24-7129

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FRANK JOHN RICHARD,

Petitioner,

-against-

O'BELL T. WINN, et al.,

Respondents

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Frank J. Richard, #0601706

Carson City Correctional Facility

10274 Boyer Road

Carson City, Michigan

48811

QUESTIONS PRESENTED

1.) Does Fed. R. Civ. P. Rule 26 (a)(1)(B)(iv.) deny Initial Disclosure to incarcerated, pro se litigants, simply because they are not represented by counsel; thereby rendering the Confrontation and Equal Protection clauses found in the Fourteenth Amendment to the United States Constitution, unavailable to them?

2.) Applying the response for Question No. 1, when challenging the veracity of an affidavit[1], before summary judgment, did the deprivation caused by Rule 26 (a)(1)(B)(iv.) infringe upon the petitioner's right to petition the courts, for the redress of grievances, guaranteed by the First Amendment to the United States Constitution?

3.) Did the United States Court of Appeals, for the Sixth Circuit, err when it stated that the petitioner failed to argue the case of Reed-Bey v. Pramstaller[2], in the district court?

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[1]An affidavit written by Richard D. Russell, the Grievance Section Manager for the Michigan Dep't of Corrections, signed on March 14, 2022 was taken in "Good Faith" by the attorney for the defendants, Joseph Y. Ho. The district court cited "Authentication Language" as the basis for it's acceptance of this document.

[2]Cited by the petitioner in a Reply brief, filed on Dec. 5, 2022, as ECF No. 50(See Appendix D., [D.2], and preserved for appeallate review by Objection No. 6, on Jan. 11, 2023. as ECF No. 57 (See Apendix D. [D.3].

PARTIES

The Petitioner is Frank John Richard, a prisoner who is currently housed at the Carson City Correctional Facility, in Carson City, Michigan. The defendants are/were all located at the Saginaw Correctional Facility, in Freeland, Michigan. They are as follows: O'Bell T. Winn, former Warden, Thomas Haynes, former Prison Counselor (P.C.), Jodie Anderson, now Norman, former Residential Unit Manager (R.U.M.), now Administrative Aid, (A.A.), Michael Guerin,former Prison Counselor (P.C.), now Residential Unit Manager (R.U.M.), and Christoper LaBreck, Classification Director.

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INDEX OF AUTHORITIES

Case law:

Federal Rules of Civil Procedure:

Federal Statutes:

DECISIONS BELOW

The decisions of the United States Court of Appeals for the Sixth Circuit are unreported. They are cited as: Richard v. Winn, et al., 2024 U.S. App. LEXIS 12922*, (6th Cir. May 29, 2024) a copy of which is attached in Appendix A to this petition as [A.1] and Rehearing, en banc Denied by: Richard v. Winn, et al., 2024 U.S. App. LEXIS 25669, (6th Cir. Oct. 10, 2024) a copy of which is attached in Appendix A to this petition as [A.2].

The Orders of the United States District Court for the Eastern District of Michigan are unreported as well. They are cited as: Richard v. Winn, et al., 2022 U.S. Dist. LEXIS 162185, (on Sept. 8, 2022)(ECF No. 32), Richard v. Haynes, et al., 2022 U.S. Dist. LEXIS 244164, (on Dec. 15, 2022)(ECF No. 53) and Richard v. Haynes, 2023 U.S. Dist. LEXIS 849, (on April 10, 2023) (ECF No. 68).

A copy of each are attached in Appendix B, sequentially as: [B.1], [B.2] and [B.3].

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on May 29, 2024. An Order denying a Petition for Rehearing, En Banc was entered on Oct. 10, 2024. Copies of these rulings are in Appendix A to this petition. They are marked as [A.1] & [A.2]. Jurisdiction is conferred by 28 U.S.C. § 1254 (1).

BASIS FOR FEDERAL JURISDICTION

This petition raises questions of the interpretations of the First and Fourteenth Amendments to the United States Constitution. The district court had jurisdiction under the general federal question, conferred by 28 U.S.C. § 1331.

As the complaint involves an incarcerated, honorably discharged, disabled veteran, who was deprived of federaly-funded rehabilative veteran's programing and disability benefits, the following federal statutes should apply:

5 U.S.C. § 551 en banc Federal Administrative Procedures Act.

29 U.S.C. § 794 Section 504 of the Rehabilitation Act.

42 U.S.C. § 1997 Civil Rights of Institutionalized Persons.

Prison Litigation Reform Act of 1996.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the deprivation of rights, conferred by the First Amendment to the United States Constitution, which provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and petition the government for redress of grievances.

This case also involves the deprevations of the Fourteenth Amendment to the United States Constitution, which in relevant part provides:

> Section 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 they reside. No State 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 the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> Section 5. The Congress shall have power to enforce by appropriate legislation, the provisions of this article.

The preceding sections are also known as the Confrontation and Equal Protection Clauses of the Fourteenth Amendment.

STATEMENT OF THE CASE

The petitioner's complaint alledges that MDOC officals removed him from rehabilative veterans programing, a "high-paying" paid program[1], and transferred him to a differant facility. The motive for these actions was retaliation for speech, for the redress of grievances.

A grievance was filed for the extortion of the petitioner's signature onto a document titled, "Regaining Honor". This was a retro-active conditional agreement, to be signed by all of the incarcerated veteran residents of 800 unit @ Saginaw Correctional Facility. This was for participation in the Veterans Unit Program.

The petitioner signed the agreement under protest. He then wrote a letter to the Director of the MDOC, to complain of the above actions of the staff. The Step I Grievance, SRF 2018-06-0531-28B was how this issue was raised.

The retaliation that was promised, removal from the Veterans Program, back in May and June of 2018, was carried-out on Sept. 5, 2019. MDOC staff, under the pretext of a termination for cause, removed the petitioner from his dog-handler job and moved him into a differant unit. Three weeks later, the petitioner was transferred to a differant facility, in Muskegon, Michigan.

The insturment used to enact these retributions, was a MDOC

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[1]Blue Star Service Dogs, a P.T.S.D. therapy dog training program.

Prisoner Program and Work Evaluation, (CSJ-363)[2]. It contained falsehoods, non-posted rule violations, and was signed by the same person as both the Evaluator and Supervisor. All of these are violations of MDOC Policy Directives for Work Programs.

When the petitioner sent an institutional "kite" to the Classification Director, to request the removal of the document from his file, the reponse was "No". A Step I Grievance was filed for the erroneous work report and that the petitioner had been ordered to sign a blank work report. This was on the same day that the petitioner was transferred to Muskegon Correctional Facility, September 25, 2019.

No Step II Appeal was ever filed for the rejection at Step I because the prospective Step II Respondent would be the person who authorized the transfer, Warden O'Bell T. Winn. This would also be a violation of the MDOC Grievance Process. The Step I Respondent, was a witness/participant to the petitioner's firing. This violates the same policy directive as above.

At Step III of the process, the Respondent upheld the Step I ruling. This was Richard D. Russell, the Grievance Section Manager for the MDOC. He later claimed in an affidavit, that the reason for rejection was failure to file at Step II of the process. Acopy of this affidavit was included as an attachment in the petitioner's Motion for Sanctions[3], for the subornation of perjury by the attorney for the defendants. A Demand for the Production of Documents, referanced by the affiant, were cited.

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[2]This form, dated 9/5/2019, is in Appendix C., [C.1].

[3]Acopy of this Motion is included in Appendix C., [C.2].

Incarcerated, pro se litigants are not permitted early discovery or initial disclosure, to challenge such testimonial evidence. A motion to Hold in Abeyance for Discovery was filed, and Denied as Moot. As no other avenue for judical redress exists, the petitioner asks this panel for it's opinion.

REASONS FOR GRANTING THE WRIT

A.) The first question presented asks why an incarcerated, pro se litigant is not afforded the same rights to discovery, as one who is represented by a lawyer.[1] Why such a deprivation is made, should shock the members of this panel. Any penological rational for this rule can only be described as prejudical. Per 28 U.S.C.S. § 1915, Procedings in forma pauperis:

> ...identity of persons and seeking witnesses having informatition regarding inmate's claim, requesting oral conversations inmate had with prison employees regarding his complaint, requesting inmate to detail his damages, seeking correspondence alledgedly not mailed in violation of inmate's rights, seeking information as to inmate's efforts to re-mail disputed correspondence, and seeking identification of inmates legal procedings were subject to mandatory disclosure under Fed.R.Civ.P. Rule 26 (a)(1)(A)...

The Fourteenth Amendment to the United States Constitution, under Section 1, provides the due process to seek discovery. Why then does Fed.R.Civ.P. Rule 26 (a)(1)(B)(iv.) deprive an inmate, in pro se? The Prison Litigation Reform Act has no such provision. It applies to both pro se and those with a lawyer.

The First Amendment is supposed to guarantee a citizen's right to petition for redress and no government agency may infringe upon this.Please refer to Cain v. Lane, 857 F.2d

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[1]An affidavit that details the efforts of the petitioner to seek counsel, is included in Appendix C.,[C.2].

1139 (7th Cir. 1988);

> "pro se prisoner-litigants have the right under the First Amendment to investigate and document claims, including obtaining affidavits from other prisoners."

And John L. v. Adams, 969 F.2d 228, 235 (6th Cir. 1992):

> "states may not erect barriers that impede the right of access of incarcerated persons."

Under this logic, the submission of an affidavit, before discovery[2], should be subject to the rule regarding Initial Disclosure. Refer to Siggers v. Campbell, 652 F.3d 681 (6th Cir. 2011):

> "courts generally grant Rule 56 (d) motions to postpone summary judgment when a party files for a summary judgment very early in the procedings, before the parties have had an opportunity for discovery."

The petitioner moved for a Hold in Abeyance for Discovery on April 6, 2023. This was by Richard v. Haynes, (ECF No. 67). It was Denied as Moot by Judge Linda V. Parker, in Richard v. Haynes, U.S. Dist. LEXIS 849, April 10, 2023, (ECF No. 68).

B.) The **third** question presented to this court, asks whether or not an issue concerning the doctrine of stare decisis was followed by the lower courts. Did they ignore/overlook the precident established by published case law? The determination as to whether or not an incarcerated, pro se litigant exhausted administrative remedies, was raised as a defense.

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[2]See affidavit of Richard D. Russell, as an attachment to petitioner's Motion for Sanctions, in Appendix D., [D.1].

[3]Michigan Dep't of Corrections Policy Directive 03.02.130, to comport with: 42 U.S.C. § 1997(e) §§ (a); Porter v. Nussle, 534 U.S. 516, 122 S. Ct. 983, 152 L.Ed.2d 12 (2002):

The petitioner did not file a Step II Appeal, and instead moved on to the third and final step of the process. This was because the Warden who transferred the petitioner, could never be considered an "impartial decision-maker".

The state offical who acted as the Step III Respondent, upheld the ruling on the merits of the step I decision. The forgiveness for this omission, was opined in the case of Reed-Bey v. Pramstaller, 603 F.3d 322 (6th Cir. 2010), which states in part;

> "prison officals could not raise exhaustion defense when they decided prisoner's grievance on the merits despite it's procedural failings."

The petitioner cited Reed-Bey at 322, 325 by;

> "When prison officals decline to enforce their own procedural requirements and opt to consider otherwise-defaulted claims on the merits, so as a general rule will we."

and Reed-Bey at 325;

> "We do not 'second guess [a states] decision to overlook or forgive it's own procedural bar."[4]

These arguments were preserved for appellate review by Supplement to Objection No. 6, Plaintiff's Objection's, filed on Jan. 11, 2023 as (ECF No. 57).[5]

> "(PLRA) requires prisoners to complete prison administrative remedies before suing prison officals under federal law, because the exhaustion requirement was created "to reduce the quantity and improve the quality of prisoner's suits, to this purpose, Congress afforded corrections officals time and opportunity to address complaints internally before allowing the initiation of a federal case" [534 U.S. at 524-25]; PLRA applies to suits involving prison conditions, and the phrase "prison condition" applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong"[534 U.S. at 532].

[4] Petitioner's Reply of 12/5/2022 as (ECF No. 50), App. D., [D.2].

[5] Objection No. 6 is in Appendix D., [D.3].

The petitioner presented these citations to the Sixth Circuit Court of Appeals, in the case of No. 23-1429, and a Petition for Rehearing, En Banc. The panel cited a failure to argue Reed-Bey, in the district court as the reason for Denial. See para's 5 & 6 on Pg. 5 of the Order dated May 29, 2024, in the Appendix A., [A.1]. The Petition for Rehearing resulted in eleven justices affirming, with one who recussed herself. This is also in Appendix A., [A.2]. This is a palpable error.

A Ninth Circuit case, while having no weight in the home circuit of the petitioner, may be considered by this forum. The deprivation of Initial disclosure for an incarcerated pro se litigant was discussed. This petitioner asks this court to take these decisions into account.

Pulido v. Lunes, 2016 U.S. Dist. LEXIS 66904 (E.D. Cal. 2016),[6] cited Fed. R. Civ. P. Rule 16 (b)(3)(B)(i);

> "modify the extent of discovery."

This allowed a district court the wide latitude to permit a pro se litigant the opportunity to discover documents, the option to do so was from the prior case of Ollier v. Sweetwater Union High School Dist., 768 F.3d 843, 862 (9th Cir. 2014);[7]

> "a district court wide discretion in controlling discovery."

The Magistrate who ruled on this portion of the petitioner's Motion for Sanctions, did not exercise this alternative rule.

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[6]Is located in Appendix E. as [E.1].

[7]Is located in Appendix E. as [E.2].

C.) This case involves the deprivation of the rights of an honorably discharged, disabled veteran, because of his status as an incarcerated pro se litigant. The deprivations here denied him the ability to properly litigate his case. The right to early discovery, to challenge a confabulated affidavit, prevented the petitioner from obtaining redress. His losses were as follows;

Removal from a federally-funded rehabilative program, and to miss an appointment for a hearing test at a Veterans Administration Hospital.

On September 5th of 2019, the petitioner was removed from Veterans programing. This was done without a hearing, by the use of a MDOC Prisoner Program and Work Evaluation Form (CSJ-363). Then on September 25, 2019, he was transferred to a differant facility, in Muskegon, Michigan.

The first removal deprived the veteran/petitioner of a Veterans rehabilative program, known as the Veterans Unit Program at the Saginaw Correctional Facility in Freeland, Michigan.[9] The second transfer caused the petitioner to miss a hearing test at a V.A. facility. This resulted in a loss of a 10% disability benefit for tinnitus. The period of loss is between September 23, 2019 to October 7, 2021. (Board of Veterans Appeals Decision, Docket No. 240213-416239), in Appendix F., [F.1].

As rehabilative programing is involved, Section 504 of the Rehabilitation Act must be considered as the statute breached.

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[9]The petitioner, in addition to being removed from the Veterans Unit, lost a "paid-program". He was a dog-handler for Blue Star Service Dogs, a P.T.S.D. therapy dog training program, The petitioner is currently rated at 50% for this condition. This is per the Board of Veterans Appeals, on March 12, 2024, (Docket No. 230921-382108), Appendix F., [F.2].

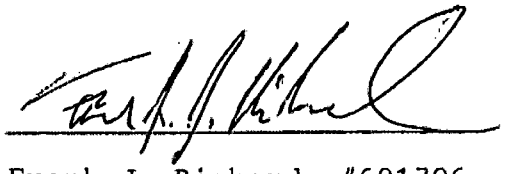
CONCLUSIONS

1.) As the deprivations complained of are the loss of veteran's rehabilative programing and V.A. disability benefits, special attention should be brought to bear for this portion of the petition.

2.) No law, regulation, or statute should ever impede a citizen's right to demand discoverable documents. A pro se litigant should be afforded the same rights and privileges as one who is represented by an attorney.[1] Fed. R. Civ. P. Rule 26 (a)(1)(B)(iv.) amounts to nothing less than class discrimination.

3.) At no time did the lower courts follow the precident set by Reed-Bey v. Pramstaller, with respect to the forgiveness of a procedural bar. The petitioner's timely citations of this case, and preservation of this issue, were ignored as well.

Respectfully submitted,



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Dated: Dec. 12, 2024

[1] See the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.