

NO. **23-6528**

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

Charles L. Burgett - Petitioner

vs.

Kilolo Kijakazi, Acting Commissioner, Social Security Administration - Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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PRO SE PETITIONER

Supreme Court, U.S.
FILED

JAN 12 2024

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QUESTIONS PRESENTED

1. Whether the Court of Appeals applied the correct summary judgment standard on *prima facie* and on pretext in assessing a case of employment discrimination under 42 U.S.C. § 2000e (Title VII).

LIST OF PARTIES

All parties **do** appear in the caption of the case on the cover page.

TABLE OF CONTENTS

OPINION BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	6
CONCLUSION	9

INDEX TO APPENDICES

APPENDIX A: Decision of United States Court of Appeals for the Eighth Circuit	1a
APPENDIX B: Decision of United States District Court WDMO.....	3a
APPENDIX C: Decision of United States Court of Appeals Denying Rehearing and Rehearing En Banc.....	20a
APPENDIX D: Motion For Reconsideration of Summary Judgment.....	21a

TABLE OF AUTHORITIES CITED

CASES:	PAGE NUMBER(S):
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S.242, 250–251, 254-255 (1986)-----	7
<i>Baltimore & Carolina Line, Inc. v. Redman</i> , 295 U.S. 654 (1935)-----	6
<i>Celotex Corp.v. Catrett</i> ,477 U.S.317, 323 (1986)-----	7
<i>Continental Ore Co. v. Union Carbide & Carbon Corp.</i> , 370 U.S.690, 696, n. 6 (1962)-----	8
<i>Davis v. Valley Distributing Co.</i> , 522 F.2d 827, 832 (9th Cir. 1975), cert. denied, 429 U.S. 1090 (1977)-----	8
<i>Lytle v. Household Mfg., Inc.</i> ,494 U.S. 545, 554–555 (1990)-----	7
<i>Matsushita Elec. Industrial Co. v. Zenith Radio Corp.</i> , 475 U.S.574, 587 (1986)--	7
<i>Meritor Sav. Bank, FSB v. Vinson</i> , 477 U.S. 57, 68 (1986)-----	7
<i>Poller v. Columbia Broad. Sys.</i> , 368 U.S. 464, 473(1962)-----	8
<i>Pullman-Standard v. Swint, et al.</i> , 456 U.S. 273, 288-90 (1982)-----	8
<i>Quick v. Donaldson</i> , 90 F.3d 1372, 1376-77(8th Cir. 1996)-----	9
<i>Tolan v. Cotton</i> , 572 U.S. 650, 134 S. Ct. 1861 (2014)-----	7
<i>Woodman v. Haemonetics Corp.</i> , 51 F.3d 1087, 1091(1st Cir. 1995)-----	8
STATUTES AND RULES:	PAGE NUMBER(S):
Rule 56 Federal Rules of Civil Procedure-----	7



IN THE SUPREME COURT OF THE UNITED STATES

Charles L. Burgett - Petitioner

vs.

Kilolo Kijakazi, Acting Commissioner, Social Security Administration - Respondent

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

The Petitioner, Charles L. Burgett, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit in Cause No. 22-3632, entered on August 1, 2023. Rehearing en banc and panel rehearing was denied October 17, 2023.

This case raises fundamental issues concerning whether *Pro Se* parties receive justice in the federal court.

OPINION BELOW

On August 1, 2023 a panel of the Court of Appeals entered its affirmance without opinion the judgment of the United States District Court for the Western District of Missouri. The affirmance without opinion of the Court of Appeals is unpublished.

JURISDICTION

The Court of Appeals entered its judgment on August 1, 2023. On October 17, 2023, the Court of Appeals denied the Petitioner's request for panel rehearing and rehearing en banc, and a copy of the order denying rehearing appears at Appendix 20a. Jurisdiction of This Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Seventh Amendment of the United States Constitution:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

42 U.S.C. Section 2000e et. seq. (Title VII of the Civil Rights Act of 1964):

Prohibits employment discrimination based on race, color, religion, sex and national origin.

STATEMENT OF THE CASE

A. Factual Background.

African-Male, Mr. Burgett was hired by the SSA as a Customer Service Representative on May 1, 2016, and he was terminated while he was still in training on November 30, 2016. During Mr. Burgett's employment with the Social Security Administration (SSA) he was subjected to [race/sex, race, sex]

discrimination and retaliation; and, [race/sex, race] based hostile and offensive work environment. Appendix (App.) 3a, 5a.

The record demonstrates that Mr. Burgett **was meeting** the legitimate expectations of his job duties, and exceeded [3.70 cases per day rate] the unofficial (non-legitimate) production target expectation [3.0 cases per day rate] created by Hawkins, and used by Harris to terminate Mr. Burgett. The SSA does not dispute this fact. The record also shows that Brown **was not meeting** [2.68 cases per day rate] the unofficial (non-legitimate) production target expectation [3.0 cases per day rate]. The SSA does not deny this fact but Brown was not terminated. Harris' statement that if he did not see significant improvement in Mr. Burgett production then he would need to make a decision on Mr. Burgett's continued employment with the SSA was insincere. Although, Mr. Burgett exceeded the non-legitimate production target expectation, Harris terminated him anyway. App. 9a, 27a, 28a.

B. District Court Proceedings.

On June 24, 2020, Mr. Burgett filed his Amended discrimination in employment Complaint under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et. seq. against Kilolo Kijakazi, Acting Commissioner Social Security Administration. Mr. Burgett alleged that he was terminated and refused rehire by the SSA race/sex, and/or race, and/or sex; and, retaliation for participation in EEO protected activity. Additionally, Mr. Burgett alleged that the

SSA subjected him to race, sex and retaliatory based hostile and offensive work environment. App. 3a.

On September 26, 2022, the district court granted summary judgment in favor of the SSA and dismissed Mr. Burgett's complaint. App. 3a.

On October 24, 2022, Mr. Burgett filed a motion for reconsideration of the granting of summary judgment. App. 21a-30a. Mr. Burgett gave the district court the opportunity to correct its erroneous grant of summary judgment. Mr. Burgett argued that looking at the entire record demonstrated that district judge David Gregory Kays engaged in manifest injustice against him, and that a clear error of law and fact had been committed. App. 21a. Further, Mr. Burgett argued that credibility issues were at the heart of his case; however, district judge Kays did not review the record as a whole and improperly made credibility determinations on a paper record in favor of the SSA. Credibility determinations were for the jury not district judge Kays. App. 22a-24a, 27a-30a.

On October 26, 2022, the district court denied Mr. Burgett's motion for reconsideration. App. 20a. Thereby, Mr. Burgett was denied the right to have his complaint decided by a jury.

C. The Court of Appeals' Opinion.

The Court of Appeals entered its affirmance without opinion the judgment of the district court. App. 1a-2a.

D. The Court of Appeals' Denial of Panel Rehearing and Rehearing En Banc.

The Court of Appeals denied rehearing and rehearing en banc. App. 20a.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Infringes On The Right To A Jury In Deciding A Title VII Employment Discrimination Case Under The Seventh Amendment Of The United States Constitution To Receive Justice In The Federal Court, Which Calls For An Exercise Of This Court's Supervisory Power.

The district court was bias and improperly used summary judgment as a weapon against Mr. Burgett to unjustly clear its docket of Mr. Burgett's meritorious case. The Court of Appeals merely supported this injustice.

The Seventh Amendment of the United States Constitution directs, "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." When the first version of the Constitution was distributed for ratification, the Anti-Federalists demanded the addition of civil juries, on the grounds that they would be an effective defense against overreach and corruption from the legislative, executive, and judicial branches of the federal government. By its very nature, the right of civil jury trials supplemented the Constitution in the Seventh Amendment. *Baltimore & Carolina Line, Inc. v. Redman*, 295 U.S. 654 (1935). Thus, This Court must grant certiorari to ensure that the right to a jury trial afforded by the Seventh Amendment is not involuntarily waived.

II. The Decision Below Violates The Summary Judgment Standard In Assessing A Case Of Employment Discrimination Under Title VII, Conflicts With This Court's Jurisprudence, The Standard Employed By Other Appeal Courts, And What It Has Applied In Its Own Circuit, Which Calls For An Exercise Of This Court's Supervisory Power.

The lower court severely misapplied the facts to the detriment of Mr. Burgett. This Court has granted review to correct a lower court's mishandling of factual issues in *Tolan v. Cotton*, 572 U.S. 650, 134 S. Ct. 1861 (2014).

This Court in applying the summary judgment standard under Rule 56 of the Federal Rules of Civil Procedure have stated that the district court must review the record "taken as a whole."—*Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250–251 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). This Court, other appeal courts, and the lower court has also asserted that a district court was compelled to draw all reasonable inferences in Petitioners' favor, and the district court is prohibited from making credibility determinations or weighing the evidence. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." In *Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 554–555 (1990); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254–255 (1986); *Meritor Sav. Bank, FSB v. Vinson*, 477

U.S. 57, 68 (1986); and, *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 696, n. 6 (1962). Additionally, in *Pullman-Standard v. Swint, et al.*, 456 U.S. 273, 288-90 (1982)(discriminatory intent is a factual matter for the trier of fact); *Poller v. Columbia Broad. Sys.*, 368 U.S. 464, 473(1962)("summary judgment procedures should be used sparingly . . . where the issues of motive and intent play leading roles"); and, *Woodman v. Haemonetics Corp.*, 51 F.3d 1087, 1091(1st Cir. 1995) ("No credibility assessment may be resolved in favor of the party seeking summary judgment.").

A. The lower court's *Prima Facie* and Pretext standard under Title VII departs from that employed by This Court, other courts of appeals, and what it has applied in its own circuit.

Mr. Burgett established a *prima facie* case based on the evidence in the record.

This Court found in *Davis v. Valley Distributing Co.*, 522 F.2d 827, 832 (9th Cir. 1975), cert. denied, 429 U.S. 1090 (1977), courts have long held that Title VII is a remedial statute to be liberally construed in favor of the victims of discrimination.

Whether the SSA's conduct was for nondiscriminatory or pretextual reasons and/or was causally linked, all require factual determinations. Factual determinations are the function of the jury, not the court. The lower court made quite clear but did not follow its own precedent :

At the summary judgment stage, the court should not weigh the evidence, make credibility determinations, or attempt to determine the truth of the matter.... Rather, the court's function is to determine whether a dispute about a material fact is genuine, that is, whether a reasonable jury could return a verdict of the nonmoving party based on the evidence.... The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in [the non-movant's] favor.... 'If reasonable minds could differ as to the import of the evidence, "summary judgment is inappropriate".'

Quick v. Donaldson, 90 F.3d 1372, 1376-77(8th Cir. 1996).

CONCLUSION

This Court is symbolic of our entire judicial system. This case presents the opportunity for the Court to exercise its Supervisory Power to guarantee the fundamental principles of fairness is untarnished; to uphold the right to a civil jury trial; and, to secure the public's perception of the right of a *Pro Se* party to receive justice in the Federal Court.

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Dated: January 12, 2024

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Charles L. Burzo". The signature is fluid and cursive, with a large, stylized "A" or "B" shape at the end.

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