

No. 24-6955

IN THE
SUPREME COURT OF THE UNITED STATES

In Re Dexter Leemon Johnson

MOTION FOR RECONSIDERATION OF
ORDER DENYING LEAVE TO PROCEED
IN FORMA PAUPERIS

PROCEDURAL HISTORY

On ~~May 30, 2024~~ March 3, 2025 Petitioner mailed to this Court a writ of Habeas Corpus pursuant to S.Ct. Rule 20. It was filed on March 3, 2025 and placed on the docket on April 10, 2025. See Exhibit A. Said Rule 20 Habeas Writ was accompanied by a completed IFP motion and thus was filed

and docketed "without payment of docket or any other fee."

According to a letter dated May 5, 2025, the Court entered an order on that same date denying IFP motion and dismissing writ of habeas corpus pursuant to S.Ct. Rule 39.8. See Exhibit B. The order did not specify why Petitioner's Rule 20 habeas writ was frivolous or malicious nor did it charge Petitioner with lying about being poor.

In response to the Court's order denying IFP motion and dismissing habeas writ, Petitioner placed in the prison legal mail system, on May 30, 2025, a petition for rehearing pursuant to S.Ct. Rule 44. On June 18, 2025 Katie Heidrick from the court clerk's office returned said

petition for rehearing to Petitioner (it was unanswered, un-filed, and un-docketed). See Exhibit C. In the letter that accompanied said returned petition for rehearing, Katie Heidrick informed Petitioner that his petition for rehearing could not be filed because his habeas writ was dismissed but NOT DENIED. See Exhibit C. She further informed Petitioner that he could file "a motion for reconsideration of order denying IFP and specified that said motion for reconsideration must be clearly titled and corrected to reflect the same." See Exhibit C. But Katie Heidrick's letter did not specify a time limit or what rules must be followed. Nor was a page limit stated.

For the following reasons Petitioner asks the Court to reconsider its

order denying leave to proceed IFP:

GROUND ONE. Court Committed
Prejudicial Legal Error By Applying
PLRA's Three Strikes Provision To A
Habeas Petition In A Criminal Action

Petitioner's S.Ct. Rule 20 habeas writ was filed on March 3, 2025 and placed on the docket on April 10, 2025 as No. 24-6955. See **Exhibit A**. It was filed and docketed "without payment of docket fee." ONLY litigants who have been granted pauperis status are allowed to be placed and proceed on the docket without payment of fee(s) prescribed by S.Ct. Rule 38. See S.Ct. Rule 39.4 (when the documents required by paragraphs 1 and 2 of this Rule are presented to the clerk, accompanied by proof of service as required by Rule 29, they will be

placed on the docket without the payment of a docket fee or any other fee).

Despite initially allowing Petitioner to proceed as an indigent prisoner pursuant to S.Ct. Rule 39.1-4 (the record conclusively shows that Petitioner's Rule 20 habeas writ was FILED AND DOCKETED WITHOUT PAYMENT OF DOCKET FEE), the Court ultimately issued an order, simultaneously denying IFP motion and dismissing habeas writ as frivolous or malicious under S.Ct. Rule 39.8. See Exhibit B.

As a preliminary matter, the status of Petitioner's ~~IFP~~ motion was moot PRIOR TO the Court's ultra vires denial of IFP, i.e., the question had been resolved and had therefore passed the point of being a live controversy. Because the Court had already

granted Petitioner ~~IFP~~ status by filing and docketing his Rule 20 habeas writ WITHOUT PAYMENT of docket fee. See Exhibit A & S.Ct. Rule 39.1-4.

More pertinently, the frivolous or malicious standards are elements of PLRA's three strikes provision. But Petitioner filed a habeas petition attacking or challenging his criminal conviction. PLRA's three strikes provision is inapplicable to habeas proceedings in criminal actions. See, e.g., *Malave v. Hedrick*, 271 F.3d 1139, 1140 (8th Cir. 2001) ("PLRA's filing-fee provisions are inapplicable to habeas corpus actions"); *Jones v. Smith*, 720 F.3d 142, 146 (2nd Cir. 2013) (a habeas petition is not a "civil" action under the three strike provision and, as such, a court cannot bar a

prisoner from filing a habeas petition in forma pauperis even if the prisoner has three strikes); *Smith v. Bennett*, 365 U.S. 708, 709, 81 S.Ct. 895 (1961) (inability to pay filing fees could not prevent indigent, convicted prisoner from filing habeas petition). Applying the three strikes provision to habeas petitions "would be contrary to a long tradition of ready access of prisoners to federal habeas corpus." *Carson v. Johnson*, 112 F.3d 818, 820 (5th Cir. 1997). And would be contrary to the Constitution's prohibition against suspension of writ of habeas corpus, see U.S. CONST. Art. I, § 9, cl. 2.

Furthermore, the 14th Amendment requires the waiver of filing fees for indigent prisoners in criminal habeas actions. See *Carson*, *Supra*, 112 F.3d at

the United States have the DUTY to examine as a justiciable issue a person's contention as to the illegal existence of a state, wherever such a claim is made); also see U.S. CONST. Art. III, §§ 1, 2, Art. VI, cl. 3; 28 U.S.C. § 453.

Pursuant to its Art. III DUTY to interpret and apply the law, the Pacific States court imposed on ALL courts of the United States the DUTY to rule on merits a person's challenge to the legal existence of a state. See Pacific States, supra, 223 U.S. at 142. This Court is obligated to abide by its own precedent unless this Court expressly overrules precedent. See North Florida Women's Health and Counseling Services, Inc. v. State, 866 So. 2d 612, 637 (Fla. 2003) (The doctrine of stare decisis, or the obligation of a court to abide by its own precedent, 11.

has been a fundamental tenet of Anglo-American jurisprudence for centuries); *Herington v. City of Wichita*, 500 P.3d 1168, 1177 (Kan. 2021) (Judicial adherence to constitutional precedent ensures that all branches of government, including the judicial branch, ARE BOUND BY LAW); *Gamble v. U.S.*, 587 U.S. 678, 691, 139 S. Ct. 1960 (2019) (a departure from precedent requires special justification). Accordingly, this Court's failure to adjudicate merits of Petitioner's nonfrivolous challenge to Oklahoma's legal existence constituted an excess of jurisdiction. By default, prejudice is presumed when a court acts in excess of its jurisdiction. And in this case, the Court's adjudication of moot IFP motion was an act so far outside of constitutional bounds

entered an order on May 5, 2025 denying leave to proceed IFP and dismissed as frivolous or malicious his writ of habeas corpus. See Exhibit B.

In its order denying IFP the Court DID NOT determine that Petitioner lied about being poor, did not explain why Petitioner's habeas writ is frivolous or malicious, and did not give him notice and an opportunity to be heard prior to dismissing sua sponte his habeas writ on a clearly erroneous procedural ground. All of which proves that the Court's denial of IFP and dismissal of habeas writ were arbitrary acts.

The 14th Amendment requires the waiver of filing fees for indigent prisoners in criminal habeas actions. See *Lewis v. Casey*, 518 U.S. 343, 350 116 S. Ct. 2174 (1996) (14th Amendment

that his habeas writ was dismissed based on him being too poor to pay docket fee. Which constituted denial of equal protection of law in violation of 14th Amendment and constituted a de facto suspension of writ of habeas corpus in violation of U.S. CONST. Art. I, §9, cl. 2.

Since the Court's denial (of moot IFP motion) and dismissal (of habeas writ) under S. Ct. Rule 39.8 had the effect of denying Petitioner due process AND equal protection of the law and had the effect of suspending writ of habeas corpus (absent showing of abuse, frivolity, or maliciousness), said Rule 39.8 is unconstitutional as applied to facts of his case.

And since a constitutional provision is superior to and supersedes any contrary rules or

statutes, S. Ct. Rule 39.8 must yield to the 14th Amendment's mandate of due process and equal protection of the law; and must yield to Art. 1, § 9, cl. 2's prohibition against suspension of writ of habeas corpus. See, e.g., 16 AM. JUR. 2d CONST. LAW § 2 (the people's constitutional standards must always prevail over the legislature's standards. And where a statute or other rule and constitutional provision are in conflict, the constitutional provision must prevail); *Marbury v. Madison*, 5 U.S. 137, 178 (1803) (If then the courts are to regard the constitution; and the constitution is superior to any ordinary act of the legislature;

the constitution, and NOT such ordinary act, must govern the case to which they both apply);

16 AM. JUR. 2d CONST. LAW § 1 (Whatever the constitution prescribes, the general assembly, and every officer or citizen to whom the mandate is addressed, MUST DO, and whatever it prohibits, the general assembly, and every officer and citizen, MUST REFRAIN FROM DOING).

Due to being a violation of the 14th Amendment's due process and equal protection of law clauses and of U.S. CONST. Art. 1, § 9, cl. 2, the Court's denial of moot IFP motion and dismissal of habeas writ were ultra vires acts and are hence void. See 20 AM. JUR. 2d Courts § 41 (any action the court takes that is outside the constitution's stricture is void).

GROUND THREE. Court's Denial of Petitioner's Right To Be Heard Combined With Failure To Perform Art. III DUTY Constituted An Abuse Of Judicial Power

Judicial action taken without any arguable legal basis—and without giving notice and an opportunity to be heard to the party adversely affected—is far worse than simple error or abuse of discretion; it's an abuse of judicial power that is "prejudicial to the effective and expeditious administration of the business of the courts." *In re Complaint of Judicial Misconduct*, 425 F.3d 1179, 1185 (9th Cir. 2005).

According to the judgment roll

for No. 24-6955 (In re Dexter Leemon Johnson), Petitioner's Rule 20 HABEAS writ was filed in this Court on March 3, 2025 and docketed on April 10, 2025 — "without payment of docket or any other fee." See Exhibit A.

The fact that Petitioner's HABEAS writ was filed and docketed "without payment of docket fee" conclusively proves the Court granted him leave to proceed IFP. Because only litigants who been granted IFP status are allowed to be placed on the docket without payment of docket fee. ~~SEEN~~ S.Ct. Rule 39.1-4.

Since the Court granted Petitioner pauperis status — by filing and docketing

his HABEAS writ without payment of docket fee — PRIOR TO its order denying IFP motion, the issue of IFP was moot, i.e., the question had been resolved and had therefore passed the point of being a live controversy. see *Couture v. Austin*, 720 F.Supp.3d 1243, 1247 (A case is moot when the issue presented is no longer live); *Young v. District of Columbia Housing Authority*, 31 F.Supp.3d 90, 95 (D.C. Cir. 2014) (A case becomes moot "when the issues presented are no longer 'live'").

Art. III courts lack jurisdiction to adjudicate a moot issue. See, e.g., *Couture*, *supra*, 720 F.Supp.3d at 1247 ("If a suit is moot, it cannot

present an Art. III case or controversy and the federal courts lack subject matter jurisdiction to entertain it"); New Jersey Turnpike Authority v. Jersey Cent. Power and Light, 772 F.2d 25, 30 (3rd Cir. 1985) (If one or more of the issues involved in an action become moot pending appeal or pending the decision of an appellate court, the adjudication of the moot issue or issues should be refused); Church of Scientology of California v. U.S., 506 U.S. 9, 12, 113 S.Ct. 447 (1992) (It has long been settled that a federal court has no authority "to give opinions upon moot questions").

This Court thus exceeded its jurisdiction by adjudicating moot IFP motion, i.e., the Court had already resolved IFP issue by filing and

docketing his HABEAS writ without payment of docket fee (a party can so proceed only if granted IFP status, see S.Ct. Rule 39, 1-4).

Due to the fact the Court lacked Art. III jurisdiction to adjudicate moot issue of IFP motion, its adjudication and denial of moot IFP motion constituted "judicial action taken without any arguable legal basis, which was an abuse of judicial power." See Judicial Misconduct, *supra*, 425 F.3d at 1185 (Judicial action taken without any arguable legal basis is far worse than simple error or abuse of discretion; it's an abuse of judicial power that is "prejudicial to the effective and expeditious

25.

administration of the business of the courts")) ; also see Shaman, Lubet & Alfani, Judicial Conduct and Ethics, § 2.07, at 50 (3d ed. 2000) ("Judges abuse the power of the judicial office when they abbreviate or change critical aspects of the adversary process in ways that run counter to the scheme established by relevant constitutional and statutory law"). (Art. III prohibits federal courts from adjudicating moot issues. Hence this Court's adjudication of moot IFP motion ran counter to relevant constitutional law [Art. III], thereby demonstrated abuse of judicial power.) The Court's ultra vires

adjudication of moot IFP motion was legal error that resulted in Petitioner being denied the fundamental right to be heard on the merits of his nonfrivolous challenge to the legal existence of Oklahoma (right to be heard was in effect due to him being too poor to pay docket fee). Pursuant to this Court's precedent, Petitioner has Art. III standing to challenge Oklahoma's legal existence and a 14th Amendment right to be heard on said challenge; and, consequently, this Court has the DUTY—under Art. III & Art. VI, cl. 3 of U.S. CONST.—to examine as a justiciable issue Petitioner's challenge to legal existence of Oklahoma. See *Pacific States*, supra, 223 U.S. at 141-142. But

without explaining why Petitioner's HABEAS writ is frivolous or malicious and without examining as a justiciable issue his contention as to the illegal existence of Oklahoma, the Court dismissed as frivolous or malicious his habeas writ, which was legal error. See *Washington v. L.A. County Sheriff's Dep't*, 833 F.3d 1048, 1055 (9th Cir. 2016) (A suit cannot be characterized as frivolous or malicious unless the court makes on the record determination that suit has no basis in law or fact, or that it was filed with intent to harm another); *Wells v. Brown*, 58 F.4th 1347, 1358 (11th Cir. 2023) (dismissing court must give some signal in its order the action or appeal was dismissed because it was frivolous, malicious, or failed to state a claim);

Thompson v. D.E.A., 492 F.3d 428, 436
(D.C. Cir. 2007) (dismissal does not count
as a strike unless the Court expressly
states that appeal itself was frivolous
or malicious or failed to state a claim).
The Court's order deny^{ing} IFP and
dismissing habeas writ did not
expressly state that habeas writ
was malicious or frivolous, nor did
it give a statement of reasons for
the decision or demonstrate reliance
on facts and legal authorities. All of
said omissions amounted to an
abuse of judicial power. See Judicial
Misconduct, *supra*, 425 F.3d at 1185
(It is wrong and highly abusive for
a judge to exercise his power without
the normal procedures and trappings of
the adversary system--a motion, an
opportunity for the other side to
respond, "a statement of reasons

for the decision," reliance on legal authority. These niceties of orderly procedure lend legitimacy to the judicial process by ensuring that judicial action is—and is seen to be—based on law, not the judge's caprice).

The Court also committed legal error by sua sponte dismissing habeas petition on procedural grounds without giving Petitioner fair notice and an opportunity to respond. See *Ethridge v. Bell*, 49 F.4th 674, 682 (2nd Cir. 2022) (court generally must provide federal habeas petitioner BEFORE dismissing sua sponte a habeas petition on procedural grounds); *Day v. McDonough*, 547 U.S. 198, 210 (2006) (of course, before acting on its

own initiative, a court MUST accord the parties fair notice and an opportunity to present their positions).

All of the aforementioned legal errors resulted in Petitioner being denied his 14th Amendment right to be heard (due to being too poor to pay docket fee).

A court abuses its judicial power when it commits legal error that result in individuals being denied their basic or fundamental procedural rights. See, e.g., Shaman, Lubet & Alfani, *supra*, Judicial Conduct and Ethics, § 2.02, at 37 (3d ed. 2000) ("... The sort of evaluation that measures the seriousness of legal error is admittedly somewhat subjective, but the courts seem to

agree that legal error is egregious when judges deny individuals their basic or fundamental procedural rights")) ; In re Quirk, 705 So.2d 172, 178 (La. 1997) ("A single instance of serious, egregious legal error, particularly one involving the denial to individuals of their basic or fundamental rights, may amount to judicial misconduct" (citing Jeffrey M. Shaman, Judicial Ethics, 2 Geo. J. Legal Ethics 1, 9 (1988))) ; also see Judicial Misconduct, *supra*, 425 F.3d at 1185 (same).

An abuse of judicial power is "prejudicial to the effective and expeditious administration of the business of the court(s)." See Judicial Misconduct, *supra*, 425

different. Because the Court would have ruled on merits of Petitioner's nonfrivolous, un-contested challenge to Oklahoma's legal existence — as the Court was bound to do by Art. III, §§ 1, 2, Art. VI, cl. 3, and by this Court's decision in *Pacific States*, supra, 223 U.S. at 141-142 — instead of denying him due process (by dismissing his habeas without stating why it is frivolous or malicious) and denying him equal protection of law (by denying moot IFP motion without determining that Petitioner lied about being poor.

CONCLUSION

Court's adjudication of moot IFP motion was contrary to Art. III, § 2 and to 14th Amendment

of U.S. CONST. Its denial of Petitioner's access to habeas writ due to poverty was contrary to both 14th Amendment's equal protection of law clause and to Art. I, §9, cl. 2 of U.S. Constitution. Hence, Petitioner ask(s) the reviewing Justice or tribunal to VACATE order denying moot IFP motion and proceed to the merits of his Rule 20 HABEAS CORPUS WRIT.

And if the Court denies this motion for reconsideration, Petitioner request(s) that the Court state reasons for its decision and cite legal authorities in support thereof — for the purpose of “lending legitimacy to the judicial process by ensuring that judicial action is — and is seen to be — based

on law, NOT THE COURT'S CAPRICE,"
see Judicial Misconduct, supra,
425 F.3d at 1185.

IT IS SO PRAYED.

Respectfully Submitted,
Dexter L. Johnson
Pro se