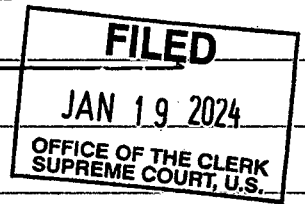


ORIGINAL

23-6655

No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

Ralph Hall, PRO-SE PETITIONER

vs.

Anthony Annunacci, et al., Respondents

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

PETITION FOR WRIT OF CERTIORARI

Ralph Hall #05A5367

GREEN HAVEN CORR. FAC.

594 ROUTE 216

Stormville, N.Y. 12582

QUESTION(S) PRESENTED

1. WHETHER LOWER COURTS HAVE UNREASONABLY APPLIED UNITED STATES SUPREME COURT HOLDINGS REGARDING, "LIBERAL CONSTRUCTION" OF PRO-SE PLEADINGS, (LOPEZ V. SMITH, 135 S. CT. 1 (2014)), AND HOLDINGS INVOLVING, "EXHAUSTION" OF STATE ARISONA'S, INMATE GRIEVANCE PROCEDURE, DIRECTIVE NO. 4040 - UNDER, ROSS V. BLAKE, 136 S. CT. 1850 (2016)?
2. WHETHER RESPONDENT'S FAILURE TO ADHERE OR FOLLOW THE GOVERNING STATE DIRECTIVE NO. 4040 WOULD CONSTITUTE OR RESULT IN AN "UNAVAILABLE GRIEVANCE PROGRAM," AND EXEMPTION FROM EXHAUSTION REQUIREMENT?
3. WHETHER SUMMARY JUDGMENT, IN FAVOR OF RESPONDENTS WAS IN VIOLATION OF UNITED STATES SUPREME COURT HOLDINGS REGARDING, "DISPUTES OVER MATERIAL FACTS", (ANDERSON V. LIBERTY LOBBY, 477 U.S. 242, 248 (1986))?

4. WHETHER LOWER COURTS CORRECTLY IDENTIFIED THE GOVERNING LEGAL PRINCIPLE, "PLRA'S EXHAUSTION REQUIREMENT," BUT UNREASONABLY APPLIES IT TO THE FACTS OF A PARTICULAR CASE WHERE GRIEVANCE PROCEDURE IS NOT OBSERVED BY RESPONDENT, RESULTING IN AN ALLEGED, UNAVAILABLE GRIEVANCE PROGRAM?

5. WHETHER "ARGUABLE BASIS" OF LAW AND FACT WERE IGNORED BY LOWER COURT, (NETTZE V. WILLIAMS, 490 U.S. 319, 325 (1989)), AND IN THE FACE OF SUCH ALLEGED, ARGUABLE BASIS, COMPLAINT GIVES AN INDICATION THAT A VALID CLAIM MIGHT BE STATED? (LARKINS V. SAVAGE, 318 F.3d 138, 139 (2 Cir. 2003) (per curiam))

LIST OF PARTIES

1. All parties appearing in the caption as et al.

Related Cases

Hall v. Annuncci, et al, C.A. #22-2031

Hall v. Annuncci, et al. SDNY #19 Civ 5521

Hall v. SONY, Claim No. BDL612

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APPENDICES:

Appendix "A" Reconsideration by USCA
DENIED ON 03 DAY OF JAN,
2024

Appendix "B" Court of Appeals Summary
ORDER ISSUED ON 02 DAY OF NOV,
2023

Table of Authorities

Correction Law, section 139; 9 NYCRR, Part 7695 of Title 9 NYCRR, NYSDOCCS - Directive NO. 4040 - Re: Governing Observance and Compliance with Administrative Remedy;
Also Fed. R. Civ. P 56(d) - (Compare due process violations; Exception to exhaustion requirement)
Ross v. Blinke, 136 S.Ct. 1850 (2016)
Black v. McDaniels, 529 U.S. 473 (2000)
Neitzke v. Williams, 490 U.S. 319, 325 (1989)
Anderson v. Liberty Lobby, 477 U.S. 242, 248 (1986)
Bell v. Napoli, 2018 WL 6506072 (NDNY)
Larkins v. Savage, 318 F.3d 138, 139 (2d Cir. 2003)
Armand v. Simonson, WL 1257972 (SDNY)

Opinions Below:

USCA, 2 Cir. Reconsideration - DENIED 01/03/2024
Appendix "A"

USCA, 2 Cir. Summary Judgment Order - ENTERED
11/02/2023
Appendix "B"

Jurisdiction - IS PROVIDED BY THE 01/03/2024
DENIAL OF Request For EN BANC Rehearing.

Constitutional and Statutory Provision Involved

THE FIRST AMENDMENT RIGHT TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES;

THE FOURTH AMENDMENT RIGHT TO BE SECURE IN HIS PERSON;

THE FIFTH AMENDMENT RIGHT TO NOT BE DEPRIVED OF PROCEDURAL DUE PROCESS OF LAW;

THE EIGHTH AMENDMENT RIGHT TO BE PROTECTED FROM CRUEL AND UNUSUAL PUNISHMENT. ABSENT THE MEANINGFUL APPLICATION OF DUE PROCESS AND EQUAL PROTECTION;

THE FOURTEENTH AMENDMENT RIGHT TO THE EQUAL APPLICATION OF ESTABLISHED DUE PROCESS OF LAW, TO INCLUDE, PROTECTION AGAINST DISCRIMINATORY APPLICATION OF APPLICABLE AND FAVORABLE HOLDINGS INVOLVING STATE PRISONER PETITIONERS SEEKING RELIEF PURSUANT TO, 42 USC 1983.

STATEMENT OF THE CASE

THE CASE INVOLVES WRONGFUL AND ERRONEOUS APPLICATION OF, "SUMMARY JUDGMENT," FOR RESPONDENTS' ALLEGED CONFLICT WITH DISPUTED FACTS CONCERNING, EXHAUSTION OF GRIEVANCE PROCEDURE, PRIOR TO FILING STATE OR FEDERAL LAWSUIT.

THE CASE REST UPON CLAIMS AND ALLEGATIONS THAT CHALLENGE THE RESPONDENT'S UNLAWFUL DEPARTURE FROM THE GOVERNING DIRECTIVE NO. 4040, WHILE AT THE SAME INSTANCE, HOLDING PETITIONER TO EXHAUSTION PREREQUISITES THAT DO NOT EXIST IN THE ABSENCE OF AN AVAILABLE GRIEVANCE PROGRAM. ADMINISTRATIVE REMEDIES WERE "NOT ACTUALLY AVAILABLE." (BELL V. NAPOLI) RESPONDENT'S FAILURE TO OBSERVE TIMELINESS AS PRESCRIBED BY GRIEVANCE DIRECTIVE #4040, SECTION 701.5(d)(3)(ii); 701.6(g)(2)(m) - CONSTITUTES AS CONDUCT TO UNDERMINE GRIEVANCE, AND MAKE PROCEDURE AN UNAVAILABLE PROCESS DUE TO, THEIR FAILURE TO FOLLOW ALL PROCEDURES, RIGHTS, AND DUTIES PERTAINING TO DIRECTIVE 4040, SECTION 701.8(i).

REASONS FOR GRANTING THE PETITION

Summary Judgment in Favor of Respondents was granted after a previously unsuccessful motion to dismiss the complaint. Some argument relied on earlier motion to dismiss was denied, was reargued against disputed material facts, which allegedly, "properly precludes the entry of summary judgment." (Anderson v. Liberty Lobby, 477 U.S. 242, 248 (1986) - REI "Only disputes over material facts that might affect the outcome of the suit under the governing law will preclude the entry of summary judgment."); (see also, Bell v. Napoli, 2018 WL 6506072 (2 Cir. 2003)) Scott disputed facts involves grievance filed during recovery of first part of parallel hip replacement surgeries. Second part of surgery was not grieved, allegedly, because the first part of grievance involving alleged inadequate medical care, that was cumulative to the first and untimely grievance proceeding. Two separate grievances were not required for an arguably, misrepresentation of

OF GRIEVANCE PROGRAM.

GRIEVANCE PROGRAM'S DEPARTURE FROM CORC TIMELINESS ALLEGEDLY SERVED TO MISREPRESENT THE PROCESS WHERE GRIEVANCE CONCERNED MEDICAL CARE. IN THE INSTANT CASE, SUCH ALLEGED, INADEQUATE MEDICAL CARE RESULTED IN PETITIONER CONTRACTING AN "INCURABLE" FLESH-EATING INFECTION THAT WOULD HAVE BEEN PREVENTABLE IF RESPONDENT HAD CLEANSED AND CHANGED DRESSING DURING HIS STAY IN THE PRISON HOSPITAL'S RECOVERY OR POST-SURGERY ADMISSION.

THE FIRST PART OF BI-LATERAL SURGERY WAS GRIEVED BECAUSE OF FAILURE TO PROVIDE THERAPY. SUCH GRIEVANCE WAS NOT LIMITED TO THERAPY, HOWEVER, BECAUSE PETITIONER WAS THREATENED BY CORRECTION OFFICER ASSIGNED TO THERAPY SECTION OF HOSPITAL. PETITIONER WAS INTIMIDATED WHEN TOLD NOT TO FILE ADDITIONAL GRIEVANCES ABOUT, MEDICAL CARE. (COMPARE, ROSS v. BLAKE, 136 S. CT. 1850 (2016) RE: "EXCEPTION TO EXHAUSTION REQUIREMENT.")

Disputed Facts concern Respondent's
Departure From, "Following all
procedures, Rights and Duties pertaining
to the processing of any other
grievance as set forth in section 701.5."
(Directive 4040, section 701.5(d)(3)(i);
701.6(g)(2)(m); 701.8(i))

Summary Judgment was granted in
favor of Respondents on the basis of
the alleged, unlawful assumption that
petitioner was not excused from filing
a second grievance against inadequate
medical care. A second, cumulative grievance
was not required because of the threat
imposed during the first grievance
and its untimely and prejudicial
handling by CORC. A motion for
Reconsideration en Banc was filed because
issues under Holdings in Ross, supra,
were debatable to counter Summary
Judgment imposed. (See Neitzke v. Williams,
490 U.S. 319, 325 (1989) RE: ARGUABLE BASIS
OF LAW AND FACT EXIST). (Miller-E. v. Cockrell,
537 U.S. 322, 327 (2003) citing Black v. McDowell,
529 U.S. 473 (2000) RE: valid complaint)

THAT A VALID CLAIM MIGHT BE STATED,
~~WHERE~~ MEDICAL IMPROPRIETY AND
INADEQUACIES WERE SHOWN. THE
RESPONDENTS HAVE MISUSED SUMMARY
JUDGMENT AS A MEANS TO AVOID
DISCLOSURE OF LIABILITY.

CERTIORARI, IF GRANTED IN THIS CASE
WOULD SALVAGE PRO SE PLEADINGS ON THE
BASIS OF A GRIEVANCE PROCEDURE THAT
WAS DYSFUNCTIONAL MAKING THE GRIEVANCE
PROGRAM UNAVAILABLE UNDER THE LANGUAGE
IN: ANDERSON v. LIBERTY LORRY, SUPRA.;
ARMAND v. SIMONSON, WL 1257972 (SDNY);
BELL v. NAPOLI, 2018 WL 6506072 (NDNY);
CARKINS v. SAVAGE, 318 F.3d 138, 139 (2 Cir 2003))

CONCLUSION:

THE PRO SE PETITION FOR CERTIORARI RELIEF
SHOULD BE GRANTED (ROSS v. BLAKE, 136 S. Ct.
1850 (2016))

NOVEMBER 15, 2023

Respectfully Submitted
Judy Hall