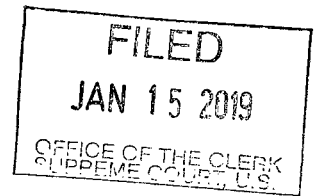


No. 18-7583

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



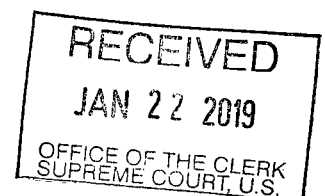
In re Bill Herron,
Petitioner

ON PETITION FOR WRIT OF MANDAMUS FROM THE UNITED
STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT
AND THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI

(Eighth Circuit Docket No. 17-1764)
(District Court Docket No. 5:16-cv-06179-DGK)

PETITION FOR WRIT OF MANDAMUS

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QUESTIONS PRESENTED

Question 1:

Where the District Court has repeatedly refused to address or adjudicate claims raised by a party, in this and other cases filed by Missouri Prisoner's alleging deprivation of property pursuant to and established state procedure, should this Court issue a writ of mandamus directing the District Court to adjudicate the unresolved issues, or explain why the adjudication was deemed unnecessary to the disposition of the case.

The unresolved issues set forth in the Complaint are:

a) That Petitioner is being denied the use of the established adjudicatory procedures set forth in the Missouri Administrative Procedure Act (MAPA) Chapter 536, RSMo. Section §§ 536.010 - .150, RSMo, relating to deprivations of personal property, by the Missouri Department of Corrections (MDOC), pursuant to an established state procedure that denies due process.

In Logan V. Zimmerman Brush Co., 102 S.Ct. 1148, 1154-55 (1982), this Court held that the right to use state adjudicatory procedures is a constitutionally protected property interest. (Appendix F, A9-11, A21-22, Claim II).

b) That the violation of Petitioners' constitutional rights and permanent deprivation of his authorized personal property, in which he has a vested right to present and future enjoyment, was pursuant to an established state procedure that failed to provide notice of prohibited conduct. MDOC Policy, Rules of Conduct, Rule 24.5 "Altering any item in an unauthorized manner", standing alone

is as meaningless or vague and would deny due process; and) that the violation of Petitioners' Constitutional rights and permanent deprivation of his authorized personal property, was not random or unauthorized but rather pursuant to an official prison disciplinary proceeding at which Petitioner was denied due process. (Appendix F, A12-19, A21 - Claim III).

When an established procedure or a foreseeable consequence of such procedure causes the loss, an adequate post-deprivation remedy is of no consequence, and the focus is solely on the process afforded by the established procedure. *Logan V. Zimmerman Brush Co.*, 455 U.S. at 435-36.

Question 2:

Where the United States Court of Appeals for the Eighth Circuit denied Petitioners Motion for the Appointment of the United States Department of Justice Civil Rights Division as Amicus Curiae to investigate this matter and submit a brief or report to that court with respect to the District Court's repeated refusal to address or adjudicate, in this and other cases, the claim that Missouri Prisoners were being denied the use of the established adjudicatory procedures, by the Missouri Department of Corrections, did the United States Court of Appeals for the Eighth Circuit shirk its duty to protect the rights of Missouri Prisoners and supervise the lower court, should this Court issue a writ of mandamus directing the Court of Appeals to explain why the matter was deemed unnecessary to the adjudication of the case. (Appendix O & P, A116-121).

Question 3:

Where the complaint asserts direct constitutional rights violations, that a state statute is unconstitutional and denies access to the internal administrative appeals procedure and access to the state court for judicial review, in violation of Petitioner's rights guaranteed by the First and Fourteenth Amendments to the United States Constitution, did the District Court error in applying the "actual injury" pleading requirement set forth in Lewis V. Casey, 518 U.S. 343 (1986) relating to "derivative rights" when dismissing the claim. (Appendix F, a9-11; A20 - Claim I).

Question 4:

After the District Court, sua sponte, dismissed the Complaint, at the screening stage, without prejudice, for failure to state a claim, subject to petitioner seeking appropriate relief in state court, after the statute of limitations had already ran with respect to any state court action, Petitioner filed a timely Fed. R. Civ. P. 59(e) Motion to Alter or Amend, alleging clear error and manifest injustice due to the District Court's refusal to address certain claims, along with a request for leave to file an amended complaint with the amended complaint attached thereto, correcting all pleading deficiencies stated by the District Court; did the District Court abuse its discretion when denying the motions, leaving Petitioner without any remedy whatsoever and hundreds of dollars in filing fees to pay. (Appendix G, A33-37; Appendix H, A38-48; Appendix I, A49-108; Appendix J, 109-110).

RELIEF SOUGHT

Petitioner prays for a writ of mandamus directed to the Honorable Judges Loken, Bowman and Benton of the United States Court of Appeals for the Eighth Circuit, and the Honorable Greg Kays of the United States District Court for the Western District of Missouri at Kansas City, directing them and each of them to vacate the Judgments complained of herein and that the case be assigned to another United States District Court Judge, and that this Honorable Court issue such other and further orders as is deemed necessary and appropriate under the circumstances.

THE PARTIES

The Plaintiff in the court below is Bill Herron a Missouri Prisoner, and the Defendants are: Christopher M. Burchett; Jerry Klever and Todd Warren. The Respondent Judges are; The Honorable Judges are Loken, Bowman and Benton of the Eighth Circuit and the Honorable Greg Kays, United States District Court for the Western District of Missouri.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR A WRIT OF MANDAMUS

Petitioner respectfully prays that a writ of mandamus issue to review the judgment below.

OPINIONS BELOW

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

The opinion of the United States District Court for the Western District of Missouri at Kansas City, appears at Appendix G and is unpublished.

JURISDICTION

The United States Court of Appeals for the Eighth Circuit decided this case on September 19, 2017 and an amended Judgment was entered on September 20, 2017.

A timely petition for rehearing was denied by the United States Court of Appeals on November 14, 2017 and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file a petition for writ of certiorari was granted to and including April 3, 2018 on January 18, 2018, in Application No. 17A741.

Petitioner posted his "Petition for a Writ of Certiorari and/or in the alternative a Petition for a Writ of Mandamus" to this Court on March 26, 2018 via United States postal Service "Priority Mail" and it was delivered to this Court on March 30, 2018 according to USPS Tracking No. 9505 5161 7537 8085 1564 34. However, the Petition then disappeared without being docketed. This Court has jurisdiction pursuant to 28 U.S.C. § 1651(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

No State shall ... deprive any person of life, liberty, or property without due process of law.

Title 42 U.S.C. § 1983, provides in pertinent part:

Every person who, under color of any statute, ordinance, custom, or usage, of any State ... , subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action of law, suit in equity, or other proper proceeding for redress.

Article I, § 10 of the Missouri Constitution provides in part:

That no person shall be deprived of ... property without due process of law.

Article V, § 18 of the Missouri Constitution provides in pertinent part:

All final decisions, findings, rules and orders on any administrative officer or body existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights, shall be subject to direct review by the courts as provided by law;....

Section § 217.380 3, RSMo, provides:

Violation hearings under the provisions of subsection 2 of this section are not contested cases under the provisions of chapter 536, RSMo. Violation hearings under the provisions or subsection 2 of this section are not subject to the rules of evidence. The department may promulgate rules for violation hearings under the authority of subsection 2 of section 217.040. The conduct of and order from a violation hearing under the provisions of subsection 2 are final and unappealable.

Art. III. § (4) of the Missouri Constitution, provides:

The general assembly shall not pass any local or special law, regulating the practice or jurisdiction of, or changing the rules of evidence in any judicial proceeding or inquiry before the courts, sheriffs, commissioners, arbitrators or other tribunals....

STATEMENT OF THE CASE

Petitioner, Bill Herron, a 71 year old Missouri prisoner filed this action on December 28, 2016, under 42 U.S.C. § 1983, in the United States District Court for the Western District of Missouri, St. Joseph Division, seeking damages and injunctive relief, alleging deprivation of authorized personal property without due process of law pursuant to established state procedures. (Appendix F, A 8-32)

Petitioner names Correction Officer Christopher M. Burchett; Caseworker Jerry Kelever and Assistant Warden Todd Warren as defendants for their role in the confiscation of petitioners property and subsequent disciplinary proceeding that resulted in the permanent deprivation of petitioners' authorized personal property, that could only be taken for cause. (Appendix F, A 8-32)

The Complaint alleges that the statute § 217.380.3, RSMO, under which the disciplinary proceeding was held acts as a bar to the administrative appeals process and access to the court and violates the right to petition as guaranteed by the First and Fourteenth Amendments to the United States Constitution, when personal property rights are at issue, and requests the Court enjoin its enforcement. (Appendix F, A 9-11; A 20 -Claim I)

The Complaint alleges Petitioner has been denied the use of the established adjudicatory procedures set forth in the Missouri Administrative Procedure Act (MAPA), Chapter 536, RSMo, Section §§ 536.010 - .150, RSMo, relating to deprivations of personal

property, by Missouri Department of Corrections (MDOC), pursuant to an established state procedure that denies due process. (Appendix F, A 9-11; A 21-22 - Claim II).

The Complaint alleges the violation of Petitioners' constitutional rights and permanent deprivation of his authorized personal property, in which he has a vested right to present and future enjoyment, that can only be taken for cause, was pursuant to an established state procedure that fails to provide notice of prohibited conduct. MDOC Policy, Rules of Conduct, Rule 24.4 "Altering any item in an unauthorized manner", standing alone is meaningless or vague and would deny due process; and that the violation of Petitioners' Constitutional rights and permanent deprivation of his authorized personal property, was not random or unauthorized, but rather was done pursuant to an official prison disciplinary proceeding at which petitioner was denied due process. (Appendix F, A 12-19; A 21 - Claim III)

The Complaint requests the Court enjoin defendants to replace Petitioners' Hoodie, Crockpot, Alarm Clock, Bowl and Cassette Tapes with like items subject to Petitioner's approval and award compensatory and punitive damages that are fair and just. (Appendix F, A 21-22)

THE FEBRUARY 2, 2017 ORDER DISMISSING THE COMPLAINT

On February 2, 2017, at the screening stage, the district court, sua sponte, dismissed the complaint for failure to state a claim, pursuant to 28 U.S.C. § 1915A(b)(1), (2), without prejudice, subject to Petitioner seeking appropriate relief in state court. (Appendix G, A33-37).

On March 1, 2017, Petitioner filed a "Motion To Alter or Amend Order/Judgment, And To Reconsider And Grant Leave to File An Amended Complaint" (Appendix H, A38-48), with a copy of the Amended Complaint attached thereto. (See Appendix I, A49-108) (Amended Complaint - clarifying the issues and correcting the pleading deficiency cited by the district court)

The district court denied the "Motion To Alter or Amend" and "For Leave To File An Amended Complaint" on March 7, 2017. (Appendix-J, A109-110), from which Petitioner filed his timely Notice of Appeal to the United States Court of Appeals for the Eighth Circuit on April 4, 2017 (Appendix K, A111) (Notice of Appeal).

The United States Court of Appeals for the Eighth Circuit summarily affirmed the judgment of the district court on September 19, 2017 (Appendix A, A1), and then granted leave to appeal in forma paupers and assessed the full \$505 appellate filing and docketing fees. (Appendix B, A2), leaving Petitioner owing \$855.00 in filing fees without any remedy whatsoever.

Petitioner then filed a timely Pettition For Rehearing And Suggestions For Rehearing En Banc, along with a Motion For The Appointment of United States Department of Justice Civil Rights

Division as Amicus Curiae, to investigate the matter and submit a brief or report to the Court of Appeals with respect to the district court's repeated refusal to address and/or adjudicate, in this and other cases the claim that Missouri Prisoner's are being denied the use of the "Contested Case Post-Deprivation" remedy set forth in §§ 536.010 - .150, RSMo, of the Missouri Administrative Procedure Act ("MAPA"), when property interests are at issue, by the Missouri Department of Corrections, pursuant to an established state procedure. (Appendix O, A 116 - 120). The Court of Appelas denied the motion without comment on October 20, 2017. (Appendix Q, A 121).

Petitioner requests this Court take judicial notice of the case entitled Bill Herron V. Jennifer Redel, et al., No. 10-6122-CV-SJ-DGK-P, filed October 18, 2010, in the United States District Court for the Western District of Missouri. The case was assigned to the Honorable Greg Kays, who refused to adjudicate a number of issues in the case including the constitutionality of Missouri Department of Corrections Policy D5-3.2 Offender Greivance. Petitioner filed a judicial complaint against Judge Kays setting forth in specific detail, with reference to the record, his refusal to adjudicate claims in the case. A copy of the Judicial Complaint is attached hereto as Appendix U, A 149-155. No action was taken by the United States Court of Appeals to correct the omissions.

REASONS FOR GRANTING THE WRIT

This case involves the deprivation of a prisoner's authorized personal property, without due process pursuant to an established

state procedure resulting in disciplinary action and sanctions for conduct not proscribed from which there exists no means of redress in state court (§ 217.380.3, RSMo, Appendix I, A 105-108) and the sanctions are immediately enforced prior to approval and order of the chief administrative officer. (See MDOC Policy IS19-1.3 Disciplinary Hearings - Minor, Appendix I, A 49, A 95), all of which call into question the subject matter jurisdiction and constitutionality of § 217.380.3, RSMo, which pertains to confinement to disciplinary segregation after a conduct violation hearing.

No Subject Matter Jurisdiction

According to § 217.380.2, RSMo:

An offender who has violated any published rule or regulation of the division or correctional facility relating to the conduct of offenders may after proper hearing and upon order of the chief administrative officer or his or her designee of the correctional facility, be confined in a disciplinary segregation unit for a period not to exceed thirty days. Disciplinary segregation of more than ten days may only be given for serious conduct violations as defined by rule or regulation of the division.

According to § 217.380.3, RSMo:

Violation hearings under the provisions of subsection 2 of this section are not contested cases under the provisions of chapter 536, RSMo. Violation hearings under the provisions of subsection 2 of this section are not subject to the rules of evidence. The department may promulgate rules for violation hearings under the authority of subsection 2 of section 217.040. The conduct of and order from a violation hearing under the provisions of subsection 2 are final and unappealable.

(§ 217.380. 2.3, RSMo)

" An administrative decision that is not a contested case under the MAPA is a noncontested decision subject to review pursuant to § 536.150." Hagley V. Board of Educ. of Webster Groves School Dist,

841 S.W. 2d 663, 668-69 (Mo. banc 1992)("A hearing that is not held pursuant to the procedural format necessary under the MAPA does not qualify as a contested case even though the hearing is required by law").

Chapter 536, RSMo, governing administrative procedure and review, distinguishes between review of "contested cases and non-contesteed cases." Furlong Companies, Inc. V. City of Kansas City, 189 S.W. 3d 157, 165 (Mo. banc 2006). The Missouri Supreme Court explained in Furlong:

Contested case review is controlled by sections 536.100 to 536.140. Contested cases provide the parties with an opportunity for a formal hearing with the presentation of evidence, including sworn testimony of witnesses and cross-examination of witnesses, and require written findings of fact and conclusions of law. The review of a contested case is a review by the trial court of the record created before the administrative body. Section 536.140. The trial court's decision upon such review is appealable, but the appellate court also looks back to the record created before the administrative body.

Non-contested cases do not require formal proceedings or hearings before the administrative body. As such, there is no record required for review. In the review of a non-contested decision, the circuit court does not review the administrative record, but hears evidence, determines facts, and adjudges the validity of the agency decision. Under the procedures of section 536.150, the circuit court conducts such a hearing as an original action.

In either a contested or a non-contested case the private litigant is entitled to challenge the governmental agency's decision. The difference is simply that in a contested case the private litigant must try his or her case before the agency, and judicial review is on the record of that administrative trial, whereas in a non-contested case the private litigant tries his or her case to the court. Depending upon the circumstances, this difference may result in procedural advantages or disadvantages to the parties, but in either situation, the litigant is entitled to develop an evidentiary record in one forum or another.

Id. (citations omitted)

Determining whether an administrative proceeding is a contested or non-contested case is not left to the discretion of the administrative body; but is, rather, determined as a matter of law. State ex rel. School Dist. of Kansas City V. Williamson. 141 S.W. 3d 418. 426 (Mo. App. W.D. 2004). The "law" referred to in the contested case definition encompasses any statute or ordinance, or any provision of the state or federal constitutions that mandates a hearing. State ex rel. Yarber v. McHenry. 915 S.W. 2d 325. 328 (Mo. banc 1995).

The United States Constitution and Missouri Constitution, each prohibit a state from depriving any person of property without due process of law. U.S. Const. amend XIV, § 1; Mo. Const. art. I, § 10 (1945).

In this case it is beyond dispute that Petitioner cannot be deprived of his authorized personal property without due process of law. A property interest created by state law requires a hearing and makes the contested case provisions, and thus judicial review under the Missouri Administrative Procedure Act (MAPA), specifically Mo. Rev. Stat. § 536.100. applicable. Physician #3491 v. North Kansas City. Missouri, 51 S.W. 3d 101. 107 (Mo. App. W.D. 2001). The failure of an administrative agency to conduct a contested case hearing when protected interests are at stake denies due process. Sapp v. City of St. Louis. 320 S.W. 3d 159. 165 (Mo. App. E.D. 2010). A violation of a litigants due process rights results in a void judgment. Baxi v. United Technologies Automotive, 122 S.W. 3d 92, 96 (Mo. App. 2003).

A void judgment is one which is rendered by a tribunal acting

without competency to render it, due to lack of jurisdiction over the parties, the subject matter or the remedy ordered by the tribunal. Ringeisen V. Insulation Services, Inc., 539 S.W. 2d 621, 625-626 (Mo. App. 1976).

In deciding this issue, the district court stated:

Insofar as Plaintiff alleges in Claim I that he has been denied access to the courts because Missouri law does not permit conduct violations to be appealed. "[i]nmates do not have a constitutional right to an internal appeals process." Wilkins V. Roper, 843 F. Supp. 1327, 1328 (E.D. Mo. 1994)(citing Buckley, 997 F. 2d at 495). Furthermore, Plaintiff fails to identify a nonfrivolous legal claim that was frustrated due to lack of access to the courts. See Waff V. S.D. Dep't of Corr., 51 F. App'x 615, 617 (8th Cir. 2002)("[A]n inmate who alleges an access violation must show actual injury. i.e., 'that a nonfrivolous legal claim had been frustrated or was being impeded.'" (quoting Lewis V. Casey, 518 U.S. 343, 351-53 (1996))). As set forth below, Plaintiff's underlying allegations fail to state a nonfrivolous federal legal claim, and Missouri law provides a cause of action arguably applicable to Plaintiff's allegations that does not necessitate an appeal from Plaintiff's conduct violation hearing. Therefore, Claim I fails to state a claim.

(Appendin G, A35).

PRISONER'S MAY NOT HAVE A CONSTITUTIONAL RIGHT TO AN INTERNAL APPEALS PROCESS, HOWEVER, ONCE ESTABLISHED A LITIGANT HAS A PROPERTY INTEREST IN THE USE OF SUCH APPEALS PROCESS.

The Director of the Missouri Department of Corrections has a duty to establish "an offender grievance procedure" (§ 217.370, RSMo), and the authority to "adopt, amend and repeal rules and regulations undet the provisions of this section and chapter 536, RSMo, ... which are not inconsistent with the constitution of this state.... § 217.040.1, RSMo.

In Logan V. Zimmerman Brush Co., 102 S.Ct. 1154-55 (1982), this Court held that the right to use established state adjudicatory procedures is a constitutionally protected property interest.

Substantive Right to Petition

In Sprouse V. Babcock, 870 F. 2d 450 (8th Cir 1989), the Court recognized the First Amendment right to petition for redress of grievances includes redress under established grievance procedures. Id. at 452.

The right of access to the courts is basic to our system of government, and it is well established today that it is one of the fundamental rights protected by the Constitution. In Chambers V. Baltimore & Ohio Railroad, 207 U.S. 142, 28 S.Ct. 34, 52 L.Ed. 143 (1907), this Court characterized this right of access in the following terms:

The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each state to the citizens of all other states to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the states, but is granted and protected by the Federal Constitution.

207 U.S. at 148, 28 U.S. at 35 (citations omitted). It is clear that this Court viewed the right of access to the courts as one of the privileges and immunities accorded citizens under article 4 of the Constitution and the fourteenth amendment.

In California Motor Transport Co. V. Trucking Unlimited, 404 U.S. 508, 92 S.Ct. 609, 30 L.Ed.2d 642 (1972), this Court found in the first amendment a second constitutional basis for this right of access: "Certainly the right to petition extends to all departments of Government. The right of access to the courts is indeed but one aspect of the right to petition." Id. 92 S.Ct. 612.

A third constitutional basis for the right of access to the courts is found in the due process clause. In Wolff V. McDonnell, 418

U.S. 539, 94 S.Ct. 2963, 41 L. Ed.2d 935 (1974), this Court defined the right of access in civil rights action under section 1983 in the following terms:

The right of access to the courts, upon which Avery [Johnson V. Avery, 393 U.S. 484, 89 S.Ct. 747, 21 L. Ed. 2d 718 (1969)] was premised in founded in the Due Process Clause and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights. It is futile to contend that the Civil Rights Act of 1871 has less importance in our constitutional scheme than does the Great Writ.

Id. 94 S.Ct. at 2986.

THE LEWIS V. CASEY, "ACTUAL INJURY" PLEADING REQUIREMENT IS INAPPLICABLE TO THE CASE AT BAR BECAUSE WHERE THE RIGHT INVOKED IS PROVIDED FOR DIRECTLY BY THE CONSTITUTION, A PRISONER HAS STANDING SIMPLY BY SHOWING A VIOLATION OF THAT RIGHT

Lewis V. Casey, 518 U.S. 343, 135 L.Ed. 2d 606, 116 S.Ct. 2174 (1996), was a class action in which the district court, relying on Bounds V. Smith, 430 U.S. 817, 52 L.Ed. 2d 72, 97 S.Ct. 1491 (1977) (requiring adequate law libraries or legal assistance), entered a sweeping injunction to improve law libraries and legal assistance programs in Arizona prisons. In striking down the injunction, the Supreme Court held that a prisoner alleging a Bounds violation must show "actual injury". Lewis, 518 U.S. at 349. Thus, to establish a claim of inadequate access to the courts under Bounds, an inmate must show "that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim".

Law libraries and legal assistance programs do not represent constitutional rights in and of themselves; they are merely means for ensuring 'a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts.' Benjamin V. Fraser, 264 F. 3d 175, 185 (2nd Cir. 2001)(quoting Lewis, 518 U.S. at 351, 116 S.Ct. at 2174); Jones V. Brown, 2006

WL 2441412, *(3rd Cir. 2006)(quoting Lewis, 518 U.S. at 351, 116 S.Ct. at 2174). In these "derivative rights" cases, Lewis requires that an "actual injury" be shown to establish standing, Benjamin, 264 F. 3d at 185. Conversely, where the right invoked is provided for directly by the constitution, a prisoner has standing simply by showing a violation of that right. Id.

A systematic denial of an inmate's constitutional right of access to the courts is such a fundamental deprivation that it is an injury in itself. Herschberger V. Scaletta, 33 F. 3d 955, 956 (8th Cir. 1994)(collecting cases)

Claim II

THE DISTRICT COURT HAS REPEATEDLY REFUSED TO ADJUDICATE THIS CLAIM IN THIS AND OTHER CASES.

The second established state procedure that deprives Petitioner of his federal right, a property interest, in the use of the "contested case", post-deprivation adjudicatory procedures, set forth in the Missouri Administrative procedure Act (MAPA), Chapter 536, RSMo, is MDOC Policy D5-3.2 Offender Grievance, which is set forth in the Complaint (Appendix F, a 10-11; A 20-21 - Claim II) and states in relevant part:

MDOC Policy D5-3.2 Offender Grievance, does not provide for any type of hearing or authorize the calling of a witness and authorizes decisions to be based on ex parte statements of staff when making decisions as to the disposition of an inmates authorized personal property, for non-disciplinary reasons....

Although, the post-deprivation procedure set forth in MDOC Policy D5-3.2 Offender Grievance, is formal in some respects it does not meet any of the requirements for a contested case as outlined in §§ 536.063 - 536.090, RSMo, and treats all complaints filed by a Missouri Prisoner as a non-contested case, which denies due process and access to the states established adjudicatory procedures for contested cases,

including access to the Court, which violates Mo. Const. art. V. § 18 (1945). See Asbury V. Lombardi, 846 S.W. 2d 196 (Mo. banc. 1993). In Logan V. Zinnerman Brush Co., 102 S. Ct. 1148, 1154-55 (1982), the Supreme Court held that the right to use state adjudicatory procedures is a constitutionally protected property interest. In this case the MDOC refuses to provide a contested case grievance procedure, which is the correct remedy.

(Appendix F, A10-11; A20-21 Claim II)

One purpose of Chapter 536, is to fill in gaps in administrative procedures. State ex rel. Noranda Aluminum, Inc. V. Associated Natural Gas, 24 S.W. 3d 243, 245 (Mo. App. W.D. 2000).

The Director of the Missouri Department of Corrections has a duty to establish "an offender grievance procedure" (§ 217.370, RSMo) and the authority to "adopt, amend and repeal rules and regulations under the provisions of this section and chapter 536, RSMo, ... which are not inconsistent with the constitution of this state...." (§ 217.040.1, RSMo.).

The United States and Missouri Constitutions, each prohibit a state from depriving any person of property without due process of law. In Percy Kent Bag Co. V. Missouri Com'n on Human Rights, 632 S.W. 2d 480, 486 (Mo. banc 1982), the Missouri Supreme Court, said:

Due Process does not necessarily mean judicial process ... Where as here, rights of specific parties are affected by an administrative decision, due process requires a hearing at some stage before the proceedings become final.

In Kertz V. Robertson Fire Protection District, 228 F. 3d 897, 904 (8th Cir. 2000), the Eighth Circuit Court of Appeals, held that the MAPA's "contested-case" provisions comport with post-deprivation requirements imposed by the Due Process Clause.

In his complaint, Petitioner entitles Claim II as "Denial of Due Process", stating:

As set forth fully above MDOC Policy D5-3.2 Offender Grievance, fails to provide for any type of hearing neither pre-deprivation or post-deprivation when an offender's personal property is at issue for non-disciplinary reasons and the failure to provide a hearing at some point before the deprivation becomes final violates due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution.

(Appendix F, A20-21, Claim II).

In Bronfman V. State, 707 F. Supp. 419 (U.S. Dist. Ct. W.D. Mo. 1989), the Honorable Elmo B. Hunter, a United States District Court Judge, sitting in Kansas City, Missouri, acknowledged and enforced this Courts precedent in Logan V. Zimmerman Brush Co, 455 U.S. 422, 430-31 (1982), in which the Court held: "... that the right to use state adjudicatory procedures is a constitutionally protected property interest". Id.

In deciding this issue, the district court, the Honorable Greg Kays, has repeatedly, in this and other cases, refused to address Petitioner's core claim that he has been deprived, by the MDOC of his federally protected right to redress under the Missouri Administrative Procedure Act (MAPA), Chapter 536, RSMo, "Contested Case" provisions, via an established state procedure MDOC Policy D5-3.2 Offender Grievance, which denies due process on its face.

In refusing to address this claim the district court has created a procedural maze, dumping the claim, Claim II, in with its Sandin V. Conner, "atypical, significant deprivation" standard, without addressing the Claim further. (Compare Appendix G, A34, para 2, with A35, para 2).

Claim III

In Claim III, Petitioner alleges that the violation of his constitutional rights and permanent deprivation of his authorized

personal property, in which he has a vested right to present and future enjoyment. was pursuant to an established state procedure that failed to provide notice of prohibited conduct, MDOC Policy, Rules of Conduct, Rule 24.5 "Alerting any item in an unauthorized manner", standing alone is meaningless or vague and would deny due process; and) the violation of Petitioner's Constitutional Rights and permanent deprivation of his authorized personal property, was not random or unauthorized but rather pursuant to to an official prison disciplinary proceeding at which petitioner was denied due process. (Appendix F, A12-19; A21 - Claim III).

When dismissing this case, the district court correctly observed that in Claim III that "plaintiff alleges that Defendants deprived him of his personal property without due process of law pursuant to an established state procedure", and then failed to address the Claim further. (See Appendix G, A34)

IN DECIDING THIS CASE THE DISTRICT COURT IGNORED ESTABLISHED PRECEDENT OF THIS COURT AND THAT OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, LEAVING PETITIONER WONDERING WHAT THE LAW IS.

Precedent

Prisoner's have a constitutional right of access to the courts, and no less than lawyers, must also "know what the law is in order to determine whether a colorable claim exists, and if so, what facts are necessary to state a cause of action". Bounds V. Smith, 430 U.S. 817, 825 (1977), overruled in part by Lewis V. Casey, 518 U.S. 343, 354 (1996).

According to case law available in the prison law library, prior to the filing of this action, subsequent judgment and decision of the Court of Appeals, the United States Supreme Court and Eighth Circuit precedents with respect to the deprivation of property pursuant to established state procedures has remained unchanged.

In Clark V. Kansas City Mo. Sch. Dist., 375 F. 3d. 698, 702

(8th Cir 2004), the Court stated:

When an established state procedure or a foreseeable consequence of such procedure causes the loss , an adequate postdeprivation remedy is of no consequence, and we focus solely on the process afforded by the established procedure. Logan V. Zimmerman Brush Co., 455 U.S. 422, 435 -36, 71 L. Ed. 2d 265, 102 S.Ct. 1148 (1982); Putman V. Unknown Smith, 98 F. 3d. 1093, 1095-96 (8th Cir. 1996).

When dismissing this case the district court correctly observed that in Claim III, "plaintiff alleges the Defendants deprived him of his personal property without due process of law pursuant to an established state procedure" and then failed to address the claim further. (Appendix G, A34)

The failure to observe precedent appears to be a common practice by the district court's in Missouri. See Walters V. Wolf, 660 F. 3d 307, 313 (8th Cir. 2011). On February 7, 2007 a Hazelwood Missouri police officer arrested Ronnie Walters on an outstanding warrant and seized a pistol and ammunition from him. Defendant Wolf, then Hazelwood's chief of police, refused to return the property without a writ of replevin. Walters filed suit pursuant to 42 U.S.C. § 1983, asserting as relevant here that defendants deprived him of his property without due process of law, in violation of the Fourteenth Amendment. The Court granted defendants' motion for summary judgment on this claim, finding that due process was satisfied because plaintiff had a postdeprivation remedy in the form of a replevin action. The Eighth Circuit Court of Appeals reversed reasoning, "when an established state procedure deprives one of property, postdeprivation remedies generally fail to satisfy

[due process requirements] ... [T]his maxim especially holds true when the proffered postdeprivation remedy is a subsequent tort suit". Id. at 313 (emphasis in original)(citing Parratt V. Taylor, 451 U.S. 527, 101 S. Ct. 1908, 68 L. Ed. 2d 420 (1981), Matthews V. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L. Ed. 2d 18 (1976), Zinnermon V. Burch, 494 U.S. 113, 110 S.Ct. 975, 108 L. Ed. 2d 100 (1990), and Logan V. Zimmerman Brush Co., 455 U.S. 422, 102 S. Ct. 1148, 71 L. Ed. 2d 265(1982)). "[T]he availability of state law postdeprivation remedies bears relevance only where the challenged acts of state officials can be characterized as random and unauthorized." Id. at 314 (emphasis in original)(quoting Coleman V. Wait, 40 F. 3d 255, 257 (8th Cir. 1994)). The case was remanded to the district court for further proceedings. Id.

In the case at bar, petitioner was not provided constitutionally adequate notice, was then denied due process at the disciplinary proceeding and denied access to all means of redress, pursuant to established state procedures, however, the District Court refused to address the issue, applying Sandin's "atypical and significant" deprivation standard to all due process and property interest claims brought by Missouri Prisoner's. See Appendix G, A35.

This is not the law of the Eighth Circuit. The Eighth Circuit Court of Appeals has not yet determined whether Sandin applies to prisoner property claims. See Jennings V. Lombardi, 70 F. 3d 994 (8th Cir. September 15, 1995). The "atypical" requirement set forth in Sandin is not explained. Id. 515 U.S. at 484. There is no metric against to compare whether a hardship is atypical. Moreover, it does not appear that this Court applied Sandin to property interests

because in Board of Regents V. Roth, 408 U.S. 564, 572-578 (1972), this Court created a fundamental distinction between liberty and property interests under the Due Process Clause that continues to apply to this very day. See Michael Z. Goldman, Sandin V. Conner and Intraprison Confinement: Ten Years of Confusion and Harm in Prisoner Litigation, 45 B.C.L. Rev. 423 (2004)(examining distinction created in Roth between liberty and property in the context of due process claims).

Immediately following Sandin, the Eighth Circuit cited the Hewitt test in Jennings V. Lombardi and looked to Missouri prison regulations to hold that a prisoner had no right to wages from prison employment. Id. 70 F. 3d 994, 995-96 (8th Cir. 1995). In a subsequent case, Mahers V. Halford, the Eighth Circuit demonstrated further support for this approach, 76 F. 3d. 951 (8th Cir.1996). At issue in Mahers was a prison procedure that automatically applied twenty percent of all money earned or received to court-ordered restitution payments despite a policy that exempted "money given to an inmate for a specific purpose, such as medical costs". Id. 76 F. 3d at 952-53. The Court found that prisoners had a property interest in money received from outside sources by citing previous Eighth Circuit opinion, Sell V. Parratt, 548 F. 2d 753, 757(8th Cir. 1977), a pre-Sandin case in which the court looked to specific state law to find this property interest Id. 76 F. 3d 951, 952-53. The court's reliance on Sell, despite the fact that it was decided prior to Sandin and relied on state law, demonstrates the Eighth Circuit's view that Sandin did not alter the property analysis.

THE HONORABLE GREG KAYS, UNITED STATES DISTRICT COURT JUDGE FOR THE WESTERN DISTRICT OF MISSOURI AT KANSAS CITY, HAD NO AUTHORITY TO, SUA SPONTE, IGNORE UNITED STATES SUPREME COURT AND EIGHTH CIRCUIT PRECEDENT RELATING TO CLAIMS OF DEPRIVATION OF PROPERTY PURSUANT TO ESTABLISHED STATE PROCEDURES.

Stare decisis -- in English, the idea that courts are governed by precedent -- is "a foundation stone of the rule of law". Michigan V. Bay Mills Indian Community, 134 S. Ct. 2024, 2036 (2014). "[I]t promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." Payne V. Tennessee, 501 U.S. 808, 827--828(1991). "It also reduces incentives for challenging settled precedents, saving parties and courts the expense of endless relitigation." Kimble V. Marvel Entm't. LLC, 135 S.Ct. 2401, 2409, 192 L. Ed. 2d 463 (2015). Conversley, parties who know precedent has been sidestepped have a just and significant incintive to continue litigation.

Widespread discretion to circumvent the process of stare decisis allows judicial power to extend beyond the scope of Article III. Anastasoff V. United States, 223 F. 3d 898, 900, 900-01 (8th Cir), vacated as moot, 235 F. 3d 1054 (8th Cir. 2000). "The judicial power to determine law is a power only to determine what the law is, not to invent it [or apply something less universal]." Id. at 901. Otherwise, the judiciary has a practically unchecked power to arbitrarily remove entire classes of cases from the body of precedent and from the guarantees to the rule of law that are inherent in the process of a stare decisis analysis. Seeid. at 904-05.

Neither efficiency concerns nor procedural rules justify a violation of fundamental rights; nor can they provide a discretionary

license for courts to choose -- without conducting the analysis concerned -- which litigants will have the law applied to their case in a way that the Framers of the Constitution expected as an element of due process. Id. at 902 (citing THE FEDERALIST No. 78 (Alexander Hamilton)). Judges are to be constrained by the law, which is -- for all practical purposes and expectations -- precedent. See Id.

The very conception of law itself contains inherent principles that "reflect ... equities and efficiencies of consistency." RONALD DWORKIN, TAKING RIGHTS SERIOUSLY 37 (2d ed. 1978). This is what the citizenry expects: that all cases will be judged against precedent with the same fundamental accountability, i.e., fundamental fairness.

Standards are needed to prevent such guarantees from being swallowed up in mere discretion, as "[d]iscretion is not whim, and limiting discretion according to legal standards helps promote the basic principle of justice that like cases should be decided alike." Martin V. Franklin Capital Corp., 526 U.S. 132, 139 (2005).

"The constitution of the United States was designed for the common and equal benefit of all the people of the United States." Martin V. Hunter's Lessee, 14 U.S. (1 Wheat) 304, 348 (1816). Allowing individual discretion to determine whether the law will be applied equally is a fundamental transgression of this design.

THE HONORABLE GREG KAYS, UNITED STATES DISTRICT COURT JUDGE FOR THE WESTERN DISTRICT OF MISSOURI AT KANSAS CITY HAS A DUTY TO RULE ON ALL CLAIMS PRESENTED, BUT FAILED TO DO SO.

Generally, federal courts have an obligation to resolve justiciable causes of action brought before them. "We have no more right to decline the exercise of jurisdiction which is given, than to

usurp which is not given. "' and that "' the one or the other would be treason to the constitution"''. New Orleans Pub. Serv. V. New Orleans, 491 U.S. 350, 358, 105 L. Ed. 2d 298, 109 S. Ct. 2056 (1989)(quoting Cohnens V. Virginia,, 19 U.S. 264, 6 Wheat, 264, 404, 5 L. Ed. 257 (1821)).

THE HONORABLE JUDGES, Loken, Bowman and Benton OF THE UNITED STATE COURT OF APPEALS FOR THE EIGHTH CIRCUIT SHIRKED THEIR DUTY TO PROTECT PETITIONERS' CONSTITUTIONAL RIGHTS AND FAILED TO SUPREVISE AND/OR CONTROL UNITED STATES DISTRICT COURT JUDGE GREG KAYS.

This Court has repeatedly held that "federal courts must protect the constitutional rights of prison inmates in the face of a prison regulation or practice which offends a fundamental constitutional guarantee. Johnson V. Avery, 393 U.S. 483, 486 (1969); Procuner V. Martinez, 416 U.S. 396, 405-06 (1974), overruled in part by Thornburgh V. Abbott, 490 U.S. 401 (1989)

In affirming the decision of the Honorable Greg Kays of the United States District Court for the Western District of Missouri, the Respondent's Loken, Bowman and Benton, have allowed a decision to stand in which the District Court repeatedly refused to address issues, created a procedural maze and in effect stated by implication that Petitioner's claims in this case are all barred by Sandin V. Conner, 515 U.S. 472 (1995).

In Sandin V. Conner, 515 U.S. 472, 487 n. 11 (1995), this Court specifically stated:

Prisoners ... , of course, retain other protection from arbitrary state action even within the expected conditions of confinement. They may invoke the First and Eighth Amendments and the Equil Protection Clause of the Fourteenth Amendment where appropriate, and may draw upon internal prison grievance procedures and state judicial review where available.

"[I]t is well-established that courts of appeal may exercise supervisory control over lower courts." Starr V. Mandanici, 152 F. 3d 741, 750 (8th Cir. 1998); see also La Buy V. Howes Leather Co., 352 U.S. 249, 259-60, 77 S. Ct. 309, 1 L.Ed. 2d 290 (1957) (explaining, "supervisory control of the District Courts by the Courts of Appeals is necessary to proper judicial administration in the federal system")

RELIEF IS UNAVAILABLE IN ANY OTHER FORUM

Petitioner has unsuccessfully sought relief from two forums, the United States District Court for the Western District of Missouri and the United States Court of Appeals for the Eighth Circuit. The United States Supreme Court is the only forum remaining.

Petitioner has already been deprived of access to this Court for the filing of a petition that simply disappeared after delivery to this Court. An extension of time to file a petition for a writ of certiorari was granted to and including April 3, 2018 in Application No. 17A741. Petitioner posted his "Petition for a Writ of Certiorari

and/or in the alternative a Petition for a Writ of Mandamus" to this Court on March 26, 2016 via United States Postal Service "Priority Mail" and it was delivered to this Court on March 30, 2018 according to USPS Tracking No. 9505 5161 7537 8085 1564 34. However, the Petition then disappeared without being docketed and Petitioner has been unable to find out any thing regarding the matter from the Clerk of this Court. Therefore, Petitioner has only one remedy, this Petition for a writ of mandamus.

MANDAMUS IS PARTICULARLY APPROPRIATE HERE

A "traditional use" of a writ of mandamus has been "to confine and inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it has a duty to do so". See Roche V. Evaporated Milk Ass'n, 319 U.S. 21, 26, 63 S. Ct. 938, 941, 87 L.Ed. 1185 (1943); See also Mallard V. United States District Court for the Southern District of Iowa, 490 U.S. 296, 109 S. Ct. 1814, 104 L. Ed. 2d 318 (1989)(Mallard); Will V. Calvert Fire Ins. Co., 437 U.S. 655, 98 S.Ct. 2552, 57 L.Ed. 2d 504 (1978); La Buy V. Howes Leather Co., 352 U.S. 249, 77 S.Ct. 309, 1 L.Ed.2d 290 (1957).

"Repeated decisions of this Court have established the rule ... that the writ will lie in a proper case to direct a subordinate Federal Court to decide a pending cause", Insurance Co. V. Comstock, 16 Wall. 258, 270 (1873), or to require "a Federal Court of inferior jurisdiction to reinstate a case, and proceed to try and adjudicate the same." McClellan V. Carland, 217 U.S. 268. 280, 30 S. Ct. 501, 54 L. Ed. 762 (1910).

CONCLUSION

The petition for a writ of mandamus should be granted.

Respectfully Submitted,

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