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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

William Edward Cloninger — PETITIONER
(Your Name)

vs.

United States, et. al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI ~~OR~~
MANDAMUS

United States Court of Appeals, Eleventh Circuit / Case No: 18-10905
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

William Edward Cloninger, Fla. DOC # 647921
(Your Name)

Columbia Correctional Institution / ANNEX
(Address)

216 S.E. Correction Way
(City, State, Zip Code)

Lake City, Florida 32025

RECEIVED
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SUPREME COURT, U.S.

(I)

QUESTIONS PRESENTED

DID THE ELEVENTH CIRCUIT COURT OF APPEAL, CASE NUMBER: 18-10905, VIOLATE THE PETITIONER'S CONSTITUTIONAL RIGHT UNDER AMENDMENT 5, 14, OF THE UNITED STATES CONSTITUTION, TO EQUAL PROTECTION AND DUE PROCESS, BY DISMISSING HIS APPEAL? ^{*1.}

(1). WITHOUT FIRST GIVING HIM ANY TYPE OF WARNING, THAT FAILURE TO FILE A FINANCIAL STATEMENT OF HIS PRISON BANK ACCOUNT, WOULD RESULT IN DISMISSAL, ^{*2.} AND

(2). WITHOUT RULING ON HIS TIMELY FILED "MOTION FOR DECLARATORY JUDGMENT..." CHALLENGING THE CONSTITUTIONALITY OF THE "PRISON LITIGATION REFORM ACT" PASSED BY CONGRESS, THAT IT DOES NOT APPLY TO HIM IN HIS APPEAL, BECAUSE IT WAS NOT CONGRESS' INTENT THAT IT WOULD APPLY TO STATE AND FEDERAL PRISONERS WHO SOUGHT OTHER LEGAL CIVIL ACTIONS THATS NOT AGAINST "PRISON CONDITION" OR "PRISON OFFICIALS".

CONGRESS INTENT WHEN ENACTING THE PRISON LITIGATION REFORM ACT INTO LAW, WAS TO STOP ALL THE FRIVOLOUS LAW SUIT BEING FILED AGAINST PRISONS AND PRISON OFFICIALS, FOR ANY AND EVERYTHING UNDER THE SUN.

THIS APPEAL STEMS FROM A BANKRUPTCY ADVERSARY PROCEEDING THAT INVOLVES TWO BROTHERS, WHICH HAS NOTHING TO DO WITH PRISON CONDITIONS OR OFFICIALS, AS CONGRESS INTENDED. ^{*3.}

*1.

(App. A., ORDER OF DISMISSAL, DATED 11-9-18)

*2.

(App. B., ORDER GRANTING EXTENSION OF TIME TO 11-5-18, DATED 10-2-18)

*3.

(App. C. Motion For Declaratory Judgment, DATED 9-4-18)

LIST OF PARTIES

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

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

1. MICHAEL EUGENE CLONINGER
(PRO SE APPELLEE / RESPONDENT)
4220 AUTUMN COURT
CANTON, GEORGIA 30115
2. SOLICITOR GENERAL OF THE UNITED STATES
ROOM 5616
DEPARTMENT OF JUSTICE
950 PENNSYLVANIA AVE, N.W.
WASHINGTON, DC 20530-0001

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Appendix A. General Docket Sheet, App. 11th Cir., Case No: <u>18-10905</u>
Appendix B. Order Of Dismissal - Dated 11.9.18
Appendix C. Order Granting Extension Of Time To 11.5.18 - Dated 10.2.18
Appendix D. Motion For Declaratory Judgment - Dated 9.4.18

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Cloninger Vs. Cloninger, 548 B.R. 839 (N.D. GA 2016). . . . 4

STATUTES AND RULES

28 U.S.C. §1251, 28 U.S.C. §1254(1), 28 U.S.C. §1651. . . . 2

OTHER

United States Constitution, Amendment 5, 11, 14. . . . II, 3, 4(A)
Prison Litigation Reform Act ("PLRA"). . . . II, 3, 4, 4(A), 5

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from **federal courts**:

DISMISSAL of the United States court of appeals appears at Appendix C to the petition and is *not reported*.

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

~~The opinion of the United States district court appears at Appendix _____ to the petition and is~~

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

~~☐ For cases from **state courts**:~~

~~The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is~~

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

~~The opinion of the _____ court appears at Appendix _____ to the petition and is~~

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

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals *dismissed my case* was *NOVEMBER 9, 2018, WHICH WAS DONE WITHOUT ANY WARNING WHATSOEVER!*

☒ No petition for rehearing was timely filed in my case.

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

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

SEE PAGE 2 (A) - JURISDICTION CONTINUOUS & Exhibits

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

§ 1251, 28 U.S.C. 1651

☐ For cases from **state courts**:

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

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

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

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

JURISDICTION CONTINUOUS

THE PRO SE PETITIONER, William Edward Cloninger, Attests To The Fact, Even Though His Petition For Writ Of Certiorari / Mandamus Is Being Filed Outside The 90 Days To File Such Action, It Still As A Matter Of Law, Should Be Considered Timely Filed Due To Government Interference Caused By The Florida Department Of Corrections, That He Was Not Able To Get The Necessary Copies Made Of This Petition Until FEBRUARY 20-2019 (SEE ATTACHED "EXHIBITS A. & B." DOC IM REQUESTS), AND MAIL THE PETITION TO THE COURT THAT DAY.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING STATEMENT & EXHIBITS IS TRUE AND CORRECT.

DATED: FEBRUARY 20th, 2019

William Edward Cloninger
William Edward Cloninger
FLA. DOC # 647921
Columbia Correctional Institution/ANNEX
216 S.E. CORRECTION WAY
LAKE CITY, FLORIDA. 32025

ATTN: LAW LIBRARY
"DEAD LINE"

INMATE REQUEST

STATE OF FLORIDA DEPARTMENT OF CORRECTIONS

Mail Number: _____
Team Number: 26
Institution: Columbia / Annex

TO: (Check One) ☐ Warden ☐ Asst. Warden ☐ Classification ☐ Security ☐ Medical ☐ Mental Health ☐ Dental ☒ Other

LAW LIBRARY

FROM:	Inmate Name <u>CLONINGER, William</u>	DC Number <u>647971</u>	Quarters <u>73-105</u>	Job Assignment <u>H/A</u>	Date <u>01-21-19</u>
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REQUEST

Check here if this is an informal grievance ☐

DEAR LAW LIBRARIAN:

COULD YOU PLEASE PUT ME ON THE LAW LIBRARY CALL OUT SO I CAN GET
PUT ON THE LAW LIBRARY DEADLINE LIST.
DEAD LINE IS 2-17-19

Respectfully Submitted

All requests will be handled in one of the following ways: 1) Written Information or 2) Personal Interview. All informal grievances will be responded to in writing.

Inmate (Signature): Wm Cloninger

DC#: 647971

DO NOT WRITE BELOW THIS LINE

RESPONSE

DATE RECEIVED:

RECEIVED JAN 30 2019

02-11-19
[Signature]

[The following pertains to informal grievances only:

Based on the above information, your grievance is _____ (Returned, Denied, or Approved). If your informal grievance is denied, you have the right to submit a formal grievance in accordance with Chapter 33-103.006, F.A.C.]

Official (Print Name):

Official (Signature): [Signature]

Date: 01/30/19

Original: Inmate (plus one copy)

CC: Retained by official responding or if the response is to an informal grievance then forward to be placed in inmate's file
This form is also used to file informal grievances in accordance with Rule 33-103.005, Florida Administrative Code.

Informal Grievances and Inmate Requests will be responded to within 10 days, following receipt by staff.

You may obtain further administrative review of your complaint by obtaining form DC1-303, Request for Administrative Remedy or Appeal, completing the form as required by Rule 33-103.006, F.A.C., attaching a copy of your informal grievance and response, and forwarding your complaint to the warden or assistant warden no later than 15 days after the grievance is responded to. If the 15th day falls on a weekend or holiday, the due date shall be the next regular work day.

DC6-236 (Effective 12/14)

Incorporated by Reference in Rule 33-103.005, F.A.C.

Exhibit A

2. (B)

INMATE REQUEST

STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS

Mail Number: _____
Team Number: _____
Institution: Columbia C.I. Annex

TO:
(Check One)

☒ Warden
☐ Asst. Warden

☐ Classification
☐ Security

☐ Medical
☐ Mental Health

☐ Dental
☒ Other

LAW LIBRARY

FROM:	Inmate Name <u>CLONINGER, William</u>	DC Number <u>642921</u>	Quarters <u>73-105-U</u>	Job Assignment <u>H/M</u>	Date <u>2-11-2019</u>
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REQUEST

Check here if this is an informal grievance ☐

DEAR LAW LIBRARIAN:

Today 2/11/19 I was scheduled on the Law Library call out, but for reasons unknown the Law Library was not open this morning!

THEREFORE PLEASE RESCHEDULE ME AND PUT ME ON THE LAW LIBRARY SO I CAN MAKE LEGAL COPIES TO SEND TO THE UNITED STATES SUPREME COURT AS SOON AS POSSIBLE.

THANK YOU FOR YOUR PROFESSIONAL TIME IN THIS MATTER!

Respectfully Submitted

All requests will be handled in one of the following ways: 1) Written Information or 2) Personal Interview. All informal grievances will be responded to in writing.

Inmate (Signature): William Cloninger

DC#: 642921

DO NOT WRITE BELOW THIS LINE

RESPONSE

DATE RECEIVED RECEIVED FEB 13 2019

You have been

(rescheduled)

for 02-20-19 AM

[The following pertains to informal grievances only:

Based on the above information, your grievance is _____ (Returned, Denied, or Approved). If your informal grievance is denied, you have the right to submit a formal grievance in accordance with Chapter 33-103.006, F.A.C.]

Official (Print Name): G B KING

Official (Signature): GB King

Date: 02-14-2019

Original: Inmate (plus one copy)

CC: Retained by official responding or if the response is to an informal grievance then forward to be placed in inmate's file

This form is also used to file informal grievances in accordance with Rule 33-103.005, Florida Administrative Code.

Informal Grievances and Inmate Requests will be responded to within 10 days, following receipt by staff.

You may obtain further administrative review of your complaint by obtaining form DC1-303, Request for Administrative Remedy or Appeal, completing the form as required by Rule 33-103.006, F.A.C., attaching a copy of your informal grievance and response, and forwarding your complaint to the warden or assistant warden no later than 15 days after the grievance is responded to. If the 15th day falls on a weekend or holiday, the due date shall be the next regular work day.

DC6-236 (Effective 12/14)

Incorporated by Reference in Rule 33-103.005, F.A.C.

Exhibit B 2. (C).

Constitutional And Statutory Provisions Involved

EQUAL PROTECTION AND THE DUE PROCESS CLAUSE OF THE FIFTH & FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

PRISON LITIGATION REFORM ACT ("PLRA"), CONGRESS SOLE INTENT WHEN ENACTING THE PLRA, WAS TO STOP ALL THE FRIVOLOUS LAW SUITS BEING FILED BY PRISONERS AGAINST PRISON OFFICIALS OR CONDITIONS. IT WAS NOT CONGRESS INTENT THAT THE PLRA BE APPLY TO STATE AND FEDERAL PRISONERS WHEN THEIR ACTIONS IS NOT AGAINST PRISON OFFICIALS OR CONDITIONS, IF SO, CONGRESS WOULD HAVE CLEARLY STATED IT APPLIED UPON ENACTING THE PLRA INTO LAW.

FORMA PAUPERIS, STATE AND FEDERAL PRISONERS, AS A MATTER OF LAW, SHOULD NOT HAVE TO PROVIDE A FINANCIAL STATEMENT OF THEIR PRISON TRUST FUND ACCOUNT TO PROCEED IN FORMA PAUPERIS, WHEN THE ACTION IS NOT AGAINST PRISON OFFICIALS OR CONDITIONS, IF SO, CONGRESS WOULD HAVE CLEARLY STATED THAT SUCH REQUIREMENTS WERE NECESSARY UPON ENACTING THE PLRA INTO LAW.

STATEMENT OF THE CASE

THIS CASE ORIGINATED IN THE UNITED STATES BANKRUPTCY COURT, NORTHERN DISTRICT OF GEORGIA, BY ADVERSARY COMPLAINT THAT INVOLVES TWO BROTHERS BOTH WERE PROCEEDING PRO SE.

ON MARCH 17, 2016, JUDGE PAUL W. BONAPPEL RULED ON THE ADVERSARY COMPLAINT FILED BY THE PETITIONER, WILLIAM EDWARD CLONINGER IN FAVOR OF HIS BROTHER, MICHAEL EUGENE CLONINGER (SEE CLONINGER VS. CLONINGER, 548 B.R. 839 (N.D. GA. 2016)).

THE CASE WAS TIMELY APPEALED TO THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF GEORGIA, WHERE JUDGE RICHARD W. STORY AFFIRMED JUDGE BONAPPEL'S DECISION (CITATION OMITTED).

ON MARCH 8, 2018, THE PETITIONER, WILLIAM EDWARD CLONINGER TIMELY APPEALED TO THE UNITED STATES COURT OF APPEAL, ELEVENTH CIRCUIT (SEE APPENDIX A. - GENERAL DOCKET SHEET AS TO THE PROCEDURAL HISTORY THE CASE WHILE ON APPEAL IN THE 11TH CIR).

WHILE THE PETITIONER WAS ON APPEAL HE WAS UNABLE TO GET PRISON OFFICIALS TO PROVIDE HIM WITH A 6 MONTH PRINT OUT OF HIS PRISON TRUST FUND FINANCIAL STATEMENT THAT THE COURT REQUESTED.

AS SUCH, ON SEPTEMBER 4, 2018, THE PETITIONER FILED A MOTION FOR DECLARATORY JUDGMENT, CHALLENGING THE CONSTITUTIONALITY OF THE PRISON LITIGATION REFORM ACT ("PLRA"), CONTENDING THAT IT WAS CONGRESS INTENT WHEN ENACTING THE PLRA INTO LAW, WAS TO STOP ALL THE FRIVOLOUS LAW SUITES BEING FILED AGAINST PRISON OR PRISON OFFICIALS, AND THEREFORE, THE PLRA DOES NOT APPLY TO HIM, BECAUSE HIS APPEAL BEFORE THE COURT INVOLVES TWO BROTHERS THAT STEMS FROM A BANKRUPTCY COURT ADVERSARY PROCEEDING, WHICH HAS NOTHING TO DO WITH PRISON OFFICIALS, AS CONGRESS INTENDED.

STATEMENT OF THE CASE CONTINUOUS

IN THE SAME MOTION THE PETITIONER ALSO MOTION FOR EXTENSION OF TIME (SEE APPENDIX D. - MOTION FOR DECLARATORY JUDGMENT AND MOTION FOR EXTENSION OF TIME...).

ON SEPTEMBER 9, 2018, THE COURT GRANTED THE EXTENSION OF TIME TO NOVEMBER 5, 2018, (SEE APPENDIX B. - ORDER GRANTING EXTENSION OF TIME), BUT IT DID NOT RULE ON THE TIMELY FILED MOTION FOR DECLARATORY JUDGMENT (SEE APPENDIX A: GENERAL DOCKET SHEET).

ON NOVEMBER 5, 2018, THE PETITIONER FILED A TIMELY MOTION TO RULE ON MOTION FOR DECLARATORY JUDGMENT (SEE APPENDIX A: GENERAL DOCKET SHEET @ PAGE 2.), SEEKING THE COURT TO RULE ON THE CONSTITUTIONALITY OF THE PRISON LITIGATION REFORM ACT PASSED BY CONGRESS THAT HE'S CHALLENGING.

INSTEAD OF RULING ON THE PETITIONER'S MOTION FOR DECLARATORY JUDGMENT, THE ELEVENTH CIRCUIT COURT OF APPEAL, WITHOUT ANY WARNING WHATSOEVER THAT HIS APPEAL WOULD BE DISMISSED FOR FAILING TO FILE A FINANCIAL STATEMENT BY NOVEMBER 5, 2018, IT ENTERED AN ORDER DISMISSING HIS APPEAL FOR WANT OF PROSECUTION (SEE APPENDIX C. - ORDER).

THIS TIMELY PETITION FOR WRIT OF CERTIORARI / MANDAMUS NOW FOLLOWS FOR THE REASONS AND QUESTIONS PRESENTED HEREIN. U. S. CONST. AMEND 5, 14.

REASON FOR GRANTING THE PETITION

CERTIORARI REVIEW IN THIS CASE IS CLEARLY WARRANTED CAUSE, OF THE GREAT PUBLIC IMPORTANCE IT HAS AND THE VAST AMOUNT OF STATE AND FEDERAL PRISONERS THE COURTS' CONSTITUTIONAL DECISION WILL EFFECT THEREAFTER. FINDING:

1). THAT COURTS (THE ELEVENTH CIRCUIT IN THIS CASE) CAN NOT DISMISS A PRO SE PETITIONERS CASE FOR FAILURE TO PROSECUTE BECAUSE PETITIONER MISSED A COURT DEAD LINE WITHOUT THE COURT FIRST GIVING PETITIONER A WARNING THAT THE CASE WOULD BE DISMISSED IF SUCH DEAD LINE REQUIREMENTS WERE NOT MET;

2). THAT IT WAS CONGRESS SOME INTENT WHEN ENACTING THE PRISON LITIGATION REFORM ACT ("PLRA"), WAS TO STOP ALL THE FRIVOLOUS LAW SUITS BEING FILED BY PRISONERS AGAINST PRISON OFFICIALS OR CONDITIONS. THEREFORE, STATE AND FEDERAL PRISONERS SHOULD NOT HAVE TO PROVIDE THEIR FINANCIAL STATEMENT OF THEIR PRISON TRUST FUND ACCOUNT TO PROCEED IN FORMA PAUPERIS WHEN THEIR ACTIONS ARE NOT AGAINST PRISON OFFICIALS OR CONDITIONS, IF SO REQUIRED, CONGRESS WOULD HAVE CLEARLY STATED IT UPON ENACTING THE PLRA INTO LAW.

CONCLUSION

The petition for a writ of ~~certiorari~~ /MANDAMUS should be GRANTED FOR THE REASONS AND QUESTIONS PRESENTED HEREIN, AS WELL AS THE INTEREST OF JUSTICE AS TO THE VAST AMOUNT OF STATE AND FEDERAL PRISONERS THE COURTS CONSTITUTIONAL DECISION WILL EFFECT, HEREAFTER.

Respectfully Submitted

William Edward Cloninger

William Edward Cloninger

FLA. DOC # 647921

Columbia Correctional Institution/ANNEX

216 S.E. CORRECTION WAY

LAKE CITY, FLORIDA 32025

DATE: February 20th, 2019