

No. 18-7589 ORIGINAL

FILED
JAN 21 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

William Lee Judy — PETITIONER
(Your Name)

vs.

Kathy Williams, et alia — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

William Lee Judy
(Your Name)

1025 Birdella Drive
(Address)

Newport News, Va. 23605-1923
(City, State, Zip Code)

(757) 251-8309
(Phone Number)

Questions Presented

1. Do violations of statutes and regulations, which are incorporated into a plea agreement, breach the plea agreement; and does that breach violate the Due Process Clause?
2. Is the government, its officers, agents and employees, entitled to the exception under 28 U.S.C. § 2600(c) and qualified immunity when they fail to abide by mandatory provisions governing their conduct?
3. Are federal courts required to assist pro se litigants by informing them of possible courses of actions and procedures needed to pursue the litigation?

LIST OF PARTIES

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

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

William Lee Judy, Plaintiff

Several Named But Unknown Search Team Members, in their individual capacities, defendants;

Kathy Williams, in her individual capacity, defendant;

Named But Unknown Institutional Administrative Remedy Coordinator, in their individual capacity, defendant;

Named But Unknown Regional Administrative Remedy Coordinator, in his individual capacity, defendant;

Ian Connor, in his individual capacity, defendant;

United States of America, defendant.

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	10
REASONS FOR GRANTING THE WRIT	12
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A Opinion of the United States Court of Appeals for the
Fourth Circuit, dated October 26, 2018.

APPENDIX B Opinion of the United States District Court for the
Eastern District of Virginia, dated September 20, 2017.

APPENDIX C Opinion of the United States District Court for the
Eastern District of Virginia, dated November 20, 2017.

APPENDIX D Appellant's Informal Brief on Appeal, dated
June 23, 2018.

APPENDIX E Response to Order to Show Cause, Docket 1:16-cv-00345-
AWA-LPL, Document 6.

APPENDIX F

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 A to the petition and is

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

The opinion of the United States district court appears at Appendix B 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 _____ 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 _____ 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 26 October 2018.

No petition for rehearing was timely filed in my case.

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

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

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

For cases from **state courts**:

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

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

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

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

Constitutional and Statutory Provisions Involved

Amendment 5

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

28 U.S.C. § 2680

The provisions of this chapter and section 1346 (b) of this title shall not apply to -

- (a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.
- (b) Any claim arising out of loss, miscarriage, or negligent transmission of letters or postal matter.
- (c) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods, merchandise, or other property by any officer of customs or excise or any other law enforcement officer, except that the provisions of this chapter and section

1346(b) of this title apply to any claim based on injury or loss of goods merchandise, or other property, while in the possession of any officer of customs or excise or any other law enforcement officer, if-

- (1) the property was seized for the purpose of forfeiture under any provision of Federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense;
- (2) the interest of the claimant was not forfeited;
- (3) the interest of the claimant was not remitted or mitigated (if the property was subject to forfeiture); and
- (4) the claimant was not convicted of a crime for which the interest of the claimant in the property was subject to forfeiture under a Federal criminal forfeiture law.

(d) Any claim for which a remedy is provided by chapter 309 or 311 of title 46 relating to claims or suits in admiralty against the United States.

(e) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of sections 1-31 of Title 50, Appendix (2).

(f) Any claim for damages caused by the imposition or establishment of a quarantine by the United States.

(g) Repealed. September 26, 1950, chapter 1049, § 13 (5), 64 Stat. 1043.]

(h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights: Provided, That, with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of this chapter and section 1346(b) of this title shall apply to any claim arising on or after the date of the enactment of this proviso, but

of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution. For the purpose of this subsection, "investigation or law enforcement officer" means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.

(i) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system.

(j) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war.

(k) Any claim arising in a foreign country.

(l) Any claim arising from the activities of the Tennessee Valley Authority.

(m) Any claim arising from the activities of the Panama Canal Company.

(n) Any claim arising from the activities of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives.

28 C.F.R. § 552.14

Search of inmate housing and work areas.

(a) Staff may search an inmate's housing and work area, and personal items contained within those areas, without notice to or prior approval from the inmate and without the inmate's presence.

(b) Staff conducting the search shall leave the housing or work area as nearly as practicable in its original order.

Procedures for handling contraband.

(a) Staff shall seize any item in the institution which has been identified as contraband whether the item is found in the physical possession of an inmate, in an inmate's living quarters, or in common areas of the institution.

(b) Staff shall dispose of items seized as contraband in accordance with the following procedures.

(1) Staff shall return to the institution's issuing authority any item of government property seized as contraband except where the item is needed as evidence for disciplinary action or criminal prosecution. In such cases, staff may retain the seized property as evidence.

(2) Items of personal property confiscated by staff as contraband are to be inventoried and stored pending identification of the true owner (if in question) and possible disciplinary action. Following an inventory of the confiscated items, staff shall employ the following procedures.

(i) Staff shall provide the inmate with a copy of the inventory as soon as practicable. A copy of this inventory shall also be placed in the inmate's central file.

(ii) The inmate shall have seven days following receipt of the inventory to provide staff with evidence of ownership of the listed items. A claim of ownership may not be accepted for an item made from the unauthorized use of government property. Items obtained from another inmate (for example, through purchase, or as a gift) without staff authorization may be considered nuisance contraband for which a claim of ownership is ordinarily not accepted.

(iii) If the inmate establishes ownership, but the item is identified as contraband, staff shall mail such items (other than hard contraband), at the inmate's expense, to a destination of

the inmate's choice. The Warden or designee may authorise the institution to pay the cost of such mailings when the item had not been altered and originally had been permitted for admission to the institution or had been purchased from the commissary, or where the inmate has insufficient funds and no likelihood of new funds being received. Where the inmate has established ownership of a contraband item, but is unwilling, although financially able to pay postage as required, or refuses to provide a mailing address for return of the property, the property is to be disposed of through approved methods, including destruction of property.

(iv) If the inmate is unable to establish ownership, staff shall make reasonable efforts to identify the owner of the property before any decision to destroy the property is made.

(v) Staff should prepare and retain written documentation describing any items destroyed and the reasons for such action.

(vi) Where disciplinary action is appropriate, staff shall delay disposition of property until completion of such action (including appeals).

(c) Staff shall retain items of hard contraband for disciplinary action or prosecution or both. The contraband items may be delivered to law enforcement personnel for official use. When it is determined that the item is not needed for criminal prosecution, the hard contraband shall be destroyed as provided in paragraph (b)(2)(v) of this section. Written documentation of the destruction shall be maintained for at least two years.

(d) Staff may not allow an inmate to possess funds in excess of established institutional limits. Staff shall deliver to the cashier any cash or negotiable instruments found in an inmate's possession which

exceed the institution's allowable limits. Funds determined to be contraband shall be confiscated for crediting to the U.S. Treasury.

(1) Where disciplinary action against the inmate is appropriate, staff shall delay final disposition of the funds until such action (including appeals) is completed.

(2) Prior to a decision on the disposition of funds, staff shall allow the inmate a reasonable amount of time to prove ownership.

TABLE OF AUTHORITIES CITED

CASES

Ali v. Federal Bureau of Prisons,
552 U.S. 214, 120 S. Ct. 831, 169 L. Ed. 2d. 680 (2008)

PAGE NUMBER

1

Berkovitz v. United States,
486 U.S. 531, 108 S. Ct. 1954, 100 L. Ed. 2d. 531 (1988)

1

Hartow v. United States,
457 U.S. 800, 120 S. Ct. 2721, 83 L. Ed. 2d (1982)

1

STATUTES AND RULES

28 U.S.C. § 2680

1,2

28 C.F.R. § 552.14

2

28 C.F.R. § 553.13

1

OTHER

Statement of the Case

William Lee Jude, the petitioner, believes the United States District Court for the Eastern District of Virginia (the District Court), and the United States Court of Appeals for the Fourth Circuit (the Fourth Circuit), did not adhere to the Supreme Court of the United States' (the Supreme Court) holdings in *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 120 S. Ct. 2721, 73 L. Ed. 2d 396, 400 (1982) ("we therefore hold that government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."). Also *Berkovitz v. United States*, 486 U.S. 531, 536, 108 S. Ct. 1954, 100 L. Ed. 2d 531, 541 (1988) ("... the employee has no rightful option but to adhere to the directives."). "When a statute, regulation or policy prescribes the employees conduct, the conduct cannot be discretionary functions and thus is unprotected by the discretionary function exception." *Idem*. Additionally, the Supreme Court said these rules must be consistently applied throughout the statute. See *Ali v. Federal Bureau of Prisons*, 552 U.S. 214, 227-28, 128 S. Ct. 831, 840-41, 169 L. Ed. 2d. 680, 692 (2009). This includes the rules and holdings mentioned above. These are the decisions the District Court and the Fourth Circuit ignored.

The United States of America (the government) did violate Mr. Judy's rights under the Due Process Clause. See Appendix E, pages two through thirty five. By invoking 28 U.S.C. § 24301(c), the government did admit to seizing Mr. Judy's property during the search of his cell on 22 July 2014. Under 28 C.F.R. § 553.13 (§ 553.13)

subsections (b)(2)(i) the government was completed to issue an inventory, documenting the seizure of the property. The inventory was never issued to Mr. Judy. A secondary result of the seizure, the government did not leave Mr. Judy's cell in its original order (his property was not found within the four corners of his), as required by 28 C.F.R. § 552.14 (§552.14) sub section (b). Since these two regulations form a bailment under the Commonwealth of Virginia's common-law bailment. The government did breach this bailment by not returning all of the bailment at the end of the search; and again when the chain of authority refused Mr. Judy's formal demand for the return of the bailment. The violations of the regulations and the bailment breach Mr. Judy's incorporated-place agreement; and violates his due process rights.

The violations of the individual defendants follow along the same theory as the government's violations. The major difference is the individual defendants rely on qualified immunity instead of relying on § 26.901(c). Otherwise, the individual defendants conduct reflects the government's conduct. Mr. Judy refers this court to Appendix D for details regarding the government's conduct and conduct of the individual defendants.

Mr. Judy concedes that the defendant's conduct is intended harm. The defendant's conduct occurred in the relative peace of a housing unit void of inmates, and office spaces, with time to reflect on their actions. These actions were contrary to established regulations and Program Statementa. These are the reasons Mr. Judy believes the harm was intentional, or at the very least, deliberate indifference.

Reasons for Granting the Writ

The deliberate harm intended by the defendants disqualifies them from qualified immunity and the exception under § 2680(c). This is why Mr. Judy believes the District Court's award of immunity amounts to absolute immunity. This is why Mr. Judy believes the District Court's award of the exception under § 2680(c) was not warranted. And this is why Mr. Judy believes the Fourth Circuit's affirmation of the District Court's orders is contrary to the Supreme Court's holdings in the decisions mentioned above.

Mr. Judy also believes his case is the first of its kind in the federal jurisprudence. Mr. Judy's theory that the incorporated-plea agreement is a nexus has no equal or parallel as far as Mr. Judy's research has found. Mr. Judy is pro se, without the aid of an attorney. Since the District Court and the Fourth Circuit refuse to address the nexus that is the incorporated-plea agreement; Mr. Judy believes the Supreme Court is the only court that can evaluate this case on the merits. Since the heart of this case is the incorporated-plea agreement, it has national impact, due to the large number of cases, both federal and state, that involve plea agreements. For these reasons, the Supreme Court must hear this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William L. Jolly".

Date: 21 January, 2019