

18-8422
No.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

FEB 28 2019

OFFICE OF THE CLERK

JOHNNY M. YOUNG-PETITIONER

VS.

STATE OF ALABAMA-RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF ALABAMA CASE NO:1180079

PETITION FOR WRIT OF CERTIORARI

JOHNNY M. YOUNG

AIS# 090679 E-63

HOLMAN UNIT 3700

ATMORE, ALABAMA 36503

QUESTION(S) PRESENTED

I. WHETHER DENIAL OF IN FORMA PAUPERIS BY THE ALABAMA SUPREME COURT IS IN CONFLICT WITH THE UNITED STATES SUPREME COURT PRECEDENT ON FEDERAL RIGHTS OF ACCESS TO THE COURTS?

II. WHETHER THE SUPREMACY LAW OF ARTICLE VI CLAUSE 2, TO THE UNITED STATES CONSTITUTION IMPOSES A DUTY UPON ALL STATE JUDGES TO ENFORCE FEDERAL LAW?

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.

All parties, acting in their official capacity, are representatives of, and are represented by the State of Alabama.

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CITATION OF THE REPORTS OF THE ORDERS

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

OPINIONS BELOW

The opinion of the highest state court, Supreme Court of Alabama, entered an Order denying Petition for Writ of Mandamus on the 26th day of December 2018. Appendix B.

The Court Overruling Application For Rehearing on the 29th day of January 2019. Appendix C.

THE BASIS FOR JURISDICTION

The basis for the jurisdiction in this Court is the the opinion below is in conflict with the United States Supreme Court's precedent on the rights of Access to the Courts.

The Supreme Court of Alabama dismissed Petitioner's petition for writ of mandamus on December 26, 2018. for Petitioner's failure to prosecute.

The failure to prosecute arises from Petitioners inability to pay \$150.00 ordered by the Court. Referenced ~~at app'x B~~

A timely Petition for Writ of Certiorari was filed January 2, 2019. The petition was treated as an Application For Rehearing . The Court OVERRULED the Application, without an opinion on the 29th day of January 2019. App'x C.

STATUTORY PROVISIONS INVOLVED

The statutory provision involved is believed to be 28 U.S.C. 1915, governing " the Law of the Land" concerning in forma pauperis status for access to the courts.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

The continuation of custody, as it relates to the conditions of confinement in the Alabama prison system is in violation of the Eighth Amendment's prohibition against cruel and unusual punishment.

The denial of in forma pauperis status under state law is in violation to the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Federal Law requires that a prisoner's petition has merit before in forma pauperis status be granted. The state law is in conflict with Federal Law on this point because a state trial court does not have subject-matter-jurisdiction to consider the merits of a petition until the in forma pauperis status has been resolved and the filing fees have been paid or waived. (See *Ex parte Carter*, 807 So. 2d 534, 536-37 (Ala. 2001)). The Equal Protection issue which is distinct from an access-to-the-courts claim, is also fully implicated by the state law inability to resolve a Constitutional or Federal Law violation.

State Courts are bound by the Federal Law. Article VI Clause 2 to the Constitution. The Constitution and the Laws of the United States which shall be made in Pursuant thereof... or which shall be made under the Authority of the United States, shall be the Supreme Law of the Land, and Judges in every state shall be bound thereby.

STATEMENT OF THE CASE

On September 24, 2018, Petitioner filed pursuant to the Alabama Prisoner Litigation Reform Act(APLRA), seeking a prisoner release order, a temporary restraining order(TRO), and for a three-judge-court, with affidavit for Substantial Hardship and Order. A copy is attached to appendix A.

April 24, 2013, Alabama State Legislature created the APLRA, 14-15-1 et seq., Ala. Code 1975, as an equilocus statute to mirror the 1995 Federal Prisoner Litigation Reform Act(PLRA), 28 USCS 3626, Federal statute.

Substantial Hardship and Order was filed with the petition and denied on the 24th day of October 2018. App'x A.

A Petition for Reconsideration was filed in the trial court on or about October 29, 2018. The court denied Reconsideration with no opinion on November 13, 2018. App'x C.

A Petition for Writ of Mandamus to the Alabama Supreme Court November 29, 2018. App'x D.

The Mandamus was denied without (written or oral) opinion December 26, 2018. App'x B.

Petitioner filed a Petition For Writ of Certiorari on the 2n day of January 2019. App'x C. This Petition was treated as an Application For Rehearing. The Court OVERRULED the Application on the 29th day of anuary 2019. App'x A.

Petitioner raised the issue concerning in forma pauperis in the Circuit Court at the initiate pleading stage and again on Rehearing. The issue was then raised in the Supreme Court Alabama at the initial Mandamus pleading and repeated on

Application For Rehearing.

DIRECT AND CONCISE ARGUMENT AMPLYING THE REASON RELIED ON FOR ALLOWANCE OF OF WRIT.

I. WHETHER DENIAL OF IN FORMA PAUPERIS BY THE ALABAMA SUPREME COURT IS IN CONFLICT WITH THE UNITED STATES SUPREME COURT'S PRECEDENT OF FEDERAL RIGHTS OF ACCESS OT THE COURTS?

The APLRA creates a forum where state prisoners may challenge the constitutionality of the " conditions of confinement." On the 24th day of April 2013 ,Section 14-15-1, et seq., became effective. Since that time Petitioner is aware of only one other case filed pursuant to the APLRA which sought a Prisoner Release Order alleging that the conditions of confinement was in violation to Constitutional and Federal Law, and requested a three-judge-court to hear the case: Ex parte Cook (In re: Curtis Cook, Jr. v. Governor Robert Bentley, et al). 202 So.3d 316, 2016 LEXIS 30 (2016). The Supreme Court of Alabama foreclosed the Cook petitioers from access to the court by denying in forma pauperis status, as the court has now done with your Petitioner denying him in forma pauperis in violation of Federal Law.

The Supreme Court of Alabama denial of in forma pauperis to an indigent prisoner conflicts with the United States Supreme Court's holding in Smith v. Bennett,365 U.S. 708, 81 S.Ct. 895, 6 L. Ed. 2d 391 (1961). In Smith v. Bennett, this Court held that once the state choose to establish appellate review in criminal cases, it may not foreclose indigents from access to any phase of that procedure because of poverty. (citing Burns v. Ohio,360 U.S. 252, 79 S.ct. 1164, 3 L. Ed.2d 1209, 89 Ohio Law Abs. 570 (1959)).

This Court held in Bounds v. Smith, 430 U.S. 817, 822, 97 S.Ct. 1491, 52 L.Ed. 2d 72 (1977), that in order to prevent "effective foreclosed access"[to the courts], indigent prisoner musts be allowed to file appeals and habeas corpus petition without payment of docket fees. Also see Bearden v. Georgia, 461 U.S. 660, 671, 103 S.Ct. 2064, 76 L.Ed. 2d 221 (1983)(Fourteenth Amendment generally prohibits punishing persons for proverty.

A Court's denial of in forma pauperis status to an indigent prisoner seeking relief pursuant to a petition for Prisoner Release Order makes it impossible for prisoner to file for relief pursuant to APLRA, and all prisoners, regardless of wealth, are entitled to reasonable access to the courts. See Moon v. Newsome, 863 F. 2d 835, 837 (11th Cir. 1989). Reasonable access to the Courts is provided to indigent Litigants by the in forma pauperis (IFP) statute of 28 U.S.C. 1915. The Alabama in forma pauperis statute is in conflict with 28 U.S.C. 1915.

The Alabama Court of Criminal Appeals uniformly granted IFP status when the balance in an inmate's prison account on the date a petition was filed was less than the filing fees and the inmate prison account balance had never exceeded the filing fees in the previous twelve (12) months. See Ex parte Robey, 160 So. 3d 757, (Ala. 2014); Ex parte Johnson, 123 So. 3d 953, 954 (Ala. 2013). A state court may not refuse to take jurisdiction of an action based on Federal Law when it has and regularly exercised jurisdiction over similar actions based on state law. Claflin v. Houseman, 93 U.S. 130, 136-37, 3 Otto 130, 23 L.Ed.833 ((1876)).

II. WHETHER THE SUPREMACY LAW OF ARTICLE VI CLAUSE
2 TO THE UNITED STATES CONSTITUTION IMPOSES A
DUTY UPON STATE JUDGES TO ENFORCE THE CONSTITUTION
AND THE LAWS THEREOF?

The Constitution and the Laws of the United States which shall be made in pursuance thereof...shall be the supreme Law of the Land, and the Judges in every state shall be bound thereby...

Petitioner alleged to the Alabama Supreme Court that the conditions of confinement in Alabama prison system is in violation to the Constitution's prohibition against cruel and unusual punishment pursuant to the Eighth Amendment and Fourteenth Amendment, with *prima facie* that his life is in imminent danger of the same conditions. The court was bound by the Constitution and Laws thereof. The Supremacy clause precludes state courts from declining to entertain an action to enforce a valid penal Law of the United States. *Claflin v. Houseman* *Id.*, also see *Puerto Rico v. Branstad*, 483 U.S. 219, 228, 107 S.Ct. 2802, 97 L.Ed.2d 187 (1987); *New York v. United States*, 505 U.S. 144, 112 S.Ct. 2408, 120 L.Ed. 2d 120...(U.S. 1992).

In a case in which the continuation of custody would be a violation of the Eighth Amendment as it relates to conditions of confinement, the continuation of that custody would be "unauthorized" under the law, or "illegal." Generally see, *Preiser v. Rodriguez*, 411 U.S. 475, 482, 93 S.Ct. 1827, 36 L.Ed. 2d 439 (1973). Courts have a responsibility to remedy the

resulting Eighth Amendment violation. See *Brown v. Plata*, 563 U.S. 493, 179 L.Ed. 2d 969 (2011); *Hutto v. Finney*, 437 U.S. 687, n.9, 98 S.Ct. 2565, 57 L.Ed. 3d 522 (1978). Courts must not shrink from their obligation to "enforce the Constitutional rights of all 'persons' including prisoners." See *Cruz v. Beto*, 405 U.S. 319, 92 S.Ct. 1079, 31 L.Ed. 3d 263 (1972) (per curiam) Courts may not allow constitutional violation to continue simply because a remedy would involve intrusion into the realm of prison administration.

In petition for release order Petitioner cited overcrowding as the primary cause of the violation of the federal right.

18 USCS 3626. Moreover, failure of state to employ and train sufficient security personnel to ensure safety of inmates from physical attack by other inmates constitutes cruel and unusual punishment. See *French v. Owens*, (1985, Ca7 Ind) 777 F. 2d 1250, cert. denied, (1986) 479 U.S. 817, 107 S.Ct. 77, 93 L.Ed. 2d 32; also see, *Braggs v. Dunn*, 257 F. Supp.3d 1171, 1268 (M.D.Ala. 2017). In Braggs, the Court found that the "...persistent and severe shortage of correctional staff was an overarching issue that contributed to the Eighth Amendment violation.

Denial of in forma pauperis status by the state courts (of Alabama) violates the Equal Protection Clause. It is the Fourteenth Amendment that weighs the interest of rich and poor criminals in equal scale. *Smith v. Bennett*, *supra*.

Confronted with facts that are materially indistinguishable from relevant Supreme Court precedent(s) (*Smith v. Bennett*, *supra*; *Burns v. Ohio*, *supra*; *Bounds v. Smith*, *supra*; and *Bearden*, *supra*), the state court has arrived at a result opposite the United States Supreme Court.

CONCLUSIONS

WHEREFORE, premise the foregoing, Petitioner prays this Honorable Court review-from the prospective of a pro se litigant-the issues herein and grant the Petition For Wri Of Certiorari.

s/ Johnny M. Young