

18-8255 ORIGINAL
No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

FEB 17 2019

OFFICE OF THE CLERK

David E. Ponder

— PETITIONER

(Your Name)

vs.

Avalon Correctional Services Incorporated et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Fifth Circuit Court Of Appeals

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

PETITION FOR WRIT OF CERTIORARI

David E. Ponder

(Your Name)

9300 I.H. 35 South, Suite A500-469

(Address)

Austin, Texas 78748

(City, State, Zip Code)

737 346 1418

(Phone Number)

QUESTION(S) PRESENTED

1. Private for profit prisons are allowed to deny Foia and State Open Records laws.
(a.) State Courts rulings as to Open Records requirements involving private prisons and halfway houses are currently the law only in Texas and Tennessee.
:Reference Prison Legal News v CCA in Texas and Tennessee.
2. Citizens currently have little to no means of recourse against for profit private prisons engaged in civil and criminal violations and abuses of State and Federal inmates.
3. The appeals court cites that I sought damages for injuries regarding the defendant's failure to contact EMS in a timely manner. I made no such claim for damages. Said supposed claim appears only from the Magistrate of the District Court, and the Defendant's.
4. There is the presence of evidence which largely consists of conflicting testimony, the granting of Summary Judgment to the Defendants prior to the completion of discovery, and seemingly deliberate wrongful use of Texas statute of limitations on actions committed by the Defendants. Furthermore, questions arise from punitive, and actual damages (particularly regarding 1st, 4th, 8th and 14th amendment violations) that seem to vary from one Circuit Court to another (Circuit Court splits).
Type text here

LIST OF PARTIES

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

[x] 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. Avalon Correctional Services Incorporated
2. Donald Smith (owner/operator)
3. Greg Basham
4. Loy Serrano
5. Jeanie Parsons
6. Max Goodale
7. Ben Lovelace

TABLE OF CONTENTS

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

INDEX TO APPENDICES

APPENDIX A United States Fifth Circuit Court Of Appeals

APPENDIX B United States Western District Court Austin Texas Division

APPENDIX C na

APPENDIX D na

APPENDIX E na

APPENDIX F na

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Prison Legal News v. CCA, Travis County District Court,
353rd Judicial District, Cause No. D-1-GN-13-001445.

Prison Legal News v. Corrections Corporation of America PC-AZ-0015
Docket / Court 2:09-cv-1831 (D. Ariz.)

Friedmann v. CCA, 310 S.W.3d 366 (Tenn.Ct.App. (2009)

Rosborough v. Management & Training Corp., et al., 350 F. 3d 459 (5th Cir 2003)

United States v. Brown, 72 F.3d 25 (5th Cir. 1995)

Friedland v. Fauver, 6 F.Supp.2d 292 (D.N.J. 1998)

Procunier v. Martinez, 416 U.S. 396 (1974).

Procunier v. Navarette, 434 U.S. 555

Zitzka vs. Village of Westmont, 743 F. Supp.
2d 887 (N.D. Ill. 2010)

Ashcroft v. Iqbal, 556 U.S. 662 (2009)

Morrissey, v. Brewer, 408 U.S.471 (1972)

STATUTES AND RULES

42 USC 1983, 1985, 1988

18 USC 241.

OTHER

Type text here

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

[] For cases from federal courts:

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

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

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was November, 26 2018.

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

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

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

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

☐ For cases from **state courts**:

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

☒ 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 na _____ (date) on _____ (date) in Application No. ____ A ____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 USC 1983, 1985, 1988

18 USC 241

1. Simply because inmates serve out their sentences in different types of facilities, i.e., public and private, they should not have different protection under law, and both their State and Federal civil rights. To allow such means there are differences in their privileges and Constitutional rights depending on whether they are incarcerated in a State or Federally run prison or halfway house versus private for-profit companies. This is a violation of equal protection. This should be ruled as unconstitutional.
2. The second Constitutional concern involves the potential impact on an inmate's due process because of the economic implications inherent in for-profit prisons managing. Notably, the U.S. Supreme Court has established the Due Process Clauses of the Fifth and Fourteenth Amendments to prohibit the delegation of discretionary governmental functions to private entities that ultimately have a financial interest in the way a discretionary function may be carried out. Despite this principle, the court has permitted some delegation to such private entities according to prescribed standards established over the years through case law. Whether these standards apply to the private prison context and whether the private prison structure satisfies the standards are questions that have not yet been answered. Private prisons continue to be employed in the United States despite these unresolved Constitutional considerations.
3. The Fifth Circuit Court of Appeals has ruled the Petitioner's appeal as "incomprehensible" claiming insufficient clarity of the petitioner's argument. The petitioner's main argument was that Summary Judgment was based on most if not all of earlier Court decisions overruling the Magistrate (who can be shown acting as a de facto defense attorney), was granted prior to discovery, and that the petitioner had a valid claim against each defendant where damages both actual and punitive could be awarded. Furthermore, this petition provided supporting case law for such, especially concerning what a reasonable jury might decide given that at the least defendant Parson's (interference with petitioner's mail) by her own admission in the presence of the petitioner's own Parole officer, and with hard evidence by means of the document trail. Parson's is guilty not by just by a preponderance of evidence, or beyond a reasonable doubt, she is guilty beyond any doubt. A preponderance of evidence exists against the other defendants. Defendant Sith's part is two fold: One he claims to be "only an employee" of Avalon, yet as owner/CEO, chairman, and policy maker he is liable under a Monell style 42 USC 1983 claim. reference: Rosborough

STATEMENT OF THE CASE

Petitioners cause is a 42 USC 1983 claim for damages against the defendants. The petitioner cites 1st, 4th, 8th, and 14th amendment violations. Interference with the petitioner's mail from the SSA, Tarrant County Texas MHMR (Mental Health and Mental Retardation), John Peter-Smith hospital, and social services supported by Fort Worth Texas Union Gospel Mission. Two counts of false arrest at both Fort Worth, and Austin Texas facilities of Avalon, denial of medical needs at both facilities through intimidation. The petitioner was harassed, and restricted to the facilities on the basis of false disciplinary charges, and denial of access to the Courts.

Type text here

REASONS FOR GRANTING THE PETITION

The District Court erred in granting Summary Judgement citing among other reasons that the petitioners evidence was lacking. Summary Judgement was granted prior to the completion of Discovery. The Magistrate in the case assumed the role of de facto defense attorney for the defendants.

Simply because inmates serve out their sentences in different types of facilities, i.e., public and private, they should not have different protection means there differences in their privileges and constitutional rights.

The second constitutional concern involves the potential impact on an inmate's due process because of the economic implications inherent in for-profit prisons managing prisoners.²³⁷ Notably, the U.S. Supreme Court has established the Due Process Clauses of the Fifth and Fourteenth Amendments to prohibit the delegation of discretionary governmental functions to private entities that ultimately have a financial interest in the way a discretionary function may be carried out.²³⁸ Despite this principle, the court has permitted some delegation to such private entities according to prescribed standards established over the years through case law.²³⁹ Whether these standards apply to the private prison context and whether the private prison structure satisfies the standards are questions that have not yet been answered. Private prisons continue to be employed in the United States despite these unresolved constitutional considerations.

Inmates and residences of for profit prisons and halfway houses should have the same rights as those housed in public facilities. 1st, 4th, 8th, and 14th amendment punitive damages are available yet denied to the petitioner. The Appeal erred in it's decision to affirm the lower court.

The petitioners case has been treated as in a Bivens style complaint rather than a 1983 . The Appeal Court is allowing this miscarriage by affirming the District Courts grant of summary judgement.

The Fifth Circuit Court of Appeals has ruled the Petitioner's appeal as "incomprehensible" as to the District Court granting of Summary Judgement based on the Magistrates recommendations previously overuled. This is the core of the petitioner's argument, which the Circuit Court claims did not exist. In general the Appeal Courts ruling uses single words or short phrases taken out of context from the whole as at least partial reasons for affirming the defective ruling of the lower court.

The case law listed all clearly support this petitioner's case against the defendant's, and contradict the District Courts reliance on previously overuled Magistrate recommendations, and seemingly deliberate misconstruance of facts. Case law (see Zitska) supports the petitioners claim that the defendants failed to meet Summary Judgement requirements.

The Appeal Court's affirmation is in error, as this petitioner's argument were very clear, and would be to any reasonable jury

CONCLUSION

Inmates and residences of for profit prisons and halfway houses should have the same rights as those housed in public facilities. 1st, 4th, 8th, and 14th amendment punitive damages are available yet denied to the petitioner. The Appeal erred in it's decision to affirm the lower court.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

David E. Ponder

David E. Ponder
2/25/2019

Date: February 25th 2019