LAW OFFICES
COPELAND, STAIR, VALZ & LOVELL, LLP

DOUGLAS W. MACKELCAN
Partner
TAYLOR L. CARY

DIRECT DIAL NUMBERS
(843) 266-8228
(843) 266-8214

E-MAIL ADDRESSES
dmackelcan@csvl.law
tcary@csvl.law

40 Calhoun Street, Suite 400
CHARLESTON, SC 29401
TELEPHONE (843) 727-0307
FAX (843) 727-2995

www.csvl.law

ATLANTA OFFICE
191 Peachtree Street, N.E.
Suite 3600
Atlanta, Georgia 30303-1740
(404) 522-8220

REPLY TO SC OFFICE

September 10, 2025

VIA EMAIL ONLY
Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

Re: Nathaniel Shell v. Law Office of Neil T. Phillips, LLC; and Neil T. Phillips
York County Case No.: 2022-CP-46-03676
Appellate Case No.: 23-000859
CSVL File No: 5457-64793

Dear Ms. Kitchings:

Appellants Law Office of Neil T. Phillips, LLC and Neil T. Phillips (the "Appellants-Defendants"), through undersigned counsel, submits this letter in accordance with Rule 208(b)(7), SCACR. In the course of preparing for argument in this matter, Appellants identified authority pertinent to the briefs submitted by the parties. The first authority is *State v. Burton*, 356 S.C. 259, 265, n. 5, 589 S.E.2d 6, 9 n.5 (2003). The second authority is *McNeil v. United States*, 508 U.S. 106, 113 (1993). These authorities respond to the issue of whether *pro se* litigants are held to a less stringent standard than those required of a licensed attorney.

The cases cited above are attached for the Court's convenience. Thank you for your time and consideration of this matter.

Sincerely,

s/Taylor L. Cary

DOUGLAS W. MACKELCAN
TAYLOR L. CARY

DWM:tjr
Enclosures
cc: D. Alan Lazenby, Esq. (via email: alan@lazenbylawfirm.com)

356 S.C. 259
Supreme Court of South Carolina.

The STATE, Petitioner,
v.
Kenneth Andrew BURTON, Respondent.

No. 25745.
|
Heard Sept. 25, 2003.
|
Decided Nov. 3, 2003.
|
Rehearing Denied Dec. 4, 2003.

Synopsis
Defendant was convicted in the Circuit Court, Laurens County, Larry R. Patterson, J., of resisting arrest, pointing and presenting a firearm, and assault on police officer while resisting arrest. Defendant appealed. The Court of Appeals, 349 S.C. 430, 562 S.E.2d 668, reversed. State filed petition for writ of certiorari. The Supreme Court, Pleicones, J., held that: (1) pointing and presenting a firearm is not a lesser included offense of assault with intent to kill, and (2) evidence of defendant's search and seizure was properly admitted in defendant's motion for directed verdict, even though the evidence was illegally obtained.

Reversed in part, and vacated in part.

Attorneys and Law Firms

****7** ***261** Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, and Assistant Deputy Attorney General Charles H. Richardson, all of Columbia, and Solicitor W. Townes Jones, IV, of Greenwood, for Petitioner.

Senior Assistant Appellate Defender Wanda H. Haile, of South Carolina Office of Appellate Defense, of Columbia, for Respondent.

Opinion

Justice PLEICONES:

This Court granted the State's petition for writ of certiorari to review the Court of Appeals' decision in *State v. Burton,* 349 S.C. 430, 562 S.E.2d 668 (Ct.App.2002),[1] and further directed the parties to brief whether pointing and presenting a firearm is a lesser included offense of assault with intent to kill. We vacate Burton's conviction of pointing and presenting a firearm because it is not a lesser included offense of assault with intent to kill. Also, we reverse the Court of Appeals' ruling that the trial court erred in failing to direct a verdict on Burton's charges due to a search and seizure violation. That issue was not properly preserved for review.

***262** ISSUES

I. Is pointing and presenting a firearm a lesser included offense of assault with intent to kill so that the circuit court had subject matter jurisdiction to try or convict Burton of that offense?

II. Did the Court of Appeals err in holding that the trial judge erred in failing to direct verdicts because of a Fourth Amendment violation?

FACTS

In March 1998, the Chief of Police for Laurens County asked six officers to serve outstanding warrants. Officer Tracey Burke explained that the officers printed out a sheet of the names of people with outstanding warrants, and said, "if we run into somebody we don't know, and we ask, then we'll get their name and we'll look through this piece of paper ... so we'll know we have active warrants on these persons."

The officers went to the Green Street Mini-mart where several people were loitering in the parking lot. Burton was standing at a pay phone, with the receiver in his left hand, and his right hand in his coat pocket. Officer Burke[2] asked Burton if he could see Burton's ID, but "[Burton] wouldn't acknowledge nothing [Burke] told him at first." When Burton did not respond, the other officers came over to the pay phone. Officer Burke asked Burton, again, for some identification, but Burton "never said a word." The officers asked Burton to remove his hand ****8** from his coat pocket, but Burton still did not respond, and did not remove his hand.

Officer Burke testified that because Burton would not acknowledge the officer's questions, and would not remove his hand from his pocket, "a lot of things went through [Officer Burke's] mind. It could have been maybe a beer or anything, but my worse interpretation was it might have been a weapon. So, after him not acknowledging us or even saying

anything, I was positioned behind [Burton]. I reached my hand around behind him to see what was inside of his coat, because at that point I'd done got worried." Officer Burke reached his hand ***263** in Burton's pocket, and Burton began to struggle with the officer. As Officer Burke and Burton fell to the ground, Officer Burke heard another officer say "He's got a gun." The other officers ran to assist Officer Burke, and during the struggle, Burton raised his left side, pointed the gun at Officer Burke, and fired the gun three or four times. The gun did not discharge because a bullet was "stove-piped in the barrel." [3] After Burton was subdued on the ground and handcuffed, Burton spit blood on Officer Deal's shoe.

Burton was indicted for two counts of assault while resisting arrest, and two counts of assault with intent to kill. Burton represented himself at trial. The trial judge granted a directed verdict as to assault with intent to kill Officer Deal, which stemmed from Burton spitting on Deal's shoe. Burton was found guilty of resisting arrest as a lesser included offense of assault while resisting arrest; pointing and presenting a firearm as a lesser included offense of assault with intent to kill Officer Burke; and assault while resisting arrest. Burton was sentenced to eight years imprisonment for assault while resisting arrest to run concurrently with his federal sentence, [4] and two one-year concurrent sentences for resisting arrest and pointing and presenting a firearm.

The Court of Appeals reversed, finding that Officer Burke did not have the right to search Burton's pocket for weapons, and therefore the search was improper. The Court of Appeals concluded that the trial court erred in not directing a verdict on all charges.

DISCUSSION

I. *Pointing and Presenting a Firearm*

We asked the parties to brief whether pointing and presenting a firearm is a lesser included offense of assault ***264** with intent to kill so that the trial court had subject matter jurisdiction to convict and sentence Burton for the offense. We hold that pointing and presenting a firearm is not a lesser included offense of assault with intent to kill and therefore the conviction must be vacated.

In a criminal case, the trial court's subject matter jurisdiction is limited to those crimes charged in the indictment and all lesser included offenses. *State v. Watson,* 349 S.C. 372, 563 S.E.2d 336 (2002). An offense is a lesser included offense of another if "the greater of the two offenses includes all the elements of the lesser offense." *State v. Elliott,* 346 S.C. 603, 606, 552 S.E.2d 727, 728 (2001). However, when an "offense has traditionally been considered a lesser included offense of the greater offense charged, [this Court] will continue to construe it as a lesser included, despite the failure to strictly satisfy the elements test." *Watson,* 563 S.E.2d at 338.

The elements of pointing and presenting a firearm are (1) pointing or presenting; (2) a loaded or unloaded firearm; (3) at another. S.C.Code Ann. § 16–23–410 (2003). The elements of assault with intent to kill are "(1) an unlawful attempt; (2) to commit a violent injury; (3) to the person of another; (4) with malicious intent; and (5) accompanied by the present ability to complete the act." ****9** *State v. Walsh,* 300 S.C. 427, 429, 388 S.E.2d 777, 779 (1988) (overruled on other grounds). In *State v. Walsh,* this Court applied the *Blockburger* test and found that the offenses of pointing and presenting a firearm and assault with intent to kill constituted separate and distinct offenses in a double jeopardy case. *Walsh,* 388 S.E.2d at 779.

Assault with intent to kill does not require the use of a firearm. Therefore, strict application of the elements test leads to the conclusion that pointing and presenting a firearm is not a lesser included offense of assault with intent to kill. *See e.g. Watson,* 563 S.E.2d at 336 (Reckless homicide requires operation of an automobile while murder does not. Therefore, under the strict elements test, reckless homicide is not a lesser included offense of murder.) Also, pointing and presenting a firearm has not traditionally been considered a ***265** lesser included offense of assault with intent to kill. *Walsh,* 388 S.E.2d at 779.

Pointing and presenting a firearm is not a lesser included offense of assault with intent to kill. Therefore, Burton's conviction is vacated because the trial court lacked subject matter jurisdiction.

II. *Preservation*

The Court of Appeals held that Officer Burke conducted an illegal search of Burton's coat pocket, and therefore the trial court erred in not directing a verdict on all charges against Burton. We agree with the Court of Appeals that the search and seizure of Burton was illegal and we look with disapproval on the officers' conduct leading up to the seizure. However, Burton's argument was not properly preserved as to any of the counts. The record reflects no attempt by Burton, at trial, to suppress any evidence on constitutional grounds. Instead, Burton only raised the propriety of the police

action in a motion for directed verdict, *after* the evidence pertaining to the search and seizure had been admitted without objection. [5]

Burton made motions for directed verdicts at the close of the State's case. The appropriate "vehicle for challenging the admissibility of evidence based on a search and seizure violation is a motion to suppress." *State v. Green,* 350 S.C. 580, 567 S.E.2d 505 (Ct.App.2002). A motion for directed verdict, on the other hand, challenges the sufficiency of the properly admitted evidence. *Green,* 567 S.E.2d at 505. Burton did not make a motion *in limine* nor did he timely move to suppress the evidence. [6] *See State v. Brannon,* 347 S.C. 85, 552 S.E.2d 773 (Ct.App.2001)(finding Fourth Amendment issue not ***266** preserved when defendant failed to join in a motion to suppress). "The general rule is that the failure to object to, or failure to move to strike, testimony renders such competent and accordingly entitled to be considered to the extent it is relevant." *State v. Frank,* 262 S.C. 526, 205 S.E.2d 827 (1974). Because Burton did not object to the evidence when offered, it was properly admitted. This properly admitted evidence was sufficient to withstand a motion for a directed verdict. Burton did not preserve the argument for appellate review and the Court of Appeals erred in reversing his convictions.

CONCLUSION

Burton's conviction of pointing and presenting a firearm is VACATED because it is not a lesser included offense of assault with intent to kill. Further, we REVERSE the Court of Appeals' decision to direct verdicts as to the remaining convictions of assault while resisting arrest, and resisting arrest as a lesser included offense of assault while resisting arrest, as Burton's arguments were not preserved for review.

****10** TOAL, C.J., WALLER and BURNETT, JJ., and Acting Justice REGINALD I. LLOYD, concur.

All Citations

356 S.C. 259, 589 S.E.2d 6

Footnotes

1 The United States Court of Appeals for the Fourth Circuit vacated and remanded Burton's federal conviction for unlawful possession of a firearm by a felon, which arose from the same incident. The court found that the "officer's search was not supported by a reasonable suspicion of criminal activity and therefore constituted an illegal search." *United States v. Burton,* 228 F.3d 524, 526 (4th Cir.2000).

2 Officer Burke was dressed in plain clothes, and was wearing a bullet proof vest marked "Police" over his clothes.

3 Officer Burke explained that the bullet was perpendicular in the chamber, which prevented the gun from firing.

4 Burton was convicted in federal court of unlawful possession of a firearm by a felon, stemming from the same incident, and was sentenced to 115 months imprisonment. The United States Court of Appeals for the Fourth Circuit vacated Burton's conviction for this charge because of the illegal search and seizure. *See* footnote 1, *supra.*

5 We note that Burton was a pro se litigant. A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.

6 "Whenever evidence is introduced that was allegedly obtained by conduct violative of the defendant's constitutional rights, the defendant is entitled to have the trial judge conduct an evidentiary hearing out of the presence of the jury *at this threshold point* to establish the circumstances under which it was seized." *State*

v. Blassingame, 271 S.C. 44, 244 S.E.2d 528 (1978) (emphasis supplied), modified by *State v. Patton,* 322 S.C. 408, 472 S.E.2d 245 (1996).

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113 S.Ct. 1980
Supreme Court of the United States

William McNEIL, Petitioner,
v.
UNITED STATES.

No. 92–6033.
|
Argued April 19, 1993.
|
Decided May 17, 1993.

Synopsis

Inmate appealed from order of United States District Court for the Northern District of Illinois, James H. Alesia, J., dismissing his Federal Tort Claims Act (FTCA) action challenging prison conditions. The Court of Appeals for the Seventh Circuit, 964 F.2d 647,affirmed. Certiorari was granted. The Supreme Court, Justice Stevens, held that FTCA requirement, that administrative remedies be exhausted before bringing suit, was not satisfied by receipt of agency rejection of claim occurring after commencement of suit but before any substantial progress had taken place in the litigation.

Affirmed.

**1980 *Syllabus* *

Four months after petitioner McNeil, proceeding without counsel, filed this Federal Tort Claims Act (FTCA) suit for money damages arising from his alleged injury by the United States Public Health Service, he submitted a claim for such damages to the Department of Health and Human Services, which promptly denied the claim. The District Court subsequently dismissed McNeil's complaint as premature under an FTCA provision, 28 U.S.C. § 2675(a), which requires that a claimant exhaust his administrative remedies before bringing suit. The Court of Appeals affirmed, although decisions in other Circuits have permitted a prematurely filed FTCA action to proceed if no substantial progress has taken place in the litigation before the administrative remedies are exhausted.

**1981 *Held:* An FTCA action may not be maintained when the claimant failed to exhaust his administrative remedies prior to filing suit, but did so before substantial progress was made in the litigation. Section 2675(a)'s unambiguous text —which commands that an "action shall not be instituted ... unless the claimant shall have first presented the claim to the appropriate ... agency and his claim shall have been finally denied by the agency"—requires rejection of McNeil's contention that his action was timely because it was commenced when he lodged his complaint with the District Court. The complaint was filed too early, since McNeil's claim had not previously been presented to the Public Health Service nor "finally denied" by that agency. Also unpersuasive is McNeil's argument that his action was timely because it should be viewed as having been "instituted" on the date when his administrative claim was denied. In its statutory context, the normal interpretation of the word "institute" is synonymous with the words "begin" and "commence." The most natural reading of the statute indicates that Congress intended to require complete exhaustion of Executive remedies before invocation of the judicial process. Moreover, given the clarity of the statutory text, it is certainly not a "trap for the unwary." Pp. 1982–1984.

964 F.2d 647, affirmed.

STEVENS, J., delivered the opinion for a unanimous Court.

Attorneys and Law Firms

*107 Allen E. Shoenberger, Chicago, IL, appointed by this Court, for petitioner.

William K. Kelley, Washington, DC, pro hac vice, by special leave of the Court, for respondent.

Opinion

Justice STEVENS delivered the opinion of the Court.

The Federal Tort Claims Act (FTCA) provides that an "action shall not be instituted upon a claim against the United States for money damages" unless the claimant has first exhausted his administrative remedies. [1] The question presented is whether such an action may be maintained when the claimant failed to exhaust his administrative remedies prior to filing suit, but did so before substantial progress was made in the litigation.

I

On March 6, 1989, petitioner, proceeding without counsel, lodged a complaint in the United States District Court for the Northern District of Illinois, alleging that the United States Public Health Service had caused him serious injuries while "conducting human research and experimentation on prisoners" in the custody of the Illinois Department of Corrections. ***108** He invoked the federal court's jurisdiction under the FTCA and prayed for a judgment of $20 million. App. 3–7.

Four months later, on July 7, 1989, petitioner submitted a claim for damages to the Department of Health and Human Services.[2] The Department denied the claim on July 21, ****1982** 1989. On August 7, 1989, petitioner sent a letter to the District Court enclosing a copy of the Department's denial of his administrative claim and an affidavit in support of an earlier motion for appointment of counsel. Petitioner asked that the court accept the letter "as a proper request, whereas plaintiff can properly commence his legal action accordingly." *Id.,* at 10.

For reasons that are not entirely clear, the United States was not served with a copy of petitioner's complaint until July 30, 1990.[3] *Id.,* at 2. On September 19, 1990, the United States moved to dismiss the complaint on the ground that petitioner's action was barred by the 6–month statute of limitation.[4] The motion was based on the assumption that ***109** the complaint had been filed on April 15, 1990, when petitioner paid the court filing fees, and that that date was more than six months after the denial of petitioner's administrative claim. In response to the motion, petitioner submitted that the complaint was timely because his action had been commenced on March 6, 1989, the date when he actually lodged his complaint and the Clerk assigned it a docket number.

The District Court accepted March 6, 1989, as the operative date of filing, but nonetheless granted the Government's motion to dismiss. Petitioner's suit was not out of time, the District Court reasoned, but, rather, premature. The court concluded that it lacked jurisdiction to entertain an action "commenced before satisfaction of the administrative exhaustion requirement under § 2675(a)." *Id.,* at 21.

The Court of Appeals for the Seventh Circuit affirmed. The court explained:

> "According to 28 U.S.C. § 2401(b), a tort claim against the United States must be 'begun within six months after the date of mailing ... of notice of final denial of the claim by the agency to which it was presented.' The administrative denial was mailed on July 21, 1989, so McNeil had between then and January 21, 1990, to begin his action. The complaint filed in March 1989 was too early. This left two options. Perhaps the document filed in March 1989 loitered on the docket, springing into force when the agency acted. Or perhaps the request for counsel in August 1989, during the six-month period, marks the real 'beginning' of the action. The district court rejected both options, and McNeil, with the assistance of counsel appointed by this court, renews the arguments here.
>
> . . . . .
>
> ***110** "March 1989 was too early. The suit did not linger, awaiting administrative action. Unless McNeil began a fresh suit within six months after July 21, 1989, he loses." 964 F.2d 647, 648–649 (1992).

The court reviewed the materials filed in August 1989 and concluded that the District Court had not committed plain error in refusing to construe them as having commenced a new action.[5]

****1983** Because decisions in other Circuits permit a prematurely filed FTCA action to proceed if no substantial progress has taken place in the litigation before the administrative remedies are exhausted, see *Kubrick v. United States,* 581 F.2d 1092, 1098 (CA3 1978), reversed on other grounds, 444 U.S. 111, 100 S.Ct. 352, 62 L.Ed.2d 259 (1979), and *Celestine v. Veterans Administration Hospital,* 746 F.2d 1360, 1363 (CA8 1984),[6] we granted certiorari to resolve the conflict. 506 U.S. 1074, 113 S.Ct. 1036, 122 L.Ed.2d 347 (1993).

II

As the case comes to us, we assume that the Court of Appeals correctly held that nothing done by petitioner after the denial of his administrative claim on July 21, 1989, constituted the commencement of a new action. The narrow question before us is whether his action was timely either because ***111**

it was commenced when he lodged his complaint with the District Court on March 6, 1989, or because it should be viewed as having been "instituted" on the date when his administrative claim was denied.

The text of the statute requires rejection of the first possibility. The command that an "action shall not be instituted ... unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail" is unambiguous. We are not free to rewrite the statutory text. As of March 6, 1989, petitioner had neither presented his claim to the Public Health Service, nor had his claim been "finally denied" by that agency. As the Court of Appeals held, petitioner's complaint was filed too early.

The statutory text does not speak with equal clarity to the argument that petitioner's subsequent receipt of a formal denial from the agency might be treated as the event that "instituted" his action. Petitioner argues the word "instituted" that is used in § 2675(a), see n. 1, *supra,* is not synonymous with the word "begun" in § 2401(b), see n. 4, *supra,* or with the word "commence" as used in certain other statutes and rules. See, *e.g., Hallstrom v. Tillamook County,* 493 U.S. 20, 110 S.Ct. 304, 107 L.Ed.2d 237 (1989). He suggests that an action is not "instituted" until the occurrence of the events that are necessary predicates to the invocation of the court's jurisdiction—namely, the filing of his complaint and the formal denial of the administrative claim. This construction, he argues, is consistent with the underlying purpose of § 2675(a): As long as no substantial progress has been made in the litigation by the time the claimant has exhausted his administrative remedies, the federal agency will have had a fair opportunity to investigate and possibly settle the claim before the parties ***112** must assume the burden of costly and time-consuming litigation. [7]

We find this argument unpersuasive. In its statutory context, we think the normal interpretation of the word "institute" is synonymous with the words "begin" and "commence." The most natural reading of the ****1984** statute indicates that Congress intended to require complete exhaustion of Executive remedies before invocation of the judicial process. Every premature filing of an action under the FTCA imposes some burden on the judicial system [8] and on the Department of Justice which must assume the defense of such actions. Although the burden may be slight in an individual case, the statute governs the processing of a vast multitude of claims. The interest in orderly administration of this body of litigation is best served by adherence to the straightforward statutory command.

***113** Moreover, given the clarity of the statutory text, it is certainly not a "trap for the unwary." It is no doubt true that there are cases in which a litigant proceeding without counsel may make a fatal procedural error, but the risk that a lawyer will be unable to understand the exhaustion requirement is virtually nonexistent. Our rules of procedure are based on the assumption that litigation is normally conducted by lawyers. While we have insisted that the pleadings prepared by prisoners who do not have access to counsel be liberally construed, see *Haines v. Kerner,* 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); *Estelle v. Gamble,* 429 U.S. 97, 106, 97 S.Ct. 285, 292, 50 L.Ed.2d 251 (1976), [9] and have held that some procedural rules must give way because of the unique circumstance of incarceration, see *Houston v. Lack,* 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988) (*pro se* prisoner's notice of appeal deemed filed at time of delivery to prison authorities), we have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel. [10] As we have noted before, "in the long run, experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law." *Mohasco Corp. v. Silver,* 447 U.S. 807, 826, 100 S.Ct. 2486, 2497, 65 L.Ed.2d 532 (1980).

The FTCA bars claimants from bringing suit in federal court until they have exhausted their administrative remedies. Because petitioner failed to heed that clear statutory command, the District Court properly dismissed his suit.

The judgment of the Court of Appeals is

Affirmed.

All Citations

508 U.S. 106, 113 S.Ct. 1980, 124 L.Ed.2d 21, 61 USLW 4468

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

1 Title 28 U.S.C. § 2675(a) provides, in pertinent part:

> "An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section."

2 Petitioner sought damages of $500,000 in his administrative claim, not the $20 million for which he prayed in his earlier federal court action. Pursuant to 28 U.S.C. § 2675(b), a claimant is barred from seeking in federal court "any sum in excess of the amount of the claim presented to the federal agency." That is, had petitioner properly filed an action in district court after his administrative claim was denied, he would have been limited in his recovery to $500,000.

3 Entries in the District Court docket indicate that plaintiff had previously filed a motion for leave to proceed *in forma pauperis,* that later in August he filed a motion for appointment of counsel, and that he ultimately paid a filing fee that caused the District Court to dismiss the motion for leave to file *in forma pauperis* as moot. In all events, in April 1990, the District Court ordered service to be effected by a United States Marshal "because plaintiff is incarcerated and proceeding pro se." App. 1.

4 Title 28 U.S.C. § 2401(b) provides:

> "A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented."

5 In dissent, Judge Ripple expressed the opinion that petitioner had properly raised the issue in the District Court and on appeal, 964 F.2d, at 649, n. 1, and that in any event it was "clear that the plaintiff, a prisoner proceeding pro se, attempted to refile the action after the denial of the administrative claim." *Id.,* at 649. Our grant of certiorari did not encompass the question whether a new action had been filed in August and we therefore express no opinion as to the correctness of the Court of Appeals' ruling on that issue.

6 Decisions in the Fifth and Ninth Circuits agree with the position taken in the Seventh Circuit in this case. See *Gregory v. Mitchell,* 634 F.2d 199, 204 (CA5 1981); *Reynolds v. United States,* 748 F.2d 291, 292 (CA5 1984); *Jerves v. United States,* 966 F.2d 517, 521 (CA9 1992).

7 Prior to 1966, FTCA claimants had the option of filing suit in federal court without first presenting their claims to the appropriate federal agency. Moreover, federal agencies had only limited authority to settle claims. See Federal Tort Claims Act of 1946, ch. 753, §§ 403(a), 420, 60 Stat. 843, 845. Because the vast majority of claims ultimately were settled before trial, the Department of Justice proposed that Congress amend the FTCA to "requir[e] all claims to be presented to the appropriate agency for consideration and possible settlement before a court action could be instituted. This procedure would make it possible for the claim first to be considered by the agency whose employee's activity allegedly caused the damage. That agency would have the best information concerning the activity which gave rise to the claim. Since it is the one directly concerned, it can be expected that claims which are found to be meritorious can be settled more quickly without the need for filing suit and possible expensive and time-consuming litigation." S.Rep. No. 1327, 89th Cong., 2d Sess., 3 (1966), U.S.Code Cong. & Admin.News3 (1966), U.S.Code Cong. & Admin.News 1966, pp. 2515, 2517.

The Senate Judiciary Committee further noted that "the improvements contemplated by [the 1966 amendments] would not only benefit private litigants, but would also be beneficial to the courts, the agencies, and the Department of Justice itself." *Id.,* at 2, U.S.Code Cong. & Admin.News2, U.S.Code Cong. & Admin.News 1966, p. 2516.

8 Even petitioner concedes that at least one objective of the 1966 amendments to the FTCA was to "reduce unnecessary congestion in the courts." *Id.,* at 4, U.S.Code Cong. & Admin.News4, U.S.Code Cong. & Admin.News 1966, p. 2518. See Brief for Petitioner 24.

9 Again, the question whether the Court of Appeals should have liberally construed petitioner's letter of August 7, 1989, as instituting a new action is not before us. See n. 5, *supra.*

10 Indeed, we have previously recognized a systemic interest in having a party represented by independent counsel even when the party is a lawyer. See *Kay v. Ehrler,* 499 U.S. 432, 111 S.Ct. 1435, 113 L.Ed.2d 486 (1991).