No. ____________________

IN THE

SUPREME COURT OF THE UNITED STATES

TAMARA ZAITSEV — PETITIONER
(Your Name)

vs.

DR. SHAWN KELLER, DDS — RESPONDENT(S)
(SMILES BY DESIGN)

ON PETITION FOR A WRIT OF CERTIORARI TO

WASHINGTON STATE COURT OF APPEALS, DIVISION I
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

TAMARA ZAITSEV
(Your Name)

15409 NE 12TH St, APT # G-351
(Address)

Bellevue, WA. 98007
(City, State, Zip Code)

425-736-1266 (MESSAGE)
(Phone Number)

QUESTIONS PRESENTED

1. Whether the case Edwards v. Le Duc, 157 Wn. App. 455, 460, 238 7 No. 74626-0-1/8 P.3d 1187 (2010) which ruled that Washington courts "must hold pro se parties to the same standards to which they hold attorneys" is in conflict with the United States Constitution (Amend. XIV, sec. 1) and the right to a due process and the equal protection of laws in regards to a particular class of "impaired" persons who cannot readily understand or communicate in spoken language (defined in RCW 2.42.110(1)), and whether a state court must apply and exception to the mentioned above rule and/or a reasonable accommodation when pro se party is "impaired" and/or actively seeking an attorney but being denied attorney services.
2. Whether a state court violates Fed.R.Civ.P.604, and a party's constitutional right to a due process and an access to the equal protection of laws when it does not provide the party with a qualified court interpreter, and instead, allows an untrained person to interpret, while compelling the untrained person to give an oath of true and correct interpretation? Fed.R.Civ.P.604. states: "An interpreter must be qualified."
3. Whether a state court abused its discretion when it did not find a party and/or his attorney within duty to give a clear and timely notice of insufficient service of process, and whether a standard and obscure

language in the attorney's Notice of Appearance constitute a proper alarm of ineffective service of process to an “impaired” pro se party? (defined in RCW 2.42.110(1), a "impaired person" is one who cannot readily understand or communicate in spoken language).

4. Whether the state court violates a party's constitutional right to a due process when it enters the judgement of dismissal WITH PREJUDICE citing the grounds that “statute of limitations has run”, without properly determining whether it has run and relying solely on date of the incident stated in the initial complaint, thus precluding the party from ever raising this question?

LIST OF PARTIES

[X] 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 ______ 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.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits 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. UNKNOWN

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 ______________________.

[ ] 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 ______.

[ ] 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).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was MARCH 6, 2018. A copy of that decision appears at Appendix C.

[ ] 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).

CONSTITUTIONAL PROVISIONS U.S.

U.S. Const. Amend. XIV, sec. 1:

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

A. On or about June 21, 2012 Petitioner Tamara Zaitsev ("Zaitsev") was severely injured by Respondent Dr. Shawn Keller ("Dr. Keller"), who performed an implant surgery in her mouth and failed to remove a piece of drill bit ("FB") which was broken off at the time of the procedure and retained in Zaitsev's lower jawbone, later causing complications with Zaitsev's health and a necessity of additional medical procedures and surgeries. Since the incident, Zaitsev has not been able to lead a normal lifestyle and has been seeking medical advice and treatment from numerous doctors and medical institutions. Zaitsev was under care of Dr. Keller until about January 15, 2013, and communicated with his office until about March,2013, and believes that the last decision to leave the FB in her jaw was made by Dr. Keller between January and March,2013 (last omission). Dr. Keller failed to provide adequate removal of the broken drill bit piece, which had to be done by a specialist in controlled conditions (estimated at least $60,000). Failing to exercise a due care, and motivated by a low price, Dr. Keller sent Zaitsev to the University of Washington School of Dentistry ("UWSD"), instead of qualified experienced provider, and paid some $300 for the FB removal procedure (continuous doctor-patient relationship). On January 15, 2013, Zaitsev sustained more significant injuries from the FB removal procedure at the UWSD, and FB was never recovered.

B. Zaitsev retained two attorneys who procrastinated much time in her case. The last attorney has withdrawn from representing the case two months before the 3-year statute of limitations deadline (if calculated from the day of the incident). Although, Zaitsev had contacted numerous lawyers, at this crucial point it was impossible to retain an attorney on contingency fee, and she could not afford to pay out of pocket due to her indigent status, age of retirement, and health issues. Zaitsev has not been able to retain an attorney to this day. Zaitsev presented to court of appeals as evidence some of the numerous attorney letters/emails of refusal before and after the case dismissal. Many attorneys were contacted by phone. Zaitsev was left no choice but to represent herself pro se with the help of her daughters and family friends, who have no legal education, and limited English. Zaitsev does not read nor write English and requires an interpreter.

C. On May 7, 2015, with the help of her daughter and a family friend, Zaitsev filed a short COMPLAINT against Dr. Keller in the King County Superior Court. On May 8, 2015, Zaitsev, with the help of her daughter, and a family friend submitted the service of process documents to the Sheriff's office for delivery to Dr. Keller's attorney Mr. Versnel (Versnel). Zaitsev was certain the following documents were given to the Sheriff: 1) ORDER SETTING CIVIL CASE SCHEDULE and supporting information pages SUMMONS, and COMPLAINT.

D. On May 21, 2015, Versnel filed a NOTICE OF APPEARANCE, but has not responded with any answer, motion, nor pleading that would indicate that the service of process was incomplete or insufficient until six months later on Nov 15, 2016, when he finally filed a MOTION TO DISSMISS based on insufficient/incomplete service of process. Versnel argued that he only received the Order Setting Civil Case Schedule and never received Complaint and Summons. He also argues that the Service of Process had to be served directly on his client Dr. Keller. and not on him (Versnel), therefore, the court does not have jurisdiction to hear this case.

E. Zaitsev asserts that she acted in good faith, and the reason why she did not serve the process on Dr. Keller directly is because she believed that she was precluded and warned by Versnel not to bother Dr. Keller anymore. On more than one occasion, in his correspondence to Zaitsev's former attorney, Versnel insisted that he is representing Dr. Keller as well as Dr. Keller's business Smiles by Design LLC and does not want his client bothered, and that all future concerns and correspondence has to be addressed to him

(Versnel). The last letter from Versnel was written less than 3 months before the commencement of the suit, and Versnel never indicated in any way that he is not representing Dr. Keller any longer. Zaitsev argues that she was misled by attorney Versnel's letters who represents the law and she was reluctant to break the law.

F. Zaitsev asserts that she tried to serve the Defendant in good faith. Because of her poor eye sight and general health, and limited English, she relied upon the help of her daughter and family friend for help, and was unaware of the missing documents. The circumstances were not in the scope of her control. Zaitsev was certain that a complete package of Service of Process documents were handed to the Sheriff for delivery to Versnel. Zaitsev had no idea the Summons and Complaint somehow went missing, and believes it could have been a clerical mistake. But, if she would have been timely notified by the Defendant's attorney about the incomplete service of process, she would have corrected the error by contacting the Sheriff's office, or/and re-serving the process.

G. Zaitseva was not represented by an attorney, and the court did not appoint her one.

H. Zaitsev tried negotiations with the Defendant and has sent a Demand Letter to Versnel on October 12, 2015, by certified mail. Versnel never responded. Zaitsev also filed a complaint with the WA Department of Insurance because (Zaitsev assumed) Versnel also represents the liability insurance company for Dr. Keller's insurance policy who is responsible for this claim. The claim was denied.

I. On Dec.16, 2015, Dr. Keller filed DEFENDANT'S REPLY IN SUPPORT OF MOTION TO DISMISS, as well as DECLARATION OF JOHN C. VERSNEL, III IN SUPPORT OF DEFENDANT'S REPLY IN SUPPORT OF MOTION TO DISMISS. Zaitsev did not have sufficient time to respond before Dec. 22 court hearing to address Versnel's statements, because she was relying on free legal help which only entitles her to occasional

30-minute appointments with different attorneys who know nothing about her case, and who are, in most cases, do not practice in the pertinent area of law. Zaitsev's friends helped prepare her Declaration and supporting documents in response and e-filed the documents on Dec.19, 2015. Zaitsev was notified by the court's automatic e-system the next day, after the dismissal judgement was already entered, that these documents did not go through. So, the trial court never received the stated documents.

J. On Dec. 22, 2015, Zaitsev appeared before the trial court for a hearing of MOTION TO DISSMISS. The trial court did not provide Zaitsev with a qualified interpreter; instead, her daughter Elena Zaitseva assisted her in interpreting. Her daughter is not a qualified court interpreter. At the time of the hearing, the court informed Zaitsev that she has an option to allow the court to make judgement without oral arguments, based on the written documents that court had. She agreed, assuming that the court acted in her best interests. However, trial court did not disclose the documents that it had, and Zaitsev was not aware that the court did not have all the documents that were e-filed.

K. Zaitsev asserts that from Versnel's actions it is evident that he purposely concealed the fact that service was insufficient. These actions, or failure to act on the part of Versnel delayed the case action significantly and prejudiced Zaitseva substantially, because at this point the Sheriff's department refused to even discuss the recovery of missing documents from six months ago; Zaitsev was not given an option by the trial court to cure or re-serve the process.

L. The trial court erroneously assumed that the 3-year statute of limitations for filing of the case has run, and dismissed the case "with prejudice", thus precluding Zaitsev form further pleading her cause of action.

M. Zaitsev appealed to the Court of Appeals, Division I. Court of Appeals Affirmed the trial court's decision.

N. Zaitsev has filed a Petition for Review with the Supreme Court of Washington, and it was denied on March 8, 2018

REASONS FOR GRANTING THE PETITION

This court should grant review of the Court of Appeals, Division I decision because it conflicts with the United States Constitution (Amend. XIV, sec. 1), another appellate court, and federal court decisions, and to preserve fairness and access to the fundamental rights to a due process and equal protection of laws, as well as access to basic needs such as the protection of health, for an overwhelmingly large class of similarly situated pro se litigants, in particular the "impaired" pro se litigants which the petitioner represents, due to the following:

I.

THIS COURT SHOULD GRANT THE REVIEW OF WASHINGTON COURT OF APPEALS, DIV. I DECISION, BECAUSE IT CONFLICTS WITH WASHINGTON COURT OF APPEALS DIV. III DECISION, AS WELL AS THE U.S. CONSTITUTION (Amend. XIV, sec. 1), AND TO DECIDE WHETHER THE STATE COURT MUST APPLY AN EXCEPTION TO THE STANDARD RULE "[COURTS] MUST HOLD PRO SE PARTIES TO THE SAME STANDARDS TO WHICH THEY HOLD ATTORNEYS" WHEN PRO SE PARTY IS "IMPARED" (AS DEFINED IN RCW 2.42.110(1)) AND/OR BEING DENIED ATTORNEY SERVICES.

A. The Washington state courts have deprived petitioner of a fair court hearing, the right to a due process and the equal protection of laws, because of her "impairment" (as defined in RCW 2.42.110(1) A "impaired person" is one who cannot readily understand or communicate in spoken language), and inability to retain an attorney, thus violating her rights afforded by Amend. XIV, sec. 1 of the U.S Constitution, whish state in part, "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."

B. Petitioner is being erroneously held by the Washington State Court of Appeals, Division I to the same standards as BAR certified attorneys per Edwards v. Le Duc, 157 Wn. App. 455, 460, 238 7 No. 74626-0-1/8 P.3d 1187 (2010), which states "[courts] must hold pro se parties to the same standards to which they hold attorneys." This decision conflicts with Washington Court of Appeals, Division III, who noted an exception to the rule as follows -

"when a pro se plaintiff also suffers from a significant mental disability" they must not be held to the same standards as the attorneys. Carver v. State, 147 Wash.App. 567, 575, 197 P.3d 678 (2008).

C. The Washington state court has bluntly disregarded the fact that petitioner is an "impaired person" (as defined in RCW 2.42.110(1), A "impaired person" is one who cannot readily understand or communicate in spoken language). Petitioner's condition exhibits similar impairment as "mental disability", where she cannot comprehend nor communicate in the English language, nor does she understand the legal proceedings, and is similarly situated with mentally impaired person. Petitioner is of retirement age, computer illiterate, and in poor health. Petitioner also could not gain access to adequate attorney services because of her indigency and numerous attorneys not willing to retain her case.

D. Washington Court of Appeals, Div. I decision also conflicts with the following cases which confirm that petitioner was not afforded a fair hearing, "[O]ne who is arguably incapable of understanding the law and legal proceedings can hardly be held to have been afforded a fair hearing." Cruz v. Root, 932 F.Supp. 66, 70 (W.D.N.Y.1996); see also West v. Ruff, 961 F.2d 1064, 1065-66 (2d Cir.1992) (reversing application of collateral estoppel because the issue could not be adequately presented pro se); Davis v. City of Charleston, 827 F.2d 317, 321 n. 3 (8th Cir. 1987) (finding that plaintiff "as a pro se litigant before the state court" did not have a full and fair opportunity to litigate the issue); Clark v. Dep't of Corr. Servs., 564 F.Supp. 787, 789 (S.D.N.Y.1983) (refusing to apply collateral estoppel not merely because of plaintiff's pro se status, but because of his confusion and ignorance about legal proceedings).

E. Therefore, it is of a vast importance that this court decide whether a state court must apply an exception/accommodation to the standard rule "[courts] must hold pro se parties to the same standards to which they hold attorneys" when pro se party is "impaired" (as defined in RCW 2.42.110(1)), and/or is also being denied attorney services.

II.

THIS COURT SHOULD GRANT THE WRIT BECAUSE THE STATE COURT ABUSES ITS DISCRETION AND ITS DECISION CONFLICTS WITH THE U.S. CONSTITUTION (Amend. XIV, sec. 1) WHEN IT VIOLATES Fed.R.Civ.P.604. WHICH STATES "AN INTERPRETER MUST BE QUALIFIED" AND ALLOWS A PERSON WHO IS NON-QUALIFIED TO BE USED IN PLACE OF A "QUALIFIED" COURT INTERPRETER.

The state trial court violated Fed.R.Civ.P.604, and petitioner's constitutional right to a due process and the access to an equal protection of laws when it did not provide the petitioner with a qualified court interpreter and allowed the petitioner's daughter – who is not a trained interpreter - to interpret, moreover, compelling the daughter to give an oath of true and correct interpretation. Fed.R.Civ.P.604. states: "An interpreter must be qualified and must give an oath of affirmation to make a true translation." A "qualified interpreter" is a person who is certified by the State. RCW 2.42.110(2). The state court did not notify the impaired petitioner of her right to a qualified interpreter, nor did it explain the consequences of not retaining one. Therefore, the petitioner was not presented with correct interpretation of court proceedings, and relied solely on daughter's good judgement, resulting in a dismissal of her case.

In 14–10400 USA v. Adalberto Murguia-Rodriguez the court decided that "The Court Interpreters Act protects the rights of federal litigants with limited English proficiency by requiring that courts utilize the services of certified interpreters in proceedings instituted by the United States when the failure to do so would inhibit the party's ability to participate fully in the proceedings. The Act also provides procedural safeguards to ensure that any waiver of this right is done knowingly, intelligently, and voluntarily." (In this case, Ninth Circuit ordered a lower court to resentence a man because of lack of qualified interpreter).

III.

THIS COURT SHOULD GRANT THE WRIT BECAUSE THE STATE COURT ABUSES ITS DESCRETION BY ISSUING A DECISION THAT CONFLICTS WITH THE U.S. CONSTITUTION (Amend. XIV, sec. 1) WHEN IT DEEMS AN OBSCURE AND STANDARD LANGUAGE IN THE ATTORNEY'S NOTICE OF APPEARANCE TO BE A PROPER ALARM OF INEFFECTIVE SERVICE OF PROCESS TO AN "IMPARED" PRO SE PARTY

The "impaired" pro se petitioner is "trapped" on technicality by a trained and experienced in the law attorney. This court should grant this writ to preserve fairness and access to a due process and the equal protection of laws, and to decide whether a party and/or his attorney is within their duty to give a clear and timely notice of a defective service of process to the opposing party, and whether a standard and obscure language in the attorney's Notice of Appearance "You are requested to serve all **future** [emphasis added] papers and proceedings in said cause, except original process upon said attorneys" constitute a proper alarm of ineffective service of process to an "impaired" and untrained in the law pro se litigant. It is imperative that this court decides on this issue to prevent harboring of contempt for legal technicalities by attorneys by which the fair trial rights of pro se litigants, and particularly the "impaired" pro se litigants are eviscerated.

IV.

THIS COURT SHOULD GRANT THE WRIT BECAUSE THE STATE COURT ABUSES ITS DISCRETION BY ISSUING A DECISION THAT CONFLICTS WITH THE U.S. CONSTITUTION (Amend. XIV, sec. 1) WHEN IT ENTERS THE JUDGEMENT OF DISMISSAL "WITH PREJUDICE" ON THE GROUNDS THAT "STATUTE OF LIMITATIONS HAS RUN" WITHOUT PROPERLY DETERMINING WHEN IT SHOULD RUN AND RELYING SOLELY ON THE INCIDENT DATE STATED IN THE INITIAL COMPLAINT.

The state court deprives petitioner of her fundamental right to a due process and THE equal protection of laws by having dismissed petitioner's case "WITH PREJUDICE" on the grounds that "statute of limitations has run" without properly determining if it has in fact run and precluding petitioner from ever raising this question. This court should grant this writ to decide if a state court properly exercises its authority when it relies solely on the date of the incident stated in the petitioner's original complaint to determine if the statute of limitations has run, without holding a proper hearing on this issue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

X Zaitsev T

Date: May 23, 2018