

No. 22-6767

ORIGINAL
Supreme Court, U.S.
FILED
JAN 25 2023
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IN THE
SUPREME COURT OF THE UNITED STATES

Travis Ray Thompson — PETITIONER
(Your Name)

vs.

Christian Pfeiffer — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States District Court-Eastern District
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Travis Ray Thompson
(Your Name)

3000 W. Cecil Ave.
(Address)

Delano, CA 93215
(City, State, Zip Code)

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(Phone Number)

QUESTION(S) PRESENTED

- Whether the Ninth Circuit abused it's discretion finding Petitioner had not shown excusable neglect for not filing his Notice of Appeal in the District Court within 30 days if the District Court decision(filing it 3 days late), FRAP 4(a)(5)(A), when the District Court was refusing to provide him a copy of the request for certificate of appealability filed in its court, despite Covid modified program forcing him to file his only copy, deprived of copying services by the prison law library, causing him to be preoccupied with recreating the argument, and given that he had mistakenly filed the request for an extension of time in a separate case brought by him, prematurely, as a result of a mix-up. With the District Court accepting the late filing;
- Whether the state court was duty bound by Cal. Const. Art. VI, § 1 to rectify constitutional error by exercising it's Article III jurisdiction invoking upon the state legislatures power under Cal. Const. Art. IV, § 1 to intervene in habeas proceedings in order to expand Fourteenth Amendment protected classes to include "different persons" being treated equal, as the circumstances warrant;
- Whether 28 USC § 2254(d)(1) is unconstitutional if it would deprive District Courts ability to effect a remedy by demanding it exercise it's Article III jurisdiction to invoke the California legislatures interference to expand the protected class to include "different persons" being treated equal, when the circumstances warrant, with Tigner v. Texas extending an invitation.

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:

Christian Pfeiffer, Warden- KVSP

State of California

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APPENDIX D	Eastern District Order Adopting F&R, dated 7-5-22;
APPENDIX E	Eastern District F&R To Dismiss Pet., dated 5-3-22;
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- Transcript of the "limited" debate in the 39th Cong. 1st Sess. 505, 1033, and 1292(1866) concerning § 1 of the 14th Amendment, allowing state legislative authority in remedying perceived problems.

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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

[x] For cases from **federal courts:**

The opinion of the United States court of appeals 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.

The opinion of the United States district court appears at Appendix D, E 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 10-27-22.

[] 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

- US Supreme Courts abuse of discretion review under 28 USC § 2107 of the Court of Appeals determination on excusable neglect of late filing of Notice of Appeal;
- Fed. Rules App. Proc., Rule 4(a)(5) requiring a showing of excusable neglect where the need for extension of time to file notice of appeal results entirely from neglect attributed to would-be appellant;
- US Const. 14th Amendment expansion of the protected class to include "different persons" being treated equal under the circumstances.
 - Congressional debate on § 1 of the 14th Amendment, leaving it to the states to remedy problems of equal protection, crafting their own classification;
- US Const. Article III, and Cal. Const. Art. I, §§ 1 and 7 judicial power invoking upon the state legislature to expand protected class under Cal. Const. Art. IV, §§ 1 and 16, to effectuate habeas remedy;
- Constitutionality of 28 USC § 2254(d)(1), depriving the court of the ability to effectuate a remedy by invoking upon the state legislature to expand protected class, constituting a suspension of the writ in violation of Article I, § 9, cl.2.

STATEMENT OF THE CASE

By an Information filed on January 18, 2017, in Sacramento County, Petitioner was charged with battery on a non-confined person within the meaning of Cal. PC § 4501.5, and possession of an inmate manufactured weapon(§ 4502, Subd.(a)). In addition, the Information further alleged two prior strike convictions(§§ 667, Subd.(e)(2), 1170.12, Subd. (c)(2), the result of an altercation at CSP-Scaramento on 4-21-16.

On about Sept. 29, 2017 Petitioner was forced to represent himself following denial of a Marsden hearing resulting from Public Defender Alice Michel refusing to pursue a political/ code of silence defense, obtain records of so-called "non-party" CCPOA's(California Correctional Peace Officers Assoc.) financial contributions to the judiciary, for disqualification purposes, or file certain dispositive motions he demended be filed.

Petitioner had contended throughout pre-trial discovery, a double standard being imposed by the Administration in the discriminatory/ selective prosecution schemes, hastily prosecuting inmate assaults/ batteries on guards, but not guards unnecessary/ excessive force against inmates, a result of the terms of the guards unions contract with the state, and a code of silence being enforced by the union- where guard culpability is the determining factor whether or not to prosecute guards for their involvement in same incident, or fostered violence resulting in the weapons possession.

Petitioner was deliberately denied all discovery to prove an equal protection violation, a result of the court micromanaging his investigation, the Attorney General/ CDC's misrepresentations in Quash motions on subpoenas, obstructing justice. Otherwise Smith v. Municipal Court for the Stockton Judicial Dist. of San Joaquin, 28 Cal. App. 3d 592, 601(Cal. App. 3 Dist. 1978),

given the parallel of the case to Keys v. Pa, 2011 US Dist. LEXIS 19928, *6-7, 14, 54, 69-73(MD Pa 2011), where it asserted the unions contract terms, and a code of silence determines whether guards are prosecuted for the same incident following altercations with inmates, seen also as to the prosecution referral decision, laid the foundation for judicial re-examination of the legislatures criminal justice policy, i.e., the "different persons" treated equal standard, rather than "similarly situated" requirement for equal protection claims.

Furthermore, the lack of actions against, and failure to join inmate Avila(who seemed to be an indispensable party, and is recently deceased, was dispositive of the case, although a convict code of silence prevented him from arguing the fact, or the reason for his demise.

Petitioner was convicted on about 5-19-17, as a result of being denied a correction expert on the code of silence dilemma, and the perjured testimony of Sgt. Steele to avoid qualifying as an expert for the defense on the issue, and sentenced to a consecutive life sentence.

Contrary to the Third Appellate District Court of Appeal Order denying Petitioner habeas relief, at p. 4, asserting his equal protection claim would be proper only where the similarly situated requirement is met. Smith, at 601 showed under the circumstances of this case, a "different persons" treated equal standard would apply.

The California Supreme Court denied review by summary denial on 2-27-19.

On federal habeas Petitioner relied on Tigner v. Texas, 310 US 141, 147 (1940), where although not "clearly established" Supreme Court authority, it extends an invitation to become such, supporting Petitioners position, calling for the expansion of equal protection as to include treating "different persons"

the same, where the circumstances of his case are identical to Keys v. Pa-
laying the foundation for judicial re-examination of the legislatures crimin-
al justice policy, expand equal protection to include protection of "different
persons".

In acknowledging that the Supreme Court only interprets law, and does not
create it, the congressional debate at the 39th Cong. 1st Sess. 505, 1033, and
1292(1866) concerning § 1 of the 14th Amendment was limited, as the state leg-
islature was left to establish standard classification(such as "similarly sit-
uated" treated equal) requirements...relevant to the problem perceived, and a
remedy of the ill, with public and private concerns.

Article III judges would have jurisdiction to invoke the state legislature
to expand the protected class, and impose an appropriate remedy for any viola-
tion found. Yet neither the District Court in it's 7-5-22, or Ninth Circuit
did.

The Ninth Circuit refused to consider his request for certificate of app-
ealability, relying on 28 USC § 2107, and FRAP 4(a)(5)(A), denying the request
on 10-27-22, chosing to ignore Petitioners excusable neglect in filing the
Notice of Appeal on 8-8-22(3 days late), after mistakenly filing a request
for an extension of time in the wrong case.

REASONS FOR GRANTING THE PETITION

Clearly the Court of Appeal had jurisdiction to determine Petitioners request for certificate of appealability pursuant to 28 USC § 2107, and 2254(c) (2), yet abused it's discretion finding he hadn't established "excusable neglect" for the filing of his notice of appeal on 8-8-22(only 3 days late), after mistakenly filing for an extension of time in the wrong case(i.e., Cal. SCT No. S275983 on 7-29)(the CDC-119 shows it going out on 8-3-22, which would have met the deadline in the District Court No. 02175, if not for the inadvertent mistake), on a mix-up, where it would have been timely otherwise. Hiab Cranes & Loaders, Inc. v. US Trucker Cranes, Inc., 1989 US App. lEXIS 11292(3d Cir.1989) citing Consolidated Freightways Corp. v. Larson, 827 F. 2d 916, 918-20(3d Cir. 1987), cert denied 554 US 922(2008), Santiago v. NY & NJ Port Auth., 687 Fed. Appx. 146, 149(3d Cir. 2017) citing Bowles v. Russell, 551 US 205, 214, 219 (2007).

The standard of review for determining abuse of discretion for not finding excusable neglect City of Chanute v. Williams Natural Gas Co., 31 F. 3d 1041, 1045(1994, CA 10 Kan.), cert denied 513 US 1141(1995), Gooch v. Skelly Oil Co., 493 F. 2d 366, 368(10th Cir. 1974), cert. denied 419 US 997(1974) considered four factors, 1) danger of prejudice to other party; 2) length of delay and its potential impact on judicial proceedings; 3) reason for delay; 4) movant's good faith. Where here the District Court judgment on 7-5-22, and the notice of appeal due by 8-5-22, there was no danger of prejudice to the other party ...by a 3 day late filing...where Petitioner inadvertently sent the request for an extension of time to the wrong court, in an unrelated matter, and given that the District Court wouldn't provide Petitioner a copy of the Req-

uest For Certificate of Appealability filed in the District Court, despite his being forced to file his only copy during a Covid modified program, depriving him of copying services.

Petitioner would have established excusable neglect, and the issues raised in the request for certificate of appealability were meritorious.

The congressional debate on § 1 of the 14th Amendment Sess. 505, 1033, in Feb. 1866, left it to the state legislature to remedy problems concerning equal protection, crafting their own classifications, based on legitimate state interest, where the state court, and fed's relied on the limited "similarly situated" requirement established by the state legislature as early as 1879, by the adoption of Cal. Const. Art. 1, § 7, to deny Petitioner'equal protection claim that a politically motivated double standard being imposed by the Administration in a discriminatory/ selective prosecution scheme, hastily prosecuting inmate assaults/ batteries on guards, but not guard unnecessary/ excessive force against inmates, a result of the terms of the guards unions contract with the state, and a code of silence being enforced by the union- where guard culpability is the determining factor whether or not to prosecute guards for their involvement in the same incident, identical to the claims in Keys v. Pa, 2011 US Dist. LEXIS 19928, *6-7, 14, 54, 69-73(MD Pa 2011). Where Petitioner discovered Keys years after raising the allegations in defense to the charges.

Where the discriminatory prosecution scheme violated his equal protection right, Petitioner relied on Tigner v. Texas, where although not "clearly established" Supreme Court authority, it extends an invitation to become such, supporting Petitioner position calling for the expansion of the protected classes to include treating "different persons" the same, under the circumstances, where he laid the foundation for judicial re-examination of the legis-

latures criminal justice policy if only recognizing "similarly situated" persons for equal protection claims.

The state court was duty bound by Cal. Const. Art. VI, § 1 to rectify constitutional error by exercising its Article III jurisdiction, invoking upon the state legislatures power under Cal. Const Art. IV, § 1 to intervene in habeas proceedings in order to expand the protected class to include "different persons" being treated equal, as the circumstances warrant.

If 28 USC § 2254(d)(1) would deprive district courts the ability to effectuate a remedy by demanding they exercise their Article III jurisdiction to invoke the California legislature to expand the protected class to include "different persons" treated equal, where the circumstances warrant, it would prove to be unconstitutional, and constitutes a suspension of the writ in violation of US Const. Art. 1, § 9, cl. 2.

Boumediene v. Bush, 553 US 723, 792(2008) established the unconstitutionality of § 2254(d)(1), where the court on habeas is empowered to effectuate a remedy, whereas here only "similarly situated" persons are entitled to equal protection, limited by state classification. Despite the circumstances in this case appearing years before the Petitioner raised the allegations in defense, in the 2011 Keys v. Pa case, the District Court declined to exercise it's Article III jurisdiction, despite the likelihood that CDCR's discriminatory/ selective prosecution schemes would continue in the prison setting, where the states interest being subservient to that of a corrupt CCPOA- who creates public policy in the state, and with the political motivations behind the assaults and batteries on guards being the subject of legislative scrutiny for the past three decades, where Senators Richard Polanco(D-Los Angeles), and John Vasconcellos(D-San Jose) chairing a Joint Committee on Prison Construction and Operations in 1998, and Senators Gloria Romero(D-Los Angeles) and Jackie Speier(D-

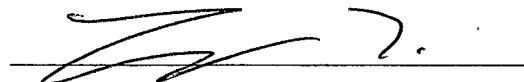
Cont. Reason For Granting The Petition
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Hillborough) chaired a Senate Select Committee on Government Oversight and the California Correctional System in January 2004, with the report of the Special Master John Hagar in Madrid v. Woodford, 2004 US Dist. LEXIS 11561 (ND Cal. 2004) the basis of the hearing. Although not invoking a re-examination of the legislatures criminal justice policy, on equal protection grounds by expansion of the protected class...

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Z. J.", is written over a horizontal line.

Date: 1-23-23