

IN THE SUPREME COURT OF THE UNITED STATES

TESSA CHILDRESS, a/k/a TESSA RANI RAYBOURNE GIBSON
CARLISLE CHILDRESS, filed as TESSA RANI RAYBOURNE
GIBSON CARLISLE CHILDRESS, PETITIONER,

v.

CITY OF CHARLESTON POLICE DEPARTMENT; LIEUTENANT
CHITO T. WALKER; OFFICER SANDERS; OFFICER KOEGLER;
SERGEANT RATLIFF; D-O FNU WILSON; D-O FNU;
D-O FNU GANT, RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO
THE FOURTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF REHEARING

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Petitioner, Pro Se

TABLE OF CONTENTS

	Page
Table of Authorities.....	ii
Petition for Rehearing.....	1
Factual & Procedural Background.....	1
A. Proceedings Below....	1
B. Proceedings Before This Court.....	3
Reasons for Granting the Petition	3
Conclusion	7
Certificate of Counsel (Petitioner).....	8

TABLE OF AUTHORITIES

	Page
Cases:	
<i>Armstrong v. Manzo</i> , 380 U.S. 545 (1965)	4
<i>County of Sacramento v. Lewis</i> , 523 U.S. 833 (1998)	4
<i>Cuyler v. Sullivan</i> , 446 U.S. 335 (1980)	6
<i>Duncan v. Louisiana</i> , 391 U.S. 145, 88 S.Ct. 1444 (1968)	4
<i>Erickson v. Pardus</i> , 551 U.S. 89 (2007)	6
<i>Espinoza v. United States</i> , 52 F.3d 838 (10th Cir. 1995)	5
<i>Estelle v. Gamble</i> , 429 U.S. 97 (1976)	6
<i>Haines v. Kerner</i> , 404 U.S. 519 (1972)	6
<i>Halbert v. Michigan</i> , 545 U.S. 605 (2005)	6
<i>Horenkamp v. Van Winkle & Co.</i> , 402 F.3d 1129 (11th Cir. 2005)	5
<i>Lassiter v. Department of Social Services</i> , 452 U.S. 18 (1981)	5
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976)	4
<i>Mickens v. Taylor</i> , 122 S. Ct. 1237 (2002)	5
<i>Sanchez v. United States Postal Service</i> , 785 F.2d 1236 (5th Cir. 1986).....	3
<i>Santosky v. Kramer</i> , 455 U.S. 745 (1982)	5
<i>Schacht v. United States</i> , 398 U.S. 58 (1970)	7
<i>Stanciel v. Gramley</i> , 267 F.3d 575, 581 (7th Cir. 2001)	2
<i>Taylor v. Dickel</i> , 293 F.3d 427, 431 (8th Cir. 2002)	2
<i>Turner v. Rogers</i> , 564 U.S. 431, 441 (2011)	2
<i>Zinerman v. Burch</i> , 494 U.S. 113, 125, 110 S.Ct. 975 (1990)	4

TABLE OF AUTHORITIES CONTINUED

	Page
Constitution/Rules:	
U.S. Const. Amend. XIV.....	3
Supreme Court Rule 44.....	1

PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44, Petitioner respectfully petitions this Court for rehearing of its June 18, 2018 order dismissing the writ of certiorari in this case. The Court denied Petitioner's pro se petition for certiorari without consideration (or knowledge) of extremely important issues that were presented to the Circuit Court but overlooked; namely, conflict of interest on the part of lead opposing counsel and emanating due process, public corruption, and separation of powers violations.

Petitioner's inadvertent failure to include those issues enabled this Court to decline certiorari without a full understanding of Petitioner's case, its complete legal history and complexity, and why, under the circumstances, the Court should exercise its discretion to reinstate the case and review the Circuit Court's lackadaisical treatment of Petitioner's case.

FACTUAL & PROCEDURAL BACKGROUND

A. Proceedings Below

Petitioner filed suit in the United States District Court for the District of South Carolina alleging that her constitutional rights were violated on April 16, 2013, by the Respondents, employees of the City of Charleston Police Department. Petitioner alleged that the named Respondents detained her, questioned her about her medical history and forced her into medical. Petitioner also alleged that the officers committed assault and battery and threats of harm.

Throughout the case, the lead attorney was Sandra Senn. In June 2016, Ms. Senn was elected as a State Senator for the Charleston District. Yet, she continued to represent the City of Charleston, the Charleston Police Department, and the Charleston Police Department Police Officers named in this action.

Petitioner's complaints to the South Carolina Supreme Court's Disciplinary Committee, the United States District Court, and the Fourth Circuit Court of Appeals were ignored; the latter in Issue No. 3 phased as "ongoing public corruption", viz-a-viz, a separation of powers argument.

After nearly four years of litigation, the case proceeded to a contested, on Petitioner's part, settlement conference. At the conference's conclusion, the District Court issued an Order dismissing the case with prejudice. Appointed counsel then abandoned Petitioner, so Petitioner filed a timely Pro Se appeal of that order, essentially alleging that: (1) she had not approved, or signed, the settlement agreement prior to the Settlement Conference; (2) that counsel did not adequately prepare her for the Conference; (3) that counsel refused to represent her in all areas of the case; (4) that counsel intimidated, and mislead, her when counsel claimed that a jury would not examine the original pleadings and documents Petitioner had filed throughout the case; and (5) that counsel intimidated, and coerced, Petitioner into accepting a monetary bribe that derived from ongoing public corruption, and to surrender her existing Constitutional rights.

Petitioner also complained that the District Court continued to proceed, and elicited oral acknowledgments from Petitioner, after counsel alerted that court that a conflict existed, and that Petitioner no longer wanted counsel to represent her.

On December 21, 2017, the Fourth Circuit affirmed the District Court's Order of Dismissal with Prejudice, finding that, despite Petitioner's claims of ineffective assistance of appointed counsel, the Sixth Amendment's guarantee of effective assistance of counsel, does not apply to civil actions, (citing *Turner v. Rogers*, 564 U.S. 431, 441 (2011)); and that Petitioner's remedy for any inadequate representation by counsel lies in a malpractice action against counsel, not a reversal of the district court's judgment. (citing *Taylor v. Dickel*, 293 F.3d 427, 431 (8th Cir. 2002); *Stanciel*

v. Gramley, 267 F.3d 575, 581 (7th Cir. 2001); *Sanchez v. United States Postal Service*, 785 F.2d 1236, 1237 (5th Cir. 1986) (per curiam).

Finally, as for Petitioner's contention that was coerced or compelled by the district court and a Defendant (sic) into accepting the settlement agreement, the Fourth Circuit stated that Petitioner pointed to nothing in the record supporting those contentions.

Petitioner did not file a petition for rehearing from that judgment.

B. Proceedings Before This Court

Still proceeding pro se, Petitioner timely filed a petition for a writ of certiorari and motion for leave to proceed in forma pauperis in this Court. The petition was initially due on or before March 21, 2018; however, on March 15, 2018, the Honorable John G. Roberts Jr., Chief Justice, extended that deadline until on or before April 20, 2018. The Court distributed the petition for Conference of June 14, 2018, and denied the petition on June 18, 2018.

REASONS FOR GRANTING THE PETITION

Supreme Court Rule 44 provides, in relevant part, that any petition for the rehearing of an order denying a petition for a writ of certiorari must be filed within 25 days after the date of the order of denial, shall can be limited to substantial grounds not previously presented.

Here, the Court denied the petition for a writ of certiorari, but did so without the following substantial, inadvertently, omitted grounds of conflict of interest on the part of lead opposing counsel and emanating due process, public corruption, and separation of powers violations.

The Due Process Clauses prohibit governments from depriving individuals of "life, liberty, or property without due process of law. U.S. Const, Amend. XIV. There are two kinds of due process issues: procedural and substantive. Procedural due process means the procedures that the Constitution requires before government can deprive an individual of life, liberty, or property.

Substantive due process "bars certain arbitrary, wrongful actions 'regardless of the fairness of the procedures used to implement them:' See *Zinerman v. Burch*, 494 U.S. 113, 125, 110 S.Ct. 975 (1990) (citation omitted); accord, *County of Sacramento v. Lewis*, 523 U.S. 833, 840, 118 S.Ct. 1708 (1998).

"Substantive due process" sometimes refers to the protections of the First, Fourth, Sixth, and Eighth Amendments, because they were initially applied only to the federal government. However, they now apply to the states because they are "incorporated "in the Fourteenth Amendment's Due Process Clause. See *Duncan v. Louisiana*, 391 U.S. 145, 147- 48, 88 S.Ct. 1444 (1968).

Both "procedural due process" and "substantive due process" may be implicated in civil cases with indigent litigants. In other words, when "governmental decisions . . . deprive individuals of 'liberty' or 'property' interests," procedural due process places limitations on the process the government may use in order to ensure individuals have the "opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 332-33 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

Hence, the argument that indigent defendants are denied due process of law when they are forced to endure an ongoing conflict of interest on the part of the lead apposing attorney fits well within the language of procedural due process. On the other hand, substantive due process, which inquiries into whether the government has sufficient justification to take away an individual's "fundamental rights," may also be implicated. For example, this Court has recognized that a parent's "care, custody, and management of his or her children" is a fundamental right for the

purposes of the Due Process Clause. *Santosky v. Kramer*, 455 U.S. 745, 758 (1982) (quoting *Lassiter v. Department of Social Services*, 452 U.S. 18, 27 (1981))

Senator Senn's dual representation of conflicting interests caused Petitioner to be deprived of an adequate opportunity to be meaningfully heard during the pendency of the case.

A conflict of interest is defined as a situation in which a person has a duty to more than one person or organization, but cannot do justice to the actual or potentially adverse interests of both parties. This includes when a public official's personal interests are contrary to his/her loyalty to public business. Moreover, an attorney cannot represent two parties in a dispute and must avoid even the appearance of conflict. See, e.g., *Mickens v. Taylor*, 122 S. Ct. 1237 (2002), a case involving a potential conflict of interest where counsel previously represented the petitioner's victim.

Mickens, was convicted of and sentenced to death for the sodomy and murder of Timothy Hall. filed a petition for writ of habeas corpus in the Court of Appeals for the Fourth Circuit, alleging he was denied effective assistance of counsel because his attorney was conflicted at the trial. The same attorney was appointed to represent Hall in an earlier assault and concealed weapons case, and had met with Hall just 10 days before Hall's body was found. Four days after Hall's body was discovered, the court dismissed the charges against Hall and dismissed Saunders from the case. Three days later the same judge appointed this attorney to represent Mickens for the murder and sodomy of Hall. However, the attorney failed to disclose the previous representation to Mickens, the court, or co-counsel. The court failed to inquire into the potential conflict created by counsel's appointment. Mickens discovered the conflict and appealed. The Court of Appeals affirmed the conviction, finding that Mickens had failed to show both an actual conflict of interest and an adverse impact.

Mickens sought and was granted certiorari in this Court, on the sole issue of what a defendant must show to demonstrate a Sixth Amendment violation where the court failed to inquire into a potential conflict of interest that the court knew or should have known about. The majority found that Mickens failed to satisfy a two-prong test, requiring "both an actual conflict of interest and an adverse effect even if the trial court failed to inquire into a potential conflict about which it reasonably should have known." *Cuyler v. Sullivan*, 446 U.S. 335 (1980). Its focal point was not that an ethical violation had occurred, but whether *Sullivan* applied. Applying *Sullivan*, it found the petitioner was entitled to a reversal only after establishing that his attorney's conflict had an adverse impact on the trial's outcome.

Throughout the case, the lead attorney was Sandra Senn. Ms. Senn was elected a State Senator for the Charleston District, and then continued to represent diverse interests by never removing herself from the case. Petitioner complained to the South Carolina Supreme Court's Disciplinary Committee, the United States District Court, and the Fourth Circuit Court of Appeals, but neither took any steps to remedy the conflict. Consequently, their failure to inquire into the existing conflict of interest created by Senator Senn's dual role, about which they knew or reasonably should have known, amounted to ongoing public corruption, and separate of powers, that adversely affected the outcome of Petitioner's case.

Given the leniency typically afforded pro se litigants inadvertently omitting issues like those enclosed, should not deprive Petitioner of his day in this Court. As the Court has recognized on several occasions, "[n]avigating the appellate process without a lawyer's assistance is a perilous endeavor for a layperson." *Halbert v. Michigan*, 545 U.S. 605, 621 (2005); see also, e.g., *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (emphasizing that "[a] document filed pro se is 'to be liberally construed'"); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (same); *Haines v. Kerner*, 404 U.S. 519,

520-21 (1972) (same). That is no less true of the process before this Court. Accordingly, this Court can and should excuse inadvertent failures to comply with the Court's rules when they result from the difficulties inherent in proceeding pro se. Cf. *Schacht v. United States*, 398 U.S. 58, 64 (1970) ("The procedural rules adopted by the Court for the orderly transaction of its business ... can be relaxed by the Court in the exercise of its discretion when the ends of justice so require.").

In short, there is no reason not to reinstate this case and every reason to do so. Convincing this Court to review a case is no mean feat for any Petitioner, let alone for a Petitioner proceeding pro se. It would be both unfortunate and inequitable to deny Petitioners the rare opportunity to have his case heard by the Supreme Court of the United States.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for rehearing, vacate the order dismissing the writ of certiorari, and restore this case to its merits docket

Respectfully submitted this 12th day of July 2018.

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CERTIFICATE OF COUNSEL (PETITIONER)

I hereby certify that this Petition for rehearing is presented in good faith and not for delay.

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