No. 23-7383 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Kenric Ledbetter, et al. — PETITIONER
(Your Name)

vs.

Religious Practice Committee, 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

Kenric Ledbetter #00628824
(Your Name)

Robertson Unit, 12071 F.M. 3522
(Address)

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

NA
(Phone Number)

QUESTION(S) PRESENTED

1. Whether the US Court of Appeals has jurisdiction to consider an appeal from a filing fee order that each of the 10 prisoner-plaintiffs in a multi-plaintiff 1983 suit must pay a per-plaintiff filing fee?

2. Whether the Prison Litigation Reform Act requires a per-litigant or per-case filing fee in a multi-plaintiff 1983 suit?

LIST OF PARTIES

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

[X] 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:

- Kenric Ledbetter, TDCJ No. 00628824
- Isaac Cardenas, TDCJ No. 02230470
- Santhy Inthalangsy, TDCJ No. 02186559
- David Martin, TDCJ No. 02125617
- Miguel Bygoytia, TDCJ No. 02161244
- ~~James Renfro, TDCJ No. 01937567~~
- ~~Jon~~ Justin Panus, TDCJ No. 02167693
- Richard Cross, TDCJ No. 02100125
- William Oliver, TDCJ No. 02290434

RELATED CASES

- ~~Scott Zirus, TDCJ No. 01640002~~ SZ

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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

[X] 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,
[x] is unpublished.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,
[X] is unpublished.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

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 16th October 2023.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 18th January 2024, and a copy of the order denying rehearing appears at Appendix C.

[ ] 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

- Prison Litigation Reform Act
- 28 U.S.C. 1915
- 28 U.S.C. 1914
- 28 U.S.C. 1291
- 28 U.S.C. 1292
- 1 U.S.C. 1

STATEMENT OF THE CASE

Petitioners signed and filed their original complaint jointly challenging various TDCJ policies that impede their ability to freely and meaningfully practice Buddhism under RLUIPA. Petitioners jointly paid one full filing fee of $402.00

On 20th November 2022, Judge Bennett of the Houston Division ordered each of the Petitioners to either pay the $402 filing fee or seek IFP. (Doc. 4). He warned that failure to timely comply would result in the dismissal of their individual claims.

In response, Petitioners filed objections to the Order and requested that he reconsider (Doc. 8). On 17th January 2023, Judge Hendrix of the Abilene Division entered an order instructing each of the Petitioners to fully comply with Judge Bennett's order (Doc. 13).

None of the Petitioners paid the additional filing fee and instead filed a motion seeking an extension of time to file a joint notice of appeal to Judge Bennett's order (Doc. 14). Judge Hendrix granted an extension because Petitioners established they did not receive a copy of the order denying their objections (Doc. 25).

Petitioners submitted their appeal to the Fifth Circuit seeking a definitive answer as to whether the PLRA requires a per-litigant or per-case filing fee.

On 16th October 2023 the Fifth Circuit dismissed the appeal for lack of jurisdiction. Petitioners filed a Motion for Rehearing and presented three legal theories that grant the Fifth Circuit jurisdiction.
On 18th January 2024 the Fifth Circuit denied the Petition for Rehearing

Petitioners now seek a writ of Certiorari.

REASONS FOR GRANTING THE PETITION

1. Whether the US Court of Appeals has jurisdiction to consider an appeal from a filing fee order that each of the 10 prisoner-plaintiffs in a multi-plaintiff 1983 suit must pay a per-plaintiff filing fee?

The Fifth Circuit has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power [Rule 10(a)].

In the case at hand, Petitioners challenge the lower courts order that each Plaintiff must pay a per-litigant filing fee. The Fifth Circuit sua sponte dismissed the appeal for lack of jurisdiction. The Fifth Circuit concluded that the appeal was not from a final decision under 28 U.S.C. 1291; was not an interlocutory decision under 28 U.S.C. 1292; and is not a nonfinal judgment certified as final.

Petitioners aver that the Fifth Circuit had jurisdiction under three possible legal theories overlooked by the Court.

1. The Collateral Order Doctrine/Cohen's Doctrine;
2. The District Court implied certification as appeallable; and/or
3. The appeal could be construed as a Petition for writ of Mandamus.

Collateral Order Doctrine

To qualify under the Collateral Order Doctrine, an order must:

- Conclusively determine a disputed question;
- Resolve an important issue separate from the merits of the action;
- Be effectively unreviewable on an appeal from a final judgment.

The Order in question clearly meets the requirement that it conclusively determine a disputed question because the lower court has consistently applied the per-litigant filing fee to other prisoner litigation, and conclusively stated that such is mandated by the PLRA. The lower court cited the language in 28 U.S.C. 1915 (b)(1) and reasoned that "prisoners cannot evade the plain language of the Act and clear intentions of Congress by the simple expedient of filing multi-party actions, hoping therefore to gain benefit of litigation without paying the full fee required by this Act" (Doc. 8, pg 2).
As such, the lower court has conclusively determined the disputed question, and failure to pay the per-litigant filing fee will inevitably result in dismissal for failure to prosecute.

The order also meets the requirement that it "resolve an important issue separate from the merits of the action".
The issue is separate from the merits of the action because it turns squarely upon the interpretation of statutory language in conjunction with the Supreme Court precedent of Jones v. Bock, 549 U.S. 199 (2007). The merits of the action thus has no baring on the adjudication of the issue presented.
Furthermore, an important right would be lost if review had to await final judgment - that right being the right to seek redress in the courts because failure to comply with the Order to pay nine additional filing fees would result in dismissal for failure to prosecute.
Waiting for said dismissal in order to challenge the per-litigant filing fee is not a viable option since the sufferance of dismissal with prejudice for failure to prosecute is not to be employed as an avenue for reaching issues which are not subject to interlocutory appeal as of right. If a litigant could refuse to proceed whenever a trial judge ruled against him, wait for the Court to enter dismissal for failure to prosecute, and then obtain review of the judge's interlocutory decision, the policy against piecemeal litigation and review would be severely weakened.

The order also meets the requirement that it be "effectively unreviewable on an appeal from final judgment" because this Court has held that the "denial by a district judge of a motion to proceed in forma pauperis is an appealable order". Roberts v. United States Dist. Court, 339 U.S. 844, 845 (1950).

This is instructive because this Court reasoned that it is appealable because if a truly indigent plaintiff is not granted IFP status, he is barred from proceeding at all in district court. Thus, the denial of leave to proceed IFP is "effectively unreviewable on appeal from a final judgment" because there would be no final judgment from which to appeal. Coopers &. Lybrand v. Livesay, 437 U.S. 463, 468 (1978).

Although Petitioners have not attempted to proceed IFP, the same legal rationale should still apply. Petitioners are litigating jointly and have already paid one full filing fee. If they refuse to pay the additional nine filing fees it would result in dismissal for failure to prosecute just like the IFP case, and similarly there would be no final judgment from which to appeal. For this reason, the order is effectively unreviewable on an appeal from final judgment.

Therefore, the Collateral Order Doctrine grants the Fifth Circuit jurisdiction to review the appeal.

Implied Certification

Although it is accurate that the district court did not explicitly certify in writing that the Order being appealed involves a "controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation", the Fifth Circuit overlooked the fact the appeal was the result of the district court granting an out-of-time interlocutory appeal.

This is significant because if the district court had reason to believe the interlocutory appeal was not in good faith, frivilous, or otherwise unappealable, it would have denied Petitioners request for an out-of-time interlocutory appeal. Afterall, if Petitioners appeal was considered unreviewable then it was harmless error that they did not receive a copy of the Courts order in a timely manner. But the district court did not conclude this.

It is not in the interest of judicial economy to allow an out-of-time interlocutory appeal on which the Court had no jurisdiction. Therefore, it is reasonable to conclude the district court found the issue of per-litigant filing fees to meet the requirements of 28 U.S.C. 1292(b).

This is supported by the fact that all proceedings in the District Court "are stayed pending the resolution of Plaintiffs' interlocutory appeal". The District Court explained: "Because Plaintiffs are, in essence, asking this Court to decide the same substantive issue that they raise in the pending interlocutory appeal, the Court, out of an abundance of caution, declines to exercise any authority it may have to adjudicate the Motion. Unless otherwise directed to do so by the United States Court of Appeals for the Fifth Circuit, the Court will defer ruling on the Motion until Plaintiffs' appeal is resolved". (Doc. 27, pg. 2).

Clearly the District Court intended the Fifth Circuit to have jurisdiction and to adjudicate the "substantive issue" presented.

Construe as Mandamus

Although Petitioners did not formally seek a writ of Mandamus under Fed. R. App. P. 21, the Fifth Circuit had the authority to tread the appeal as a Petition for writ of Mandamus.

Upon review of the arguments presented in the original appeal brief, it is evident that the lower court clearly abused its discretion and/or erred by ordering that the PLRA requires that each of the prisoner litigants must pay the $402 filing fee in a multi-plaintiff lawsuit. Afterall, the Fifth Circuit did not require multiple filing fees to submit the joint appeal.
This produced patently erroneous results because 28 USC 1915(b)(3) states that "in no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action".
The order in dispute requires a total filing fee of $4020.00

For these reasons, this Court should grant Certiorari.

2. Whether the Prison Litigation Reform Act requires a per-litigant or per-case filing fee in a multi-plaintiff 1983 suit?

The US Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court [Rule 10(c)].

This is an issue of first impression. Neither the Supreme Court or the Fifth Circuit has expressly addressed whether the PLRA requires prisoner-plaintiffs proceeding jointly to pay an individual filing fee when they do not bring suit in forma pauperis.

In the case at hand, the lower court ordered that "each of the prisoner plaintiffs must pay the $402.00 filing fee in order to proceed as a plaintiff in this lawsuit" (Doc. 4, pg 1).
To justify this conclusion, the lower court cites the language in 28 U.S.C. 1915(b)(1) that "if a prisoner brings a civil action... the prisoner shall be required to pay the full amount of a filing fee" (Doc. 8, pg 2).
The lower court reasons that "prisoners cannot evade the plain language of the Act and clear intention of Congress by the simple expendient of filing multi-party actions, hoping thereby to gain benefit of litigation without paying the full fee required by this Act' Id.
Under this rationale, the full filing fee in this case is $4020.00 because there are ten prisoner-plaintiffs.

Petitioners argue that the plain language of 1915(b)(1) does NOT require a per-litigant filing fee in light of the statutory construction of 1 U.S.C. 1; that Jones v. Bock, 549 U.S. 199 (2007) held that, unless the statute explicitly prescribes, a court applying the PLRA should not depart from the usual procedural practices; and because Petitioners have not moved for IFP status, 1915(b) was never triggered and 1914(a) controls the filing fee requirements despite the fact the litigants are prisoners.

Furthermore, the Sixth Circuit has long held that the PLRA only requires one full filing fee per-case. See, In re PLRA, 105 F.3d 1131, 1138 (6th Cir. 1997); Talley-Bey v. Knebl, 168 F.3d 884, 887 (6th Cir. 1999).
Thus the Fifth Circuit has entered a decision in conflict with the decision of the Sixth Circuit on the same important matter. [Rule 10(a)].

Statutory Construction

The per-litigant approach to fees is often premised upon the language of 28 USC 1915(b)(1) which referces "a prisoner" in the singular, and thus, the argument goes, implies the congressional intent for each individual prisoner-plaintiff to pay the full filing fee.

However, this leads to an unsound statutory construction in light of the mandates of 1 U.S.C. 1. This states that "in determining the meaning of any Act of Congress... words importing the singular include and apply to several persons, parties or things." Applying this rule of construction, the use of a singular litigant in 1915(b)(1) can also be determined to mean a multitude of litigants i.e. several persons joinded under Rule 20. As such, 1915(b)(1) can be read to mean that "if [several persons] bring a civil action or files an appeal in forma pauperis, the [several people] shall be required to pay the full amount of a filing fee."
Petitioners aver that all this statute is saying is that prisoners proceeding IFP are not ~~exent~~ exempt from the "full amount of a filing fee" because of their indigent status - he must pay it, unlike a non-prisoner litigant granted IFP status who is exempt from the fee and does not have to pay it.

This construction still conforms with the deterrance goal of the PLRA by creating an economic incentive to refrain from frivolous, malicious, or repetitive lawsuits.

Furthermore, to require multiple plaintiffs in a single suit to <u>each</u> pay the entire filing fee would arguably contradict the imprecation of the PLRA that "<u>in no event</u> shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of <u>a</u> civil action." See, 28 U.S.C. 1915(b)(3).

"In no event" is pritty clear. It means with no exception - under no circumstance. This closes off the possibility of a filing fee exceeding \$402 even if the plaintiffs are joined under Rule 20 in a single case. In the case at hand, the filing fee collected will be \$4020.00 - Ten times the amount permitted by statute for the commencement of a civil action.

Deterrance Policy

Proponents of the per-litigant approach to fees assert that requiring a per-litigant filing fee is more consistent with the PLRA intent to deter the filing of frivolous lawsuits by creating an economic incentive to refrain from such filings.

However, this argument runs afoul of this Courts holding in Jones v. Bock, 549 U.S. 199, 212 (2007).
In Jones this Court warned the Courts applying the PLRA that they should NOT depart from the usual procedural practices, under the Federal Rules of Civil Procedure or otherwise, based on perceived policy concerns (like detering prisoners from filing suit) unless the statute so prescribes. See, Hill v. McDonough, 547 U.S. 573 (2006); Swierkiewicz v. Sorema N.A., 534 U.S. 506 (2002)

It is difficult to convincingly argue that 28 U.S.C. 1914(a) does not require a per-case filing fee - which has been the normal procedural interpretation since its inception.

Since the PLRA does not explicitly address how filing fees apply to multi-plaintiff litigation, this Courts holding in Jones mandates that Courts apply the usual procedural practice. Thus the appropriate practice is to require a filing fee per-case - NOT per-litigant.

Although it is clear that the principal purpose of the PLRA is deterring frivolous lawsuits and appeals, Congress was explicit as to the means and extent of that deterrance. Had Congress intended to require a per-litigant filing fee in multi-plaintiff litigation under Rule 20, they would have amended the Statute and Rules to reflect this - but they did not.

The courts need not read between the lines of the statute in order to give that deterrance meaning. To do so crosses a line between deterrance and obstruction.

1915 only applies to IFP

For arguments sake, if this Court finds that the statutory construction of 1915 does create a per-litigant filing fee, Petitioners argue that such only applies if a prisoner seeks in forma pauperis status.

Because Petitioners in this case never moved for IFP status, 1915(b) was never triggered, and 1914(a) controls the filing fee requirement despite the fact that the litigants are prisoners.

28 U.S.C. 1915 is explicitly entitled: "Proceedings In Forma Pauperis." The language of 1915(b)(1) supports this argument that it only applies to IFP cases. It reads:

> "[I]f a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee".

The use of the word "if" in this statute shows that there is a qualifier that triggers the requirements of the statute. The action that sets off this trigger is the filing of a civil action or appeal in forma pauperis. If a prisoner does not proceed IFP, the statute is not triggered. There is absolutely no support for a per-litigant filing fee outside the IFP statute.

For these reasons, Petitioners seek a writ of Certiorari

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

____

Date: 12th March 2024

Respectfully Submitted,

Inner Liberation Prison Sangha:-

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12th March 2024