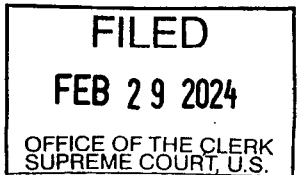


No. **23-7349**



IN THE
SUPREME COURT OF THE UNITED STATES

Scott Zirus — PETITIONER
(Your Name)

vs.

O'Daniel, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Scott Zirus #01640002
(Your Name)

12071 F.M. 3522
(Address)

Abilene, Texas 79601
(City, State, Zip Code)

NA
(Phone Number)

QUESTION(S) PRESENTED

1. Whether Mandamus relief is available when the lower court categorically precludes incarcerated plaintiffs from joinder under Fed. R. Civ. P. 20 on the basis of their incarceration?
2. Whether Mandamus relief is available when the lower court applied a harsher standard than required by Statute when considering joinder?
3. Whether Mandamus relief is available when the lower court denies transfer of venue?
4. Whether the US Court of Appeals must issue a written opinion explaining their rationale when denying a Petition for Writ of Mandamus?

LIST OF PARTIES

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

S ☒ 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:

RELATED CASES

S ~~In re Justin Panas, 23-10819; 1:23-cv-00086-H~~
~~In re Matthew Baker, 23-10820; 1:23-cv-00134-H~~
~~In re Timothy Cone, 23-10822; 1:23-cv-00136-H~~
~~In re Dannie Carter, 23-10823; 1:23-cv-00137-H~~
~~In re Eric Quinones, 23-10824; 1:23-cv-00138-H~~
~~In re Benjamin Grisham, 23-10825; 1:23-cv-00139-H~~
~~In re Cory Garcia, 23-10826; 1:23-cv-00140-H~~
~~In re Zachary Guerra, 23-10827; 1:23-cv-00141-H~~
~~In re Jeffrey Johnson, 23-10828; 1:23-cv-00142-H~~

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OTHER

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 A 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☒ is unpublished.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 United States district court appears at Appendix B to the petition and is

☐ reported at _____; 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 12th December 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: _____, 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

28 U.S.C. 1391

Fed. R. Civ. P., Rule 20

STATEMENT OF THE CASE

Petitioner Zirus is one of 10 prisoners whom filed a multi-plaintiff 1983 lawsuit alleging that as a systemic practice, Texas prisoners are being unconstitutionally deprived of adequate food and nutrition.

Because the issue is systemic, they did not name any official or officer from their assigned unit in Abilene, Texas. Instead they named all members of the Texas Board of Criminal Justice (located in Austin) as well as the TDCJ Executive Director; Director of the Correctional Institutions Division; Director and Operations Manager of Laundry, Food and Supply Division; and the TDCJ Senior Dietitian.

Since the majority of the named Defendants are members of the TBCJ and that the TBCJ headquarters is statutorily required to be located in Austin, the Plaintiffs filed the suit in the Western District of Texas, Austin Division.

However, the Austin Court misconstrued the suit as being about the food conditions on the unit in Abilene and transferred the suit to the Northern District of Texas, Abilene Division.

Plaintiffs filed a Motion To Reconsider and asked the Abilene Court to transfer the suit back to Austin for the following reasons:

- Abilene is NOT where a substantial part of the events or ~~omissions~~ omissions giving rise to Plaintiffs' claims occurred and is an inappropriate venue under 28 USC 1391(2)
- Abilene is not more convenient than Austin for a majority of the witnesses to travel and for the Plaintiffs to be transported there
- Deference is owed to Plaintiffs choice of venue
- The plain language of 28 USC 1391(1) and (3) uses the phrase "judicial district in which any defendant".
 - There is absolutely no reference to the judicial district in which the Plaintiff resides. As such, it is the Defendants residence (not Plaintiffs) that determines the venue under 1391(1) and (3)

On 13th June 2023 the Abilene Court denied the Plaintiffs motion To Reconsider on the grounds that "the Austin court reasonably concluded that a substantial part of the events or omissions giving rise to the Plaintiffs' complaint occurred at the Robertson Unit." The Abilene Court did not address the Plaintiffs arguments in their Motion To Reconsider.

In the same order the Abilene Court severed the case into 10 separate suits because, the Court somehow reasoned, it was "in the interest of judicial economy;" because of "the well-established, inherent logistical concerns involved in maintaining a lawsuit with multiple prisoner-plaintiffs".

Plaintiffs immediately filed a detailed objection to this order. The objections were overruled.

Plaintiffs then filed a Petition for writ of mandamus to reverse the severance order and transfer the suit back to Austin Division where it was originally filed. Plaintiffs requested leave to proceed on appeal jointly, but leave was denied.

Petitioner Zirus was the only Plaintiff able to seek IFP to proceed on the Mandamus.

On 12th December 2023 the Fifth Circuit granted IFP status and denied Petitioners request for writ of Mandamus. The Fifth Circuit did not issue an opinion explaining the rationale for their decision.

Petitioner Zirus now seeks a Writ of Certiorari on the issues presented in this petition. Thank you.

REASONS FOR GRANTING THE PETITION

1. Whether mandamus relief is available when the lower court categorically precludes incarcerated Plaintiffs from joinder under Fed. R. Civ. P. 20 on the basis of their incarceration?

The US Court of Appeals has entered a decision in conflict with the decision of another US Court of Appeals on the same important matter [Rule 10 (a)] and has decided an important question of federal law that has not been, but should be, settled by this Court [Rule 10 (c)].

Although the lower court acknowledges in the order that "the PLRA does not prohibit prisoner-plaintiffs from joining under Rule 20" the lower court stated that "because of the well-established, inherent logistical concerns involved in maintaining a lawsuit with multiple prisoner-plaintiffs, the Court finds that joinder should be denied in the interest of judicial economy".

Petitioner argues that since ALL prisoners are incarcerated, then it follows that ALL prisoner-plaintiffs are subject to the "inherent logistical concerns" caused by said incarceration. As such, the lower court's rationale categorically precludes the joinder of prisoner-plaintiffs under Rule 20 because ALL prisoners are subject to the "inherent logistical concerns" of their incarceration under all circumstances.

Neither this Court or the Fifth Circuit has explicitly addressed whether prisoner-plaintiffs may proceed jointly in a single action. But a majority of the Circuits that have addressed the issue permit joinder.

In Boriboune v. Berge, 391 F.3d 852, 853-56 (7th Cir. 2004), the Seventh Circuit vacated a district court's order precluding prisoner-plaintiffs from litigating jointly in forma pauperis.

The Seventh Circuit held:

"Because the PLRA did not repeal or modify Rule 20, the district court had to accept complaints filed by multiple prisoners if the criteria of permissive joinder were satisfied".

In Hagan v. Rogers, 570 F.3d 146, 152 (3rd Cir. 2009), the Third Circuit agreed with the Seventh Circuit and concluded:

"Nothing in the PLRA demonstrates that Congress intended to alter plain language of Rule 20, and that conditions of incarceration should not be considered in disregarding the unambiguous language of the Rule. Accordingly, prisoner litigants may not be categorically precluded from joining as plaintiffs under Rule 20"

Although the Sixth Circuit has never squarely addressed the issue, its jurisprudence seems to assume without deciding that prisoner-plaintiffs may litigate jointly. See, Taylor v. First Med. Mgmt., 508 F. Appx 488, 493-94 (6th Cir. 2012) ["when multiple prisoners are joined under Rule 20, strikes may still be incurred for an individual prisoner's portion of the case"]; Talley-Bey v. Knebl, 168 F.3d 884, 887 (6th Cir. 1999) [concluding that district court properly permitted two prisoner-plaintiffs proceeding jointly to share the costs of the filing fee]; In re PLRA, 105 F.3d 1131, 1138 (6th Cir. 1997). [same]

Even the Northern District of Texas, Dallas Division, agrees that the PLRA does not preclude prisoner-plaintiffs from litigating as a group even in light of certain "impracticalities and inherent difficulties of allowing [prisoner-plaintiffs] to proceed jointly" Glenewinkel v. Carvajal, 2020 U.S. Dist. LEXIS 167284.

For these reasons, this Court should issue Certiorari on this issue.

2. Whether Mandamus relief is available when the lower court applied a harsher standard than required by Statute when considering joinder?

The US Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power [Rule 10(a)]

Rule 20(a)(3) - Extent of Relief

The lower court claims that it "cannot determine from the single complaint how the alleged conditions of confinement affect each plaintiff" and that the "likelihood of varying facts and injuries, and the potential for individual claims against varying defendants support separating the plaintiffs claims into separate suits."

This conclusion belies Rule 20(a)(3), which reads:

"Extent of Relief. Neither a plaintiff nor a defendant need be interested in obtaining or defending against all the relief demanded. The court may grant judgment to one or more plaintiffs according to their rights, and against one or more defendants according to their liabilities".

As provided in Rule 20(a)(3), joinder is permissible even if the liability of each defendant and the damages awarded to each plaintiff will differ.

As such, the lower court's analysis included a harsher standard not required by Statute, and thus the lower court acted outside its authorized discretion.

Two Prong Test Under Rule 20

The two prong test for joinder under Rule 20 is defined as:

- 1) occurrence of some question of fact or law common to all parties
-and-
- 2) existence of right to relief predicated upon or arising out of a single transaction or occurrence or series thereof.

The Plaintiffs met both prongs of the test for permissible joinder.

First, Plaintiffs assert a right to relief jointly. It is clear from the Original Complaint that Plaintiffs seek relief based upon the unconstitutional deprivation of adequate food and nutrition that affects ALL of them. And, although each Plaintiff may have suffered different degrees of harm (past, present and future harm) due to the unconstitutional conditions, the gravamen of claims and the relief sought derive from the same alleged unconstitutional deprivation of adequate food and nutrition, rather than from wrongdoing directed at individual Plaintiffs.

Second, questions of law common to all Plaintiffs will arise. For example, this case will require the court to determine whether the practice of feeding prisoners between 1,100 and 1,600 calories per day, or the deficiency in essential vitamins and minerals, constitutes cruel and unusual punishment. The court will also need to determine whether the conditions Plaintiffs describe amount to deliberate indifference under the Eighth Amendment.

Therefore, the lower courts analysis included a harsher standard not required by Statute, and thus the lower court acted outside its authorized discretion

3. whether Mandamus relief is available when the lower Court denies transfer of venue?

The US Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Courts Supervisory power [Rule 10(a)].

In denying Plaintiffs request to reconsider transfer of venue, the lower court states that "all of the plaintiffs' factual allegations are specific to their experience at the Robertson Unit. They speculate that those conditions are the result of systemic practice, but they offer no factual support for that conclusion. moreover, they assume without support that their experience is universal - that is, the conditions they complain about must exist in other units. But despite the plaintiffs' arguments to the contrary, many of the facts appear unique to the Robertson Unit".

An honest reading of the Original Complaint will show that besides the Plaintiffs profiles at paragraphs 3-12, the Robertson Unit is only mentioned three times in the entire Original Complaint - each time as a mere example. The remainder of the Complaint explicitly refers to Systemic practices within TDCJ. Plaintiffs even quote in their responses a video recorded of Defendant Garth Parker admitting that the food issues in TDCJ are systemic. He also admits that TDCJ serves an outdated menu which contains a lot of starchy and carbby food and that he is concerned for the health of those that eat it.

Plaintiffs need not prove their claims in the original complaint in order to state a claim, because all factual assertions are presumed true. The Original Complaint is well written and researched, so the lower court should construe it to mean exactly what it says - not read between the lines and misconstrue the entirety of the suit. Therefore, the basis that Abilene is the proper venue is a mischaracterization of the claims presented.

The lower court also reasoned that Abilene "will be more convenient for a majority of the witnesses to travel there and for the Plaintiffs to be transported there" in the event of an evidentiary hearing or trial.

Firstly, as explained above, none of the events giving rise to the claims in this suit originate from the Robertson Unit and none of the Defendants work or reside in the Abilene area. As such, there is no foreseeable need for witnesses from the Robertson Unit to attend an evidentiary hearing or trial.

Secondly, 42 USC 1997e(f)(1) negates the need to transfer the Plaintiffs to any courthouse for an evidentiary hearing. Robertson Unit has telecommunication means to allow Plaintiffs to attend a hearing virtually.

The correct venue in civil rights cases is controlled by 28 USC 1391. The plain language of 1391(1) and (3) uses the phrase "judicial district in which any defendant". There is absolutely no reference to a judicial district in which the plaintiffs reside. As such it is the Defendants residence (not the plaintiffs) that determine the appropriate judicial district under 1391(1) and (3).

Pursuant to Tex. Gov. Code 492.014(a) the TBCJ "shall maintain headquarters in Austin". For all practical purposes, this renders Austin the "residence" of the TBCJ since the "residence" of a public official or officer sued in their official capacity is the place where they perform their official duties - in this case, Austin.

When denying Plaintiffs Motion To Reconsider the transfer of venue the lower court did not take these statutory mandates into consideration and only relied upon a mischaracterization of the facts and claims presented in this suit. For these reasons, the lower court's decision not to transfer the suit back to Austin Division was a clear abuse of discretion.

4. Whether the US Court of Appeals must issue a written opinion explaining their rationale when denying a Petition for writ of mandamus.

In this case the Fifth Circuit did not issue a written opinion explaining their rationale as to why Petitioner was not entitled to Mandamus relief.

Instead the Fifth Circuit issued an unpublished order stating:

"It is ordered that Petitioner's petition for writ of mandamus is denied".

Such a vague and ambiguous order forces Petitioner Zirrus to speculate as to the reasons it was denied. Did it not meet the inadequate remedy or abuse of discretion standards? Did his legal arguments lack merit?

In order to present a meaningful appeal on the denial of Mandamus relief, the Fifth Circuit should issue a written opinion setting out the reasons they are denying a Petition for writ of Mandamus. To do otherwise renders their adjudication arbitrary and in want of due process.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 28th February 2024