

21-8222

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ABDUR-RASHID MUHAMMAD,

Petitioner,

v.

SCOTT FRAKES, et al.,

Respondents.

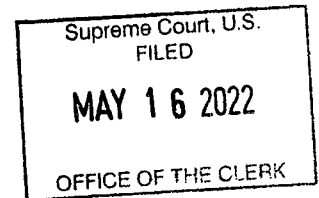
ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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PRO SE PETITIONER

ORIGINAL



QUESTIONS PRESENTED

1. Whether the Fifth Amendment prohibits federal courts from holding pro se litigants to the same stringent standards as attorneys?
2. Whether the Fifth Amendment prohibits federal courts from denying leave to amend when no bad faith, undue delay, prejudice to opposing party, nor futility are shown or demonstrated?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page.
A list of all parties to the proceedings in the courts whose judgments is the
subject of this petition is as follows:

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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 and decision of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The judgment on appeal from the United States Court of Appeals appears at Appendix A to the petition and is unpublished. The opinions and orders of the United States District Court appears at Appendix C to the petition and is unpublished (4:21CV3096/Filing Nos. 13 & 17).

JURISDICTION

The order of the United States Court of Appeals denying timely petition for rehearing en banc was entered on February 18, 2022 (Appendix B). There was no extension of time to file this petition for writ of certiorari and it is timely filed by not later than May 19, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in pertinent part, that: "No person shall ... be deprived of life, liberty, or property, without due process of law;"

STATEMENT OF THE CASE

Petitioner filed a civil rights complaint in the United States District Court ("district court") to redress the deprivation under color of state law

of rights, privileges and immunities secured to Petitioner by provisions of the First and Fourteenth Amendments to the United States Constitution; and Article I, §§ 3, 5, and 13 to the Constitution of the State of Nebraska (id./Filing Nos. 1, 12, & 16). The Nebraska Department of Correctional Services ("NDCS") prison officials intentionally delayed the processing and mailing out of Petitioner's notice of appeal from the denial of his post-conviction relief motion for purposes of missing Petitioner's deadline by its untimely mailing and deprivation of Petitioner's constitutional rights. id. After Petitioner's complaint was dismissed preservice, he timely filed in the district court a motion to alter or amend and for reconsideration pursuant to Fed. R. Civ. P. 59(e) (id./Filing No. 15). Petitioner also requested leave to amend his complaint and attached the proposed complaint to the motion (id./Filing No. 15, at CM/ECF pp.2-3; Filing No. 16). See Proposed complaint attached hereto, marked as Appendix D, and is fully incorporated herein by this reference. However, the district court denied the motion to alter or amend and for leave to amend complaint (id./Filing No. 17) (Appendix C).

On October 27, 2021, Petitioner timely filed a notice of appeal to the United States Court of Appeals for the Eighth Circuit from the dismissal of his complaint and denials of his motion to alter or amend and for leave to amend the complaint (id./Filing No. 18). The Eighth Circuit Court of Appeals affirmed the district court's decision on December 13, 2021, in **Muhammad v. Frakes, et al., No. 21-3679 (8th Cir.2021)**, unpublished (Appendix A), rehearing denied February 18, 2022 (Appendix B). The present petition for writ of certiorari is now before this Court for its consideration.

REASONS FOR GRANTING THE WRIT

I. CERTIORARI SHOULD BE GRANTED TO ADDRESS WHETHER THE FIFTH AMENDMENT PROHIBITS FEDERAL COURTS FROM HOLDING PRO SE LITIGANTS TO THE SAME STRINGENT STANDARDS AS ATTORNEYS.

The manner in which the district court and Eighth Circuit Court of Appeals summarily disposed of Petitioner's civil rights action without reaching its merits, but rather deciding his case on relative pro se pleading skills implicates several constitutional concerns under the Fifth Amendment. First and foremost, because the lower federal courts never reached the merits of Petitioner's constitutional violation claims for relief, this Court should intervene to address whether the due process clause of the Fifth Amendment prohibits federal courts from holding a pro se litigant to the same standard as one who is represented by counsel. This Court has held that "a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." (internal citations and quotation marks omitted). *Estelle v. Gamble*, 429 U.S. 97, 106 (1976).

The Eighth Circuit Court of Appeals has also held that a pro se complaint must be liberally construed, and pro se litigants are held to lesser pleading standard than other parties. *Whitson v. Stone County Jail*, 602 F.3d 920, 923 n.1 (8th Cir.2010). In this case, the district court found, with virtually no legal analysis whatsoever, that:

Although Plaintiff is pro se, he is "bound by and must comply with all local and federal procedural rules." NEGenR 1.3(g).

(4:21CV3096/Filing No. 17, at CM/ECF p.4) (Appendix C, at p.4). Most convicted

prisoners cannot afford to hire a civil rights lawyer to objectively evaluate constitutional violation claims. Consequently, most prisoners must learn legal procedures, case law (and its application to the individual's circumstance), and then must apply what was learned before lapse of the statutes of limitation. The lower federal courts' procedures of holding a pro se litigant to the same stringent standards as an attorney is inconsistent with traditional principles of justice and recognized principles of fundamental fairness, thus violates Petitioner's federal due process rights.

Certiorari should be granted to address whether the lower federal courts' procedures of holding pro se litigants to the same standards as an attorney violates the due process clause of the Fifth Amendment. This Court's discretionary intervention is necessary to address this important issue that will undoubtedly recur in the future.

II. CERTIORARI SHOULD BE GRANTED TO ADDRESS WHETHER THE FIFTH AMENDMENT PROHIBITS FEDERAL COURTS FROM DENYING LEAVE TO AMEND WHEN NO BAD FAITH, UNDUE DELAY, PREJUDICE TO THE OPPOSING PARTY, NOR FUTILITY ARE SHOWN OR DEMONSTRATED.

The Federal Rules of Civil Procedure mandate that federal courts "should freely give leave [to amend] when justice so requires." Rule 15(a)(2). This Rule reflects the "'principle that the purpose of pleading is to facilitate a proper decision on the merits.'" *Foman v. Davis*, 371 U.S. 178, 182 (1962). "If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits." *Ibid*. For that reason, denying leave to amend a potentially viable claim requires a "justifying reason," such as "undue delay, bad faith[,] or dilatory motive on the part of the movant." *Ibid*. Absent such justification, denying leave to amend "is not an exercise of discretion;

it is merely abuse of discretion and inconsistent with the spirit of the Federal Rules." *Ibid.* See also, *Johnson v. Precythe*, 141 S.Ct. 1622 (Mem) (2021) (Sotomayor, J. dissenting).

In this case, Petitioner did not move for leave to amend in bad faith; nor for undue delay; no prejudice to the opposing party in that Respondents had not even been served with any complaint yet; and amendment of the complaint was not futile (*id.*/Filing No. 15). Although Petitioner submitted the proposed amended complaint that is attorney quality pleaded, the district court still denied leave to amend (*id.*/Filing No. 17). See (Appendix D). With virtually little legal analysis whatsoever, the district court found that:

Plaintiff, ignoring the court's local rules, has simply submitted a 17-page Second Amended Complaint without specifically identifying the proposed amendments or explaining how the Second Amended Complaint—in contrast to his two previous pleadings—states a plausible claim for relief against each Defendant. The Second Amended Complaint therefore will be stricken from the court file and the court will not set aside the judgment or undertake an initial review of the Second Amended Complaint under 28 U.S.C. §§ 1915(e)(2) and 1915A.

(4:21CV3096/Filing No. 17, at CM/ECF p.4) (Appendix C, at p.4).

Since Petitioner was seeking to vindicate the denial of his constitutional rights to access the courts, and since the prison was impeding his ability to challenge these conditions of confinement by its denial of access to the courts from numerous closures of the prison's law library, the lower federal courts clearly violated Petitioner's federal due process rights by dismissing his complaint preservice without granting leave to amend.

A prisoner claiming lack of access to the courts must also show that "the lack of a library or the attorney's inadequacies hindered [his] efforts to proceed with a legal claim in a criminal appeal, postconviction matter, or civil rights action seeking to vindicate basic constitutional rights. (alterations and emphasis added).

Lewis v. Casey, 518 U.S. 343, 354 (1996); *Lamp v. State of Iowa*, 122 F.3d 1100,

1105 (8th Cir.1997). In this case, Petitioner's suit was dismissed before the NDCS prison officials were required to answer the complaint, let alone to advance evidence that might help this Court decipher whether NDCS' decision to delay the mailing out of Petitioner's legal mail was appropriate, or an exaggerated response to prison concerns. With virtually little legal analysis whatsoever, the district court found that:

Plaintiff argues that numerous closures of the prison library due to staffing issues prevented him from drafting an Amended Complaint that could pass initial review under 28 U.S.C. §§ 1915(e)(2) and 1915A, but this is a flimsy makeweight excuse.

(4:21CV3096/Filing No. 17, at CM/ECF p.3, ¶12) (Appendix C, at p.3, ¶12).

Notice pleading is designed to "give the defendant fair notice of what the claim is and the grounds upon which it rests." **Erickson v. Pardus**, 551 U.S. 89, 93 (2007) (*per curiam*) (internal quotation marks and ellipsis omitted). It is not meant to be "'a game of skill in which one misstep'" prevents a potentially meritorious claim from being heard. **Foman**, 371 U.S. at 181. Prison walls do not form a barrier separating prison inmates from the protections of the Constitution, including those of the First Amendment. **Sisney v. Kaemingk**, 888 F.3d 692, 697 n.3 (8th Cir.2018). Petitioner's allegations are sufficient to plausibly state claims under 42 U.S.C. § 1983 that the NDCS prison officials violated his First and Fourteenth Amendment rights.

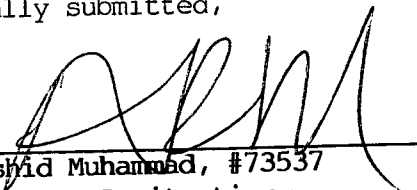
Accordingly, leave to amend should have been granted and the complaint should not have been dismissed preservice. It is contrary to spirit of Federal Rules of Civil Procedure for decisions on merits to be avoided on basis of mere technicalities. **Foman**, 371 U.S. at 181 n.3. The lower federal courts' procedures are clearly contrary to the fundamental principle of fairness and violates the due process clause to the Fifth Amendment to the United

States Constitution. The district court's dismissal of Petitioner's section 1983 complaint without granting him leave to amend and Eighth Circuit Court of Appeals affirmance thereof undermines the integrity of our federal judicial system. A writ of certiorari should issue on this basis.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,



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May 16, 2022