

No. _____

23-5800

IN THE

SUPREME COURT OF THE UNITED STATES

MALCOLM MUHAMMAD

(Your Name)

Pro Se

— PETITIONER

Supreme Court, U.S.
FILED

OCT 12 2023

OFFICE OF THE CLERK

vs.

WILLIAM JACKSON, et al., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MALCOLM MUHAMMAD # 1025895

(Your Name)

BUCKINGHAM CORRECTIONAL CENTER

(Address) **P.O. Box 430**

Dillwyn, VIRGINIA 23936

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Appellant alleged that defendants Jackson, Jones and Turner denied him of his rights under the First Amendment and Religious Land Use and Institutionalized Person Act - ("RLUIPA"), for their failure to provide him prayer service and a feast meal for the celebration of the Nation of Islam - ("NOI") holiday of "Savior's Day" in 2018 and 2019. In finding no reversible error, the Fourth Circuit relied upon the District Court's order granting summary judgment to defendants and dismissing Appellant's 42 U.S.C. § 1983 action. The Courts completely ignored both matter of material facts and law when it concluded,

Did the Fourth Circuit err in deferring to the district Court's findings that Appellant has not put forth any evidence that disputes, Contradicts defendant Jackson's sworn testimony that he was not responsible for "Organizing any Savior's Day programming outside of entering names into the Master Pass List, and defendant Jones's testimony attesting that he does not know why the holiday was not set up?"

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:

WILLIAM E. JACKSON, chaplain; JONES, chaplain, chaplain at SISP,
and

WILLIAM JARRETT, Assistant Warden; GREGORY L. HOLLOWAY, Eastern Regional Administrator; R. WOODSON, Regional Ombudsman; QUEEN GOODWYN, Food-Service Manager; S. Turner, Food Service Manager; E. Witt, Grievance Coordinator; TEEA HARVEY, Statewide Ombudsman Manager.

RELATED CASES

- MUHAMMAD V. JACKSON, NO. 1:19-CV-00746, U.S. District Court for the Western District of Roanoke, Virginia, Judgment entered Aug. 24, 2021.
- MUHAMMAD V. JACKSON, NO. 21-7360, U.S. Court of Appeals for the Fourth Circuit. Judgment entered June 8, 2023.
- MUHAMMAD V. JACKSON, 2023 U.S. App. LEXIS 18734, Rehearing / Rehearing En banc Review denied. Judgment entered July 21, 2023.

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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

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix 1a. to 2a.
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 5a. to 13a.
the petition and is

☒ reported at 1:19cv746, Dkt. NO. 74, and 91; 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 June 8, 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: July 21, 2023, 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

U.S. CONST. AMEND. I: The Free Exercise clause of the First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..." U.S. CONST. amend. I.

U.S. CONST. AMEND. XIV: Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of Citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or Territory or the District of Columbia, subject or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.A. § 2000cc-1(a) (West 2003): Evaluating a statutory violation under RLUIPA involves the same threshold issues as invoked by the Free Exercise clause for the most part. RLUIPA prohibits a prison institution from "imposing a substantial burden on the religious exercise of a person residing in or confined to an institution..." unless the prison can show that "imposition of the burden..." (1)

Cont.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

is in furtherance of Compelling governmental interest; and (2) is the least restrictive means of furthering that compelling interest." RLUIPA defines religious exercise as any exercise of religion, whether or not compelled by, or central to, a system or religious belief." 42 U.S.C. A § 2000cc-5 (7) (A) (West 2003). As under the First Amendment, although prison official may not question the truth of an inmate's belief, an inmate must demonstrate that the belief is sincerely held in order to establish a protected right under RLUIPA.

Rule 12 (b) (6), Fed. R. Civ. P.

Rule 56 (c), Fed. R. Civ. P.

Va VDOC op. 841.3

STATEMENT OF THE CASE

Appellant Malcolm Muhammad, pro se, filed an 42 U.S.C. § 1983 complaint alleging that Defendants Jackson, Jones, Goodwyn, and Turner violated his rights to exercise his religion freely, by denying him to celebrate his religious holiday of Savior's Day in 2018 and 2019, in violation under the First, and Fourteenth Amendments and Religious Land Use and Institutionalized Persons Act - ("RLUIPA"). The District Court dismissed several other listed defendants including defendants Goodwyn and Turner, for failure to state a claim, Granting in part and Denied in part (App. 13a). The district Court final memorandum Opinion, granting defendants Jackson and Jones motion for Summary judgment for reasons stating, "Appellant has not put forth evidence that disputes defendants sworn testimony", the Court further stated, "Appellant had not submitted any evidence to directly contradict Jackson's testimony that he was not responsible for organizing any Savior's Day program outside of entering names into the master pass list and Jones's testimony that he was not involved with CORIS mishap". Instead, Appellant attempts to create a material dispute of facts by pointing to Virginia Department of Corrections - ("VDOC") operating procedure - ("op") that detail job duties of the institutional chaplains. (App. 5a). Appellant appeal to the Fourth circuit Court of Appeals, relief was denied. (App. 2a). Appellant petition for Rehearing and Rehearing en banc, However, no judge requested a poll under Fed. R. App. P. 35, on the petition for rehearing. (App. 1a).

Appellant is an incarcerated inmate of the VDOC, was housed at Sussex State Prison - ("SSP") in the years of 2017 - 2020, where this action arise. Appellant is a register muslim and Sincerely holds his religious belief under the teachings of the Honorable Elijah Muhammad of the Nation of Islam - ("NOI"), who was acting Coordinator at SSP during this timing of Complaint. Appellant begin filing several complaints to defendants Jackson and Jones, for their denial, not providing the NOI with their religious materials. that of the NOI videos for the NOI programs, including Black History month (February), and their failure to allow the Appellant to celebrate (Savior's Day), Master Fard Muhammad's birthday on February 26, 2018 and 2019. Appellant, also filed complaints against defendants Goodwyn and Turner, for their

STATEMENT OF THE CASE

CONT.

failure to provide a feast meal after prayer service of Savior's Day on February 26, - 2018 and 2019 that was authorized by VDOC and listed on VDOC Religious Calendar each year. In regards to Defendant Jackson, not providing the NOI program with its videos, defendant Jackson made several responses that, "there was no approved videos for the NOI." Appellant made complaints requesting the NOI videos for Black History month in 2018, defendant Jackson respond stating, "the chaplain office is not in possession of any approved videos for the NOI program." Appellant ask further questions through Complaints, "what happen to the approved NOI videos," defendant Jackson Continued stating, "No approved videos." However, appellant provided the Court's with a sign list of NOI approved videos by defendant Jackson that he had in his office.

In regards to defendant Jackson not providing, scheduling, and planning for the NOI Savior's Day prayer service and feast meal on February 26, 2018, defendant Jackson testified in which he avers that, "he was not in charge of Savior's Day programming beyond entering the names of the NOI inmates into the Master Pass List." However, per VDOC op. 841. (offenders Religious Programs, Supervision of Religious Activities) Chapter IV. (A), states, "the chaplain should plan, direct, and Coordinate All aspect of the Religious Programs." Defendant further stated, "After his investigation to why the NOI did not have it services, he could not find out why it wasn't provided."

In regards to defendant Jones, who began serving as chaplain at STSP on September 4, 2018, he also avers that "for reasons UNKNOWN to him, the Savior's Day Program was not set up in CORIS in 2019." Defendant Jones also stated, "to the best of his knowledge, the Savior's Day Program was Omitted from the Religious Calendar due to inadvertence." Defendant Jones also submitted an affidavit stating, "the memorandum from Chief of Corrections operations Robinson related to the Holy Day/Season for the first-quarter 2019 and that year's Master Religious Calendar that Robinson's December 7, 2018, memorandum broad cast that "Savior's Day is to be observed on February 26, 2019, and that NOI observants are authorized to

STATEMENT OF THE CASE

CONT.

have a group feast meal, separate from the general population inmates and a special meeting (Savior's Day prayer service) or observance in conjunction with or separate from that meal." Defendant Jones offered Appellant a "make up service for Savior's Day". However, Appellant avers that he declined to a make up service for the celebration in 2019, because "no member of the NOI can add or change the date ... to be celebrated for another day." Several NOI members provided the courts their Affidavits testifying that, "no Savior's Day was provided for the NOI program in 2018 or 2019."

In regard to defendant Turner, who the District Court dismiss with Prejudice for failure to state a claim, Appellant filed complaints to defendant Turner, for failure to provide the appellant and the NOI program with a feast meal in 2018 or 2019, the next action date to respond was 03/23/2019, however, it was not responded until 04/12/2019, stating, "There was NO special date set up for this meal."

To determine the facts of the case for the purpose of making an First, Fourteenth Amendments and RLUIPA violations analysis, the Court of Appeals relied on, and quoted, the statement of facts from the District Court opinion on granting defendants Summary Judgment, App. 5a-13a. Based on that opinion, the Fourth Circuit, largely ignored, both matter of material facts and law when it concluded.

REASONS FOR GRANTING THE PETITION

1. THE FOURTH CIRCUIT OVERLOOKED BOTH THE STANDARD OF ANDERSON MATERIAL FACT, THE CONSTITUTIONAL AND THE STATUTORY RIGHT OF RLUIPA OF THE FIRST AMENDMENT WARRANTS THIS COURTS ATTENTION

The Fourth Circuit opinion completely ignored the genuine issue as to any material fact for granting a Summary judgment in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, - 248 106 S.Ct. 2505 (1986), and the Free Exercise of Religion and RLUIPA under the First Amendment in several ways.

First, the court merely examined the opinion of the district court which stated the facts in the light most favorable to the defendants arguments and all contrary evidence ignored. District court opinion stated, "Appellant, has not put forth evidence that dispute defendants Jackson and Jones sworn testimony particular not submitting any evidence to directly contradict Jackson's testimony that "he was not responsible for organizing any Savior's Day programming outside of entering names into the Master Pass List, (DKT.NO. 82, Jackson AFF'd 6., and Jones testimony, "For reasons unknown to him, the savior's day program was not set-up in CORES in 2019, (DKT.NO. 82, Jones AFF'd 7). The district court further stated, "Instead, Appellant attempts to create a material dispute of facts by pointing to VDOC operating procedure 841.3, that detail job duties of institutional chaplains. App. 10a. Clearly, the Fourth circuit has decided several important federal questions that contradicted with relevant decisions of this court's ruling and their own.

This court requires in determining whether there is a genuine issue of material fact, the court must view all facts and make all reasonable inference in favor of the non-moving party, Fed. R. Civ. P., 56(c), Also See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, *Matsushita Elec. Ind. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. - 574, 587, 106 S.Ct. 1343 (1986); *Miller v. Leathers*, 913 F.2d 1085, 1088 (4th - cir. 1990). Under this test, it is inappropriate to consider the evidence in

light most favorable to the district Court's opinion, it's clear that the Court of Appeals here disregarded this principle as it has in several other cases involving disputes. See Scott v. Harris, 550 U.S. 372, 380 (2007), even if there is no dispute as to the evidentiary fact, summary judgment is not appropriate where the ultimate factual conclusion to be drawn are in dispute. See Overstreet v. Ky. Cent. Life Ins. Co., 950 F.2d 931, 937 (4th Cir. 1991).

The Fourth Circuit affirm the district Court's order, after their review of the record and find no reversible error App. 4a., but this analysis ignored conflicting evidence that was presented at the district Court opinion before granting of defendant's summary judgment motion, but not recited by the Fourth Circuit Court of Appeals.

For example, Appellant submitted documented facts of provisions per VDOC op. § 841.3, chapter IV (A), states, "the chaplain should PLAN, DIRECT and COORDINATE ALL aspect of the RELIGIOUS PROGRAM." App. 30a., Also see (DKT. NOS. 82-2, pg. 8 of 29, and DKT. NO. 86, pg. 11). ~~THEREFORE~~, defendant Jackson's responsibility was more than as he testified, "only entering names into the master pass list, his job duties was to plan, direct and coordinate all aspect of Savior's Day celebration for 2018, including a feast meal after prayer service (Savior's Day). Here, Appellant alleges that he has put forth evidence that dispute defendant Jackson's sworn testimony, see (Jackson Aff. ¶ 6, DKT. NOS 82-1, pg. 20 of 27) which create a material dispute 477 U.S. at 248 and contradicted by the record. Scott v. Harris, 550 U.S. 372 (2007).

Defendant Jackson further testified stating, "to the best of his knowledge and recollection, NOI inmates at SISP were allowed to eat together as a group in observance of Savior's Day 2018, Jackson Aff. ¶ 5, DKT. NOS. 82-1, ¶ 20 of 27, defendant Jackson also testified that "he did not personally observe the NOI group meal in February 26, 2018, However, I have no reasons to believe that this accommodation was not provided Jackson Aff. ¶ 6.

In addition to defendant Jackson statements, Appellant provided the Courts with documented questions to defendant Jackson Q. "what did you do to investigate why Savior's Day was not planned" and he responded, "I will have to investigate why it wasn't held, See (Dkt. NO. 50, exhibit *7., 1 of 5). However, defendant Jackson respond after his investigation, "he could not find out why the Savior's Day was not held as planned. See (Dkt. NO. 50) exhibit *7., 2 of 5). This Court has decided that when opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts purposes of ruling on a motion for Summary judgment, See Scott v. Harris, 550 372, 380 (2007).

The Fourth Circuit ignored the fact in regards to defendant Jones's contradicted sworn statement stating, "it Un Known to him why savior's day for the year of 2019, was not set up in the COBIS system", (Dkt. NO. 82., Jones AFF'd 7., See v Doc Master Religious Calendar, which provides all dates and scheduling for all Religious program holidays. App 30a., Also See (Dkt. NO. 50. exhibit *12). Jones testified that savior's day was in effect on February 26, 2019, he further states, "the chief of Corrections operation Mr. Robinson, provided a Memorandum announcing the eligible religious and dates for observances which includes savior's day." See Jones AFF'd 4. However, both defendants acknowledge with sworn statements that Mr. Robinson, provided these Memorandums each year of 2018 and 2019, See Jackson AFF'd 5. Therefore, defendant Jones's statements, that he doesn't know why the NOI holiday was not set up in COBIS is not relevant because defendant Jones had full knowledge on December 7, 2018 Approximately 2 1/2 months of Mr. Robinson's Memorandum broad cast that Savior's Day is to be observed on February 26, 2019. See (Dkt. NO. 91, pg. 4 of 8).

The opinion overlooked the District Court's Standard of Review under Fed. R. Civ. P. 12(b)(6), when concluded that Appellant failure to state a claim against defendant Turner, See (Dkt. NOS, 66, 67, and 68), that Appellant does not allege, that these defendants were responsible for and failed to provide him the saviors

Day celebration in 2018 and 2019 feast. See App. 24a., or (Okt. NO. 74. pg. 12 of 12). However, Appellant testified that defendant Turner denied him the Free Exercise of Religion by failure to provide the Appellant and the NOI program a feast meal after prayer Service of Savior's Day. See (Okt. NO. 69. 78) - In light of this evidence, VDOC, op. 841.3., Master Religious Calendar authorized Savior's Day on every February 26. App. 31a., or (Okt. NO. 50. exhibit # 12 (a)), which is clearly contradicted by defendant Turner statement, "NO special date was set up for this meal. App. 32a., or (Okt. NO. 50. exhibit # 12 (b).)

Here, there's clear sufficient factual matter which is true that "savior's Day feast was not provided." Therefore, when no feast was provided, also no prayer service was provided, which Appellant allege state a claim in violation of the First Amendment for relief that is plausible on its face. See *Ashcroft v. Iqbal*, 556 U.S. 1 - 1129 S.Ct. 1937, 1949, 173 - L.Ed.2d 868 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)).

Moreover, the Fourth Circuit further ignored both matter of material fact and laws that Appellant's arguments that, "for two years he was denied to practice and exercise his religious belief having an prayer service and feast meal on February 26, 2018 and 2019. This is a National religious holiday celebrated for the NOI and was authorized as stated above by VDOC, one of the two major holiday celebration beside Ramadan. This denial imposed an substantial burden on the Appellant's practice and exercise of his religious belief; these acts by defendants was intentional because they had full knowledge of Mr. Robinson's Memorandum and the Master Religious calendar that savior's Day was in effect. This place pressure on the Appellant's behavior, who was acting coordinator for the NOI at SISP. It change his practice of belief and violated his constitutional and statutory rights of the First Amendment. The Fourth Circuit decisions clearly in direct conflict with this Honorable Court's ruling and their own of the Fourth Circuit. See *O'One v. Estate of Shabazz*, 482 U.S. 342, 348, 107 - S.Ct. 2400, 96 L.Ed.2d 282 (1987); *Thomas v. Review Bd. of Ind. - Employment Sec. Div.* 450 U.S. 707, 718, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981); *McMorris*, 2006 WL 753017 at *5 (quoting *Hernandez v. Comm'r -*

of Internal Revenue, 490 U.S. 680, 699, 109 S.Ct. 2136, 104 L.Ed.2d 766 (1987); 42 U.S.C. § 2000cc-1(a); *Lovelace v. Lee*, 472 F.3d 174, 198 § 11.8 (4th Cir. 2006) and *Wall v. Wade*, 741 F.3d 492 (2014), which cases is so strikingly similar, both legally and factually, that the same results reached in these above cases must also be reached in this case.

These factual issues do not require the attention of this Court. What does merit review is the emerging practice of the Fourth Circuit of ignoring evidence while performing their "Standard of Review" of a motion for summary judgment, a summary judgment is to be granted only if the record before the court shows that "there is no genuine issue as to any material fact. See Rule 56(c), Fed.R.Civ.P., However, the district court dismissed Appellant's summary judgment motion, for reasons,"

(1) Appellant has not put forth evidence that DISPUTES defendant's sworn testimony. (2) Had not submitted any evidence to directly CONTRADICT Jackson's testimony that he was not responsible for organizing any survivor's Day programming "OUTSIDE of entering names into the Master Pass List." (3) Jones's testimony that he was not involved with the COBIS mishap and (4) Appellant ATTEMPTS to CREATE a material dispute of fact by pointing to VDOC operating procedures that detail job duties of institutional chaplains, which Appellant has stated above, Contradicted by the record.

This Court MUST grant and issue a writ of Certiorari because the failure to do so would allow the Fourth Circuit to continue to apply the wrong standard in deciding their Review for Summary Judgments claims and deny justice to those it is entitled to.

This Court has an ethical duty by the United States Constitution to establish the law of the land and to assure the citizens of the United States of America that the lower courts apply that law. When they do not, it is this Court's obligation to HOLD THAT COURT ACCOUNTABLE and see to it that justice is administered fairly. This Court MUST hear this case and hold the Fourth Circuit accountable for failing to properly apply the law of this Court and relief where relief is due.

CONCLUSION

For these reasons, a writ of Certiorari should issue to review the judgment and opinion of the Fourth Circuit Court of Appeals

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mahesh M. Mahanad

1025895

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Date: 9/22/2023