

21-7887

No. 21-3110

Rodd vs. Standard et al

FILED
MAY 10 2022
OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

JEFFREY C. RODD — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA

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

PETITION FOR WRIT OF CERTIORARI

JEFFREY C. RODD
(Your Name)

2638 Grove Lane
(Address)

Mound MN 55364-8128
(City, State, Zip Code)

763-301-9395
(Phone Number)

QUESTION(S) PRESENTED

(1) Could Mr. Rodd have been excused or allowed to file administrative remedies at a later date or been excused altogether because of his physical incapacitation at the time his remedies were due to be filed.

LIST OF PARTIES

- (1) Andrew Tweeten 300 South Fourth Street, Minneapolis, MN 55415
- (2) Ashley Peterson FPC Duluth
- (3) Kraig Crandall FPC Duluth
- (4) Dr. Benjamin Rice FPC Duluth
- (5) Christopher Nickrenz FPC Duluth

All parties do not appear in the caption therefore are listed above.

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STATUES:

(1) 42 USC 1997e(a)	
(2) 28 CFR 542.14(b)	

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 _____ to the petition and is

[] reported at unknown ; 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[] is unpublished.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 A to the petition and is

[] reported at Unknown ; 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[] is unpublished.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 B 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[] is unpublished.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[] is unpublished.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 February 14, 2022.

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: _____, 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. § 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

- (1) Eighth Amendment of U.S. Constitution
- (2) 42 USC 1997e(a)
- (3) 28 CFR 542.14(b)

STATEMENT OF THE CASE

On November 5, 2014, Mr. Rodd attended a class in the education building while being housed at Federal Prison Camp in Minnesota. As Mr. Rodd was being pushed in his wheelchair by the instructor down a loading ramp, the wheelchair struck a pothole and Rodd was flung from the chair. Rodd suffered numerous injuries including arm and knee abrasions, a twisted left foot, and his tooth got knocked lose.

Following the accident, Rodd reported the injuries to Ashley Peterson, a physician assistant at FMC Duluth. Peterson examined Rodd, ordered an xray for Rodd's injured foot, but no xray was ordered for Rodd's knee. Rodd paid daily visits to the medical office, reporting his foot and knee pain. Mr. Rodd also requested physical therapy for his injuries and the requests were denied by Kraig Crandall. Mr. Rodd received minimal medical attention at best. Rodd contends in his original complaint the injuries and lack of treatment ultimately implicate Christopher Nickrenz, the Warden of FPC Duluth, because he oversees and supervises the complete administration of the medical staff, grounds, housing and safety, etc. It is Mr. Rodd's contention that no evaluation of the damage done to him has ever been attempted by the BOP or its medical staff. Mr. Rodd as of this writing is having to seek medical attention to his leg and foot in that he can't even hardl walk.

REASONS FOR GRANTING THE PETITION

Mr. Rodd recognizes that a prisoner is required to exhaust only "available" administrative remedies, 42 USC Sec. 1997(e)(a); *Woodford V. Ngo*, 548 U.S. 81, 102, 126 S.Ct. 2378 (2006), a remedy is not available if essential elements of the procedure for obtaining it are concealed. *Dole V. Chandler*, 438 F.3d at 810; *Bryant V. Rich*, 530 F.3d 1368, 1373 n.6 (11th Cir. 2008). Apparently the FMC Rochester medical staff and Prison staff created a secret supplement to 28 CFR 542.14(b). Mr. Rodd when he finally got where he could see a little bit started filing grievances about his eyes and after defendants failed to respond, Mr. Rodd approached them in person and inquired why they were not responding to his requests. He was told by staff that he had exceeded the time limitations to file any grievance on his claims, this is contrary to 28 CFR 542.14(b)'s plain language. which provides "an extended time period during which time the inmate was physically incapable of preparing a "Request or Appeal" is a "Valid reason for delay" in filing a grievance. 28 CFR 542.14(b); See *McCoy V. Gilbert*, 270 F.3d 503, 510-11 (7th Cir. 2001). In any event, an administrative remedy that would be forfeited for failure to comply with a deadline that in the circumstances could not possibly be complied with would not be "available" within the meaning of 42 USC Sec. 1997e(a) as held in *Days V. Johnson*, 322 F.3d 863, 867-68 (5th Cir. 2003) (per curium) (An unrelated ruling in Days, involving burden of proving exhaustion, was rejected in *Jones V. Bock*, 549 U.S. 199, 216, 127 S. Ct. 910, 166 L.Ed.2d 798 (2007) See e.g. *Dillon V. Rogers*, 596 F.3d 260, 267 (5th Cir. 2010).

It should be noted that Mr. Rodd was completely blind at the time he was required to file his administrative remedies to be timely. Thus,
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Mr. Rodd was led to believe by staff that he had no remedy. It appears that Mr. Rodd's claim is so novel before this Court that certiorari should be granted on this issue in light of *Reed V Ross*, 468 U.S. 1 (1984); and to bring the Circuits into conformity with the Fifth and Seventh Circuits. Mr. Rodd was unable to locate any Supreme Court case law on this issue.

Therefore this appears to be a novel issue that this court needs to address to bring the circuits into conformity in that they are sorely divided on this novel issue.

Therefore Mr. Rodd prays that the Court grant certiorari on this novel issue in the ends of justice.

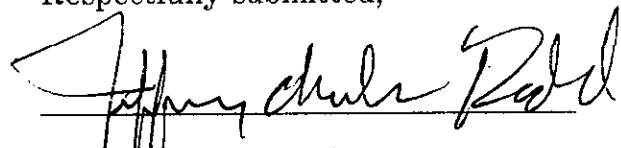
It is Mr. Rodds position that the District Court had original jurisdiction to hear his claims despite his failure to comply with a statutory time limit that did not deprive the court of subject matter jurisdiction on his claims.

Therefore Mr. Rodd respectfully submits that this court has an obligation to bring the couts into confirmity on this issue in that it is a novel novel issue in that there is no case law in the Supreme Court on this important issue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 05/04/2022