

No. _____

*In The
Supreme Court of the United States*

Original

JAMES WILLIAMS

Petitioner,

v.

CLARK, OFFICER, METROPOLITAN POLICE, et al.,

Respondents.

**On Petition for Writ Of Certiorari
To The United States Court of Appeals
For The Ninth Circuit**

PETITION FOR WRIT OF CERTIORARI

JAMES WILLIAMS
5117 Garden Lane, Apt. B
Las Vegas, Nevada 89119
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Petitioner in Pro Se

QUESTION PRESENTED

Whether the Ninth circuit Court of Appeals in *James Williams v. Clark, Officer, Metropolitan Police, et al.*, No. 16-17243 (9th Circuit Mandate 2/13/2018) acted outside its proper purpose to secure Petitioner's Unalienable Rights under the Ninth Amendment; violated Plaintiff's First Amendment Right to petition the Government for redress of grievances, and Fifth Amendment and Fourteenth Amendment Rights to invoke Due Process of Law and Equal Protection, and Seventh Amendment Right to Trial by Jury; thereby violating Plaintiff's Right fundamental fairness and access to the Court, by affirming the District Court's Order Dismissing the case for failure to comply with the Local Rules and the Court's Order pertaining to participation in preparation and filing a Joint Pretrial Order, and Denying Plaintiff Leave to Amend, which is based upon disingenuous legal legerdemain.

PARTIES TO THE PROCEEDINGS

The Judge having an interest in this Appeal is the Honorable Andrew P. Gordon United States District Judge.

The following were parties to the proceedings in the United States Court of Appeals for the Ninth Circuit:

1. James Williams, Petitioner, was the Plaintiff/Appellant below.
2. Clark, Officer Metropolitan Police, were the Defendants/Appellees.

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OPINIONS BELOW

The United States District Court, District of Nevada, Dismissed the case of *James Williams v. Clark, Officer, Metropolitan Police, et al.* 2:14-cv-00414-APG-PAL, against Petitioner, With Prejudice, on November 29, 2016, as a sanction for this Petitioner's alleged refusal to (1) participate in preparing a joint pretrial order and (2) comply with the court's orders and the Rules. This ruling was Appealed in *James Williams v. Clark, Officer, Metropolitan Police, et al.* No. 16-17243 (9th Circuit Court of Appeals December 26, 2016). This disposition is not recommended for full-text publication. The opinion of the three-judge panel of the Court of Appeals affirming the District Court ruling, was filed on October 5, 2017. After denying Plaintiff's Request for Rehearing En Banc on February 2, 2018, the Order from the United States Court of Appeals was filed on February 12, 2018

JURISDICTION

The opinion of the Court of Appeals was filed October 5, 2017. The Court of Appeals denied a Request for Rehearing En Banc on February 2, 2018. The Court has Jurisdiction under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISIONS

The Seventh Amendment to the Constitution of the United States provides: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of common law."

The Fourteenth Amendment rights of due process and equal protection are accorded parties in Federal actions through their Fifth Amendment due process rights. *Bolling v. Sharpe*, 347 U.S. 497 (1954).

Federal Rule of Civil Procedure (Fed. R. Civ. P.) 37(b)(2)(A) include striking pleadings and dismissing an action. (Fed. R. Civ. P.) 37(b)(2)(A)(iii), (v). In determining whether to impose the harsh sanction of dismissal, the Court must reasonably weigh all of the factors as outlined in *Wanderer v. Johnston*, 910 F.2d 652, 656 (9th Cir. 1990), such the public's interest in expeditious resolution of litigation and the Court's need to manage its docket against public policy favoring disposition of cases on the merits and the availability of less drastic sanctions.

Under "newer" equal protection jurisdiction claims will lie "where the plaintiff alleges that he/she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000) paragraph 11.

Rational reasoning is the very foundation of the principles of fundamental fairness and of the due process and equal protection rights in our judicial system. No judge, either Federal or State, has the discretion to use an irrational basis as the foundation of an opinion. The requirement to provide appropriate findings and an analysis is especially applicable to those individuals who have been deprived of the right to receive court rulings immediately and to be afforded the opportunity to correct inadvertent mistakes that are based upon situations through no fault of that individual. To interpret understandable mistakes as *intentional* is an example of such an irrational ruling and an abuse of discretion when other, less drastic remedies are available such as extending the time to seek professional legal assistance in complying with

procedural issues. The petitioner was segregated and retaliated against by Defendants and the Court ignored this in denying him the right to correct procedural mistakes. This Petition for Certiorari involves a major, national judicial policy issue of exceptional importance. There is an epidemic of judicial rulings that are based upon reasoning so egregious that it defies rational explanation. Ignoring glaring factors as existed in this case, constitutes an absence of a rational connection between the facts of this case and the most drastic sanction as imposed. This dismissal is arbitrary and capricious and the rationale is grossly inappropriate. *Natural Resources Defense Council, Inc. v EPA*, 966 F.2d 1292 (9th Cir. 1992).

The courts Rulings are based on irrational and unfair reasoning so arbitrary and capricious as to offend principles of fundamental fairness and of the right to due process and equal protection clauses of the Fourteenth Amendment. The Rulings denied the Petitioner his Seventh Amendment right to have the merits of his case brought before a jury based upon mistakes relating as a result of not being properly and timely informed of certain court rulings, not as a result of intention acts on his part as alleged; while concurrently failing to liberally construe the Pleadings of a Pro Se litigant; and by allowing Defendants/Respondents to continue to conduct the affairs of Clark County through a pattern of racketeering activity and anti-competitive conduct, resulting in "extortion" of Petitioner's Unalienable/Inalienable Rights in Retaliation and for Petitioner initiating the underlying lawsuit and other litigation.

STATEMENT OF THE CASE

On March 20, 2014, JAMES WILLIAMS, hereinafter referred to as "Williams", initiated this action while being held in the custody of the Las Vegas Metropolitan Police Department

(LVMPD) at the Clark County Detention Center (CCDC). Williams only access to the procedures necessary to prepare and file a Complaint stemmed from his access to an inadequate Law Library within CCDC. To the best of his ability, Williams filed his Complaint against Defendants, ultimately determined to be CLARK, OFFICER, METROPOLITAN POLICE, et al. hereinafter referred to as "Defendants".

The basis of the Complaint pertains to multiple claims against Defendants based upon alleged Constitutional violations related to Williams' arrest and excessive and unjustified force used against him simply for selling and/or accepting donations for bottled water on the Las Vegas Nevada Strip. These claims as alleged, included seizing William's property, his money, and being stripped searched. Williams filed several Motions for Leave to Amend his Complaint as a pattern of Racketeering activity and anti-competitive conduct continued, ensued and escalated without justification and in retaliation against Williams for his attempts to pursue his rights. Williams has alleged that this pattern of retaliatory conduct directed towards him prevented him from properly pursuing his claims against these Defendants.

Williams, who is a Hebrew Israelite, "African American" male, was repeatedly segregated and denied access and/or notification of many of the Court's rulings on his Motions to Amend his Complaint. This was a direct violation of Williams' First, Fifth and Fourteenth Amendment Rights to petition the government for redress of grievances and invoke Due Process of Law, aka, access to the Court. The Court issued orders of non-compliance to Local Rule 8, against Williams due to his repeated attempts to Amend his Complaint while repeated failing to liberally construe his Pleadings as a Pro Se litigant and ignoring the fact that Williams was not

being properly and/or timely served with the Court's rulings and was not acting in bad faith as alleged.

Ultimately, the Court Ordered Williams to contact/communicate with defense counsel for the preparation of a Joint Pretrial Order or show cause in writing as to why the case should not be dismissed for failure to comply with the Court's Order. In response, Williams filed an Emergency Notice for Writ of Mandamus/Prohibition, which the District Court should have liberally construed as a Notice explaining why the case should not have been dismissed and a Request for Injunctive Relief. Further more, the only reason why Williams was unable to communicate with Defense Counsel and produce an JPO, was due to the fact Defendants' continued an on-going pattern of Racketeering activity and anti-competitive conduct directed at Petitioner in retaliation for exercising his right to have access to the Court. Lastly, contrary to Defendants' assertion, Williams was never contacted to discuss and provide any such Joint Pretrial Order. Instead, Defendants filed a separate Pretrial Order without notification to Williams.

On November 29, 2016, the District Court, District of Nevada, Dismissed Williams Case against Defendants With Prejudice.; and ignoring his latest Motion for Leave to Amend. The stated basis for this dismissal was to impose the most drastic sanction alleging that Williams intentionally and repeatedly refused to participate in preparing a Joint Pretrial Order and refused to comply with the Court's Orders and the Local Rules. However, as stated above, Petitioner was in compliance with the Court Order by filing what the Court should have liberally construed as a Notice of why the case should not be dismissed, and request for Injunctive Relief and the only reason he did not communicate with Defense Counsel was because he was poverty stricken

due to Defendant's continually extorting him of his inalienable rights; which was directed at Petitioner in retaliation of him initiating the underlying lawsuit. This Dismissal denied Williams his First Amendment Right to petition the government for redress of grievances, Fifth and Fourteenth Amendment rights to invoke Due Process of Law, and his Seventh Amendment right to have the merits of his case brought before a Jury; in other words, the District Court denied an impoverished Pro Se Litigant, access to the Court.

This ruling was Appealed in *James Williams v. Clark, Officer, Metropolitan Police, et al.* No. 16-17243 (9th Circuit Court of Appeals December 26, 2016). This disposition is not recommended for full-text publication. The opinion of the three-judge panel of the Court of Appeals affirming the District Court ruling, was filed on October 5, 2017.

The Court of Appeals denied a Petition for Rehearing and Hearing En Banc on February 2, 2018. The Order from the United States Court of Appeals was filed on February 12, 2018.

Williams requests that this Court focus on the issues presented, specifically whether the District Court abused its discretion by disregarding the fact that Williams' failures to fully comply with the Court rules and Order to prepare a Joint Pretrial Order, was not an intentional refusal to do so but a result of being denied cooperation by the Defendants and timely notification of the Court's Rulings. Accordingly, instead of imposing a less drastic sanction such as permitting Williams to have additional time to retain Counsel and properly amend his pleadings, the Court imposed the most drastic sanction of Dismissal With Prejudice thereby denying Williams the right to have a Jury decide the case in its merits.

SUMMARY OF THE ARGUMENT

On November 29, 2016, the District Court, District of Nevada, Dismissed Williams' Case against Defendants With Prejudice. The Order Dismissing Williams' Case was predicated on the assertion that Williams demonstrated bad faith and repeated refusals to cure deficiencies in accordance with Local Rules. The District Court's rationale for this dismissal was to impose the most drastic sanction alleging that Williams asserting that Williams also refused to participate in preparing a Joint Pretrial Order. The Court ignored the fact that, due to segregation while in the custody of the Las Vegas Metropolitan Police Department (LVMPD) at the Clark County Detention Center (CCDC) and the Nevada Department of Corrections (NDOC) at High Desert State Prison (HDSP) and Southern Desert Correctional Center (SDCC), and as a result of inadequate Law Libraries and other restrictive behavior imposed by Defendants' subsequent retaliatory conduct, such as withholding Legal Mail and placing him in segregation, Williams was not provided timely notification of Court rulings on his Motions for Leave to Amend his Complaint, and was not contacted by the Defendants to prepare a Joint Pretrial Order as they were ordered to do, despite Defendants false assertion that they had done so.

The Court Dismissing the case while ignoring the latest Motion for Leave to Amend denied Williams' Right to his First, Fifth, Seventh and Fourteenth Amendment Rights to Petition the Government for redress of grievances, invoke Due Process and Equal Protection, and access the Courts by having the merits of his case brought before a Jury. Both the district Court and the Court of Appeals ignored the fact that Williams was actually in compliance with the court's Order.

The District Court relied on Federal Rule of Civil Procedure (Fed. R. Civ. P.) 37(b)(2)(A) which refer to striking pleadings and dismissing an action as described in (Fed. R. Civ. P.) 37(b)(2)(A)(iii), (v). In determining whether to impose the harsh sanction of dismissal, the Court must reasonably weigh all of the five (5) factors outlined in *Wanderer v. Johnston*, 910 F.2d 652, 656 (9th Cir. 1990). This includes weighing the public's interest in expeditious resolutions of litigation and the Court's need to manage its docket against public policy favoring disposition of cases on the merits and the availability of less drastic sanctions for the Court to employ. To place more weight on managing the Court's own docket over the Constitutional rights of a Plaintiff, defies the interests of justice.

Under "newer" equal protection jurisdiction claims will lie "where the plaintiff alleges that he/she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000) paragraph 11. The facts of this case apply to these equal protection rights afforded to Williams.

The District Court failed to use rational reasoning in deciding to use the most harsh of the available sanctions against Williams. Deprived Williams the right afforded to others to be served and notified of rulings in a timely manner constitutes a denial of fundamental fairness and of the right to due process and equal protection clauses of the Fourteenth Amendment. The Court's harsh sanction over less harsh sanctions, denied the Petitioner his Seventh Amendment right to have the merits of his case brought before a jury. These failures were not as a result of intentional acts on part of Williams, but rather a result of being treated differently than other similarly

situated litigants; and Defendants continually conducting affairs of Clark County through a pattern of Racketeering activity and anti-competitive conduct.

This decision defies the interest of justice and fairness.

The clear and plain language of the Appeals Court's ruling in this case states: "We review for an abuse of discretion a district court's dismissal as a sanction under Fed. R. Civ. P. 16(f), *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987), and we affirm."

The Appeals Court further stated; "that the district court did not abuse its discretion by dismissing Williams' action because Williams failed to comply with court orders, including the filing of a pretrial order, despite being ordered twice to do so. *See id.* at 130-32."

Although referenced, the five factors for a court to weigh before dismissing a case for failure to comply, were never addressed by the Courts. If it they had, it would have been determined that the facts of this case weigh heavily in favor of those factors addressed in Fed. R. Civ. P. 16(f), *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987). The choice not to use less drastic sanctions was upheld by the Appeals Court without addressing the actual facts of the case.

REASONS FOR GRANTING THE PETITION

The Interest of Justice calls for an exercise of this Court's Supervisory Power; as the the district Court's Order Dismissing Petitioner's case wit Prejudice and ignoring his latest Motion for Leave to Amend and request for Injunctive Relief, is a far departure from the accepted and usual course of Judicial Proceedings; and the Appellate court's Order of Affirmation and denial of the En Banc Petition sanctioned such a departure.

In its determination of whether to impose the harsh sanction of Dismissal With Prejudice, the District Court reference the five (5) factors outlined in *Wanderer v. Johnston*, 910 F.2d 652, 656 (9th Cir. 1990). This included weighing the need of the Court's to manage its docket expeditiously over favoring having the disposition of Williams' case be based upon its merits. By placing more weight on managing the Court's own docket over the Constitutional rights of a Plaintiff, defies the interests of justice.

The District Court failed to use rational reasoning is deciding to use the most harsh of the available sanctions. As such, the Court bypassed the very foundation of the principles of fundamental fairness and of the due process and equal protection rights in our judicial system. The requirement to provide appropriate findings and an analysis is especially applicable to those individuals, such as Williams, who have been deprived of the right to receive court rulings immediately and to be afforded the opportunity to correct inadvertent mistakes that are based upon situations through no fault of that individual. To interpret excusable mistakes as *intentional* is an example of such an irrational ruling and an abuse of discretion when other, less drastic remedies are available such as extending the time to seek professional legal assistance in complying with procedural issues.

The District Court abused its authority by imposing the harsh sanction of Dismissal despite having the knowledge that Petitioner explained to the Court why Injunctive Relief was appropriate in lieu of Dismissal. The alleged failure of Petitioner to communicate with Defendants was not intentional but rather a result of Defendants' on-going retaliatory conduct against Petitioner.

Petitioner's final Motion for Leave to Amend was Denied as being moot and untimely. What was not considered by the Court was the fact that there was on-going retaliatory conduct on the part of the Defendants, which justified Petitioner in his attempt to add this claims to his underlying Complaint.

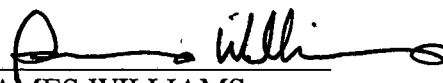
The Courts Rulings are based on irrational and unfair reasoning so arbitrary and capricious as to offend principles of fundamental fairness and of the right to due process and equal protection clauses of the Fourteenth Amendment. The Rulings denied the Petitioner his Seventh Amendment right to have the merits of his case brought before a jury based upon mistakes and restrictions placed upon him by the retaliatory conduct of the Defendants.

In this Petition, Williams asks the Court for the following remedy: That is to remand the case back to the District Court with instruction to liberally construe his last Amended Complaint and Request for Injunctive Relief and to provide him the time to seek counsel to assure compliance with all applicable Rules and Procedures. Such an opportunity will prevent Defendants such as these, from taking advantage of an individual such as Williams, and from restricting his right to have access to all Court Ruling in a reasonable manner.

CONCLUSION

For the foregoing reasons, a writ of certiorari should be granted.

Respectfully submitted


JAMES WILLIAMS
5117 Garden Lane, Apt. B
Las Vegas, Nevada 89119
Petitioner in Pro Se

**PETITIONER, JAMES WILLIAMS' AFFIDAVIT IN SUPPORT OF HIS
PETITION FOR WRIT OF CERTIORARI**

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

I, JAMES WILLIAMS , first being duly sworn, depose and state the following:

1. That I am the Petitioner/Plaintiff in the in the above-entitled matter;
2. That I live at 5117 Garden Lane, Apt. B, Las Vegas, Nevada 89119;
3. That I have read Petitioner's Writ of Certiorari to The United States Court of
 Appeals For The Ninth Circuit;
4. I have personal knowledge as to the facts contained therein;
5. That I am competent to testify as to these facts;
6. That the facts are true and correct to the best of my knowledge; and as to those
 allegations made upon information and belief, I believe them to be true.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

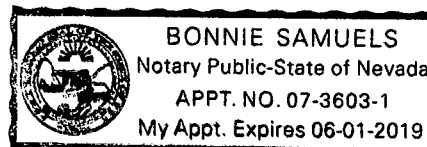
RESPECTFULLY SUBMITTED this 25th day of April, 2018, by:


JAMES WILLIAMS
Petitioner in Pro Se

SWORN AND SUBSCRIBED to before me
this 25th day of April, 2018.



NOTARY PUBLIC



VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

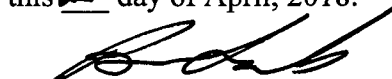
JAMES WILLIAMS, under penalty of perjury, being first duly sworn, deposes and says:

That he is the Petitioner/Plaintiff in the Petition for Writ of Certiorari and that he has read the foregoing **Petition for Writ of Certiorari To The U.S. Court of Appeals For The Ninth Circuit** and knows the contents thereof; that the same is true of his own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters he believes them to be true.

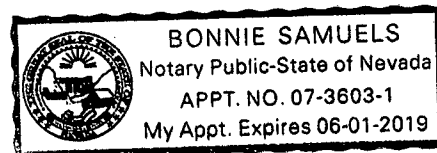
DATED this 25th day of April, 2018.


JAMES WILLIAMS
Petitioner in Proper Se

SUBSCRIBED and SWORN to before me
this 25th day of April, 2018.



NOTARY PUBLIC

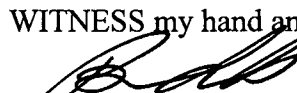


ACKNOWLEDGMENT

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this 25th day of April, 2018, before me, the undersigned Notary Public in and for the said County and State, personally appeared JAMES WILLIAMS known to me to be the person described in and who executed the foregoing **Petition for Writ of Certiorari To The U.S. Court of Appeals For The Ninth Circuit** and who acknowledged to me that he did so freely and voluntarily and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.



NOTARY PUBLIC

