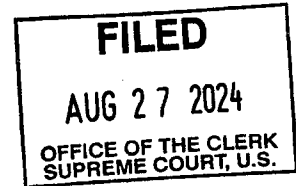


No. _____

24-5849

ORIGINAL



IN THE

SUPREME COURT OF THE UNITED STATES

Elizabeth Johnson on behalf of Aaron Johnson Jr.

and

Aaron Johnson Jr.

-PETITIONERS

vs.

Jeremiah Kinney

-RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Maryland

PETITION FOR WRIT OF CERTIORARI

Elizabeth Johnson obo Aaron Johnson Jr.

2861 Chesterfield Avenue

Baltimore, Maryland 21213

443-339-4878

Aaron Johnson Jr. - SID 3547590

Maryland Correctional Training Center

18800 Roxbury Road

Hagerstown, Maryland 21746

QUESTIONS PRESENTED

1. IS THE INMATE GRIEVANCE PROCESS THE "EXCLUSIVE REMEDY" AVAILABLE TO PRETRIAL DETAINEES AND CONVICTED PERSONS FOR PROTECTION FROM ABUSE?
2. CAN AN INDIVIDUAL FILE A PEACE OR PROTECTIVE ORDER ON BEHALF OF AN ADULT FOR WHOM THEY HAVE THE POWER-OF-ATTORNEY?
3. MUST PRE-TRIAL DETAINEES EXHAUST INTERNAL GRIEVANCE PROCESSES BEFORE SEEKING PEACE AND PROTECTIVE ORDERS FROM THE COURT AGAINST ABUSE FROM CORRECTIONS OFFICERS AND / OR OTHER CORRECTIONS STAFF / PERSONNEL WHILE IN STATE CUSTODY?

LIST OF PARTIES

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

RELATED CASES

None.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari be issued to review the judgment below.

OPINIONS BELOW

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at appendix A to the petition and is

☒ reported May 29, 2024; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the Supreme Court of Maryland appears at appendix A to the petition and is

☒ reported at Supreme Court of Maryland by Order of the Court; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **state courts**:

The date on which the highest state court decided my case was May 29, 2024.

A copy of that decision appears at appendix A.

☐ 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. _____.

The jurisdiction of the U.S. Supreme Court is invoked under 28 U. S. C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Title 18 U.S.C., Section 242.
- 1st Amendment to the United States Constitution
- 5th Amendment to the United States Constitution.
- 8th Amendment to the United States Constitution.
- 14th Amendment to the United States Constitution.
- 28 U.S.C. § 2241.

STATEMENT OF THE CASE

This appeal originally arises from a District Court case appealed to the Circuit Court for a Petition for Peace order that was made by power-of-attorney in the District Court of Maryland on or about 11/29/2023 by Elizabeth Johnson, on-behalf-of her husband, Aaron Johnson Jr.

Aaron Johnson Jr., as an incarcerated person in pretrial detention in Baltimore City, was reportedly assaulted by corrections officer, Jeremiah Kinney on or about 11/17/2023.

Petitioner was denied a temporary peace order on or about 11/29/2023 in the District Court.

The Court's stated reason for dismissal was as follows: "PETITIONER HAS NO BASIS TO SEEK RELIEF".

Petitioner appealed the case on 12/29/2023.

On 3/8/2024, the Circuit Court denied the appeal on the grounds that the "PETITIONER COULD NOT MEET REQUIRED BURDEN OF PROOF"; per a print out of the Court order provided by the Court on or about 3/20/2024. However, the Maryland Case Search reflects a result of, "THIS ORDER IS DENIED BECAUSE: THERE IS NO STATUTORY BASIS FOR RELIEF".

Petitioner now seeks review of the Supreme Court of Maryland's erroneous ruling through this Petition for Writ of Certiorari.

District Court for Baltimore County - Essex
Circuit Court Case Name: Johnson v. Kinney
District Court Case No.: D-08-CV-23-828246

Circuit Court for Baltimore County - Towson
Circuit Court Case Name: Johnson v. Kinney
Circuit Court Case No.: C-03-CV-24-812235

Supreme Court of Maryland
Supreme Court of Maryland Case Name: Elizabeth Johnson O.B.O. Aaron Johnson Jr. v. Jeremiah Kinney
Supreme Court of Maryland Case Number: SCM-PET-0046-2024.

This case has not been decided on by the Appellate Court of Maryland, and it is not pending in the Appellate Court. Thus, no briefs were filed.

There was no Appellate Court decision. Thus, there is no decision date to be provided.

The judgment or decision of the Supreme Court of Maryland resolved the entire case with respect to all of the parties.

On May 29, 2024, the Maryland Supreme Court denied the Petition, stating that “there has been no showing that review by certiorari is desirable and in public interest”.

REASONS FOR GRANTING THE WRIT

This review is in the public interest as incarcerated persons vulnerable to physical abuse requesting protection from the abuse while in custody must be afforded the opportunity to access the Court without undue delay, by proxy. There should be no limitations on the means for which a person seeking physical protection from an abuser can lawfully request help through another person. Placing restrictions discourages victims from coming forward and, it emboldens abusers.

The respondent has the resources of the State at his disposal; being represented by the Maryland Office of the Attorney General, free of charge, while Mr. Johnson remains incarcerated, indigent and without access to resources for protection. No grievance that he filed was responded to / resolved. Most have never even been acknowledged.

Guardians and power-of-attorneys must be permitted to present relevant documentation and testimony, as part of their duties and their responsibilities in the fiduciary relationship that exists. The forms for application for peace orders allows power-of-attorneys to apply but the Courts are unwilling to extend the protection to incarcerated people by invoking excuses as to jurisdiction and, by disregarding who can apply for peace and protective orders despite the forms saying otherwise. Inmates and detainees are told to use the inmate grievance process that does not work, and it is being used as a means to deprive detainees and inmates access to seeking protection from abuse by corrections officers while incarcerated.

Persons physically unable to access the court, must be able to authorize an agent to act on their behalf, through the process of guardianship or power-of-attorney; as the Petition for Peace Order form DC-PO-001, section 1, dictates. This affords equity in the judicial process, and the equal protection of vulnerable persons from abuse through access to the Courts. However, the lower Courts are excluding incarcerated people from these protections, even though they are unable to appropriately cite the legal authority to do so.

Access to using proxies preserves the right of individuals to self-advocate without the financial burden and the strictures of seeking and obtaining legal counsel; which is consistent with the ability and access afforded to peace order seekers in the free society. Again, this ensures the equal protection of pretrial detainees under the 5th and 14th Amendments of the United States Constitution. It also ensures protection of prisoners under the 8th Amendment.

This review is necessary as there needs to be clarity and better guidance for the lower Courts on the matters presented.

Petitions for peace orders must be made in person in the Commissioner's office at the courthouse. Aaron Johnson Jr. is incarcerated in pretrial detention, and he cannot freely go to the court to file on his own. A lawyer cannot file on his behalf either.

To further compound matters, Aaron Johnson Jr. was held without bond and, without access to a legal library for the entire time that he was held in pretrial detention in Baltimore City. Thus, he had no means of self-advocating and defending against the abuse, false allegations against him in retaliation and / or any pending legal charges for which he was being detained. He has essentially been placed at the disadvantage of the legal system while not being kept free from the color of law abuse involving the use of corporal and chemical punishment by State employees against him. This violates Title 18 USC., Section 242.

Aaron Johnson Jr. executed a notarized power-of-attorney and appointed his wife, Elizabeth Johnson, as his agent to act on his behalf to file the Petition for Peace Order. The Petition for Peace Order, MD form DC-PO-001, section 1 states: "I (the petitioner) am seeking protection from the respondent (name) for (name) an adult over whom I have guardianship or Power of Attorney". Aaron Johnson Jr. properly executed a power-of-attorney to file the petition on his behalf, as required by the form.

Upon request, the Court has failed to provide any reference for case law, rule or regulation that explicitly supports their assertion that Petitioner, Elizabeth Johnson, cannot file on Aaron Johnson Jr. 's behalf or, that pretrial detainees cannot obtain peace and protective orders (restraining orders) against jail personnel that have physically harmed them.

"Pretrial detainees are entitled to the same protection under the Fourteenth Amendment as imprisoned convicts receive under the Eighth Amendment" (citing *Butler v. Fletcher*, 465 F.3d 340, 345 (8th Cir. 2006)). Pretrial detainees are not convicts, so the language against "cruel and unusual punishment" is not applicable as they have not been sentenced for any "punishment" to be enacted. Thus, pretrial detainees are still presumed to be innocent and are not being corrected. Therefore, pretrial detainee matters are not adjudicated by the Division of Correction (DOC). The incarcerated person, Aaron Johnson Jr., was a pretrial detention detainee, and he was actually in the custody and control of the Commissioner of the Division of Pretrial and Detention Services (DPDS). Therefore, the internal inmate grievance process / procedure for administrative remedy does not apply. Assistant Attorney General, James Pasko, has argued that grievances appealed by the inmate go to the Commissioner of the DOC prior to the court process, but Aaron Johnson Jr. was not in the custody of the DOC. The DOC was not the proper jurisdiction for Aaron Johnson's grievances. Maryland Commission on Correctional Standards (MCCS) Manual for Adult Detention Center, the Inmate Rights Facility Directive CRDET.200.0003 and DOC policy DCD # 200-1 Inmate Rights, all state that detainees and inmates are to have access to the Courts to seek redress.

Assistant Attorney General James Pasko violated Aaron Johnson's constitutional right to due process of law and his 1st Amendment rights; in obstructing his access to seek redress for the abuse and assaults that he has experienced, while a pretrial detainee in State custody. He has done so by falsely claiming in the lower Court that it was the wrong jurisdiction and that Aaron Johnson Jr. had to use the internal inmate grievance process to address his concerns. Assistant Attorney General Pasko has also violated Aaron Johnson Jr.'s right to due process of law and obstructed justice by standing in for subpoenaed personnel. Physical abuse of detainees are violations of their human rights under color of law and, detainees are federally

protected against such acts. Additionally, Assistant Attorney General Pasko and the Court infringed upon the Petitioner's and Aaron Johnson Jr.'s right to be heard. This violates MD Rules Attorneys, Rule 19-300.1; MD Rules Attorneys, Rule 19-304.1; MARYLAND RULES OF PROCEDURE TITLE 18 – JUDGES AND JUDICIAL APPOINTEES Rule 18-102.2 IMPARTIALITY AND FAIRNESS (ABA RULE 2.2); Rule 18-102.3. BIAS, PREJUDICE, AND HARASSMENT (ABA RULE 2.3); Rule 18-102.4. EXTERNAL INFLUENCE ON JUDICIAL CONDUCT (ABA RULE 2.4); Rule 18-102.5. COMPETENCE, DILIGENCE, AND COOPERATION (ABA RULE 2.5); Rule 18-102.6. ENSURING THE RIGHT TO BE HEARD (ABA RULE 2.6), the Constitution of Maryland Declaration of Rights and, DPDS.200.0001 - Directive on Detainee Legal Matters.

Further, the inmate grievance process clearly states that non-grievable issues include matters currently in litigation. The peace order process is considered civil litigation.

It must be restated that Aaron Johnson Jr. has filed numerous inmate grievances and he did receive a response to any concerning the abuses. This was also presented to the court. No inmate grievance that he has submitted has gone beyond an initial acknowledgement of his 'Step 1 grievance'. The vast majority were not acknowledged.

At the hearing in the lower Court, Petitioner did allege preferential treatment for Assistant Attorney General Pasko during the hearing and legal process, and neither he nor the Court refuted this. Although it has the authority under 28 USC section 2241 to bring an incarcerated individual to court, the Court did not and, the incarcerated Petitioner had no other means of appearing independently.

Aaron Johnson Jr.'s lack of access to a legal library while in pretrial custody violated several policies on legal matters. This matter has been brought to the attention of the Office of the Attorney General (OAG), along with other human and civil right issues, but it was not remedied. To further compound matters, it was uncovered that The Division of Pretrial & Detention Services (DPDS) issued a directive, Directive Number DPDS.020.0024 on 4/19/22 with an effective date of 5/13/22. The directive rescinded key policies without replacement. They include, but are not limited to, Inmate Programs, Compassionate Release, Help Request Process / Adult, Help Request Process for Juvenile Detainees, Monitoring Service Contracts and Maintenance Contracts, Assuming Custody of Hospitalized Arrestees, Employee Subpoenaed by Plaintiff, Definitions, Restricting Off-Duty Staff from DPDS facilities (two policies on this subject), Employee Filing a Criminal Complaint, and Additional Resident Rule Violations.

At the Circuit Court trial, Assistant Attorney General Pasko told the Court to not let Petitioner, Elizabeth Johnson, speak. The Court obliged Mr. Pasko, stating that Elizabeth Johnson was not the Petitioner, as it was done on behalf of Aaron Johnson Jr. who was present, and that she is not an attorney. However, Elizabeth Johnson is indeed the Petitioner via power-of-attorney, and she solely participated in all court hearings up until that point as Petitioner. Ms. Johnson had pertinent records and information to present to the court that would have assisted with meeting the burden of proof that the Court stated in its denial was not met. Instead, the Court agreed to

unduly censor Ms. Johnson, to the benefit of the State and, to the disadvantage of the Petitioner and Aaron Johnson Jr. The Petitioners' 1st Amendment rights were violated.

Petitioner is extremely concerned for Aaron Johnson Jr.'s safety and welfare. Aaron Johnson Jr.'s medical provider recommended transfer to a facility where he would be treated, as he is in a treatment program, but the institution blocked his transfer. There are reportedly no security cameras in the PSA, Hallways, Medical or Elevators at Maryland Reception Diagnostic and Classification Center (MRDCC). There are only limited security cameras on the tiers. This left Aaron Johnson Jr. vulnerable to further abuse. The State then uses the absence of proper security surveillance as the excuse for being unable to support findings of wrongdoing within its staff and its institutions, which is unacceptable. It is the State's duty to maintain the safety and order of its institutions and, to protect the welfare of those in their charge. Aaron Johnson Jr. was transferred to prison in June 2024.

The Court has opted to maintain the status quo out of fear that other detainees and inmates would also seek peace orders if this one was granted; versus, taking the appropriate steps to protect the vulnerable, incarcerated person from further physical abuse based on the merits of his individual case. The District Court denied the Petition for Peace Order, stating that, if one was granted, other detainees would obtain them and, it suggested that the Petitioner sue the jail instead. However, suing the jail does not offer the protection from abuse as a peace order is intended to do.

Petitioner requests that the Court obtains a transcript of the 3/8/2024 Circuit Court hearing for its review, as it contains Aaron Johnson Jr.'s testimony.

CONCLUSION

No one should be prevented from seeking protection from abuse through use of a proxy or otherwise. We have followed the protocols to get protection but have been challenged with systemic blocks. We hope the Court will take the time to answer the questions presented so that the lower courts have clarity and, so that the abuses can cease.

For the foregoing reasons, Petitioner, Elizabeth Johnson, on-behalf-of, Aaron Johnson Jr. and, Aaron Johnson Jr., respectfully request that this Court grant this Petition for Writ of Certiorari, and review the decision of the Supreme Court of Maryland.

Respectfully Submitted,

Elizabeth Johnson

Elizabeth Johnson on October 17, 2024

Aaron Johnson Jr

Aaron Johnson Jr. on October 17, 2024