IN THE
SUPREME COURT OF THE UNITED STATES

October Term 2003

In re: Milton H. Whitaker

No.: 02-5396

Petition for an
Extraordinary Writ

Habeas Corpus Ad Respondendum

QUESTION PRESENTED

Is the petitioner's constitutional right for due process by means of the Fourteenth Amendment, of the United States Constitution, to file a civil complaint in the First Judicial Circuit Court in the city of Cheaspeake, Virginia violated by officers of that court?

PARTIES

1. Milton H. Whitaker, herein referred to as the petitioner, is an incarcerated individual at the prison institution of Buckingham Correctional center, located in Buckingham County in the city or town of Dillwyn, Virginia, at the address of Post Office Box number 430, zip code 23936.

2. Honorable Frederick H. Creekmore, Circuit Court Justice for thr First Judicial Circuit located in the City of Cheaspeake, Virginia, herein after referred to as the defendant, appellee, or respondent; at the last known address of, 307 Albemarle Drive, Court Building Suite 400A, Chesapeake, Virginia 23322-5580.

3. Shepelle Watkins-White, Attornet at Law for the First Judicial Circuit Court, herein after referred to as defendant, appellee, or respondent; at the address of 307 Albemarle Drive, Court Building Suite 400A, Chesapeake, Virginia 2332-5580.

The petitioner states fact of having exhausted every possible remedy to resolve this matter. And there is no other recourse to vindicate the petitioner for a violation of his Constitutional Due Process right, as written in the United States Constitution's, Fourteenth Amendment.

The petitioner states fact of being denied due process in a State Court by means of cost and fees in the First Judicial Circuit Court in the city of Chesapeake, virginia. That after having made request by forma pauperis motion purusant to the standards of §17.1-606, Virginia Code 1950, as amended; is denied the privilege of filing a law suit in that court against petitioner's former employer. According to the statutory provisions of 17.1-606 it states:

> **§17.1-606. Persons allowed services without fees or costs.**
>
> Any person, who is a resident of this Commonwealth, and on account of his poverty is unable to pay fees or costs may be allowed by a court to sue or defend a suit therin, without paying fees or costs; whereupon he shall have, from any counsel whom the court may assign him, and from all officers, all needful services and process, without any fees, except what may be included in the costs recovered from the oposit party.

The petitioner is requesting leave of the Supreme Court of the United States by application to a presiding justice of the Court that has jurisdiction of the Federal Circuit of where the issues in question can be entertained. The petitioner makes request for a HABEAS CORPUS AD RESPONDENDUM. Which according to Black's Law Dictionary, Seventh Edition it states in definition: "that you have the body to respond. A writ used in civil cases to remove a person from one court's custody into that of another court, in which the person may then be sued. Again focusing on the

statutory provisions of Title 28 U.S.C. §2241 - **Power to grant writ** it is stated in subparagraph (a):

> Writs of habeas corpus may be granted by the Supreme Court, **any justice thereof** . . . within their respective jurisdiction. INter alia . . . .

Reiterating the fact of having exhausted all possible avenues for vindication of the due process right of the Fourteenth Amdndment. to the United States Constitution, in a State Court by officers of that particular court. Even in the United STate Supreme Court the petitioner is denied the granitng of certiorari and rehearing. ("It is not necessary in such circumstances for the [petitioner] to ask the state for . . . relief, based on the same evidence and issues already decided . . . review with another petition for certiorari directed to this Court . . . . [i]t is to be noted that an applicant is barred unless [the petitioner] has "exhausted the remedies avaliable in the State . . . by available procedure.") (**q.v.**: "A fortiori, where the state action was based on an adequate state ground, no further examination is required, unless no state remedy for the deprivation of federal constitutional rights ever existed.") ("that the nature of the proceeding is such tht, **when the reasons for a denial of ceritorari are not stated, the denial should be disregarded in passing upon a subsequent application for relief**, except to note that this source of possible releif has been exhausted.) Brown v. Allen, 344 U.S. 443 (1953), see opinion of Justice Franfurter at pp. 488-97, internal citation omitted.

The respondent's violated the constitutional right of the petitioner. Whereby according to the statutory provisions of

dismissed when it fails to state a federal question, or fails to set forth facts which, if accepted at face value, would entitle the [petitioner] to relief. [A court] must take due account of the proceedings that are challenged by the application for a writ, [a]ll that has gone before is not to be ignored as orrelevant, [b]ut the prior State determination of a claim under the United States Constitution cannot foreclose consideration of such a claim, else the State court would have the final say which the Congress, by the Act of 1867, provided it should not have. [P]etitioner for certiorari are rarely drawn by lawyers; some are almost unintelligible and certainly do not present a clear statement of issues necessary for . . . understanding, in view of the . . . Court's work . . . . certified records . . . in the run of certiorari cases in which most of the papers necessary to prove what happened in the States proceeding are not filed . . . . [s]eldom [is there] enough on which to base a solid conclusion as to the adequacy of the State adjudication, [e]ven if . . . [there is] never . . . a transcript of these proceedings to assist . . . in determining whether the [claim] was adequate. Brown v. Allen, 344 U.S. 443, **n.b.**: opinion of MR. JUSTICE FRANKFURTHER at pp. 488-561, emphasis added, internal citations omitted, (1953). In other circumstances the [lower courts] adjudication carries the weight of last resort of another jurisdiction on the federal consititutional issues. **It is not res judicata.** As the burden of [explaining] the [claims] rests on the [petitioner, he

F[redacted]T JUDICIAL CIRCUIT
OF VIRGINIA

JUDGES
V. THOMAS FOREHAND, JR.
S. BERNARD GOODWYN
FREDERICK H. CREEKMORE
BRUCE H. KUSHNER

307 ALBEMARLE DRIVE, SUITE 400A
CHESAPEAKE, VIRGINIA 23322-5580
757-382-3050
FAX NOS. 757-382-3080 / 757-382-3090

March 12, 2001

Milton H. Whitaker, #281066
Augusta Correctional Center
P.O. Box 1000
Craigsville, VA 24430

Mr. Whitaker:

This acknowledges receipt of your request to proceed in forma pauperis. The Court has reviewed your Motion for Judgment, with attachments, as well as the six-month institutional accounting and denies your request to proceed in forma pauperis. Therefore, I am returning herewith your Motion, with attachments.

In the event you wish to proceed in your own behalf, money orders should be made payable as follows:

Lillie M. Hart, Clerk of the Chesapeake Circuit Court ---------- $64.00
John R. Newhart, Sheriff of the City of Chesapeake ---------- $12.00

When filing, all paperwork and money orders should be sent to Lillie M. Hart, Clerk of the Chesapeake Circuit Court, 307 Albemarle Drive, Suite 300A, Chesapeake, Virginia, 23322.

Very Truly Yours,

Frederick H. Creekmore

Enclosures