

22-6760 ORIGINAL

FILED
JAN 31 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

DAVID LASSEGUE — PETITIONER
(Your Name)

vs.

UNITED STATES, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DAVID LASSEGUE REG. No. 09210-070
(Your Name)

USP LEAVENWORTH, P.O. Box 1000
(Address)

LEAVENWORTH, KS 66048
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Whether the U.S. Court of Appeals for the Third Circuit Violated Lassegue's rights when it ignored this Courts precedent in Kwai Funwong V. Beebe 732 F.3d 1030- (9th Cir 2013). See also Jonhson V. United States, 3:14-cv-753 2016 U.S. Dist. LEXIS 81976 2016 WL 4497066 at 6 (M.D. Pa Aug 26 2016). And in it's own circuit Under Schimidt V. Skolos, 770 F. 3d 241, 249 (3d Cir. 2014).

Whether the U.S Court of Appeals For the Third Circuit also Violated Lassegue's rights Under "Barnes V. American Tabacco Co. 161 F .3d 127, 154 (3d Cir 1998)(quoting Kichline V. Consolidated Rail Corp., 800 F.2d 356, 360 (3d Cir. 1986)) . See also Lake V. Arnold, 232 F .3d 360, 266-68 (3d Cir. 2000). also See "West V. Philadelphia Elec. Co 45 F .3d 744, 754 (3d Cir 1995). And Hill v. United States, 180 F Supp. 3d 578, 581 (SD.Ill. 2016).

Whether the U.S Court Of Appeals for the Third Circuit violated (Lassegue's) rights when it ignored it's own Courts precedent in Berry, 715 F. 2d at 981. Cowell v. Palmer Twp, 263 F. 3d 286, 292 (3d Cir. 2001). And in Basley v. CMC Real Estate Corp., 923 F. 2d, 758, 760 (9th Cir. 1991) brought Under 42 U.S.C. (1983). See id. at 755 n. 9 (citing Berry v. Board of Supervisors of Louisiana State Univ. 715 F.2d 971, 982 (5th Cir. 1983)). And also See... Seitzinger v. Reading Hosp. & Med. Ctr, 165 F. 3d 236, 240 (3d Cir. 1999). And Miller v. NJ State Dept of Corr, 145 F. 3d 616, 618 (3d Cir. 1998). See Haines v. Kerner, 404, U.S. 519, 520-21, 92, S. Ct 594, 30 L.Ed. 2d 652 (1972).

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: DAVID LASSEGUE # 09210-070 P.O. Box 1000
USP LEAVENWORTH, LEAVENWORTH, KS 66048
PETITIONER.

UNITED STATES, et al (and others)

ELIZABETH B. PRELOGAR, Solicitor General
Department of Justice, Washington, D.C. 20530

RESPONDENT(S)

RELATED CASES

1. United States District Court for the Middle District of Pennsylvania Case. No. 4:21-CV-01466
2. United States Court of Appeals for the Third Circuit Of-Pennsylvania Case. No. 22-2475
3. United States District Court, for the District of New Hampshire Case. No. 1:18-cv-109-SM

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Basley v. CMC real Estate Corp., 923 F.2d, 758, 760 (9th Cir. 1991). Ap. I (1)	

STATUTES AND RULES

The state under which petitioner, seek relief is under one (1)
The Federal Tort Claim Act (FTCA), 28 U.S.C. § 2675, Under delegated
by C.F.R. § 543. 30.

2. Under the Bivens Claim 28 U.S.C. § 2671.

OTHER

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 2022 U.S. Dist. LEXIS 135642; 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 02, 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

1. The Eighth Amendment of the United States Constitution provides:

"Rights to be Free from Cruel and Unusual Punishment, a plaintiff's 14th Amendment Right of Equal protection of law, and the Due Process Clause, all guaranteed him by The United States Constitution.

2. The First Amendment of the United States Constitution provides:

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 for a redress of grievances").

3. The Fifth Amendment of the United States Constitution provides:

"No person shall be... deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation."

STATEMENT OF THE CASE

On March 15, 2017, petitioner Mr. Lassegue filed an administrative, Tort Claim to the Northeast Regional Office identified under TRT-NER-2017-03305. And was denied by the Northeast Regional Office by letter on September, 6, 2017. (See Appendix G) first letter of denial.

Petitioner "Lassegue" then filed a request for reconsideration on October 16, 2017, which was also denied by letter on November 1, 2017. (See Appendix H) second letter of denial.

Petitioner (Lasseguè) did filed a letter for reconsideration of the first letter of denial, that proved that the Northeast Region was in error for denying his Claim as untimely. (See Appendix I) letter for reconsideration.

After unsuccessfully pursuing his tort claim based on Administrative Remedies, Mr. Lassegue pursued his claim in the district court for the U.S. District Court of New Hampshire, (Concord NH), while he was housed and detained to serve his federal sentence, at (FCI Berlin) in Berlin NH.

After unsuccessfully pursuing his motion for relief in the wrong court, Mr. Lassegue withdrew his motion without prejudice in an order by the court. (See Appendix J) docket sheet of the District Court of New Hampshire.

During the time that Mr. Lassegue withdrew his motion to then file it in the appropriate court he was housed at FCI Gilmer, because of medical issues, he was then transferred to the (ACI) in Rhode Island for an (IA D) Interstate Agreement on an open case pending detainer. (See Appendix K--inmate history ADM-REL)) which shows where Mr. Lassegue was transferred to the (ACI) in Rhode Island for 18 months in a Maximum Prison and was denied access to legal material as well as use of the law library. Once Mr. Lassegue was transferred back to FCI Gilmer, he filed his complaint in the Middle District Court of Pennsylvania, under case number 4:21-CV-01466-MWB-D13.

REASONS FOR GRANTING THE PETITION

QUESTION(S) PRESENTED

1. Whether; the petitioner's Lassgue, motion is timed barred if he timely filed his complaint in the "wrong forum." And the Court did not transfer the complaint, but instead dismissed it without prejudice.?
2. Whether; the fact Lassegue was gone from federal Custody on an (I AD) to Rhode Island for Eighteen months, had no access to a law library, or legal research materials, his legal papers (which were left, per State of Rhode Marshal's order, at his federal prison), did establish reasons for "equitable tolling."?

ARGUMENTS AMPLIFYING REASON FOR WRIT

1. THE THIRD CIRCUIT PANEL ERRED DENYING PETITIONER'S APPEAL ON FEDERAL TORT CLAIM (FTCA) AND BIVENS CLAIM BECAUSE PETITIONER WAS NOT TIME BARRED AS THE UNITED STATES DISTRICT COURT SAID.

The Supreme Court should grant certiorari because the Court of Appeals failed to make a necessary finding of of fact required by the established laws of this Court. The United States court of appeals has entered a decision in conflict with the decision of the Ninth Circuit in *Kwai Funwong v. Beebe* 732 F. 3d 1030 (9th Cir 2013). In this Courts "Opinion" it has been found that when a plaintiff untimely file his civil actions because of an action or decision by others, Court have found such circumstaces to justify equitable tolling . See also *Jonhson v. United States*, 3:14-cv-753 2016 U.S. Dist. LEXIS 81976 2016 WL 4497066, at 6 (M.D. Pa Aug 26 2016).

Petitioner, Lassegue, was transferred out of federal custody when he started pursuing his tort against the FBOP for erroneously hiking up his

security level to keep him in a high custody federal prison where he was placed in a dangerous environment of inmates. See. Appendix K (inmate history ADM-REL). Which shows why Mr. Lassegue was delayed for 18 months and then an additional 3 months due to "Covid 19 pandemic prison nationwide lockdown.

Basically petitioner Lassegue was never supposed to be placed in a maximum security federal prison because his custody level was based on absent allegations not relating to federal BOP records.

Petitioner Lassegue, has attached various documents to his complaint which include a list of defendants concerning his claim. If the court can reasonably read a pro se litigant's pleadings to state a valid claim upon which relief could be granted it should do so despite the litigant's failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or unfamiliarity with pleading requirements.

See **Boag V. MacDougall**, 454 U.S. 364 (1982); **United States ex rel. Montgomery v. Bierley**, 141 F.2d 552, 555 (3d Cir. 1969). (Petition prepared by a prisoner may be inartfully drawn and should be read with a measure of tolerance.

This Court may consider facts and make inferences where it is appropriate. See. **Heffley v. steele**, 2019 WL 5092127, at 4 (W.D. Pa Oct 11, 2019).

Also the third circuit has instructed that if a complaint is vulnerable to dismissal for failure to state a claim, the district court must permit a curative amendment unless an amendment would be inequitable or futile. See. **Grayson v. Mayview State Hosp**, 293 F.3d 103, 108 (3d Cir. 2002).

The U.S. Appeals Court of the 3rd circuit stated also that there was no substantial "question presented by the petitioner's appeal," which maybe true, but, they still were to construe petitioner's appeal liberally as said in **Haines v. Kerner**, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L. Ed. 2d

652 (1972); **United States v. Day**, 969 F.2d 39, 42 (3d Cir. 1992). (2013 U.S. Dist. LEXIS 3) The court must "accept as true all factual allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the plaintiff."

Morse v. Lower Merion School Dist. 132 F.3d 902, 906 (3d Cir. 1997).

~~The court must accept as true all factual allegations in the complaint and view them in the light most favorable to the plaintiff.~~

Therefore, that the U.S. Appeals Court of the 3rd Circuit did not construe Petitioner's Lassegue, claims liberally as to petitioner stated all facts to his claims.

T

The 3rd has also acknowledge that two of the (3) "Equitable tolling available situations" are at issue here. See page 5 Appendix A." By stating the second and third tolling situations are at issue here; it is clearly, that petitioner filed his claim timely asserted his rights mistakenly in the wrong forum. In February 2018, about three months into the six-month - limitations period, In November 2019, the District of New Hampshire granted Lassegue's motion to voluntarily withdraw the complaint. Due to the fact that the United States filed motions to the court to opposed the court from transferring petitioner's claim to the right venue, so that petitioner's motion would timely be filed. Due to these facts that force petitioner Lassegue to voluntarily withdraw his complaint. Under the circumstance of the District Court of New Hampshire granting motion.

§ 1412. CHANGE OF VENUE

A district court may transfer a case or proceeding under title I 11 USCS §§ 101 et seq. to a district court for another district, in the interest of justice or for the convenience of parties. In determining whether venue transfer under § 1412 is in the interest of justice, courts may consider factors including: "(1) the economics of estate administration; (2) a presumption in favor of the home court; (3) judicial efficiency;

(4) the ability to receive a fair trial; (5) the state's interest in having local controversies decided within its borders; (6) the enforceability of any judgment; and (7) plaintiff's choice of forum." *Perno v. Chrysler Grp., LLC*, Civ. A. No. 10-5100, 2011 U.S. Dist. LEXIS 24251, 2011 WL 868899, at * 4 (D.N.J. Mar. 10, 2011).

CONCLUSION

This petition is very important for this Court to exercise its supervisory power; cause (1) here lies a "Question where the lower court ignores its due diligence to consider the fact;" a "Covid 19 pandemic Nationwide prison lockdown existed," And neither Inmates nor Citizens, in the free world was able to access libraries, Gyms, or Movie theaters, and other public place's . (2) Where the plaintiff in some extraordinary way has been prevented from asserting [his] rights; to access to the Courts addresses.

For the foregoing reasons, Petitioner David Lassegue prays that this Court review all the "Appendix's in this case ;" and this Honorable Court grant Certiorari to review judgment of the United States Court of Appeals for the Third Circuit. The Court must liberally construe a pro se litigants pleadings. See Haines v. Kerner, 404. U.S. 519, 520-21, 92 S.Ct 594, 30 L.Ed 2d 652 (1972).

David Lassegue, ID number: 09210- 070 on Date: of 1/27/2023.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



David Lassegue ID # 09210-070

Date: 1/27/2023