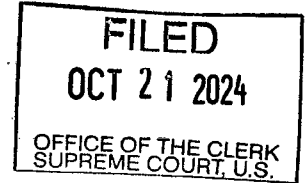


24-6124

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



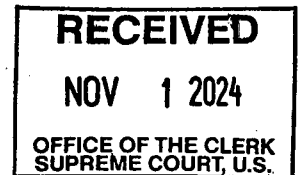
BRADLEY DORMAN,
Petitioner,

vs.

SEC' Y Fla. DOC et. al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
ELEVENTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI



Bradley Dorman
DC# F-11590
Martin Correctional Institution
1150 S.W. Allapattah Road
Indiantown, Florida 34956-4301

QUESTIONS PRESENTED FOR REVIEW

- 1). Is the application of the Prison litigation Reform Act ("PLRA"), "Three-Strike" Rule, 28 U.S.C. § 1915(g) to Petitioner's prior dismissals under *Younger v. Harris*, 401 U.S. 37, 41 (1971) ("Younger Abstention Doctrine") unreasonable as the cases were automatically dismissed and should not trigger a PLRA strike?
- 2). Is the PLRA unconstitutional under the United States First Amendment and U.S. Supreme Court precedent, considering prisoners have a constitutional right to access the courts.
- 3). Does the PLRA violate equal protection of the United States by denying court access to indigent prisoners while affording it to similarly situated prisoners who can pay the filing fee, and treating prisoners differently from other litigants?

LIST OF PARTIES

- 1.) Bradley Dorman, Petitioner
- 2.) Ricky Dixon, Secretary, Florida Department of Corrections
- 3.) Robert Bryner, Acting Warden at Martin Correctional Facility

PROCEEDINGS IN DISTRICT AND FEDERAL COURT OF APPEALS

- 1). 24-cv-14155-AMC (S.D. Fla. 2024)
- 2). 24-12224-D (11th Cir. 2024)

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**APPENDIX A U.S. District Court Southern District of Florida
 Order for Case Number 24-CV-14155-AMC
 July 9, 2024**

**APPENDIX B 11th Circuit Court of Appeals
 Order Case Number 24-1224-D July 30, 2024**

JURISDICTION

- 1). The United States Supreme Court has jurisdiction under Federal Rules of Civil/Appellate Procedure, United States Supreme Court Rule 10 (c) and in accordance with 28 U.S.C. § 1254(1). The date on which the United States Court of Appeals for the Eleventh Circuit decided my case was July 30th, 2024.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 1.) First Amendment of the United States Constitution
- 2.) Fourteenth Amendment of the United States Constitution
- 3.) 28 U.S.C. § 1915

POINTS OF AUTHORITY

CASES

- 1.) Barbier v. Connally, 113 U.S. 27 (1995)
- 2.) Bounds v. Smith, 430 U.S. 817 (1977)
- 3.) Carbajal v. McCann, 808 F. App'x 620 (10th Cir. 2020)
- 4.) Coppedge v. United States, 369 U.S. 438 (1962)
- 5.) Edwards v. California, 314 U.S. 160 (1941)
- 6.) Gibson v. Berryhill, 411 U.S. 564 (1973)
- 7.) Gilbertson v. Albright, 381 F.3d 965 (9th Cir. 2004)
- 8.) Miller v. Donald, 541 F.3d 1091(11th Cir 2008)
- 9.) Mitchell v. Farcass, 112 F.3d 1483 (11th Cir. 1997)
- 10.) Moore v. Maricopa County Sheriff's Office, 657 F.3d 890 (9th Cir. 2011)
- 11.) Neitzke v. Williams, 490 U.S. 319 (1989)
- 12.) Talamini v. All State, Ins., Co., 470 U.S. 1067 (1985)
- 13.) Washington v. Los Angeles Cnty. Sheriff's Dept.,
833 F.3d 1048 (9th Cir.2016)
- 14.) Younger v. Harris, 401 U.S. 37 (1971)

STATUTES AND RULES

- 1.) 28 U.S.C. § 1915(g)
- 2.) 28 U.S.C. § 1915(b)(4)
- 3.) Federal Rules of Civil Procedure 12(b)(1)

STATEMENT OF THE CASE

Petitioner filed multiple complaints and associated appeals prior to this petition in regards to his pending criminal case. The cases was dismissed under *Younger v. Harris*, 401 U.S. 37, 41 (1971) and were counted as strikes against Petitioner under 28 U.S.C. § 1915(g). Unable to file new cases, Petitioner is having Constitutional Rights violated by not being able to petition the government for a redress of grievances.

ARGUMENT

A. YOUNGER ABSENTION NOT PLRA STRIKE

- 1.) The application of the PLRA "three-strikes" rule, 28 U.S.C. § 1915(g) to Petitioner's prior dismissals under the *Younger* abstinence doctrine is unreasonable since it forces cases to be dismissed as they relate to pending State cases. A *Younger* dismissal is treated like a Federal Rule of Civil Procedure 12(b)(1) dismissal for lack of subject matter jurisdiction, which does not trigger a PLRA strike. "Unlike those situations where a Federal Court merely abstains from decision on Federal questions until the resolution of underlying or related State law issues... *Younger v. Harris*, contemplates the outright dismissal of the Federal suit, and the presentation of all claims, both State and Federal, to the State Courts." *Moore v. Maricopa Cnty. Sheriff's Office*, 657 F.3d 890, 893 (9th Cir. 2011). See also: *Washington v. Los Angeles, Cnty.*

Sheriff's Dept. 833 F.3d 1048, 1058 (9th Cir. 2016); *Mitchell v. Farcass*, 112 F.3d 1483, 1490-93 (11th Cir. 1997).

- 2.) Due to the unreasonable application of the PLRA "three-strikes" rule, petitioner is unable to initiate any new litigation in the Federal Courts. Courts under the Ninth Circuit jurisdiction recognize a Younger dismissal is treated like a Federal Rule of Civil Procedure 12(b)(1) dismissal for lack of subject matter jurisdiction, which does not trigger a PLRA strike. The Eleventh Circuit has yet to rule on the application of Younger in relation to the PLRA "three-strikes" rule under U.S. Supreme Court Rule 10(c); a United States Court of Appeals has decided an important question of Federal law that has not been, but should be, settled by this Court.
- 3.) Freedom of access to the Courts is a cherished value in our society. The Courts provide the mechanism for the peaceful resolution of disputes that might otherwise give rise to attempts at self-help. Their is, and should be, the strongest presumption of open access to all levels of the judicial system. This Court, above all should uphold the principle of open access to the Courts as secured under the Federal Constitution. As stated under 28 U.S.C. § 1915(b)(4):

In no event shall a prisoner be prohibited from bringing a Civil action or appealing a Civil or Criminal judgment for the reasons that the prisoner has no assets and no means by which to pay the initial partial filing fee.

- 4.) Unfortunately, prisoners are being prohibited from bringing Civil actions when they have insufficient assets to cover the filing fee. Courts should be better gatekeepers in determining when a case is actually frivolous or is just a reasonable issue with merit from a litigant that utilizes the Court system effectively. A litigant who files the same claim successively against the same parties is not the same as one who files a newly relevant claim against a fresh party. By enacting the PLRA, Congress has deprived prisoners and other indigents of a significant procedural

right that un-institutionalized paying litigants enjoy, and has not provided a rational justification. For this differential treatment, filing fees can be recovered by prevailing parties, and should be considered when initially reviewing the case *Talamini v. All State Ins., Co.*, 470 U.S. 1067, 1070 (1985). See also: *Carbajal v. McCann*, 808 F. App'x 620, 630 (10th Cir. 2020); *Bounds v. Smith*, 430 U.S. 817, 821 (1977).

B. PLRA § 1915(g) VIOLATES FIRST AMENDMENT

- 1.) Under the United States First Amendment and standing U.S. Supreme Court precedent, prisoners have a Constitutional Right to access the Courts. As stated in the First Amendment:

Congress shall make no law...abridging...the right of the people...to petition the Government for a redress of grievances."

The Constitution requires States to waive filing or other Court fees for indigent persons in cases involving certain fundamental rights. 28 U.S.C. § 1915(g) states:

In no event shall a prisoner bring a Civil action or Appeal a judgment in a Civil action or proceeding under this section if the prisoner has, on 3 or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a Court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted unless the prisoner is under imminent danger of serious physical injury.

- 2.) The above statute is clearly unconstitutional under the plain language of the First Amendment stating:

"Congress shall make no law...abridging...the right of the people...to petition the Government for a redress of grievances."

The Statute 28 U.S.C. § 1915(g) clearly blocks litigants from petitioning the government for a redress of grievances. Congress and the Courts must provide a better method than blocking legitimate litigation from being heard. The minimal annoyance some litigants might cause is well worth the cost. The longstanding tradition of leaving the door open to all classes of litigants is a proud and decent one worth maintaining. *Talamini*, 470 U.S. at 1069-70.

C. 28 U.S.C. § 1915(g) VIOLATES EQUAL PROTECTION OF THE FOURTEENTH-AMENDMENT

- 1.) The PLRA statute 28 U.S.C. § 1915(g), violates equal protection by denying Court access to indigent prisoners while affording it to similarly situated prisoners who can pay the filing fee, and treating prisoners differently from other litigants. The guarantee of equal protection of the laws in the Fourteenth Amendment undoubtedly intended that all person should have like access to the Courts may not be denied to the poor, while available to the wealthy. The equal protection of the law does not mean merely equal protection of those laws which concern the violation of Constitutional Rights. Rather, it requires equal protection of all the laws. *Neitzke v. Williams*, 490 U.S. 319, 327-30 (1989). See also *Farcass*, 112 F.3d at 1490-93; *Barbier v. Connally*, 113 U.S. 27 (1885).
- 2.) Under Rule 12(b)(6), a plaintiff with an arguable claim is allowed notice of a pending motion to dismiss for failure to state a claim and an opportunity to amend the complaint before the motion is ruled upon. These procedures alert to the legal theory underlying the defendant's challenge, and enable meaningful response by opposing the motion to dismiss on legal grounds or by clarifying his factual allegations so as to confirm with the requirements of a valid legal cause of action. *Neitzke*, 490 U.S. at 329-30. The PLRA strips this right only from in forma pauperis ("IFP") litigants, denying them equality of treatment in the Federal Courts. *Neitzke*, 490 U.S. at 330. ("noting the unfairness in applying the failure to state a claim, will in all likelihood be dismissed

sua sponte, whereas an identical complaint filed by a paying plaintiff will in all likelihood receive the considerable benefits of the adversary proceeding contemplated by the Federal Rules".) The differential treatment cannot be justified by the stated purposes of the PLRA - to deter frivolous prison litigation and ease the burden of such suits on the Federal Courts. The distinction between immediate dismissal for failure to state a claim and immediate dismissal for frivolousness if not lost on the average litigant surely will not weigh heavily in a decision whether to bring a claim. Easing the small bit of the Courts burden that is made up of complaints that are not frivolous, but none-the-less fail to state a claim simply cannot be justified when weighed against the procedural rights IFP litigants are denied. Depriving one group of this right, while retaining it for another, stands in stark opposition to established principles of equal access to Courts for all litigants, the intended purpose of 28 U.S.C. § 1915. *Coppedge v. States*, 369 U.S. 438, 447 (1962)(noting that the purpose of the IFP status was "to assure equality of consideration for all litigants".)

REASONS FOR GRANTING THE PETITION

- 1.) The application of the PLRA "three-strikes" rule, 28 U.S.C. § 1915(g) to Petitioner's prior dismissals under the *Younger* abstinence doctrine is unreasonable, since it forces cases to be dismissed as they relate to pending State cases. A *Younger* dismissal is treated like a Federal Rule of Civil Procedure 12(b)(1) dismissal for lack of subject matter jurisdiction, which does not trigger a PLRA strike. In addition the PLRA is unconstitutional under the First and Fourteenth Amendments of the U.S. Constitution as it abridges the right of the people to petition the government for a redress of grievances. Also, the PLRA violates the equal protection by denying Court access to indigent prisoners while affording it to similarly situated prisoners who can pay the filing fees, and treating prisoners differently from other litigants.

CONCLUSION

The petition for a Writ of Certiorari should be granted.

Respectfully submitted,

/S/ BRADLEY DORMAN

Bradley Dorman

VERIFICATION

I have read the foregoing petition and hereby verify that the matters alleged therein are true, except as to matters alleged on information and belief, and, as to those, I believe them to be true. I certify under penalty of perjury that the foregoing is true and correct. Executed on this 23rd day of October, 2024, under 28 U.S.C. § 1746.

Respectfully submitted,

/S/ BRADLEY DORMAN

Bradley Dorman

UNITED STATES SUPREME COURT

BRADLEY DORMAN,
Petitioner,

vs.

SEC' Y Fla. FDOC, et.al.,
Respondents.

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITS
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/S/BRADLEY DORMAN

Bradley Dorman

Dated: October 23, 2024.