

22-5823

No. 21-30610

FILED

JUN 16 2022

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Edward Simmons #103371 PETITIONER
(Your Name)

vs.

LA. Dept. of Public Safety & Corrections — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals, Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Edward Simmons #103371
(Your Name)

Elaine Hunt Correctional Center
(Address)

St. Gabriel, Louisiana 70776
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether or not, The petitioner established an Eighth Amendment Violation By Showing, He is incarcerated under conditions posing a Substantial Risk of serious Harm, When The petitioner was illegally place on an Mental Health Suicide Watch Tier That House a Known Enemy of Him and That prison official were deliberately indifferent to His Safety.

Whether or not, were E.HCC-2021-384, and E.HCC-2021-386 was considered exhausted when they were rejected upon initial screening by LAU.

Whether or not, is The Fifth Circuit Court of Appeal Opinion is contrary to The district court Opinion.

Whether or not, does Special Circumstance exist, which amounts to justification for The petitioner not asserting that E.HCC-2021-045 were exhausted prior to initial filing of This Suite.

Whether or not, should not The district court and Fifth Circuit Court of Appeal consider documents which embellished The Original Complaint Pleading.

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:

Being Sued in Their Individual and Official Capacity
All of The Below Listed Named Defendants ARE

Secretary, James Leblanc, Assist Warden Todd BARBERE, Colonel Thomas, Lt. Colonel Johnson, Major Verbet, Major Lance, Captain Cobb, Captain Whitaker, Lt. Harris, Lt. Fisher, Sergeant Jasman, Eugene, Sergeant Butler.

RELATED CASES

CASE NO. 21-CW-706 is pending in The United States Middle District Court Before The Honorable Magistrate Judge Scott D. Johnson Revealing A exact pattern failure to protect. One of The Key defendant in CASE NO. 21-CW-706 Has Recently Been Fire, charged for committing Reckless Misconduct which Resulted in The Death of A Hanging Inmate.

New Case Created By Security:

On/ July 30, 2022, Security personnel, let an Inmate enter The Dorm Bed AREA who did not live in The Dorm and Attack The petitioner while He lay in His Bed Sleeping with a weapon causing injuries To The petitioner Head, eyes, and BROKEN Wrist as a Result from The Assaults. An Emergency Administrative Remedy Complaint Has Been filed But UnAnswer. My life is in danger as long as I am Being House Bound Hunt Correctional Center.

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 28 U.S.C. 1915g
 Rule 24 (A)
 LA Administrative code 22.15.325

Other

EHCC-2021-384 (ARP) Rejection notice June 9, 2021
 EHCC-2021-386 (A.R.P.) Rejection notice June 9, 2021
 EHCC-2021-045 Disciplinary Appeal decision Respond. June 21, 2021

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,
☐ 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.

☐ For cases from **state courts**:

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

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 23, 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 September 10, 2021.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: JANUARY 10, 2022, 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

This case involves an Eighth Amendment to the United States Constitution that guarantees that no prisoner shall be subjected to cruel and unusual punishment. The constitutional prohibition against cruel and unusual punishment not only prohibits certain kinds of physical punishment, such as torture, but embodies broad and idealistic concepts of dignity, civilized standard, humanity and decency. The Eighth Amendment requires conduct compatible with the evolving standards that mark the progress of a maturing society. Thus, the Eighth Amendment requires that prison officials, under no circumstance, must not be "deliberately indifferent to a prisoner's need for protection against physical assault. A prisoner who is deprived of such protection because of prison officials' deliberately indifferent to a physical assault by a known enemy, of a prisoner has suffered a violation of his constitutional rights as guaranteed by the Eighth Amendment".

Section 1983 of Title 42 of the United States code under which this action is brought provides that any inhabitant of this judicial district may seek redress in this court, by way of damages against any person or persons who under color of law, statute, ordinance, regulation or custom, knowingly subjects such inhabitant to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution of the United States.

STATEMENT OF THE CASE

The petitioner Edward Simmons #103371, is an inmate at The Elays Hunt Correctional Center St. Gabriel LA. Brought a lawsuit Under 42 U.S.C. § 1983 claims Against prison officials for Various Alleged Unconstitutional conditions of confinement By forcing The petitioners To (1) Live Under Mental Health suicide watch condition for no Valid Reason Around an Known Enemy, well documented By The Administration and (2) Unconstitutional failure To "Protect Him from A Second Attack By His Known Enemy."

The petitioner claims Like so many Recently prisoner cases. Raises an issue of first impression Under The Prison Litigation Reform Act. The United States district court for The middle district of Louisiana, Chief Judge Shelly D. Dick adopted on September 10, 2021 The Recommendation Report of The magistrate Judge Hon. Scott D. Johnson issue on August 6, 2021 Recommending dismissal of petitioner cause of Actions "Without Prejudice pursuant to 28 U.S.C. § 1915 (e), and 1915 (a)" For failure To Exhaust Administrative Remedies As Required By 42 U.S.C. § 1997 (e).

The petitioner Timely Filed an Application for leave To proceed In Forma Pauperis on Appeal (Re. Doe no 12) on January 10, 2022. The district court "Denied" petitioner Application for leave To proceed In Forma Pauperis on Appeal pursuant To 28 U.S.C. § 1915 for The following Reason Stated in This court Ruling and Judgment The court certifies That The Appeal is not Taken In Good Faith.

The petitioner Timely Filed a Motion Asking The Fifth circuit court of Appeal of The United States for premission for leave To Appeal In Forma Pauperis, on May 23, 2022 The United States Fifth circuit court of Appeal Denied petitioner Motion for leave To proceed In Forma Pauperis on Appeal, and Dismissing petitioner Appeal Request As Frivolous, and Asserting That petitioner motion for premission for leave To Appeal In Forma Pauperis Be Counted As A Strike Against petitioner Under 28 U.S.C. § 1915 (g) A Copies of The Fifth circuit Court of Appeal is Attached Herein As Appendix (A) Also The Order entered By The United States middle district court for The State of Louisiana Opinion is Attached As Appendix (B)

REASONS FOR GRANTING THE PETITION

This case is important for the issues it raises as to the proper allocation of functions between the federal district courts and federal court of appeals. This court has consistently recognized that "the proper observance of the division of functions between federal trial courts and the federal appellate courts is important in every case," especially in cases where the district court has been asked to issue an effective remedy to cure unconstitutional conditions in prison institutions *Hutto v. Finney*, 437, U.S. 678 (1978).

The opinion of the United States Fifth Circuit court appeal denying petitioner motion for permission leave to proceed *in forma pauperis* on appeal and dismissing petitioner appeal as "frivolous" asserting the dismissing be counted as a "strike" under 28, U.S.C. § 1915 (e) is contrary to the general principles which this court has enunciated governing the equitable powers of district courts to fashion remedies for constitutional violations and raise important questions about the proper function of appellate courts in reviewing Remedial Order.

In the present case, there is no disputed asserted by the district court alleging that the petitioner's statement of claim is "frivolous" or do not involves a colorable issue of a constitutional deprivation, in fact the district court upon initial screening, only asserted in their opinion that the petitioner cause for action be dismissed "without prejudice" for failure to exhaust administrative remedies as require under 42, U.S.C. § 1997 (e)(a).

Under 28, U.S.C. § 1915 (e), a federal or states court may refuse to certify an appeal for leave to proceed *in forma pauperis*, if it is not taken in good faith. See Fed. R. App. 4 (A). "Good Faith" is demonstrated when a party seeking appellate review of any issue not "frivolous" in *Coppa v. U.S.* 369, U.S. 438, 82 S. Ct. 717, 8 L. Ed. 21 (1962), an investigation were conducted into the *in forma pauperis* movant "Objective Good Faith" while necessitating a brief inquiry, is merits of an appeal

does not require that probable success be shown. The inquiry is limited to whether the report involves arguable on their merit and therefore not frivolous. In *Anders v. California* 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed. 2d 493 (1967) and *Woodall v. Fort*, 648 F.2d 368, 371 (5th Cir. 1982) the existence of any non-frivolous issues on appeal is sufficient to require that this Honorable Court grant petitioner present motion. *Carson v. Polley*, 689 F.2d 586 (5th Cir. 1982), because Rule 19 (b)(2), dismissal of pro-se complaints are disfavored. A court should grant a pro-se party every reasonable opportunity to amend citing *Haines v. Kerner*, 404 U.S. 519, 520-21, 93 S.Ct. 594, 30 L.Ed. 652 (1972) and *Bazrow v. Scott* 136 F.3d 1053, 1054 (5th Cir. 1998).

In support of petitioners attach motion for leave to appeal uniform papers under Rule 24 (a). The petitioners attach several true copy of Administrative Records to demonstrate. The petitioners seeking permission for leave to appeal uniform papers were being taken in good faith. *EHCC-2021-384*, *EHCC-2021-886* and *EHCC-2021-045* will embellish the original complaint pleading. *EHCC-2021-384* and *EHCC-2021-045* had been consider by the courts. In *Brough v. Taylor*, 117 F.3d 197 (5th Cir. 1997), Howard v. King, 707 F.2d 215 (5th Cir. 1983), *Tolsted* the district court and fifth circuit court of appeals. Held the petitioners to a stringent standard applicable. *Mustard v. Underless* S.Ct. 594, 30 L.Ed. 652, 110 Fed. R. Serv. 2d 1 (1972).

The district court upon mutual screening of the complaint, in which the court ordered, that service of the summons be withheld upon the department, it clearly shows in the opinion of the district court, the courts primary focus was on the answer to *EHCC-2021-045* asserted on the complaint. The petitioners asserted to question asked upon mutual screening of his suit concerning exhaustion process. The petitioners filed into (A.R.B), before being brought to disciplinary court, *EHCC-2021-384* and *EHCC-2021-386*. Both of those complaints were improper. Rejected. Because it was impossible for the petitioners to frame his claim he wish to litigate without given a detail description of (who, what, when, where, and how), as subsection I of the Louisiana Administrative Code III. § 22.1, 325, afford an inmate to cite.

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Second The petitioner asserted upon initial filing of the suit. His disciplinary appeal were still pending. E.H.C. 2001-045. Because the department did not provide the petitioner with the warden respond concerning his pending disciplinary appeal. After the warden decision. Granting, petitioners appeal.

The United States Supreme Court and several circuit courts of appeal has recognize special circumstance to exist. Amount to justification for an inmate not complying with the Administrative Remedy procedure. Requirement Bureau v. Board, 380 F. 3d 670, 679-80 (and Cir. 2004).

Also, Base on a plain Reading of the foregoing, pursuant to § 325 F(3)(A)(vii)(c). The code provides that exhaustion for purposes of filing suits in Federal court occurs under multiple circumstance specifically including when they were "Rejected for the Reason specified in § 325 (i)" In Anderson v. Wilkinson, 2014, Jul 992078 (W.D. La. 2004) citing other cases has Applied These provisions to find that a plaintiffs claims were exhausted upon Rejection in the Screening process.

The LA Administrative Remedy Procedure: Instructions to inmates afford an inmate the Rights to upon the filing of a complaint, murder to demonstrated a (motive) to give a detail description of (who, what, when, where and how) of events that trigger the violation of his Rights. The petitioner to Believe his complaint were in compliance with the guideline set forth. In Tora v. Mississippi Dept of Corrections 301 Fed. Appx. 386 (5th Cir. 2008) Held, Courts must find non-exhaustion Apparent on the face of other parts of the complaint 301 Fed. Appx. 389.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Edward Simmons #103371

Date: September 30, 2022