

ORIGINAL

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Joel Marvin Munt --- PETITIONER
(Your Name)

VS.

District of Minnesota --- RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

No Court has ruled on the merits
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joel Marvin Munt
(Your Name)

970 Pickett St. N.
(Address)

Bayport, MN 55003
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Did the 8th Circuit err in not granting Petitioner a Writ of Mandamus?
2. Was it improper for the District of Minnesota to refuse to docket and consider Petitioner's TRO?

LIST OF PARTIES

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

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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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 issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 5, 2017.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix B.

☐ An extension of time to file the petition for writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.

A copy of that decision appears at Appendix ____.

☐ No petition for rehearing was timely filed in my case.

☐ 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 writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

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

STATEMENT OF THE CASE

1. Did the 8th Circuit err in not granting Petitioner a Writ of Mandamus?

Petitioner sought a Writ of Mandamus from the 8th Circuit pursuant to Fed.R.App.P. 21 after the Clerk at the District of Minnesota refused to even docket his request for a Temporary Restraining Order(TRO). The 8th Circuit refused the petition without explanation. A request for a rehearing or rehearing en banc was then filed.

By denying my Petition for Writ of Mandamus the 8th Circuit has deprived me of my right of access to the courts as guaranteed by the 1st and 14th Amendments. As was laid out to the District Court, without the relief requested in my TRO it is impossible for me to meaningfully file the suit to remedy the issues the TRO seeks temporary relief from. And at any time the DOC could deprive me of the evidence and materials I need to prosecute that suit successfully.

2. Was it improper for the District of Minnesota to refuse to docket and consider Petitioner's TRO?

a. Facts Necessary to understand issue presented

I am a prisoner in the custody of the Minnesota Department of Corrections (DOC). The DOC controls what legal resources I have access to and what access I have to those resources. For some time I have been preparing a suit seeking relief from DOC

created impediments to my access to the courts and redress the harm that has already occurred. The suit is intended to address a wide range of impediments and see them remedied. However, the impediments themselves make the filing and service of the suit to see them addressed impossible and irreparable damage is likely in the interim that would greatly attenuate my ability to effectively prosecute the suit (see attached TRO that I attempted to file with the District of Minnesota (*Appendix C*) and harm from any diminishing of that suit (*Appendix D*)).

Petitioner filed his TRO in an effort to gain temporary relief from the impediments so that it would be possible to file and serve his Complaint.

The Clerk returned my TRO, claiming he was directed to do so, but not naming who directed him to do so. I then attempted to send it to a specific judge as permitted under Fed.R.Civ.P. 5(d)(2)(B). Again it was returned by the clerk as directed by some anonymous person. I then sent a letter trying to get the Clerk to identify who directed him to return my filings. The Clerk never responded.

United States District Court Judge Susan Richard Nelson and Magistrate Judge Steven E. Rau are material witnesses in that suit, thus they are disqualified pursuant to 28 USC § 455 (b)(5)(iv) from participating in it.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

.Const.Art.VI, cl. 2
.Const.Amd.1 - Right to Petition
.Const.Amd.14 - Right to Due Process
paration of Powers
28 USC § 455 (b) (5) (iv)
28 U.S.C. 1651
Fed.R.App.P. 21
Fed.R.Civ.P. 3
Fed.R.Civ.P. 5(d) (2) (B)
Fed.R.Civ.P. 5(d) (4)
Fed.R.Civ.P. 65(b)

No district court judge has made any ruling in this and I have no means to get it before a judge with the clerk returning it.

b. Argument

1. 1st Amendment right to petition the government for redress of grievances, which requires that the government not abridge this right that is vital to the vindication of any other rights. Government officials have a duty to obey the Constitution. *Brewer v. Hoxie Sch. Dist. No. 46*, 238 F.2d 91, 99 (8th Cir. 1956) (citing U.S.Const.Art.VI, cl. 2).

This includes a right not to be interfered with in performance of that duty. *Id.* Which clearly this unnamed official did. Note that Judges are also under an affirmative duty to obey the Constitution. The Clerk had an affirmative duty to docket my request for a Temporary Restraining Order (TRO) and the Court had a duty to consider and grant it.

2. All Writs Act (28 U.S.C. 1651) which permits this Court to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and

principles of law." Again, there was no lack of authority to hear my TRO.

3. Fed.R.Civ.P. 5(d)(4) states "The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice." Here the clerk claimed Fed.R.Civ.P. 3 required a complaint to be filed before a TRO could be sought because a complaint is required to start an action. Yet Rule 5 does not permit him to refuse to file it for this reason. This rule is nondiscretionary. Also, Fed.R.Civ.P. 65(b) does not state such requirement. (Note that 28 USC 1361 permits filing a mandamus and puts no such requirement). Further he is incorrect. Courts have ruled a TRO can be filed without having exhausted, yet a complaint cannot be filed without having exhausted, so obviously a TRO may be filed before the Complaint. Further, since the impediments I seek to be remedied prevent me from being able to file a complaint, such an interpretation of the rule would be an unconstitutional abridgment of my right to petition the government for a redress of grievances. The clerk had a legal duty to file my TRO and did not do so.

4. Rule 3 contains no text preventing filing of a TRO before a complaint nor does Rule 65(b) contain such a requirement.

5. "Federal courts have the power to afford all remedies necessary to the vindication of federal substantive rights defined in statutory and constitutional provisions except

where Congress has expressly indicated that such remedy is not available." *Action v. Gannon*, 450 F.2d 1227, 1238 (8th Cir. 1971). Congress has stated the Court has the power to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." *All Writs Act*. Rules 3 and 65(b) do not expressly prevent a TRO from preceding a Complaint. Since I cannot file my Complaint without the relief sought in my TRO and may forever lose my ability to do so, it is clearly necessary to vindicate my constitutional right to petition the government for redress. Logic would dictate there must be some remedy available for when you are prevented from filing a Complaint and may lose all the evidence to prosecute the claims, both of which need relief. The point is, the clerk's justification for returning my pleading is clearly inadequate to ignore his nondiscretionary duty to do so.

6. Under 28 USC 1651, federal courts can issue all writs necessary and appropriate. *Brewer* at 103. Federal laws are binding alike upon the courts and the people. *Brewer* at 101. Nothing in this law requires a complaint exist before relief can be granted.

7. An indefinite stay on proceedings has been held by this court to violate due process. See *Peterson v. Nadler*, 452 F.2d 754, 755, 756 (8th Cir. 1971)
8. I have been unable to find any case law supporting the position that Fed.R.Civ.P. 3 bars pre-complaint motions.
9. I remember seeing a case, though I have no means of locating it again since I have no ability to search Federal District and Circuit Court cases, where it was held that exhaustion was not required to seek preliminary injunctive relief. Since exhaustion is required before a complaint can be filed, that implies that pre-complaint relief can be sought.
10. In so much as an unnamed person in the District of Minnesota has interpreted Fed.R.Civ.P. 3 to bar pre-Complaint TROs, the rule is an unconstitutional suspension of my 1st Amendment right to petition the government and a violation of my right to due process, as I cannot file or serve my complaint without relief from the impediments it seeks to challenge. Therefore it cannot justify clerk failing in his nondiscretionary duty to file my pleadings.
See generally *Brewer v. Hoxie Sch. Dist. No. 46*, 238 F.2d 91, 99 (8th Cir. 1956) ("All provisions of federal, state, or local laws requiring or permitting such [violations of the constitution] must yield").

11. "The jurisdiction of the federal courts to issue an injunction to protect rights safeguarded by the Federal Constitution is well established." *Brewer v. Hoxie Sch. Dist. No. 46*, 238 F.2d 91, 91 (8th Cir. 1956).

"The federal courts have the power to afford all remedies necessary to the vindication of federal substantive rights defined in statutory and constitutional provisions except where Congress has explicitly indicated that such remedy is not available." *Id* at 91, 98; See *Spiel Motor Sales Co. v. Dodge*, 295 US 89, 96. An injunction will issue whenever necessary "to afford adequate protection of constitutional rights." *Brewer* at 98; *Spielman* at 95. The district court had the jurisdiction and power to hear my TRO and grant the relief necessary for me to bring my suit to vindicate my Constitutional rights.

12. 28 USC § 455 (b) (5) (iv) disqualifies those who are to be witnesses from presiding over a suit. United States

District Court Judge Susan Richard Nelson and Magistrate Judge Steven E. Rau are both material witnesses whose testimony is vital to many of the claims in the suit I am attempting to bring and the initial letter with the TRO

informed the Court of this fact. The Clerk has refused to respond to my requests that the unnamed individual be identified.

This is a fundamental question of access to the courts. It may even be a matter of first impression. Since I am denied access to Federal Circuit and District cases I cannot check and the 8th Circuit gave no reasoning for refusing my Petition despite it's clearly unconstitutional effect of complete denial of access to the courts.

It would seem very important that this Court rule on these matters, both the clearly establish the law and to avoid a manifest injustice. Rule 35 did not seem to require a great deal of pleading.

I hope that this Court will grant this Petition. I am at a loss. For years I have been trying to get my suit filed to remedy access to the Courts violations by the Minnesota Department of Corrections. As was shown in my TRO, it is now very clear that my suit will never be filed without some relief from the very impediments that it seeks to remedy (or without being forced to abandon much of the cause of action, thereby crippling it and waiving many constitutional violations - you cannot be forced to waive a constitutional right to exercise one). I was shocked to have an unnamed individual (presumably the judge or magistrate barred from the case since the Clerk has

refused to identify them) preventing my request from even being heard.

And that is the crux of the matter. Without relief from this court, my request for relief will never even be heard, which will prevent my suit from being heard. And without either being heard, there is nothing for me to appeal. Therefore I will have been completely denied access to the courts.

Beyond a doubt an injustice is occurring in this case.

REASONS FOR GRANTING THE PETITION

I am not sure what is expected of this section above what the preceding one contained, but I will try. Much of this I believe was in the last section so I will try not to be repetitive.

S.Ct.R. 10 states a non-exhaustive list of reasons for which review may be granted. This list includes:

- (a) has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court,
- (b) state court of last resort decided a federal issue contrary to another state court of last resort or a US Circuit Court,
- (c) state court decided a federal question
 - [1] that has not been, but should be settled by this Court, or
 - [2] in a way that conflicts with relevant decisions of this court.

It further states the list is "neither controlling nor fully measur[es] the Court's discretion".

I would argue that any time the Federal Constitution has been violated this Court has a duty to see that violation is redressed and in fact that upholding the Constitution is the primary duty of this Court.

"The government of the United States has been emphatically termed a government of laws, and not of men.

It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested right." *Gilmore v. People of the State of California*, 220

F.3d 987, 1006 (9th Cir. 2000) (*Gilmore*) (quoting *Marbury v. Madison*, 5 US 137, 163 (1803)).

No Federal Court has bothered to rule on the important issue before this court. The District Court Clerk refused to even file my papers. The Circuit Court denied my mandamus without an opinion. Whether a TRO can be requested before a complaint is filed is an important federal question on which this court should rule. Further, if this Court declines to hear this case it deals a severe blow to the Constitution by telling States that all they have to do is make it impossible for inmates to file complaints and they can violate their constitutional rights with impunity. I have spent years collecting proof and preparing this suit against the Minnesota Department of Corrections to see their unconstitutional impediments to my access to the courts are remedied. Yet those very impediments have long kept me from being able to file the suit and now the District Court itself adds to those impediments.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Joel Munt

Date: 11/22/2017