

22-6638

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

JAN 23 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

James Ralph Dawson, Jr. — PETITIONER
(Your Name)

vs.

Jeff Archambeau, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court of Appeals For the Tenth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

James Ralph Dawson, Jr.
(Your Name)

Prisoner #46709, P.O. Box 6000
(Address)

Sterling, CO 80751
(City, State, Zip Code)

970-521-5010
(Phone Number)

QUESTION(S) PRESENTED

- I. Whether the Tenth Circuit's Ruling that it was not just and practicable to apply to Mr. Dawson's then pending appeal this Court's December 1, 2021 Amendments to Fed. R. App. P. 3(c) to Mr. Dawson's Notice of Appeal, Conflicts with the Court's Order that the Amendments "shall apply" in all proceedings then pending?
- II. Whether Raising Failure to exhaust Administrative Remedies pursuant to Fed. R. Civ. P. 12(9)(2)(H), then Omitting the Affirmative defense in subsequent Summary Judgment Pleadings act as a waiver of the defense?
- III. Whether Mr. Dawson's Attached prison grievance at Appendix-H gave Colorado State Prison Official sufficient information to exhaust Administrative Remedies according to their prison grievance Rules?

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

1. *DAWSON V. ARCHAMBEAU, et al.*, 763 Fed. Appx 667
(10th Cir. 2019).
2. *DAWSON V. LLOYD et al.*, 642 Fed. Appx 885
(10th Cir. 2019).

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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 D. to the petition and is

☐ reported at Appendix D - Page #; 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☐ is unpublished.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 F to the petition and is

☐ reported at Appendix F - Page #; 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☐ is unpublished.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 November 7, 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: November 7, 2022, and a copy of the order denying rehearing appears at Appendix D.

☐ 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 _____.
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

1. This Court's December 1, 2021 Order Adopting Amendments to the Federal Rules of Appellate Procedure (2021)
2. The PLA Exhaustion Requirements
- 3.

STATEMENT OF THE CASE

After a Remand by the Tenth Circuit to the U.S. District Court for the District of Colorado, Mr. Dawson filed a premature Notice of Appeal challenging the district Court's "Second" grant of Summary Judgment to medical

providers as state policy makes for creating and implementing medical policies that delayed and prevented Mr. Dawson from receiving hepatitis-C treatment. However, because the Complaint was scheduled for trial against four remaining defendants, Mr. Dawson motioned the Court to dis-

miss his appeal as being improvidently sought. The Court granted the motion. See Appendix G.

Three Defendants settled out of Court. The district Court granted summary judgment to medical provider Robert Friskey on a finding that Friskey was not named in Mr. Dawson's prison grievances. A step that is not required by the Colorado Prison Grievance Rules.

After December 1, 2021, Mr. Dawson filed a third Notice of Appeal and inadvertently failed to name the Policy maker Defendants and Judgment Order and continued to argue in his Opening Brief that the district Court erred in granting Summary Judgment to the Defendants a second time. The Court ruled that it did not have Jurisdiction to determine Mr. Dawson's Appeal against the medical Provider Policy makers. That applying the December 1, 2021 amendments to Fed. R. App. P. 3 (c) to Mr. Dawson's pending Appeal was not Just and Practicable. This Request for Review follows.

REASONS FOR GRANTING THE PETITION

The Tenth Circuit's Ruling in Mr. Dawson's Case Refused to Apply the 2021 Amendments to Federal Rules of Appellate Procedure 3(c) to Mr. Dawson's pending Appeal. The Court Applied an Abrogated Reading of Rule 3(c) and Ruled that a Notice of Appeal that designated only an interlocutory Order - One that merged into the final Judgment - limits the Scope of Appellate Jurisdiction to just the designated Order. That Opinion, (1) Created an Unacknowledged Circuit Split with the First Circuit as to the Retroactivity of the 2021 Rule 3(c) Amendments, (2) Created an Unacknowledged Intra-Circuit and Inter-Circuit Split as to how this Court and others have treated the analogous 1993 Rule 3(c) Amendments, and (3) Erred on an important Issue of law in the Country that should be Reviewed.

Furthermore, this Court Ordered that

the 2021 Amendments to Federal Rule of Appellate Procedure 3(c) "shall" govern insofar as just and practicable in all proceedings then pending. A panel of the Tenth Circuit disregarded the Court's Order adopting the amendments

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James H. Dawson Jr.

Date: JANUARY 11th, 2023