
Hughes Hubbard & Reed

Firm Wins Appellate Reversal of First Impression in 2nd Circuit

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Hughes Hubbard & Reed successfully represented a New York state prisoner pro bono before the U.S. Court of Appeals for the Second Circuit. The June 19, 2013 ruling reversed the decision of the district court dismissing an action brought by incarcerated petitioner Michael Jones for failure to pay the filing fee.

In September 2009, Jones filed a pro se action in the Northern District of New York, alleging, among other things, denial of medical treatment and retaliation for submissions of grievance proceedings. While the filing fee for civil actions may be waived for indigent petitioners, the district court determined that the client was not entitled to proceed “in forma pauperis” because on three or more prior occasions the client had brought an action or appeal that was dismissed on the grounds that it was frivolous, malicious or failed to state a claim upon which relief may be granted (the so-called “three strikes” rule). The district court dismissed Jones’ action in January 2012 for failure to pay the filing fee.

In June 2012, the Second Circuit appointed Vilia Hayes, a member of the court’s pro bono panel, to represent Jones on appeal. Gabrielle Glemann took primary responsibility for the brief, which Hayes and Marc Weinstein edited. Nathaniel Fintz and Trudy Dako also worked on the appellate briefs. On April 9, Glemann argued her first appeal.

Hughes Hubbard argued on Jones’ behalf that the district court improperly counted the dismissal of prior habeas petitions and appeals from dismissals of habeas petitions as “strikes” for the purposes of the “three-strikes” rule. The Second Circuit agreed and concluded that dismissal of a habeas petition and dismissal of an appeal from a habeas petition cannot qualify as a “strike.”

The Second Circuit reversed the dismissal and ordered the district court to permit Jones to proceed with his civil rights complaint in forma pauperis.

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