

22-6283

ORIGINAL

No.

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

OCT 25 2022

OFFICE OF THE CLERK

James R. Turner III, Petitioner,

Vs.

Federal Aviation Administration, et al, Respondent,

On Petition for a Writ of Certiorari to the United States

Court of Appeals for the Second Circuit

Petition for a Writ of Certiorari

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Questions Presented for Review

1. Whether the United States Court of Appeals was justified by DISMISSING Petitioner's appeal for lack of jurisdiction.

2. Whether the United States District Court of New York of the Eastern District erred when DISMISSING Petitioner's complaint as untimely against the United States and the Port Authority concluding that Petitioner's affirmation was "not responsive" because he failed to explain how his Psychiatric illness warranted equitable tolling of the Statute of Limitation.

LISTED PARTIES

- Elizabeth Prelogare, Solicitor General of the United States,
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N.W., Washington DC 20530-0001

- Cheryl Nancy Alterman, Esq., The Port Authority of New York
& New Jersey Office of the General Counsel, 24th Floor 4
World Trade Center 150, Greenwich Street New York N.Y
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- F.J.C Security Services Inc., 3310 Queens Blvd Long Island
City, NY 11101

RELATED CASE

James R. Turner Appellant, v. Federal Aviation
Administration, Port Authority of New York and New
Jersey, F.J.C Security Service Inc. 09-4518-cv United States
Court of Appeals for the Second Circuit Mandate issued on
06/11/10.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner James R. Turner III respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINION BELOW

Petition for rehearing en banc was filed. An order denying petition for rehearing en banc was issued (3-A) is unreported. The judgement of the District Court (2-A) is unreported.

BASIS FOR JURISDICTION

The judgement of the Appeals Court was entered on June 2, 2022. A timely petition for rehearing en banc was filed. Order denying a petition for rehearing was dated on July 27, 2022. This Court's jurisdiction rests on 28 U.S.C 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

United States Constitution, Amendment I:

“Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

United States Constitution, Amendment XIV:

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizen of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

United States Constitution Article I Section 10 Clauses 1:

“No State shall enter into any Treaty, Alliance, or Confederation; grant letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder; ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.”

United States Constitution Article III Section 2:

“The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all cases affecting Ambassadors, other public Ministers and Consuls; - to all Cases of admiralty and maritime Jurisdiction; - to Controversies to which the United States shall be a Party; - to Controversies between two or more States; - between a State and Citizens

of another State; - between Citizens of different States, - between Citizens of the same State claiming Land under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

Title VII of the Civil Rights Act:

"No person employed by a company covered by Title VII, or applying to work for that company, can be denied employment or treated differently with regard to any workplace decision on the basis of perceived racial, religious, national, sexual, or religious characteristics. No employee can be treated differently based on his or her association with someone who has one of these protected characteristics. Additionally, employment decisions may not be made on the basis of stereotype or assumptions related to any protected characteristic."

28 U.S.C §2201(a):

“...any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgement or decree and shall be reviewable as such.”

STATEMENT OF THE CASE

On January 19, 1997, Petitioner, Mr. James Turner, (“Mr. Turner”) reported to work at J.F.K. Airport at Building 14 at Jamaica Queens. Petitioner was hired as a contracted security agent by Port Authority of New York & New Jersey. Mt. Turner was a full-time employee at the time working for \$8.75 per hour; \$350 weekly. At the time of Mr. Turner’s discharge, he was under physician’s care along with doctor’s order to rest. Mr. Turner filed for worker’s compensation, but his employer, F.J.C Security, controverted the claim, stating that he was not on duty at the time of the incident.

Mr. Turner was assaulted in the employees’ locker room on the second floor. He was threatened that he would be shot, he was robbed, and shoved into the lockers injuring his back and finger on his right hand. At no time did Mr. Turner retaliate against his attackers in the locker room. Mr. Turner’s employer, F.J.C Security and Port Authority

terminated him for fighting which they said warranted termination for violating their policy. After escaping from his attackers in the locker room, Mr. Turner's finger was bleeding. He reported the incident to his supervisor. Mr. Turner's supervisor said she was aware of what happen and authorized Mr. Turner to get treatment. The supervisor was informed by Mr. Turner that he would contact her when he felt safe.

As Mr. Turner was leaving the building, he was prevented from exiting because his attackers from the locker room were in the lobby area. At this time one of the assailants grabbed at Mr. Turner and out of fear a fight ensued. Mr. Turner went to Interfaith Medical Hospital emergency room where he received medical care. Mr. Turner called is supervisor at approximately 7p.m and he was told to come in to work the next morning and report it to the police department in the Airport. On Monday the 20th of

January 1997, when Mr. Turner arrived at building 14, the Administration building, he was escorted to the police department by one of his supervisor's named Bruno. Mr. Turner was first questioned by the officers and airport mangers, then he was taken to the medical office in the airport. Mr. Turner left the airport and went to meet with his doctor for the injuries he sustained. Mr. Turner was not advised of his rights or that he should have had an attorney present, so on Wednesday, January 22, 1997, Mr. Turner made a written statement of what transpired. Mr. Turner was informed that a meeting with his union reps would be on Friday January 24, 1997. However, Mr. Turner was terminated that very day! It came to Mr. Turner's attention that his Project Manager, Lou Del Baso, stated in front of everyone at roll call that if they saw something, knew something, or heard something, they should tell him, and the police would not bother them (employees); clearly witness

tampering and interfering with the process of justice. Mr. Turner was shocked and appalled by Mr. Del Baso's actions and ensured to have it noted in a complaint to the Port Authority Police Department. Mr. Turner believes that this action by Mr. Del Baso played a significant role in determining actions to terminate his employment.

Mr. Turner is in possession of a voice recording conversation between him and the lead investigating detective (Rapp) stating that there was no arrest and that the case was closed. Because of this, Mr. Turner was under the belief that there was no hope for his case. Mr. Turner was deceived as to the actual facts of the matter due to Detective Rapp's misrepresentations. As the Petitioner. Mr. Turner must demonstrate that the defendant's conduct caused him to forego commencing a timely action and that he was justified in relying upon such conduct along with the unjust treatment by his immediate employer, F.J.C security services when they penalized him for defending himself from

a vicious attack on the premise of his extended employer's property.

Since the incident, Mr. Turner has suffered greatly, and his entire life and livelihood have been affected by the compounded occurrence of the attack, being terminated unjustly, and eventually suffering life-altering mental health issues. Mr. Turner has found it hard to function and think in a succinct manner. The effects have impacted his awareness of time, schedule, events, etc. In fact, even this very case not being filed in a timely manner is a direct result of his experience.

The Court will find in this writ of certiorari, medical and scientific evidence that Mr. Turner has been adversely affected by Schizophrenia, which the American Psychiatric Association, DSM-5 Diagnostic and Statistical Manual of Mental Disorder, Fifth Edition, states is characterized by delusions, hallucinations, psychosis, disorganized speech and behavior, and other symptoms that cause social or

occupational dysfunction. For a diagnosis, symptoms must have been present for six months and include at least one month of active symptoms.

Definitions

Psychosis is defined as a set of symptoms characterized by a loss of touch with reality due to a disruption in the way that the brain processes information. When someone experiences a psychotic episode, the thoughts and perceptions are disturbed, and the individual may have difficulty understanding what is real and what is not.

Delusions are fixed false beliefs held despite clear or reasonable evidence that they are not true. Persecutory (or paranoid) delusions, occur when a person believes they are being harmed or harassed by another person or group.

Hallucinations are the experience of hearing, seeing, smelling, tasting, or feeling things that are not there. They are vivid and clear with an impression similar to normal

perceptions. Auditory hallucination or “hearing voices,” are the most common in schizophrenia and related disorders.

Disorganized thinking and speech refer to thoughts and speech that are jumbled and /or do not make sense. For example, the person may switch from one topic to another or respond with an unrelated topic in conversation. The symptoms are severe enough to cause substantial problems with normal communication. Disorganized or abnormal motor behavior are movement that can range from childlike silliness to unpredictable agitation or can manifest as repeated movements without purpose. When the behavior is severe, it can cause problems in the performance of activities of daily life. It includes catatonia, when a person appears as if in a daze with little movement or response to the surrounding environment.

Negative symptoms refer to what is abnormally lacking or absent in the person with a psychotic disorder. Examples include impaired emotional expression, decreased

speech output, reduced desire to have social contact or to engage in daily activities, and decreased experience of pleasure.

Mr. Turner was also diagnosed with Schizoaffective Disorder which causes episodes of major depression or bipolar symptoms (major depression or mania) at the same time as symptoms of schizophrenia (delusions, hallucinations, disorganized speech, grossly disorganized behavior, or negative symptoms). Symptoms of major mood episodes must be present for the majority of the duration of the active illness and there must be a period of at least two weeks when delusions or hallucinations are present in the absence of a mood episode.

Mr. Turner was furthered diagnosed with Posttraumatic Stress Disorder (PTSD). PTSD is a psychiatric disorder that may occur in people who have experienced or witnessed a traumatic event such as a natural disaster, a serious accident, a terrorist act, combat,

or rape or who have been threatened with death, sexual violence or serious injury. Symptoms of PTSD fall into the following four categories:1. Intrusion: Intrusive thoughts such as repeated, involuntary memories; distressing dreams; or flashbacks of the traumatic event. Flashbacks may be so vivid that people feel they are re-living the traumatic experience or seeing it before their eyes. 2. Avoidance: Avoiding reminders of the traumatic event may include avoiding people, places, activities, objects and situations that may trigger distressing memories. People may try to avoid remembering or thinking about the traumatic event. They may resist talking about what happened or how they feel about it. 3. Alterations in cognition and mood: Inability to remember important aspects of the traumatic event, negative thought and feelings leading to ongoing and distorted beliefs about oneself or others (e.g., “I am bad,” “No one can be trusted”); distorted thoughts about the cause or consequences of the event leading to wrongly blaming self or

other; ongoing fear, horror, anger, guilt or shame; much less interest in activities previously enjoyed; feeling detached or estranged from others; or being unable to experience positive emotions (a void of happiness or satisfaction). 4.Alterations in arousal and reactivity: Arousal and reactive symptoms may include being irritable and having angry outbursts; behaving recklessly or in a self-destructive way; being overly watchful of one's surroundings in a suspecting way; being startled; or having problems concentrating or sleeping. Mr. Turner continues to struggle with anxiety, and psychological and emotional disorders like these every day.

The court will agree that the Port Authority of New York and New Jersey is also responsible for not interceding on Mr. Turner's behalf nor explaining that Mr. Turner was only engaged in a fight, because one of their employees, Mr. Ricardo Edwards, had taken it upon himself to invite his violent cousin, Mr. Derick Duncan, to access (*through his*

authority) the secured premises of the Port Authority with the intent of assaulting and robbing Mr. Turner, based upon his personal vendetta over a prior incident. Upon their own admission, on a recorded line, the Port Authority detective Mr. Rapp stated that, Mr. Duncan was authorized by Mr. Edwards to access the premise. Mr. Turner knows for sure that if Mr. Edwards had not abused his security privileges to give Mr. Duncan access to the employee's locker room, he (Mr. Turner), would not have been forced to engage in the event that forced him to defend himself from his assailant (Mr. Duncan). Mr. Turner also would not have sustained any physical injuries, and subsequent mental health issues. The event that occurred in 1997, reflected gross negligence and miscarriage of justice, and an impediment to Mr. Turner's Civil Rights as provided in Title VII of the Civil Rights Act.

See Harris v. City of New York, New York Police Dept 186 F.3d 243 (1999) and Jones v. R.R. Donnelley & Sons Co. 541 U.S. 369 His right to be in a safe working environment was

violated by both Mr. Edwards and Mr. Duncan and was not upheld by the Port Authority of New York and New Jersey. Also, Mr. Turner's rights as an employee at F.J.C Security services were stripped from him, when his project manager Mr. Lou Del Baso, instructed the staff to direct their information to him, then when he decided to fire Mr. Turner for defending himself from an assault on the Port Authority property.

The question in this case is whether these actions were legal, or whether it was an attempt to maintain the government contract that F.J.C felt would be rescinded over the event that occurred between Mr. Turner and Mr. Duncan. Legislation Mandating breach of public contract: The distinction between a breach of contract and an impairment of contract depends on the availability of a remedy in damages. Thus, if a state breaches a contract but does not impair the counter party's right to recover damages for breach the state has not impaired the obligation of

contract, in violation of the contract clause. Redondo const .corp v Izequierdo 662 F.3.d 42 (1st Cir 2011)

Mr. Turner did not file within the required time constraints for commencement of suit against the Federal Aviation Administration and Port Authority of New York and New Jersey (a federal agency according to 28 U.S.C 2671) F.J.C Security Services, Inc. (his employer and a private contractor with the Port Authority) to warrant consideration to move forward. The court also asserted that Mr. Turner pursued other legal cases during this time and provided insufficient medical evidence. Mr. Turner was operating under the assumption that his claim would be handled through administrative relief procedures after applying for Social Security.

Title XVI of the Social Security Act and Regulations Promulgated thereunder 42 1382c 3(a) states: "Except as provide in subparagraph(c) an individual shall be considered to be disabled for purposes of this subchapter if he is unable

to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." Mr. Turner's date of entitlement for Social Security Disability benefits was April 1999, and his Disability award was set on October 3, 1998. The issue posed upon the court is whether an injured Petitioner may successfully assert the toll of the statute of limitation for disability by insanity, under CPLR 208. Upon the claim that Petitioner was diagnosis with PTSD, SCHIZOAFFECTIVE DISORDER, and SCHIZOPHRENIA, a person is insane pursuant to CPLR for the purpose of tolling the statute of limitation if he is unable to manage his business affairs and estate and to comprehend and protect his own legal rights and liabilities because of an overall inability to function in society. Anonymous v Anonymous 154 Misc. 2d 46.

The district court erred when it stated that because Mr. Turner pursued other claims this made him not eligible for tolling equitable relief. Bolarinwa v. Williams 593 F.3d 226 (2010); Bowles v. Russell, 551 U.S. 205,214 (2007) All other cases that Mr. Turner pursued were with attorney representation provided by support group referrals. Mr. Turner would have to show that his illness prevented him from doing this on his own. Not one of the attorney's who represented Mr. Turner advised him of what his next steps should be. It is pertinent to note that when a person is under a disability of "insanity" at the time his cause of action arises, the limitation period in a Personal injury action will be extended to three years after the disability ceases. Hurd v County of Allegany 39 AD,2d 499.

According to Civil Practice Law and Rules, if a person entitled to commence an action is under a disability because of infancy or insanity at the time the cause of action accrues, and the time otherwise limited for commencing the action is

three years or more and expires no later than three years the disability ceases or the person under the disability dies, whichever event first occurs if the time otherwise limited is less than three years the time shall be extended by the period of disability the time within which the action must be commenced shall not be extended by this provision beyond ten years after the cause of action accrues except, in any action other than. Medical, dental or podiatric malpractice, where the person was under a disability due to infancy, this section shall not apply to an action to recover a penalty or forfeiture, or against a sheriff or other officer for an escape, *Mc Carthy v Volkswagen of America, Inc et al 55 N.Y. 2d 543(1982).*

REASON FOR GRANTING PETITION

This Petition should be granted because this case can become a landmark case. With the up rise of mental

disability, the court can reflect on the fact that this case involves a National Security matter where one has raised an important federal law which has not been settled Hammer v Rosen 7 N.Y.2d 376. It gives courts and the Federal government power to modify contracts and to impose freedom of association, freedom of speech, freedom of movement without due process, to damages any party whose rights are ensured by federal laws, to affirm and find no error in lower court's ruling to discrimination, where relief is controversy regarding dispute of contract, with due process, liberty with substantial due process.

This court should review, and set aside, that judgement which will provide critical guidance to all lower courts, both federal and state, regarding the scope of the prior listed and aforementioned and later stated constitutional and statutory provisions at issue, that has not been, but should be settled by this court. The lower court

created a continuous and effective deprivation of Petitioner's federal rights; where government departed from equal protection and infringed constitutional rights. Such practice may be common in some courts, but its essence and its impact likely have negated the principal of justice for a long time unattended. This likely is also a violation of due process, especially given the fact that what the United States court of appeal affirmed and found no error in the district court judgement determined several extremely critical and life changing judgement. Due process does not exist in the instant case.

Laws governing agency actions such as when certain district courts have evaluated similar situations with the related law as in evaluating agency actions under the Administrative Procedure Act's (APA) arbitrary and capricious standard, the court must be satisfied that the agency has examined the relevant data and articulated a

satisfactory explanation for its action including a rational connection between the facts found and the choice made.

“When an agency has failed to provide a reasoned explanation for an action, or where the record belies the agency’s conclusion, the court must undo its action.”

Especially in definitive command that “An agency must explain why it decided to act as it did.” And “In reviewing an agency’s decision, the court is not free to substitute its judgement for that of the agency.” The fundamental principle that an administrative agency must set for its reasons for a decision is indispensable to sound judicial review. An agency decision will be arbitrary and capricious if it is not supported by substantial evidence because it is impossible to conceive of a nonarbitrary factual judgement supported only by evidence that is not substantial in the Administrative Procedure Act (APA).

Petitioner's petition for relief is a matter of law, which the district court denied and dismissed in totality, also the appeal court affirmed the district court. Denying Petitioner's request will continue to violate the Due Process Clause and the First Amendment directly against all precedence in all courts. *See Neitzke v. William* 490 U.S. 319, 325 (1989)

This is a violation of constitutional rights and violation of federal laws. In order to give any binding effect to a judgement, it is essential that the court should have jurisdiction of the person and subject matter. Supreme court had jurisdiction, under statute providing it with authority to review cases "in" the court of appeals, to settle questions whether removal notice was required to incorporate evidence supporting allegation of amount in controversy in putative class action, notwithstanding that review by court of appeals of remand order was discretionary and that the court of appeals exercised its discretion to deny review; case was "in" court of appeals because of leave -to- appeal application, and

Supreme Court had jurisdiction to review what court of appeals did with that application. Jurisdiction and Venue 28 1254(4). *See* Brown v. Eli Lilly & Co., 654 F.3d 347,356 (2d Cir.2011)

“Private rights of actions to enforce federal law must be created by congress.” The judicial task is to interpret the statute congress has passed to determine whether it displays an intent to create not just a private right but a private remedy. The Petitioner has been in contact with TSA FOIA 2022-TSFO-00896 and was told there has been an Administrative Closure to his request. He has written to the Port Authority for a copy of the complaint. Petitioner has also been in touch with Senate Majority leader Charles Schumer’s office but has yet to speak with the two case workers following up on his complaint.

This petition should be granted as stated, to provide the courts with indefinite reference and to rule for Due Process. The petitioner asks that the court take into

consideration that Mr. Turner has filed this petition looking for the writ of certiorari to be granted because of the seriousness of the Breach of Airport Security along with Federal Tort Claims Act.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

December 6, 2022

Respectfully Yours,

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