No. 22-5815

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

EHONAM M. AGBATI a/ka ROGER AGBATI — PETITIONER

vs.

VIRGINIA DEPARTMENT OF AGRICULTURE AND

CONSUMER SERVICE, Office of Charitable and

Regulatory Programs — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT – Richmond, VA

PETITION FOR WRIT OF CERTIORARI

EHONAM M. AGBATI a/k/a ROGER AGBATI

714 N ARTHUR ASHE BLVD
APT. 2

RICHMOND, VA 23220

434-242-2033

QUESTION(S) PRESENTED

Question 1:

Whether in Title VII, Civil Right Act of 1964, prohibition of discrimination based on race, color, and national origin; an employer is deemed not in violation of the Act, if the employer (Defendant) picks one out of a list of posted job qualifications and claims it to be decisive qualification regardless the other posted qualifications for the position and regardless of disputed evidence(s) introduced by the employer (Defendant).

Question 2:

Whether in Title VII, Civil Right Act of 1964, prohibition of discrimination based on race, color and/or national origin; an employer is deemed not in violation of the Act, not liable, and not to be held accountable for fostering a hostile work environment if the employer decides to not address hostile work environment complaints and fails to address hostile work environment complaints because the employer thinks and decides that the hostile work environment complaints brought to its attention were trivial.

Question 3:

Whether in Title VII, Civil Right Act of 1964, prohibition of discrimination based on race, color, and national origin; the Act sets a time frame considered to be too long of a time to show causal link between a grievance and an alleged retaliatory adverse action, despite evidence(s) showing that the alleged retaliatory adverse action(s) took place while the grievance was ongoing; and whether an employer is deemed not in violation of the Act, and not having engaged in retaliatory act if the employer can simply claim that an adverse action took place long after a plaintiff's grievance.

Question 4:

Whether in Title VII, Civil Right Act of 1964, prohibition of discrimination based on race, color, and national origin; an employer is deemed not in violation of the Act, if the employer (Defendant) simply and allegedly claims that an employee (Plaintiff) did not assert descriptive facts showing that higher paid colleagues and comparators were similarly situated and performed substantially equal work, and the employee (Plaintiff) instead provided evidences consisting of his or her EWP (Employee Work Profile) and salary record as well as those of his or her colleagues comparators as obtained from the employer (Defendant) through FOIA requests to show and prove his or her pay discrimination complaint.

LIST OF PARTIES

☑ 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:

RELATED CASES

Ehonam Agbati v. VDACS, No. 3:19-cv-00512, U.S. District Court for the Eastern District of Virginia – Richmond, VA.

Court Order of April 6, 2020

Court Memorandum Order of May 12, 2020

Court Memorandum Order of August 5, 2020

Court Memorandum Order of January 7, 2021

Ehonam Agbati v. VDACS, No. 21-1097, United States Court of Appeals for the Fourth Circuit – Richmond, VA.

Judgment of August 18, 2022

Temporary Stay of Mandate of August 25, 2022

Mandate of September 28, 2022

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OTHER

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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

☑ 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,
[**x**] is unpublished.

The opinion of the United States district court appears at Appendix (B) 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: (N/A)**

The opinion of the highest state court to review the merits appears at Appendix _____ 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

[x] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was: August 18, 2022.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: September 28, 2022, and a copy of the order denying rehearing appears at Appendix (A).

[ ] 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: (N/A)**

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

42 U.S. Code § 2000e-2 - Unlawful employment practices

(a)Employer practices

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) Employment agency practices

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

STATEMENT OF THE CASE

Failure to Promote Claim:

In November 2017, I, the Petitioner (Plaintiff), applied for the team leader/supervisor position of the unit I have at the time worked at the Respondent (Defendant) for four and a half years. From the time I, the Petitioner (Plaintiff), started working at the Respondent (Defendant) in June 2013 to the time the team leader/supervisor position became available again in November 2017 when I applied for the position, the position was held by three different people under whom and with whom I have worked closely. Two of these former team leader/supervisors were colleagues of mine who were respectively hired almost two to three years after I have been working at the Respondent (Defendant) and I have worked closely with them and mentored them before they were respectively promoted to the same team leader/supervisor position here in question.

To fill this same team leader/supervisor position again in late 2016, the Respondent (Defendant) also interviewed other former colleagues of mine whom I have mentored since they were hired; these former colleagues of mine did not have a college degree, tenure, and experience working at the Respondent (Defendant) as compared to me, the Petitioner (Plaintiff). One of those former colleagues who was also not just interviewed for the position but actually recommended to be promoted to the position was someone who was working under me as my assistant and was known in the office to have been dating our Program Manager who also was the Hiring Manager.

Then again in late 2017 when this position was opened again and I applied for it, the Respondent (Defendant) did not find me even qualified to have at least been interviewed for the position, but yet interviewed and promoted to the position another former colleagues of mine who always was at the center of a lot of employee conflict issues since she started working at our office and who also did not have long tenure and experience working at the Respondent (Defendant) as compared to me because she started working at our office three years after I, the Petitioner (Plaintiff), started working there at the Respondent (Defendant).

I, the Petitioner (Plaintiff), filed an administrative complaint to no avail trying to address the unlawful employment practices that I was subjected to at the Respondent (Defendant) simply because I am black and also importantly an immigrant American citizen. The case ended up in the U.S. District Court for the Eastern District of Virginia – Richmond, VA. At first, the Respondent (Defendant) denied having ever interviewed for this same position some of my former colleagues who had no college degree, tenure, and experience as me, the Petitioner (Plaintiff), and filed a motion for my complaint to be dismissed for failure to state a claim upon which relief can be granted, but the Trial Court denied the Respondent's motion.

Rather than letting the case go to a jury trial as I, the Petitioner (Plaintiff), initially requested, the case ended tied up in summary judgment. As supporting document to the Respondent's summary judgment, the Program Manager who is also the Hiring Manager issued a declaration in which he stated that the job entailed demanding workloads and lower pay and the problem with retaining someone in the team leader/supervisor position was the increasing number of registrations coming in, and that at any given time, the Charitable Programs Team could have as many as 12,125 registrations to review and approve per fiscal year. I, the Petitioner (Plaintiff), would like to ask this Court to importantly note here that the Program Manager and Hiring Manager did not here claim and or made any statement as to prove that the Respondent (Defendant) changed the qualifications of the disputed position and made prior supervisory experience a MANDATORY qualification for the position to address the issue of high turnover in the position.

In summary judgment, the Respondent (Defendant) by counsel without presenting any undisputable evidence moved again for the dismissal of my failure to promote claim and argued this time that the Respondent (Defendant) changed the qualification of the job position when I, the Petitioner (Plaintiff), applied for the disputed position of team leader/supervisor, made prior supervisory experience a MANDATORY qualification for the position because of high turnover in the team leader/supervisor position, and that I, the Petitioner (Plaintiff), did not qualify for the position for lack of prior supervisory experience from the list of all posted qualifications for the position. I, the Petitioner (Plaintiff), would like to ask this Court to importantly note here also the contradiction between the Program Manager and Hiring Manager's statement above and the Respondent (Defendant) counsel's new argument here in summary judgment that my former employer changed the qualifications of the disputed position and made prior supervisory experience a MANDATORY qualification for the position due to high turnover in the team leader/supervisor position when the Program Manager and Hiring Manager as shown above declared that high volume of work and lower pay were the reasons for the high turnover in the team leader/supervisor position and not the lack of prior supervisor experience of people who previously held the position. As a matter of fact, the only actual qualification for the position that was specifically listed for the job as REQUIRED, thus MANDATORY, was for a candidate to have a high school diploma or a GED. I, the Petitioner (Plaintiff) have a Bachelor's Degree in Political Science and a Minor in Nonprofit Management and Administration which relate to our line of work at the Respondent's Office of Charitable and Regulatory Programs were I worked.

The U.S. District Court for the Eastern District of Virginia in its ruling on this case's summary judgment argued that the Respondent (Defendant) revised the minimum qualifications for the position to include "demonstrated ability" to effectively supervise and oversee the work of others, and that the Respondent (Defendant) employee who screened applications for the team leader/supervisor position interpreted "demonstrated ability" to mean "actual experience" meaning actual prior supervisory experience and used this argument to grant the summary judgment to the Respondent (Defendant) and dismissed my failure to promote claim. Here again, I, the Petitioner (Plaintiff) would like to ask this Court to note how not only that the Program Manager and Hiring Manager and the Respondent's (Defendant's) counsel contradicted each other on the Respondent's new argument of prior mandatory supervisory experience it introduced in summary judgment with no undisputable supporting evidence, but the U.S. District Court for the Eastern District of Virginia in its ruling on this case's summary judgment also contradicted the Program Manager and Hiring Manager as well as the Respondent's (Defendant's) counsel on their aforementioned arguments by introducing a third argument said to have come from the Respondent (Defendant) employee who screened applications and which by the way neither proves with undisputable evidence that the Respondent (Defendant) changed the qualifications for the team leader/supervisor position and made prior supervisor experience a MANDATORY requirement. Again, as a matter of fact, the only actual qualification for the position that was specifically listed for the job as REQUIRED, thus MANDATORY, was for a candidate to have a high school diploma or a GED.

I, the Petitioner (Plaintiff) timely filed a Notice of Appeal following the U.S. District Court for the Eastern District of Virginia final judgment on this case. The United States Court of Appeals for the Fourth Circuit – Richmond, VA opened my appeal case on **January 25, 2021**. The last brief in the Court of Appeals for the Fourth Circuit before the case was turned over to the Court's Judges for review and ruling was **March 15, 2021**. On **August 16, 2022,** I, the Plaintiff, called the Court of Appeals Clerk's Office to check on the status of my case pending with the Court considering that it has been **seventeen (17) months** since the last brief on this case was filed, **nineteen (19) months** since the case was opened with the Court, and my case was still pending with the Court of Appeals.

I simply wanted to know if there has been any progress in my case as I was wondering if the Court sent me something in the mail about the case that may have gotten lost in the mail. The gentlemen I spoke to in the Clerk's Office told me that the case was still pending and that they were just waiting on the Judges' Opinion or Order.

Ironically, two days later, on August 18, 2022, following my call to the Clerk's Office to check on the status of my case, the Court of Appeals issued a judgment on my case affirming the District Court's judgment on the case, with an Unpublished Opinion. On the Court of Appeals cover page to its judgment on my case, the Court stated that this case was submitted on **July 29, 2022 which is not true and made the time the case was pending with the Court of Appeals before judgment to be about two months instead of the actual nineteen months (nearly two years); my case was submitted to the Court of Appeals on January 25, 2021 as mentioned above and proven by the Court's records**. Throughout the more than four years and ongoing litigation process of this case, every step of this case has been done through briefs; facts that I, the Petitioner (Plaintiff), introduced in my initial complaint, amended complaint, and briefs were misinterpreted, misconstrued, and ignored; evidences were also ignored no matter how I tried to highlight them in writing. Requests in briefs and motions to the lower Court(s) to correct misinterpreted and misconstrued facts of the case were denied, simply ignored, and went unanswered in some case. As I, the Petitioner (Plaintiff), also did when this case was still at the District Court level; I, the Petitioner (Plaintiff), timely on August 22, 2022 filed with the Court of Appeals a Motion to Reconsider and for a Hearing in person along a letter to the Chief Judge of the Court requesting his involvement in my case when addressing my Motion to Reconsider and for a Hearing in person so that I could in person set the facts straight and make sure my evidences were not ignored. On September 28, 2022; the Court of Appeals denied my Motion to Reconsider and for a Hearing in person and I never received a response to my letter to the Chief Judge of the Court of Appeals. There are so many aspects of this case that I, the Petitioner (Plaintiff) could not include here as I tried to summarize this case here to the best of my ability as this petition requires. I pray that this Court will grant this petition so that it could get pertinent complete details of all the facts and evidences of this case which were misinterpreted, misconstrued, and ignored by the lower Courts when issuing their judgments on the case. I pray that this Court will grant this petition so that in more than four year that this case has been ongoing, I will finally have the change to set the facts straight in person and being able to used evidences ignored by the lower Courts to prove my case against the Respondent (Defendant).

In Dennis v. Columbia, "... an employer asked to justify its actions after the fact has an incentive to claim that the "real" criteria were those on which the chosen employee happens to perform best relative to the plaintiff. When an employer picks one of a list of posted job qualifications and claims that it was actually decisive without regard to the others, the jury is certainly permitted to conclude, in light of the totality of the evidence, that this may have been done as a post hoc justification of a decision made on other grounds." Dennis v. Columbia Colleton Med. Ctr., Inc., 290 F.3d 647 (4th Cir. 2002). This exactly is what happened in my case. More so, the irony here in this case was that my former colleague who was illegally promoted over me to the team leader/supervisor position in question not only did not compare to me with my college degree related to our line of work, my tenure, and my experience working at the Respondent (Defendant), but she did not either have prior supervisory experience which the Respondent (Defendant) now claimed to have made a mandatory requirement for the position and allegedly the reason why I did not qualify for the position. If my former colleague who was illegally promoted over me to the team leader/supervisor position in question did not either have prior supervisory experience as the Respondent (Defendant) could not provide any evidence to prove she did; how could any argument by the Respondent (Defendant) and more so here by the lower Courts would have justified the Respondent (Defendant) adverse action against me in failing to have even found me qualified to have been interviewed and promoted to the position? Both lower Courts ignored and refused to answer this question among others as they know that would have justified my position as the Petitioner (Plaintiff).

Having waited to hear from the Court of Appeals for seventeen to nineteen months hoping to at least have the chance to prove my case against the Respondent (Defendant) in person during a hearing which this case definitely deserved, but to only have the judgment on this case handed down to me, the Petitioner (Plaintiff), with an Unpublished Opinion affirming the District Court's judgment and leaving me, the Petitioner (Plaintiff), with no answer to any of the legitimate questions raised in my appeal regarding the District Court's lack of consideration of the totality of the evidences demonstrates the Court of Appeals not only approving of the District Court's disregard of the Court of Appeals ruling in Dennis v. Columbia as cited above, but more importantly demonstrates that the Court of Appeals has created procedural incongruity in conflicting and ignoring its own precedent ruling set in Dennis v. Columbia as cited above.

Thus, arises the first question posed to this Court and in this Writ of Certiorari as to: Whether in Title VII, Civil Right Act of 1964, prohibition of discrimination based on race, color, and national origin; an employer is deemed not in violation of the Act, if the employer (Defendant) picks one out of a list of posted job qualifications and claims it to be decisive qualification regardless the other posted qualifications for the position and regardless of disputed evidence(s) introduced by the employer (Defendant).

Hostile Work Environment Claim:

The U.S. District Court for the Eastern District of Virginia – Richmond, VA dismissed my hostile work environment claim in its Order of April 6, 2020 arguing that my allegations show that I, the Petitioner (Plaintiff), experienced rude treatment, callous behavior, and personality conflict(s) during my time at the Respondent (Defendant), but that those experiences fall short of a plausible hostile work environment claim. The District Court also in dismissing my hostile work environment claim cited the precedent that to state a hostile work environment claim, plaintiff must plead facts showing that "(1) he experienced unwelcome harassment; (2) the harassment was based on his race; (3) the harassment was sufficiently severe or pervasive to alter the conditions of employment and create an abusive atmosphere; and (4) there is some basis for imposing liability on the employer." Perkins v. Int'l Paper Co.; 936 F.3d 196, 207 -08 (4th Cir. 2019). Then, from all aspects of this precedent, the Trial Court could only argue that I failed to allege facts to meet "severe or pervasive" standard.

First and foremost, contrary to the District Court's position and argument, my hostile work environment claim in this case cannot be compared to the case of Perkins v. Int'l Paper Co. view the different circumstances in both cases. Though this cannot be said to have necessarily been the case in Perkins v. Int'l Paper Co.; I, the Petitioner (Plaintiff), presented specific incidents that occurred in my case and backed them with evidences proving that those incidents I endured at the Respondent (Defendant) were severe or pervasive. The District Court's argument here failed on its face. As established in Clark Cty. Sch. Dist. V. Breeden, 532 U.S. 268, 270-71 (2001), to determine if conduct qualified as severe or pervasive, courts consider the totality of the circumstances, including (1) frequency; (2) severity; (3) whether the conduct was physically threatening or humiliating, or merely an offensive utterance; and (4) whether the conduct unreasonably interfered with the plaintiff's work performance. If the Trial Court had seriously considered the totality of the circumstances and incidents regarding this case that I, the Petitioner (Plaintiff), already put forth at the early stage of this case, it is incomprehensible as to how it found this hostile work environment claim to not be severe or pervasive and having no merit considering all the evidences I presented to support my claim. The situations I was subjected to at the Defendant were the most humiliating and mentally abusive experiences which affected my work at the Defendant and which no one should have ever endured.

To do justice to the circumstances, facts, and evidences regarding my hostile work environment claim, some of the pertinent details of all the facts and evidences are set forth in Appendix (C) which is an excerpt from the my Court of Appeals Appeal Brief regarding my Hostile Work Environment Claim. I, the Petitioner (Plaintiff), here again pray that this Court will grant this petition so that it could get pertinent complete details of all the facts and evidences of this case which were misinterpreted, misconstrued, and ignored by the lower Courts when issuing their judgments on the case.

What was so unfounded and unjustifiable on the lower Courts ruling(s) on my hostile work environment claim was that none of the arguments of the lower Court(s) in their ruling(s) on this claim were arguments actually made by the Respondent (Defendant); all of them were arguments made by the lower Court(s) on behalf of the Respondent (Defendant) and against me. The only statement by the Respondent (Defendant) on my hostile work environment claim came from my former Program Manager and Hiring Manager in his declaration in support to the Respondent's summary judgment and in which he admitted been aware of the hostile work environment issue raised in my claim, but he found them to be trivial. The Court of Appeals Judgment, Unpublished Opinion, and denying my Motion to Reconsider and for a Hearing in person as previously stated above prevented having any answer and justification to the District Court's ruling on the Petitioner's hostile work environment claim.

Thus, arises the second question to this Court and in this Writ of Certiorari as to: Whether in Title VII, Civil Right Act of 1964, prohibition of discrimination based on race, color and/or national origin; an employer is deemed not in violation of the Act, not liable, and not to be held accountable for fostering a hostile work environment if the employer decides to not address hostile work environment complaints and fails to address hostile work environment complaints because the employer thinks and decides that the hostile work environment complaints brought to its attention were trivial.

Retaliation Claim:

The U.S. District Court for the Eastern District of Virginia – Richmond, VA, dismissed my retaliation claim in its Order of August 5, 2020 arguing that the incidents giving rise to the alleged adverse action took place long after I, the Petitioner (Plaintiff), filed my grievance in April 2018 and my complaint with VDHRM in May 2018, and that given the substantial length of the time between the protected activity and the allegedly retaliatory conduct; I, the Petitioner (Plaintiff), failed to plead facts showing the required causal link. In reality and based on the facts and evidences, this decision by the District Court is incomprehensible, unjustifiable, and demonstrates misinterpretation of facts, ignoring evidences, misinterpretation of legal standards, and abuse of discretion because the dates of all the series of events that took place before I, the Petitioner (Plaintiff), filed my grievance(s) and the dates of all the series of events that took place after I filed my grievance(s) were provided to the District Court throughout the litigation process.

Throughout the litigation process with the District Court, I, the Petitioner (Plaintiff), provided as facts and evidences with outlined dates, a number of incidents that happened throughout and later that year (2018) since I filed my grievance(s) and complaint(s) and continuing through the first few months of 2019 before I could no longer support being outcast and mistreated in such ways and had to resign. The series of events adverse actions that took place occurred while my grievance(s) and complaint(s) were in fact still ongoing.

As noted above and as the District Court was clearly aware of through court documents filings during the litigation process; my grievance(s) and complaint(s) were respectively filed in April 2018 and May 2018, and the administrative grievance(s) and complaint(s) process were **not completed until October 5, 2018 and November 6, 2018.**

In addition to being ostracized and outcast since filing my grievance(s) and complaint(s), one of the adverse actions that I, the Petitioner (Plaintiff), suffered and which **took place from October 15, 2018 through October 18, 2018** was that, contrary to other previous years before all these issues leading to the filing of my grievance(s) and complaint(s), no one in Management at the Respondent (Defendant) would meet with me when time came for my 2018 annual employee evaluation as they did with all my former colleague employees for their annual employee evaluations. I came to work in the morning of **October 15, 2018** and found a copy of my annual employee evaluation left on my desk with a note to sign it, scan it, and email it back to my team leader/supervisor who was none other than my former colleague that the Respondent (Defendant) illegally promoted over me into the team leader/supervisor position as discussed in my failure to promote claim.

When the series of adverse actions that took place happened since the dates I, the Petitioner (Plaintiff), filed my grievance(s) and complaint(s) up to a few days apart in the same month and year that the administrative grievance process ended as demonstrated above, how can the District Court's dismissal of my retaliation claim be justified on the Court's ground of argument that the incidents giving rise to the alleged adverse action took place long after I, the Petitioner (Plaintiff), filed my grievance?

Even more disturbing and incomprehensible, the District Court itself acknowledged and stated in its Legal Standard section of the Order it issued to dismiss my retaliation claim that the Respondent (Defendant) moved to dismiss the amended complaint on my retaliation claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. So, what does this means? This means and confirms that all the arguments put forth by the District Court to dismiss the Petitioner's retaliation claim, just as the lower Court(s) did on other claims of my complaint, were not even arguments made by the Respondent (Defendant) because the Respondent (Defendant) knew it could not have proved such arguments not supported with evidences in a Court of Law. Yet, the District Court took upon itself to make such unfounded arguments on the Respondent's behalf and used them as a standing ground to dismiss Petitioner's retaliation claim. To do justice to the circumstances, facts, and evidences regarding my retaliation claim, pertinent details of some of the facts of this claim are set forth in Appendix (D) which is an excerpt from my Court of Appeals Appeal Brief regarding my retaliation claim. I, the Petitioner (Plaintiff), here again pray that this Court will grant this petition so that it could get pertinent complete details of all the facts and evidences of this case which were misinterpreted, misconstrued, and ignored by the lower Courts when issuing their judgments on the case.

Neither the Respondent (Plaintiff) nor the lower Court(s) could in the face of the evidences deny that the adverse actions took place as I, the Petitioner (Plaintiff), put forth. Yet, here again, what was so unfounded and unjustifiable on the lower Courts ruling(s) on my retaliation claim was that none of the arguments of the lower Court(s) in their ruling(s) on this claim were arguments actually made by the Respondent (Defendant); all of them were arguments made by the lower Court(s) on behalf of the Respondent (Defendant) and against me. As I, the Petitioner (Plaintiff) demonstrated and contrary to the lower Court(s) arguments made on behalf of the Respondent (Defendant) to dismiss my retaliation claim; the incidents giving rise to the adverse action(s) did not take place long after I, the Petitioner (Plaintiff), filed my grievance; a number of the adverse actions took place while my grievance(s) were still ongoing and some of the adverse actions took place days or a few weeks after my administrative grievance(s) process concluded and my litigation processes in the Court(s) were still ongoing. This Court should here again keep in mind that neither the Respondent (Plaintiff) nor the lower Court(s) denied or could deny that the adverse actions took place; the low Court(s) argued that they happen long after my grievance(s) which is not true as demonstrated above and in Appendix (D).

The Court of Appeals Judgment, Unpublished Opinion, and denying my Motion to Reconsider and for a Hearing in person as previously stated in this Writ of Certiorari prevented having any answer and justification to the District Court's ruling on the Petitioner's retaliation claim.

Thus, arises the third question to this Court in this Writ of Certiorari as to: Whether in Title VII, Civil Right Act of 1964, prohibition of discrimination based on race, color, and national origin; the Act sets a time frame considered to be too long of a time to show causal link between a grievance and an alleged retaliatory adverse action, despite evidence(s) showing that the alleged retaliatory adverse action(s) took place while the grievance was ongoing; and whether an employer is deemed not in violation of the Act, and not having engaged in retaliatory act if the employer can simply claim that an adverse action took place long after a plaintiff's grievance.

Constructive Discharge Claim:

The Federal Rules of Civil Procedure require that a complaint contains "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "When the plaintiff appears pro se, courts do not expect the pro se plaintiff to frame legal issues with the clarity and precision expected from lawyers. Accordingly, courts construe pro se complaints liberally." Beaudett v. City of Hampton, 775 F 2d 1274, 1278 (4th Cir. 1985).

It would be fair to say that as a pro se plaintiff, my initial complaint would have been framed to the standard of a lawyer if I were a lawyer. In the District Court's Order of April 6, 2020 footnote (2) page (3) of the section "FACTS ALLEGED IN THE COMPLAINT" in support to its Opinion, it stated that: "Liberally construed, the three 'claims' in Agbati's complaint raise allegations of failure to promote, hostile work environment, constructive discharge, retaliation, and pay discrimination under Title VII. Thus, the Court enumerates the Title VII allegations as five separate counts." It will be fair to say that in the process of enumerating the Title VII allegations as five separate counts; the Trial Court misconstrued my constructive discharge claim and facts, therefore dismissing this claim from my complaint by mistake.

The District Court with its Order of April 6, 2020 dismissed my constructive discharge claim arguing that I proceeded on the same factual allegations to support my constructive discharge claim as my hostile work environment claim. This was an incorrect decision by the District Court due to its misinterpretation of evidences and also because of its misinterpretation of facts and having liberally misconstrued my initial complaint. I, the Petitioner (Plaintiff), through briefs and motions tried to make these clarifications and requested the District Court to correct the records, but the District Court simply denied my requests and in some cases never responded to my motion(s) for the Court to correct the records.

Contrary to the District Court's reading and position on my constructive discharge claim, my constructive discharge claim actually derived from my failure to promote claim, having filed my grievance and complaint(s), and my retaliation claim. Therefore, the facts regarding my constructive discharge are related to the facts from these claims especially those regarding my retaliation claim, and there is no need to repeat or copy and paste them all here. By addressing the Petitioner's failure to promote claim and retaliation claim, this Court would have also addressed all the facts, evidences, and questions to issue a ruling on my constructive discharge claim. I would like to refer this Court to the facts listed above in my failure to promote claim that lead to the filing of my grievance(s) and complaint(s) as well as the facts in my retaliation claim in addressing my constructive discharge claim.

The Court of Appeals Judgment, Unpublished Opinion, and denying my Motion to Reconsider and for a Hearing as previously stated in this Writ of Certiorari prevented having any answer and justification to the District Court's ruling on the Petitioner's constructive discharge claim.

Pay Discrimination Claim:

Working at the Respondent (Defendant) for that many years, I have learned that, for doing the same job under the same job title and pay grade, the Respondent (Defendant) has a history of unfair and equal pay discrimination practices, and I was most likely being paid less as compared to my colleagues that were white or non- black. As a result of the employment promotion discrimination committed against me, the Petitioner (Plaintiff), I decided to investigate to find out if I was also a victim of the Respondent's equal pay discrimination practices and if former colleagues of mine, simply because they were white or non black, were being paid more than I was for doing the same job.

I had to file a number of Freedom of Information Act (FOIA) requests to obtain the needed information from the Defendant to determine if I was victim of the Defendant's pay discrimination practices. The information I received from the Defendant through my FOIA requests and provided as supporting evidences to the Complaint in the lower Courts prove that I was unequally treated and paid a lesser salary as compared to my colleagues that were not black especially those who were white. The information I obtained from the Respondent (Defendant) through my FOIA requests identify white and non-black comparators who were paid more than me, the Petitioner (Plaintiff), for performing the same exact work and duties at the same office, under the same management, and despite the fact that these comparators former colleagues of mine whom I have mentored do not compare to me at the educational level, expertise, experience, and tenure.

Compared to my starting and ending salary, information received from the Defendant via FOIA request and submitted to the lower Courts titled "Proof #13" and "Proof #15" demonstrates how Terri Larus a former colleague who happens to be white was getting pay almost $4,000 more than me at her hiring salary and with a high school diploma. Information I received from the Defendant and submitted to the lower Courts titled "Proof #14" demonstrates how Caly Emerson a former colleague who happens to be white and was hired a few years after I have been working at the Defendant was getting paid $7,376 more than me at her hiring salary and nearly $4,000 more than me when she left to go work for another state agency and with no college degree. Information I received from the Defendant and submitted to the lower Courts titled "Proof #15" demonstrates how even any other non-black employees were paid better salary as compared to me a black immigrant American employee; Edievith Pollard whose heritage is Filipino was also getting paid nearly $2,000 more than me as her hiring salary and with no college degree and despite the fact that I have been working at the Defendant a few years before she was hired.

Keep in mind the fact that view my college education degree, my expertise as relating to the job at that office, my experience, and my tenure as compared to these former colleagues of mine; when I was offered the position of licensing specialist/registration analyst as full-time salaried employee, I was told by Program Manager and Hiring Manager Michael Menefee that my salary was not negotiable as I expressed my dissatisfaction on the offered starting salary. Yet, come to find out that all these former colleagues of mine who did not compare to me at the educational level, expertise, experience, and tenure at the Respondent (Defendant) were getting paid higher salaries as compared to me.

Just as it has done throughout this case and in several of my discrimination claims as I, the Petitioner (Plaintiff), have discussed in this petition, the District Court here in my pay discrimination claim misinterpreted and misconstrued facts and ignored evidences I, the Petitioner (Plaintiff), put forth to support my pay discrimination claim. In its Order of April 6, 2020; the District Court stated that I, the Petitioner (Plaintiff), retrieved some salary information about my former colleagues and comparators from public reports available online; this was incorrect and untrue.

All the salary information of my former colleagues and comparators as well as my own which I presented as supporting evidences in my pay discrimination claim to show that my former colleagues comparators were paid more than me for working at the Respondent (Defendant) under the same supervisor and management and doing the same work (or performed substantially equal work as the District Court wanted me to put it) were obtained from the Respondent (Defendant) who of course was my former employer. My requests through brief(s) for the District Court to correct this error among others were denied and/or ignored.

At this point, I, the Petitioner (Plaintiff), have to say I believe the District Court purposefully misinterpreted, misconstrued, and ignored evidences I presented to support my claims in order to rule in favor of the Respondent (Defendant); here is one other example as to why I make this statement. The Respondent (Defendant) is currently fighting a separate employment discrimination lawsuit with a former colleague of mine whom I worked with at the Respondent (Defendant); from Court public record information in that separate lawsuit, I have discovered that while the Respondent (Defendant) was in my case and claim of failure to promote arguing that it promoted another former colleague over me to the team leader/supervisor position because I did not "demonstrate the ability to supervise other", the Respondent (Defendant) in this separate other lawsuit was using me to defend itself and stating that I "demonstrated team leadership skills". I, the Petitioner (Plaintiff) introduced this information from that other lawsuit as supporting evidence in my appeal to the Circuit Court, but the Circuit Court simply ignored that evidence as the District Court did others. I have enclosed this referenced information from that separate lawsuit in Appendix (E) for this Court to see for itself. I, the Petitioner (Plaintiff), here again pray that this Court will grant this petition so that it could get pertinent complete details of all the facts and evidences of this case which were misinterpreted, misconstrued, and ignored by the lower Courts when issuing their judgments on the case.

The Respondent (Defendant) moved for the District Court to dismiss the amended complaint on my pay discrimination claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Despite the evidences I, the Petitioner (Plaintiff), obtained from the Respondent (Defendant) through FOIA requests including salary records and EWP (Employee Work Profile) of mine and those of my colleagues comparators, and presented them to demonstrate how former colleagues of mine in this case whom I have mentored and who did not compare to me at the educational level, expertise, experience, and tenure were similarly situated and performed equal work as I did, but were getting paid more than me; the District Court then with its Memorandum Order of August 5, 2020 dismissed my pay discrimination claim using the arguments it put forth on behalf of the Respondent (Defendant) and arguing that I did not allege any facts showing that my former higher paid colleagues and comparators were similarly situated and performed substantially equal work. Here again as it did in my other above discrimination claims, the District Court decided to make all these arguments on behalf of the Respondent (Defendant), and used such arguments to dismiss my pay discrimination claim, when the Respondent (Defendant) had absolutely no argument and evidence to counter my evidences and to prove me wrong. I, the Petitioner (Plaintiff), here again pray that this Court will grant this petition so that it could get pertinent complete details of all the facts and evidences of this case which were misinterpreted, misconstrued, and ignored by the lower Courts when issuing their judgments on the case.

Taking in consideration my complaint as a whole, my pay discrimination claim, the facts, and evidences I, the Petitioner (Plaintiff), presented to the lower Courts as also indicated here above; the District Court's dismissal of my pay discrimination claim is incomprehensible and demonstrates misinterpretation of facts, ignoring evidences, misinterpretation of legal standards, and abuse of discretion. The Court of Appeals Judgment, Unpublished Opinion, and denying my Motion to Reconsider and for a Hearing in person as previously stated in this Writ of Certiorari prevented having any answer and justification to the District Court's ruling on the Petitioner's pay discharge claim.

Thus, arises the fourth question to this Court in this Writ of Certiorari as to: Whether in Title VII, Civil Right Act of 1964, prohibition of discrimination based on race, color, and national origin; an employer is deemed not in violation of the Act, if the employer (Defendant) simply and allegedly claims that an employee (Plaintiff) did not assert descriptive facts showing that higher paid colleagues and comparators were similarly situated and performed substantially equal work, and the employee (Plaintiff) instead provided evidences consisting of his or her EWP (Employee Work Profile) and salary record as well as those of his or her colleagues comparators as obtained from the employer (Defendant) through FOIA requests to show and prove his or her pay discrimination complaint.

REASONS FOR GRANTING THE PETITION

The United States Supreme Court should grant this petition for two reasons. First, more specifically related to the Petitioner's failure to promote claim and as previously stated in this Writ of Certiorari; it is an established precedent ruling from this same Court of Appeals for the Fourth Circuit evolved in this case that, "... an employer asked to justify its actions after the fact has an incentive to claim that the "real" criteria [the employer discriminatorily failed to promote a deserving employee] were those on which the chosen employee happens to perform best relative to the plaintiff. When an employer picks one of a list of posted job qualifications and claims that it was actually decisive without regard to the others, the jury is certainly permitted to conclude, in light of the totality of the evidence that this may have been done as a post hoc justification of a decision made on other grounds." Dennis v. Columbia Colleton Med. Ctr., Inc., 290 F.3d 647 (4th Cir. 2002).

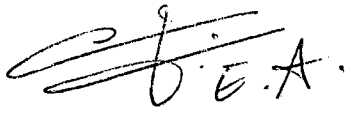
Here in this case, not only that the District Court's ruling conflicted with this existing and established precedent in Dennis v. Columbia cited above, but also, by affirming the District Court's judgment on this case and using an unpublished opinion to do so providing absolutely no answer and no clarification whatsoever to any of the Petitioner's questions filed on Appeal; the Circuit Court not only allowed the District Court to ignore and issue a conflicting judgment to this Circuit Court's own existing and established precedent in Dennis v. Columbia, but the Circuit Court itself in its ruling on this case has created procedural incongruity in conflicting and ignoring its own established precedent ruling set in Dennis v. Columbia as cited above. It is very important that the Court grants this Writ of Certiorari because the Court would have thus corrected and set the records straight so that no lower court throughout these United States of America would have to put countless citizens and residents of these United States of America in the same position that I, the Petitioner (Plaintiff), have been put into in this case and having no choice but to file this Writ of Certiorari.

Secondly, regarding all the other claim and questions that I, the Petitioner (Plaintiff), have put forth in this Writ of Certiorari; as previously held by this Court (the Supreme Court of the United States of America) in Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002), "it seems incongruous to require a plaintiff, in order to survive a motion to dismiss, to plead more facts than he may ultimately need to prove to succeed on the merits if direct evidence of discrimination is discovered. Moreover, the precise requirements of the prima facie case can vary with the context and were 'never intended to be rigid, mechanized, or ritualistic.' Furnco Constr. Corp. v. Waters, 438." Despite the facts supported with numerous undeniable evidences that were presented at the early stage of this case, the District Court's rulings on the Petitioner's hostile work environment claim, retaliation claim, constructive discharge claim, and pay discrimination claim which the Court of Appeals affirmed with unpublished opinion and no answer whatsoever to any of the questions raised on appeal are clearly in conflict with the precedent in Swierkiewicz v. Sorema cited above as held by this Court (the Supreme Court of the United States of America). By dismissing all this claims of the Petitioner's lawsuit before the discovery stage of this litigation process despite direct evidences and facts of discrimination introduced at the early stages of this lawsuit which the lower Courts misinterpreted, misconstrued, and ignored, created conflict and direct violation of this precedent in Swierkiewicz v. Sorema held by this Court. For the more than four years that I, the Petitioner (Plaintiff), have been fighting for justice in this case, I have been denied the chance to appear in front of a Judge, Judges, or Jury to prove my case against the Respondent (Defendant) and preventing the facts of the case from been misconstrued and the evidences from been ignored; this would not have been the case if the lower Courts rulings in dismissing these claims so early did not conflict and violate the above cited precedent in Swierkiewicz v. Sorema and the dismissed claims of this case were to go the discovery stage of this litigation and ultimately heard by a jury as requested by the Petitioner (Plaintiff) in filing this lawsuit. Therefore, It is very important that the Court grants this Writ of Certiorari because the Court would have thus corrected and set the records straight so that no lower court throughout these United States of America would have to put countless citizens and residents of these United States of America in the same position that I, the Petitioner (Plaintiff), have been put into in this case and having no choice but to file this Writ of Certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



EHONAM M. AGBATI (ROGER)

Date: October 7, 2022