

22-6686

No. _____

FILED

JAN 19 2023

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SUPREME COURT U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

JERAD M. ROSS — PETITIONER
(Your Name)

vs.

VIRGINIA, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. DIST. CT., (Roanoke Div.) / U.S. CT. OF APP. (4th Cir.)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JERAD M. ROSS #1474139
(Your Name) Pro-Se Petitioner
VA. DOC Centralized Mail Distribution Center
3521 Woods Way
(Address)

State Farm, Virginia 23160
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Whether State Prisoner incarceration for a Felony is considered a disability under Federal statutes the Rehabilitation Act ("RA") and the Americans With Disabilities Act ("ADA") Pursuant to Federal implementing regulation - 45 Code of Federal Regulation Section 84.3 (i) (2) (iv) and Virginia Civil Code Section 8.01-2 (6) (a)?

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:

The Commonwealth of Virginia;
The Virginia Department of Corrections;
Harold W. Clarke, Director of VA. DOC;
David A. Robinson, Chief of VA. DOC operations;
Rick E. White, Warden of Red Onion State Prison.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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OTHER

N/A

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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 14 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☒ is unpublished.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☒ is unpublished.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 October 21, 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 _____.
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

Federal Statute 29 U.S.C. Section 794 (a) ;

Federal Statutes 42 U.S.C. Sections 12112 and 12132 ;

45 Code of Federal Regulation Section 84.3 (j)
(2) (iv) ;

Virginia Civil Code Section 8.01-2(6) (a) .

STATEMENT OF THE CASE

1. Petitioner a Virginia State incarcerated Prisoner Proceeding by Pro-se, Filed a civil action under the Rehabilitation Act ("RA") and the Americans with Disabilities Act ("ADA") in the United States District Court For the Western District of Virginia (Roanoke Division). [Ross v Commonwealth of Virginia, et al., U.S. Dist. Ct. Civil Action No. 7:22-cv-00179].
2. Petitioner alleged in his Complaint the Respondents is excluding him as an employee from participating in the state's minimum wage service through Virginia Department of Corrections ("VA.DOC") Prison Work Program, by reason of his disability-"being an incarcerated prisoner convicted of a felony" in violation of the Federal statutes-("RA") and ("ADA"). [Pl. Compl. Section E, Pg. 10F4, U.S. Dist. Ct. Civil Action No. 7:22-cv-00179].
3. On June 3, 2022, the U.S. District Court summarily dismissed Petitioner's Complaint by sua sponte for Failure to state a claim upon which relief may be granted.➔

The U.S. District Court stated "the Complaint does not plausibly allege that Plaintiff is disabled within the meaning of the ("RA") or the ("ADA") because incarceration is not a disability." [U.S. Dist. Ct. Order, pgs 1-3, Civil Action No. 7:22-cv-00179]. See: Appendix B.

4. Petitioner appealed the U.S. District Court's June 3, 2022, Final decision to the U.S. Court of Appeal for the 4th Circuit of Virginia. The Appeals Court affirmed the U.S. District Court's decision on October 21, 2022. See: Appendix A.

REASONS FOR GRANTING THE PETITION

A. Conflicts with decisions of other Courts.

The holdings of the Court's below that State Prisoner's incarceration for a felony is not considered a disability within the meaning of Federal Statutes ("RA") and ("ADA") is contrary to the holdings of the 5th and 11th Federal Circuits. *Harris v Thigpen*, 941 F.2d 1495, 1524 [11th Cir. 1991]; *Leckelt v Bd. of Comm'rs of Hosp. Dist.*, 909 F.2d 820, 825 [5th Cir. 1990]; *Carter v Orleans Parish Pub. Schools*, 725 F.2d 261, 262-63 [5th Cir. 1984].

REASONS FOR GRANTING THE PETITION

B. IMPORTANCE OF THE QUESTION PRESENTED.

This case presents a Fundamental Question of the interpretation of 45 Code of Federal Regulation 84.3 (i)(2)(iv) and Virginia Civil Code Section 8.01-2 (6)(a) and the 5th and 11th Circuit Court's holding *supra*.

The Question presented is of great Public importance because it affects the operation of the Prison systems in all 50 states, the District of Columbia, and hundreds of City and County jails. Guidance on the question is also of great importance to Prisoners' because it affects their ability to receive a fair wage for their labor during their incarceration. Respondent(s) uses societal inflation and taxation to increase the Petitioner's incarcerated cost of living, but excludes him from participating in the State's minimum wage service.

Title II of the ("ADA") provides that "No Qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any such entity" 42 U.S.C. § 12132.

Similarly, Section 504 of the ("RA") provides that "[N]o otherwise qualified individual with a disability... shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance..." 29 U.S.C. § 794(a).

Title I of the ("ADA") defines the term "employer" as a person engaged in an industry affecting commerce who has more than 15 employees each working day and defines the term "employee" as an individual employed by an employer" 42 U.S.C. § 12112.

Federal Statutes ("ADA") and ("RA") applies to State Prisoners. Pennsylvania Dept. of Corr., v Yeskey, 524 U.S. 206 (1998) ("ADA"); Onishea v Hopper, 171 F.3d 1289 ("RA"); Armstrong v Wilson 124 F.3d 1019 ("RA").

Prison employment is a Program subjected to the ("ADA") title II Public entity provision. *Northrop v Carucci*, 2007 WL 685173, *4 (D. Conn, March 5, 2007); *Montez v Romer*, 32 F. Supp. 2d 1235 [D. Colo 1999], Federal Regulation promulgated under the ("RA") and ("ADA") statutes are applicable to incarcerated state prisoners. *Amos v Maryland Dept. of Corr.*, 178 F. 3d 212 [4th Cir. 1999]; 205 F. 3d 687 [4th Cir. 2000]; *Bullock v Gomez*, 929 F. Supp. 1299 [C.D. Cal. 1996], Federal implementing regulation - 45 Code of Federal Regulation Section 84.3 (i)(2)(iv) provides that persons are "regarded as having an impairment" if they are treated by the recipient of Federal Funds as if they ~~were~~ handicapped ("disable") regardless of their actual condition. *Id.* *Harris v Thigpen*, 941 F. 2d 1495, 1524 [11th Cir. 1991]; *Lockett v Bd of Comm'rs of Hosp. Dist.*, 909 F. 2d 820, 825 [5th Cir. 1990]; *Carter v Orleans Parish Pub. Schools*, 725 F. 2d 261, 262-63 [5th Cir. 1984].

ANALYSIS

Petitioner asserts, Respondents' receives Federal Funding to run their Prison - Virginia Department of Corrections ("VA. DOC"). "Every state accepts some Federal Funds to run their Prisons". *Cutter v Wilkinson* 544 U.S. 709, 725 N. 4, 125 S.Ct. 2113 (2005). The ("VA. DOC") is a Public business entity that affects intra/inter State Commerce. ("VA. DOC") as an employer has over 15 employee each working day who travels intra/inter state to work.

Pursuant to Virginia Civil Code Section 8.01-2(6)(a) the Respondent- Commonwealth of Virginia treats a person incarcerated for a Felony as a person under a disability. *Id.*, *Hawkins v Commonwealth*, 63 Va. Cir. 211, 2003 Va. Cir. LEXIS 168 [2003] ["a person convicted of a Felony is a person under a disability during the period he is confined Pursuant to Code Section 8.01-2(6)(a)."].

Thus, Petitioner's incarceration for a Felony is considered by Respondent who receives Federal Funds to run its Prisons to be a disability pursuant to 45 C.F.R. Section 84.3 (j)(2)(iv) and Va. Code § 8.01-2(6)(a). Consequently, Petitioner's incarceration for a Felony is a disability within the meaning of Federal Statutes ("RA") and ("ADA").

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jerad M. Ross

Date: January 17, 2023