No. 18-7697

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

DUANE YATES,

PETITIONER

VS.

PATTY WACHTENDORF, WARDEN,

RESPONDENT,

ON PETITION FOR A WRIT OF CERTIORARI TO
AN ADVERSE RULING FOR THE IOWA SUPREME COURT REGARDING
A DISCIPLINARY HEARING AT AN IOWA PRISON

PETITION FOR WRIT OF CERTIORARI

QUESTION(S) PRESENTED

1. Whether inmates who file a postconviction under Iowa Code 822 in the Iowa District Court's are denied the equal protection of law under the Sixth and Fourteenth Amendment as the Iowa Court's claim that there is a difference in postconvictions in a criminal and prison disciplinary hearing to deny the applicant the right to an attorney when the difference being is that if you are poor you cannot have an attorney but you can hire one for a disciplinary action if you have money and as this action pertains to the loss of good time on a criminal conviction should counsel be available to both the rich and the poor under the Sixth and Fourteenth Amendments to the United States Constitution?

2. Whether the district denied Yates his due process of state law when the court erred by not following Chapter 23 of the Iowa Rules of Court as it failed to use the mandatory trial scheduling order of Rule 23 Form 2 and allowed the State to enter an exhibit and evidence after the 7 day deadline prior to trial which severely altered the document exhibit by intentionally omitting an item that Yates needed to prepare a defense for after the State resisted Yates' motion to produce all the tapes of the kitchen and the court ruled in favor of the State to not turn over these tapes?

3. Whether Yates was denied due process of law when the prison failed to follow Iowa Code of 704.1 and 704.3 when defending himself from an aggressive attack by another inmate at the prison as the prison kitchen staff stood by and allowed another inmate to attack Yates while at his assigned prison job?

4. Whether Yates was denied due process of law under the Fourteenth Amendment of the United States Constitution when the court refused to hear and consider the equal protection of similarly situated inmates when Yates tried to argue that his sanction was more severe than others who were involved in a fight and Yates had to act in self defense and got more severe sanction while other inmates enjoyed a lesser sanction for fighting than that of Yates?

5. Whether Yates was denied due process of law under **Wolff v. McDonnell** when the court used the report as some evidence to uphold the sanction when Wolff says that the report is only a notice to the inmate on the rule violations that the inmate was supposed to have violated and denied him counsel in a district court setting by not allowing him a court appointed attorney on the loss of good time?

6. Whether Yates was denied his United States Constitution's Eighth and Fourteenth Amendments right of cruel and unusual punishment and equal protection when he was placed in lockup for acting in self defense when other inmates who were fighting got a far lesser sanction for fighting when their fight stemmed from a direct altercation between these other inmates?

LIST OF PARTIES

[**XXX**] 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:

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OTHER

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 case 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.

[**XXX**] 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,
[**XXX**] 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. _____.

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

[**XXX**] For cases from state courts:

The date on which the highest state court decided my case was August 27, 2018. A copy of that decision appears at Appendix __**A**__.
[ ] 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. _____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution's Fourteenth Amendment of Due Process as it applies to the states when the state court has to follow the state statutes as enacted by the legislation.

The Sixth Amendment as it applies to the right to counsel when your life and liberty is involved.

The United States Constitution's Eighth Amendment on cruel and unusual punishment as the state courts and the prison's administrative law judge (herein after ALJ) acted outside the scope of clearly established state law review when deciding the merits of the attack on Yates from an aggressive inmate and then subjecting Yates to a more harsh punishment which is cruel and unusual punishment for the same conduct that other inmates who acted in far more severe manner than Yates received a substantially less sanction and punishment.

Federal Statute 28 U.S.C. § 1257(a) as it give jurisdiction to this court for review purposes.

The Iowa Codes of 704.1 and 704.3 as they apply to self defense in Iowa when someone attacks you in a threatening manner.

Iowa Code 822 as it applies to how to pursue action in the state courts on a prison disciplinary action and it applies to the right to access the courts on the actions of a state court conviction and the loss of life and liberty.

Iowa Code 903A.3 as it applies to the loss of good time in a disciplinary action in a prison.

Iowa Rules of Court Chapter 23 Time Standards for Case Processing as they are governed by Iowa Code 611-624A and makes them laws in which the Iowa District and Supreme Court has to follow when making lawful determinations on a case before them. This section includes the sub sections of Trial Scheduling Order Form 23.5, Iowa Rule of Civil Procedure 1.500, Iowa Rule of Civil Procedure 1.500(1)(a), Iowa Rule of Civil Procedure 1.500(1)(a)(1), Iowa Rule of Civil Procedure 1.500(1)(a)(2) and Iowa Rule of Civil Procedure 1.500(1)(a)(3).

United States Constitution Fourteenth Amendment § 1, which states; "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 of law; nor deny to any person within its jurisdiction the equal protection of the laws" as the prison's administrative law judge and the Iowa courts failed to follow clearly established Iowa statutes on self defense when hearing the report and when doing postconviction relief in the courts abridging Yates' right to be protected by the laws of Iowa.

Iowa Constitution Art. 1 § 6 which states as follows; Laws uniform. SEC. 6. "All laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens." Which shows that the ALJ and the Iowa courts have not properly applied the laws of Iowa when the same operation allows some persons more preferential and favorable treatment over others and then the same organization allows these other individuals to act in an unlawful manner when they attack others and then hold the person about to be victimized accountable for the unlawful actions of the perpetrator when the person defends himself under Iowa law.

Iowa Constitution Art. I, § 10 is Iowa's due process and equal protection of the State Constitution and states as follows; Rights of persons accused. SEC. 10. In all criminal prosecutions, and in cases involving the life, or liberty of an individual the accused shall have a right to a speedy and public trial by an impartial jury; to be informed of the accusation against him, to have a copy of the same when demanded; to be confronted with the witnesses against him; to have compulsory process for his witnesses; and, to have the assistance of counsel.

42 U.S.C. § 1983 as the state's attorney tried to make a false claim of Yates advancing a theory that was not correct.

28 U.S.C. § 2254 as Yates argued with the court that he had to exhaust all of his state remedies through appeals to all the DOC channels and through the Iowa District and Supreme Court so that he may opt at a later date to pursue a state habeas corpus action in this disciplinary action as it took good time away from Yates and the State's attorney claimed that this federal code section does not apply to these proceedings.

Iowa Code 904.701 as it pertains to the due process and equal protection of the law when inmates are to have a job within the prison while in general population.

Iowa Code 2B as it applies to all the Iowa Department of Corrections and Iowa administrative policies and their application to the state departments within Iowa.

Iowa Code 814.1 gives the person the right to appeal from the district court decision on the first instance.

Iowa Code 814.6 explains what you can appeal and of a first review by the district court a person can appeal that decision to the Iowa Supreme Court.

Iowa Code 815 as it applies to the right to the appointment of counsel for an indigent person.

Iowa Code 822.2 is on where situations with the law are applicable.

Iowa Code 822.9 on an appeal from a postconviction action.

STATEMENT OF THE CASE

Prison Proceedings

On December 18, 2017, Petitioner Duane Yates was attacked by another inmate at the Iowa State penitentiary at Fort Madison, Iowa while working in the bakery area of the kitchen.

Yates was taken to lock-up for this attack upon him by inmate Gene Cook and Yates was given a notice why he was in lock-up on 12/18/17.

Yates was given a disciplinary report on 12/19/17 and it said that Yates was fighting with inmate Gene Cook and it is dated as such. (App. C-1)

An investigation was had on 12/19/17 and was reported on 12/26/17. (App. C-2)

Yates saw the prison's administrative law judge on 12/27/18 and made his arguments of self defense and objected to the fact that the prison did not call a witness that was right there when incident happened to support that Yates was attacked by inmate Cook in an aggressive manner. Yates asked the ALJ to review all of the videos and dates given him on the ongoing conduct of inmate Cook while working in the kitchen.

The decision was handed down on January 2, 2018 by the ALJ. (App. C-3)

A timely appeal was made to the warden on 1/4/18, (App. C-5). [Note; this appeal was timely filed due to the holidays and the problem of people being on vacation. The warden accepted this appeal as timely filed and Captain Peterson made special notice that this appeal was timely had as he had received in within the 24 hours needed to have it turned in my in the DOC policy.]

The warden's decision denied relief and was dated 2/9/18. (App. C-7)

A timely notice of appeal was sent to the Director of the IDOC on 2/10/18. (App. C-8)

The director's response denying relief is dated 2/23/18. (App. C-23)

The warden amended her appeal response on 5/8/18 (App. C-24)

Iowa Court Proceedings

Yates filed for postconviction relief on the discipline to the Iowa District Court in Lee County (North) on March 19, 2018. The proper jurisdiction to file in as Lee County Iowa has 2 jurisdictions in it. The case was captioned Duane Yates v. State of Iowa PCLA006654 (App. B-1)

The State filed a response to the postconviction on April 25, 2018 with several copies of the reports, decisions, and IDOC policies. (App. B-2)

Yates filed a resistance to the States' resistance on May 5, 2018. (App. B-5)

Yates filed his First Motion for the Production of Evidence on April 9, 2018 which was basically the video tapes of the kitchen bakery area. (App. B-6)

The State filed a resistance to Yates' motion for evidence on April 25, 2018. (App. B-7)

Yates filed his second Motion for the production of Evidence on May 23, 2018 which was basically the same type of request as the first motion along with a memorandum of law on the subject. (App. B-10 & 11)

The State filed a second resistance on June 4, 2018. (App. B-13)

The court entered an order on the motion for the production of evidence on June 7, 2018 denying the tapes to be entered. (App. B-17)

The Iowa District Court for Lee County (North) issued its ruling on July 5, 2018. (App. B-19)

A timely writ of certiorari was filed to the Iowa Supreme Court on July 30, 2018.

The State filed a resistance to the petition on August 16, 2018.

The writ of certiorari was denied on August 27, 2018. (App. A-1)

REASONS FOR GRANTING THE PETITION

The Iowa Code of 822 specifically 822.2(e & f) is in violation of the United States Constitution when the legislation enacted language claiming that there is a difference in a regular postconviction attacking a criminal conviction and that of one attacking a disciplinary action from a prison setting. A postconviction relief action is a collateral attack on the loss of good time on a prison sentence which requires the appointment of an attorney per the Iowa Constitution Art. I § 10 as stated in the recent case of **Allison v. State** ___ N.W.2d____ (Iowa 2018) Docket Number 16-0764 applies this Iowa Constitutional guarantee to postconviction actions and it pertains to the life and liberty interests to Iowa citizens which invokes the Sixth Amendment Right To Counsel in the loss of good time. The boarder application of this new rule was also done while Yates' case was currently of collateral review in this action which the federal courts have said new rules apply to cases that are pending on collateral review, **Griffith v. Kentucky** 479 U.S. 314, 326-27 107 S.Ct. ___, 715-16 (1987) and **Headbird v. United States** 813 F.3d 1092, 1095 (8th Cir. 2015), and the applicant only has to have a "prima facie showing" of a new constitutional law, **Donnell v. United States** 826 F.3d 1014, 1015 (8th Cir. 2016) citing **Johnson v. United States** ___ U.S. ___, 135 S.Ct. 2561, 192 L.Ed.2d 569 (2015) which allows for a new rule of constitutional law to be applied to cases pending on collateral review. This was also addressed in **Saffle v. Parks** 494 U.S. 484, 495, 110 S.Ct. 1257 (1990) which allows for a new rule on collateral review. Post convictions are collateral reviews. The issue of good time on a felony criminal conviction is required when the sanction includes further prison time to be had by the person sanctioned in the disciplinary action by the prison. This is ambiguous language as there are other sections and case law precedent that contradicts Iowa Code 822.9. In **Rinaldi v. Yeager** the Court concluded that Rinaldi (like Yates) attacked the constitutionality of the statute on the basis of our decisions defining the duty of a State, under the Equal Protection Clause and the Due Process Clause not to limit the opportunity to appeal in a criminal case because of the appellant's poverty citing **Griffin v. Illinois** 351 U.S. 12, 76 S.Ct. 585 and **Burns v. Ohio** 360 U.S. 252, 79 S.Ct. 1164, citing from **Rinaldi v. Yeager** 384 U.S. 305, 307, 86 S.Ct. 1497, 16 L.Ed.2d 577 (1966). The Rinaldi court went to say that the law only fastens to people who are in prison. You also have to make a requirement of the rationality of the class of people it singles out. **Rinaldi** 384 U.S. at 308-309. The Iowa Constitution Art. 1 § 6 provides for the equal protection of its citizens as well. This is Yates' argument as the law only fastens to people in prison who are poor or poverty stricken. No appointment of counsel is allowed to fight a contingent of prison hired attorneys. But, if you got money you can go ahead and hire counsel for what is to be called a disciplinary postconviction. This is contradicting procedure in conditions of the law and if you are right or poor. Then the Rinaldi court says that; the classification

established by statute cannot be justified on the ground of administrative convenience, **Rinaldi** 384 U.S. at 310. In Iowa the law is just that, it was done for administrative convenience of the prison itself. This way there was a high probability of success by the prison and its hired attorneys over that of an inmate without legal savvy and knowledge to attack the actions of the prison administration itself. This law in Iowa is discriminatory and it amounts to unfair justice outside of a disciplinary hearing within the prison as **Wolff v. McDonnell** defines a prison disciplinary hearing. This Court has addressed the factors of the discriminatory treatment based upon the financial inability to pay a fine and court costs imposed in a criminal case in **Williams v. Illinois** 399 U.S. 235, 236, 90 S.Ct. 2018, 26 L.Ed.2d 586 (1970). This same principle needs to be applied to this obscure standard of review in postconvictions in the Iowa courts. This ambiguous determination of the legislator's enacting these laws was determined to be ambiguous as amended as the reviewing court said; "the law as amended to limit the appeal rights of prisoners but not the State denied plaintiff-appellants the equal protection of the law," **Shortridge v. State** 478 N.W.2d 613, 614 (Iowa 1991). The court then went on to state that; "subsection 6 of Iowa Code 663A.2 (now 822.2(1)(f)) that the new law the legislation created made 2 classes of appellants, one with a right of direct appeal and one without," **Shortridge** 478 N.W.2d at 615. The court further said that; the legislation casts the sate and the inmates in unequal roles, **Shortridge** 478 N.W.2d at 615. This change in law was further review when the court said; "how legislation passed a law changing the manner of a review from a right of direct appeal to a petition for a writ of certiorari," **Jones v. State** 541 N.W.2d 864, 868 (Iowa 1995). In **Pierce v. State** the court said; that the disciplinary committee has to state why no witness was called, **Pierce v. State** 433 N.W.2d 38, 40 (Iowa 1988) citing **Ponte v. Real** 471 U.S. 491, 495, 105 S.Ct. 2192, 2195-97 (1985). Upon this Iowa Supreme Court review and answer to the unlawful writ of certiorari that the Iowa Courts now claim an inmate must use to deny the inmate the right to counsel, the reply had to factual bearing or proper answer why relief was not granted, (App. A-1). With no proper review Yates asks this court for a review of the actions of the Iowa courts.

The issues on the loss of good time makes this an illegal application of the United States Constitution on the Sixth and Fourteenth Amendment as Iowa will not appoint an inmate to have court appointed counsel as they claim it is a disciplinary setting and counsel is not allowed in a disciplinary setting. "But" if you have money and can hire an attorney that is fine. You can have an attorney for this disciplinary hearing. This same issue was addressed in when the court said in **Bearden v. Georgia** that; "there can be no equal justice where the kind of trial a man gets depends on the amount of money he has," **Bearden v. Georgia** 461 U.S. 660, 664, 103 S.Ct. 2064 (1983) citing **Griffith v. Kentucky** 351 U.S. 12, 19, 76 S.Ct. 585 (1956). The issue of money is the difference on whether or not you get counsel in a postconviction. In Iowa you can hire an attorney for what is considered a disciplinary postconviction action but you

cannot have one court appointed if you are poor. This is not equal protection of this same law either. Since everyone in prison is similarly situated the legislators have made a law in postconviction proceedings that is disproportionate to the equal protection of the federal constitution add of Iowa Constitution Art. 1 § 6. Since this court in **McGinnis v. Rayster** 410 U.S. 263, 270, 93 S.Ct. 1055, 35 L.Ed.2d 282 (1983) has already said that; "the issue with the court which has already deemed to be two separate and distinct classes are in fact but one class of persons" "similarly circumstanced" the aforesaid legislative distinction in dealing with members of that "class" be supported if there exists any rational basis for this distinction and was cited in **White v. Wyrick** 432 F. Supp. 11316 (W. D. Missouri 1977) citing **McGinnis v. Rayster** 410 U.S. 263, 270, 93 S.Ct. 1055, 35 L.Ed.2d 282 (1983). As all inmates are just that inmates with criminal convictions in a prison setting, the loss of further good time affects their prison sentence. When the legislators make a law that defines two different types of postconviction actions and one is allowed an attorney and one is not, due to what they want to call a disciplinary postconviction over what is considered a regular postconviction action then there is no equal protection for similarly situated individuals as the same Iowa Code of 822 applies to both instances. This is when the legislators did not act correctly in making a law that allows for rich inmates to seek help from an attorney and poor inmates to act as pro se litigants. This is not equal treatment and defiles the federal constitutional goals of due process and equal treatment under the Fourteenth Amendment. Since the issue of good time credits makes the sentence longer a person should be able to have court appointed counsel in a postconviction setting as Iowa Code 822 provides for counsel when it comes to attacking criminal convictions. The rich guys get an attorney the poor guys are left to fend for themselves. Since a postconviction is really no longer a disciplinary action as explained in **Wolff v. McDonnell** 418 U.S. 539, 556, 94 S.Ct. 2963, 2974 (1974), as the Wolff Court said that a disciplinary hearing was a prison setting with an administrative law judge presiding over the disciplinary hearing. Nowhere had Iowa defined the difference between a postconviction on a criminal matter or on a disciplinary hearing. This type of action by the Iowa courts and the Iowa legislators making a separate issue on whether or not you get an attorney by hiring one or by court appointed is not a proper constitutional right of access to the courts as without counsel the vast majority of inmates are at a loss on court tribunals let alone representing themselves in a court action against the educated and licensed counsel of the state. Iowa has even gone one step further and denied the applicant in a postconviction on prison discipline the right to appeal. The Iowa courts have said and made any type of appeal to Iowa's higher courts be done through a writ of certiorari and not by filing for an appeal. This was a two step move by the Iowa Supreme Court as (1), the courts do not have to appoint counsel if you are forced to do a writ of certiorari and (2), without the assistance of counsel an inmate with limited access to any legal text, books or other research sources it

is highly improbable that he will be able to file any meaningful brief or writ on the issues. Then the inmate has to act as a pro se litigant while the prison administration gets to have a team of attorneys to represent their wrong doings and persuade a court that they are right. When accessing the courts it is said that you do not file an appeal but a writ of certiorari and referenced postconviction codes of 822.2 which referenced 822.9. In Iowa Code 822.2 on postconviction the law says on disciplinary actions from prison that;

> **822.2 Situations where law applicable.**
> 1. Any person who has been convicted of, or sentenced for, a public offense and who claims any of the following may institute, without paying a filing fee, a proceeding under this chapter to secure relief:
>
> *f.* The person's reduction of sentence pursuant to sections 903A.1 through 903A.7 has been unlawfully forfeited and the person has exhausted the appeal procedure of section 903A.3, subsection 2.
>
> [NOTE](Sections a thru e and g was omitted by Applicant to show this court the section that Iowa says applies to disciplinary postconviction proceedings.)
>
> [C71, 73, 75, 77, 79, 81, §663A.2; 81 Acts, ch 198, §1, 2] 83 Acts, ch 147, §10, 14; 86 Acts, ch 1075, §3 C93, §822.2 2006 Acts, ch 1010, §162 Referred to in §822.3, 822.5, 822.7, 822.9

In Iowa Code 822.9 the legislation said when enacting this law that;

> **822.9 Appeal.**
> An appeal from a final judgment entered under this chapter may be taken, perfected, and prosecuted either by the applicant or by the state in the manner and within the time after judgment as provided in the rules of appellate procedure for appeals from final judgments in criminal cases. However, if a party is seeking an appeal under section 822.2, subsection 1,
> paragraph *"f"*, the appeal shall be by writ of certiorari.
>
> [C71, 73, 75, 77, 79, 81, §663A.9] 85 Acts, ch 157, §3; 90 Acts, ch 1043, §1; 92 Acts, ch 1212, §38 C93, §822.9 96 Acts, ch 1018, §1; 2006 Acts, ch 1010, §166

Nothing in these code sections says anything about a prison disciplinary action or makes them a prison disciplinary hearing to determine a person's conduct in prison and if that conduct violated a prison rule. The Iowa courts determination and the Iowa legislation's application of this fact is an ambiguous application to show favorable treatment to the prison and violates a selected group of persons, those being inmates who are poor to fend for themselves in a civil postconviction action in the Iowa court. This issue was addressed in **State v. Propps** 897 N.W.2d 91, 96 (Iowa 2017) where the court determined that an appeals is from a final judgment and this was applicable to both criminal and civil actions in which *Propps* cited **State v. Aumann** 236 N.W.2d 320, 321-22 (Iowa 1975)(quoting **State v. Klinger** 144 N.W.2d

150, 151 (1966)) as its controlling authority. Herein is where the problem lies with Iowa's application of this issue. The postconviction action is not a disciplinary review of an inmate's conduct. It is a review of the proceedings that lead to the sanction and loss of good time by prison officials and is a review of their conduct and not that of the inmate. It also involves the lost of good time which can increase a sentence. The matter of having to forgo counsel due to the ambiguous application of a clearly defined due process action that Iowa Code 814 which says that;

> **814.1 Definition of appeal and discretionary review.**
> For the purposes of this chapter, unless the context otherwise requires:
> 1. *"Appeal"* is the right of both the defendant and the state to have specified actions of the district court considered by an appellate court.
> 2. *"Discretionary review"* is the process by which an appellate court may exercise its discretion, in like manner as under the rules pertaining to interlocutory appeals and certiorari in civil cases, to review specified matters not subject to appeal as a matter of right. The supreme court may adopt additional rules to control access to discretionary review.
> [R60, §4904, 4905; C73, §4520, 4521; C97, §5448; S13, §5448; C24, 27, 31, 35, 39, §**13994;**
> C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.1; C79, 81, §814.1]

In 814.1 Iowa has made law that says that says that an appeal is the correct application to take on specific actions of the district court. A postconviction relief action is a district court action and an appeal is the first order of right by the aggrieved party. There is nothing in this code section that pertains to any writ of certiorari on a district court decision at on the first denial of relief.

> **814.11 Indigent's right to counsel.**
> 1. An indigent person is entitled to appointed counsel on the appeal of all cases if the person is entitled to appointment of counsel under section 815.9.
> 2. *a.* If the appeal involves an indictable offense or denial of postconviction relief, the appointment shall be made to the state appellate defender unless the state appellate defender notifies the court that the state appellate defender is unable to handle the case.

Iowa allows for the appointment of counsel in postconviction relief actions under Iowa Code 815 and in 822 and an indigent person is entitled to assistance under Iowa Code 814.11

An appeal in Iowa is allowed under Iowa Code 814.6 which is cited here.

> **814.6 The defendant as appellant or applicant.**
> 1. Right of appeal is granted the defendant from:
> *a.* A final judgment of sentence, except in case of simple misdemeanor and ordinance violation convictions.
> *b.* An order for the commitment of the defendant for insanity or drug addiction.
> 2. Discretionary review may be available in the following cases:
> *a.* An order suppressing or admitting evidence.
> *b.* An order granting or denying a motion for a change of venue.

c. An order denying probation.
d. Simple misdemeanor and ordinance violation convictions.
e. An order raising a question of law important to the judiciary and the profession.
[C79, 81, §814.6; 82 Acts, ch 1021, §9, 12(1)]

In plain language in 814.6(1)(a) allows for an appeal on a final judgment of sentence. This applies to all district court proceedings. There is no exception in this language to any disciplinary hearings from a prison action and the conduct of the prison officials. Any issue with an indigent inmate having to do a writ of certiorari without counsel and the misguided theory in the Iowa courts that there is a difference in a disciplinary postconviction over any other type of postconviction is a wrongful application of clearly established Iowa law. These Iowa laws make the judicial process for inmates ambiguous and highly favorable to the State to succeed in any type of appellate court review as it further punishes inmates for attacking their conviction and sanction by the prison's disciplinary body and makes the inmates a selected class of persons to this cause of the denial of due process of law.

Yates did talked later with Sergeant Hawk who was supposed to investigate the matter and was the person who wrote down that there were no witnesses in the investigation (App. C-2). His reply was he would check on that and get back to Yates on it. As of this writing Yates is still waiting for his reply.

A major factor of this denial of due process in the district court setting was that the State never presented any exhibits from the file to show Yates that the ALJ or the disciplinary committee had a written report as to the evidence relied on in this disciplinary action. **Wolff** 418 U.S. at 564, 94 S.Ct. at 2979. With Yates a witness would have discounted and rebutted the issue of a fight making it self-defense as this witness would have been able to tell the ALJ what actually happened and what lead up to this attack by this other inmate. There is also issues with the prison administration and the ALJ departing from the prison's own rules and codified state laws that they are to adhere to and obligated to follow, **Hrbek v. State** 478 N.W.2d 617, 619 (Iowa 1991) which cites **Wolff** 418 U.S. at 539, 94 S.Ct. 2975. With the right to call witnesses in the Iowa prison the precedent on this matter is determined in **Fichtner v. Iowa State Penitentiary** 285 N.W.2d 751, 757 (Iowa 1979). No written report was found in the State's exhibits to show that there was a written report stating the reason why the ALJ found Yates guilty of any rule violation.

The problems of the denial of due process with a writ of certiorari over a direct appeal from the district court proceedings is further hindered as the inmate with limited resources and a restricted law library of having only Iowa case law, rulings from the 8th Circuit District and Appellate Courts which Iowa is in and the United States Supreme Court decisions this limitation is place upon the inmates by the prison and the Iowa Attorney General's directive to the prison to hinder inmates from attacking the prison and the

state in litigation on the wrongful acts of these parties. The prison through the attorney general has also limited inmates to only 45 minutes a day research and if a computer is available to use to look up case law and Iowa codes and rules on. This 45 minutes a day was found to be inadequate as well, **Johnson-El v. Schoemehl** 878 F.2d 1043, 1053 (8th Cir. 1988) meaningful legal research cannot be done in 45 minutes citing **Williams v. Leeke** 584 F.2d 1336, 1340 (4th Cir. 1978) and also citing **Bounds v. Smith** 430 U.S. 817, 824, 828, 97 S.Ct. 1491, (1977).

These issues are a complete denial of due process of law as the Iowa legislators enacted a law that side steps an inmate's right to file a postconviction in Iowa as a even in a disciplinary action the inmate has lost good time which is from his criminal conviction. Iowa law is making a court action an extension of the administrative proceedings in a prison setting which is not allowed by either the federal or state constitutions. This Court has made a prison disciplinary action just that in **Wolff** 418 U.S. at 556, 94 S.Ct. at 2974. This type of court action is no longer a disciplinary matter it is a review of the prison's ALJ and other administrative staff on how they conducted themselves. Just like a postconviction action is done on the criminal trial court proceedings it is a review of the attorney's actions, the prosecutor's actions and all the other parties subject to the criminal proceeding itself. The principle review is the same criteria in both instances. Since prison discipline involves the further loss of good time from a criminal conviction, the appointment of counsel for an inmate that is without funds to hire an attorney over one who can hire an attorney is truly a denial of due process of law for the poor person which in this situation this Court needs to take into account that as inmates we are all a similarly situated class of people entitled to equal protection under the Fourteenth Amendment § 1 as it gives this right to the states and Iowa Constitution Art. 1 § 6. The findings of the prison administrative law judge and the Iowa courts is incorrect as the prison and the courts failed to follow the constitutional right of due process of law and the prison rules and the Iowa Codes before entering a judgment upon Yates for what is being called a fight by the prison. This due process denial includes the ALJ's hearing and the district and Supreme Court review in Iowa.

The prison staff had an opportunity to stop the fight as inmate Gene Cook announced his intentions to start the fight from across the kitchen and took an assertive posture and made an aggressive advance toward Yates. The prisons staff not only witnessed these acts by inmate Cook but failed to intervene stop Cook when they saw him advancing in a threatening manner as the writer of the report supervisor Bob Walters ran from the area. If the court would have allowed the videos into evidence that Yates requested the court would have seen that the report contained false statements. If the prison staff would have intervened and stopped the physical attack Yates would not have had to take a defensive position to begin with.

This matter of the Iowa State Penitentiary staff not doing their jobs is in front of Iowa's legislative panel and under review in Des Moines at this time. This was announced in the Des Moines Register newspaper shortly after this hearing was held in the Lee County Court. The prison has a lawful obligation to protect Yates from attack and the videos will show that Bob Walters the staff who wrote the report ran from the area and did not break up the fight as he states in the report. The question arises on what other facts did the staff omit to find Yates guilty of this report and what other duties did the staff fail to do when this incident began with Cook attack and his actions.

The failure of the court to amend the entire record of the appeals of Yates within the prison itself reflects that the prison has withheld viable information and is trying to deny the matter of complete exhaustion for any further court reviews per Iowa Code 903A.3. Yates brought this up to the court and the State through their attorney argued that Yates was trying to advance a 42 U.S.C. § 1983 violation and this code section is not applicable to this case. The applicable standard of any federal actions is a 28 U.S.C. § 2254 Habeas Corpus action as in this disciplinary action involves the loss of earned time. In 2254 Yates has to exhaust all of his state court remedies to move to a habeas proceeding. To fulfill the due process of law the IDOC has to consider and review all the appeals. The IDOC failed to uphold their legal obligation as stated in the letter with Yates' appeal to the director of the department of corrections as the letter signed by Doug Bolton says that he appeals stop at the warden, (App. C-8). Contrary to what Ms. Wallace argued the denial of this appeal and the denial of the court accepting the appeal Yates sent to the IDOC Director (App. C-8) are a denial of due process and a wrongful application of Iowa law.

The court let the State's attorney have and review the file being submitted by Yates instead of the court taking it and reviewing it. The district court letting the State claim it was not relevant to the proceedings without the court looking at it is also denying due process and the court abusing its discretion as it makes the judges' decision erroneous and under the pinning's are eroded, **Rodriguez de Quitas v. Shearson/American Express** 490 U.S. 477, 109 S.Ct. 1917-1919 (1989) and is on grounds or reasons clearly untenable, **State v. August** 589 N.W.2d 740 (Iowa 1999). This is a matter for the court to decide and not the opposing counsel. Lorraine Wallace is not the judge. The court then ruled it would not take it into the record for the reasons Wallace stated. Yates now presents the amended decision of the appeal to this court for review (App. C-24) as the State through its attorney Loraine Wallace has failed to properly submit the entire IDOC file to the court for review which is another denial of due process as the State and the prison appear to be hiding facts that are not submitted into evidence. This is attested to at page 3 in the Respondent's Answer dated April 25, 2018 as the State lists all of the items they are presenting to the court. The court also allowed the State to decide whether the documentation that Yates was wanting to put into evidence on his objection to State's Exhibit A as the State failed to put the

entire record into the court. The non-confidential portions of the record were not fully submitted and by her signing this document as a true statement Lorraine Wallace has outright lied to the court. A denial of due process is had when attorneys present false documentation to the court when they are considered officers of the court.

Further denial of due process was had when the court failed to allow Yates to have some videos reviewed in camera and letting the State claim it was a security issue that Yates was not allowed to see them. Yates never asked to see them and his motion clearly states this fact. The motions in the court file explains Yates' position on this, (App. B-6 & 10). The court after the State resisted ruled that they would not look at the videos, (App. B-17). The State selected a video to be presented and this was entered at the end of the hearing and was not in compliance with the Iowa Rules of Court 23.5. This is a selective application of evidence that Yates has a right to view as the State through their attorney gave no reason why there are any security issues to seeing this preselected video the State wants to slide in at the end of the hearing. Yates has a right under the due process of law to present mitigating evidence in the proceedings and when these videos that were asked for by a pro se motion (B-6 & 10) when presenting a defense, **Wolff v. McDonnell** 418 U.S. 539, 94 S.Ct. 296 (1974). The matters of a proper review and that Yates does enjoy the right to be free from harm even in prison, Yates had to rely on self defense as the staff failed to protect him. Bob Walters stood by and watched Yates get attacked by inmate Cook and then wrote a report on it questions the matter of the staff's duty as Walters says in the report he seen this happen and the video shows he failed to stop the aggressive attack of Cook. Unit Manager Brad Hoenig told Yates this in a discussion about this report while talking about other things. ALJ Paul Geiger's findings (App. C-3) states that Cook came at Yates in a threatening manner which was brought up to the court and produced an amended appeal statement from the Warden's office (App. C-24) clarified that "Cook did come at Yates in a threatening manner." It was found that the kitchen staff all agrees that Cook initiated the incident in the warden's first appeal response, (App. C-7).

In **Wolff v. McDonnell** 418 U.S. at 555, 94 S.Ct. 2693, it was held that state law create liberty interests that are protected by Due Process. Due Process is the right to present all evidence in his defense, including exculpatory evidence. Exculpating evidence would be that Walters ran from the area and did not separate anyone. This left Yates to fend for himself against this aggressive attack. In **Piggy v. Cotton** 344 F.3d 674 (7th Cir. 2003) an inmate has a due process right to disclosure of exculpatory evidence (videotape) in prison disciplinary hearing unless disclosure would unduly threaten prison security. The State has shown no reason why there is a security issue when reviewing tapes with the actions of Yates and Cook in them along with other staff unless it is the inactions of staff that is of a concern. Walters did not separate anyone as he ran away from the area. The prison was required to advance their security

reason for withholding from Yates the videotape of the incident giving rise to the disciplinary charge. The State cannot rely on a blanket policy of keeping confidential security camera video tape for security reasons without some type of hearing and factual reason. Refusal to give prisoner access to videotape of incident given rise to disciplinary charge was not harmless violation of BRADY RIGHTS if state lacked a valid security reason for failing to disclose tape and tape in fact contained exculpatory information, **Brady v. Maryland** 373 U.S. 83, 83 S.Ct. 1194 (1963). The State never gave or presented a reason why these tapes were of any security concerns to the court in their resistance filed on June 4, 2018 on that it was a security issue. Exculpatory evidence applies to prison disciplinary proceedings, **Chavis v. Rowe** 643 F.2d 1281 (7th Cir. 1981). A review of all of the tapes Yates requested will show that there was exculpating evidence in them and that Cook did throw a tub of cookies at him earlier in the morning. The Chavis Court said; we explained the function of the BRADY RULE in prison disciplinary proceedings as in criminal cases as twofold; (1), to insure that disciplinary board considers all of the evidence relevant to guilt or innocence, (2), to enable the prisoner to present his best defense. In **Cabrillo v. Fabian** 701 N.W.2d 763 (Minn. 2005) and with **Hamdi v. Rumsfeld** 542 U.S. 507, 124 S.Ct. 2633 (2004), with the some evidence standard of **Superintendent v. Hill** 472 U.S. 45, 107 S.Ct. 2768 (1985) where the Court held due process is satisfied if some evidence supports decision at hearing to revoke good time. "This standard is met if there was some evidence from conclusion of an administrative tribunal could deduce." In *Hamdi*, the Supreme Court recently explained in a plurality opinion that it has utilized the "SOME EVIDENCE" standard not as a standard of proof, but rather a standard of review when examining an administrative record developed after an adversarial proceeding. This principle of review found in *Hamdi* is what the court failed to use and if the court would have used this principle of review the outcome would be different and favorable to Yates instead of the prison. The due process of law under the *Wolff* rule was violated by allowing tapes into evidence without Yates having been properly notified and the opportunity to resist or respond. The court was not acting in a neutral and detached manner which gave preferential treatment to the State.

SELF DEFENSE AS FOUND UNDER THE IOWA CODE AND DUE PROCESS ALLOWS FOR EVERYONE TO DEFEND THEMSELVES FROM POTENTIAL HARM FROM ANOTHER INDIVIDUAL

The Iowa Code of 704.1 on Reasonable Force and 704.3 of Defense of Self or Another is material component of this action that the district court has failed to adhere to as the Iowa law supersedes any IDOC policy and Iowa has recently rewrote the self defense code to make it more broad for self protection purposes. The matter of a person's violent and aggressive behavior was addressed in **Begay v. United States** 553 U.S. 137, 148, 128 S.Ct. 1581 (2008) and said that violent and aggressive crimes, are committed intentionally and purposeful. Cook's actions were violent, aggressive, and intentional, and he

made it clear as he yelled it out from across the kitchen on his advancement toward Yates. *Id.* at 533 U.S. 150; shows that the predicate crime involved purposeful, violent and aggressive conduct. Cook's actions and the ALJ's decision (App. C-3), support this statement. At *Id.* 553 U.S. at 151; this all posed a serious potential risk of physical injury to another. Cook's actions had a potential risk of harm. The Court in **Dixon v. United States** 548 U.S. 1, 24, 126 S.Ct. 437 (2006) says even if the illegal act is voluntary, indeed intentional, but the circumstances deprive defendant of any meaningful ability or opportunity to act otherwise, depriving the defendant of a choice that is free. Cook's acts were intentional forcing Yates to choose to act to defend himself or face serious harm as there was no escape from a locked area. Due process was not properly adjudicated as the court failed to follow clearly established Iowa law. The some evidence standard supports Yates in acting in a lawful manner in defending himself as the prison staff failed to are defined in **Rosemond v. United States** 572 U.S. ___, 134 S.Ct. ____, 188 L.Ed.2d 248, 269-70 (2014) when the Court said that; a lawful motive, such as necessity, duress, or self defense, proof of self defense-negates other crimes. This application of law negates any findings as some evidence supports self defense in this report. The Eight Circuit Court said in **United States v. Oakie** 709 F.2d 506, 506-07 (8th Cir. 1983) that self defense is justified in using force necessary to prevent harm and cannot use any more force than necessary to relieve the risk of harm. The ALJ investigated the incident finding that all the kitchen staff said that Cook initiated the conflict and attacked Yates. Cook intentions were to fight and inflict harm. His announcing his intentions from across the kitchen supports self defense. This decision was amended in the Warden's supplemental appeal review (App. C-24), which was presented to the court during the hearing. Yates' self dense claim is valid. The some evidence issue in **Young v. Wyrick** 451 F.Supp 576, 583 (W.D. Missouri 1978) at (Ft. N. 1) says must conform with "some evidence" of self defense (emphasis added), also citing **Mallory v. Wilbur** 421 U.S. 684, 701-02 95 S.Ct. 1881 n. 30 (1975) and this some evidence standard is used in *McDonnell* to determine a prison setting issue. The Eight Circuit explanation in **Means v. Solem** 6465 F.2d 322, 327 (8th Cir. 1980) said that; when self defense is introduced the State has the burden of proving self defense did not exist for the justification of self defense. At the hearing the State had no proof of anything other than the ALJ's decision (App. C-3) found that Cook did attack in the threatening manner and the warden's appeal response said that Yates used only 1 punch and Cook backed away. All of these statements support self defense. Yates' actions are justified as in a prison setting it is not given that younger guys just attack older guys. This type of conduct is not condoned by inmates or staff when it comes to the older population. It is a given that when someone in prison attacks someone else the intentions and possible end result is to do harm to the person being attacked. This type of persona supports Yates acting in self defense. The ALJ told Yates (emphasis added) that Yates only hit Cook one time and Cook retreated and Yates stopped when

this happened. This was reaffirmed in the warden's appeal decision, (App. C-5).These actions are what the Iowa Codes noted above is predicated on. In **United States v. Okie** 709 F.2d 506, 506-07 (8th Cir. 1983) it was said that with self defense, you are justified in using force necessary to prevent harm and cannot use any more than necessary to relieve the risk of harm. This is what Yates did and these facts are what the ALJ investigated the incident and the kitchen staff's statements and the videos that were reviewed by the ALJ showed. Iowa's 5 part test for this type of conduct on self defense is in **State v. Gomez-Rodriguez** 736 N.W.2d 267 (Iowa App. 2007). Iowa law justifies self defense when one believes such force is necessary to defend one's self from any imminent use of unlawful force Iowa Codes 704.1 and 704.3 and has the **5** PART TEST; **1.)** who initiated the incident, **2.)** did not actually believe in the need for force, **3.)** used more force than necessary, **4.)** failed to avoid the confrontation when an alternative course of action is available, **5.)** the danger was not imminent. Cook was found to be on the attack in the decision and the warden's second appeal notice, (App. C-3 & C-7 & C-24). The warden's appeal decision shows that Yates used only the force necessary to stop the attack. The same principle in **State v. Richards** 879 N.W.2d 140, 148 (Iowa 2010) has the 4 step test. **(1.)** The defendant initiated or continued the incident resulting in injury, **(2.)** the defendant did not believe he was in imminent danger or death or injury and that the use of force was not necessary to save him, **(3.)** defendant has no grounds for relief, **(4.)** the force used was unreasonable citing **State v. Rubino** 602 N.W.2d 558, 565 (Iowa 1999) which shows this same test. The issues of the conduct of a safe and orderly institution found in **State v. Smith** 542 N.W.2d 567 (Iowa 1996) R&R, inmate violations on safe and orderly institutional environment of I.C. 904.505 and *Id.* at 568 officer's verbal order to an inmate's does not have to go to any rule and at *Id.* at 569 direct orders are essential to "safe & orderly institutional environment." The preferential and favorable treatment of Cook has lead to this type of behavior which Walters could not get control of over Cook. He was not going to be allowed to bake special cookies for him and his friends like he wanted too. Walters told Cook he was not going to make any banana cream pies for himself either just because we were to do pecan pies for Christmas that day. Walters' denying Cook these special privileges contributed to his anger and hatred to supervisor Walters. All the inmates in the bakery had already been told about being in the freezer without Walters. The bakery crew had been given these directives. Yates was to accompany Walters in the freezer to get the cookies out and do an inventory of other bakery items. Johnson was to get baking racks and then help Yates with panning up the cookies and baking them. Cook was to help the new guy sort and oil pans for cakes and paper pans for the cookies. Cook took it upon himself to go into the freezer and get the cookies without Walters consent and get the cookies. The court in **State v. Ostrander** 788 N.W.2d 397 (Iowa App. 2010) tells about who instigated the fight. The findings of the ALJ shows it was Cook instigating the fight. This

was addressed in **State v. Price** 760 N.W.2d 210 (Iowa App. 2008) on the evidence to support self defense. In making a proper determination it would appear that the district court failed to follow clearly established case law precedent and with Yates being the possible victim if not for acting in self defense and the videos will show Cook's demeanor attacking threatening manner. The failure of the court to state why Yates was found guilty of fighting is not mentioned in the decision (App. C-3). This is an issue that needs to be reviewed by the court to support due process of law. In **Love v. State** 551 N.W.2d 66, 69-70 (Iowa 1996) Yates feels like in *Love* that his self defense mirrors Love's conditions and court's ruling that the decision (App. C-3), by the ALJ supports self defense and negates the prison's claim of Yates fighting.

The findings in **Eubanks v. Wilson** 2017 U.S. Dist. LEXIS 80552 which is a disciplinary case involving a fight reviews the due process and the some evidence to find guilt on. Yates argues that he was inappropriately stripes of good time credits just and was denied due process of law. Even thought Yates' acts are dissimilar to Eubanks as Eubanks hit the guy 6-7 times after Eubanks was attacked and then kneed the guy makes Eubanks actions a fight over what the findings were in Yates' case. The Eubanks court goes on to state that the loss of good time credits implicates a liberty interest that is protected by due process. Since Yates was not allowed a witness and the prison manipulated the records to deny him this right the Wolff rule of due process on this issue was denied requiring a reversal of the decision. Unlike Eubanks the findings of the "some evidence" is not satisfied as the decision lists no actions that Yates did to support a fight as Eubanks shows that there has to be multiple hits or strikes from the person to constitute a fight situation. Denying the appeal to the director of the IDOC is further denial of due process by the state agency itself. There was nothing to show Yates had intentions to fight and the videos would support this concept. The decision (App. C-3) further stated that it was Cook who came at Yates in this threatening manner. The entire action took place due to Cook first coming at Yates and then pushing Yates. Yates acting in defense of his own safety had to use the force necessary to ward of any further attack by Cook. The warden's appeal (App. C-7) shows a more in depth review and findings as nothing in either of these two documents shows Yates ever initiated any type of fight or actually continued to hit Cook after the first hit. This is contrary to the findings in Eubanks and supports the self defense that Eubanks brought and was found not to be a credible defense. Yates has a credible application of Iowa law as Yates did not do any substantial harm to Cook. Eubanks did substantial harm to the person he fought with after being hit first. The warden's appeal decision (App. C-7), also shows that the kitchen staff all said it was Cook who started the act. Then Cook's threatening moves and pushing of Yates substantiates that Cook started the incident. The district court now claims that Cook did not take any swings so he did not fight. If Cook would not have acted in the manner of which he did

and of which is supported by kitchen staff in the investigation Cook would not have received a hit from Yates. See **Eubanks** (at section C). In support of this matter is the recent incident on T.V. on July 23-25, 2018 where a guy came out of a convenience store and saw a guy by his car yelling at his wife. The guy pushed the person away from the car and the person who got pushed pulled a gun a shot the guy in self defense. No charges were filed.

The due process of law is to first find some evidence to support the finding and since there is no supporting evidence in the decision (App. C-3), to support a finding that Yates did in fact fight. This fight issue is without merit and the findings of fact fail on that accord. Cook refusing to follow multiple direct orders and not getting his way is a contributing factor to him starting the fight and Yates' having to take a self defense posture. These contributing factors if the court would have reviewed all of the evidence that *Wolff* says the ALJ must do before pronouncing a sanction would change the outcome of the decision on Yates as the court would have to apply Iowa law and the constitutional rights as previously argued.

THE STAFF GAVE INMATE COOK SUCH FAVORABLE AND PREFERENTIAL TREATMENT OVER OTHER INMATES THAT HE FELT HE COULD DO WHATEVER HE WANTED AND DID NOT HAVE TO FOLLOW STAFF SUPERVISOR BOB WALTERS DIRECTIVES WHEN TOLD TO DO AN APPOINTED JOB

The preferential treatment that was given inmate Cook of being allowed days off with pay to play the X-Box when he rented it and others did not get time off, along with days off during the lockdown when everyone in the kitchen was told to work 7 days a week and had to stay late some days if the work was not done during a lockdown. Cook worked 4 days and lied to staff about his health and made up health problems to get Saturdays off as he did not want to work for Bob Walters claiming he had to have a day off to rest while several others in the kitchen had been working for weeks on end without a day off. Cook lied to get a bakery job when he knew nothing about it as he told everyone he worked at Panera Bread and could bake the best bread we all later found out that Panera bread gets all premade and frozen bread dough, thaws it out, lets it rise and then bakes it at preset temperatures. There is no making bread dough and going through the process of working the dough into any type of product. Thaw and bake is it. A simple and basic labor job at best. Cook says he can bake the best cakes and pies as he worked at the Hy-Vee bakery. We later found out that he sold doughnuts over the counter and that is as far as his baking career went at Hy-Vee and this was from Cook's own admissions. The kitchen staff of Stephanie Hale and Joyce Miller has given Cook almost a year of favorable treatment and due to this type of preferential treatment over other inmates Cook felt that even with Walters being in charge of the bakery he could do whatever he wanted without following Walters's directives. Favorable

treatment is one of the causes that lead to this attack on Yates as Cook did not get his way with Bob Walters the substitute supervisor. Walters had warned Cook repeatedly in the last 2½ weeks about his work attitude and his running off and not doing his share of the work. These are some of the things that lead Cook to think he could do whatever he wanted without following the directives of other staff as staff supervisor Hale and Miller allowed him to do this on a regular basis. Walters seen Cook take his share of the biscuit dough that he was supposed to have dipped and make biscuits with leave set on the work table and walk off for over an hour while Walters went out to smoke and do other things. Walters came back only to see bowls of biscuit batter sitting on the table where Cook was supposed to be working and then have Cook question the rest of the inmate crew why they did not do these bowls as he had to go talk to supervisor Hale. This was Cook's fourth time he left to talk to Hale that day. Walters made Cook do his biscuits and while Walters went to do something else Cook dumped all the dough on a pan and baked one big biscuit wasting over 250 biscuits that could have been stored and used for another meal. It was all thrown away and Cook thought it was funny and Walters really chewed him out over that. This all goes back to the issue of following a directive as stated above and that Cook felt he did not have to follow the directives and with all the favorable treatment towards him is what made him get mad and attack Yates as Cook did not get to do the cookies as it was assigned to George Johnson and Yates to do. Cook had been directed several times that all inmates had to have staff with them to go in the cooler which made Cook out of place of assignment when he went into the freezer without Walters. The matter of an inmate following a direct order is reviewed in **Hughes v. State** 513 N.W.2d 711 (Iowa 1994) which addresses a prisoner's violation of 2 rules with direct orders. Walters gave Cook directive orders which he did not follow. Cook continued to deny directives and then got mad and wanted to fight as he did not get his way. This report is from conduct from staff not protecting Yates when a threat of danger was imminent. The staff has an obligation and duty to protect inmates' from other inmates. This was not done as the report (App. C-1) by Walters shows stood by watched the incident take place as the language of the report support this fact. The favorable conduct that staff gave Cook over the other inmates and lead Cook into a false sense of superiority leading him to think he could do whatever he wanted without any recourse for his actions. The staff continues to show preferential treatment towards selected inmates is displayed with this prison action as with Yates the bakery has a job opening and they will not give the job back to Yates as it is a specialty job and would only be filed by a person with specialty skills in this area. Yates has over 2 ½ years in the bakery. When inquiring about this issue the staff said that Yates had to be level 3 to get that job as all specialty jobs are for level 3 only. This was after Yates was informed a couple weeks before this that if a specialty job came open that they would jump a person up the list to give that person the job if he had the qualifications. Yates had a bakery job

for over 2½ years. The prison has kept a cook's job open for months just to accommodate inmate Ramos after he went to lock up for months for security violations. His security violations amounted to having a cell phone and also had tattoo equipment and ink in his possession and control which was in his cell. When Ramos got to level 2 he got to immediately go back to the kitchen, which made the guys in the kitchen work shorthanded until the prison staff of Stephanie Hale could facilitate Ramos with preferential treatment and job placement. This is also a false statement that level 3 can have only the specialty jobs as they have two other cooks who they call "Little D" and "A.J." living in level 2 status and has refused to move to level 3 and let them have specialty jobs in the kitchen as cooks. The statements that the prison's staff says and what their actions show is entirely different. They discredit their own actions by their statements that contradict their actions.

THE REQUEST FOR A WITNESS WAS ASKED FOR AND NOT HAD BY YATES AS GEORGE JOHNSON WOULD HAVE BEEN ABLE TO GIVE A STATEMENT TO THE FACTS AS PRESENTED IN THIS WRIT

The failure of the investigation (App. C-2), to call Yates' witness George Johnson is a violation of due process of law which **Wolff v. McDonnell** has said is a right of the inmate to do. With Johnson's statement it is good probability that this report would have had a different outcome as Johnson was right there and seen what had happened, could testify to the fact that Cook was given other directives that he did not follow and that Walters had told him multiple times what to do and Cook just kept getting more and more upset with Walter's directives and refused to do what he was told to do. Yates has cited a case, the prison regulation and all of the parameters to this issue, **Davis v. Silva** 511 F.3d 1005, 1010 (9th Cir. 2008). As **Davis** 511 F.3d 1010, goes on to say that the *Wolff* rule holds that when a person already in state custody faces disciplinary proceeding resulting a loss of good-time credit or imposition of solitary confinement procedural due process demands that the inmate "be allowed to call witnesses and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals" citing **Wolff** 418 U.S. at 566, 94 S.Ct. 2963. The prison staff can write anything they want into the record to claim that Yates did not call any witnesses, but this is an issue that needs to be reviewed by this court as Yates wanted George Johnson called and he was the inmate assigned to the bakery and directed to help Yates with the cookies. Johnson was only a few feet away when Cook attacked Yates and was an eye witness to this incident. Yates brought this up in the haring and the State claims that because Yates never called anyone this was not an issue of the court. Contrary to the thoughts of the State, the denial of this witness is the deprivation of the due process of law that is guaranteed by **Wolff v. McDonnell** 418 U.S. at 566, 94 S.Ct. 2963.

THE FAILURE TO FOLLOW THE IDOC DISCIPLINARY POLICY IS SHOWN BY THE ACTIONS OF STAFF THAT CONTRADICT THE SECTIONS OF THE POLICY THAT THEY ARE REQUIRED TO FOLLOW

The issues with disciplinary policy IO-RD-03 (App. D-1) as they relate to Yates' situation are as follows which the policy was put in as an unnumbered State exhibit which Scheduling Order Form 23.5 Time Standards For Case Processing states must be done in Trial Scheduling Order Form 23.5 at number 9(3). Yates is citing all the issues in the prison policy with the favorable and preferential treatment as **page 4** at Section III(B) on the aggravating factors as the findings by the ALJ show that Cook acted in a premeditated manner when he announced his intentions from across the kitchen that he was going to start a fight, and III(C) Attempt, as Cook did attempt to start a fight and actually made an assaultive move upon Yates by pushing Yates twice and then doubling up his fist and coming at Yates in a threatening manner. Section III(E), as Yates should not be held liable and have all this lockup time and a major report for the conduct that was brought on by Cook and his attack upon Yates. At **page 5** Section III(J) It should be readily apparent that Cook did act intentionally with respect to his conduct and his announcing that he was going to start a fight with Yates and the actions of Cook did lead to his conscious objective of starting a fight. At **page 6,** Section III(Q), on the reckless act of Cook led to Yates' safety being compromised as Cook did act with a willful and wonton manner in initiating a fight with Yates and the staff had ample opportunity to intercede and stop Cook which Walters failed to do. Section III(R), This security matter is definitely what Cook engaged in as his actions did cause a significant threat to the peace and tranquility of the institution and also shows an imminent threat by the conduct he showed and acted upon as he did announce prior to his attack that he was going to attack Yates personally and instigate a fight. At **page 7** Section III(T), Cook's actions meet this criterion as they are serious as he did make a physical assault upon Yates. At **page 12** under Section IV(C)(4) Yates wanted George Johnson called as a witness and was never allowed to have him, Section IV(C)(5), Yates wanted more videos reviewed and it seems that part of what Yates brought up on some of the videos was never looked at by the investigator or the ALJ, Section IV(C)(6), Yates did tell them about the issues Yates brought up in his appeals on what Cook did by throwing a tub of cookies at Yates along with the other acts he did with Walters the supervisor earlier in the morning before this attack. The throwing of a tub of cookies at Yates is in one of the videos Yates asked for by motion. This would be the first attack on Yates that Yates let go without any response. The court failed to recognize these actions by Cook when deciding this action in the hearing. The prison administration has failed to follow their policy on discipline. The actions of staff allowing this type of conduct to go unimpeded when inmate Cook announced his intentions from across the kitchen and not stopping him made Yates have to act in a manner of self defense as

Iowa law has shown is a right for Yates to do to protect himself. The Iowa Code 904.505 applies the disciplinary rules to inmates making special notice of 904.505(1)(a)(b)(c) on the inmates who disobey the disciplinary rules, which would apply to Cook and his intentional actions as already stated. In applying 1(b) & (c) on the fair application of a sanction this was not upheld in Yates' report and is addressed in the next section which addresses the preferential treatment of some inmates over others who were fighting. In support of these areas of this law is **State v. Gomez-Rodriguez** 736 N.W.2d 267 and **State v. Richards** 879 N.W.2d at 148. Yates acted within Iowa law and in **State v. Wright** 2002 Iowa App. LEXIS 343 from Lee Co. which applied this 2 prong test that under number 1), submitting of evidence of self defense exists, 2), State's burden of disproving this self defense. The findings by the ALJ are supportive of Yates and not conflicting evidence as the ALJ found the attack came from Cook. Yates can meet the Courts criteria of **State v. Dunson** 433 N.W.2d 676, 677 (Iowa 1988) R&R, as the defense of self defense is statutorily denominated as a defense of justification. At *Id.* at 677, submitting evidence in the record from any source justifies submission of self defense. *Id.* at 678, if some evidence is presented sufficient to raise the issue of self defense. *Id.* at 681, court found substantial evidence in the record justified the self defense issue. The ALJ's findings in the decision (App. C-3) show Yates acted in a lawful manner when inmate Cook who was doing the attacking justified Yates in using the minimal amount of force necessary to protect himself.

THE LIST OF OTHERS WHO THE PRISON HAS GIVEN A MORE PREFERENTIAL AND FAVORABLE TREATMENT FOR THE SAME CONDUCT OR FOR OTHER RULE VIOLATIONS WHICH YATES WAS HELD AT A MORE STRICT STANDARD FOR IS A VIOLATION OF YATES' CONSTITUTIONAL RIGHT TO EQUAL PROTECTION AS IT APPLIES TO A SIMILAR CLASS OF PEOPLE THOSE BEING OTHER INMATES

Yates suffered from disparate and dissimilar treatment from the reviewing staff in all his appeals and requests for level movement. This same situation is being carried over to him having a prison job as Iowa Code 904.701 provides for inmates to have prison jobs to help pay for restitution and to buy personal hygiene products, cover costs of legal copy, mailing and other personal issues an inmate must take care of on his own. Yates has to show he is similarly situated. The court in **United States v. Whiton** said that; the person has to "have a threshold to show that he is similarly situated to those who received favorable treatment to show he has a viable equal protection claim," **United States v. Whiton** 48 F.3d 356, 358 (8th Cir. 1994). This can be shown by the comprehensive list of other inmates preferential and more favorable treatment on their fights and other unlawful prison conduct over Yates as cited below. The threshold is that Yates' fight was initiated by another inmate's conduct when he did not get his way and get to do the job he thought he should have. He was assigned another job and Yates was given the job that this other inmate thought he should do. Then this other inmate Gene Cook attacked Yates and

this is found in the ALJ decision (App. C-3) and in the warden's appeal reply and in the amended appeal response, (App. C-7 & C-24). The fights shown in the list below have the same person in multiple fights and never got lock up or loss of job or good time. This sets the threshold that Yates can show and that there is the *Whiton* issue involved in the prison's actions and that Yates met the threshold requirement of this litigation. The Iowa Constitution Art. 1 § 6 provides for protection as well.

Yates applied for a mentor job and was told in an e-mail by Joy Cooper the psychologist that he could not get the job as he is not (1) year major report free. This is another problem as jobs are supped to be assigned by the classification committee and to have another person involved who is not part of the classification committee on job placement is a denial of Iowa law 904.701. This is contradicted by the fact that Beeman has just been given a mentor job and he is not 1 year report free. This and other incidents of unfair and unequal treatment are in the following list of the prison staff's actions.

Yates has also been interviewed for a tutor job and he has a high school diploma with good grades to go with it, some college credit hours and was working towards an engineering degree to design and build bridges. Yates has taken vocational technical classes in heating and air conditioning and has been licensed to be able to buy refrigerants. He has an inactive license to sell real estate in 3 states, and held a general contractors license when on the street. Yates also held a private pilot's license. The prison has denied him this job as well. They gave the tutor job to a guy who took GED classes in prison. You have to question the actions of the prison staff when assigning jobs and why you would give a job to a guy with a prison GED over a guy with credentials like Yates.

THE LIST OF PREFERENTIAL TREATMENT OF SELECT INMATES

With Yates' report verses these other incidents as listed below the act of self defense is proven with all the reports on these other fights when guys acted in self defense as it was claimed got minor reports or no report at all. They kept their level and their job as most all of them had only minor reports except for a very few which got preferential treatment after they received a major report and are already back in level 3 before they served the allotted time in the lesser levels that the prison claims you have to serve to get moved to level 3. A fight, security violations of cell phones, tattoo items, alcohol or hooch is supposed to be automatic lockup and as you can see that this is not the practice of the prison administration at ISP as they give preferential treatment to some inmates over others. There are inmates who got moved ahead of the policy time to stay in a level, some were in more than 1 fight and did not go to lock up. Others got jumped up the list for jobs over others and the others got the less paying jobs and basic crap jobs that the prison has just to place guys in a job.

A. Charles Cullor & D.J. Betts were fighting on the pod and both got a minor report and kept their level and job.

B. Charles Cullor & Shawn Hogan were fighting on the pod and both got a minor report and kept their level and job. This is the second fight for Cullor.

C. Ed Love & Jerry Ashburn was fighting in the shop and Love got a minor report and kept his job and level 3. Ashburn was put in lock up but he is back in Level-3 already and was armed with weapons in the fight.

D. Ed Love was caught with sandpaper from the shops in his possession and control. This is a major rule infraction of theft from the shops and a major security violation. Yet, he got a major report, kept his job in the shops, kept his level and basically this report was made a simple reprimand with no loss of any privileges of any kind.

E. Ron Millbrook & _____ (unknown legal name) who went by the nickname of 63rd, had a big fight and was throwing up gang signs and everything in the fight. Both went to lock up but Millbrook was back in Level 3 in 8 days and 63rd was transferred. Millbrook got his job back in the infirmary right away and special cell moves were made so he got his old cell with cellmate and he lived only 4 cells down from Yates. An infirmary job by policy is not to be had when you have not been major report free for 1 year. Millbrook was only 8 days out and got this job back. Essentially it was held for him by the prison for his return which took only about 4 months from lock up to the move back to level 3.

F. William Beaman & Blue Jay Kalar, had a fight and Beaman was back in Level 3 in 90 days with all his rights and everything restored and selected his cellmate, had a select top paying job, everything. Now he is a mentor and has not fulfilled the one (1) year waiting period that the prison administration says is needed to apply for a mentor job. Kalar had to wait about 7 months to get back to level 3 and had to wait the 1 year to get his shop job back.

G. William Beeman and _____ Brandow just got into a fight on 7/8/18 and again Beeman got preferential treatment as he was immediately let out of lock up within 24 hours. Brandow went to lock up and is still there. This is Beeman's second fight in a year and was over Beeman's smart comments to another inmate just like the above incident.

H. Paul Quigley & Jeremiah Mumford got into a fight. Quigley never got a report and he got a transfer to a less secure prison with only about 5 years on a fresh 75 year sentence. Quigley's job and level and all the benefits went with his transfer. Mumford got a report and Lockup, lost his job and level and everything and of this writing is waiting for level 3 advancement and a job.

I. Michael Reyna & inmate _____, nick named Dutch, given name unknown as Dutch was let right back out with no report, Reyna went to lockup for his attack on Dutch.

J. Vega Sanchez went to lockup on a security threat group (STG) and doing gang activity got 30 days D/D and level 3 back at day 31, with no other levels of 1 and 2 to do time in before his transfer back and a

shop job 10 days later. This is considered one of the worst things in a prison is gang activity. You are not by policy to have a shop job if you have had a major report within the year. This one is 40 days old and got a shop job.

K. Del Suddoth & and _____ (cannot remember the inmate's name) had a sexual misconduct report got 7 days lockup and Suddoth was back in Level 3 as he was fast tracked to get his level back within 90 days. The other guy had to do all of his time and then some in levels 1 and 2 before he was even eligible to come back to level 3.

L. Enrique Garcia had multiple stolen watches and got no time at all for them and the report he did get was dropped on appeal with no lockup time at all.

M. Enrique Garcia got fired from his job for having contraband issues with one of the school teachers as she was bringing contraband items for him. The teacher was fired and Garcia was just classified and removed from his school job and left in level 3 with all of his benefits and then got a transfer a few weeks later to a less secure prison. These contraband items were flash drives with pornography on them and Garcia was selling them for hundreds of dollars of commissary items to inmates. This is Garcia's second rule violation within about a year.

N. Tyler Hobbs was caught drunk and with a big bag of hooch in his cell, blew a dirty breath test and got 7 days cell rest, loss of level to Level 2 and he got to wait for a bed to open which kept him in Level 3 for about a month when everyone else has to go to level 1 ½ and wait for a bed for Level 2 and then he was fast tracked back in less than 60 days which the prison says you are supposed to have 120 days in Level 2 to move to 3. The policy is that if you go to level 2 you have to be there for at least 4 months. This is way short of the policy time stated by the prison.

O. Mantha Henderson Got a major report and sanctioned to some cell rest and a loss of level. After about 60 days he was back from level 2 to level 3. This is a similar situation like Hobbs above with his major report and cell rest and loss of level. Hobbs kept his level 3 only, specialty job in the hospice program while in level 2 which the prison says those jobs are level 3 only.

P. Rick Wilson and Dave Moffit got caught throwing water at each other in their cell and arguing, and no reports were given and this is considered a type of fight were separated and left in level 3 with a new cell mate. This type of conduct is considered fighting in the Iowa prisons.

Q. Glenn Jackson got caught with over 42 Lbs. of stolen meat in the unit freezer and got 5 days cell rest and kept his job in the kitchen and kept his level 3 too. Others have been fired for stealing a chicken leg or a couple of hamburgers.

R. Vincent Ramos got a report for a cell phone and tattoos and went to lockup, upon leaving lockup had a job given him in level 1 right away, then on level 1 ½ had a job right away, and stayed only about 3 ½

weeks in level 1½ and then almost a week to the day after making level 2, he got his job back in the kitchen as a cook which is supposed to be a level 3 only job and now on 6/1/18 has moved to level 3 already ahead of about 20 other guys who have been waiting for level 3 and was classified weeks before Ramos was to move to Level 3. He did not stay the allotted time he was supposed to before moving and this shows the preferential treatment that is given some inmates over others. His actions implemented his cellmate and caused his cellmate to do more lower level time than that of Ramos and his cellmate is still in level 2 while Ramos has moved and got a job right away. This is Ramos' second time to lockup for issues like this within a year from the time he went to lockup in late October of 2017. His old cell mate is still in level 2 to the date of this writing.

S. _____ Ortiz got locked up for horse play in the kitchen and moved back from level 3 to level 2 for only 60 days and then got moved back to level 3 with his job back in the kitchen.

T. Glenn McGee got into the gang fight and used tennis rackets as weapons and started assaulting and hitting guys on the yard. Went to lockup and then was transferred within about 2 weeks to a lesser secure prison and allowed back out in general population after his transfer.

U. Steve Frazier and George Prentiss who were caught in a fight in their cell in level 3. It is said that this fight has gone on for about a half an hour and George Prentiss was hollering P.R.E.A. The fact is that they put Frazier in level 1 which would be no D/D or lockup time and gave Prentiss lockup time for this fight. The staff and the rest of the prison have said that these two guys were fighting for a long time before the guard came by and caught them. The fight was so severe that the guards had to spray the cell with pepper spray and do a cell extraction to get the guys out and to stop the fight. Now where is the disciplinary report to Frazier for a fight when multiple hits were involved with both guys? The prison is still holding Frazier's job open like he is returning in the near future. Now after weeks of debate, it was finally found that Frazier did start the fight and he was placed in lockup. The entire ordeal is being kept real quiet at this time.

V. The fight between DuWayne Wright and Ronnie Eisenhower happened in the gym as they both worked there. Wright started the fight as he pulled out an ink pen and tried to stab Ronnie multiple times and Ronnie defended himself. Wright made multiple attacks and Ronnie had to increase the force used each time until the guards separated them. Ronnie got lock up and a lot of D/D time while Wright was allowed back into level 3 and then got a new job with better pay a few weeks later. This shows the preferential treatment by staff and the fact that Wright did sustain some harm but the harm was attributed to Wrights own actions. This does not make Wright a victim as he also started the conflict. Anyone in prison will defend themselves from an attack with a weapon to keep from being stabbed.

W. Kirk Levin had 2 major reports back to back, for unknown reasons, and the administration advanced his movement back to level 3 months before Yates and one of these reports was after Yates was moved to level 1 and ready to move to level 2. Levin was moved to level 2 status 3½ weeks after Yates, and was put in level 1½ at the same time as Yates, put on the level 2 list way above Yates, given level 2 status 3 ½ weeks before Yates, and given a job right away on the yard crew and moved to level 3 a month before Yates and Yates is still in level 2 and approved for level 3 for over 2 weeks and still waiting to be moved to level 3. Levin was advanced well ahead of several other inmates as well, and to note Levin was caught stilling a big bag of chicken from the kitchen when he worked there and got no report and was not fired for this act when several others were fired for weigh less an got a report for this type of act. Levin was given a job right away upon his entry to level 2 and this job jumped him over about 60 other inmates who had been waiting months to get a job.

X. Steven Wilburn got a job change in the second week of September 2018. DOC policy says that you cannot change jobs for four (4) months after getting a new job. The job he took was a hobby craft orderly position. He lasted about 3 weeks in that job and then he got moved to a orderly job in the programs building. This is not in compliance with DOC policy at the Iowa State Penitentiary and DOC policy is governed by Iowa Code 2B. This person got to select jobs he wanted both times.

Y. Jeremy Esuary went to lockup for stealing from the kitchen in about February 2018. He was about 2 months behind Yates in level moves. About the first week of September he was moved to level 3. This is about a 60 day advanced move to level 3 that is not in compliance with the ISP level policy of IS-CL-01 and the DOC policy on work programs of OP-WI-01. Now Esuary was given a bakery job back in the kitchen on about 9/12/18 ahead of Yates who Yates has the specialty skills that the prison says is needed to get this job. Yates had this bakery job for over 2½ years before this physical attack on him. Now they put a thief back into a position to steal again. This is not in compliance with DOC protocols policy or procedures.

Z. William Beeman the same guy in sections F & G above got to get a job as a mentor and did not have a year report free when he got that job. Yet, Yates was denied this mentor job as he was not a year report free. Favoritism abounds! This is the same person who got moved early to level 3 and got a core orderly position which is a highly desired and high pay job.

AA. Joseph Olea went to lockup for altering his tablet and trying to access the internet. This was over a month a after Yates went to lock up and he was already in level 1 waiting for level 2 move. Olea got moved to level 3 a month before Yates did showing favorable movement to another and the prison is not following their own policy of level advancement.

Deputy Warden Chris Tripp has said that it takes 2 to tangle but it appears that there is a special list of inmates that the rules of the DOC do not apply too, as shown in this list of guys who fight.

This goes to Unit Manager Hoenig's statement of a fight is fight. If this is true, why was it all of these other inmates kept their level and privileges for fighting and other rule violations and got either a shorter time in lock up than Yates and moved back to the highest level in the prison right from lockup while Yates got lockup and months of lower level stay for defending himself under Iowa law. Note that of this writing Yates is still without a job and the Iowa Code of 904.701 provides for inmates to have a job. Another violation of the due process of law as the prison staff does not follow the Iowa law at all.

THE SECOND PART OF THIS DUE PROCESS OF LAW AND THE PRISON NOT FOLLOWING IOWA LAW IS HAD UNDER IOWA CODE 904.701 AS THE PRISON WILL NOT ISSUE YATES JOB AS THE ADMINISTRATION IS TO DO CREATING A GREATER DEGREE OF PUNISHMENT THAN WHAT HAS BEEN ALLOTTED BY THE PRISON'S ALJ

The real issue is that Iowa Code 904.701 says that all inmates are to have jobs. There is no provision for a waiting list or any type of selective application of who they will give a job too and not give a job too. Everyone is to have a job. Since the prison gives jobs according to who they want to give one too and just make a list of others to wait is not in concert with the Iowa Code and the due process of law when it comes to jobs. This also denies inmates the equal protection of the law that goes with the Fourteenth Amendment § 1 and Iowa Constitution Art. 1 § 6.

In **Racing Ass'n v. Fitzgerald** 648 N.W.2d 555 (Iowa 2002) the equal protection clause prohibits states from denying any person with its jurisdiction the equal protection of the laws and at *Id.* 648 N.W.2d 558-59 the court tells about similarly situated parties and the class distinction between river boats and race tracks are not different. With Yates, his issues are the same as they are treating the guys in level 3 who fought in the unit different then other inmates which the equal protection of law does not allow the prison to do and the dissimilar treatment of myself verses the others listed above is a constitutional violation in **Fitzgerald** 648 N.W.2d 559-60, and cites **Bowers v. Polk County Board of Supervisors** 638, 689 (Iowa 2002). Since Yates was treated in a dissimilar manner than other inmates and Yates acted under the Iowa Code the reviewing body in *Fitzgerald* said at Id. 648 N.W.2d at 563. The court found that the dissimilar treatment of the tax scheme on race tracks and river boats is a violation and needed to be corrected. Mirroring this concept with the inmates at ISP, this same principle was violated as other inmates who fought to defend an attack on themselves got a minor report with only 5 - 7 days cell rest, kept their job, and their level and all the other benefits of the level which is a less sever treatment while Yates got a more harsh treatment with lockup and having to go through the level system and was without a job per Iowa cod 904.701 which shows dissimilar treatment violating my equal protection of

law by the prison and this is also in the Iowa Const. Art. 1 § 6. Furthering Yates' argument is had in **Blumenthal Investment Trusts v. City of Des Moines** 636 N.W.2d 255 (Iowa 2001), as the equal protection clause under the U.S. Const. Amend. 14, § 1 requires similarly situated persons be treated alike and any governmental classification of persons must meet the applicable constitutional standard imposed under the equal protection clause. As the government has classed everyone at ISP to be considered an inmate this class of people is being treated with different levels of application of the disciplinary policy (App. D-1). With Yates this violation between the others listed above who fought and got minor reports for defending themselves in a fight and Yates getting a major report, lockup and loss of level and privileges for doing the same conduct that the prison had already classified other inmates of doing and gave a far less severe sanction to then they did Yates is a violation of the equal protection. Yates acted in self defense under Iowa law 704 as well. The findings of the court in **Blumenthal Investment Trusts** 636 N.W.2d at 262, has found that the government's actions were arbitrary and capricious as if favored certain developers over others. In this case involving Yates the prison as the government agency is giving favorable treatment to others (SEE LIST ABOVE) over Yates in the same situations and the same class of people as they are all inmates at the prison. The equal protection clause of the United States Constitution prohibits states from denying "to any person within its jurisdiction the equal protection of laws, **State v. Biddle** 652 N.W.2d 191 (Iowa 2002). Iowa Code 704.1 and 704.3 would be in this application of law. The prison's jurisdiction over inmate actions shows that Yates was treated in a less than equal aspect than (SEE LIST ABOVE) and Yates was subjected to a more strict standard of review for self defense under the Iowa law of 704.1 and 704.3 than other inmates and Yates has shown the court in **Blumenthal Investment Trusts** 652 N.W.2d at 202-03 on equal protection the rational basis to treat Yates differently than others is a constitutional violation in both the Iowa and IDOC disciplinary policy IO-RD-03 (App. D-1). Yates has the Iowa Law of self defense to support him along with the ALJ findings. Brad Hoenig, the Unit Manager in Level 2 told Yates in a meeting on this matter that he reviewed the videos Cook went within 2 feet of Walters on his attack and Walters failed to stop Cook. Everyone in prison is considered an inmate making this a class of people all similarly situated. The first step of an equal protection claim is to identify the classes of similarly situated people singled out for differential treatment, **State v. Doss** 720 N.W.2d 194 (Iowa App. 2006). This is self explanatory with Yates as an inmate and the others he lists are also inmates within the same prison with the same conditions and differential treatment that Yates has to endure over the list provided when it came to adjudicating his report.

There have been 2 other programs orderly jobs come open along with a unit core orderly job. Yates asked for each of these jobs and programs staff tried to get Yates on these programs jobs. Todd

Ensminger the Unit 3 manager told Yates that there were no jobs in these areas. Yet he sits in on the job classification reviews each week and filed these jobs with other people who were behind Yates and Yates had a job when he advanced in the levels.

On 9/13/16 Yates was told by counselor Nick Clark after checking the job list that Yates was not on the list. Yates has been in level 3 for over a month and had advanced to level 3 with a job which is a "C" grade job per DOC policy OP-WI-01. On 9/14/18 Yates found out that he was not even on the job list and Clark said to send a kiosk to Brad Hoenig the unit 2 manager as he does the jobs. This in itself is questionable as why would a manager in another housing unit control the jobs for a high level housing unit. On 9/16/18 Clark tells Yates he is number 100 on the job list. This is the bottom of the list. On 9/17/18 Clark replies he has sent a kiosk to Hoenig about the job issue. On 9/18/18 Yates has a talk with Clark and after Clark spent considerable time in Ensminger's office, then unit 3 manager Ensminger has Clark tells Yates he will be on the job classification list for the next day. This job was a dish machine job to push Yates off onto a job and not fulfill the policy and level system advancement criteria and to try and hide the fact that the staff has not followed policy and was making a feeble attempt at a cover up to try and say they gave Yates a job. This would also be a retaliatory move by the unit manager for the fact that Yates started the grievance process on this job issue by filing an informal resolution as Yates had a job when he moved up in the levels and is supposed to by DOC policy have a job at the same skill level and type of criteria he came from. Since the level Yates was at was considered a specialty job with special skills stuffing a person on a dish machine just for filing a grievance is retaliatory and not following the Iowa law.

Job classification was done on 9/19/19 and no job is had and no DOC policy or Iowa Code of 904.701 and 2B were followed. Now after this supposedly called a job classification Yates found out through Clark later in the day that the prison now has 2 lists of job eligible inmates. One is for the guys like Yates who were transferred and are awaiting job placement. The other is just a list of guys waiting for a job. The problem that stems from this 2 list issue is that the list of transferred inmates is supposed to be given jobs first. That meant Yates was supposed to have a job when he was transferred and the specialty jobs were given to other inmates off of the second list before Yates was assigned job. This is not happening as the prison is doing a selective application process of going through the list and giving jobs to who they first want to give them to and then going back if any jobs are left that no one wanted, they want to push them off onto this transfer list of guys or onto other guys who they just put on the list and not just assign them from top of the list on down. This is an actual retaliation act as Yates found out on 9/19/18 that there is two (2) job lists. This could also be construed as a hate crime as Yates has a sex case and the prison hates on him for this type of crime. In fact the prison administration brings this up all the time to

Yates whenever it is convenient for them to badger him about it. The first job list is supposed to be for guys like Yates who moved up in the level system and had a job. Remember Yates had a class 3 job which is a special skills section of jobs in prison. Now this retaliation of just pushing Yates into a job as he complained that the prison is not following the law is without merit. The second job list is for guys who never had a job and just got to prison or got out of lock up or quit their job or was fired. Yates is number 10 on the first list after Clark investigated it. After this phony and deceptive job classification act on 9/19/18 to shove Yates a bottom feeder job of dish washing on him so the prison can circumvent the real problem that they failed to follow their own procedure and Iowa law months back also shows that they do not follow the policy and law as they have in place a list of guys with transfers to give jobs to first. This first list is over 15 guys long. The second list is the one being awarded jobs on a regular basis and these guys are to be the last ones to get the left over jobs.

CRUEL AND UNUSUAL PUNISHMENT UNDER THE EIGHT AMENDMENT

The matter of the prison conditions has been addressed **Hope v. Pelzer** 536 U.S. 703, 122 S.Ct. 2508 (2002) in which the court said on prison conditions and the totality of them along with a prison official subjecting an inmate to his deprivation of rights. In **Hope** 536 U.S. at 733 and 736; the court has addressed that there are "materially similar facts." The actions of the prison administration giving minor reports to others who fought and acted in self defense, subjected Yates to cruel and unusual punishment with long term lockup and denial of his federally protected exercise for 1 hour per day, no clothes after making it to level 1 for 5 days, along with having my personal property denied for 5 days, denied seeing the dentist as I did not have personal clothes only a jumpsuit from lockup to wear, which were all grieved and the grievances are able to be reviewed. These issues were grieved with the prison. The grievances can be requested for review. Claiming Yates was fighting and given a major report when other inmates with similar facts got minor reports for the same actions and a less severe sanction. Not only does this show that the prison officials knew their conduct was wrong, but illegal and against clearly defined Iowa statutes is supporting elements that the prison staff subjected Yates to cruel and unusual punishment. In **Hope** 536 U.S. at 734, the same principle was found when Hope was in a conflict with another inmate and was later released as the conflict was initiated by the other inmate. In reviewing the ALJ decision (App. C-3), and the warden's appeal decisions (App. C-7 & 24), clearly shows that this incident was initiated by Cook. Yates was held for extended periods in lockup for acting in self defense under Iowa law. In **Hope** 536 U.S. at 737-738, the court reviews the issues of corporal punishment and its improper use upon an inmate and how it is applied under the Eighth Amendment. The unnecessary infliction of pain is totally without penological justification. In applying this concept of a constitutionally

protected liberty interest to Yates, the prolonged lockup and denial of level privileges to Yates and not of others who acted in a similar manner or did worse infractions is cruel and unusual punishment from the prison officials. If a fight is a fight as unit Manager Hoenig has said and Deputy Warden Chris Tripp has said it takes 2 to tangle, then everyone should have been treated the same and went to lockup. Then start over in the level system at level 1, and be without a job but this was not the case. The restricted position and the unnecessary exposure to the conditions of the level system and not having a job under Iowa Code 904.701 are circumstances violating the "basic concept of the Eighth Amendment" as the said punishment amounted to the gratuitous infliction of "wonton and unnecessary pain." The court went further and said in **Hope** 536 U.S. at 739; with the review of materially similar cases, the conduct of the prison officials violates prisoner rights. With this constitutionally impermissible conduct violated, it violates clearly established rights that a reasonable person would have known was. The court's review also covered the constitutionally impermissible conduct violated clearly established rights that a reasonable person would have known. This paragraph from *Hope* shows that the prison would know that their conduct in denying Yates the proper appeal on the sanction to the director of the IDOC and the rights of property, medical attention and the long term lockup which the Obama administration had recently passed laws to stop are all known violations that any prison official would have known was wrong to do is "The use of unnecessary and wonton infliction of pain," **Hope** 536 U.S. at 741. The use of level 1 and the made up level of 1½ as it is referred to here at ISP which is not part of the level system at all, shows that the prison officials know that this conduct violates inmates protected rights and do nothing to correct their unlawful ways. Level 1 is not used as a starting point level but is used as an Ad/Seg level at ISP to further punish inmates without using the proper procedures of an ALJ to sanction the disciplinary time to serve as it was already set and the prison wants to add time to the lockup by misusing the level system which violates state created liberty interests that inmates have. As the court reviews the prison's actions of violating clearly established law and that a reasonable person would have known that their actions were violating clearly established law, **Hope** 536 U.S. at 744. In this case the issues of the Iowa law of self defense was raised and heard by the ALJ. The appeals also addressed the self defense issues and the equal protection of law. The IDOC policy on the level system was also addressed to the prison staff through meetings and level classifications. Yates was told by them they were in compliance with the laws and the policies. Now they have removed the level policy from inmates view on the computers. They have also removed the self defense portion of the policy (App. D-1) which shows that this policy does not conform to Iowa law. Yates' arguments are that the use of the hitching post situation in *Hope* is like the prison misusing the level system for punishment and holding inmates in made up levels and giving preferential treatment to some inmates over others for the same

conduct. This supports an Eighth Amendment issue as all the other conduct that should have had major reports and lockup time as listed above but got a far less severe sanction than Yates for more egregious acts. In Iowa the courts have said; "the test for cruel and unusual punishment is whether the sentence is grossly disproportional to the crime, and both the federal and state constitutions prohibit punishment that inflicts torture or is excessively severe that are disproportionate to the offense charged," **State v. Schofield** 736 N.W.2d 267 (Iowa App. 2007). Yates' act of self defense negates the lockup and the holding of him in the lower levels as the prison is inflicting a disproportionate punishment upon him over others who were in the same position as Yates. These other inmates who fought were defending themselves and the prison staff gave all of these inmates their privileges back. Yates' denial of these same rights is a constitutional violation of both the equal protection and cruel and unusual punishment. This court says that even guilty people are entitled to protection from over reaching punishment meted out by the state, **State v. Newell** 2015 Iowa App. LEXIS 87, R&R, and cites **State v. Bruegger** 773 N.W.2d 862 (Iowa 2009).This court has said that due process must be observed before earn time can be forfeited, **Marshall v. State** 524 N.W.2d 150 (Iowa 1994) citing **Hrbek v. State** 478 N.W.2d. 617, 619 and **Wolff v. McDonnell** 418 U.S. at 557, 94 S.Ct. at 2975 on Due Process & loosing liberty on ALJ hearing & some evidence. It appears that the actions of the prison administration is overreaching and in violation of several basic concepts of ordered liberty as Yates is being treated in a more dissimilar way than that of other inmates. The district court has failed to follow the standard protocols that this court has set forth on these matters warranting review from this court. It was held that state law creates liberty interests that are protected by Due Process. Due Process is the right to present all evidence in his defense, including exculpatory evidence, **Wolff v. McDonnell** 418 U.S. at 559, 94 S.Ct. at 2693. Due process was not followed in this hearing.

THE COURT UNLAWFULLY HELD YATES ON MAJOR REPORT WHEN THE "SOME EVIDENCE" STANDARD AND THE REVIEW OF THE ALJ AND THE WARDEN SHOW A DIFFERENT OUTCOME

This same scenario that Yates brings in this writ of certiorari was addressed in **Harper v. State** 463 N.W.2d 418 (Iowa 1996) which was reversed and remanded. As the Harper Court has an offense as a major instead of a minor violation and there was no evidence to support the major. The fairness and justice dictate against such a result with the court telling about a sham of the present class of infraction as at/or when the prison can turn anything into a more serious offense when only a minor offense is committed. This is Yates' report and ruling in a nutshell. The prison turned a lawful act of self defense and equal protection into a matter that the evidence and the prior conduct of the prison administration shows is not acting within the scope of review of the due process of law, the Iowa Codes of self defense

and the equal protection of similarly situated individuals and the imposing of a cruel and unusual punishment for conduct that Iowa law says is available to a person who is being attacked.

THE COURT FAILED TO FOLLOW THE PROPER DUE PROCESS OF LAW WHEN SCHEDULING THIS TRIAL WHICH DENIED YATES HIS RIGHT TO FAIR NOTICE OF LAW AND HIS RIGHT TO RESIST AND BE HEARD ON THE ISSUES OF THE STATE'S WRONGFULLY SUBMITTED EVIDENCE

The district court denied Yates his procedural due process of trial hearing process when the court failed to use the Trial Scheduling and Discovery Plan which by law is a mandatory form that needs to be with each civil trial set in the court, **May v. BHP Billiton Petro (Fayetteville) LLC** 2015 U.S. Dist. LEXIS 100357 under number 9 of the ruling on the Motions In Limine which the court says; "must follow rules and the scheduling order." In the Iowa Rules of Court Chapter 23 Time Standards for Case Processing under the Scheduling Order Form 23.5 at number 9 in the Pretrial Submissions section it says in part:

9. Pretrial submissions

At least **14 or** ____ (the parties may enter another number but not less than **7**) **days before trial,** counsel for the parties and self-represented litigants must:

A. File a **witness and exhibit** list with the clerk of court, serve a copy on opposing counsel and self-represented litigants, and exchange exhibits. In electronic cases, witnesses and exhibit lists must be electronically filed, and the EDMS system will serve copies on all registered parties.

Exhibits must be electronically submitted in lieu of exchanging them. These disclosures must include the following information about the evidence that the disclosing party may present at trial other than solely for impeachment:

(1) The name, and if not previously provided, the address, the telephone numbers, and electronic mail address of each witness, separately identifying those the party expects to present and those the party may call if the need arises.

(2) The page and line designation of those witnesses whose testimony the party expects to present by deposition and, it not taken stenographically, a transcripts of the pertinent parts of the deposition.

(3) An identification of each document or other exhibit, including summaries of other evidence, separately identifying those items the party expects to offer and those it may offer if the need arises. The following rules govern exhibits and exhibit lists:

a. Plaintiff will use numbers and Defendant will use letters. Pretrial exhibit lists will indentify each exhibit by letter or number description. Exhibits must be marked before trial.

b. Immediately before commencement of trial, the court must be provided with a bench copy, and the court reports with a second copy, of the final exhibit list for use in recording the admission of evidence.

c. In nonjury cases, immediately before commencement of trial, parties must provide the court with a bench copy of all exhibits indentified on the exhibit list.

d. Within 7 days after the filing of an exhibit list, or with 4 days if the deadline for filing of the list is less than 10 days before trial, counsel and self-represented litigants must file with the clerk of court, and serve on each party, any identification, authentication, and foundation objections to the exhibits listed; otherwise such objections are deemed **waived** for trial purposes. In electronic cases, any identification, authentication, and foundation objections will be electronically filed, and the EDMS system will serve copies on all registered parties. Electronic filing of these objections must be done within 7 days of the filing of an exhibit list; or within 4 days if the deadline for filing of the list is less than 10 days before trial, otherwise, such objections are deemed **waived** for trial purposes.

Copied directly from the Iowa Rules of Court on the inmate computers.

The Iowa Rules of Civil Procedure 1.500 also apply to this last minute submission of the video tape that the State admitted and the court allowed without following these rules. The submission is done without the due process of law and this tape needs to be stricken for the lack of the proper procedures that the law requires. See Iowa R. Civ. P. 1.500(1)(a) and 1.500(1)(a)(1) and 1.500(1)(a)(2) and 1.500(1)(a)(3) which this last section is the important section that was not followed because there is no reason given to ascertain if it any of these things are privileged or protected from disclosure. The court did not have a hearing on the matter which bring up another abuse of discretion, **State v. August** 589 N.W.2d 740. The due process of law which is the first criteria the court has to meet in this hearing was not had when the court refused or did not follow the established procedures for a civil trial. The State as the defendant must follow the rules in Langford, **Hiltibran v. Levy** 793 F.Supp.2d 1108, 1114 (8th Cir. 2011). The court has to follow the rules as well or due process is denied. Following the laws and the constitutional guarantees is a matter that the State seems to take lightly and in their own Writ of Certiorari the State tried to change the law and the manner of which it was correctly applied in the district court proceedings. Again this Court said that the ex post facto provision of the federal constitution was the proper avenue and denied the State's writ. The basic concept here is that the court had followed the rules and the constitution, **State v. Iowa District Court** 759 N.W.2d 793, 800 (Iowa 2009) and the ruling was correct. In this case, neither the district court nor the State's attorney has followed the rules and the constitutional right of due process was denied at the court level. Yates is not given counsel for this hearing under Iowa Code 822 so therefore he is the self represented person. He did not get properly served notice of the exhibits that the state presented on the day of the hearing under Rule 23.5. This being a video recording that Yates was denied in his motions after the state made an extensive resistance to the process. Then on the day of court the State shows up and at the last minute before the g is over wants to submit a video tape. This video was not properly admitted under Chapter 23 of

the Iowa Rule of Court in mandatory form 23.5 number 9 states that you have to have all of your exhibits filed at least 7 days before the trial. In this case the State first objected to Yates' motion for the video tapes and then violated the rules of court when the State at the end of the hearing submitted a video tape. This piece of evidence was to be submitted in the Respondent's Answer dated June 4, 2018 at page 3. There is nothing to show that this video is confidential for the court to review making it a reviewable item by Yates. It was not listed and therefore is not part of the record for review as it is now untimely submitted without due process of law. The crucial matter that the United States Supreme Court has said must be followed in a disciplinary proceeding in **Wolff v. McDonnell**. Since due process allows the right of fair notice the State did not properly admit this video by the rules of court. Then the State's resistance to Yates' motions is contradicting the submission of the tape that they resisted to begin with. The State cannot argue for and against video tape evidence. The second problem the State has and the court has as well is that Yates has a right after to fair notice and to make a resistance or argument to the requested admission of this tape. Without a proper following of the rules of court on submitting the video the due process of law was denied to Yates. The State also has to show that there is some type of security concern to the court and not just say the words "security issue" to deny Yates the right to look at their proposed submission of evidence. There has to be a factual determination and as Yates is a party to the action, to say it is a security issue without a proper foundation is without merit.

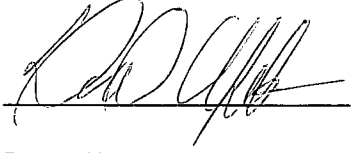
FINAL STATEMENT

The statements and documentation of the prison contradicts any evidence to hold Yates guilty of this report. The some evidence standard has not been met. The prison and the Iowa courts fail to follow their own state laws. For due process and equal protection to be had the prison and the courts have to follow all the Iowa Codes and the prison policies and they have failed to act in a lawful manner.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: November 15th, 2018

Duane Yates