

23-7601

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED
MAY 23 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Khari Devon Coley — PETITIONER
(Your Name)

vs.

COWGARL and ET AL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Second circuit court of Appeals of New York
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Khari Devon Coley
(Your Name)

Clinton C.F. P.O. Box 2001
(Address)

Dannemora NY 12929
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Was the petitioner's prison grievance procedures were rendered unavailable to prisoner upon his transfer to custody of New York's Office of Mental Health (OMH) relieving prisoner of his Prison Litigation Reform Act (PLRA) obligation to exhaust his administrative remedies?

15. Affirmative defense of exhaustion is subject to Estoppel were defendants actions may have Estopped the state from asserting the exhaustion defense?

LIST OF PARTIES

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

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:

CO Joseph R Granger
CO Nathan T Locke
CO Randy J Russell
Sergeant William Hoffnagle

cole v Garland Et AL 2023 WL 346242 U.S District court
Northern District of New York

cole v Garland Et AL 2024 WL 878917 second circuit court
of Appeals of New York

TABLE OF AUTHORITIES CITED

CASES

medina v Napoli
Ross v Blake
Romano v Ulrich
Williams v Copriatno
Ziemba v Wezner

PAGE NUMBER

725 FED APPX 51
136 Sct 1850
49 F4th 148
829 F3d 118
366 F3d 161

STATUTES AND RULES

20 USC #1234
20 USC #15678
20 USC #8901
42 USC #1983
42 USC #1997(E)(A)

FED.R. CIV.P 9(1)
FED.R. CIV.P 10(c)
FED.R. CIV.P 12(b)(6)
FED.R. CIV.P 12(c)

OTHER

TABLE OF CONTENTS

| | |
|--|---|
| OPINIONS BELOW | 1 |
| JURISDICTION..... | |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED | |
| STATEMENT OF THE CASE | |
| REASONS FOR GRANTING THE WRIT..... | |
| CONCLUSION..... | |

INDEX TO APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

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 _____ to the petition and is

reported at 2024 WL 878917; 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 _____ to the petition and is

reported at 2023 WL 346242; 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 March 28 2024.

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

Eighth Amendment Violations excessive Force and Failure to
intervene

Prison Litigation Reform Act (PLRA) 42 USC 1997 e(a)

42 USC 1983

STATEMENT OF THE CASE

on october 31, 2016 upstate c.f correctional officers responded to an alleged Attempted Suicide by the petitioner During the response petitioner was assaulted by three correctional staff members while a superior officer and another correctional officer watched. as a result to the response Petitioner was transported to the infirmary where petitioner was examined petitioner and observed dried blood on his lips and mouth and a nickel size swelling on his cheek because petitioner complained of neck pain he was transported to a local hospital where CT Scan revealed a small fracture near the tip of the spinous process of the C6 vertebral body after receiving Medical care, petitioner was transported to the central New York Psychiatric center where he received mental health treatment For a period of 4 weeks a month later petitioner was transported back to DOCCS custody

REASONS FOR GRANTING THE PETITION

The District court erred in holding that Petitioner failed to exhaust his administrative remedies because petitioner's transfer out of DOCCS custody served as a deadend exception a claim that effectively rendered his Administrative remedy unavailable to him.

The District court should be directed to consider petitioner claim that estoppel bars the state assertion of the exhaustion defense because such consideration will require the court to look beyond the pleadings the district court must allow factual development and Address the estoppel at the Summary Judgment Stage see FED.R.CIV.P 12 (c) If a motion for Judgment on the Pleading matters outside the Pleading are presented to and Not excluded by the court the motion shall be treated as one for Summary Judgment and disposed of as provided in Rule 56 and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by FED.R.CIV.P 56

I therefore respectfully ask that this court reverse the district court conclusion that petitioner failed to exhaust his remedies petitioner's transfer out of DOCCS custody cut short his time to file Grievance which rendered the remedy "unavailable" to him. Petitioner transfer to OMH custody rendered him unable to file any grievance against DOCCS

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Khalid Deon Coley

Date: _____