

24-5851

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Elizabeth Johnson on behalf of Aaron Johnson Jr.
and
Aaron Johnson Jr.
-PETITIONERS

vs.

Deshawn Hector
-RESPONDENT

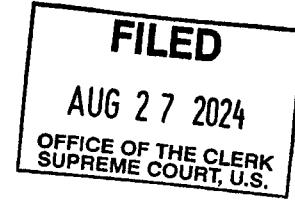
ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Maryland

PETITION FOR WRIT OF CERTIORARI

Elizabeth Johnson obo Aaron Johnson Jr.
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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
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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- is unpublished.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- is unpublished.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

[X] 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".

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".

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

While held in pretrial detention at Baltimore Central Booking and Intake Center (BCBIC), Aaron Johnson Jr. filed grievances about the conditions and harassment he experienced from correction officer, Deshawn Hector and others while housed there. He received no response to his grievances. Petitioner also brought the issue to the attention of jail leadership to no avail.

On or about October 6, 2024 Aaron Johnson Jr. was assaulted by Deshawn Hector. He was subsequently transferred to Maryland Reception, Diagnostic and Classification Center (MRDCC) for what was stated to be for his own safety; however, he was immediately placed in disciplinary

segregation and denied access to appropriate medical treatment for his injuries although he was the victim of a series of assaults.

On October 7, 2023 he was removed from a transport vehicle that was to take him to Metropolitan Transition Center (MTC) where his medication and treatment program resources are available. He was instead returned to disciplinary segregation at MRDCC. He has remained at MRDCC, against medical recommendation. While at MRDCC, Aaron Johnson Jr. was subjected to further physical abuse by corrections officers for over the period of approximately 6 weeks. The corrections officers became more emboldened as they faced little to no consequence for their egregious actions. Aaron Johnson Jr. experienced lapses in his medical treatment and care as a result.

Incarcerated person, Aaron Johnson Jr.'s request to view the footage of the incident was denied during an adjustment hearing for which he was unduly sanctioned following the assault by corrections officer, Deshawn Hector. Although the sanctions were formally appealed, no formal response was provided by the institution with respect to his appeal of the sanctions and, he was placed on lock-up from on or about October 6, 2023 to February 26, 2024. He completed the entire period of the levied sanctions without an outcome on his appeal of the sanctions. While on lock-up, he was only permitted one hour outside of the cell on Mondays, Wednesdays and Thursdays for a total of only three hours weekly. He was shackled while out of the cell, against policy which states detainees in disciplinary segregation are to be handcuffed at the front. He also was disallowed visits, calls, denied a cellmate although cleared for one, deprived of a tablet for mental stimulation / communication, and so forth. Mr. Johnson has serious health conditions that were adversely impacted as a result.

On or about October 18, 2023, Assistant Attorney General, James Pasko, told the District Court that it was not the "proper jurisdiction" for the peace order to be heard, and that inmates must use the inmate grievance process before bringing matters to the court. On or about October 18, 2023, it was claimed that an individual could not petition the court via power-of-attorney for a peace order.

On or about October 25, 2024, the District Court denied a request to issue a writ of habeas corpus so that, incarcerated person, Aaron Johnson Jr. could appear in court.

On or about October 25, 2023, Department of Public Safety and Correctional Services (DPSCS) denied a request for the release of video footage and records related to the incident that was requested under the Maryland Public Information Act (MPIA).

The Baltimore City Sheriff's Office claimed they were unable to 'get beyond the doors' of the Baltimore Central Booking and Intake Center (BCBIC) to serve the Respondent without a body attachment.

On or about November 8, 2023, a request for issuance of a request for body attachment by personal justification due to potential evasion of service was filed by the Petitioner. It was denied.

A motion for reconsideration due to premature dismissal of the case was made on November 13, 2023 and it was also denied by the District Court.

The case was appealed on November 20, 2023 to the Circuit Court.

A motion for Alternate / Substituted service was granted by the Circuit Court on January 18, 2024. Pursuant to 82 Op. Att'y Gen. 154 (Ops.Md.Att'y.Gen.1997), III Methods of Substituted Service With an Order of Court and, a copy "of the summons, complaint, and all other papers filed with it [was mailed] to the Respondent at his last known residence and delivery a copy of each to a person of suitable age and discretion at the place of business...of the defendant". A certified process server delivered a copy to the Respondent's place of business. An affidavit of service and a certificate of mailing were obtained.

Attorney General, James Pasko, did not officially enter his appearance but he did appear in court on behalf of the Respondent on or about October 18, 2023 (District Court) and again on February 9, 2024 (Circuit Court). On February 9, 2024, he falsely claimed, "I was at the original one and he had not been served. And then I since appeared at every extension hearing and then ultimately it expired, Your Honor. Officer Hector has never been served". In truth, the District Court told him that he did not have to appear if there was no service on the Respondent. Thus, only the Petitioner appeared for all the hearings.

On February 9, 2024, the Court claimed that Aaron Johnson Jr. was not brought to court. However, the Assistant Warden, Angelina Burrell, of the detention facility confirmed that he was transported to court. Court records also indicate that he was present. A witness also affirmed by affidavit that Aaron Johnson Jr. was present at the courthouse on February 9, 2024 which was contrary to what the court reported during the hearing. Court records also show that he was at the courthouse for trial.

On February 9, 2024, the court denied a request for a postponement so that Aaron Johnson Jr. could be present; instead holding an informal hearing in which it did not swear in the parties, disallowed presentation of witnesses, and then dismissed the case for "lack of jurisdiction".

On or about February 20, 2024, the Respondent was allegedly involved in another incident of physical abuse involving another detainee in custody at BCBIC. He was accused of slamming a detainee onto the concrete.

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.

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 regarding the abuse was resolved. Most of his grievances have never 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 form for peace orders allows power-of-attorneys to file but the Courts are unwilling to extend the protection to incarcerated people by invoking excuses as to jurisdiction and by disallowing the Petitioner by power-of-attorney to complete the peace order process despite the forms permitting it. Inmates and detainees are told to use the internal inmate grievance process that does not work and is being used to deprive detainees and inmates access to the courts for protection from abuse by corrections officers while in custody.

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 Court. 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. The use of proxies is consistent with the access afforded to peace order seekers in the free society and, it ensures the equal protection of pretrial detainees under the 5th and 14th Amendment 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. An attorney cannot file one on his behalf.

To further compound matters, Aaron Johnson Jr. was held without bond and without access to a legal library for the entire time that he has been in pretrial detention in Baltimore City. Thus, he had no means of self-advocating and defending against the abuse, allegations and / or any charges. He essentially has 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, in violation of Title 18 U.S.C., 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 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.

Assistant Attorney General James Pasko violated Aaron Johnson's constitutional right to due process of law and his 1st Amendment rights by obstructing his access to seek redress for the abuse and assaults that he has experienced while a pretrial detainee in State custody. Respondent's counsel has falsely claimed 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 which is untrue. 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 Petitioners, Elizabeth Johnson 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 Rule18-102.2. 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 policy clearly states that non-grievable issues include matters currently in litigation. The peace order process is considered civil litigation. Additionally, Pretrial Detention and Services, Directive Number 180-1, Adult Resident Grievance Procedures, specifically excludes matters that are in the course of litigation, rendering them as "non-grievable" issues.

It must be restated that Aaron Johnson Jr. has filed numerous inmate grievances and he did not receive a response to any related to the reported abuse. It was presented to the court that no inmate grievance that he submitted went beyond an initial acknowledgement of his 'Step 1 grievance".

Although the Court had the authority under 28 USC section 2241 to bring him to court, it did not at the District Court and the incarcerated Petitioner had no other means of appearing independently. When a writ was sent at the trial court, the Court obstructed Aaron Johnson's participation by falsely claiming he had not been transported by the institution when in fact he was there and it did not permit him to participate. This violated Petitioner's right to access the courts and his constitutional due process rights.

"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 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 Jr.'s grievances. The Maryland Commission on Correctional Standards (MCCS) Manual for Adult Detention Centers; Inmate Rights Facility Directive CRDET.200.0003 all state that detainees and inmates are to have unfettered access to the Courts to seek redress.

Instead of being offered protection from abuse, Aaron Johnson Jr. has been reprimed against and sanctioned due to his protected complaints. Further, his inmate grievances have not been properly processed and adjudicated despite policy governing procedure and timelines. Therefore, there is no outcome from any inmate grievance submitted that can be appealed through the means that Assistant Attorney General Pasko has described either.

Pursuant to MD. Code, Courts and Judicial Proceedings § 3-1504 - Temporary Peace Orders (2023) (C) (3) "If the court is closed on the day on which the temporary peace order is due to expire, the temporary peace order shall be effective until the second day on which the court is open, by which time the court shall hold a final peace order hearing". The day that the temporary peace order was set to expire occurred on Veterans' Day, which was observed on Friday, November 10, 2023. The District Court was closed in observance of the federal holiday. As such, the final peace order hearing should have been held on the second business day that the court was open, which was Tuesday, November 14, 2023. Thus the temporary peace order did not expire until Tuesday, November 14, 2023. During the hearing on Monday, November 13,

2023, the District Court erroneously stated that the 30th day had been reached, and that the order could no longer be extended for a final hearing on the matter.

As stated, on appeal in the Circuit Court, the Court denied the appeal without allowing Aaron Johnson Jr. or any witnesses to be called or heard. The Court falsely claimed that incarcerated person, Aaron Johnson Jr., was not present at the courthouse when in fact he was transported and was being held at the same building of the court hearing. There was no reason to believe that the court was being untruthful. This act violated Aaron Johnson Jr.'s right to due process of law afforded under the 5th and 14th Amendments of the United States Constitution, his right to freedom of speech under the First Amendment, the various policies on detainee legal matters and inmates' rights, fundamental fairness, equity, judicial ethics and justice.

To complicate matters further, there is a 30-day window for peace orders to be filed which makes it virtually impossible to wait for the outcomes of an internal process that runs substantially longer than the court filing window.

The District Court failed to use its authority under 28 U.S.C. § 2241 to bring Aaron Johnson Jr. to court to seek redress or to protect him from physical abuse. The Circuit Court did issue the writ of habeas corpus pursuant to 28 U.S.C. § 2241 but it then disallowed him from appearing at the hearing. Further, although it heard arguments as to his maltreatment and that he had been physically abused while in custody, the Court failed to protect Aaron Johnson Jr. by issuing a peace order and / or releasing him from commitment. Essentially, it has ignored the seriousness of the situation while claiming lack of jurisdiction when it in fact has the authority to act.

Assistant Attorney General Pasko has appeared in court and stated that there has been no service on the Respondent and that he represents the Respondent. He has also claimed previously that he's representing all of the State employees. Subpoenas have been served for State employee witnesses but Respondent's legal counsel has effectively obstructed any appearance of State employees by standing in for them without accepting service. This violates Aaron Johnson Jr.'s right to due process of law and it obstructs justice.

The Circuit Court has previously queried, and the Petitioner objects to, the Court bringing unrelated matters into the hearing. The court previously asked for the case number for the pending charges in a hearing on Monday, February 5, 2024. On February 9, 2024, the court stated, "So I won't be able on my own tonight -- well, I'm not able to do independent investigation. I was just, as a courtesy, going to check the MDEC system to see who the lawyer is but I don't have the ability". The Petitioner never requested the court provide any courtesy information. The court asked for attorney names for Aaron Johnson Jr.'s pending criminal matters which violates his right to be heard without bias and prejudice on the civil matters which are the basis of his petition for peace order.

There appears to have been earlier interference in the case; as the January 18, 2024 Request for Postponement and Motion of Alternate / Substituted Service was granted by one

judge at 3:28:25 p.m., and then denied by another judge at 4:05:09 p.m. on the same date. The court on February 9, 2024 remarked that it thought it was denied when both copies were on record. Further, the denial makes no sense as the court itself contacted the Petitioner on January 18, 2024 to change the hearing date due to forecasted inclement weather.

DPDS.020.0024, Rescission Notices of Division of Pretrial Detention and Services Directives, repealed policy that prevents off-duty officers from being at pretrial detention facilities effective May 13, 2022. It also repealed policies on Inmate Programs, Help Process Request (Adult and Juvenile), Use of Force and Use of Restraints, among other key policies. This is very concerning and has been brought to the leadership but has garnered no response. This leaves Aaron Johnson Jr. vulnerable to additional abuse, as the Respondent can access the facilities where Aaron Johnson Jr. was housed while off-duty. Additionally, there are no clear policies to prevent unwarranted uses of force and restraints or on how inmates can request help.

The State must be equitably estopped from benefiting from their wrongs of not permitting incarcerated person, Aaron Johnson Jr., to present to the court to seek redress for the abuses he has experienced while incarcerated.

Incarcerated person, Aaron Johnson Jr. must be equally-protected against cruel and unusual punishment and physical abuse by an order of the court ordering corrections officer, Deshawn Hector, to stay away from Aaron Johnson Jr., and / or by releasing Aaron Johnson Jr. from confinement to prevent further abuse of him by correction officers.

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 will 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 the 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 justification 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 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.

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, Petitioners, 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