

24-5161 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

JUL 11 2024

OFFICE OF THE CLERK

Genuine Truth Banner — PETITIONER
(Your Name)

vs.

Mr. Tisdale, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals, Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Genuine Truth Banner
(Your Name)

BRSF, Saluda #218-B, 4460 Broad River Rd.,
(Address)

Columbia, SC 29210
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- 1) should a prisoner's claims be dismissed for failure to exhaust administrative remedies where prison officials prevented him from exhausting?
- 2) should the district court make credibility determinations and/or weigh evidence at the summary judgment stage?
- 3) Does the apparent acknowledgment of a discovery order violation in the Magistrate Court's Report and Recommendation preclude summary judgment by the District Court in favor of the party supposed to have failed to comply with the discovery order?
- 4) Should lower courts be allowed to contravene well established and applicable law in unpublished cases, while "reaffirming" those laws in published cases, essentially creating a law in practice and a law in public and greatly diminishing a petitioner's ability to seek review in this Court?

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:

Mr. Tisdale, Associate Warden Lee Correctional Institution,
Lieutenant Burley; Mrs. Tucker, Contraband Lee Correctional,
Officer McKissack; Branden Davis, Vernon Adams, Sergeant

RELATED CASES

Banner v. Tisdale, No. : 23-6709, U.S. Court of Appeals for the fourth circuit. Judgment entered May 23rd, 2024

Banner v. Tisdale, CJA No. : 6:21-cv-03456-JD-KFM , U.S. District Court for the District of South Carolina. Judgment entered June 23rd, 2023.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Faulk V. Charrier, 262 F.3d 687 (8 th Cir. U.S. Court of Appeals (2001))	5,7
Anderson V. Liberty Lobby, Inc, 106 S.Ct. 2505 (1986)	5,7
Alexander V. Connor, 105 F.4th 174 (2024)	6,8

STATUTES AND RULES

Unknown

OTHER

Prison Litigation Reform Act (PLRA)

7

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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 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 _____ 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 May 23rd, 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: June 1st, 2024, and a copy of the order denying rehearing appears at Appendix B.

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

Unknown

STATEMENT OF THE CASE

On April 2nd, 2020, I was assaulted, kicked and beaten by some of the listed defendants, while others watched and video recorded the beating on direction of defendant Tisdale. I was later clothed and transferred to a maximum security institution.

Upon arrival to the new institution, I immediately reported the incident to the appropriate staff (Jana Hollis), the deputy warden. Hollis never responded or returned that report (known as a request to staff member (RTSM)).

I later filed multiple other documents to other staff and departments reporting the incident and informing them that a prior RTSM to Hollis which reported the incident was not returned. No one answered or responded to those reports via RTSM either. An ANSWERED RTSM is an essential element of exhaustion.

In October 2021 I filed a §1983 on the incident. The defendants repeatedly failed to comply with the discovery order but all request for sanctions were denied. However, as it related to video specifically, I noted on the returned "acknowledgment form" that the videos supplied to me were the wrong videos/not what was requested.

The defendants eventually filed summary judgment, which I countered with my verified complaint, affidavit, interrogatory responses, deposition testimony and other documents specifically countering their claim that I failed to exhaust any administrative remedies.

In South Carolina, exhaustion requires an RTSM filed to the appropriate staff within 8 days of the incident, a grievance with an attached copy of the ANSWERED RTSM from the appropriate staff, and a grievance appeal.

In its Report and Recommendation, the Magistrate Court noted:

"The court has reviewed the video exhibit submitted by the defendants as "Exhibit A" to defendant Tisdale's affidavit. However, it appears that the ~~video~~ exhibit does not contain the correct camera footage as the description of the events as articulated by Associate Warden Tisdale in his affidavit does not correspond with the video provided to the court..."

In regards to the video exhibit provided to me in discovery, while making the ALTERNATE recommendation of dismissal for failure to exhaust administrative remedies.

The District Court adopted that alternate recommendation while acknowledging my contention that I was prevented from exhausting via Jana Hollis' failure to respond to my RTSM reporting the incident. The District Court apparently disregarded my evidence (affidavit, interrogatory, deposition testimony, documents) in contravention of applicable law and abused its discretion in doing such.

The 4th Circuit Court of Appeals affirmed the district court's ruling/order of dismissal, claiming it found no error. A timely petition for rehearing en banc was filed and no poll was taken.

REASONS FOR GRANTING THE PETITION

Petitioner respectfully prays this Court will grant the petition for the following reasons:

- 1) The district court's ruling cuts sharply against the logic provided in *Faulk v. Charrier* 262 F.3d 687 (8th Cir. U.S. Court of Appeals, 2001). *Faulk* provided:

"A prison's failure to respond to a prisoner's informal resolution request was sufficient basis on which to deny dismissal of his claims based on the prisoner's failure to exhaust his administrative remedies."

~~I~~ specifically testified to reporting ~~my~~ claims via RTSM to Hollis on the same day the incident occurred [ECF 167-2, pg 66 (petitioner's deposition)] and further testified that no one responded to that or other RTSMs. Petitioner even presented other documents substantiating those facts yet the district court granted summary judgment for failure to exhaust.

- 2) The district court's ruling is in direct opposition to the U.S. Supreme Court's ruling in *Anderson v. Liberty Lobby, Inc.*, 106 S.Ct. 2505 (1986). In *Anderson* this Court strictly prohibited credibility determinations and weighing of evidence. However, in this action, the district court acknowledged:

"Plaintiff contends SCOC staff namely (Jana Hollis) the deputy warden at Kirkland Correctional's Maximum Security Unit prevented [him] from exhausting his administrative remedies when she failed to respond to his RTSM reporting the incident."

in its order of dismissal, while completely disregarding Petitioner's deposition testimony (interrogatory response #9, affidavit, documents) evidence on the issue of exhaustion during summary judgment which was a clear abuse of discretion.

- 3) The district court clearly abused its discretion in granting summary judgment for the defendants where even the magistrate court acknowledged (albeit *de facto*), a failure to comply with the discovery order. Petitioner has not found any case law on this issue directly, but asserts that this issue has wide ranging implications and may in fact be a NOVEL question for this Court.

"Does the apparent acknowledgment of a discovery order violation by the Magistrate Court in its R&R preclude summary judgment by the district court in favor of the party supposed to have failed to comply?"

If cannot be, that a court could grant summary judgment to a party that has failed to even comply with the court's own orders! What precedent does this set? Petitioner asserts that it sets a precedent of chaos, disorder and insubordination that must be reigned in. otherwise, what is to stop future parties from doing the same, essentially subverting the idea of justice itself.

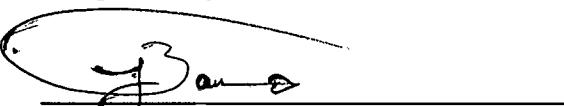
4) The decision of the district court and the affirmation by the court of appeals is directly contradictory of another 4th Cir. Court of Appeals case : Alexander V. Connor, 105 F.4th 174 (2024) holding: "On motion for summary judgment, non-moving parties who would bear burden of proof on issue at trial may not simply rest on assertions in their complaint but must produce evidence that could - if believed - permit reasonable factfinder to rule in their favor, but once that party produces such evidence, court must decide summary judgement motion on assumption that factfinder would believe that evidence and credit it over any contrary evidence offered by moving party."

The district court acknowledged my contention that I was prevented from exhausting by Jana Hollis' failure to respond to my RTSM. That contention was made in deposition testimony, affidavit, interrogatory response #9 and was substantiated by various other documents. However, the district court disregarded ALL of that evidence that was outright proof, much less contrary evidence to the defendant's (moving party) contention that I failed to exhaust. This was unwarranted, an abuse of discretion, a miscarriage of justice and the 4th Cir. Court of Appeals affirmed this abuse of discretion . On July 3rd, 2024, proof of that April 2nd, 2020 RTSM to Hollis reporting the assault was obtained.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Denitine Truth Bonner

Date: July 11th 2024

Reasons for Granting the Petition

5) A large portion and perhaps the majority of cases decided by lower courts are unpublished. However, in the 4th circuit, unpublished opinions are NOT binding precedent. Petitioner submits that this creates a set of circumstances where 4th circuit courts can contravene clearly established, well settled and applicable law in cases that go unpublished, while claiming to reaffirm those very laws in published opinions. Petitioner submits that this creates a duality; what the laws in practice and what the law is in public. Petitioner's case is a prime example of this in action.

In Petitioner's case, Petitioner testified to filing what is called a Request to Staff Member (RTSM) to Jana Hollis (a deputy warden) reporting having been assaulted and beaten by various officers on the same day the incident happened (the beating eventually led to a diagnosis and a prescribed treatment). This was done in compliance with the PLRA and institutional grievance procedures requiring: 1) An RTSM filed to the appropriate staff reporting the incident within 8 days, 2) A grievance filed with an attached copy of the ANSWERED RTSM and, 3) a grievance appeal. Petitioner further testified that Hollis failed to answer or return that RTSM.

During Summary judgment, Petitioner argued that Hollis' failure to answer or respond to my RTSM reporting the incident prevented me from exhausting my administrative remedies. These arguments were substantiated by an affidavit, deposition testimony, a 2nd RTSM dated 11.9.20 and other documents. The Magistrate Court (claiming my affidavit was self-serving) issued an R&R with alternate recommendations. One recommendation was trial as to one of the defendants, the other was dismissal for failure to exhaust.

On Review, the District Court acknowledged:

"Plaintiff contends SCDC staff, namely (Jana Hollis) the deputy warden at Kirkland Correctional's Maximum Security Unit, prevented [him] from exhausting his administrative remedies when she failed to respond to his RTSM reporting the incident."

while still dismissing the complaint for failure to exhaust. The Court weighed and considered the defendants affidavits (some of which were unsigned, unauthenticated and therefore inadmissible (Agent Horne and Brandon Davis' affidavits)) over Petitioner's affidavit, deposition and other documents in contravention of applicable law, Anderson v. Liberty Lobby, Inc, 106 S.Ct. 2505 and in conflict with rulings from other circuits, Faulk v. Charrter, 262 F.3d 687 (8th Cir. 2001).

Instead, the District court highlighted my testimony that I did not file an RTSM requesting MEDICAL TREATMENT on the day the incident occurred. However, this was/is not a requirement of the PLRA or the institutional grievance procedures and was an irrelevant distraction. The court further highlighted Petitioner's 11.9.20 dated 2nd RTSM claiming it was filed "far beyond the time to comply with SCDC deadlines". However, that 2nd RTSM begins by saying: "Hi, I previously filed an RTSM on this issue and have yet to hear back", before again reporting the incident.

Reasons For Granting The Petition

- 5) Petitioner submitted various arguments highlighting these facts on appeal which was dismissed in an unpublished opinion. A petition for Rehearing En Banc was filed, no poll was taken and a final order was issued on June 21st, 2024. However, on June 24th, 2024 the 4th Circuit Court of Appeals panel Wynn (who sat on my panel), Harris and Heftens, circuit judges in Alexander V. Connor 105 F.4th 174 (2024) wrote in a published opinion:

"We reaffirm that a Plaintiff's own affidavit based on personal knowledge must be credited for purposes of adjudicating summary judgment motion - even affidavits that are uncorroborated, selfserving or filed by pro se prisoners."

This was clearly a double standard as it relates to Petitioner's case specifically, but more importantly, it shows how clearly established law can be subverted without consequence so long as a case is unpublished. Where unpublished cases are NOT binding precedent in the 4th circuit, it would be difficult to argue how having this Court review the specifics of any unpublished case might have national importance to similarly situated petitioners/parties.

However, where a large portion and perhaps even the majority of cases go unpublished, Petitioner submits that any party subjected to their case being unpublished (at least in the 4th circuit) may also be subject to the contravention of applicable law or subversion of justice with little or no consequence, just as Petitioner was in this case.

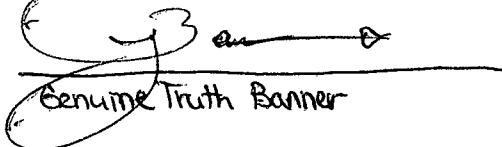
There cannot be two systems of justice and Petitioner submits that the Supreme Courts consideration of this petition would have national importance (at least for the states comprising the 4th circuit) as it very well may decide that courts may not subvert the law and rights of the people in practice in private while only proclaiming to uphold the law and rights of the people in public.

* On July 3rd, 2024, Petitioner received proof from the institution that he did in fact file an RTSM dated April 2nd 2020 to Jana Hollis reporting the incident and that she did not respond or return that RTSM. This document is proof that Petitioner did NOT fail to exhaust administrative remedies and in fact was prevented, just as he had always asserted. See Appendix "C".

CONCLUSION

For these reasons, Petitioner respectfully requests the petition for a writ of certiorari be granted.

Respectfully submitted,


Genuine Truth Banner

July 11th, 2024