22-5648

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

SHANNON V. CAMPBELL,

Pro Se Petitioner,

vs.

ANTHONY J. ANNUCCI, Commissioner, DOCCS, et al.

Respondent(s)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

SHANNON V. CAMPBELL #00B1258
CLINTON CORRECTIONAL FACILITY
P.O. BOX 2001
DANNEMROA, NEW YORK 12929

QUESTION (S) PRESENTED

WHETHER THE ADMINISTRATIVE REVERSAL WAS BASED OFF NEW EVIDENCE THAT WAS DETERMINED THROUGH A NEW HEARING OR A NEW HEARING BASED ON NEW EVIDENCE?

WHETHER PETITIONER WAS INDUCED BY FRAUD, MISREPRESENTATION AND DECEPTION TO REFRAIN FROM FILING A TIMELY ACTION?

WHETHER THE ACTION WAS TOLLED DURING THE SEEKING OF ADMINISTRATIVE REMEDIES BECAUSE OF THE NEGLIGENCE AND INTENTIONAL TORT OF AN OFFICER OF THE STATE?

LIST OF PARTIES

[**X**] 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:

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INDEX TO APPENDICES

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

[**x**] 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[ ] is unpublished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[ ] is unpublished

TABLE OF AUTHORITIES CITED

JURISDICTION

[X] For cases from **Federal Courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] 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 _____.

[X] An extension of time to file petition for a writ of certiorari was granted to and including June 15, 2022 (date) on September 05, 2022 (date) in Application No. A- 21A824 .

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITES STATES CONSTITUTION FOURTEENTH AMENDMENT

42 UNITED STATES CODE ANNOTATED §1983

STATEMENT OF THE CASE

On September 27, 2015, Petitioners bunkmate was standing on the swivel stool, slipped, and fell which caused injuries to parts of his body and head.

Sgt. Krzeminski escorted petitioner's bunkmate to the Medical Department who repeated how his injuries were caused to medical personnel, who confirmed that the injuries happened because of a slip and fall.

Correction Officer (C.O.) Saunders, one of the first persons to report to the cell, if called, would have testified not only to Mr. Jefferson's condition being consistent with falling off of the stool, but petitioner's total lack of any injuries consistent with engaging in a fight with Mr. Jefferson. Indeed, if petitioner had assaulted Mr. Jefferson as he claimed, the trained eye of a seasoned corrections officer like C.O. Saunders would have immediately observed if petitioner had bruised knuckles or other injuries. C.O. Saunders would have also been able to ascertain from the condition of the cell whether a fight had indeed occurred. She made no such observation in her To-From Memo to Supervisor.

The next day petitioner's bunkmate changed his story. This would eventually result in a Tier III ticket being issued against petitioner. Petitioner was immediately put on keep-lock status pending a disciplinary hearing.

A hearing commenced on 10/05/15, and ended on 10/27/15.

Petitioner then filed a timely appeal to the Commissioner and was denied on 1/4/16. Petitioner then filed reconsideration after newly discovering vital evidence from prison officials consisting of a To-From memo from C.O. Saunders and log book entry indicating that she was in fact working on the date of the incident, which proved a due process violation had occurred. This second appeal attempt was denied.

Petitioner immediately filed an Article 78 to prove the due process violations. After the administration received and reviewed the brief prison officials would eventually administratively reverse the guilty determination when (implicitly) finding the due process violation unlawful.

The district court, the only court that expounded on the lawsuit, denied and dismissed petitioner's claims, among other things, as untimely believing that this Courts case of Heck v. Humphrey did not apply to prison disciplinary hearings favorable termination rule.

REASONS FOR GRANTING THE PETITION

THE ADMINISTRATIVE REVERSAL WAS BASED ON NEW EVIDENCE WAS A FAVORABLE DETERMINATION. THUS PETITIONER'S 1983 WAS TIMELY FILED.

In Heck v. Humphrey, 512 U.S. 477 (1994), the United States Supreme Court was confronted with a civil suit filed pursuant to 42 U.S.C. § 1983 in federal court (Heck, 512 U.S. at 478). In that case, a man convicted of voluntary manslaughter (it is worth noting that the appeal from his criminal conviction was still pending when his civil suit was filed) was suing the prosecutor and the police for, amongst other things, engage in an unlawful, unreasonable, and arbitrary investigation leading to his arrest and knowingly destroying exculpatory evidence. The Supreme Court ultimately held:

> We hold that, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, * * * a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question a federal court's issuance of a writ of habeas corpus * * *" id. at 486-87

Simply put, as a prerequisite to the award of any funds for any damages, which resulted from an administrative determination, privilege must be removed.

In addition, the Supreme Court, extending Heck's favorable termination rule, applied it to prison disciplinary hearings. Edwards v. Balisok, 520 U.S. 641 at 645, (1997).

Here, favorable termination did not occur until 11/15/16, when prison officials, after being served with a third de factor administrative appeal, reversed petitioners tier 3 action once presenting new discovered evidence.

The Court insinuated that the administrative reversal was a "sua sponte" decision.

The only way "sua sponte" can occur is by review on a motion and or new evidence being presented by a party.

PETITIONER WAS INDUCED BY FRAUD, MISREPRESENTATION AND DECEPTION TO REFRAIN FROM FILING A TIMELY ACTION.

In New York, the equitable tolling doctrine may be invoked to defeat a statute of limitations defense when the plaintiff was induced by fraud, misrepresentation or deception to refrain from filing a timely action (Abbas v. Dixon, 480 F.3d 636 at 642).

Moreover, where there is evidence of a discriminatory policy or practice, the statute of limitation can be deemed to begin running once the last discriminatory act occurs (Harris v. City of New York, 186 F.3d 243, 249 2nd Cir. 1999). In order to invoke this rare provision, a plaintiff must plead and establish that he was diligently pursing his action, and that it was the actions of the defendants which prevented him from filling his § 1983 action in a timely fashion (see McCann v. City of New York, 2013 WL 1234928 [SDNY, 2013][holding that while this doctrine is used rarely, upon a showing of compelling circumstances, it should be applied]). This is one of those rare circumstances.

New York State continues to engage in several deceptive practices which entices § 1983 claimant to go down the "rabbit hole" of improper jurisdictional filings.

For instance, when Article 10(9) is read *in pari materia* with Article 10(3) of the Court of Claims Act, as a pro se inmate, untrained in the law, his understanding of the plain language of the statute lead him to believe that he could not file a claim for action for damages until he has, as required by the language of Court of Claims Act § 10(9), exhausted his Administrative remedies[1]

This brings up some interesting points warranting the invocation of equitable tolling. For instance, because an intent patently absurd is not to be attributed to any statutory provision, and because a valid reversal of the hearing officer's determination is required for money damages resulting from wrongful confinement in SHU, how could an inmate be expected to put in a claim upon his release from SHU while the order of confinement is still legally binding?

[1] This is so because Inmates are being misled by the language of Article 10(9) -- the only section of Article 10 that mentions inmate claims -- and are delaying filing of claims until after the exhaustion of Administrative remedies.

The Supreme Court has spoke on this exact same issue, and ruled that in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by a state actions was unlawful, a § 1983 plaintiff must prove that the process by which he was punished was expunged by "executive order" (see Heck v. Humphrey, 512 U.S. 477, 486-87 [1994]). The present scheme, where a plaintiff must file his action upon release from SHU Confinement, or when the hearing has concluded, is a waste of judicial time, and expense. How could a plaintiff win an action that is not yet ripe for review? Something that the Attorney General has argued in countless cases when an inmate has brought the action once he was released from SHU confinement, but prior to his disciplinary action being administratively reversed (Affidavit of Assistant Attorney General Kenrich who states, "... is the appropriate procedure").

When there is any doubt about the proper interpretation of a statute, it should receive the construction, which would not work hardship or injustice.

Thus, if a fair construction can be found which gives force to the whole act and to the legislative intent, then it must necessarily be adopted. After all, injury can only occur once the label of privilege has been removed by a reversal of the hearing officer's order[2]. It is at this time that it can be said that "damages for ... personal injuries caused by the negligence or intentional tort of an officer or employee of the state" has actually accrued.

[2] It is interesting to note that assistant Attorney General Michael T. Krenrich, stated that in order for the Court of Claims to have jurisdiction of a claim, ***there must be evidence that the claimant's tier hearing was overturned via administrative review or an CPL Article 78 proceeding.***

THE ACTION WAS TOLLED DURING THE SEEKING OF ADMINISTRATIVE REMEDIES BECAUSE OF THE NEGLIGENCE AND INTENTIONAL TORT OF AN OFFICER OF THE STATE.

The Second Circuit has held that, procedural due process claims relating to disciplinary hearing accrues "either at the date of the disciplinary hearing or at the date the prisoner's final administrative appeal is decided" Williams v. Roberts, 2011 WL 7468636, at *16-17). However, pursuant to 42 U.S.C. § 1997e(a), no action shall be brought with respect to prison conditions under section 1983 until such administrative remedies have been exhausted (also see Urena v. Annucci, 2018 WL 3863454 at * 6 [SDNY, 2018][holding that that petitioner's action was tolled during the time he exhausted his administrative remedies and began to run again when his administrative remedies were fully exhausted).

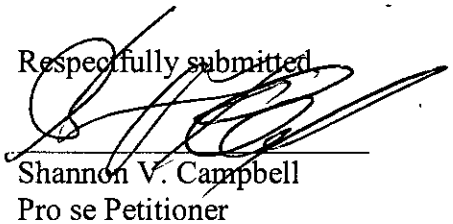
In the instant matter at bar, the complaint, demonstrate four distinct periods which should be considered tolled. 1) Those being when petitioner filed his initial appeal, 2) When petitioner filed his application for re-argument, 3) When petitioner filed a notice of receipt of newly discovered evidence that showed that the hearing officer lied concerning one of petitioner requested witnesses, 4) And when, as noticed in his initial complaint, petitioner filed additional papers on the NYS Department of Corrections asking that his tier hearing be dismissed, and then they administratively reversed the same on 11/15/16.

1. The first administrative appeal,
2. The second administrative appeal,
3. The discovery of the newly received documents,
4. Service on the defendants of the Documents upon reversal.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Shannon V. Campbell
Pro se Petitioner

Date: September 3, 2022