

23-5337

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

NOEL L. BROWN - PETITIONER

-against-

SOMERSET SCI, Administration Office;
ERIC TICE, Superintendent SCI Somerset;
B. COSTEA, Unit Manager SCI Somerset; and

PENNSYLVANIA BUREAU OF CORRECTIONS, Division of Treatment Services. Respondents

Supreme Court, U.S.
FILED
AUG - 4 2023
OFFICE OF THE CLERK

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES SUPREME COURT

(NAME OF COURT THAT LAST RULED ON THE MERITS OF THIS CASE)

(UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT)

Petition for Writ of Certiorari under 28 U.S.C. §1254(1).

NOEL L. BROWN MW0387

SCI. SOMERSET 1590 WALTER MILL ROAD

SOMERSET, PA. 15510

RECEIVED
AUG - 8 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED

1. Does the substantial holding in case on point Commonwealth v. Spotz, No.9 MD 2008. In which the Commonwealth Court, Senior Judge Kelly, held that "Clerk of Courts and Corrections Officials were not authorized, in the absence of a Court Order to deduct funds from inmate's account to cover payment of waivable Court Costs". Spotz's ACT 84 Deductions was ceased from being deducted from his inmate account. The total sum deducted was refunded to his inmate account. Apply on appeal from the District Court for the Western District of Pennsylvania?
2. Does the substantial holding in case on point Buck v. Hampton twp. Sch. Dist. unequivocally suggest that the Third Circuit in ruling on Petition for Rehearing En Banc, should accept as true all well pleaded material allegations in the Petition for Review, as well as all inferences reasonable deduced therefrom, matters of public records, court orders, and item appearing in the records of the case?
3. Whether substantial holding of the Acknowledgment and Notice of Appearance will constitute compliance with the requirements to file a FRAP 12(b) Representation Statement. In counseled cases only an attorney whose admission to the Third Circuit Court's bar is current or an attorney with an admission or renewal application pending may file a Notice of Appearance?
4. If an attorney other than the original designated lead counsel of record wishes to appear in a case for any reason, that attorney MUST file a Notice of Appearance of Substitute?
5. Amicus Counsel. When an attorney seeks to substitute for the lead counsel of record, the Court will recognize the new attorney as the lead ONLY after the original lead counsel of record files with the Court a letter stating that new lead counsel is about to enter the case?
6. Does failure to substitute acknowledgment and notice of appearance (3rd Cir. LAR)(IOP),

QUESTIONS PRESENTED

that party will be deemed to be in default. Based off defective filing?

7. Should this Supervisory Court Remand this case to the Third Circuit for failure to meet its fiduciary duty. Within the 3rd Cir. Rules and Requirements; "All litigants in this court must follow the Federal Rules of Appellate Procedure (FRAP) and the Third Circuit Appellate Rules (3rd Cir. LAR), in addition, the Third Circuit internal Operating Procedures (IOP) apply to all cases"? Suggested Answer: YES!

8. Whether Counsel who is not of record, has the right to file a brief or argue for the appellee's/respondents?

9. Should such a clear violation of the FRAP 12(b) always lead to a default judgment against the party who has intentionally violated the Federal Rule of Appellate Procedure, and substantially the Local Rules of the United States Court of Appeals?

10. Has failure by the 3rd Circuit to Stare Decisis to the Binding Authority of Federal Rules of Appellate Procedure (FRAP) by not issuing a Default Judgment against the violating party constitute a prima facie case for Error of Law? Suggested Answer: YES!

LIST OF PARTIES

A list of all parties to the proceedings in the court whose judgment is the subject of this petition for Writ of Certiorari is as follows:

1. Deputy Attorney General Amelia J. Goodrich

Office of Attorney General

1251 Waterfront Place

Mezzanine Level

Pittsburgh, PA 15222

2. UNITED STATE COURT OF APPEALS THIRD CIRCUIT

@!\$)) U.S. Courthouse

601 MARKET STREET

PHILADELPHIA, PA 19106.

TABLE OF AUTHORITIES CITED

CASES:

BUCK V. HAMPTON TWP. SCH. DIST.

SPOTZ V. COMMONWEALTH, 972 A.2d 125 (Pa. Cmwlth. 2009)

ERIE RAILROAD CO. V. TOMKINS, 304 U.S. 64 (1938).

STATUTES and RULES CITED

28 U.S.C. §1254(1)

FRAP 12 (b)

3rd Cir. LAR.

Fed. R. Civ. 72 (b).

TABLE OF CONTENTS

OPINION BELOW

JURISDICTION

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

REASON FOR GRANTING OF WRIT OF CERTIORARI

INDEX TO APPENDICES

APPENDIX (A): COPY OF THE UNITED STATES COURT OF APPEALS THIRD CIR. DECISION AND ORDER.

APPENDIX (B): COPY OF THE APPELLANT'S BRIEF IN SUPPORT OF REHEARING EN BANC.

APPENDIX (C): COPY OF THE UNITED STATES COURT OF APPEAL 3RD CIR. JUDGMENT.

APPENDIX (D): COPY OF THE UNITED DISTRICT COURT WESTERN DISTRICT OF PENNSYLVANIA REPORT AND RECOMMENDATION, AND MEMORANDUM ORDER.

APPENDIX (E): COPY OF THE TRUE AND CORRECT ONLY SUBSTITUTION OF APPEARANCE, WITHIN THIS CASE.

APPENDIX (F): COPY OF THE BRIEF FOR APPELLEES.

IN THE SUPREME COURT OF THE UNITED STATES
FOR WRIT OF CERTIORARI

Petitioner Noel L. Brown, respectfully request that a writ of certiorari be issued to review the error of Frap Law judgment below.

OPINION/ORDER

The opinion of the highest Federal Court to review the merits in this civil case appears at appendix (A), to this petition, and is reported at the United Staters Court of Appeals for the Third Circuit, at 22-2659, on July 21, 2023.

The opinion of the District Court Western District of Pennsylvania, appears at appendix (d).

JURISDICTION

The date on which the United States Court of Appeals Third Circuit decided my case appears at appendix (A).

The Jurisdiction of the United States Supreme Court, is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Pursuant to case on point Buck v. Hampton twp. Sch. Dist. The court held; "a court may consider matters incorporated by reference or integral to the claim, items subject to judicial notice, matters of public records, court orders, and items appearing in the records of the case".
2. The Commonwealth Court at No. 9 MD 2008. Spotz v. Commonwealth held that Clerk of Courts and Corrections Officials were not authorized in the absence of a Court Order to deduct funds from inmate's account to cover payment of waivable Court Costs, such as those pursuant to (ACT 84)". In doing so Spotz's ACT 84 deductions was ceased from being deducted from his inmate account. The deducted sum of \$96.00 was refunded to his inmate account.
3. Acknowledgment and Notice of Appearance, must be filed within 14 days of receiving the Court's docketing notice. Timely submission of the Acknowledgment and Notice of Appearance will constitute compliance with the requirement to file a FRAP 12(b) Representation Statement. If an attorney other than the originally designated lead counsel of record wishes to appear in case for any reason, that attorney must file a Notice of Appearance of Substitute.
4. Pursuant to case on point Erie Railroad Co. v. Tomkins, the Federal Court's deciding a diversity case must apply State substantive law. Both State Statute and its Common Law.
5. Pursuant to Fed.R.Civ.P. 72 (b); District Judge, in the case must consider timely objections and modify or set aside any part of a Magistrate Report and Recommendation order that is clearly erroneous or contrary to law.

STATEMENT OF THE CASE

This case was brought to be considered on the records from the United States District Court for the Western District of Pennsylvania, and was submitted to the Third Circuit Pursuant to Third Circuit LAR 34.1(a) on April 21, 2023. Based on the District Court failure to exhaust conclusion, and premature error of law dismissal.

On consideration by the Third Circuit. The Court ordered in fact error of law affirmed the District Court's premature dismissal. Despite appellant's request for rehearing en banc, to further establish extraordinary and exceptional circumstances in regards to the court's local rules on OBJECTIONS, to Magistrate and Rule and Requirements for Counsel for Appellee's not being followed. The record is undisputed, the Appellee's Counsel of record was Amanda M. Scarpo, upon her withdrawal from the case Amelia J. Goodrich, filed her Substitution of Appearance. No other Substitution of Appearance was ever filed in the District Court nor the Third Circuit. However, Brief for Appellee's suggest that Daniel B. Mullen, now propose to argue for the Appellee's case in the Third Circuit. Appellant pointed out Local Rule for the 3rd Cir. Counsel for Appellee; As counsel for Appellee(s), you must file: 1. Application for Admission (if applicable); 2. Appearance Form; 3. Disclosure Statement; and these forms must be filed within fourteen (14) days from the date of the court's letter.

Appellant further established the burden of proof, by filing a motion by appellant to file exhibits to Petition for Rehearing En Banc. Wherein the Substitution of Appearance was submitted, as evidence to Strike Appellee's brief, and render a default judgment in the appellant's favor.

Furthermore, explaining to the Circuit Court, as to why appellant Objected to the Magistrate Report and Recommendation. Pursuant to whether Respondeat Superior should apply within the case. HOWEVER, the District Judge, in the case error in law, by failure to consider a timely objection and ether modify or set aside any part of the Magistrate

STATEMENT OF THE CASE

Report and Recommendation that is clearly erroneous or contrary to law. As is the reviewing court fiduciary duty.

²(NOTE MENTIONING): Appellant/Petitioner, intends to prove by a preponderance of the evidence that the defendants/respondents, unequivocal proximate cause injury by use of corporal punishment and other Eight and First Amendments violations. WHEREBY, a jury trial was requested. Including a petition for Whistleblower Status.

REASON FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

Appellant's claim has at least an arguable basis in the law. The United States Supreme Court Fiduciary Duty is to uphold right of meaningful court access, and to insure that the United States Constitution, and the Federal Rules within are being properly followed by all the lower court's. Any violations of the Constitution or (FRAP) based on policy when it appears beyond a reasonable doubt, that the petitioner can prove Prima Facie fact support of his claim that would entitle him to relief base on error of law. The Due Process of Law requires procedural protection in the form of redress. Upon a showing of extraordinary or exceptional circumstances, and or a showing of good cause. Such as the facts presented within this petition for Writ of Certiorari.

CONCLUSION:

To address two novel issue not presently before this Court; 1. Whether a District Judge should always consider timely objections and issue order modify or set aside any part of the Report and Recommendation by the Magistrate; and 2. Whether Counsel for Appellee's must file Appearance Form, or Substitution of Appearance. WHEREBY, I pray this Court GRANT the Writ of Certiorari and REMAND, to perhaps mitigate the Third Circuit unequivocal fundamental miscarriage of Justice. Thank You.

³Except when the U.S. Constitution or Federal Status apply, the Federal Courts deciding a diversity case must apply State substantive law--both the state's statutes and its common law. That is the approach mandated by the U.S. Supreme Court's landmark decision in Erie Railroad Co. v. Tomkins, 304 U.S. 64 (1938).

8/3/2023

Respectfully Submitted,

