

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2017

BRIGITTE REYNOLDS-PLAINTIFF

VS.

ANTHONY STEWART et al-RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

INMATE NO. 671020
WOMEN'S HURON VALLEY CORRECTIONAL FACILITY
3201 BEMIS ROAD
YPSILANTI, MICHIGAN 48197-0911

NO PHONE

QUESTION(S) PRESENTED

- 1. DID THE DISTRICT COURT IMPROPERLY DECIDE DISPUTED FACTUAL ISSUES AND DISMISSED WITH PREJUDICE; AND DID THE SIXTH CIRCUIT COURT IMPROPERLY AGREE WITH THE DISTRICT COURT?**
- 2. WAS PLAINTIFF'S ACCESS TO THE COURT EFFECTIVELY IMPEDED WHEN DEFENDANT'S REFUSED TO LET HER REVIEW THE CD TRANSCRIPTS FROM THE ALPENA COUNTY CIRCUIT COURT SUFFERING PLAINTIFF ACTUAL INJURY?**
- 3. WAS PLAINTIFF TREATED DIFFERENTLY THAN PRISONERS REPRESENTED BY COUNSEL?**

LIST OF PARTIES

☐ All parties appear in the caption of the case on the cover page.

☒ All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Erica Reeves	Warden's Assistant	Women's Huron Valley Correctional Facility 3201 Bemis Road Ypsilanti, MI 48197-0911
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Kari Osterhout	Deputy Warden Programs	Women's Huron Valley Correctional Facility 3201 Bemis Road Ypsilanti, MI 48197-0911
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S. Holliwell	Warden's Assistant	Women's Huron Valley Correctional Facility 3201 Bemis Road Ypsilanti, MI 48197-0911
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Tackett	Correctional Officer	Women's Huron Valley Correctional Facility 3201 Bemis Road Ypsilanti, MI 48197-0911
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Mandate.

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2017

PETITION FOR WRIT OF CERTIORARI

Plaintiff respectfully prays that a writ of certiorari issues to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears as Appendix C to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state court**:

The opinion of the highest state court to review the merits appears at Appendix ____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears as Appendix ____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of appeals decided my case was April 25, 2018.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix ____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A-____.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix ____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix ____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A-____.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. AMEND. I

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

U.S. CONST. AMEND. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. AMEND. XIV

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 wherein they reside. No State shall make or enforce any law which 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 due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This is a civil rights action under 42 U.S.C. § 1983 brought by a state prisoner who alleges that her access to the courts was impeded by prison staff. The district court dismissed the complaint with prejudice stating that plaintiff has not shown an actual injury and therefore, her case is non-justiciable. The Magistrate Judge declined to consider the qualified immunity issue because of the non-justiciability of plaintiff's claim. The Magistrate Judge also stated that Plaintiff's claims for monetary damages against defendants in their official capacities are barred under the Eleventh Amendment.

Plaintiff then appealed to the United States Sixth Circuit Court of Appeals. The United States Sixth Circuit affirmed the United States District Court's decision.

Plaintiff asserts that her United States Constitutional I, V and XIV Amendment rights as a citizen of the United States have been violated.

STATEMENT OF FACTS

The Plaintiff alleged in a declaration under penalty of perjury that the Defendants impeded her access to the courts, causing her actual injury.

On July 12, 2016, Plaintiff was summoned to control center for legal mail. However, when Plaintiff arrived she was given a rejection notice because the 26th Judicial Court in Alpena, Michigan, mailed a compact disc for her requested transcripts of a hearing she had in that court. Plaintiff needed transcripts to request a reconsideration and appeal the circuit court's decision.

Correctional officer Tacket (E-9), told Plaintiff that she was not allowed to have the disc. Plaintiff then contacted Deputy Osterhout, Mr. Holliwell, and Warden Stewart asking if Plaintiff could at least view the disc and make notes for her to prepare a reconsideration/appeal; Plaintiff had 21 days from June 3, 2016, to request a reconsideration from the Alpena circuit court.

Plaintiff's constitutional right of access of the courts was violated when, during the limited time period in which she could have requested a reconsideration and/or appealed the judge's decision, she was denied access to the CD provided by the 26th Judicial Circuit Court, to prepare her pleading. Plaintiff was not provided with any alternative means of access to her hearing transcripts as the lower court denied her request for a hard copy of the hearing transcripts.

Plaintiff was prevented her possibility to prevail on a reconsideration and/or appeal of the 26th Circuit Court's decision, when Defendants impeded her access to the courts by denying her to view the CD. Plaintiff has made several attempts to contact Deputy Osterhout and Deputy Warden Assistant Halliwill to view the compact disc, but never received a response or the requested hearing. Plaintiff then filed a grievance.

The prison staff did not complete the grievance process within the Michigan Department of Corrections policy's mandated 120 days.

Plaintiff filed a civil rights action under 42 U.S.C. § 1983 presenting the following issues:

1. Whether the district court improperly decided disputed factual issues and dismissed with prejudice?
2. Whether the plaintiff's factual allegations of "impeding her access to the courts" by prison officials raised a material issue under the First Amendment?
3. Whether the plaintiff was treated differently than prisoners represented by counsel?

The U.S. District Court granted defendants motion to dismiss with prejudice.

Prisoners have a fundamental right of access to the courts under the First Amendment. Plaintiff asserts that Defendant's confiscation and loss of legal materials blocked and effectively prevented Plaintiff's access to the courts. Prisoners have a fundamental right of meaningful access to the courts. The importance of this right cannot be overstated. It is the right upon which all other rights depend. This right is founded in the due process clause, U.S. Const. Amend. V, and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights. *Casey v. Lewis*, 43 F.3d 1261 (1994). "[T]he principle that unimpeded transmission of inmate legal mail is the 'most obvious and formal manifestation' of the right of access to the courts has been clearly established for some time now." *Simkins v. Bruce*, 406 F.3d 1239, 1243 (10th Cir. 2005) (internal citation omitted).

REASONS FOR GRANTING THE WRIT

This petition should be granted because the United States District Court for the Eastern District of Michigan issued an Order dismissing with prejudice which was in error. The United States Sixth Circuit affirmed the District Court's decision which was error.

The Plaintiff has shown that her United States Constitutional rights have been violated and the decisions of the lower courts resulted in a decision that was contrary to clearly established Federal law, as determined by the Supreme Court of the United States in their interpretation of the United States Constitution for a constitutional right of access to the courts.

1. THE DISTRICT COURT IMPROPERLY DECIDED DISPUTED FACTUAL ISSUES AND DISMISSED WITH PREJUDICE AND THE SIXTH CIRCUIT COURT IMPROPERLY AGREED WITH THE DISTRICT COURT.

Discussion:

Plaintiff has brought actionable standing as access to the courts is a constitutional right to seek redress on appeal for a criminal or civil rights appeal. Plaintiff's "right to access the courts . extends to direct appeals, habeas corpus applications, and civil rights claims only." *Thaddeus-X v. Blatter*, 175 F.3d 378, 391 (6th Cir. 1999) (en banc).

Plaintiff's constitutional right to seek redress from the circuit court was impeded when named prison officials refused to allow her access to the compact disk sent from the circuit court.

Prisoner's constitutional right of meaningful access to the courts is fundamental as the reality and substance of any of prisoner's protected rights is only as strong as his ability to seek relief from the courts or otherwise to petition the government for redress of the deprivation of his rights. U.S.C.A. Const. Amends. I, XIV.

A prisoner's right to meaningful access to the courts, along with his broader right to petition the government for a redress of his grievances under the First Amendment, precludes prison authorities from penalizing a prisoner for exercising those rights. In some instances, prison authorities must even take affirmative steps to help prisoners exercise their rights *Casey v*

Lewis, 43 F3d 1261 (9th Cir. 1994). Federal judges should not be dealing with prisoner complaints which, although important to prisoner, are so minor that any well-run institution should be able to resolve them fairly without resort to federal judges. *Jihaad v Carlson*. 410 F.Supp. 1132 (1976).

The District Court and Sixth Circuit Court limited Plaintiff's constitutional right to only appeal of her criminal case or conditions of confinement. Impeding Plaintiff's access to the court, when Plaintiff clearly grieved prison officials concerning that constitutional right, is a condition of her confinement. Both courts erred in dismissing Plaintiff's 42 U.S.C § 1983 Complaint.

Boag v MacDougall, 454 U.S. 364, 70 L.Ed.2d 551, 102 S. Ct 700 (1982): Pleadings filed by individuals representing themselves are held to a less stringent standard than those prepared by attorneys. *Fernandez v U.S.*, 941 F.2d 1488 (11th Cir.1991): Federal courts are to liberally construe the pleadings of pro se litigants.

2. PLAINTIFF 'S ACCESS TO THE COURT WAS EFFECTIVELY IMPEDED WHEN DEFENDANT'S REFUSED TO LET HER REVIEW THE CD TRANSCRIPTS FROM THE ALPENA COUNTY CIRCUIT COURT SUFFERING PLAINTIFF ACTUAL INJURY.

Discussion:

"Because the right to procedural due process is absolute in the sense that it does not depend upon the merits of a claimant's substantive assertions, and because of the importance to organized society that procedural due process be observed, the denial of procedural due process should be actionable for nominal damages without proof of actual injury." *Hughes v. Rowe, et al.*, 449 U.S. 5; 101 S. Ct. 173; 66 L. Ed. 2d 163; 1980 U.S. LEXIS 1; 49 U.S.L.W. 3346.

“In order to prevail on a claim of denial of access to the courts, a plaintiff must establish that he suffered actual injury as a result of the alleged denial. *Lewis*, 518 U.S. at 349; *see also Hadix v. Johnson*, 182 F.3d 400, 405 (6th Cir. 1999). “[A]ctual injury” does not occur “without a showing that...a claim has been lost or rejected, or that the presentation of...a claim is currently being prevented.” *Root v. Towers*, 238 F.3d 423 (6th Cir. 2000), citing *Lewis*, 518 U.S. at 354-56; *Pilgrim*, 92 F.3d at 416. In other words, an inmate who claims that his right of access to the courts was denied must present evidence showing that he was actually impeded in an existing or contemplated non-frivolous legal proceeding.” *Lewis*, 518 U.S. at 351-53; *Hadix*, 182 F.3d at 406. *Eberle v. Wilkinson*, 2005 U.S. Dist. LEXIS 46296. Citing *Carey v. Piphus*, 435, U.S. 247, 266-267 (1978).

In *Wolf v McDonnell*, 418 U.S. 539 (1974) due process is often called basic fairness. In the instant case, Plaintiff was deprived of her appeal from the order of the 26th Judicial Court in Alpena, Michigan. The Alpena Court denied the return of property they seized from her apartment while she was confined in the county jail. Upon completion of her trial Plaintiff motioned the Court for the return of her seized property.

When Plaintiff requested transcripts to appeal the hearing the court held concerning the return of her property. The Circuit Court sent a CD instead of paper transcripts. Correctional officer Tacket (E-9), told Plaintiff that she was not allowed to have the disc. Plaintiff then contacted Deputy Osterhout, Mr. Holliwell, and Warden Stewart so that Plaintiff could at least view the disc and make notes for the reconsideration and appeal; Plaintiff had 21 days from June 3, 2016, to request a reconsideration from the circuit court for the hearing. The Supreme Court has recognized that in the context of incoming inmate correspondence, a penal institution's

legitimate security needs justify certain measures that may infringe on inmates' First Amendment and Sixth Amendment rights, as well as their right of access to the courts. *See Procunier v. Martinez*, 416 U.S. 396, 412-413, 40 L. Ed. 2d 224, 94 S. Ct. 1800 (1974). These measures, as with other measures affecting inmates' constitutional rights, are valid if they are "reasonably related" to the institution's security needs or other "legitimate penological interests". *Turner v. Safley*, 482 U.S. 78, 96 L. Ed. 2d 64, 79, 107 S. Ct. 2254 (1987). In evaluating whether a particular measure satisfies this standard, a court must examine whether there is "a 'valid, rational connection' between the prison regulation and the legitimate governmental interest put forward to justify it"; whether the "governmental objective [is] . . . a legitimate and neutral one"; whether "alternative means of exercising the right . . . remain open to prison inmates"; the "impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally"; and whether there are any ready alternatives to the challenged regulation. *Id.* at 79-80. In the legal mail context, prison officials bear the burden of putting "forth legitimate reasons for interfering with a prisoner's incoming mail." *Parrish v. Johnson*, 800 F.2d 600, 604 (6th Cir. 1986).

The refusal to allow Plaintiff to view the Alpena circuit court's hearing proceeding to prepare her appeal, impede Ms. Reynolds access to the court. This caused her acutal injury when she was prevented from appealing the circuit court hearing.

It was imperative that Plaintiff viewed the hearing proceeding because while she attended a video conference during the hearing proceeding, the power at the prison was intrupted and the proceeding was cut off. Plaintiff had no knowledge what continued at the hearing and she depended on the transcripts/CD, to prepare her appeal of the decision of that hearing, which is

clearly a due process right. The alleged denial of viewing the CD containing the proceeding hindered/impede Plaintiff's ability to appeal a non-frivolous issue in the higher courts.

Plaintiff's lost chance to pursue an appeal of her constitutionally protected due process access to the court, cannot be deemed "frivolous" without the higher court's ability to make that judgment. Therein lies the "actual injury." "To state a denial-of-access claim, a prisoner has to allege an actual injury--in other words, explaining the connection between the alleged denial of access to legal materials and an inability to pursue a legitimate challenge to a conviction, sentence, or prison conditions. The right of access protects prisoners from being shut out of court, it does not exist to enable the prisoners to litigate effectively once in court." *Nitz v. Hall*, 473 Fed. Appx.513 (2012).

As Plaintiff is appearing *pro se*, his Complaint¹ is held to less stringent standards than those drafted by attorneys. *Burton v. Jones*, 321 F.3d 569, 573 (6th Cir. 2003); *Hahn v. Star Bank*, 190 F.3d 708, 715 (6th Cir. 1999). During screening, the Plaintiff's allegations are taken as true and liberally construed in his favor. *Urbina v. Thoms*, 270 F.3d 292, 295 (6th Cir. 2001).

3. PLAINTIFF WAS TREATED DIFFERENTLY THAN PRISONERS REPRESENTED BY COUNSEL.

Discussion:

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw reasonable inference that the defendant is liable for the misconduct alleged."

Jasinski, supra at 538. (Quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)).

¹ Highly specific facts to support Plaintiff's claim are presented as best as possible considering Plaintiff's limited capabilities and education.

Plaintiff requested but did not receive a hearing on the rejection of the CD. Plaintiff has not been able to receive a viewing of the disc, which has been allowed to other inmates at this facility when they requested to view disc's they received from the courts.

On November 6, 2016, a memo was posted through December 6, 2016 to allow the showing of your video related to your case. The memo stated, "Attorney's will be permitted to show you video related to your case, it must be played on an MDOC owned DVD player." Plaintiff was *pro se* for the Motion in the Alpena Circuit Court in that she did not have an attorney and therefore, prison officials did not allow her to view the CD containing the transcripts from the circuit court hearing.

Plaintiff demonstrated a fundamental violation of her Due Process, First Amendment right to access to the courts. MDOC Defendants have knowingly interfered and prevented Plaintiff from achieving this in the present instance. These clearly established rights of the Plaintiff were in effect and known to MDOC Defendants at the time of the violation. MDOC Defendants' had intent to violate and prevent said rights when they violated state procedure and did not grant her a hearing on the rejected CD per policy, nor did they provide her with supervised access to view the CD containing the transcripts from her Circuit Court hearing.

Plaintiff has a clearly established Due Process right to access to the courts. "Prisoners have a fundamental right of access to the courts under the First Amendment. *Lewis v. Casey*, 518 U.S. 343, 346, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996); *Bounds v. Smith*, 430 U.S. 817, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977); *Pilgrim v. Littlefield*, 92 F.3d 413, 416 (6th Cir. 1996). Such access to the courts must be "adequate, effective, and meaningful." *Bounds*, 430 U.S. at 822. Meaningful access embraces the right to adequately prepare and file the necessary legal

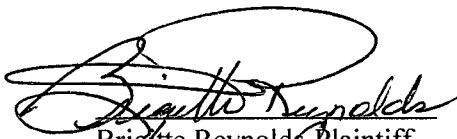
documents. *Id.*, at 823-24; *Johnson v. Hubbard*, 698 F.2d 286, 288 (6th Cir.), *cert. denied*, 464 U.S. 917, 104 S. Ct. 282, 78 L. Ed. 2d 260 (1983). Restrictions on the time, place, and manner in which inmates may engage in legal research and preparation of legal papers are constitutional, however, so long as the restrictions do not unreasonably frustrate the right of access to the courts.” *Walker v. Mintzes*, 771 F.2d 920, 932 (6th Cir. 1985). MDOC Defendants not only frustrated Plaintiff Reynolds access to the court, she suffered actual injury when the avenues to appeal and recover her seized property from her criminal case, were effectively blocked by MDOC Defendants.

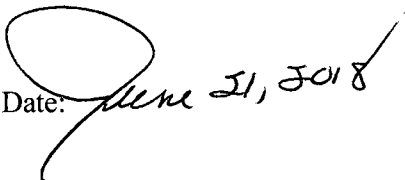
CONCLUSION

Prisoners have a fundamental right of access to the courts under the First Amendment. Plaintiff asserts that Defendants confiscation and loss of legal materials blocked and effectively prevented Plaintiff’s access to the courts. Prisoners have a fundamental right of meaningful access to the courts. The importance of this right cannot be overstated. It is the right upon which all other rights depend. This right is founded in the due process clause, U.S. Const. Amend. V, and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights. *Casey v. Lewis*, 43 F.3d 1261 (1994).

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Brigitte Reynolds-Plaintiff

Date:  June 21, 2018