

IN THE

SUPREME COURT OF THE UNITED STATES

Johnson Christopher Jamerson

PETITIONER,

CASE No:

Vs.

L.T. CASE No: 16-15422

Julie Jones, Sec. Fla. Dept. of Corrections et al.,
Benjamin T. Wappler, (Librarian, Tomoka Correctional
Institution),

Captain Goddard, (Captain of Security, Tomoka
Correctional Institution),

RESPONDENT(S),

Petition For Writ of Certiorari

On Petition from the Eleventh Circuit Court
of Appeal.

1st Alca
Johnson C. Jamerson # 453581

Questions Presented

1. Under the 1st Amendment to the United States Constitution, "Do prisoners still retain their Constitutional Right to the Freedom of Speech?"
2. Is it a Denial of Due Process for a Prison Facility operating under the Executive Branch of Government to create regulation denying a prisoner of his Constitutional Right to the Freedom of Speech?
3. Must a Prison's Rules and Regulations be adopted and in conformity with both the Legislative Intent of State Statutory Law and all principles of Due Process as guaranteed by the United States Constitution?
4. Did the Eleventh Circuit Court of Appeal create the law of the case without applying any law to the case?

List of Parties

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

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgements below.

Opinions Below

The opinion of the United States District Court appears at Appendix A to the petition and is unpublished.

The opinion of the United States Court of Appeals appears at Appendix B to the petition and is unpublished.

Jurisdiction

The date on which the United States Court of Appeals decided my case was October 2, 2017.

A timely petition for rehearing was denied by the United States Court of Appeals on May 21, 2018, and a copy of the order denying rehearing appears at Appendix C.

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

Constitutional and Statutory provisions involved

Amendment 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.

Amendment XIV. 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 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; nor deny to any person within its jurisdiction the equal protection of the laws.

Statement of the Case

"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America"

For this timeless declaration establishing the foundation of this Institution, bore our forefathers' inherited characteristics and traits of truth, and sought to deploy a vision of morality, rooted in deep conviction of our Creator. Recognizing that all men are created equal, facilitated the procreation of the Bill of Rights, ensuring the equilibrium divested by their oath, and entrusting those with the administration of its sacred precepts as if they were their own.

This Bill of Rights, enacted "in order to prevent misconstruction or abuse", of the Constitution's regulatory powers, provides declaratory and restrictive clauses properly preserving the Blessings of Liberty guaranteed to all by our God through our forefathers. It cannot be disputed that "every man has a right to his own faculties, physical and intellectual" Slaughter-House Cases 83 U.S. 36 (U.S. CA 1872), as no man can restrict those bodily functions that characterize us as human beings and are essential to life itself.

The First Amendment to the United States Constitution declares that "Congress shall make no law... abridging the freedom of speech". This clause more commonly referred to as the freedom of expression, is a restrictive clause on any form of Legislation seeking to impose punishment on any Citizen for expressing themselves verbally, imposing upon others their opinions and views. For "speech is often provocative and challenging... but it is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest" *Houston v. Hill* 107 S.Ct 2502 (1987). This sacred freedom of right is what separates a man from an animal, and distinguishes us from each other. Protected by the First Amendment against punishment from all branches of Government, this freedom of right cannot be denied to a prisoner, as "the restraints and the punishment which a criminal conviction entails do not place the Citizen beyond the ethical tradition that accords respect to the dignity and intrinsic worth of every individual," for "Liberty and Custody are not mutually exclusive concepts" *United States ex rel. Miller v. Twomey* 479 F.2d 701 (CA 7 1973).

The Separation of Powers Doctrine

The Constitution of the United States, written by lawyers solely acquainted with the Common Law, held fast to foundations of justice when employing the principles of the "Law of the Land". These principles, administered through the 14th Amendment's provisions of Due Process, originated in the Roman Empire and is the fundamental maxim of distributive justice. Integral to its proscriptions are the Separation of Powers Doctrine, which "is a restraint on the Legislative as well as on the Executive and Judicial powers of the Government" *Den v. The Hoboken Land and Improvement Co.* 18 How 272 (1856), ensuring that each of the Organic Provisions of Governmental power are "exercised within the limits therein prescribed, and interpreted according to the principles of the Common Law" *Hurtado v. People of the State of California* 110 U.S. 516 (1884). The Doctrine, wholly regulatory in character, declares that "no person properly belonging to one of the Departments shall exercise any powers appertaining to either of the others" *State v. Atlantic C.C.R. Co.* 56 Fla 617 (Fla 1908), forbidding any delegation of exclusive powers to be conferred amongst them. The legislature is the law making Branch of the Government, and they "retain all the powers of legislation delegated to them by the State Constitutions, which are not expressly taken away by the Constitution of the United States" *Calder v. Bull* 3 Dall 386 (1796), but "if it does not itself choose to act directly, it has not invoked its prerogative, and if it desires that some other function of the Government shall do its duty, such

other function can do it only if allowed by Constitutional limitations, and if the nature of the act is prohibited to that function, then it cannot be performed by it?" *McWhorter v. Pensacola* 3 A.R. Co. 24 Fla 412 (Fla 1888). For wherever the improper delegation of Legislative power occurs, an unlawful act is procured, in defiance of the Constitution.

Issue One

I. The Appeal

The Petitioner was not afforded his Constitutional Rights to Due Process and the Equal Protection of the Law when the Circuit Court decided an issue involving facts and law without properly applying former precedent in order to show that its conclusion was formulated within the boundaries of the law. Furthermore, the Circuit Court failed to address the grievous issue of the Department of Corrections' policy facilitating the denial of the Petitioner's Right of the Freedom of Speech, and the use of the UnConstitutional Policy to deprive him of his liberty, by placing him in Administrative Confinement. This jurisprudence holds that the Courts of the United States have jurisdiction over all cases "arising under the Constitution and Laws of the United States" and that "there is... an inseparable, indissoluble connection between the law and the case as cause and effect" because "but for the law, the case would never have existed" *Osborn et al. v. The Bank of the United States* 9 Wheat 738 (1821).

So quite naturally, the Circuit Court must provide some sort of justifiable basis for its claims that the Florida Administrative Code did not violate Due Process, and is Constitutionally adequate by demonstrating with down upon principles of law, How the Florida Administrative Code's Chapter 33 is in conformity with the requirements of Due Process, and How the regulation's process is deemed by law Constitutionally adequate. Let it be noted that the Circuit Court's claim that the Petitioner did not argue or appeal that the District Court erred in dismissing his claim that he did not receive Due Process and Equal Protection, is totally irrelevant to the basis upon which the Petitioner appealed (See Circuit Court Order P. 4) For the Petitioner appealed the general proposition that the District Court did not in any shape, form or fashion cover all of the facts and violations of Constitutional provisions laid out inside of the claim, which, undoubtedly would include his claims of the denial of Due Process and the Equal Protection of the law. As stated by the Petitioner previously in his motion for Rehearing, neither Court, District or Circuit addressed the Constitutionality of the Policy of the Department of Corrections and its facilitation of the deprivation of the Petitioner's 1st Amendment Right to the Freedom of Speech. As the "doctrine of 'law of the case' ... applies only to issues that were decided in the former proceeding but not to questions which might have been decided but were not" *Morrow v. Dillard* 580 F.2d 1284 (C.A. 5th Cir 1978), the Petitioner has not received

the Equal Protection of the doctrine, due to the failure of the District and Circuit Courts to address the questions involving the Constitutionality of the Prison's Policy and its direct effect upon his 1st Amendment Rights to the Freedom of Speech. A Monell claim demonstrates "a direct causal link between a ... policy or custom and the alleged Constitutional deprivation." *Carter v. Columbus Consul Gov't* 559 Fed. Appx 880 (C.A. 11th Cir 2014), for when "a Constitutional injury is caused by the execution of a Government entity's official policy or custom, the entity may be held liable under § 1983." *Carter v. City of Tampa Police Dep't* 575 Fed. Appx 869 (C.A. 11th Cir 2014). The Petitioner is seeking a resolution to his claims of the violation of his Constitutional Rights, and the Equal Protection of the laws attributable to the nature of the claim's disposition.

Issue Two

III. The UnConstitutional Policy

The Florida Department of Corrections was established through Title IV of the Florida Constitution as being a part of the Executive Branch of Government. Its functions include but are not limited to the enforcement of all valid State and Federal laws, rules, and regulations. It has been declared that "The Secretary shall ensure that the programs and services of the Department are administered in accordance with State and Federal laws, rules, and regulations, with established program

standards, and consistent with Legislative Intent" §20.315(3). The Department of Corrections, given the express authority in Florida Statute 944.09 to adopt rules and regulations, must utilize the procedures outlined within the Florida Administrative Procedure Act in order to establish the rule or regulation as being a valid exercise of their duty and power. For "Chapter 120, Florida Statutes, are calculated to assure Procedural Due Process" and are "necessary for the Court to measure the validity or invalidity of the Administrative Action against the standards and guidelines articulated in the Legislation under which the Agency Acts" Askeew v. Cross Key Waterways 372 So.2d 913 (Fla 1978). Florida Statute 120.54 sets forth all of the specific procedures required by law to effectuate the valid adoption of any provision of law, and Florida Statute 120.52 in Subsection (8) describes all of the characteristics of an Agency rule that has been adopted in contravention of the prerequisites required by the Administrative Procedure Act. Amongst those enumerated in Florida Statute 120.52 (8), is that (C) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by 120.54 (3)(A) 1;

- (D) The rule is vague, fails to establish adequate standards for Agency decisions, or vests unbridled discretion in the Agency; and
- (E) The rule is arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is

irrational. The rule of the Department of Corrections' policy that the Petitioner is claimed to have violated is rule 9-19 'Disorderly Conduct'. The rule, lacking in any definition or "necessary facts", that will provide notice to a prisoner and provide a standard of measure for Agency Officials to make a determination of whether or not an individual's conduct constitutes being Disorderly, and uniformly applied, violates the proscriptions of Florida Statute 120.52 (8), rendering the rule invalid by law. Furthermore, the Florida Department of Corrections only has the "authority to make rules for the complete operation of the Statute", and "no authority is given to change the law in any way" State V. Atlantic C.L.R. Co. 56 Fla 617 (Fla 1908). So being that Florida Statute "877.03 (Disorderly Conduct) should not be read to proscribe the use of language in any fashion whatsoever" State V. Saunders 339 So2d 641 (Fla 1976), it cannot be disputed that by characterizing the Petitioner's words of rebuke as being "Disorderly", and depriving him of his liberty for exercising his 1st Amendment Right of Freedom of Speech with the UnConstitutionally drafted Policy, that his 14th Amendment Rights were intentionally violated. For "A bare... desire to harm a politically unpopular group cannot constitute a legitimate governmental interest" Rome v. Evans 116 S.Ct 1620 (1996), and "the touchstone of the § 1983 action... is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution" Monell v. New York City Dept. of Soc. Serv. 98 S.Ct 2018 (1978). The invalid rule,

Disorderly Conduct, was not utilized independently to deprive the Petitioner of his liberty for exercising his 1st Amendment Right to the Freedom of Speech. The Florida Department of Corrections' rule 33-602.220(3)(A) was simultaneously applied to effectuate the unlawful deprivation of liberty, and is as well an Unconstitutionally drafted provision of policy. The rule of law has always been that Administrative Confinement is imposed upon prisoners when their behavior constitutes a threat to the Security of the prison as evidenced by the prediction of "not just one Inmate's future actions... but those of an entire Institution" *Hewitt v. Helms* 103 S.Ct 864 (U.S. PA 1983). In order for the Policy to provide language that is adequate enough to inform Agency officials that an Inmate's conduct must be determined to be a threat to the security of the Institution before they can lawfully be placed in Administrative Confinement, the Policy makers must expressly state such procedural requirements within the provision. Chapter 33-602.220(3)(A) requires that in order to justify the placement of an Inmate into Administrative Confinement "Disciplinary charges must be pending and the Inmate needs to be temporarily removed from the general population in order to provide for security or safety". A vague, indefinite statement that "fails to establish adequate standards for Agency decisions, And vests unbridled discretion in the Agency" - F.S. 120.52(8)(D), enabling the Department's officials to impose liability for actions that the law that they are sworn to enforce does not prohibit. It is by

Chapter 33-602.220 (3)(A)'s non definitive language that the Agency officials were able to deprive the Petitioner of his liberty for exercising his Right of the Freedom of Speech. For if its language contained prescriptions, sufficient enough to facilitate lawful restraints of liberty, by setting boundaries to its application, no Inmate could ever be found to justify to be locked down for wholly innocent conduct. Accordingly, the Agency's policy is UnConstitutionally drafted, and is what procured the deprivation of the Petitioner's 1st and 14th Amendment Rights.

Issue Three

III. Liberty Interest

To speak in terms of Liberty, involves "A rational continuum which... includes a freedom from all substantial arbitrary impositions and purposeless restraints" *Albright v. Oliver* 114 S.Ct 807 (U.S. 111 1994). This fundamental right is secured and guaranteed for all Citizens, and emanates from the substratum of this jurisprudence. Expressly stated within the 14th Amendment to the United States Constitution, "prisoners... may not be deprived of life, liberty, or property without Due Process of Law" *Wolff v. McDonnell* 94 S.Ct 2963 (U.S. Neb 1974). As foretold by our Ancestors "the phrase "Due Process of Law" is not new in the Constitutional history of this Country or of England", for "it antedates the establishment of our Institutions" and includes

"the established principles of private right and distributive justice" *Hurtado v. People of the State of California* (SUPRA). These principles attributable to private right and distributive justice employ rules and regulations that govern the administration of the the branches of Governmental power over an individual. Deeply rooted within Common Law principles are the inescapable truths that define Jurisdiction. Subject-Matter Jurisdiction involves the power to declare what the law is, and when there is a want of jurisdiction, no power exists "over the Subject-Matter and over the person" *Empire State-Idaho M & D Co. v. Harley* 205 U.S. 255. Affirmative evidence demonstrating that one of the Departments of the Government exercised power appertaining to another in violation of the separation of powers doctrine, renders the unlawful act null and void. For the making of an act "A criminal offense that... is not made so by the law... confers no jurisdiction to hear and determine" *In re Robinson* 73 Fla 1068 (Fla 1917). The rule in *Sandin v. Conner* 115 S.Ct 2293 (U.S. Hawaii 1995) is not applicable in this set of circumstances, as the deprivation of liberty accrued in *Sandin* did not involve an invalid policy establishing that the deprivation was done in the absence of jurisdiction. Furthermore, depriving prisoners of their liberty through the imposition of an unlawful policy cannot be said to be an "Ordinary" incident of prison life. For it can more definitely be characterized as "Out" of the ordinary. Surely something that is not seen everyday. Circumstances that affirmatively

demonstrate that the Petitioner has a liberty interest.

Reasons For Granting The Petition

It is within the Public's interest that those who are entrusted to enforce the law, do so and abide by it as well. The Florida Department of Corrections performs a Public Service that represents the integrity of our communities.

Prisoners are Citizens of the United States that retain their Citizenship while being incarcerated, and "A prisoner does not shed his basic Constitutional Rights at the prison gate." *Baxter v. Palmigiano* 96 S.Ct 1551 (U.S. Cal 1976). When a prisoner's Constitutional Rights are intentionally deprived by one who has been commissioned to respect them, moral corruption ensues, its permeating effect destroying centuries of this Country's pursuit of justice, obtained by the blood, sweat, and tears of our ancestors. For if any instance of lawless conduct by Governmental officials goes unaddressed, it sends a message of approval and creates the presumption that justice has a blind eye. Prisoners HAVE to be able to retain their Constitutional Right to the Freedom of Speech, or many many Complaints of abuse and misconduct will never be heard, as speech overlaps into redress of Grievance. The Nation deserves to know affirmatively whether or not these Prisoner's rights are retained and the scope of Governmental power over them.

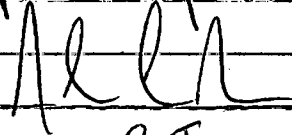
An UnConstitutional Prison Policy demonstrates a total disregard for the Constitution, and in the Public's interest needs to be admonished and

corrected.

Conclusion

The Petition for a writ of Certiorari should be granted.

Respectfully Submitted,

/s/ 

Johnson C. Jamerson #453581

On this 16 day of August 2018.