

CASE NO.

17-7650

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER EVERSON-PETITIONER

VS

JOHN ARMSTRONG,
CONNECTICUT COMMISSIONER OF CORRECTIONS, ET AL-RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR REHEARING

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PRO SE PETITIONER

May 8, 2018

LIST OF PARTIES

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:

Christopher Everson- Petitioner

Scott Semple, Connecticut Commissioner of Corrections-Respondent

John Armstrong, former Connecticut Commissioner of Corrections -Respondent

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STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

28 U.S.C. section 1291 provides

Final decision of district courts: The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, , and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

42 U.S.C. section 1983 provides

Civil Action for Deprivation of rights: Every person who, under color of any statute, ordinance regulation, custom, or usage of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

First Amendment provides

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fifth Amendment provides

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment section one provides

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

In 1984 the petitioner here an African American began employment with the Connecticut Department of Corrections (hereinafter referred to as DOC),. The petitioner was a stellar employee with an outstanding work record. In March of 2001 the petitioner was terminated from his employment with DOC, in 2004 the petitioner filed a timely lawsuit in Connecticut District Court under 42 U.S.C. section 1983 alleging numerous Constitutional Violations the case was filed within the prescribed statute of limitations period. The case was dismissed by the District Court after two separate summary judgments. The petitioner filed an appeal with the Second Circuit Appeals Court within the time prescribed by law, the petitioner's appeal cited that among other things that petitioner's admissible evidence ie "the names of similarly situated comparators" were discarded and replaced with names of comparators submitted by the defendant DOC at summary judgment. At the time the appeal was filed the petitioner was incarcerated in Connecticut for a matter unrelated to this case and prison official were screening the petitioners legal mail, some of the petitioners legal mail was not being delivered to the petitioner, specifically legal mail sent to the petitioner from the Appeals Court was not being delivered to the petitioner this resulted in the petitioner missing important filing and Court imposed deadlines as instructed by the Court of Appeals. The appeal was dismissed by the Court of Appeals by default judgment for failure to return a New York fee waiver, the petition had already filed an approved Connecticut fee waiver with the Appeals Court, but the Appeals Court wanted a New York fee waiver. The petitioner

requested the appeals court reopen the case, the petitioner argued *Wolf v. McDonnell*, "An inmate in a state prison has a right to legal mail and a right to access to the federal courts" request to reopen case denied, the petitioner filed Writ of Certiorari with U.S. Supreme Court, denied "as filed untimely", the untimeliness was attributed to the mail delays, filed request for rehearing, denied, filed Extraordinary Writ, denied. Upon his release from incarceration the petitioner by his attorney made numerous communications with DOC. Attempting to resolve the matter, the petitioner's attorney passed away during that time. In 2016 the Petitioner refiled the case in the same District Court as the 2004 claim, District Court dismissed claim citing "Res Judicata" and frivolous, Petitioner filed appeal to Second Circuit Appeals Court, Appeals Court upheld the District Court's ruling and also cited time barred stating 3 year statute of limitations had expired, petitioner filed request for panel rehearing and rehearing En Banc, Denied, The petitioner filed a Petition for Writ of Certiorari with this Court it was denied. This Petition for Rehearing followed.

GROUNDS FOR PETITION OF REHEARING

The decision of the Appeals Court denies the petitioner of his right of "access to the court" This is a case of a lawsuit being prevented from being appealed while the petitioner was incarcerated and denying the petitioner's substantial right of "access to the courts". *Bounds v. Smith*, 430 U.S. 817,821 (1977) "it is now established beyond doubt that prisoners have a constitutional right of access to the courts", *Bounds*, at 822 "More recent decisions have struck down restrictions and require remedial measures to insure that inmate access to the court is adequate effective and meaningful". Pursuant to: under the 1st Amendment right to petition the government for a redress of grievances and the 5th Amendment grants the right of: No person shall be deprived of life liberty or property without due process and 14th Amendment right of: All persons born or naturalized in the United States and subject to the jurisdiction thereof; No state shall deny to any person within its jurisdiction the equal protection of the law. *Lewis v. Casey*, 518 U.S. 343, 346 (1996) "prisoners right of access to the courts protected by the 1st, 6th and 14th Amendments".

The defendant's actions prevented the appeal from being heard

The Department of Corrections, via prison officials, prevented the petitioners lawsuit from being heard by the 2nd Circuit Appeals Court while the petitioner was in department of corrections custody, by censoring the petitioners communications with the Appeals Court, by

withholding the petitioners legal mail sent to him by the Appeals Court, causing the petitioner to miss important court imposed deadlines resulting in the appeal being dismissed by default during the filing stage of proceeding without ever being heard by the Appeals Court, additionally, the decision of the Appeals Court not to allow the petitioner case to be heard at appeal denies the petitioners right of "access to the courts". An Appeal was filing within the time allowed by court rules. When the petitioner filed his appeal with the 2nd Circuit Court of Appeals, he included with the documents that were filed an approved fee waiver approved by the Connecticut District Court allowing the petitioners Appeal of the District Court decision to proceed "in forma pauperis" pursuant to Federal Rules of Appellate Procedure "FRAP" Rule 24 (a) (1) (A),(B) and (C) and (a)(2) reads: ("(a) Leave to Proceed in Forma Pauperis.(1) Motion in the District Court. Except as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that: (A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs; (B) claims an entitlement to redress; and (C) states the issues that the party intends to present on appeal (2) Action on the Motion. If the district court grants the motion. The party may proceed on appeal without repaying or giving security for fees and costs, unless a statute provides otherwise. If the district court denies the motion, it must state its reasons in writing"). The District Court granted the petitioners motion for the Appeal to proceed "in forma pauperis".

The decision of the Appeals Court effectively denies the petitioner's right of access to the court.

The petitioner filed a Title 42 U.S.C. section 1983 claim in the District Court for Connecticut in March 2004. The petitioner was incarcerated in May 2008 until April of 2012, the petitioner's lawsuit was still active during his time incarcerated. The petitioner was at the Appellate stage of his Title 42 U.S.C. section 1983 claim and he was denied access to the Appellant Court. *Wolf v. McDonnell*, 418 U.S. 539, 578 (1974) "it is fundamental that access of prisoners to the courts for the purpose of presenting their complaints may not be denied or obstructed" at 579 "the right of access to the courts, upon which Avery was premised, is founded in the due process clause, and assures that no person will be denied the opportunity to present to the Judiciary allegations concerning violations of fundamental constitutional rights" see *Johnson v. Avery*, 383 U.S. 483 (1969). The decision of the District Court was appealable and the petitioner had a right to appeal the decision of the District Court and the petitioner had a right to access the Appellate Court. During the time that the petitioner was incarcerated all mail received or sent out by the petitioner was processed by prison officials, prison officials have complete control over the prisoners mail, when prison officials withheld the petitioners legal mail sent to him by the 2nd Circuit, the information and instructions of the 2nd Circuit Court of Appeals was also withheld from the petitioner. The 2nd Circuit Court of Appeals sent the petitioner two separate letters with enclosed forms and instructions to fill-out and return to the Appeals Court enclosed New York Fee Waivers. Two letters sent to the petitioner from the Appeals Court acknowledge receipt of Connecticut fee waiver granted by the District Court, but indicate that a New York fee

waiver was required because the Appeals Court was located in New York State. The two separate letters and forms from the Appeals Court were withheld from and never delivered to the petitioner this resulted in the petitioners lawsuit being dismissed by default. The petitioner only learned of the appeal being dismissed by receiving a letter from Connecticut office of Attorney General "Assistant Attorney General" notifying the petitioner that his appeal had been dismissed and asking the petitioner to cover cost of bond. In the 2004 case in the Circuit Court of Appeals the petitioner filed both a motion to reopen the case and to recall the mandate both were denied by the Circuit Court of Appeals, in both the 2004 decision and the affirming of the District Courts decision in the 2016 case was reaffirmation of the petitioner being denied access to the courts. The two decisions of Appeals Court not to allow the petitioner's 42 U.S.C. section 1983 case to proceed denied the petitioner the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights. The petitioner had a substantive constitutional right of "access to the courts" and the decision of the 2nd Circuit Appeals Court denied the petitioner of his right to access the court on two decisions: on August 12 2009 Docket No. 09-0903-cv and on September 7, 2016 Docket No. 16-3381-cv.

Access to the courts is a substantive right

Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803) "that the very essence of civil liberty certainly consist in the right of every individual to claim the protection of the laws, whenever he receives an injury". Blacks law dictionary tenth edition p. 1520 defines "substantive right": An essential

right that potentially effects the outcome of a lawsuit and is capable of legal enforcement and protection. *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508,513 (1972)

“(“That right, [the right of access to the courts] is part of the right of petition protected by the First Amendment”) This lawsuit was never heard by the Circuit Court of Appeals, the petition had several appealable issues that were included in his appeal of the District Courts decision. *Tennessee v. Lane*, 541 U.S. 509 (2004) “fundamental right of access to the courts”, “states must provide access for prisoners”, “right protected by Due Process” *Wolf v. McDonnell*, 418 U.S.539, 556 (1974) “ Prisoner retain right of access to the courts” “Prisoners are protected under the Equal Protection Clause of the 14th Amendment..” “They may not be deprived of life, liberty, or property without due process of law”.

Other circuit decisions

Other circuits recognize the right of prisoners to receive legal mail and “to access the courts”. The 5th Circuit in *Brewer v. Wilkinson*, 3 F.3d 816 (5th Cir. 1993)“Prisoners have a right to legal mail and access to the court” and *Taylor v. Sterrett*, 532 F.2d 462 (5th Cir. 1976) “inmates court access right outweighed prisons security interest” also the 9th Circuit *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204 (9th Cir. 2017) “prisoners protected by 1st Amendment to receive legal mail”.

GVR “Grant Vacate Remand”

The petitioner acknowledges and request the court consider has an alternative to denial of his Petition for Rehearing, the GVR. see *Lawrence v. Chater*, 516 U.S. 163, 166-167 (1996)

“Regardless of it’s earlier history, however the GVR order has, over the past 50 years, become an integral part of this court’s practice , accepted and employed by all sitting and recent justices. We have GVR’d in light of a wide range of developments, including our own decisions. 167, “GVRs assist the court below by flagging a particular issue that it does not appear to have fully considered,...and alleviants the “{p}otential for unequal treatment” ...”a reasonable probability “ that the decision below rest upon a premise that the lower court would reject if given the opportunity”. A Petition for Rehearing can linger for a couple of years, until legal landscape changes. There is no time table for a Petition for Rehearing see *Fla v. Rodriquez*, 461 U.S. 940 (1983) (rehearing of denial of Cert dated May 26 1981, Granted May 23 1983) also *Place v. Weinberger*, 426 U.S. 932 (1976) (rehearing of denial of Cert dated November 25 1974, Granted June 14 1976). A Petition for Rehearing can remain on the Courts Docket until the time when the Court is prepared to address the issues. See *Melson v. Allen*, 130 S. Ct 3401 (Cert denial date 10/5/09 GVR Granted 6/21/10); *Friend v. U.S.*, 517 U.S. 1152 (Cert denial date 1/22/96 GVR Granted 4/22/96); *Adams v. Evatt*, 511 U.S. 1001 (Cert denial date 6/14/93 GVR Granted 3/28/94); *Hitchcock v. Fla*, 505 U.S. 1215 (Cert denial date 10/15/91 GVR Granted 6/29/92); *Simmons v. Sealand Servs*, 462 U.S. 1114 (Cert denial date 10/12/92 GVR Granted 6/13/83). *Ash v. Tyson Foods*, 546 U.S. 454, 457-58 (2006) “The Court will vacant and direct the court below to apply the proper standard to the facts” see *California v Roy*, 519 U.S. 2, 4-5 (1996)

CONCLUSION

The petition for rehearing should be granted, or GVR'd

Respectfully submitted,

A handwritten signature in black ink that reads "Christopher Everson". The signature is fluid and cursive, with a long horizontal flourish at the end.

Christopher Everson, Pro Se Petitioner

Date: May 8, 2018

CERTIFICATE OF A PARTY UNREPRESENTED BY COUNSEL

Pursuant to the Rules of the Supreme Court of the United States Rule 44.2, this petition is limited to substantial grounds not previously presented, this petition is restricted to the grounds specified in this paragraph and that it is presented in good faith and not for delay. The Circuit Court of Appeal's decision denied the Petitioner his substantial fundamental constitutional right of "access to the courts" pursuant to the 1st, 5th, 6th and 14th Amendments: to petition the government for a redress of grievances, no person shall be deprived of life, liberty or property without due process of law.

May 8 2018

A handwritten signature in black ink that reads "Christopher Everson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Christopher Everson, Pro se petitioner