
No. 20-8373

**IN THE
SUPREME COURT OF THE UNITED STATES**

KEVIN HERRIOTT,

Petitioner,

v.

ASSOCIATE WARDEN FORD, ASSOCIATE WARDEN CANNING,
CAPTAIN DAVIS, LIEUTENANT DANLEY, FOOD SERVICE DIRECTOR BRAGG,
HEAD NURSE ROBBINS, ACTING WARDEN MCCABE,

Respondents.

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

**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

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STATEMENT OF THE CASE

The Petitioner Kevin Herriott is an inmate within the South Carolina Department of Corrections (SCDC). In this action brought pursuant to 42 U.S.C. § 1983, the Petitioner alleged that certain conditions of confinement violated his Eighth Amendment rights while he was housed at Kershaw Correctional Institution. The Respondents moved for summary judgment on several grounds, including that the Petitioner failed to exhaust his administrative remedies prior to commencing this action as required by the Prison Litigation Reform Act of 1995 (PLRA) and this Court's controlling authorities. *See, Porter v. Nussle*, 534 U.S. 516 (2002); *Woodford v. Ngo*, 548 U.S. 81 (2006).

On May 1, 2020, Magistrate Judge Kevin F. McDonald issued an Amended Order and Report of Magistrate Judge in which he recommended that the Respondents' motion for summary judgment be granted on their PLRA exhaustion defense. The Magistrate Judge reviewed the evidence presented and concluded that "the evidence from both parties shows that the plaintiff did not exhaust his administrative remedies." By Order filed May 19, 2020, District Judge David C. Norton adopted the Report and granted the Respondents' motion for summary judgment.

The Petitioner appealed to the Fourth Circuit Court of Appeals which unanimously affirmed the District Court by an unpublished opinion entered November 23, 2020. The Fourth Circuit stated: "We have reviewed the record and find no reversible error." *Herriott v. Ford*, 829 Fed. Appx. 660, 661 (4th Cir. 2020).

REASONS FOR DENYING THE PETITION

In his Petition for Writ of Certiorari, the Petitioner does not challenge the merits of the District Court's ruling on the PLRA exhaustion defense. In fact, the Petitioner makes no mention of that issue. Instead, the Petitioner argues that he was denied the full opportunity to engage in discovery in the District Court. That issue does not merit the issuance of a writ of certiorari. The Petitioner has not shown that his petition raises any issues of substantial importance or a conflict among the circuits for this Court to address.

As to the discovery matters raised by the Petitioner, he has not demonstrated an abuse of discretion by the District Court on any discovery rulings. The District Court is obviously granted substantial discretion to address discovery disputes. While the Petitioner cites various categories of documents that he contends he did not obtain through discovery, he has not argued that any of those documents impacted the summary judgment granted on the PLRA exhaustion defense. The Report of the Magistrate Judge, in fact, reflects that the Petitioner, like the Respondents, submitted records regarding grievances that were submitted by the Petitioner. That evidence, as the District Court concluded, clearly demonstrated that the Petitioner had not exhausted his administrative remedies prior to suit being filed. To the extent that the Petitioner maintains he was denied documents that went to the merits of his conditions claims, that is immaterial because the District Court did not reach the merits of those claims and instead dismissed the action based solely on the PLRA exhaustion defense. In addition, the Petitioner has not even demonstrated that he made timely requests for the production of such documents.

In sum, there is no reason for this Court to weigh in on discovery matters that were addressed by the District Court within its discretion and that were reviewed by the Fourth Circuit with the ultimate finding that there was no reversible error. Accordingly, the District Court's

decision was properly affirmed. Stated simply, there is no basis for the issuance of a writ of certiorari.

CONCLUSION

For the foregoing reasons, the Respondents submit that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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