

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

QUORDAIES SANDERS — PETITIONER
(Your Name)

vs.

CARLO ESQUEDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF WISCONSIN
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Quordais v. Sanders
(Your Name)

P.O. Box 351
(Address)

Wauwatosa, Wisconsin 53963
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I. Did the State of Wisconsin, Department of Corrections (DOC) lose competency to extradite and conduct a final parole revocation hearing and re-commit the petitioner back in prison?

II. Did Racine County Clerk of Courts improperly exercised its official discretion under the Rules therein, by returning the petition for a writ of certiorari for judicial review of the parole revocation decision, despite the fact that the clerk has a "ministerial duty" to have filed the petition with the court?

III. Was the petitioner entitled to relief under Section 1983, 42 U.S.C. Civil Rights Act, in the State Circuit/Civil Court for Dane County against the Clerk of Racine County, and other State employees involved in the case upon the filing of his complaint therein against them?

VI. Did the Clerk of Dane County upon having received the complaint improperly returned the complaint back to the petitioner unfiled, despite the fact(s) (1) the petitioner was asserting "imminent danger" pursuant to Wis. Stat. § 814.29 (4m) (f) and (2) the clerk has a "ministerial duty" to have filed the complaint with the court?

V. Did the Wisconsin Court of Appeals, District IV, abuse its discretion on March 7, 2018, ordering that the petitioner show "imminent danger" when the claim that the petitioner presented in the complaint also supported the "imminent danger" exception in § 814.29 (4m) (f), Wis. Stat.?

VII. Did both the Wisconsin Appellate Courts misuse and abuse its discretion dismissing the Supervisory Writ against Clerk of Dane County to have filed and served the complaint against the Defendants therein, despite the fact of having granted the petitioner leave to proceed in forma pauperis?

IV. Did the State's Supreme Court deny due process and equal protection of the law that guarantees a "full and fair" hearing dismissing the petitioner's petition for a writ of supervisory over the circuit court(s) *ex parte*?

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 judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals 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 United States district court appears at Appendix _____ 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 courts**:

The opinion of the highest state court to review the merits 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 _____ court appears at Appendix B 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 _____.

☐ 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 9/04/2018.
A copy of that decision appears at Appendix B.

☐ 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. V:

provided in relevant parts "No person shall be deprived of life, liberty, or property without due process and equal protection of the law."

U.S. Const., Amend. XIV:

Provides also in relevant parts:
"No State shall deprive any person of life, liberty, or property without due process."

Wis. Stat., § 814.29(1m)(f), provides:

"if the court believes that a prisoner is in imminent danger of serious physical harm, the court shall issue an order permitting the prisoner to commence or defend an action without being required to submit the (six-month) statement under par. (b) or preparing the initial partial filing fee under par. (d)."

28 U.S.C. § 1915(b)(4), provides:

"a prisoner may not be prohibited from bringing a civil action because he or she has no means by which to pay the initial partial filing fee."

STATEMENT OF THE CASE

On September 16, 2017, the Petitioner petitioned the Wisconsin Court of Appeals, District IV, pursuant to Rule 809.51, Wis. Stat., for the exercise of its original jurisdiction and supervisory jurisdiction over the Clerk of Dane County Civil Division for an order granting leave to proceed in forma pauperis upon the Section 1983 complaint filed therein on June 3, 2017, as having being placed in imminent danger, pursuant to § 814.29(4m)(f), Wis. Stat. (APP. NO. 17-1836-W).

Whereupon on September 20, 2017, the Clerk of Wisconsin Court of Appeals docketed and filed the petition upon all the parties deemed appropriate therein (Id.).

On March 7, 2018, the State's Appeals Court entered an order, ordering that the Petitioner prove "imminent danger" and submit a "six month statement" on his prison trust account on or before March 16, 2017, or the case will be dismissed, in conformity to § 814.29(4m)(f), Wis. Stat. (Id.).

On March 11, 2018, the Petitioner filed a motion to show cause of imminent danger consistent with the appeals court's order, arguing that the claim presented in the complaint against the Defendants places the Petitioner at all times, in imminent danger, pursuant to § 814.29(4m)(f), and therefore, the clerks in both instant, were required to promptly file the petition and complaint with the court (Id.).

On March 22, 2018, the Appeals Court entered an order, second, ordering that the Petitioner submit a six-month statement upon his prison trust account on or before March 29, 2018, or the case will be dismissed, in conformity to § 814.29(4m)(f) (Id.).

On March 26, 2018, the Petitioner filed the six-month statement, as ordered by the Appeals Court (Id.).

Whereupon on May 1, 2018, the Appeals Court, improperly dismissed the petition for failure to submit a six month statement, although the Petitioner had filed the six-month statement as ordered, and had proof from the disbursements that the institution had approved for the six month statement and mailed out to the Appeals Court on March 27, 28, 2018 (Id.).

Wherefore the Petitioner filed a Motion for Reconsideration and Petition for original action in the State's Supreme Court to take original jurisdiction over the Motion for Reconsideration on May 9, 2018 (Id.).

Whereby on May 24, 2018, the Clerk for the Wisconsin Supreme Court docketed and filed the case as a petition for Review therein, which was denied without costs on September 4, 2018, ex parte, improperly without a response from the Respondents, in conformity to Wis. Sup. Ct. R. 60.01 (Id.).

Whereas this court has jurisdiction under 28 U.S.C. § 1257(a) to hear and determine this matter from the Wisconsin State's Supreme Court.

REASONS FOR GRANTING THE PETITION

I. The State of Wisconsin, (Doc) lost competency to have extradited and conducted a final parole revocation hearing, and to have recommitted the petitioner back in prison where the criminal complaint and information in relation to the case were "jurisdictionally defective and void"; and where the petitioner upon his arrest refused to have waived extradition back to the State of Wisconsin, and thus denied the constitutional due process rights that the petitioner were entitled to upon his extradition back to the State of Wisconsin, in contrary to Wis. Stat., § 976.03 (10), (15).

Whereas both this court and the Wisconsin State Supreme Court has long held that "An appropriate issue for the habeas corpus court upon extradition proceedings is not whether a warrant was properly issued in the demanding state, but whether, given properly authenticated documents, probable cause is stated that justified the issuance of a governor's warrant in the asylum state." See *Michigan v. Doran*, 439 U.S. 292, 285 (1978); and *State ex rel. Sietoff v. Gotz*, 80 Wis. 2d 225, 229-30 (1977).

Moreover, Wis. Stat., § 976.03 (10), provides:

"No person arrested upon such warrant may be delivered over to the agent whom the executive authority demanding the person shall have appointed to receive the person unless the person shall first be taken forthwith before a judge of a court of record in this state who shall inform the person of the demand made for the person's surrender and of the crime with which the person is charged, and if the prisoner or prisoner's counsel shall state that the prisoner desire to test the legality of the prisoner's arrest, the judge of such court of record shall fix a reasonable time to be allowed the prisoner within which to commence an action for habeas corpus." (See § 976.03 (10), Wis. Stat.).

However, the State of Wisconsin never appointed the petitioner an extradition attorney, nor afforded the petitioner a timely hearing within the initial 30-days of his arrest and having placed a parole violation (PO) hold upon him on April 9, 2016, in the State of Alabama, City of Selma, or an extension of the initial 30-day period before its expiration on May 9, 2016, in contrary to Subs. (15), (17), § 976.03, Wis. Stat., and thus lost competency to have extradited and conducted the parole revocation hearing on January 23, 2017, and recommitted the petitioner back to prison on February 13, 2017, in reference to case No. 14-CF-110, citing *State v. Sykes*, 91 Wis. 2d 436 (Ct. App. 1979) (the State's failure to hold a hearing within the 30-day period required discharge of the prisoner from a detainer).

Whereas it were these substantial and controlling facts and laws that form the legal basis of the State petition for a writ of certiorari, challenging the parole revocation decision filed with the Clerk of Racine County on February 14, 2017, and returned by to the petitioner unfilled for reasons (5) in contrast to § 814.29 (4m) (f), Wis. Stat., which also form the legal basis for the Section 1983 Civil Rights Action filed in the State Court of Dane County, and upon the Clerk therein, as the Respondent, herein, failure to have promptly filed and served the complaint upon the Defendants therein, consistent with his "ministerial duty" as a clerk, to have done so, form the legal basis of the petition for an original action and supervisory jurisdiction of the Wisconsin Appeals Court to have exercised its discretion over the Dane County Circuit Courts Clerk to have filed and served the complaint, pursuant to Rule 809.51 (1), Wis. Stat. (APP. No. 17-1836-W),

citing State ex rel. Steidt v. McCaughy, 238 Wis. 2d 393, 395-96 (Cl. App. 2000) (Prisoners seeking to Petition for certiorari review without payment of the filing fees due to indigence should not be precluded by delays in obtaining a fee waiver or making the appropriate payments over which the Prisoners have no control over), see also Jackson v. Janney, 411 F.3d 615, 624 (6th Cir. 2005) (State inmates wrongfully denied parole for reasons recognized as illegal continue to have access to courts to seek relief through State habeas actions and mandamus), and Dallas v. Gamble, 448 F. Supp. 2d 1020, 1026-27 (Wis. Dist. 2001) (the clerk shall forward to chambers for review any complaint from an inmate asserting that he is in imminent danger of serious physical injury)).

II. Both Clerks Office of Racine and Dane County had/had a "ministerial duty" to have filed the Petitioner's certiorari Petition and Section 1983 Complaint that prohibited them from exercising the authority that they exercised sending the Petition and Complaint back to him unfiled for the reasons provided thereupon, pursuant to Wis. Stat. § 814.29(4m)(f).

Whereby § 814.29(4m)(f), Stat., provides:

"if the court believes that a prisoner is in imminent danger of serious physical harm, the court shall issue an order permitting the prisoner to commence or defend an action without being required to submit the statement under par. (b) or preparing the initial partial filing fee under par. (d)." (3d).

(citation omitted)

See Lewis v. Sullivan, 279 F.3d 526, 531 (7th Cir. 2002) (when fundamental rights are implicated, a prisoner under the federal three-strikes-law may sue without prepayment under the exception that he is under imminent danger of serious physical injury; and this just is the category of cases where fundamental rights are at stake). See also Dallas v. Gamble, 448 F. Supp. 2d 1026-27 (the Seventh Circuit has modified a standard Mack order to preclude habeas corpus petitions other than those attacking a State court imposed criminal judgment).

Thus where the Petitioner had presented a sufficient constitutional claim in both his Petition for a writ of certiorari and § 1983 Complaint upon which relief can be granted that also placed him in imminent danger at all times, the Clerk(s), as Respondent, herein, had/had a "ministerial duty" to have forwarded to the chambers of the Judge for review of the Petition and Complaint, citing Dallas v. Gamble, 448 F. Supp. 2d 1027 as cited herein above. See also Williams v. Pervino, 775 F.3d 1182, 1190 (9th Cir. 2015) (imminent danger found where false reports of defendant's sex offender's status led to daily threats of irreparable harm, injury, and death); and Miller v. Donald, 541 F.3d 1091, 1097-98 (11th Cir. 2008) (overly litigious prisoner's right of access wrongfully denied by blanket restriction on filings in forma pauperis where prisoner pleaded

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imminent danger)).

Moreover, the Supreme Court in *Nelson v. Campbell*, 541 U.S. 637, 641, 643-48 (2004), held that a complaint brought under § 1983 by a capital prisoner seeking a stay of execution in order to pursue a challenge to the procedures for carrying out the execution is not properly recharacterized as a habeas corpus petition under 28 U.S.C. § 2254); see e.g., *Beard v. Woodford*, 395 F.3d 1064, 1068-69 (9th Cir. 2005) (§ 1983 is proper vehicle to challenge state lethal injection protocol through inmate previously challenged punishment of lethal injection in general through habeas corpus) amended by 2005 U.S. App. Lexis 1059 (9th Cir. 2005)).

III. Both the Wisconsin Appellate Courts misused and abused its discretion in denying and dismissing the Petitioner's Petitions for Supervisory Writ over the Circuit Court for an order granting leave to proceed in forma pauperis upon the filing of the Section 1983 Complaint in State Court on June 3, 2017, and the Petition for Review of the Appeals Court decision dismissing the Petition for Writ of Supervisory over the Circuit Court for failure to submit a six-month statement upon the Petitioner's Prison Trust Account in contravention to Wis. Stat. § 814.29(1m)(f).

Whereas the Petitioner contends, as previously argued herein and above, that he was excused under the exception of imminent danger in Sub. (1m)(f), Wisconsin State Law Forma Pauperis Statute, as cited throughout herein and above and thus the State Appellate Courts misused and abused its discretion dismissing the Petitioner's Petitions therein, and a denial of "meaningful and effective" access of the Courts therein, and due process and equal protection of the law, in violation(s) of the First, Fifth, and Fourteenth Amendments of the United States Constitution, citing *Douglas v. Dewey*, 147 Wis.2d 238, 240 (1989) (failure to submit the docketing fee within the time specified for filing the notice of appeal (or in this matter "six-month-statement") does not deprive the Court of appeals of jurisdiction... The notice of appeal, not the docketing fee, vests the Court with jurisdiction).

Thus it was the Petitioner's Section 1983 Complaint and Petitions for a Supervisory Writ and for Review thereof, in the State's Supreme Court not the six-month-statement ordered by the Appeals Court that vested the State Courts with jurisdiction to have adjudicated the merits of the Petition(s) only in accordance with the substantive rights of the Petitioner as the movant party, citing *Evelyn C.R. v. Tykila*, 25, 246 Wis.2d 1 (2001) (if the constitution or statutes require proof before the circuit court can enter a particular judgment order, the court cannot enter the judgment or order without the appropriate showing); and *Douglas v. Dewey*, 147 Wis.2d at 240, as cited herein above. See also *Evelyn C.R.*, 246 Wis.2d at 3 (for an error to "affect the substantial rights" of a party, there must be a reasonable possibility that the error contributed to the outcome of the action)).

IV. The Appellate Courts were required to

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independently determine whether the Section 1983 Complaint stated a claim upon which relief can be granted, and whether the Clerk of Circuit Courts had misused and abused its discretion in failing to have filed the Complaint in court with a judge, rather than dismissing the Petition(s), in having afforded the Petitioner the right to a "full and fair" hearing. Citing Conn Bd. of Pardons v. Dumschant, 552 U.S. 458, 463 (1997) (the constitution clearly does require that any or at least the initial direct appellate procedure that a state provides defendants as of right must meet minimal standards of fairness and due process). See also Dist. Att'y's Office v. Osborne, 129 S.Ct. 2308, 2319 (2009) (equating fundamental fairness with the "full and fair" hearing requirement) (proposing that "where there are material facts in dispute that cannot be resolved on the record alone, a process that fails to provide an opportunity to confront witnesses where necessary, and fails to make relevant findings of fact will not be "full and fair"").

Thus this court must find that the Wisconsin Supreme Court misused and abused its judicial discretion dismissing the Petitioner's Petition(s) without a findings of fact and conclusion of the laws that govern the issues of the Petition and state and federal laws applicable therein, and are "clearly erroneous" and require a federal appellate court upon review of such state court's decision to accord a "presumption of correctness" on certiorari review, herein, citing Miller E. v. Cockrell, 532 U.S. 322, 341 (2003); see also Winston v. Pearson, 683 F.3d 489, 506 (4th Cir. 2012) (Presumption of correctness impossible where state court failed to articulate claims as merits "by refusing to facilitate production of new, material evidence").

Moreover, this court must also find that the Petitioner was excused under Wis. Stat., § 814.29 (4m) (f) from being required to have filed and submitted the six-month-statement, as ordered by the State's Appeals Court on March 7, 2013, and that although the Petition for Review and Supervisory-writ is of "judicial discretionary" of the appellate courts of the state, and not of right, the Petitioner contends that he had/had a right under the Equal Protection clause to have received equal treatment and justice upon the consideration and granting relief upon his Petition(s) where there are compelling facts and circumstances in his case that warrants both the state's appellate courts to have exercised their discretionary authority and jurisdiction to have granted the appropriate relief that the Petitioner was entitled to upon the face of the Petition(s), consistent with their prior other cases that they had accepted and granted relief, when the Parties did not have half of the evidence that the Petitioner, herein, presented to them and they denied the Petition(s), citing Taylor v. Gray, 375 F. Supp. 2d 790, 798 (1974) (the post conviction detention of a person is a violation of equal protection if it is occasioned by the prisoner's indigency) (quoting U.S. Const., Amend. XIV and Wis. Const., Art. I, Secs. 7, 8' Due Process and Equal Protections clauses)).

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WHEREFORE, the State's Supreme Court improperly sua sponte dismissed the Petitioner's petition for Review of the issues presented therein without having required the Respondent(s) of the petition to have filed and served a Response Pleading to the petition and where the State Appellate Court had granted the petitioner leave to proceed in forma pauperis upon the Docketing and filing of the petition for Review, citing Bryan v. Johnson, 821 F.2d 455, 457 (7th Cir. 1987) (a complaint is deemed filed upon the payment of the filing fee; A district court should deny leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 if an action is frivolous or malicious, but if the motion is granted and the complaint filed, the case cannot be dismissed until a summons has been issued). See also State ex rel. Luedtke v. Bertrand, 220 Wis.2d 574 (Ct. App. 1998) (the circuit court may grant a fee waiver petition if the proposed action states no claim upon which the court may grant relief. Wis. Stat. § 814.29 (1)(c). However, if the proposed action states a claim and the individual seeking a fee waiver is indigent, then the court must accept the action for filing without payment of fee) and (in Wisconsin fee waiver statute's standard for deciding whether a proposed action states a claim is the same standard that is applied when considering a motion to dismiss in an ordinary civil case for failure to state a claim upon which relief can be granted. Wis. Stat. § 802.06 (2)(a) 6. In Wisconsin, a civil pleading need not define issues or state detailed facts; only "fair notice" is required. Thus, a complaint is dismissed as legally insufficient only if it is quite clear that under no condition can a plaintiff recover)).

CONCLUSION

This court must find that the Petitioner was excused under the exception of the "imminent danger" of Wisconsin Forma Pauperis Statute § 814.29(1m)(f) from submitting a six month statement; and that the complaint under Section 1983 stated a claim upon which relief could be granted against the Defendants, therein.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Donald J. Sanders

Date: 9/09/2018



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September 4, 2018

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You are hereby notified that the Court has entered the following order:

No. 2017AP1836-W

Sanders v. Esqueda

The court having construed Quordalis V. Sanders's May 24, 2018 filing as a petition to review the court of appeals' May 1, 2018 opinion and order dismissing his writ action;

IT IS ORDERED that the petition for review is denied, without costs.

Sheila T. Reiff
Clerk of Supreme Court