

No. _____

TERM OCTOBER 2016

IN THE
SUPREME COURT OF THE UNITED STATES

JOHNNY BRETT GREGORY — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JOHNNY BRETT GREGORY #57012019

(Your Name)

FEDERAL CORRECTIONAL INSTITUTION LA TUNA

(Address)

P.O. BOX 3000, ANTHONY, TX 88021

(City, State, Zip Code)

NOT APPLICABLE

(Phone Number)

QUESTION(S) PRESENTED

Does the filing fee under U.S.C.A § 1915, part of the forma pauperis provisions of the PLRA apply to Prisoners who appeal criminal proceedings from a District Court imposed Anti-Filing injunction?

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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Northern District of Georgia Atlanta Division
Criminal case no# 4:06-CR-00010-ODE-WFJ,
united states of America V. Johnny Brett Gregory
filed in chambers on October 10, 2016.

Appendix 11 opinion of the united states court of
Appeals for the Eleventh circuit criminal appeal
no# 16-17379-B, united states of America V.
Johnny Brett Gregory DENIED on June 26, 2017.

Appendix 14 opinion rehearing was denied by the
united states court of Appeals for the Eleventh
circuit criminal appeal no# 16-17379-B, united
States of America V. Johnny Brett Gregory dated
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Brewer v. United States, 614 Fed. Appx 426 U.S. App.
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Harris v. Nelson, 394 U.S. 286, 299 (1969).

Pennsylvania Bureau of Correction v. United
States Marshall's Service, 474 U.S. 34, 43 (1985).

Price v. Johnson, 334 U.S. 266, 282.

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 11 to the petition and is

☐ reported at N/A; 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☒ is unpublished.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 8 to the petition and is

☐ reported at N/A; 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 June 26 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: August 7 2017, and a copy of the order denying rehearing appears at Appendix 14.

☐ An extension of time to file the petition for a 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 _____.

☐ 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 a 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).

I. JURISDICTION (continued)

This exceptional writ of certiorari jurisdiction is invoked pursuant to the U.S. Supreme Court Rule 20.1 "Issuance by the court of an extraordinary writ authorized by 28 U.S.C. § 1651(a)." (the "All Writs Act") authorizes [t]he Supreme Court and all courts established by Act of Congress...[to] issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. 1651(a) is available to Petitioner to remedy injustices from the District Court's Anti-Filing Injunction imposed violated his due process rights resulting from the District Court's misuse of power through our criminal justice system. In the spirit of unfairness with hope of concealment of misconduct by the United States Attorneys, the Petitioner has pointed out in recent years in the hope that doing so would eradicate such abuses and injustices. The Petitioner has no other meaningful or reasonable adequate and speedy remedies. The Petition for All Writs Act filed with the Supreme Court of the United States could not be premature on the grounds that the Petitioner has not exhausted all of his administrative remedies, because there are no other administrative remedies available to which the Petitioner's court access is restricted, his ability to file any future pleadings or motions in his criminal case from the District Court, usurpation of power and clear abuse of discretion.

The Anti-Filing Injunction if left as is, has severely prejudiced the Petitioner's constitutional right of access to the courts, because it has prevented him from seeking ongoing criminal relief.

II. CONSTITUTIONAL PROVISIONS

Article III, section 2: the judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States .

Article V: United States Constitution in pertinent part provides: No person shall be deprived of life, liberty, or property, without due process of law.

III. BILL OF RIGHTS

The Petitioner invoking and adopting the principles announced on December 15, 1791. The Bill of Rights restricts the powers and authority of the Federal Government and establishes the Petitioner's liberties and due process of law rights enjoyed in the United States.

IV. STATUTES

"Safety valves" 18 U.S.C. § 3582(c) compelling and extraordinary on "drugs minus two", formally known as Amendment 782 to the Federal Sentencing Guidelines.

28 U.S.C. § 1651(a) All Writs Act.

28 U.S.C. § 1915, leave to proceed on appeal forma pauperis

V. STATEMENT OF THE CASE

On July 19, 2005, the Petitioner who is Black was arrested during a drug bust from a warrant-less warrant by Whitfield County Sheriffs in Whitfield County, Georgia, also as a result of the arrest, one handgun was seized with serial number SZ005675, which did not belong to the Petitioner. Although it was in the residence, which also did not belong to the Petitioner. Another person named Chad Beckman was also arrested, who is White, was released earlier. Therefrom, this Federal case arose. In 2006, in the United States District Court for the Northern District of Georgia, Rome Division, Petitioner entered a plea agreement to plea guilty to possessing with intent to distribute methamphetamine, in violation of 21 U.S.C. § § 841(a)(1) and 841(b)(1)(A)(viii), in count two with possessing a firearm in furtherance of

drug trafficking, in violation of 18 U.S.C. § 924(c)(1)(A) also embodied in the plea, (see (Exhibit 1), agreement, forfeiture included a Beretta 9mm handgun, SN SZ005675. According to the Indictment filed on 02/08/2006 (Doc. 1), the Beretta 9mm was seized from Petitioner on 07/19/2005. FBI case agent, Ken Hillman, advised that the Beretta 9mm was seized by the Whitfield County Sheriffs Office from Petitioner at time of his warrant-less arrest. Further, the plea with Beretta in question did not list any person named Terry Parker, see (Doc. 21). Also, on October 23, 2006, the plea agreement was passed Judgment, see (Exhibit 2). On 02/14/2008, (Doc. 43), AUSA, Dahil Goss, filed a motion for the United States for an order authorizing the Destruction of certain Beretta 9mm SZ005675, pursuant to 28 U.S.C. § 1651 ("the All Writs Act"). Based on AUSA, Dahil Goss, lack of jurisdiction over the criminal forfeiture, (see (Exhibit 3). On 03/06/2008, the United States District Court Judge, Honorable Harold L. Murphy, passed an order Authorizing the Destruction of the Beretta 9mm, serial number SZ005675, see (Exhibit 4).

On 4/30/2009, Assistant District Attorney, Lee Miles, for the Conasauga Judicial Circuit, acknowledged and ran in the Dalton Newspaper, a legal notice after the AUSA, Dahil Goss 03/06/2008 order authorizing the AUSA Goss to destroy the same Beretta 9mm, serial number SZ005675 (Doc. 46) which bears the same make, model and serial number as the evidence against Petitioner Plea Agreement (Doc. 21), entered on July 27, 2006. See (Exhibit 5) and see (Exhibit 5 $\frac{1}{2}$), Verification of Complaint for Forfeiture by State of Georgia A.D.A Lee Miles.

On 08/02/2016, AUSA Dahil Goss filed a Motion for Withdrawal of AUSA Goss based on alleglly the criminal forfeiture had been resolved, see (Exhibit 6).

On 08/08/2016, Judge Orinda D. Evans passes a Court order granting AUSA Goss motion for withdrawal, see (Exhibit 7).

On 08/10/2016, Petitioner submitted a Notice of Appeal in

the District Court (Doc. 242).

On 08/24/2016, USCA Petitioner's Criminal Appeal was docketed and timely filed as Appeal number 16-15646-A.

On 10/11/2016, Judge Orinda D. Evans passed an order dismissing various criminal motions of the Petitioner including Judge Evans who created her own personal Anti-Filing Injunction to refrain the Petitioner from performing on any adequate remedy at law, see (Exhibit 8/Appendix 8).

On 10/12/2016 in Case number 16-15646-A, the Eleventh Circuit Judges Tjoflat, Wilson, and Jill Pryor, stated: "This appeal is DISMISSED, sua sponte, for lack of standing. Appellant Johnny Brett Gregory was not aggrieved by the district court's August 8, 2016 order granting the government's motion for the withdrawal of an Assistant United States Attorney as counsel of record...All outstanding motions are DENIED as moot. No motion for reconsideration may be filed unless it complies with the timing and other requirements of 11th Cir. R. 27-2 and all other applicable rules." See (Exhibit 9).

On 12/01/2016, in case number 16-15646-A, the Eleventh Circuit Judges, Tjoflat, Wilson, and Jill Pryor stated: "Appellant Johnny Brett Gregory's motion for reconsideration of our October 12, 2016 order dismissing this appeal for lack of jurisdiction is DENIED. Gregory's "Petition for Leave to Proceed on Appeal as Unnecessay Under Equitable Jurisdiction" is DENIED as moot. This appeal remains closed, and any other pending motions are DENIED as moot. However, Gregory filed in this appeal a "Petition to Equitable Estoppel to AUSA Dahil D. Goss and Judge Orinda D. Evans on October 10, 2016 Anti-Filing Injunction", which we deemed filed on October 24, 2016 under the prison mailbox rule. See Fed. R. App. P. 4(c)(1); United States...This motion evinces a clear intent to seek review of the district court's order entered October 12, 2016, denying and dismissing a number of the appellant's motions as moot and imposing an anti-filing injunction against him. This motion was also filed within the time for filing a notice of appeal from the October 12, 2016 order. See Fed. R. App. P. 4(b)(1)(A). We therefore construe the October 24, 2016 motion as a notice of appeal from the district court's order entered on October 12, 2016, and DIRECT the clerk of court to forward the motion to the clerk of the district court to be filed as of the date received it was delivered to prison authorities for mailing, October 24, 2016. See (Exhibit 10).

On 06/26/2017, in criminal appeal number 16-17379-B, single Judge Frank M. Hull passed order which read in part:

"...A review of Gregory's lengthy history of filing frivolous and duplicative motions indicates that the imposition of the injunction was justified. Furthermore, the injunction is not overbroad, as it specifically limits the targeted filings to those raising claims arising from the same set of factual circumstances as all of his prior motions and allows him to file future motions and appeals if he seeks and obtains leave of the court. See id. Therefore, Gregory has no non-frivolous argument that the district court abused its discretion in issuing a filing injunction. Accordingly, because any appeal in this case would be frivolous, his motion for leave to proceed IFP is DENIED...Thus, Gregory's motion for sanctions is DENIED...Therefore, Gregory's motion to recuse Chief Judge Carnes is DENIED. Because Gregory's appeal is frivolous, his motions for an initial hearing en banc and for appointment of a special master is DENIED. His motions for clarification appear to be further attempts to reassert the arguments contained in his underlying motions, and, thus, his motions for clarification are DENIED." See (Exhibit 11/Appendix 11).

On 07/17/2017, Petitioner filed motion for reconsideration of single Judge's order, See (Exhibit 12).

On 07/21/2017, Petitioner filed his supplement motion named Anti-Slapp to Single Judge Hull's Anti-Filing Injunction on June 26, 2017 O.C.G.A. § 9-11-11-1 ET SEQ Violation, see (Exhibit 13).

On 08/7/2017 order: Motion for reconsideration of single judge's order filed by Appellant Johnny Brett Gregory is DENIED [8193225-2] (GB7/Frank M. Hull) stated:

"Johnny Brett Gregory has filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2 of this court's June 26, 2017, order denying leave to proceed in forma pauperis in appeal. See (Exhibit 14/Appendix 14).

On 08/29/2017, Clerk's Entry of Dismissal for failure to prosecute in the above referenced appeal is issued as the mandate of this court...See (Exhibit 15).

VI. STATEMENT OF RELIEF SOUGHT BY PETITIONER

By this Petitioner under the All Writs Act 28 U.S.C. § 1651(a) in this extraordinary case relief is available to correct the

the manifest injustice in criminal action abuses of power the United States Attorneys and the District Court has put to use in Petitioner's case inheres in our adversarial system. Mr. Gregory is invoking and adopting the principles announced in Brewer v. United States, 614 Fed Appx 426 US App. LEXIS 9558 No. 13-15198 (June 9, 2015 11th Cir.) "the District Court abused it's discretion in imposing anti-filing injunction because injunction was unnecessarily broad and went beyond what was sufficient to protect court from inmate repetitive filings related to his proceedings, and functioned as impermissible restriction on inmate's constitutional right of access to courts." It is the abuses of power to peremptory is injustice by Anti-Filing Injunction placed on the Petitioner in this circumstances, the Supreme Court of the United States can do justice by the simple act of command to the District Court to remove the Anti-Filing Injunction and seeking that justice should be done. After careful consideration of Petitioner's crimes, who is Black, the views of that other person who was arrested, who is White, was treated significantly different while jailed and released decades as to the Petitioner still imprisoned as a result of this case, the government has decided that it need to stand by silently and withdrew from the case, while Petitioner serves two more years of an unjust sentence. Specifically, the government has agreed to an District Court order Anti-Filing Injunction to keep Petitioner remaining disproportionately subjected to the injustices.

VII. REASONS FOR WHY THE WRITS SHOULD BE ISSUED

The record shows that the District Court Judge Orinda Evans (the "District Judge") as the presiding District Judge imposed harm and disadvantage to the Petitioner from the August 2, 2016 order for the government's motion to withdraw by an Assistant United States Attorney (AUSA) from the case. The AUSA purported that he had entered an appearance for asset forfeiture issue only and those issues had been resolved, see (Exhibit 6). The District Judge granted the motion to withdraw. The Petitioner appealed, and the Eleventh Circuit dismissed the appeal for lack of standing, sua sponte on October 12, 2016 (Exhibit 9).

Petitioner then filed, among other things, a motion to withdraw his plea agreement in light of the AUSA's withdrawal and because the AUSA departed from the terms of the agreement asset forfeiture in October 11, 2016, the District Judge entered an order denying various criminal motions Petitioner had filed, including the motion to withdraw his plea agreement. See (Exhibit 8/Appendix 8). The order also imposed and directed an Anti-Filing Injunction at Petitioner, which the order had the effect of preventing him from litigating this criminal case by the accompanying denial of leave to proceed in forma pauperis in District Court which was a close question under 1915, in Good Faith in a criminal matter.

Furthermore, the Anti-Filing Injunction issued purported based on his exceptional litigiousness. Specifically, Petitioner was: (1) enjoined from relitigating claims arising from the same set of factual circumstances as all of his prior motions, and (2) required to seek leave of court before filing any future motions or appeal (Exhibit 8/Appendix 8), was an Anti-Filing Injunction from District Court order granting injunction without a hearing in the District Court in this criminal case was unnecessarily broad and went beyond that was sufficient to protect the court as the Anti-Filing Injunction functioned as an impermissible restriction on Petitioner's constitutional right of access to the court from the District Court Judge's October 2016 order imposing the injunction against Petitioner was the District Court's own created personal Anti_Filing Injunction to conceal and cover up misconduct pertaining to AUSA breached plea agreement and criminal forfeiture is a violation of due process of law and contrary to Bill Of Rights: Currently, there is no specific statute authorizing the Anti_filing Injunction under the circumstances described herein. However, the All Writs Act authorizes "the Supreme Court and all the courts established by Act of Congress...to issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). As the

Supreme Court explained, "the All Writs Act is a residual source of authority to issue writs that are not otherwise covered by the statute." Pennsylvania Bureau of Correction v United States Marshalls Service 474 U.S. 34, 43 (1985). See also Harris v. Nelson, 394 U.S. 286, 299 (1969) (quoting Price v. Johnson, 334 U.S. 266, 282) (All Writs Act "has served...as a legislatively approved source of procedural instruments designed to achieve the rational ends of the law").

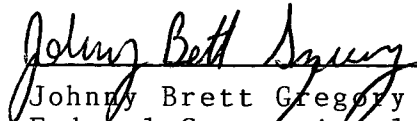
Since the Anti_Filing Injunction cannot be legally placed upon the Petitioner criminal action, the Petitioner respectfully requests the court to exercise it's equitable power under the All Writs Act and grant in form pauperis and writ by entering the request which is extraordinary and unusual in a criminal case.

VIII. CONCLUSION

The Petitioner, do not wish to file pleadings outside of this criminal case and the District Court's Anti-Filing Injunction order/prohibition has denied Petitioner meaningful access to the courts in the current criminal case. It is prayed that this Honorable Supreme Court of the United States enter writ to vacate the Anti-Filing Injunction order regarding Petitioner filings and correct this manifest injustice in this criminal case.

Respectfully submitted,

Dated September 13, 2017


Johnny Brett Gregory #57012019
Federal Correctional Institution
La Tuna
P.O. Box 3000
Anthony, TX 88021