Mar. 10, 2021 dismissing Folk claims and ruling on several motions. MD PA Doc. 155-156, 163-164, 165-166 and 82-83.

B. Appeal

On August 11, 2021, a panel of the United States Court of Appeals for the Third Circuit(Restrepo,Matey and Scirica,JJ.), issued a non-precedential opinioning affirming District Court Judgment.Pet. Appx. A.

C. Post-Appeal

After the Third Circuit issued its decision, this court issued Cert. grant in light of Egbert v. Boule, Case No. 21-147 Nov. 5, 2021).

REASONS FOR GRANTING THE WRIT

I. IN LIGHT OF THIS PENDING COURT'S CERTIORARI GRANT IN EGBERT V. BOULE, CASE NO. 21-147 (NOV. 5, 2021) SHOULD BE HELD IN ABEYANCE UNTIL SUPREME COURT DECISION.

This Court grant cert. in Egbert v. Boule, Case No. 21-147 (Nov. 5, 2021).

QUESTION PRESENT:

Whether a Bivens Remedy Should Be Available For A Federal Agent's Violation of A Person's 1st Amendment and Fourth Amendment Right's.

Now Petitioner has a Status Quo pending in lower Court level MD PA Doc. 189-190. Petitioner will further direct the court to MD PA Doc. 101 para. 142-147, 149-150, 153, 159, 163, 168, 171, 173, 174, 177, 185, 188, 190, 195, 197 and 198.

These event's stem from exhaust BP-11#947874-A1 on PA-C Gosa (Def. 30) and United States (Def. 32) for the Hinge-Knee-Brace being to big in size. Which led to these events of constitution violations under 1st Amendment, 4th Amendment, 5th Amendment, 8th Amendment violations for permanent damage and FTCA claims. (MD PA Doc. 66, 169 and 174).

For this reason, Mr. Folk respectfully requests that this court grant Mr. Folk's petition for certiorari to be held in abeyance until Supreme Court decision in Egbert v. Boule, Case No. 21-147 (Cert. Granted Nov. 5, 2021).

II. CERTIORARI IS WARRANTED BECAUSE IT'S SPLIT IN OTHER CIRCUIT COURT'S THAT FAILURE TO FILE "COM" DOES NOT MEET FTCA DISMISSAL.

The Third Circuit found that Folk did not file a certificate

of Merit ("COM") or claim that a com was unnecessary as required by Pennsylvania Rule of civil Procedure 1042.3, despite receiving ample notice about the requirement in Dr. Ball's motion to dismiss. See (Folk v. Bureau of Prison, 2021 U.S. App. Lexis 23798 No. 21-1543 3d Cir. Aug. 11, 2021), at 3. See (In Pioneer In v. Servs. Cov. Brunswick Assocs, Ltd. Partnership, 507 U.S. 380, 395(1993), the Supreme Court outlined a series of factors for courts to consider when conducting an excusable neglect analysis. Petitioner will direct the court to the record upon retaliation in mailroom as Folk did not receive MD PA Doc. 110-111 until on 7-31-20. See (Exhibit C), at 2-6. Petitioner file his timely response on 8-5-20 MD PA Doc. 130. See (Exhibit D). Petitioner have a pending MD PA Doc. 182-183 pointing to these claims and unaddress "COM" MD PA. Doc. 66 before ruling on MD PA. Doc. 82-83, MD PA. Doc. 163-164, MD PA. Doc. 165-166 and MD PA. Doc. 169.

Furthermore upon the record MD PA. Doc. 130 at 31-34. The Petitioner will direct the court to Dr. Ball Ortho (Def. 19) and United States (Def. 32) is liable to the claims. MD PA. Doc. 101 para. 85,92,201 and 206. See (Carlson v. Green, 100 S.Ct. 1468(4-22-81).

Therefore Petitioner will enlighten the court on the split in Circuit's pertaining to the failure to file "COM" is not grounds for dismissal of FTCA claims. See (Pledger v. Lynch, Case No. 18-2213, 2021 U.S. App. Lexis 21587(4th Cir. July 21, 2021); See (Gallivan v. US, 943 F.3d 291, 294(6th Cir. 2019); See (Young v. US, 942 F.3d 349, 351(7th Cir. 2019); See (All Plaintiffs v. All Defendants, 645 F.3d 329, 337(5th Cir. 2011); See (Shields v. US, 436 F. Supp. 3d 540, 543-44)(D. Conn. 2020); See (Shady Grove Orthopedic Associates P.A. v. Allstate Insurance co., 559 U.S. 393, 130 S.Ct. 1431, 176 L.Ed.

2d 311 (2010)(Supreme Court decided "COM" is not warranted to plead action in Federal Court); See(Bilinski v. Wills Eye Hosp., 2019 U.S. App. Lexis 1046; Fed Appx. No. 16-4298 3d Cir. 1/11/19)(Failure to File COM); See(Corley v. US, 2021 U.S. App. Lexis 25504 2d Cir. Aug. 25, 2021). Pet. Appx. A3.

The panel's decision is improper when a split in other circuit court's address "COM" is not warranted and cannot meet a dismissal of FTCA. Dr. Ball attorney filed Rule 26 Initial Disclosure. See(Exhibit E).

III THIS COURT SHOULD GRANT CERTIORARI BECAUSE
THE THIRD CIRCUITS REASONING AFFIRMING
APPOINT OF COUNSEL WAS ABUSE OF DISCRETION

The Third Circuit found District Court did not abuse his discretion for denying Appointment of Counsel. Pet. Appx. A4.

Now Petitioner will direct the court to lower court(MD PA Doc. 155-156), that point to Petitioner (MD PA Doc. 86-87). These documents are to be directed at Covid-19 modified operations. That has been clearly mind blowing when Folk cannot receive access to the court or just plain denied the right flat out. See(Fulton v. City of Philadelphia, 141 S.Ct. 1868; 240 L.Ed 2d 137; 2021 U.S. Lexis 3121 No. 19-12 June 17, 2021). **Petitioner directed lower court's** to this very finding and on top of that Folk requested extension of time twice to prepare MD PA. Doc. 101. Petitioner was force to file a handwritten Second Amended Complaint that follow in a Rule 8 violation. See(MD PA. Doc. 87).

Petitioner directed the lower court to follow into MD PA. Doc. 30 with 16 defendant's already serve summons and the complaint total

39 defendant's. See(MD PA 82-83). This position willcure MD PA Doc. 101 at para. 92-213 that if type like the other MD Doc.'s 1,7,30 Petitioner Second Amended Complaint would have survive Rule 8 violation. When the facts of 247 pages would amount to at most 70 pages type written. See(Haines v. Kerner, 404 U.S. 519(1972). See(MD PA. Doc. 182-183).

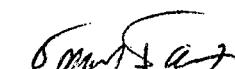
Therefore the Court should grant Appointment of Counsel MD PA. Doc. 86-87. As rule 8 or 20 violation cannot stand in MD PA. 82-83 and Doc. 165-166. Moreover, review by this Court is necessary because of the critical importance of Sixth Amendment. Petitioner therefore respectfully requests that the Court grant certiorari in this matter.

CONCLUSION

Based on the foregoing, Petitioner Omar s. Folk respectfully requests this Court to issue a writ of certiorari to the United States Court of Appeals for the Third Circuit.

Date: April 6, 2022

Respectfully Submitted,



Omar S. Folk#70338-067
FCI Allenwood Medium
P.O. Box. 2000
White Deer, PA. 17887