No. 23-6962

IN THE
SUPREME COURT OF THE UNITED STATES

VERNON D.F. ROBBINS,
PLAINTIFF/APPELLANT/PETITIONER

V.

JOHN E. WETZEL, Former Secretary of Department of Corrections; DORINA VARNER, Chief Grievance Coordinator; KERI MOORE, Assistant Chief Grievance Coordinator; KEVIN KAUFFMAN, Former Superintendent at SCI-Huntingdon; ANTHONY SCALIA, Safety Manager at SCI-Huntingdon; GEORGE RALSTON, Former Unit Manager SCI-Huntingdon, in their individual and official capacities,

DEFENDANTS/APPELLEES/RESPONDENTS

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

PETITION FOR WRIT OF CERTIORARI

Vernon D.F. Robbins
GK8880
1100 Pike Street
Huntingdon, Pa 16654-1112

QUESTIONS PRESENTED FOR REVIEW

1. Whether the United States Court of Appeals for the Third Circuit has entered a decision in conflict with the decision of that same United States Court of Appeals on the same important matter concerning statutory prohibitions as it relates to pro se prisoner litigants' administrative remedy exhaustions?

2. Whether the United States Court of Appeals for the Third Circuit has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter pertaining to statutory prohibtions as it relates to pro se litigants' administrative remedy exhaustions?

3. Whether the United States Court of Appeals (Third Circuit) has entered a decision in conflict with the same U.S. Court of Appeals decision as it pertains to applying the applicable law to pro se litigants irrespective of whether it's mentioned by name?

4. Whether the United States Court of Appeals (Third Circuit) has decided an important question of federal law in a way that conflicts with relevant decisions of This Court concerning the provisional authority of the Prison Litigation Reform Act (PLRA) fashioned by Congress?

5. Whether the United States Court of Appeals (Third Circuit) has decided an important question of federal law in a way that conflicts with relevant decisions of This Court concerning Equal Protection Rights for similarly situated plaintiffs?

6. Whether the United States Court of Appeals (Third Circuit) has decided an important question of federal law in a way that conflicts with relevant decisions of This Court concerning Stare Decisis applications for precedential case decisions?

LIST OF PARTIES

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

RELATED CASES

Robbins v. Wetzel, 2023 U.S. App. LEXIS 23101 (3d Cir. 2023)(non-precedential)
Robbins v. Wetzel, 2023 U.S. Dist. LEXIS 100279, 2023 WL 3901806 (M.D. Pa. June 8, 2023)

LIST OF PARTIES AND RELATED CASES

The cases directly related to this petition for a writ of certiorari are as follows:

- Vernon Robbins v. John Wetzel, et al, No. 1:23-CV-00276, U.S. District Court for the Middle District of Pennsylvania. Judgment entered May 8, 2023 and June 8, 2023 (Motion to Alter or Amend Judgment Denial).
- Vernon Robbins v. John Wetzel, et al, No. 23-2051, U.S. Court of Appeals for the Third Circuit. Judgment entered Aug. 31, 2023 & Nov. 9, 2023 (Rehearing En Banc Denial).

All parties involved are disclosed/listed in the caption of the case on the cover page.

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Exhibit-L	**Appellant's Response To Show Cause Order**

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S t a t u t e s :

OPINION BELOW

Federal Court Cases:

The opinion of the United States Court of Appeals appears at exhibit-__B__ to the petition and is reported at Robbins v. Wetzel, 2023 U.S. App. LEXIS 23101(3d Cir. 2023)(non-precedential).

The opinion of the United States District Court appears at Exhibit-__C__to the petition and is reported at Robbins v. Wetzel, 2023 U.S. Dist. LEXIS 100279, 2023 WL 3901806 (M.D. Pa. June 8, 2023).

JURISDICTION

The date on which the United States Court of Appeals decided Appellant's case was August 31, 2023

A timely petition for rehearing was denied by the United States Court of Appeals on November 9, 2023 and a copy of the order denying rehearing appears at Exhibit- D .

The jurisdiction of this Court is invoked under 28 U.S.C.§ 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional and statutory provisions involved in the Petitioner/Appellant matter consist of U.S. Const. Amend. 8 & 14; Civil Action Suit 42 U.S.C. §1983; Pennsylvania two year statute of limitation personal injury claims 42 Pa.C.S. §5524(7); Prison Litigation Reform Act of 1996, codified at 42 U.S.C. §1997e(a); Stay of Matter 42 PA.C.S. §5535(b) and Federal Rules of Civil Procedure, Rule 8(a)(c) as the Appellant's matter consist of an erroneous assertion of untimeliness by the lower court by the creation of new rules by federal judges contravening to the established statutory provisions cited herein above.

S T A T E M E N T O F T H E C A S E

The Appellant, Vernon Robbins, filed an civil complaint under 42 U.S.C. §1983 as a pro se prisoner litigant on February 8, 2023 raising deplorable prison conditions claims at SCI-Huntingdon. See U.S. District Court Docket ("D.C.Dkt." hereinafter) #1 and Docket Sheet attached hereto as Exhibit-A. Expressed within the facts of Appellant's civil complaint and attached to said complaint was the timely exhaustion of all administrative remedies taken by way of DOC Policy DC-ADM 804 which is mandatory in accordance with the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. §1997e(a). See D.C.Dkt.1, Exhibit ("Ex." hereinafter) B attached thereto. Appellant subsequently amended his complaint. See D.C.Dkt. 4 & 5. The U.S. District Court issued an order directing Appellant to show cause as to why his case should not be dismissed as untimely. See D.C.Dkt. 9 and also attached hereto as Ex.- E (D.C.'s 3/31/2023 Order). Appellant filed a response to said Order explaining the stay by statutory prohibition of his timely exhaustion of the grievance process applied to his filing time and the stay's adherence under 42 Pa.Cons.Stat. §5535(b) to which Appellant exhausted all administrative remedies to each of his claims on February 9, 2021. Appellant filed his complaint asserting all claims in federal court on February 8, 2023 within the two-year statute of limitations by Pennsylvania law for §1983 claims. See D.C.Dkt.10 (Dkt. 11 & 12 a correction Motion to D.C.Dkt.10). The U.S. District Court issued an Order dismissing Appellant's amended complaint and, thereby, case with prejudice as untimely sua sponte at the PLRA screening stage. See 28 U.S.C. §1915A. The District Court's reasoning states: "Because the time between the accrual of Appellant's claims and the filing of his initial grievance, combined with the time between the conclusion of the grievance process and the filing of his complaint in court, totaled more than two years the claims untimely." The District Court did not address the merits of Appellant's claims. See D.C. May 8, 2023 Order at D.C.Dkt.14 and attached hereto as Ex.- C. Appellant filed an Motion to Alter or Amend a Judgment presenting cases supporting inclusiveness of post-incident and pre-grievance time being all embodied within a statutory prohibition as well as arguing equitable tolling by Appellant's need of requisite information before filing a grievance necessary for bringing a civil suit and the District Court's duty to apply all applicable law to a pro se prisoner litigant's §1983 suit without the

Appellant mentioning all applicable law by name. See Appellant's Motion To Alter or Amend Judgment at D.C.Dkt.16. District Court issued an Order denying Appellant's said motion. See D.C.'s June 8, 2023 Order & Mem. At D.C.Dkt. 20 & 21 and attached hereto as Ex.- F.

The Appellant filed a timely notice of appeal to The United States Court of Appeals for the Third Circuit (See D.C.Dkt.17) to which subsequently that said court summarily affirmed the district court's dismissal on appeal. Appellant, therefore, was not given the opportunity to have his claims heard on their merits. See U.S. Court of Appeals August 31, 2023 Opinion by Summary Action Pursuant to Third Circuit LAR. 27.4 and I.O.P. 10.6 attached as Ex.- B hereto. The U.S. Court of Appeals explanation for their opinion was that Appellant "Robbins did not present a basis for it" as well as additionally stating that "Robbins was incorrect about when the statute of limitations began to run" and that "Robbins did not argue that he was entitled to equitable tolling." See Ex.- B at footnote #2. Appellant sought counsel from Pennsylvania Institutional Law Project to assist in filing an rehearing en banc. See Petition For Rehearing and Rehearing En Banc as Ex.- G hereto. On Appellants behalf PILP presented the COA panel's erroneousness by misapplying the Pennsylvania tolling statute by contravening two precedential opinions of the panel's Court at the Third Circuit, and; The Panel's decision will contribute to confusion on a question of exceptional importance to incarcerated litigants. The Appellant's petition for rehearing/rehearing en banc was denied per curiam on November 9, 2023. This Petition For A Writ of Certiorari now follows. See Rehearing En Banc Denial as Exhibit-D attached hereto.

REASONS FOR GRANTING THE PETITION:

ARGUMENT

I. The United States Court of Appeals for The Third Circuit has Entered A Decision In Conflict With The Decision of That Same Court of Appeals on the same Important Matter Concerning The Extent of Statutory Prohibition as it Relates To Pro Se Prisoner Litigant's Administrative Remedy Exhaustions.

Appellant presents this important matter for the reasons outlined supra and infra. The matters start with the Panel's decision in the U.S. Court of Appeals for the Third Circuit towards the Appellant's civil compliant filing pursuant to 42 U.S.C. §1983 being a direct contradiction to Third Circuit cases Pearson v. Sec'y Dep't of Corr., 775 F.3d 598 (3d Cir. 2015) and Jones v. Unknown D.O.C. Bus Driver & Transp. Crew, 944 F.3d 478 (3d Cir. 2019) and, therefore, how This Said Court should grant this petition for a writ of certiorari in order to maintain uniformity of law within the Third Circuit's precedential decisions. The above binding precedential decisions correctly state the law, and the assigned U.S. Court of Appeals Panel, in Appellant's case, opinion does not. In fact, that same panel decision conflicts with a series of non-precedential opinions that correctly apply Third Circuit court's precedents and Pennsylvania's tolling statute cited herein infra. Indeed, the District Court decision in this case has already muddled an issue that arises regularly and holds exceptional importance to incarcerated litigants. This Court is humbly asked to grant Appellant's petition herein for the reasons as follows:

By tolling the statute of limitations only during the pendency of Appellant's grievances--rather than treating it as beginning to run only when he completed his exhaustion of administrative remedies--the U.S. Court of Appeals assigned panel decision misunderstands the interaction of Pennsylvania's tolling law, the PLRA's exhaustion requirement and DOC Policy DC-ADM 804, Section 1(A)(8). In Pennsylvania, personal injury claims pursuant to §1983 must be brought within two years of accrual. See 42 PA.C.S.§5524(7). Pennsylvania also has tolling rules which apply to the Appellant as Pennsylvania law makes clear that the limitations period does not always begin

running when a claim accrues. "Where the commencement of a civil action or proceeding has been stayed by a court or by statutory prohibition, the duration of the stay is not part of the time within which the action or proceeding must be commenced. See 42 Pa.C.S.§5535. Put another way: if a state or federal statutory provision prohibits the commencement of a civil action asserting some claim, the statute of limitations on that claim does not begin until the statutory provision first allows commencement of the action. This is a major factor as the Appellant's status as an incarcerated person subjects his claims to the PLRA. See 42 U.S.C.§1997e(a), which asserts; "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." The Third Circuit Court of Appeals confirms this process in Pearson v. Sec'y Dep't of Corr. 775 F.3d 598, 603 (3d Cir. 2015), which established; "There is no ambiguity in the PLRA: it is clearly a statutory prohibition that prevents a prisoner from filing §1983 actions until the prisoner exhausts all administrative remedies. 42 U.S.C.§1997e(a)." Also, see Wisniewski v. Fisher, 857 F.3d 152, 158 (3d Cir. 2017). With that asserted, the Appellant's available administrative remedy in Pennsylvania as a prisoner is DOC Policy DC-ADM 804 to which the encompassed language at 804, Section 1(A)(8), admonishes; "The inmate must submit a grievance to the Facility Grievance Coordinator/designee, usually the Superintendent's Assistant, within 15 working days after the event upon which the claim is based." See DC-ADM 804, Sec.1(A)(8) attached as Exhibit ("Ex." hereinafter) I hereto, and Available at: https://www.cor.pa.gov/About%20Us/Documents/DOC%20Policies/804%20Inmate%20Grievances.pdf. Said required stipulations render the fifteen working days given to file a grievance an inclusive process of this said administrative remedy as one cannot reasonably expect a prisoner to receive requisite information to present in a properly filed grievance on the same day of the incident or within 24 hours (one day). The framers of DC-ADM 804 knew this which is why a 15 working day time allotment was given and drafted into this said policy. This is so the person (as a prisoner) might use that time to review the grievance policy, undertake legal research, speak with witnesses, or otherwise compose a higher quality grievance. Given the DOC's control of it's own policy, these pre-grievance steps are rightly considered part of the

exhaustion process.

The Appellant thus faced a "statutory prohibition" against filing his lawsuit at all times prior to his completion of the grievance process, including during the time between the accrual of his claim and the filing of his initial grievance, days that the District Court and the panel within the Third Circuit Court of Appeals wrongly counted as part of the limitations period. See 42 PA.C.S.§5535(b). The fact is no part of the "duration of the prohibition" counts toward the statute of limitation, id., so the time between the accrual of Appellant's claim and the filing of his initial grievance is not to be counted as part of his two-year statute of limitations. Even the state level courts agree with this process. See Bank of N.Y. v. Harvey, 928 A.2d 325, 328 (PA.Super.Ct.2007)(explaining that periods during which a party can file suit count toward the limitation period, while periods during which the party cannot file suit do not). The limitations period here thus began to run on February 9, 2021, when Appellant exhausted administrative remedies. He filed his complaint less than two years later, so his claims were not time-barred.

The text of the PLRA's exhaustion provision and Pennsylvania's tolling statute dictate that the statute of limitations does not start running until an incarcerated person completes the prison's mandated exhaustion process, as expressed above. The Third Circuit Court of Appeals has already held that the PLRA's exhaustion requirement is a "statutory prohibition" that stays the commencement of an action. Jones, 944 F.3d at 482; Pearson, 775 F.3d at 602. With that established, This Said Court has authoritatively expressed within the precedence of Crawford-El v. Britton, 523 U.S. 574, 596 (1998), its disapproval with changing PLRA context by asserting; "the Supreme Court applied the same rationale in the PLRA context, criticizing 'the creation of new rules by federal judges.'" Id., continues with; "Congress has already fashioned special rules [in the PLRA]...if there is a compelling need to frame new rules of law..., presumably Congress either would have dealt with the problem in the [PLRA], or will respond to it in future legislation." 523 U.S. at 596-97. So in adherence to This Court's assertions above, it has already previously been established that the Third Circuit has repeatedly recognized and applied this understanding of the statute of limitations. The Circuit

Court Panel assigned to Appellant's case wrongly departed from that uniform understanding.

The Circuit Court's decision in Jones forecloses any serious argument about whether to count pre-grievance time as part of the limitations period:

> "If a prisoner wants to file a §1983 suit, he must exhaust the prison's internal administrative remedies first. Because he must clear this hurdle before suing, we wait to start the limitations clock until after he has exhausted them (or after his release, whichever comes first)," Jones, 944 F.3d at 480 (Bold emphasis added).

That Court's analysis of the timeline in Jones demonstrates clearly that the time between accrual and the initial grievance does not count toward the limitations period. The plaintiff in Jones filed his initial grievance several days after the bus accident that injured him. Id. at 480. He tried, unsuccessfully, to complete the prison's grievance process over the next ten months, after which he was released from prison. Id. at 480-81. The Court explained that, because, "[u]pon release, he no longer had to exhaust [,] [h]is release date was [ ] the first time that Jones could file a civil complaint [, and since] Pennsylvania law gave Jones two years from his release date to sue," his suit, which was filed less than two years later, was timely. Id. at 482. Notably, the Court did not subtract the days between the accident and the filing of the initial grievance from the post-release limitations period and stated explicitly that the plaintiff had the full two years after his release to bring his claims in court. Id.

Jones confirmed and built upon the Third Circuit Court's precedent in Pearson. There, that court held that "the PLRA is clearly a statutory prohibition that prevents a prisoner from filing §1983 actions until the prisoner exhausts all administrative remedies" and that it thus tolls Pennsylvania's statute of limitations during the exhaustion process. Pearson, 775 F.3d at 603. Like Jones, Pearson binded the Third Circuit Court. But Pearson itself built on other prior cases that pointed to the same result, including Paluch v. Sec'y Pa. Dep't of Corr, 442 F. App'x 690, 694 (3d Cir. 2011). In Paluch, the plaintiff engaged in exhaustion of administrative remedies from September 2004 through January 2005, so "the statute of limitations... did not begin to run until January 2005." 442 F.App'x at 694

(Bold emphasis added); see also Pearson, 775 F.3d at 602 (citing Paluch with approval). And after Pearson but before Jones, Third Circuit Court emphasized that the PLRA prohibits filing of an action before exhaustion of administrative remedies, and thus that "the statute of limitations applicable to §1983 actions should be tolled while a prisoner pursues the mandated remedies." See Wisniewski v. Fisher, 857 F.3d 152, 158 (3d Cir. 2017). These decisions are all consistent with each other and the textual commands of the PLRA and Pennsylvania's tolling statute—no plaintiff could have filed an action during the post-injury but pre-grievance period. See 42 U.S.C. §1997e(a); 42 Pa.C.S. §5535(b).

The panel opinion in the instant Appellant's case, while not precedential, will likely create confusion because of its conflict with not only the precedential decisions of the Third Circuit Court of Appeals, cited supra, but also with non-precedential decisions of that same Circuit Court. So consistent with Pearson, 775 F.3d at 602 (citing Paluch with approval), more recent non-precedential opinions correctly tolled the statute of limitations for the entire period between the accrual of the claim and the completion of exhaustion. See Lomax v. Tennis, 708 F.App'x 55, 57 (3d Cir. 2017)(per curiam)(vacating dismissal on statute of limitations grounds because "the Department of Corrections rendered final decisions on several of [plaintiff's] grievances within two years of the complaint's date"); Bullock v. Buck, 611 F.App'x 744, 746 (3d Cir. 2015)(per curiam)("The two-year statute of limitations for this [incarcerated litigant's] claim thus began to run on the date he exhausted [administrative] remedies.") The panel's decision in the instant Appellant's case thus explicitly conflicts with both precedential and non-precedential decisions of this Court, in a manner likely to engender confusion in district courts, which often undertake this analysis at the screening stage, with just a pro se complaint and without the benefit of adversarial briefing.

The District Court decision in the Appellant's case has already engendered some uncertainty on the interaction of Pennsylvania's statute of limitations and the PLRA for purposes of counting post-injury but pre-grievance time. A District Court in the Western District of Pennsylvania recently addressed—and rebutted—the Appellant, Vernon Robbins, District Court decision because

of its incorrect analysis. Callahan v. Clark, No. 1:20-CV-00305, 2023 U.S.Dist. LEXIS 142944, at *30 n.7 (W.D. Pa. Aug. 14, 2023), Report & Recommendation adopted, 2023 U.S.Dist. LEXIS 151997 (Aug. 29, 2023)(explaining that the Robbins Court's analysis was incorrect because it "did not address the statutory prohibition on the commencement of suit recognized by the Court of Appeals in Pearson and thus did not account for its effect on the tolling analysis.") The Callahan Court, unlike the District Court and the Third Circuit Panel argued herein, correctly recognized that "[b]ecause [the PLRA's statutory] prohibition includes the period between the accrual of the prisoner's cause of action and the submission of his grievance, it logically follows that the tolling of the statute of limitations also includes this period." Id. at *30. The Callahan Court not only has the correct reading and analysis of the PLRA and the Pennsylvania tolling statute; it also foreshadows the potential confusion facing district courts if the said Panel's decision herein endorsing the District Court's error remains on the books, even as a non-precedential opinion.

An intricate review of this matter reveals, absent the error in the Appellant's case, district courts generally get this issue right. Without harping on the point, district courts in the Third Circuit regularly recognize, correctly, that the statute of limitations commences at the end of the grievance process. See, e.g., id.; Ozoroski v. Maue, No. 08-0082, 2009 U.S. Dist LEXIS 13449, at *22 (M.D.Pa. Feb. 18, 2009); Carter v. PA. Dep't of Corr., No. 08-0279, 2008 U.S. Dist LEXIS 102016, at *34 (E.D. Pa. Dec. 17, 2008)("[T]he statute of limitations begins to run only when [a] plaintiff has exhausted his administrative remedies-under the PLRA."); Wright v. O'Hara, No. 00-1557, 2004 U.S.Dist. LEXIS 15984, at *17 (E.D. Pa. Aug. 16, 2004)("Because the PLRA makes the exhaustion of administrative remedies mandatory, the statute of limitations only began to run once plaintiff had exhausted his administrative remedies[.]"). Pearson, 775 F.3d at 603, itself cites Ozoroski with approval. Also see, e.g., Brief in Support of Defendant's Motion to Dismiss Plaintiff's Complaint at 11 n.3, Spotz v. Wetzel, No. 21-CV-1799 (M.D. Pa. May 19, 2023), ECF No.55 ("SOIGA ultimately upheld the denial of Plaintiff's grievance on September 17, 2017. If the Court chooses to find that Plaintiff fully exhausted his Eighth Amendment claim based on this grievance, under the applicable statute of limitations, Plaintiff would have had to file

this lawsuit by September 17, 2019."), and; Brief in Support of Motion for Summary Judgment at 4, **Robinson v. Folino**, No.14-CV-227, 2017 U.S.Dist. LEXIS 35044 (W.D. Pa. Mar. 13, 2017) ECF No.37. ("In this case, plaintiff exhausted his administrative remedies...on December 20, 2011....Therefore, with the two-year statute of limitations, he was required to file his Complaint no later than December 20, 2013").

Accordingly, to maintain uniformity of precedent with **Pearson, Wisniewski,** and **Jones,** as well as to ensure that this uniform treatment of an exceptionally important issue to incarcerated litigants continues, it is duly noted that the instant Appellant has an equal protection right to all of the above case citings in support of his claims in accordance with **U.S. Const. Amend. 14** argued further at length, infra. For said reasons, This Court should grant this said petition for a writ reversing the U.S. Court of Appeals (3rd. Cir.) summary affirmed decision in order to reverse the District Court, and reinstate Appellant's case for further proceedings.

II. Whether The United States Court of Appeals For The Third Circuit has Entered a Decision In Conflict Wtih the Decision of Another United States Court of Appeals On The Same Important Matter of Statutory Prohibitions as it Relates To Pro Se Prisoner Litigant's Administrative Remedy Exhaustions.

In conjunction with the correct applications of precedent and non-precedent opinions cited above, see **Section I,** supra, though not all out-of-circuit authorities necessarily bear on this question, several other circuits have addressed a tolling statute for incarcerated litigants identical to Pennsylvania's and held that it likewise requires tolling states statute of limitations during the PLRA exhaustion process for inmates administrative remedies also under §1997e. See **Johnson v. Rivera,** 272 F.3d 519, 521 (7th Cir. 2001)("[A] federal court relying on the Illinois statute of limitations in a 1983 case must toll the limitations period while the prisoner completes the administrative grievance process.") Subsequent decisions applying the same Illinois law have made clear that "the two-year clock beg[i]n[s] ticking' when the grievance process ends, without regard to post-injury but pre-grievance time. **Bowers v. Dart,** 1 F.4th 513, 517-18 (7th Cir. 2021). See **Wilson v.**

Wexford Health Sources, Inc., 932 F.3d 513, 517 (7th Cir. 2019)("[The plaintiff's] limitations clock...did not begin to run until his administrative grievance was denied."). (Bold emphasis added), also see Brown v. Morgan, 209 F.3d 595, 596 (6th Cir. 2000); Harris v. Hegmann, 198 F.3d 153, 157-59 (5th Cir. 1999), and; Brown v. Valoff, 422 F.3d 926, 942-43 (9th Cir. 2005).

Accordingly, to maintain both uniformity with Third Circuit precedents cited above, see Section I, supra, establishing the statute of limitations clock beginning to run upon completion of exhaustion of administrative remedies in conjunction with the additional out-of-circuit case influences by identical statutory tolling requirements during the PLRA exhaustion process cited in this Section above to further influence a continuance of uniform treatment of an exceptionally important issue to incarcerated litigants, the Appellant asks that This Court grant this said petition for a writ for an in-depth review and reversal of this matter.

III. The United States Court of Appeals (Third Circuit) Has Entered A Decision In Conflict With The Same U.S. Court of Appeals decision as it Pertains To Applying The Applicable Law To Pro Se Litigants Irrespective of Whether It's Mentioned by Name.

The Appellant, as a pro se prisoner litigant, was required to receive application of the applicable law pertaining to the filing processing of his civil complaint from the Third Circuit Court of Appeals as well as from the U.S. District Court. It is the Third Circuit Court of Appeals who issued their precedent holding in Higgins v. Beyer, 293 F.3d 683, 688 (3d Cir. 2002), which asserts; "In a §1983 action, the court must 'apply the applicable law, irrespective of whether the pro se litigant has mentioned it by name." Quoting Holley v. Dep't of Veteran Affairs, 165 F.3d 244, 247-48 (3d Cir. 1999). Dluhos v. Strasberg, 321 F.3d 365, 369 (3d Cir. 2003), establishes; "When presented with a pro se complaint, the court should construe the complaint liberally and draw fair inferences from what is not alleged as well as from what is alleged." The origin of construing a pro se litigant liberally stems from Haines v. Kerner, 404 U.S. 519, 520 (1972); Estelle v. Gamble, 429 U.S. 97, 106 (1976).

By and through said above precedents by the Third Circuit Court of Appeals said Circuit was required to apply all applicable law to the Appellant's case as he was, in fact, a pro se litigant appealing the judgment of the U.S. District Court. With that, the applicable law consisted of Jones, 944 F.3d at 480-82 and Pearson, 775 F.3d at 602-04 as they both pertain to statutory prohibition and that prohibition included the period between the accrual of the prisoner's cause of action and the submission of [a prisoner's] grievance. These cases were decided prior to Appellant's civil complaint filing on February 8, 2023 and therefore the described statutory prohibition to the statute of limitations period within said cases applied to the Appellant as well. See "Statement of the Case," surpa. As a pro se litigant, Appellant cited Pearson in his response to the District Court Order (See Ex.- L pg. 3-4) and cited Wisniewski, 857 F.3d at 158 and Paluch, at 694 within his 59(e) motion (See Ex.- H, p. 9-10) though despite any of these citings it was the duty of the court to apply the inclusiveness of post-injury but pre-grievance time towards tolling within the statutory prohibition specifically expressed within Jones, surpa, and Pearson, supra, as this was the law applicable to the Appellant's case regardless of whether the Appellant, a pro se litigant, mentioned these cases by name. See Higgins, at 688 and Holley, at 247-48. Appellant even cited both Higgins and Holley within his 59(e) motion (See Ex.- H, p. 12-13).

Additionally, even if by chance the Jones holding defining what all consists of statutory prohibition for tolling was not applicable, though surely it is, the Appellant would also be entitled to the applicable law of equitable tolling due to his rightful ability to obtain "requisite information" to bring a cause of action. Black's Law Dictionary, Eleventh Edition (p.680), defines "equitable tolling" as: "The doctrine that the statute of limitations will not bar a claim if the plaintiff, despite diligent efforts, did not discover the injury until after the limitations period had expired, in which case the statute is suspended or tolled until the plaintiff discovers the injury. •Equitable tolling does not require misconduct such as concealment by the defendant." Now in accordance with Barnes v. American Tobacco Co., 161 F.3d 127, 154 (3d Cir. 1998), it asserts; "On discovering an injury and its cause, a claimant must choose to sue or forego the remedy. (Bold emphasis added) Id., continues with; "the continuing conduct of [a] defendant will not stop the ticking of

the limitations clock begun when plaintiff obtained **requisite information** [to statue a cause of action]." (Bold emphasis added). (quoting **Kichline v. Consolidated Rail Corp.**, 800 F.2d 356, 360 (3d Cir. 1986) as addressed in **Section I**, supra, in an Eighth Amendment claim of deplorable prison conditions such as in the Appellant's civil complaint in question here, a pro se prisoner would need time to gather much needed (requisite) information (legal research, witnesses, etc.) before discovering that an "injury" (The violation of another's legal right for which the law provides a remedy- Black's Law Dictionary, Id., (p. 939)) has actually occurred to file a grievance. For it is impossible to discover this type of injury and all requisite information needed during the same day of the incident to be inquired. Appellant Robbins filed his grievance upon receiving the requisite information necessary to do so, which was done on October 15, 2020 after his release from a Restricted Housing Unit (RHU) into the general population on September 23, 2020. Therefore Appellant would also be entitled to the applicable law establishing equitable tolling. Appellant presented this alternate factor within his 59(e) motion (See **Ex.**- H, p. 7-8) to the District Court. So by the precedence of **Higgins** and **Holley**, supra, and their binding language within the Third Circuit Court of Appeals, said court was to apply the applicable law of Barnes, supra, and **Kichline**, supra, for equitable tolling purposes, if needed.

The applicable, law of statute of limitations under the PLRA and **Fed.R.Civ.P., Rule 8(c)** was to be applied to the appellant as federal judges are not permitted to create new rules to the PLRA and Federal Civil Procedure Rule 8(c) establishes that statute of limitations is considered an affirmative defense that must be pled by a defendant that is to be expressed in further detail, infra, herein.

Another applicable law claim that was to be applied to the Appellant's matter herein was his entitlement to equal protection of the law under U.S.Const.Amend. 14 and the rights awarded from said Equal Protection Clause (U.S.C.A.14) as the Appellant, as a pro se plaintiff, is to be treated the same as similarly situated persons. This particular claim has rightful implementations under **Higgins**, supra, and **Holley**, supra, and shall be presented in further detail, infra.

Lastly, the applicable law of a stare decisis standard was to be applied to the Appellant's case pertaining to his citing of Pearson and Wisniewski to the U.S. District Court and the Third Circuit Court of Appeal was required to apply the applicable law of Jones, Pearson and Wisniewski, supra, to Appellant's timeliness issue in this matter and to adhere to these said cases in stare decisis in order to promote a consistent development of legal principles and support the perceived integrity of the judicial process as expressed in further detail, infra.

Accordingly, to maintain both uniformity with the precedence of Higgins, supra, and Holley, supra, and all applicable law cited above that was required to be applied to the appellant, as a pro se litigant, and to ensure that a uniform treatment of an exceptionally important issue to pro se and incarcerated litigants continues, the Appellant asks that This Court grant this said petition for a writ for an intricate review and reversal of this matter.

IV. The United States Court of Appeals (Third Circuit) Has Decided An Important Question of Federal Law In a Way That Conflicts With Relevant Decisions of This Court Concerning The Provisional Authority of The Prison Litigation Reform Act And Federal Rules of Civil Procedure all Fashioned By Congress.

The Third Circuit Court of Appeals' ("COA") summary affirmance of the District Court's dismissal was also erroneous in the guise of their assessment of a statute of limitations issue due to said issue being an affirmative defense that must be pleaded and proven by the defendant(s). Even within Third Circuit Court of Appeals precedents, this has been established. So in support of Appellant's claim that a question of timeliness in a statute of limitations issue applicable to §1983 actions being an affirmative defense that must be pleaded and proven by the defendants in a PLRA suit, Ray v. Kertes, 285 F.3d 287, 292 (3d Cir. 2002), asserts; "although statutes of limitations are very often phrased in mandatory language,...they are quite clearly affirmative defenses, see e.g., Fed.R.Civ.Proc.8(c) (listing the statute of limitation as an affirmative defense)." Citing Gruber v. Price Waterhouse, 911 F.2d 960, 963 (3d Cir. 1990)("When the statute of limitations is raised as defense, we have

recognized that it "is an affirmative defense, and the burden of establishing its applicability to a particular claim rests with the defendant."). See, also Van Buskirk v. Carey Canadian Mines, Ltd., 760 F.2d 481, 487(3d Cir. 1985); Bradford-White Corp. v. Ernst & Whinney, 872 F.2d 1153, 1161 (3d Cir. 1989). The Defendants in the instant Appellant's case were never placed with the burden of establishing the applicability of the statute of limitations issue. Ray, 285 F.3d at 293, cites both the Seventh and Second Circuits to express; "Defendants may waive or forfeit reliance on §1997e(a), just as they may waive or forfeit the benefit of a statute of limitations." citing Perez v. Wis. Dept. of Corr., 182 F.3d 532, 536 (7th Cir. 1999); Jenkins v. Haubert, 179 F.3d 19, 28-29 (2d Cir. 1999)("Under the PLRA,...a defendant...may also assert as an affirmative defense the plaintiff's failure to comply with the PLRA's [exhaustion] requirement [].."). Ray, surpa, cites Fifth Circuit's Wendell v. Asher, 162 F.3d 887, 890 (5th Cir. 1998)("Rather, the amended statute imposes a requirement, rather like a statute of limitations, that may be subject to certain defenses such as waiver, estoppel, or equitable tolling.")(Bold emphasis added).

In the case of the instant Appellant, the District Court dismissed the Appellant's claims asserting a violation of the statute of limitation deeming his civil complaint filing untimely. However, it is This Court who has ruled against such practice by a court. See Arizona v. California, 530 U.S. 392, 412-13, 120 S.Ct. 2304, 2317-18, 147 L.Ed. 2d 374 (2000)("cautioning that sua sponte consideration of statute of limitations defenses should be allowed sparingly because doing so erodes principle of party-presentation essential to Nation's adversary-based system of adjudication."). Arizona further elaborates; "Where no judicial resources have been spend to the resolution of a question, trial courts must be cautious about raising a preclusion bar sua sponte." Id.

The Third Circuit COA has summarily affirmed, and thereby agreed to, the District Court's sua sponte dismissal to which was given under the screening stage of 28 U.S.C. §1915 & 1915A though after ordering the Appellant to provide greater specificity of his claim to establish timeliness of his complaint filing despite Appellant having expressed the fact that he had filed and fully exhausted the grievance and Appeals process and attached said

administrative remedies to his filed complaint as exhibits for the court. See Statement of the case, pg. 4, supra. Therefore the COA has affirmed a practice that is prohibited by the precedent established by This Court in Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002), which highlights; "To measure a plaintiffs complaint against a particular formulation of the prima facie case at the pleading stage is inappropriate." Id., at 515, asserts; "A requirement of greater specificity for particular claims is a result that "must be obtained by the process of amending the Federal Rules, and not by judicial interpretation." Id., at 513, expressed, by Justice Thomas, the range of Fed.R.Civ.P.8 applicability in opining; "Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited exceptions. Rule 9(b), for example, provides for greater particularity in all averments of fraud or mistake. This Court, however, has declined to extend such exceptions to other contexts." Id.; "Other provisions of the Federal Rules of Civil Procedure are inextricably linked to Rule 8(a)'s simplified notice pleading standard. Rule 8(d)(1) states that '[n]o technical forms of pleading or motions are required', and Rule 8(e) provides that '[a]ll pleadings shall be so construed as to do substantial justice.'" Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 168 (1993) has explained that; "heightened pleading standards are inconsistent with the liberal system of 'notice pleading' set up by the federal rules."

Due to such precedents above, established by This Court, it was impermissible for the Third Circuit COA to fashion their own rules contrary to Fed.R.Civ.P., Rule 8(c) and to the PLRA context concerning the Appellant's case herein. Crawford-El v. Britton, 523 U.S. 574, 596 (1998), concurs with; "This Supreme Court applied the same rationales in the PLRA context, criticizing 'the creation of new rules by federal judges.'" This Court pointed out that "Congress has already fashioned special rules [in the PLRA]," concluding that "if there is a compelling need to frame new rules of law..., presumably Congress either would have dealt with the problem in the [PLRA], or will respond to it in future legislation." 523 U.S. at 596-97. These above factors were applicable to the Appellant's case and should have been applied accordingly as the Third Circuit COA summary affirmance of the District Court dismissal conflicts with these relevant precedent decisions above opined by This Said Court.

Accordingly, to maintain both uniformity with This Court's precedent citings above prohibiting judicial interpretation of established rules of law fashioned by Congress in the PLRA context and the Federal Rules of Civil Procedure Rule 8 and to ensure that a uniform treatment of an exceptionally important issue to pro se and counsel appointed prisoner litigants continues equitable to them in achieving substantial justice, Appellant ask that This Court grant this said petition for a writ for an intricate review and reversal of this matter.

V. The United States Court of Appeals (Third Circuit) Has Decided An Important Question of Federal Law In A Way That Conflicts With Relevant Decisions of This Court Concerning Equal Protection Rights For Similarly Situated Plaintiffs.

Now, as expressed in the previous section above, See **Section III**, supra, the Appellant was required to have the applicable law of Equal Protection rights (U.S.C.A.14) applied in his case as expressed in **Higgins**, supra and **Holley**, supra. With that, the Equal Protection Clause of the Fourteenth Amendment provides a state shall not "deny to any person within its jurisdiction the equal protection of the laws." **U.S. Const. Amend.14.** As such, the Equal Protection Clause requires that all persons "similarly situated" be treated alike by state actors. See **City of Cleburne v. Cleburne Living Ctr., Inc.**, 473 U.S. 432, 439 (1985). An equal protection claim can be brought by a "class of one," a plaintiff alleging he has been "intentionally treated differently from other similarly situated and...there is no rational basis for the difference in treatment." **Village of Willowbrook v. Olech**, 528 U.S. 562, 564 (2000) and **Bd. of Trustees v. Garrett**, 531 U.S. 356, 367 (2001). Also, said Appellant is safeguarded under the protective right of the asserted expression held within **Article 7 of the Universal Declaration of Human Rights**, by which its legal authority states; "all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

Due to the precedent set by This Court's legal authorities cited above,

See **Section V** herein, supra, Appellant's equal protection rights were to be safeguarded by the Third Circuit COA's and the U.S. District Court's (M.D. Pa.) decision below as the instant Appellant's case circumstances are similarly situated to the claims and relief awarded within **Jones**, supra, **Pearson**, supra, **Wisniewski**, and all other cases cited herein, See **Section I**, supra, in support of the Appellant's claims as he too was required to have his post-incident but pre-grievance time inclusively tolled until the exhaustion of all administrative remedies were complete. See **D.C.Dkt.1**, at **prgh.13-33**. It's as though the Appellant is singularly being punished for following the same process as **Jones, Pearson, & Wisniewski** which is surely inequitable. **U.S. v. Goodwin**, 457 U.S. 368, 372, 102 S.Ct. 2485 (1982), asserts; "To punish a person becuase he has done what the law allows him to do is a 'Due Process Violation' of the most basic sort." The Appellant's equal protection rights equitably apply to all cases cited throughout this filed petition herein, See **Sections I thru IV**, supra, & **Section VI**, infra, and thereby entitles him to the same treatment in relief that was awarded in the detail asserted expressions of legal authority cited therein.

Accordingly, to maintain uniformity with This Court's precedent legal authorities establishing ones rights to equal protection under the Fourteenth Amendment of the U.S. Constitution, See **City of Cleburne**, supra, **Vill. of Willowbrook**, supra, and **Bd. of Trustees**, supra; continued uniformity of **Article 7 of the Universal Declaration of Human Rights** and to ensure that a uniform treatment of an exceptionally important issue of equal protection to the Appellant and all pro se & counseled appointed prisoner litigants is exercised, Appellant asks that This Court grant this said petition for a writ for an intricate and much needed review and reversal of this case matter.

VI. The United States Court of Appeals (Third Circuit) Has Decided An Important Question of Federal Law In A Way That Conflicts With Relevant Decisions of This Court Concerning Stare Decisis Applications For Precedential Case Decisions.

Again, as expressed in the previous section above, See **Section III**, supra, the Appellant was entitled to have the applicable law of a Stare Decisis standard applied in his case as expressed in the application of applicable law

cases Higgins, supra, and Holley, supra. With that established, This Court has set the precedent for a stare decisis standard to be applicable to which the Third Circuit Court of Appeals cites This Supreme Court in this said regard within their holding in Riccio v. Sentry Credit, Inc., 954 F.3d 582, 590 (3d Cir. 2020), establishing their adherence to U.S. Supreme Court precedence of stare decisis with the excerpt quote of; "Stare decisis--in English, the idea that today's Court stand by yesterday's decision--is 'a foundation stone of the rule of law.'" Citing Kimble v. Marvel Entm't, LLC, 576 U.S. 446, 135 S.Ct. 2401, 2409, 192 L.Ed. 2d 463 (2015) quoting Michigan v. Bay Mills Indian Cmty., 572 U.S. 782, 798, 134 S.Ct. 2024, 188 L.Ed 2d 1071 (2014). Riccio, id., continues with; "To be sure, stare decisis 'is not an inexorable command,' but it is critical to 'promote [ ] the evenhanded , predictable, and consistent development of legal priciples, foster [ ] reliance on judicial decisions, and contribute [ ] to the actual and perceived integrity of the judicial process.'" Citing Payne v. Tennessee, 501 U.S. 808, 827, 111 S.Ct. 2597, 115 L.Ed 2d 720 (1991).

It is This Court that has established the precedent for a stare decisis standard. And it is the Third Circuit COA who has acknowledged and cited This U.S. Supreme Court's precedents as displayed, supra. So it was, therefore, a violation of law for the Third Circuit COA not to adhere to the assessment and previous relief established in the precedent cases of Jones, supra, Pearson, supra, & Wisniewski, supra, presenting the full range of tolling time applicable to a prisoner litigant within an §1983 complaint by the adherence to mandatory exhaustions under 42 U.S.C. §1997e as these cases applied equally to the Appellant. All legal authorities cited herein, See Sections I thru VI, supra, are entitled to a stare decisis standard assessment review.

Accordingly, to maintain uniformity with This Court's precedent legal authorities establishing a stare decisis standard review in keepings with Kimble, supra, Michigan, supra, and Payne, supra, and to ensure that a uniform treatment of an exceptionally important issue concerning stare decisis and its proper application to all prisoner litigants and other pro se litigants is being properly exercised, Appellant asks that This Court grant this said petition for a writ for an intricate and much needed review and reversal of this case matter.

Legal authorities addressing abuse of discretion by "arbitrary, fanciful or unreasonable decisions, errant conclusion of law, or an improper application of law" are held in **Hart v. Elec. Arts, Inc.**, 717 F.3d. 141, 148 (3d Cir. 2013); **Hanover Potato Prods., Inc. v. Shalala**, 989 F.2d 123, 127 (3d Cir. 1993), and; **Harrington v. Richter**, 562 U.S. 86, 100 (2011). This applies to all of Appellant's claims presented herein, if needed.

C O N C L U S I O N

For the aforementioned reasons asserted, the Appellant's petition for a writ of certiorari should be granted.

DATE: 2 / 5 / 2024

Respectfully Submitted,

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Exhibit-A