



ORIGINAL

No. 22A 215

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In the Supreme Court of the United States

FILED
SEP 03 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.

BERNICE CURRY-MALCOLM

Applicant,

v.

NEW YORK STATE DIVISION OF HUMAN RIGHTS AND ROCHESTER
CITY SCHOOL DISTRICT

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW
YORK STATE COURT OF APPEALS

APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI

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BERNICE CURRY-MALCOLM, PRO SE APPLICANT

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SUPREME COURT, U.S.

**APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A
WRIT OF CERTIORARI**

To the Honorable Sonia Sotomayor, Associate Justice for the Supreme Court of the United States:

In accordance with Rule 13.5 of the United States Supreme Court Rules, Bernice Curry-Malcolm, appearing before the Court as an unrepresented *pro se* litigant, who was the *pro se* plaintiff and then appellant in the proceedings below, makes respectful request for a sixty -day extension of time, up to and including, Monday, November 14, 2022 within which to file her petition for writ of certiorari in this case. Curry-Malcolm’s petition for writ of certiorari is currently due September, 12, 2022. In support of this application, *pro se* Applicant states:

1. The word “substantial” is not found in the governing statute, CPLR 5601 (a), or the New York State Constitution provision that provides for appeals as of right on constitutional grounds. N.Y. Const. art. VI, § 3(b)(1)-(2)There is a conflict in the circuits as to what the word “substantial” means, and whether dismissal of appeals as of right *sua sponte* deprives an aggrieved party of his or her due process rights under the N. Y Const. Article I, § 11, Fifth and Fourteenth Amendments.
2. The Fifth and Fourteenth Amendments to the United States Constitution and N.Y. Const. Article I, § 11, prohibits a state or government from infringement on and/or deprivation of a person’s life, liberty, or property without due process of law and/or deny to any person within its jurisdiction equal protection of the laws ,whether the Petitioner had a property right to her employment and whether termination of her employment constitutes an adverse employment action under Title VII.
3. Under this Court’s precedents there are objective standards that require recusal when the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable, whether the same objective standard of the probability of actual bias be applied to agency decisionmakers where their arbitrary and capricious actions as a decisionmaker is too high to be constitutionally tolerable, should this Court overrule its standing in *Rippo v. Baker*.

4. Did the Appellate Division, Fourth Judicial Department abuse and exceed its discretion in confirming the New York State Division of Human Rights final determination where the court lacked jurisdiction to do so thereby acting as an advocate for the agency and whether, as here, a pro se litigant has a clear civil and fundamental right to the articulated the basis of the appellate division's November 12 Order, and under what circumstances should an appellate court "rubber stamp" an agency determination by overlooking the abuse of discretion of the lower court which overstepped in its jurisdiction and was the school district's actions in violation Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. ("Title VII"), 42 U.S.C. § 1981, the New York State Human Rights Law, N.Y. Exec. Law § 290 et seq. ("NYSHRL") and the New York State Constitution. The Court of Appeals sua sponte dismissal conflicts with the Courts own guidance regarding "Rubber Stamping" an agency's decision. Matter of New York City Tr. Auth. v. State Div. of Human Rights, 78 N.Y.2d 207, 216, 573 N.Y.S.2d 49, 54, 577 N.E.2d 40, 45 (1991); Matter of Reape v. Adduci, 151 A.D.2d 290, 293, 542 N.Y.S.2d 562, 564 (1st Dept.1989).
5. The New York State Division of Human Rights final determination was arbitrary, capricious, done in bad faith, error of law, and was not rationally based, whether the lower court and Appellate Division November 12 Order made based on a record that did not exist below and/or on appeal, and/or in the alternative, the November 12 Order made based on an incomplete record transcript that omitted relevant evidence was proper for appellate review where the appellate court lacked jurisdiction to hear the matter on transfer from the lower court, and where the record was not settled as pursuant to CPLR § 5532 AND R. 1000.4 (A)(2) [53-55] by all the parties was an abuse of discretion and violates the due process and equal protection clauses of the constitution. The lower courts orders were not supported by substantial evidence in the record, whether it was congressional intent that pro se litigants be deprived of constitutionally protected rights to a full and fair opportunity to be heard.
6. Whether the actions of the Respondents-Defendants New York State Division of Human Rights and Rochester City School District's Stipulation of Discontinuance filed with the New York State Supreme Court and the Monroe County Clerk's Office dated September 10, 2020 caused the lower court to lose its jurisdictional power to make an Order to transfer a matter to the Appellate Division, Fourth Judicial Department by Order dated October 27, 2020 where defendants-respondents' discontinued the action without serving the Petitioner-Appellant, and under which state, federal and/or constitutional amendment are the attorneys for the respondents allowed to stipulate to and discontinue an action with prejudice without the knowledge and consent of as her the prose litigant? Under what circumstance would that

be consider a deprivation due process rights under the Fifth and Fourteenth Amendments, and whether the matter should have been remanded to the Division for further proceedings.

7. Whether Section 298 of the New York State Division of Human Rights is unconstitutional and in violation of equal protection and due process under the Fifth and Fourteenth amendments of the United States Constitution where the transfer of the proceeding is automatic by the lower court to the appellate division without any participation by the agency, who was a necessary named party in the lawsuit before the lower court, and under what circumstances does non-participation equates to constitutional equal protection under the law and due process where a party did not timely appear, move to dismiss, and/or answer? Whether the Appellate Division, Fourth Judicial Department had jurisdiction.
8. Whether, Petitioner, as a *pro se* litigant, was afforded the same equal access and constitutional due process where attorneys for the respondents-defendants do not have to follow the basic rules of appearing, moving to dismiss, and/or answering the petition and/or complaint? Under what circumstances, did congress intent for the lower court serve as an advocate for the defendants-respondents when they fail to appear, move to dismiss, and/or answer a complaint, does the lower court and appellate division actions violates equal protection and due process. N.Y. Const. Article I, §11, U.S. Const. amend. V, XIV.
9. Under what circumstances is it okay, where an agency does not submit the record for review, and/or cherry pick documents for the record for its own self-interest and the self-interest of the employer, without having to settle the record is that constitutional and/or equal due process where the pro se Petitioner-Appellant was not allowed settlement of the record? See *Weeden v. Ark*, 2 A.D.3d 1280, 768 N.Y.S.2d 891 (4th Dept.,2003); *Matter of Lavar C.*, 185 A.D.2d 36, 592 N.Y.S.2d 535 (4th Dept.,1992).
10. Whether the Petitioner sufficiently established a prima facie case of discrimination where the Respondent Rochester City School District proffered reasons was false? Title VII prohibits an employer from discriminating “against any individual with respect to [her] compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e–2(a)(1), whether Petitioner showed that the motive to discriminate was one of the employer’s motives and was in fact motivated at least in part by the prohibited discriminatory animus, and whether Petitioner established a prima facie case of race-based discrimination.

11. Whether Petitioner sufficiently established a prima facie case of discrimination and retaliation under NYSHRL and Title VII?
12. Whether the Petitioner sufficiently established a prima facie case of race-based and age-based discrimination under NYSHRL and Title VII?
13. The Court of Appeals' *sua sponte* dismissal of the complaint was an abuse of discretion and conflicts with this Court and other circuits.
14. Whether the Due Process Clause of the Fourteenth Amendment prohibits a state supreme court from advocating in the interest of the state where the relevant time limitation to response in an action has expired and whether petitioner was provided adequate process.

Under Rule 13.5, a Supreme Court Justice may extend the time for seeking certiorari for up to sixty additional days. The Supreme Court has certiorari jurisdiction over this case under 28 U.S.C. § 1257 (a) and § 1254 and constitutional and statutory provisions under the United State Constitution.

The State of New York Court of Appeals' *sua sponte* order dismissed the appeal as of rights and from a final order. The Appellate Division, Fourth Judicial Department denied Petitioner's Motion of Leave to Appeal to the Court of Appeals was decided and entered on March 11, 2022. The State of New York Court of Appeals order dismissing the appeal was decided and entered on June 14, 2022. The

Reasons for Granting An Extension of Time

1. *Pro se* Applicant's need for additional time is heightened by the fact that she appears *pro se* and currently appears as *pro se* on other matters that are currently pending before the United States Court of Appeals for the Second Circuit and this Court.

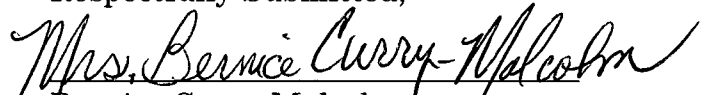
2. Applicant requests an additional thirty days to properly prepare and file her petition for writ of certiorari.
3. Applicant's need for additional time is also heightened by the extraordinary circumstances that the State of New York Court of Appeals *sua sponte* dismissal of appeals decided and entered on the same day of June 14, 2022.
4. Applicant makes prayerful and respectful request that she is granted the additional time.
5. Thus, granting an additional thirty-days will ensure that these important issues to be raised are properly, rather than hurriedly, presented to the Court.
6. Curry-Malcolm's cases raises substantial questions that warrants review by this Court. New York State Human Rights Law Executive prohibits discrimination based on race (Black/African American), color (Black/African American), age (Applicant was fifty-eight years of age when the discriminatory acts against her began) and/or sex (female, excludes sexual harassment and sexual violence), and/or gender (female), and retaliation and prohibits retaliation while engaging in a protected activity. This case presents issues of national importance concerning employment discrimination, breach of binding employer-employee contractual relationship, rights to tenured employees to protected property rights without due process of law and post-employment retaliation.

In Conclusion, the Supreme Court of the United States is authorized to review state court decisions holding state laws violative of the Constitution. Specifically, under 28 U.S.C. §1257(a), final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by writ of certiorari.

WHEREFORE, In light of the circumstances presented and the extraordinary undertaking of preparing an adequate petition for writ of certiorari will require an extension of time, affording good cause for a sixty-day extension. Wherefore, Petitioner Curry-Malcolm requests that she be granted a sixty-day extension of time, to and including Monday, November 14, 2022, within which to file a petition for writ of certiorari.

Dated: September 3, 2022

Respectfully Submitted,


Bernice Curry-Malcolm, *pro se*

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