

22-5808

No. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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ZACHARY THOMAS SPADA, *pro se*,  
Petitioner,

v.

PENNSYLVANIA DEPARTMENT OF CORRECTIONS, *et al.*,  
Respondents.

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FILED

OCT 03 2022

OFFICE OF THE CLERK  
SUPREME COURT, PA

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE SUPREME COURT OF PENNSYLVANIA

ORIGINAL

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**PETITION FOR WRIT OF CERTIORARI**

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Zachary Thomas Spada  
Petitioner, *pro se*

Prisoner No. NX-7892  
SCI-Houtzdale  
209 Institution Drive  
P.O. Box 1000  
Houtzdale, PA 16698-1000

## QUESTIONS PRESENTED

1. Whether an inmate that was confined at a correctional institution during the COVID-19 Pandemic has a right to sue for damages for the denial of exercise and recreation opportunities that occurred during this time due to the restrictions that were imposed by administrators of these institutions under the premise of keeping inmates safe from the virus?

2. Whether suits such as this are never moot because actual injury occurred and an actual controversy exists to preclude dismissal under the mootness doctrine?

## **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 proceeding in the court whose judgment is the subject of this petition is as follows:

- Pennsylvania Department of Corrections
- Attorney General of Pennsylvania
- In Their Individual and Official Capacities

## **RELATED CASES**

There are no related cases to this matter other than the case originally filed in the Commonwealth Court of Pennsylvania at docket number 93 M.D. 2021 and the direct appeal thereto filed in the the Supreme Court of Pennsylvania at docket number 1 WAP 2022.

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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**

The opinion of the highest state court to review the merits, the Supreme Court of Pennsylvania, 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☐ is unpublished.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 Commonwealth Court of Pennsylvania, the trial court, appears at Appendix B to the petition and has not been published in the Atlantic Reporter. It has been published by LexisNexis at *Spada v. Pa. Dep't. of Corr.*, 2021 Pa. Commw. Unpub. LEXIS 649, No. 93 M.D. 2021 (Pa. Commw. December 22, 2021). Your Petitioner does not have access to WestLaw so he is unaware if there is a WestLaw citation to this case.

## **JURISDICTION**

The date in which the highest state court, the Supreme Court of Pennsylvania, decided my case was August 16, 2022. A copy of that decision appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

## STATEMENT OF THE CASE

On January 14, 2021, Petitioner filed a grievance pursuant to Pennsylvania Department of Corrections ("DOC") policy DC-ADM 804<sup>1</sup>. In the Grievance, Petitioner cited that he was placed on quarantine and not afforded the 2 hours of outside exercise required by law. *See* 61 Pa. C.S. § 5901.

an Initial Review Response issued denying Petitioner's grievance and Petitioner appealed unsuccessfully to the Facility Manager and Final Review.

On March 21, 2021, Petitioner filed a Complaint styled as a Petition for Review<sup>2</sup> to the Commonwealth Court of Pennsylvania in its original jurisdiction<sup>3</sup> along with an Application to Proceed *In Forma Pauperis* ("IFP"). On April 12, 2021, the Commonwealth Court granted IFP and ordered the Respondents to answer or otherwise plead within 30 days. On May 5, 2021, Respondent DOC filed Preliminary Objections in the nature of a demurrer<sup>4</sup>. On May 7, 2021, Petitioner filed a response to the demurrer. On May 21, 2021, the Commonwealth Court ordered that the Parties file briefs in regards to the Preliminary Objections. On June 8, 2021, Respondent DOC filed a Brief in Support of the Preliminary Objections. On June 9, 2021, Petitioner filed a Brief in Opposition to the Preliminary Objections. On June 20, 2021, Petitioner filed an Affidavit in Support of his Brief. On September 22, 2021, Respondent DOC filed a Suggestion of Mootness citing that the violation of 61 Pa. C.S. § 5901 has ceased and the matter is moot. Thereafter, Petitioner filed a Response to the Suggestion of Mootness. On December 22, 2021, the Commonwealth Court dismissed the Petition for Review as moot. (Appendix B). On December 23, 2021, Petitioner, not yet having received the dismissal, filed a Motion for Leave to Supplement the Petition for Review. On January 14, 2021, the Commonwealth Court dismissed the Motion for Leave to Supplement the Petition for Review as moot.

On December 28, 2021, Petitioner filed a Notice of Appeal and Pa.R.A.P. 910 Jurisdictional

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1. DC-ADM 804, the Official Inmate Grievance Policy, and all other public policies of the DOC are available at [www.cor.pa.gov](http://www.cor.pa.gov).

2. Petitions for Review are governed by Chapter 15 of the Pennsylvania Rules of Appellate Procedure

3. 42 Pa. C.S. § 761.

4. *See* Pa.R.Civ.P. 1028, *et seq.*



Statement to the Supreme Court of Pennsylvania<sup>5</sup>. On February 12, 2022, the Supreme Court of Pennsylvania noted probable jurisdiction. A Briefing Schedule issued. On April 9, 2022, Petitioner filed the Brief of Appellant. On or about May 16, 2022, Petitioner filed a Motion to Order Service [of Process] by [privileged] legal mail. On May 16, 2022, Respondent filed the Brief of Appellee. On May 31, 2022, Petitioner filed a Reply Brief of Appellant. On August 16, 2022, the Supreme Court of Pennsylvania affirmed the Order of the Commonwealth Court of Pennsylvania and denied Petitioner's Motion to Order Service by Legal Mail. (Appendix A).

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5. Direct appeals from matters commenced in the original jurisdiction of the Commonwealth Court of Pennsylvania to the Supreme Court of Pennsylvania are governed by Pa.R.A.P. 1101 and 42 Pa. C.S. § 723.

## REASONS FOR GRANTING THE PETITION

The key question in this case has national implications. If this Honorable Court would make a decision to grant this Petition, it would resolve the question: "Do inmates in the United States of America have a right to sue for the denial of recreation and exercise opportunities that were stripped from inmates during the COVID-19 Pandemic." According to the Respondents and Courts Below, this case does not constitute an actual controversy and lacks standing under the justiciability and mootness doctrine.

This Court has recently said the following regarding mootness:

At all stages of litigation, a plaintiff must maintain a personal interest in the dispute. The doctrine of standing generally assesses whether that interest exists at the outset, while the doctrine of mootness considers whether it exists throughout the proceedings. To demonstrate standing, the plaintiff must not only establish an injury that is fairly traceable to the challenged conduct but must also seek a remedy that redresses that injury. And if in the course of litigation a court finds that it can no longer provide a plaintiff with any effectual relief, the case generally is moot. This case asks whether an award of nominal damages by itself can redress a past injury. We hold that it can.

*Uzuegbunam v. Preczewski*, 592 US \_\_\_, 141 S Ct \_\_\_, 209 L Ed 2d 94, 99 (2021). Petitioner has requested damages in the instant matter to redress the deprivation of rights. According to state statute,

Physical welfare of inmates (a) Physical exercise.

(1) A chief administrator who may or shall have in charge any inmate, whether the inmate has been tried or not, shall provide the inmate with at least two hours of daily physical exercise in the open, weather permitting, and, upon such days on which the weather is inclement, with two hours of daily physical exercise inside of the correctional institution.

(2) The physical exercise must be safe and practical, and the judges of several courts are to be the judges thereof.

61 Pa. C.S. § 5901(a)(1)-(a)(2); *see also* Appendix C. According to this statute, an inmate has a clear-cut right to two hours of daily exercise per day and the only exception is if weather is inclement. The Pennsylvania Legislature also included a provision to this statute that allows judicial review of the DOC's implementation of the physical exercise:

A Petition for Review is governed by Chapter 15 of the Pennsylvania Rules of Appellate Procedure.

Note: This chapter applies to appeals of administrative agency action, original jurisdiction actions cognizable in an appellate court in the nature of

actions in equity, replevin, mandamus or quo warranto or for declaratory judgment, or upon writs of certiorari or prohibition, and appeals of other actions as enumerated in paragraph (a)

Pa.R.A.P. 1501 Note. "The appeal and the original jurisdiction actions of equity, replevin, mandamus, and quo warranto, the action for a declaratory judgment, and the writs of certiorari and prohibition are replaced by the petition for review." Pa.R.A.P. 1502.

The Commonwealth Court of Pennsylvania has original jurisdiction in matters such as this where a determination of a governmental unit is in question. 42 Pa.C.S. § 761.

"The doctrine of mootness exists to ensure courts have before them a 'real and not hypothetical legal controversy' at at stages of litigation, including on appeal." *Harris v. Rendell*, 982 A.2d 1030, 1035 (Pa. Commw. 2009). The Supreme Court of Pennsylvania "has recognized that issues 'capable of repetition yet evading review' fall within a limited exception to the mootness doctrine. *Reuther v. Delaware Cty. Bureau of Elections*, 651 Pa. 406, 205 A.3d 302, 306 n.6 (Pa. 2019)" (quoting *In re Y.W.-B.*, 265 A.3d 602, 612 n.8 (Pa. 2021)).

Petitioner argued, albeit unsuccessfully, that the restrictions related to the COVID-19 Pandemic **could** repeat themselves. The purpose of this exception to the mootness doctrine is to allow cases that are quickly remedied before the judiciary can review them to have a chance at review. This also hinders the chance that a Repondent will "sweep a violation under the rug".

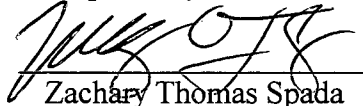
But as the Honorable Justice Thomas opined in *Uzuegbunam, supra*, a claim for damages alone **does**, in and of itself state a claim for relief that is not barred by the mootness doctrine.

This begs the question of this Honorable Court: Does an inmate have a right to sue a Department of Corrections in any state in the union for inadequate recreation and exercise opportunities during the quarantine restriction periods imposed by the COVID-19 Pandemic even though those restrictions have ceased and operations of prisons are near normal now?

## CONCLUSION

WHEREFORE your Petitioner respectfully requests that this honorable Court grant a Writ of Certiorari in this matter.

Respectfully Submitted,

  
Zachary Thomas Spada  
Petitioner, *pro se*

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