TRULINCS 73608298 - WILBURN, ANDRE SHAWN - Unit: BRO-K-B

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FROM: 73608298
TO:
SUBJECT: Certiorari - Nguyen - Cover
DATE: 09/13/2024 08:59:56 AM

Docket No. _____
Supreme Court of the United States
Andre Wilburn, Petitioner
- against -
Virginia Nguyen, Robert Polemeni, Andrew Grubin, and Carolyn Pokorny, in their individual capacities, Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

Petition for a Writ of Certiorari

Andre Wilburn #73608-298
MDC Brooklyn
PO Box 329002
Brooklyn, NY 11232

Incarcerated Pro Se Petitioner

Dated: September 13, 2024

FROM: 73608298
TO:
SUBJECT: Certiorari Nguyen - Question
DATE: 09/13/2024 08:45:58 AM

The United States District Courts for the Eastern and Southern Districts of New York routinely dismiss pro se prisoner's factually consistent, curable, In forma Pauperis suits, for mere legal or technical reasons, without leave to amend. Accordingly, the United States Court of Appeals for the Second Circuit, (the "Second Circuit"), perfunctorily, and without providing any legal or factual reasons, denies motions for leave to proceed In forma Pauperis. Simultaneously, and prior to any briefs being filed, the Second Circuit unfairly dismisses appeals as frivolous using boilerplate language,

Therefore, the questions presented are:

Whether a district court errs when it dismisses a pro se prisoner's complaint, without leave to amend, for futility reasons when the defects could be cured with an amended complaint?

And whether a court of appeals errs when it denies, without reason, pro se prisoner's leave to proceed In forma Pauperis and ultimately dismisses factually consistent and plausible appeals, in the absence of briefing or adudication on the merits, merely because of the pro se prisoner's indigency?

FROM: 73608298
TO:
SUBJECT: Certiorari - Nguyen Part 1
DATE: 09/13/2024 08:05:54 AM

JURISDICTIONAL STATEMENT

a. Orders and Applications in this Case

Pursuant to the Rules of the Supreme Court, "[a] concise statement of the basis for jurisdiction in this Court" is required to petition for a writ of certiorari. S. Ct. R. 14.1(e). Accordingly, the date of the order being appealed is May 10, 2024. Appx at 1. The date of the order denying reconsideration and panel rehearing is June 13, 2024. On July 08, 2024, the petitioner submitted his application for an extension of time to file the petition for certiorari addressed to an Associate Justice of this Court. On September 09, 2024, the petitioner received a letter from this Court, returning his certiorari petition, and "inform[ing]" him that "the Court has no record of previously receiving the application... for an extension of time" to file the certiorari petition. Appx 45-46 (Letter dated 08/22/2024 from this Court returning certiorari petition).

b. Federal Laws Conferring Jurisdiction

The United States Constitution provides that "[t]he judicial Power of the United States shall be vested in one supreme Court [.]" US Const. art III, sec. 1. The Constitution goes on to outline that the Supreme Court's "appellate Jurisdiction, both as Law and Fact" is subject to "Exceptions... under [the] Regulations as the Congress shall make." Id. at 2.

Here, as with all cases coming from the federal courts, the Supreme is granted jurisdiction to review "[c]ases in the courts of appeals... [b]y writ of certiorari[.]" 28 USC 1254(1). The reference to "cases in" the court of appeals has been interpreted extremely broadly, so that virtually any federal law dispute that ever reaches the court of appeals can be reviewed by the Supreme Court. Id.

In sum, the only jurisdictional requirement is that the case be "in" - meaning docketed in - the court of appeals. Gay v. Ruff, 292 US 25, 30 (1934). Thus, the circumstances of this case pass jurisdictional muster.

STATEMENT OF THE CASE

On May 30, 2023, the petitioner filed a factually coherent complaint in the district court establishing the constitutional defective oaths of offices and appointment affidavits ("OOAA") of four people in the Eastern District of New York who were represented as government lawyers. Wilburn v. Nguyen, Case No. 23-CV-4082(HG) (JRC), Dkt. 1 ("Original Complaint") (EDNY May 30, 2023). The OOAA's are utilized to ensure that federal officers support the United States Constitution. And because these purported prosecutor's failed to possess valid OOAA's, the petitioner's criminal cases have been irreparably tainted. The detailed Original Complaint, which contained ten exhibits, was filed after the district court repeatedly overlooked, undermined, and de-emphasized this substantial and important constitutional issue. See United States v. Wilburn, Case No. 19-CR-108(EK), Dkts. 46, 165, 188, 198, 209, 233 (Detailing former lead prosecutor Virginia Nguyen's absence of an OOAA); Dkt. 188 (Demonstrating that in April, 2011, Robert Polemeni's appointment was not to exceed 18 months); Dkts. 184, 209 (Showing Andrew D. Grubin is a "law clerk" in "Washington, DC"); Dkts. 178, 186, 209 (Establishing Carolyn Pokorny's appointment to the position of "Carolyn Pokorny", not First Assistant United States Attorney).

On June 23, 2023, the district court dismissed the petitioner's detailed factual complaint, without leave to amend, for legal and technical reasons. Wilburn v. Nguyen, et al., no. 23-CV-4082(HG)(JRC), 2023 US Dist. LEXIS 108952 at *5 (EDNY June 23, 2023). In particular, the district court dismissed the Original Complaint because the petitioner sought damages from a United States agency, United States District Court for the Eastern District of New York. Robinson v. Overseas Military Sales Corp., 21 F. 502, 510 (2d Cir. 1994) ("Under the doctrine of sovereign immunity, an action for damages (money) will not lie against the United States absent consent" and suits against "federal officers in their official capacities is essentially a suit against the United States"). On July 14, 2023, the petitioner filed a petition for a writ of mandamus, to compel the Second Circuit to grant the petitioner 60 days to amend his district court complaint. Wilburn v. Nguyen, no. 23-1032, Dkt. 1 (2d Cir. July 14, 2023). On October 25, 2023, the Court of Appeals for the Second Circuit ("Second Circuit"), construed denied the petitioner's mandamus relief. However the Second Circuit construed the mandamus petition as a notice of appeal. Id. at Dkt. ____ (Order dated October 25, 2023); Appx at 8..

On October 28, 2023, the Second Circuit docketed the mandamus appeal on behalf of the petitioner. Wilburn v. Nguyen, no. 23-7603, Dkt. 1 (2d Cir. Oct. 27, 2023). On January 03, 2024, the Second Circuit filed a notice on the district court docket

requesting the status of the petitioner's in forma pauperis application in the district court. United States v. Wilburn, no. 19-CR-108(EK), Dkt. 306 (EDNY Jan. 3, 2024). Over three months later, on March 15, 2024, the district court denied the petitioner's motion to proceed in forma pauperis ("IFP"). Id. at Dkt. 323 at 18. In a letter dated April 16, 2023, the petitioner requested the status of his pending motion to proceed IFP in the Second Circuit. Wilburn v. Nguyen, no. 23-7603, Dkt. 24 (2d Cir. Apr. 16, 2024).

On May 10, 2024, in a generic, non-case specific, two sentence order, the Second Circuit simultaneously denied the petitioner's IFP motion and dismissed the appeal without briefing, or even a briefing schedule, because the appeal "lack[ed] an arguable basis in either law or in fact." Id. at Dkt. 27 (2d Cir. May 10, 2024); Appx at 1.. On May 23, 2024, the petitioner filed a timely motion for reconsideration challenging the Second Circuit's adverse order. Id. at Dkt. 30 (2d Cir. May 23, 2024); Appx at 9 -23. On May 24, 2024, the district court judge inadvertently received the petitioner's motion for reconsideration mailed only to the Second Circuit. Consequently, the district court judge ordered the motion for reconsideration "stricken" from the district court record because "th[e] case was closed on June 26, 2023." Wilburn v. Nguyen, no. 23-CV-4082(HG)(JRC), Electronic Order dated 05/24/2024 (EDNY May 24, 2024). On May 31, 2024, upon receipt of the district court's electronic order, the petitioner drafted, mailed, and served his motion for an extension of time to file the motion for reconsideration in the Second Circuit. Wilburn v. Nguyen, no. 23-7603, Dkt. 31 (2d Cir. June 6, 2024).

On June 13, 2024, while the petitioner was subjected to an extended 24-hour a day lockdown due to the knife-attack killing of his friend by another inmate, "the [Second Circuit] panel that determined the motion" for reconsideration should be denied. Appx at 25. The Second Circuit Order merely stated that the panel "considered the request[,]" and nothing more. Id. at 32 (2d Cir. June 13, 2024); Appx at 25. On June 20, 2024, while still on modified lockdown, and upon receipt of the June 13 order, the petitioner gave prison staff, for mailing to the court, his emergency motion for legal and factual reasons for the Second Circuit's denial of the motion for reconsideration. Wilburn v Nguyen, no. 23-7603, Dkt. 35 (2d Cir. July 8, 2024).

It's worth mentioning that the petitioner's motion for reconsideration, due to only the odd-numbered pages being filed, is unintelligible on the docket. Therefore, on July 05, 2023, the petitioner mailed a letter to the Second Circuit requesting that the court correct the clerical error. Id. at 37 ("A complete copy of the [m]otion [for reconsideration] on the public docket is critical to the p[etitioner's] continued litigation of [his] case"). On July 08, 2024, the Second Circuit court filed a notice stating that the Second Circuit no longer has jurisdiction in the 23-7603 case. Id. at Dkt. 36 (2d Cir. July 8, 2024). The dame day, due to his incarceration and desire to solicit amici curiae briefs, the petitioner mailed a letter to this court requesting an extension of time to file his certiorari petition. Appx at 48-53 (Letter dated 07/08/2024 requesting an extension of time to file certiorari petition). This Court never received the letter.

Following the issuance of the Second Circuit mandate on June 20, 2024, the Eastern District of New York court was revested with jurisdiction. Subsequently, on July 16, 2024, the petitioner drafted, mailed, and served, a motion for leave to file a First Amended Complaint in the district court. Wilburn v. Nguyen, no. 23-CV-4082(HG) (JRC), Dkt. ___ (Docket Entry Unknown). On July 24, 2024, the petitioner drafted and mailed his motion for leave to recall the Second Circuit Mandate so that the Second Circuit could properly rule on the emergency motion for legal and factual reasons for denying the motion for reconsideration. The recall motion also requested that the Second Circuit stay the Mandate pending certiorari. Wilburn v. Nguyen, No. 23-7603 at Dkt. 40 ("[T]he 'grave, unforeseen contingencies' in this case weigh in favor of reasserting authority by recalling the June 20, 2024 mandate") (quoting Calderon v. Thompson, 523 US 538, 549-550 (1998) (2d Cir. July 30, 2024)).

To exhaust his lower court remedies, on July 26, 2024, the petitioner filed a motion in the district court to correct the caption to remove defendant United States Attorneys Office in the Eastern District of New York from his complaint, thereby curing all defects in the complaint. Wilburn v. Nguyen, no. 23-CV-4082(HG) (JRC), Dkt. ____ (Docket Entry Unknown). The record and the Appendix to this petition demonstrate that the petitioner has been diligent in securing 60 days to cure the defects in his district court case so that it could be adjudicated on the merits. On the other hand, the district court and Second Circuit perfunctorily denied the petitioner's efforts.

ARGUMENT

"In enacting the federal in forma pauperis statute [28 USC 1915], Congress 'intended to guarantee that no citizen shall be denied an opportunity to commence, prosecute, or defend an action... in any court of the United States, solely because... poverty makes it impossible... to pay... the costs of litigation." Denton v. Hernandez, 504 US 25, 31 (1992) (quoting Adkins v. El. DuPont de Nemours & Co., 335 US 331, 342 (1948) (internal quotation marks omitted).

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Nonetheless, the Prison Litigation Reform Act (PRLA) (28 USC 1915A), requires a district court to screen a civil complaint brought by a prisoner against a governmental entity or its agents. The PRLA requires the district court to dismiss the complaint, or any portion of the complaint, if the complaint is "frivolous, malicious, or fails to state a claim upon which relief may be granted." Wilburn, no. 23-CV-4082, 2023 US Dist. at *3. "[A] complaint... is frivolous where it lacks an arguable basis... in law[.]" Neitzke v. Williams, 490 US 319, 325 (1989). And the PRLA was "designed to filter out bad claims [filed by prisoners] and facilitate consideration of the good." Coleman v. Tollefson, 575 US 532, 532 (2015).

However, the district court is obliged to construe pro se pleadings liberally. Harris v. Mills, 572 F. 3d 66, 72 (2d Cir. 2009). Equally important, the district court must also interpret pro se pleadings to raise the "strongest [claims] that they suggest." Triestman v. Fed. Bureau of Prison, 470 F. 3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted). In the past, the Supreme Court has cautioned that a "court of appeals reviewing a[Section] 1915[ ] disposition should consider whether the district court abused its discretion by dismissing the complaint... without leave to amend." Denton, 504 US at 34. More recently, in a case involving the factual sufficiency of the pleadings, this "Court... suggested that a trial court might abuse its discretion by dismissing an in forma pauperis suit" without leave to amend "if frivolous" portions could "be remedied" though "an amended pleading." Lomax v. Ortiz-Marquez, 140 S. Ct. 1721, 1726 (2020) (internal quotation marks and citation omitted).

Accordingly, well-established Second Circuit decisions have held that a pro se plaintiff whose claim is dismissed, should be given an opportunity to amend his pleadings and refile his complaint, prior to dismissal. Platsky v. CIA, 953 F. 2d 26, 29 (2d Cir. 1991). Ordinarily, "when a liberal reading of the complaint gives any indication that a valid claim might be stated[,]" a pro se litigant should be afforded at least one pre-dismissal opportunity to amend. Grullon v. City of New Haven, 720 F. 3d 133, 139 (2d Cir. 2013). The district court knew, or had reason to know, that "the Second Circuit has warned that dismissing claims sua sponte without giving the plaintiff an opportunity to be heard is, at a minimum, bad practice in numerous contexts, and is reversible error in others." Wilburn, No. 23-CV-4082, 2023 US Dist. LEXIS 108952 at *3 (citing Catzin v. Thank You and Good Luck Corp., 899 F. 3d 77, 82 (2d Cir. 2018)).

The district court's routine denial of pro se plaintiff's suits without "notice and an opportunity to amend the complaint to overcome any deficiency[,]" has eroded the spirit of the IFP statute and the PRLA. Denton, 504 at 34. Furthermore, Congress' goal of assur[ing] equality of consideration for all litigants" is repeatedly violated by the Second Circuit's routine denial of leave to appeal the district court's adverse decision in ruling on motions for leave to proceed In forma Pauperis. Coppedge v. United States, 369 US 438, 447 (1962). For decades, the Second Circuit and the district courts in the Eastern and Southern Districts have foreclosed pro se litigants from being heard, simply because they were impoverished. The Second Circuit has "allowed its courts to be practically closed to its own citizens, who are conceded to have a valid and just rights, because they happen to be without money to pay the tribunals of justice." H.R. Rep. No. 52-1079, at 1 (1892). These actions go against the spirit of the In forma Pauperis statute. Therefore, without the careful guidance of a clear Supreme Court decision, these violations are likely to recur for many years to come.

In the Original Complaint, the petitioner's only request from the Second Circuit was for an Order to compel the district court to grant him 60 days to amend his factually plausible and substantially legally coherent claim that the four defendants were not legally appointed prosecutors. The Original Complaint contained over 10 exhibits, many of them self authenticating documents. However, almost one year after the petitioner filed the Original Complaint, the Second Circuit dismissed the case by merely denying the petitioner's motion for leave to proceed In forma Pauperis. Specifically, the petitioner's mandamus petition in the Second Circuit, which was ultimately construed as a notice of appeal, and the long-pending appeal had a substantial "bearing on [the petitioner's0 ability to timely" file the motion for leave to reopen the case in the district court. Heendeniya v. St. Joseph's Hosp. Health Ctr., 830 F. App'x 354, 359 (2d Cir. 2020). The petitioner's appeal to the Second Circuit was never adjudicated on the merits.

Throughout the years, the actions of the district court in dismissing claims, combined with the Second Circuit's perfunctory denial of In forma Pauperis status has adversely affected myriad incarcerated pro se plaintiff's by denying them equal access to the courts, due process, and redressing of grievances. All because the pro se prisoners were not afforded an opportunity to amend and could not afford the costs of litigation. This Court made it clear that a litigant need not be "absolutely destitute" to qualify for IFP status, but need only demonstrate that they "cannot because of [their] poverty pay or give security for the costs and still be able to provide [themselves] and dependents with the necessities of life." Adkins v. E.I. DuPOnt de Nemours & Co., 335 US 331, 339 (1948) (internal quotation marks omitted).

This regular practice, not only goes against precedent and the United States Constitutions, but it also fails to "promote public confidence in the integrity and impartiality of the judiciary." Code of Conduct for United States Judges, Canon 2A; United States v. Atkinson, 297 US 157, 160 (1936) ("[A]ppellate courts, in the public interest, may, of their own motion, notice errors to which no exception has been taken, if the errors are so obvious, or if they otherwise seriously affect the fairness, integrity, or public reputation of judicial proceedings"). Over 30 years ago, this Court expressed no opinion on the district court's routine denial of incarcerated pro se litigants in forma pauperis suits without "notice and an opportunity to amend the complaint to overcome any deficiency unless it is clear that no amendment can cure the defect." Denton v. Hernandez, 504 US 25, 34 (1992). This petition asks the Court to revisit this topic and to guide the lower courts in promoting justice for all, including impoverished, incarcerated, pro se litigants.

CONCLUSION

By routinely dismissing pro se petitioner's complaints, for technical or legal reasons, and then denying any subsequent appeals, without adjudication on the merits, both the district court and the court of appeals have failed in their "'virtually unflagging obligation' to hear and resolve questions properly before [them]." FBI v. Fikre, 144 S. Ct. 771, 777 (2024). Here, and in many other cases, the Second Circuit has failed to provide the petitioner with an opportunity to amend his pro se, In forma Pauperis complaint in the district court. And instead, dismissed the cases without adjudication on the merits or providing case-specific reasons for the denial. Thus, the petitioner has established that the Second Circuit "has decided an important question... in a way that conflicts with relevant decisions of this Court[,]" favoring the granting of certiorari.

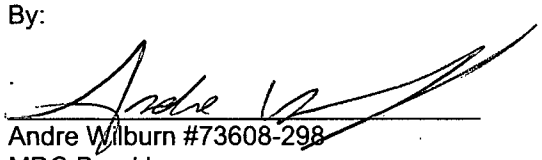
In sum, the record (and appendix) demonstrates that the petitioner has done everything within his judicial power to simply secure 60 days to correct the defects in his Original Complaint in the United States District Court for the Eastern District of New York. To no avail.

For these reasons, the petitioner respectfully asks the Court to grant certiorari.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 13, 2024
Brooklyn, NY

By:



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