No.

IN THE SUPREME COURT OF THE UNITED STATES

KEVIN R GOLDEN - - - PRO SE PETITIONER

V.

CITY OF LONGVIEW , et al Named Defendants THE CITY OF LONGVIEW ET-AL.

Individual & In Their Official Capacity; Rollin McPhee,

Dwayne Archer, Chi Ping Stephen Ha, Keith Covington,

Mary Ann Miller & Robyn Edwards.----- RESPONDENT(S)

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

PETITION FOR REHEARING

CASE NO.23-7621

I.

QUESTION PRESENTED

WHETHER VIOLATION OF AN EQUAL PROTECTION CLAUSE OF THE COURT OF APPEALS JUDGMENT PROTECT PETITIONER'S VIA ARBITRARY OR CAPRICIOUS DECISIONS PURSUANT TO EXISTING PRECEDENT AUTHORITY TO "PRIMA FACIE" RECORDS REVIEW MERITING SUMMARY JUDGMENTS PROCEEDINGS IN LIGHT MOST FAVORABLE TO PETITIONERS

II.

PARTIES TO THE PROCEEDINGS

THE CITY OF LONGVIEW ET-AL.
Individual & In Their Official Capacity; Rollin McPhee,
Dwayne Archer, Chi Ping Stephen Ha, Keith Covington,
Mary Ann Miller & Robyn Edwards.

III.

CORPORATE DISCLOSURE

Not applicable

LIST OF ALL RELATED CASES

1. United States Court of Appeals for the Fifth Circuit, Golden v. City of Longview etal , No. 22-40785 Judgment and non opinion November 09,2023

2. United States District for the Eastern District of Texas ,Golden v. City of Longview etal , No. 6:20cv00620 Judgment and memorandum

III.

Table of Contents

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

STATUTES AND RULES

42 U.S.C. § 12112(a).

42 U.S.C. § 12102(1)(A)

42 U.S.C. § 12203(a)

42 U.S.C. § 12112(a).\

42 U.S.C. § 12112(b)(5)(A)

Fed.R.Civ.P. 56

Fed.R.Civ.P. 56 (e)

Fed.R.Civ.P. 8(a)(2)

JURISDICTION

The Fifth Circuit's order was entered November 09,2023.. Pursuant to this Court's orders, this Petition is filed within 90 days after the date of the Fifth Circuit's order. The statute conferring this Court's jurisdiction is 28 U.S.C. § 1254(1). The 5th Circuit has decided an important federal question in a way that conflicts with relevant decisions of this Court. Sup. Ct. R. 10(c) ; Notifications are not required under Sup. Ct. R. 29.4. On October 07,2024, this honorable court denied such writ of certiorari and the petitioner now has timely filed such rehearing within the 25 day period for initial review thereof.

---------- ♦ ----------

STATEMENT OF THE CASE

I. Issue and basis for federal jurisdiction in the district court.

In the district court, jurisdiction existed under 28 U.S.C. § 1331 (federal questions). Petitioner Golden, brought an disability discrimination in employment claim under Title I ADA 42 U.S.C. § 12112(a) of his "mental disability" under 42 U.S.C. § 12102(1)(A), his retaliation claim under 42 U.S.C. § 12203(a)(ADA) and a failure to accommodate claim under 42 U.S.C. § 12112(b)(5)(A). Petitioner,Golden,also provided within his complaint pursuant to Federal Rule of Civil Procedure 8(a)(2).

II. Facts material to the question presented

There is no clearer rule or principle in all appellate jurisprudence than the rule that a lower court must comply with the mandate of a precedent / stare decisis superior court and that the issues decided by the superior court are not subject to relitigation below. [1] When a court faces a legal argument, if a previous court has ruled on the same or a closely related issue, then the court will make their decision in alignment with the previous court's decision. The previous deciding-court must have binding authority over the court; otherwise, the previous decision is merely persuasive authority. In *Kimble v. Marvel Enterprises*, [2] the U.S. Supreme Court described the rationale

[1] See Stare decisis doctrine

[2] Kimble v. Marvel Entertainment, LLC :: 576 U.S. 446 (2015)

behind stare decisis as "promot[ing] the evenhanded, predictable, and consistent development of legal principles, foster[ing] reliance on judicial decisions, and contribut[ing] to the actual and perceived integrity of the judicial process."[3] It also reduces incentives for challenging settled precedents, saving parties and courts the expense of endless relitigation. The doctrine operates both horizontally and vertically.[4]

Because the district court entered summary judgment, what follows are the facts [5] as viewed in the light most favorable to Petitioner, "taken from the ***entire record*** evidence", discriminatory pretext reasons sufficient to present before a "trier of fact" & petitioner entitlement to pursue his Tort 1983 claim with the opinions below.

III. ARBITRARY & CAPRICIOUS STANDARD OF REVIEW :

Arbitrary and capricious is a standard for judicial review and appeal, often seen in administrative law. Under this standard, the finding of a lower court will not be disturbed unless it has no reasonable basis, or if the judge decided without reasonable grounds or adequate consideration of the circumstances.

---

[3] Citing *Payne* v. *Tennessee*, 501 U. S. 808 –828 (1991).

[4] Horizontal stare decisis refers to a court adhering to its own precedent. A court engages in vertical stare decisis when it applies precedent from a higher court.

[5] The record below was sealed and contained in a joint appendix (not filed with this Petition) and is referred to herein by the page, line, paragraph and witness/document identifier in the joint appendix.

Although there is no set standard for an arbitrary and capricious decision, guidance can be found in *Natural Resources Defense Council, Inc. v. United States EPA*: [6] 5 U.S.C. § 706(2)(A) authorizes the court to "set aside agency action ... found to be ... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." Under this standard, a court must find a "rational connection between the facts found and the choice made" per *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co. (1983)*.[7] The court must decide whether the agency considered the relevant factors and whether there has been a clear error of judgment; see *Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971).*

A. PRIMA FACIE RECORD FINDINGS :

(i). Intentional Discrimination :

a. The District Court found that Mr.Golden established a prima facie ***intentionally discrimination*** against him via employer as to Golden's Attention Deficit Hyperactivity Disorder ("ADHD") **limits** his ability to ***think,concentrate,learn and read*** [8] satisfied the ADAA disability statute,that he was a "qualified individual" into being able to perform the essential duties of the job description and that he was subject to an adverse

[6] Natural Resources Defense Council, Inc. v. United States Environmental Protection Agency 966 F.2d 1292 (9th Cir. 1992)

[7] MOTOR VEHICLE MFRS. ASSN. v. STATE FARM MUT., 463 U.S. 29 (1983)

[8] This District Court granted Golden's Reconsideration proceedings pursuant to having proven that his "ADHD" is in fact a disability from the District Court having used the **wrong standard** of reviewing related ADAA's disability statute.

employment decision on account of his disability via termination . [9]See Appx (1) (Reconsd)

(ii).***Retaliation :***

a. The District Court also found that Mr.Golden established a prima facie ***retaliation record*** against him by Golden having requested for reasonable accommodations,that he was terminated and found that causal connection exists between the protected act (date Golden requested for accommodations) and the adverse action (date Golden was terminated).[10] See Appx (1) (Reconsd)

B. AUTHORITY TO FAILURE TO ACCOMMODATE CLAIM :

---

[9] "To establish a prima facie discrimination claim under the ADA, a plaintiff must prove: (1) that he has a disability; (2) that he was qualified for the job; [and] (3) that he was subject to an adverse employment decision on account of his disability." EQUAL EMPLOYMENT OPPORTUNITY COMMISSION v. LHC GROUP INCORPORATED 176 F.3d at 853 (5th Cir.2014).

[10] To prevail on a retaliation claim, Golden must prove: (1) he engaged in an activity protected by the ADA; (2) an adverse employment action occurred; and (3) a causal connection exists between the protected act and the adverse action. Seaman v. CSPH, Inc., 179 F.3d 297, 301 (5th Cir. 1999), the plaintiff must adduce sufficient evidence that the proffered reason is a pretext for retaliation. Ultimately, the employee must show that 'but for' the protected activity, the adverse employment action would not have occurred." Seaman v. CSPH, Inc., 179 F.3d 297, 301 (5th Cir. 1999) (footnotes omitted); see also Feist v. La. Dep't of Justice, Office of the Att'y Gen., 730 F.3d 450, 454 (5th Cir. 2013), "A 'causal link' is established when the evidence demonstrates that 'the employer's decision to terminate was based in part on knowledge of the employee's protected activity.'" Medina v. Ramsey Steel Co., 238 F.3d 674, 684 (5th Cir. 2001) (quoting Sherrod v. Am. Airlines, Inc., 132 F.3d 1112, 1122 (5th Cir. 1998)).

The 5th Circuit Taylor court opined that …..("[T]he term `***discriminate'*** **includes** ... ***not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability....***") [11] (emphasis added); 29 C.F.R. 1630.9, App. (1995) ("Employers are obligated to make reasonable accommodations only to the physical or mental *limitations* resulting from the disability that is ***known to the employer***.") (emphasis added).[12] Golden need not have to relitigate / rehash material facts disputable as to whether the defendant provided reasonable accommodations subject before a trier of fact summary judgment proceedings when in fact a prima facie evidence of discrimination exists that necessitates to the contrary that no accommodations were provided. See Appx.(1) ("District Ct. Reconsideration Findings"). The record ***prima facie*** demonstrated that the defendant "retaliated" against the petitioner by which having to exercise his rights to…[r]equest for reasonable accommodations and was terminated for exercising such rights, such precedent authority in Taylor id in combination with a prima facie "ADA Retaliation" record establishes an arbitrary / capricious judgment in

---

[11] Taylor v. Principal Financial Group, Inc., 93 F. 3d 155 - Court of Appeals, 5th Circuit 1996

Id at 164

[12] See Taylor v. Principal Financial Group, Inc., 93 F. 3d 155 - Court of Appeals, 5th Circuit 1996

Id at 164. Feist v. Dept. Of Justice, Offc. Of The Atty. Gen., 730 F. 3d 450 - Court of Appeals, 5th Circuit 2013 id 453. ("The ADA prohibits covered employers from "discriminat[ing] against a qualified individual on the basis of disability." 42 U.S.C. § 12112(a). Discrimination includes failure to make "reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability ... unless such covered entity can demonstrate that the accommodation would impose an undue hardship." *Id.* § 12112(b)(5)(A).No record evidence has been offered as to such appointed accommodations being an undue hardship.§12112(b)(5)(A)

which to grant the defendant summary judgment on a "complete record" in light most favorable to the petitioner.

C. AUTHORITY TO PRETEXT :

[U]nder the ADA, "discrimination need not be the sole reason for the adverse employment decision ... [so long as it] actually play[s] a role in the employer's decision making process and ha[s] a determinative influence on the outcome" *See Pinkerton v. Spellings*, 529 F.3d 513, 519 (5th Cir.2008) (citation and internal quotation marks omitted). For this reason, ***[an] employee who fails to demonstrate pretext can still survive summary judgment by showing that an employment decision was "based on a mixture of legitimate and illegitimate motives ... [and that] the illegitimate motive was a motivating factor in the decision."*** *Machinchick v. PB Power, Inc.*, 398 F.3d 345, 355 (5th Cir.2005) (internal quotations omitted). EEOC V LHC 176 F.3d 847, 853 (5th Cir. 1999) id at 702,703...

Subject to the Rule 56 summary judgment,the district court made, and the panel upheld, the type of conclusory findings that this court specifically made clear in Matsushita [13] ("In the language of the Rule, the nonmoving party must come forward with "specific facts showing that there is a *genuine issue for trial.*" Fed. Rule Civ. Proc. 56(e) (emphasis added). See also Advisory Committee Note to 1963 Amendment of Fed. Rule Civ. Proc. 56(e), 28 U. S. C. App., p. 626 (purpose of summary judgment is to "pierce the pleadings and to assess the proof in order to see

[13] Matsushita Elec. Industrial Co. v. Zenith Radio Corp., 475 US 574 - Supreme Court 1986

Id 587

whether there is a genuine need for trial"). ***Where the ….(" [record] [t]aken "as a whole" could not lead a rational trier of fact to find for the non-moving party, there is no "genuine issue for trial.")*** Cities Service, at 289. [14]which was, notably, holding concerns to ***either*** "prima facie" findings alone being a genuine issue of material fact in dispute or ***combined*** with…. [s]ufficient evidence for a reasonable factfinder to reject the employer's nondiscriminatory explanation for its decision, *being adequate to sustain a finding of liability for* (pretext) that plaintiff was discriminated against Rule 56 directs for summary judgment proceedings.

Rule 56 pretext stage, [i]nvolves ***review the facts in a light most favorable to the party opposing the motion and give that party the benefit of any inferences that logically can be drawn from those facts***. Matsushita, 475 U.S. at 587. [15] in combination with sufficient evidence

---

[14] 1 *First National Bank of Arizona* v. *Cities Service Co.*, 391 U. S. 253, 288-289 (1968)

[15] 1 The pretext stage in a Rule 56 motion for summary judgment refers to the point after both plaintiff and employer have met their respective burdens to produce prima facie evidence of discrimination (on one hand) and evidence of nondiscriminatory intent (on the other). Once this conflict exists (as it does in this case), the seating of a jury is necessary to resolve the conflict by scrutinizing the truthfulness of the employer's explanation, since credibility and the drawing of inferences are uniquely within the sphere of the fact finder. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986); see also Justice Brennan's dissent, id., at 266, criticizing language in the majority opinion as akin to the directed verdict standard.

offered to establish pretextual discrimination . Rule 56 motion for summary judgment is for Golden to show ***only*** a genuine dispute of material fact so as to require a jury to be seated. [16] Notably, this argument concerns a Rule 56 motion, evidence demonstrating that the employer's explanation is false or unworthy of credence, ***taken together with the plaintiff's prima facie case***, is likely to support an inference of discrimination even without further evidence of defendant's true motive.*See* Sandstad v. CB Richard Ellis, Inc., 309 F.3d 893, 899 (5th Cir.2002). *Id.* at 897; Russell, 235 F.3d at 223. [17]No further evidence of discriminatory animus is required because "once the employer's justification has been eliminated, discrimination may well be the most likely alternative explanation. ..." Reeves, 530 U.S. at 147-48, 120 S.Ct. at 2108-09. The "rare" instances in which a showing of pretext is insufficient to establish discrimination are (1) when the record conclusively reveals some other, nondiscriminatory reason for the employer's decision, or (2) when the plaintiff creates only a weak issue of fact as to whether the employer's reason was untrue, and there was abundant and uncontroverted evidence that no discrimination occurred. *See* Russell, 235 F.3d at 223 (citing Reeves, 530 U.S. at 148, 120 S.Ct. at 2109); Rubinstein, 218 F.3d at 400. A decision as to whether judgment as a matter of law is appropriate ultimately turns on "`the strength of the plaintiff's prima facie case, the probative value of the proof that the employer's explanation is false, and any other evidence that supports the employer's case and that properly may be considered on a motion for judgment as a matter of law.'" Wallace, 271 F.3d at 220 (quoting Reeves, 530 U.S. at 148-49, 120 S.Ct. at 2109).

---

[16] For another example, see Wittenberg v. American Expr. Fin. Adv., Inc., 464 F.3d 831, 841 (8th Cir. 2006) (holding that, at the pretext stage of summary judgment: "Wittenburg has failed to prove pretext in her age discrimination claim," after withdrawing and replacing original opinion) (emphasis added), cert. denied, 551 U.S. 1113 (2007).

[17] Laxton v. Gap Inc., 333 F. 3d 572 - Court of Appeals, 5th Circuit 2003 id at 579

The lower court incorrectly required Petitioner to "establish," or essentially, to "prove by preponderance of evidence" of the employer's discriminatory intent, as if at a trial, rather than, in response to a Rule 56 motion for summary judgment, [18] show only a genuine dispute of material fact so as to require a jury to be seated. [19] The 5th Circuit's Miller [20] court opined that Perjured ,False & Inaccurate Statements may be proof of pretext.[21] Rule 56 involves a total record review and just not partial evidentiary reviews.

---

[18] The pretext stage in a Rule 56 motion for summary judgment refers to the point after both plaintiff and employer have met their respective burdens to produce prima facie evidence of discrimination (on one hand) and evidence of nondiscriminatory intent (on the other). Once this conflict exists (as it does in this case), the seating of a jury is necessary to resolve the conflict by scrutinizing the truthfulness of the employer's explanation, since credibility and the drawing of inferences are uniquely within the sphere of the fact finder. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986); see also Justice Brennan's dissent, id., at 266, criticizing language in the majority opinion as akin to the directed verdict standard.

[19] For another example, see Wittenberg v. American Expr. Fin. Adv., Inc., 464 F.3d 831, 841 (8th Cir. 2006) (holding that, at the pretext stage of summary judgment: "Wittenburg has failed to prove pretext in her age discrimination claim," after withdrawing and replacing original opinion) (emphasis added), cert. denied, 551 U.S. 1113 (2007).

[20] Miller v. Raytheon Co., 716 F.3d 138 (5th Cir. 2013) id 145 citing *Norris v. Hartmarx Specialty Stores, Inc.*, 913 F.2d 253, 256 (5th Cir.1990); *see also* *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 147, 120 S.Ct. 2097, 2108, 147 L.Ed.2d 105 (2000) ("In appropriate circumstances, the trier of fact can reasonably infer from the falsity of [an] explanation that the employer is dissembling to cover up a discriminatory purpose.").

[21] See also Burton v. Freescale Semiconductor, Inc., 798 F.3d 222, 239-40 (5th Cir. 2015) (holding that a jury may view "erroneous statements in [an] EEOC position statement" as "circumstantial evidence of discrimination."); McInnis v. Alamo Comm. College Dist., 207 F.3d 276, 283 (5th Cir. 2000) (reversing summary judgment that had been entered for the employer in a discrimination case partially because the employer's report to the EEOC "contained false statements. . . .")

D. EQUAL PROTECTION CLAUSE VIOLATION RELEVANT TO CAPRICIOUS / ARBITRARY JUDGMENTS :

The Equal Protection Clause of the 14th Amendment prohibits denying to any person the equal protection of the laws; the right to equal protection is part of due process under the 5th Amendment, and so it applies to courts-martial,just as it does to civilian juries. It essentially guarantees that individuals in similar situations should be treated equally under the law, meaning that a court cannot make decisions based on relevant factors or without a rational basis; essentially protecting against discriminatory or unfair rulings.

Precedent authority has allowed persons with discrimination cases to pursue jury trial proceedings upon a "prima facie" record which is subject thereto satisfying Rule 56 summary judgment proceedings.

1. **ADA Discrimination & Retaliation Claims :**

The judgment rendered is arbitrary / capricious to deny relief subject to... [record] evidence demonstrating the lower courts not combining the petitioner's "prima facie" record evidence with sufficient facts to overcome pretext that the court found favorable to the petitioner overcoming pretexts ,see Reeves id 134 ("A plaintiff's prima facie case of discrimination (as defined in *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792, 802, and subsequent decisions), combined with sufficient evidence for a reasonable factfinder to reject the employer's nondiscriminatory explanation for its decision, may be adequate to sustain a finding of liability for intentional discrimination under the ADEA. "). Absent the lower court not establishing a factual findings and conclusion of law relevant to having combine the

already established findings of an ADA Intentional Discrimination and Retaliation violation, would be arbitrary and capricious to the Reeves precedent authority.

2. ADA Failure To Accommodate Claim :

The judgment rendered is arbitrary / capricious to deny relief subject to.... [the] petitioner's "prima facie" record which demonstrates "Clear and Convincing" evidence of the petitioner being denied reasonable accommodations subject to his ADA Failure To Accommodate Claim on undisputed related ADA Discrimination & Retaliation prima facie findings in which precedent authority recognizes relief to the petitioner. See Taylor id 164 supra, and findings given relevant to the petitioner's ADA Retaliation claim were findings given that [the petitioner] was retaliated against per exercising his rights to request for reasonable accommodations. See Appx.1 (Reconsideration Findings) .

---------- ♦ ----------

CONCLUSION

In light of the 5th Circuits precedent authority,summary judgment cannot be upheld based on a "prima facie" record finding that was adjudicated on and prohibit the petitioner from exercising his 7th amendment right to go before a jury "trier of fact"in light of such a "complete record" that denies summary judgment on the behalf of the respondents. It would be deemed arbitrary and or capricious in which precedent authority grants the petitioner relief subject to presentment of sufficient evidence in which may be

presentable before a jury and the petitioner be denied such relief absent reasonable explanations subject to its precedent authority and the "specific facts" undisputed by the record,as a whole,relevant to Rule 56 summary judgment proceedings and not an actual trial .

PRAYER

WHEREFORE, PREMISES CONSIDERED Petitioner prays that the Court will enter an order granting writ of certiorari reversible before the Fifth Circuit to reconsider its non opinion matter and grant such other and further relief that the Court deems just and proper.

COMPLIANCE

Golden (pro se litigant) has made every reasonable attempt to comply with the Supreme Court Rules pre presentment of this petition. Golden is indigent,has a mental disability with limited ability in learning,thinking,concentrating & reading and presented such a petition in "paper form" in lieu of booklet form according to S.Ct.Rule 33.2.The petition itself is within the 40 page limitation,excluding pages afforded by the S.Ct.Rule,given in a 12 point font 10 point font for footnotes with 10 copies and 1 original.If any portion of the petition is of non compliance, please feel free to inform Golden in which corrections may be made before the Supreme Court Justices review respectfully.

CERTIFICATE OF SERVICE

I, Kevin R Golden, certify that today 11/30/ 2024, certify that the ground listed for review are limited to a controlling effect or other substantial ground not previously presented and

that the facts provided within this Reconsideration / Rehearing & Appendix before the United States Supreme Court is both true and correct,presented in good faith absent any delay as best known before the Golden providing,in forma pauperis, 10 copies an original, a copy of the was delivered via email to the defendant / appellant as well as the 5th Circuit Court of Appeals Clerk's office under pro_se@ca5.uscourts.gov and mailed certified directly to the United States Supreme Clerk office :

Honorable Clerk Scott S. Harris

1 First Street, NE.

Washington, DC 20543

BOON;SHAVER;ECHOLS;COLEMAN AND GOOLSBY
P.L.L.C. 1800 W. LOOP 281 SUITE 303
LONGVIEW TEXAS 75604
Email darren.coleman@boonlaw.com

Dated 11/30/2024

Respectfully Submitted

/s/ Kevin R Golden

10103 Lansdale Dr. Apt.706

Houston,Tx. 77036

Cell no. (903) 261-1870 EMAIL goldenrashaan@gmail.com