

23-5529

No. 4:22-CV-00135-SMR-HCA

Appeal Number 23-1393

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Abdalla Elehamir Mousa — PETITIONER
(Your Name)

Supreme Court, U.S.
FILED

JUL 17 2023

CLERK OF SUPREME COURT

vs.

Christina Greve & Warden Shawn Howard — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States District Court Southern District of Iowa- Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Abdalla Elehamir Mousa
(Your Name)

307 S 60th Ave W
(Address)

Newton IA 50208
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED FOR REVIEW

Whether an Applicant for Relief Under 42 U.S.C. §1983 is Required to Exhaust Administrative Remedies Pursuant to 42 U.S.C.

§1997e(a) If the Prison Officials Fail to Respond to the Grievance and the Appeal?

Whether United States Court of Appeals for the Eighth Circuit's Rule 47B That Summarily Affirms the District Court's Decision Violates the Rights to Equal Protection and Due Process of Law?

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

| | |
|--|---|
| <i>Brengettcy v. Horton</i> , 423 F.3d 674, 682 (7 th Cir. 2005)..... | 5 |
| <i>Cruz v. Jordan</i> , 80 F.Supp.2d 109 (S.D.N.Y. 1999)..... | 5 |
| <i>Dale v. Loppin</i> , 376 F.3d 652 (7 th Cir. 2004)..... | 5 |
| <i>Neese v. Arpaio</i> , 397 F.Supp.2d 1178 (D. Ariz. 2005)..... | 5 |
| <i>Ross v. Blake</i> , 578 U.S. 632, 642-43 (2016)..... | 5 |

STATUTES AND RULES

| | |
|--|------|
| 42 U.S.C. §1983..... | 4, 5 |
| 42 U.S.C. §1997e(a)..... | 4, 5 |
| 28 U.S.C. §2072..... | 4, 5 |
| U.S. Court of Appeals for the 8 th Circuit, Local Rule 47B..... | 4, 5 |

OTHER

| | |
|--|------|
| United States Constitutional Amendments 5 and 7..... | 4, 5 |
|--|------|

TABLE OF CONTENTS

| | |
|--|---|
| OPINIONS BELOW | 1 |
| JURISDICTION..... | 2 |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED | 3 |
| STATEMENT OF THE CASE | 4 |
| REASONS FOR GRANTING THE WRIT | 5 |
| CONCLUSION..... | 6 |

INDEX TO APPENDICES

| | |
|------------|--|
| APPENDIX A | Order of the U.S. District Court for the Southern District of Iowa, <i>Mousa v. Greve, et al.</i> , #4:22-cv-00135-SMR, 1/25/2023, granting Summary Judgment to the Defendants |
| APPENDIX B | Order of the U.S. Court of Appeals for the 8 th Circuit, <i>Mousa v. Greve, et al.</i> , No. 23-1393 on April 6 th , 2023, summarily affirming the judgment of the U.S. District Court, pursuant to “Local Rule 47B” |
| APPENDIX C | Order of the U.S. Court of Appeals for the 8 th Circuit, <i>Mousa v. Greve, et al.</i> , No. 23-1393 on May 16 th , 2023, denying petition for rehearing. |

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 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 A 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 4/25/2023

☐ 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: 05/16/2023, and a copy of the order denying rehearing appears at Appendix C.

☐ 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 5/16/2023.
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

United States Constitutional Amendments 5 and 7

42 U.S.C. §1983

42 U.S.C. §1997e(a)

28 U.S.C. §2072

STATEMENT OF THE CASE

The U.S. District Court *failed to follow previous decisions of this court and various other U.S. Courts of Appeals* when it granted Summary Judgment for the defendants in this case.

In the underlying complaint in U.S. District court, the Petitioner, Abdalla Mousa (who speaks and writes English *as a second language*), stated under penalty of perjury that “Defendant Greve sexually assaulted him on multiple occasions and ‘had [him] locked up to silence him’”.¹ After Abdalla was released from solitary confinement he attempted to utilize the grievance process, however, the Prison officials refused to process Abdalla’s grievances and appeals. Therefore, Abdalla filed a complaint in the U.S. District Court pursuant to 42 U.S.C. §1983.

This is a Petition for Writ of Certiorari to the Supreme Court of the United States from the Court of Appeals for the Eighth Circuit, *Mousa v. Greve, et al.*, No. 23-1393. On April 6th, 2023, the Appellate court summarily affirmed the judgment of the U.S. District Court for the Southern District of Iowa pursuant to the 8th Circuit Local Rules, Rule 47B. The U.S. District Court for the Southern District of Iowa, Central Division, *Mousa v. Greve, et al.*, case no. 4:22-cv-00135-SMR, granted Summary Judgment for the defendants on January 25th, 2023. Defendants claimed that the Plaintiff, *Abdalla Mousa*, had failed to exhaust his administrative remedies (See Appendix A, Order of Chief Judge Stephanie M. Rose denying the Petitioner relief, 1/25/2023, ECF. #15).

The U.S. District Court *failed to follow previous decisions of this court and various other U.S. Courts of Appeals* when it granted Summary Judgment for the defendants. Judge Rose determined that the Petitioner, *Mousa*, had failed to exhaust his administrative remedies. However, *Mousa*, was *denied* an “available” remedy pursuant to 42 U.S.C. §1997e(a) when the Prison officials *refused to answer his grievances* and his grievance appeals. Judge Rose went in her decision to claim that *Mousa* could have made a complaint pursuant to the “Prison Rape Elimination Act” (PREA) and decided that he did not. However, when *Mousa* filed *three (3)* grievances about the sexual harassment the prison officials were sufficiently put on notice pursuant to PREA—which is evident from the affidavit filed by the defendants referenced by Judge Rose in her Order.

Based on the affidavit filed by the defendants, *Mousa* requested that he be allowed to exhaust the grievance system that the defendants were now claiming was “available” to him in the affidavit supporting their Summary Judgment. However, Judge Rose used this request to support the granting of the defendants’ Summary Judgment.

The U.S. District Court denied the Petitioner’s right to a jury trial pursuant to the 7th Amendment of the U.S. Constitution, as well as due process and equal protection of the law pursuant to the 5th Amendment to the U.S. Constitution.

The U.S. Court of Appeals for the Eighth Circuit denied due process and equal protection of Federal Rules of Appellate Procedure (28 U.S.C. §2072) when the court summarily affirmed the District Court’s Order of 1/25/2023. The 8th Circuit’s “Local Rule 47B”, summarily affirms judgments of the District Court without the operation of any proceedings pursuant to the Rules of Appellate Procedure and is unconstitutional.

¹ U.S. District Court for the Southern District of Iowa, Central Division, *Mousa v. Greve, et al.*, case no. 4:22-cv-00135-SMR, Document No. 4, pg. 1 of 5, “Further Review Order”, Chief Judge Stephanie Rose, filed 5/25/2022.

REASONS FOR GRANTING THE PETITION

The U.S. District Court *failed to follow previous decisions of this court and various other U.S. Courts of Appeals* when it granted Summary Judgment for the defendants in this case.

Abadalla Mousa was sexually assaulted by Correctional Officer *Christina Greve* *for a period of months*. When *Mousa* informed *Greve* that he was going to report her for the sexual assaults, she then reported *Mousa* for allegedly showing his penis to her. *Mousa* was placed in solitary confinement as a result and, when *Mousa* was released for solitary, *he filed numerous grievances that prison officials failed to respond to*. Because the grievance process was not available to *Mousa* he then filed a complaint pursuant to 42 U.S.C. §1983. *Even though Mousa filed numerous grievances that prison officials failed to respond to, Chief Judge Stephanie M. Rose granted prison officials' Summary Judgement based on failure to exhaust*. (U.S. District Court, Southern District of Iowa, Central Division, *Mousa v. Greve, et al.*, case no. 4:22-cv-00135-SMR, Document No. 4, "Further Review Order", Chief Judge Stephanie Rose, filed 5/25/2022).

This court and various U.S. District Courts and Courts of Appeal have *repeatedly ruled that when a grievance process is "not available"*, a "simple dead end", or "not capable of use to obtain relief" *a petitioner has satisfied 42 U.S.C. §1997e(a) concerning exhaustion of "available" administrative remedies*. See *Ross v. Blake*, 578 U.S. 632, 643-44 (2016); *accord Cruz v. Jordan*, 80 F.Supp.2d 109 (S.D.N.Y. 1999); and *Brengettcy v. Horton*, 423 F.3d 674, 682 (7th Cir. 2005).

The 7th Circuit reversed the granting of a Summary Judgment when the underlying U.S. District court granted Summary Judgment claiming that a Petitioner who *had no administrative remedy "available" to them* failed to exhaust administrative remedies. *Dale v. Loppin*, 376 F.3d 652 (7th Cir. 2004).

The 8th Circuit, in this case, *summarily affirmed* Judge Rose's Summary Judgment ruling in this case pursuant to their "Local Rule 47B". However, "Local Rule 47B" in the Eighth Circuit Court of Appeals *denies due process and equal protection* of 28 U.S.C. §2072—concerning court rules.

The Petitioner in this case, *Abdalla Mousa*, was denied the protection of the U.S. laws, court rules, and the Constitution of the U.S. by both the U.S. District Court for the Southern District of Iowa and the 8th Circuit Court of Appeals.

CONCLUSION

Executed on this 17 day of July 2023

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Abdalla Moussa

Date: 07/06/2023