

23-5545

SUPREME COURT OF THE UNITED STATES

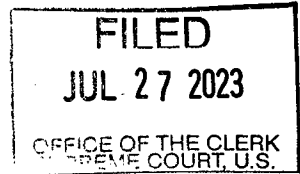
ORIGINAL

ROBERT K. DECKER,

Petitioner,

v.

FEDERAL BUREAU OF PRISONS



PETITION FOR CERTIORARI

On appeal from the Seventh Circuit Court of Appeals

Case No.: 22-2475

From the United States District Court, Southern District of Indiana

Terre Haute Division, Docket No.: 2:21-cv-00253-JPH-MJD

by: Robert K. Decker #51719-074
Petitioner, Pro se
4500 Prison Road
P.O. Box 1000
Marion, Illinois 62959

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LIST OF PARTIES

- I. Robert K. Decker, Petitioner
- II. Federal Bureau of Prisons, Respondent

RELATED CASES

Foman v. Davis, 371 U.S. 178 (1962)

Johnson v. Precythe, et al., 210 F.3d 849, No. 20-287 (2021)

Mayle v. Felix, 545 U.S. 644, 664 (2005)

Krupski v. Costa Crociere, S.P.A., 560 U.S. 538 (2010)

Erickson v. Pardus, 551 U.S. 89, 94 (2007)

Turner v. Rogers, 564 U.S. 431 (2011)

United States v. Sanchez-Gomez, 200 Fed. 2d 792 (2018)

Douglas v. Reeves, 964 F.3d 643, 649 (7th Cir. 2020)

Simmons v. United States, 142 S.Ct. 23, 25 (2021)

COURT RULES

Federal Rules of Civil Procedure

15(a)

15(c)(2)

QUESTIONS PRESENTED

- I. Did the Seventh Circuit Court of Appeals err in the decision to Affirm the United States District Court's decision in dismissing the case.
- II. Did the Seventh Circuit Court of Appeals err in the decision to Affirm the United States District Court's decision in denying the Petitioner, Robert K. Decker in filing a motion for "Leave to file an Amended Complaint" adding the United States as a proper Defendant in the instant action.
- III. Did the United States District Court fail to take into consideration of Foman v. Davis, 371 U.S. 178 (1962), in the filing of the Amended Complaint.
- IV. Did the United States District Court and the Seventh Circuit Court of Appeals err, pursuant to: Erickson v. Pardus, 551 U.S. 89, 94 (2007), by holding the filings at a less stringent standard than formal pleadings drafted by lawyers than a pro se litigant.
- V. Did the United States District Court err by not allowing the Petitioner, Robert K. Decker to file an Amended Complaint pursuant to Fed.R.Civ.P. 15(a),(c)(2) that related back to the original complaint.

LIST OF PROCEEDING IN THE LOWER COURTS

1. This case was first filed in the United States District Court in the Southern District of Indiana, in Terre Haute, Division, on June 23, 2021.
2. The District Court had initially dismissed an access to the courts claim alleged in the original complaint. See Dkt. 1 at 9.
3. The Plaintiff-Appellant, Robert K. Decker, hereinafter, "Mr. Decker" later sought leave to amend his complaint pursuant to add a damages claim against the United States for failing to provide adequate access to state law resources. See Dkt. 21.
4. The District Court had erred in allowing Mr. Decker the right to amend his complaint pursuant to the Federal Rules of Civil Procedure 15(a) & (c).
5. In the original complaint that was filed with the United States District Court, on June 23, 2021, Mr. Decker had claimed a denial of access to the courts claim, (even though it was not well pled, he did in fact claim a denial of access to the courts claims. (See page 9 of the original complaint.
6. In Mr. Decker "First Amended Complaint" he had stated that he was denied "access to the courts claim" more profoundly in the "First Amended Complaint." This should of been acceptable to the court pursuant to Foman v. Davis, 371 U.S. 170 (1962).
7. Mr. Decker then filed a Motion to reconsider their prior decision . He had asked the court to dismiss the APA claim as moot —because he was being transferred out of the Communications Management Unit in Terre Haute, Federal Correctional Institution, but that was not the case on the grounds that Mr. Decker was transferred to

the Communications Management Unit in Marion United States Penitentiary, in Marion, Illinois any ways. See Dkt. 32 & 56. Mr. Decker then filed a motion back to the United States District Court within a year to re-open the case on the grounds that the APA claim was not moot as first claimed by Mr. Decker. That motion was also denied as being futile and on the grounds that the case was presently pending in the Seventh Circuit Court of Appeals.

8. Mr. Decker had filed his Notice of Appeal in the Seventh Circuit Court of Appeals on August 19, 2022. The briefs were submitted on April 13, 2023 and was decided on April 14, 2023, in which the Court of Appeals had denied the appeal and affirmed the decision of the United State District Court.

9. Mr. Decker then filed for a Hearing En Banc on May 30, 2023, the petition for rehearing was denied on May 19, 2023.

10. The Petition for Certiorari has now been filed with this Honorable Court for consideration.

JURISDICTION BASIS

The United States District Court had jurisdiction on the basis of 28 U.S.C. §1331, "Federal Question," 28 U.S.C. §§2201 & 2202 "Declaratory Judgment Act;" 5 U.S.C. §551, "Administrative Procedure Act," and Bivens v. Six Unknown Named Agent of the Federal Bureau of Narcotics, 402 U.S. 388 (1971), and the "Preliminary Injunction" pursuant to Federal Rules of Civil Procedure 65.

The Seventh Circuit Court of Appeals had jurisdiction on the

basis of 28 U.S.C. §1291.

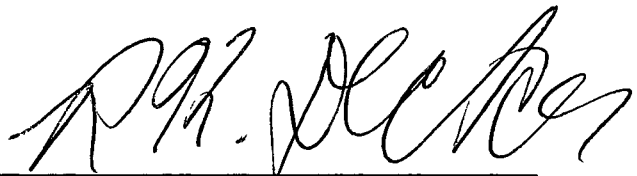
The United States Supreme Court has jurisdictional basis pursuant to 28 U.S.C. §1254, "Certiorari" & "Certified Questions."

CERTIFICATE OF SERVICE

I, certify and state that I personally handed my petition to a B.O.P. employee for mailing, postage paid, first class on August 28, 2023, to be mailed to the:

United States Attorney's Office
Southern District of Indiana
10 W. Market Street, Suite 2100
Indianapolis, IN 46204

Dated: August 28, 2023


Robert K. Decker #51719-074

CONSTITUTIONAL PROVISIONS

Mr. Decker is claiming that his Fifth Amendment to the United States Constitution has been violated, pursuant to the denial of "Legal Access" to the Courts and a violation of the Fifth Amendment to the United State Constitution, pursuant to the fact that his rights were violated on the grounds that he was not provided with the due process that is required to his step down procedures to be transferred out of the Communications Management Unit on a six month review that is suppose to happen every six months of his incarceration in the C.M.U. placement. This did not happen.

DIRECT ARGUMENT

That the United States District Court had erred in the dismissal of the Complaint without allowing leave to file his amended complaint.

By not allowing Mr. Decker to reinstate the complaint pursuant to the Administrative Procedure Act to reinstate the complaint on the grounds that the matter was not moot, since he was not transferred out of the C.M.U. "Communications Management Unit" as he was led to believe, by the staff.

By not allowing Mr. Decker to file the Amended Complaint to add the United States of America, pursuant to the Federal Tort Claims Act, 28 U.S.C. §2671, et seq. Federal Rules of Civil Procedure 15(c).

By not taking into consideration that Mr. Decker has been and was proceeding pro se and that he should of been held at a less stringent standard than a lawyer.

PROCEDURAL HISTORY

The Petitioner, Robert K. Decker, hereinafter, "Mr. Decker" filed a Complaint in the Southern District of Indiana, United States District Court on June 23, 2021. The complaint was not screened until February 10, 2022, eight months later. The United States District Court Judge had erred by not screening the complaint within a timely manner. 2:21-cv-00253-JPH-MJD

Mr. Decker filed a motion for "Leave to file and Amended Complaint" with the attached "Amended Complaint" on March 18, 2022. The United States District Court Judge denied the motion and the attached "Amended Complaint on May 3, 2022.

On June 9, 2022, the United States District Court Judge had ordered that the Plaintiff, "Mr. Decker" to respond to the fact of why the matter should not be dismissed as being moot. The mootness doctrine did not apply to the matter at hand. This has been an on-going issue for Mr. Decker for many years now.

Mr. Decker was originally incarcerated at the Terre Haute, Indiana Federal Correctional Institution, Communications Management Unit and he was transferred to the Marion, Illinois United States Penitentiary on November 10, 2023 and the matter is still a continuous matter at hand. Mr. Decker has been denied access to the courts on a repeated basis. Mr. Decker originally filed complaint stated that the legal department, the Federal Bureau of Prisons, amongst various Defendants have been blocking legal access to State laws, statutes, and State case law on a repeated basis.

This matter has been on-going since Mr. Decker has attempted to litigate his issues in the Michigan Family Court, in Wayne County, the New York State Probate Court, e.g. his father's will and estate.

It is very imperative that this matter be reversed and remanded back to the United States District Court with directions to resolve the on-going issues that has plagued Mr. Decker's attempts to litigate his Parental Rights in the Michigan Family Court, Wayne County and the New York State Probate Court and the New York Supreme Court, Appellate Division for an appeal in lieu of the probate decision denying his efforts to have an accounting conducted for his trust.

Mr. Decker has exhausted his administrative remedies in this matter in both prisons, the Northern Regional Office, and the Central Office in Washington, D.C. Mr. Decker then filed a Federal Tort Claim against the United States for damages that Mr. Decker had sustained by the Federal Bureau of Prisons blocking of Legal Access.

Mr. Decker filed a Notice of Appeal in the Seventh Circuit Court of Appeals for the final judgment dismissing the complaint in its entirety. See Appeal No. 22-2475. See attached decision from the Appeals Court, affirming the dismissal of the complaint.

A R G U M E N T

DID THE SEVENTH CIRCUIT COURT OF APPEALS ERR IN THE
DECISION TO AFFIRM THE UNITED STATES DISTRICT COURT'S DECISION
TO DISMISS THE CASE AT BAR

The Seventh Circuit Court of Appeals had erred in the affirming of the United States District Court's decision in dismissing the case at bar on the following grounds:

a.) The United States District Court had dismissed the case on the grounds that the matter was allegedly moot.

Pursuant to the Mootness Doctrine, the case is still a live controversy. Mr. Decker is presently in the Michigan Supreme Court fighting for his parental rights. "A dispute qualifies for the exception to the mootness doctrine for a controversy that is capable of repetition, yet evading review, only if (1) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subjected to the same action again. United States v. Sanchez-Gomez, 200 LED2D 792 (2018); also see L.Ed. Digest: Courts §762.7

Now pursuant to the Turner v. Rogers, 564 U.S. 431 (2011): "A case is not moot because it falls within a special category of disputes that are capable of repetition while evading review. The Turner case is on point to the fact that a father's due process was violated while being incarcerated for civil contempt for failing to pay child support, where father was not entitled to appointed counsel in the proceedings. As in the case at bar, Mr. Decker has been denied legal access to defend his parental rights in the Wayne County, State of Michigan, Family Court for numerous years. e.g. "termination of my
[]

parental rights were being litigated since 2019. Therefore the mootness doctrine does not apply in the case at bar and this case should be reversed and remanded for further proceedings.

S E C O N D A R G U M E N T

DID THE SEVENTH CIRCUIT COURT OF APPEAL'S ERR IN THE DECISION TO AFFIRM THE UNITED STATES DISTRICT COURT'S DECISION IN DENYING THE PETITIONER FOR LEAVE TO FILE A MOTION TO AMEND THE COMPLAINT BY ADDING THE UNITED STATES OF AMERICA AS A PROPER DEFENDANT IN THE INSTANT ACTION

The Seventh Circuit had erred in affirming the United States District Court's decision in denying the Petitioner leave to file an amended complaint pursuant to the rules of the Federal Rules of Civil Procedure 15(a)(c)(2). Fed.R.Civ.P. 15 should be freely given when justice requires. The United States erred to allow Mr. Decker to amend not even one time. Now pursuant to Foman v. Davis, 371 U.S. 178 (1962) a district court should allow the petitioner the right to at least amend one time to rectify any deficiencies that may accrue in the original complaint. It would not have been futile if the United States District Court Judge had allowed Mr. Decker at least one time to file the amended complaint adding the United States of America as a Defendant in the case at bar. "The rules themselves provide that they are to be construed 'to secure the just, speedy and inexpensive determination of every action.'"

The Court of Appeals also erred in affirming the District Court's denial of petitioner's motion to vacate the judgment in order to allow amendment of the complaint.

As it appears in Foman and the case at bar "from the record, the amendment would have done no more than state an alternative theory for recovery.

Mr. Decker is and has been a pro se litigant in this case and he should've been held to less stringent standards by freely giving Mr. Decker leave to amend the complaint when justice so requires. Foman at 182.

The United States District Court failed to even allow one amendment to be filed. "leave should, as the rules require be 'freely given.'" "of course the grant or denial of an opportunity to amend is within the discretion of the District Court, but reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules. The United States District Court and the Seventh Circuit abuse their discretion by claiming that the matter was moot and by not allowing leave to amend the complaint.

The United States was being biased from the beginning of the case on the grounds that the District Court Judge had taken eight months to screen the complaint in the first place. The Court of Appeals had stated in its opinion that "multiple claims against a single defendant are allowable, but Claim A against Defendant 1 should not be joined with unrelated Claim B against Defendant 2." In the original complaint Mr. Decker had claimed that nine defendants were responsible for the A.P.A. claims and the denial of the legal access to the state rules, statutes and case law. Mr. Decker had claimed in the original complaint that he was being denied legal access to the laws of the states and a notary public on the grounds that in State Court's require a notary to be accommodated with certain

documents, e.g. Affidavit of Service, Affidavit of Indigency, Affidavit in Support of Motion, Affidavit Certifying that the documents included are true copies and not forgeries.

Mr. Decker is presently incarcerated in the United States Penitentiary, Marion, Illinois, Communications Management Unit and he is still being continuously being denied a Notary and his due process, pursuant to the A.P.A. by receiving his due process by receiving his six month reviews of his placement in the C.M.U. So therefore nothing has changed since his transfer to the other C.M.U. So therefore both issues are still on-going. Mr. Decker is being denied legal access and he is being denied his six month reviews to determine his eligibility to be transferred out of the Communications Management Unit, therefore these are still on-going.

T H I R D A R G U M E N T

DID THE UNITED STATES DISTRICT COURT AND THE COURT OF APPEALS
ERR PURSUANT TO THE LESS STRINGENT STANDARDS THAN FORMAL
PLEADINGS DRAFTED BY LAWYERS THAN A PRO SE LITIGANT

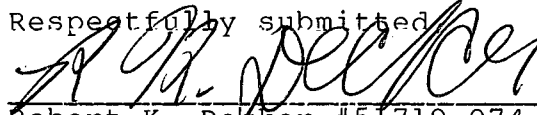
The United States District Court and the Court of Appeals had erred in lieu of the filings by a pro se litigant than a lawyer, pursuant to Erickson v. Pardus, 551 U.S. 89, 94 (2007). The courts had erred by holding the Plaintiff to such a high standard in the filing a drafting of the complaint that has been submitted to the court. Pro se filings must be liberally construed. See Estelle v. Gamble, 429 U.S. 97 (1976); Douglas v. Reeves, 964 F.3d 643, 649 (7th Cir., 2020) A complaint filed by a pro se litigant is to be liberally construed, however inartfully pleaded, must be held to

a less stringent standards than formal pleadings drafted by lawyers.
Erickson at 94; Simmons v. United States, 142 S.Ct. 23, 25 (2021).

Mr. Decker has attempted to litigate this matter at his best possible attempts at showing that he has a viable complaint to be heard by the court. Mr. Decker has attempted to get the Court's ear in this matter for years now, only to be unsuccessful.

WHEREFORE, Mr. Decker moves the United States Supreme Court to consider the merits of this case and place it upon the courts docket for determination and for any other relief that this Honorable Court may deem fair and correct.

Respectfully submitted



Robert K. Decker #51719-074
USP Marion, P.O. Box 1000
4500 Prison Road
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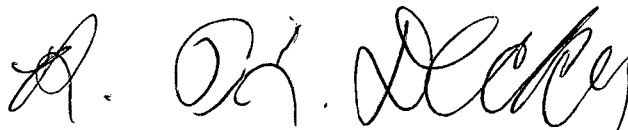
Dated: July 3, 2023

CERTIFICATE OF SERVICE

I, certify that I personally handed my petition for certiorari on July 3, 2023, to a B.O.P. employee for mailing, postage paid, first class, to be sent to:

United States Attorney's Office
Southern District of Indiana
10 W. Market Street
Suite 2100
Indianapolis, IN 46204-3048

Dated: July 3, 2023



Robert K. Decker #51719-074