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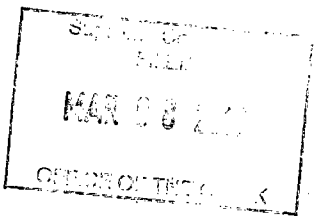

IN THE

SUPREME COURT OF THE UNITED STATES

Joel Marvin Munt --- PETITIONER
(Your Name)

vs.

Eddie Miles --- RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Minnesota Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joel Marvin Munt
(Your Name)

5329 Osgood Ave N.
(Address)

Stillwater, MN 55082
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Was it error to not consider the DOC's role in filing delays when ruling Writ of Habeas corpus moot?

2. Did Court error by holding his petition was moot?

3. Did Court error in equating mootness with frivolousness in this case?

LIST OF PARTIES

[X] 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:

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ 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[ ] is unpublished.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[ ] is unpublished.

[X] 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,
[ ] is unpublished.

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

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[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] 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 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).

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

The date on which the highest state court decided my case was 11/26/2018.
A copy of that decision appears at Appendix A.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for review was thereafter denied on the following date: 2/19/2019, and a copy of the order denying review appears at Appendix B.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Provision

U.S. Const. Art. 1 Sec. 9 Cl. 2

The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

U.S. Const. Art. VI Cl. 2

This 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

U.S. Const. Art. VI Cl. 3

The senators and representatives, and the members of the several state legislatures; and all executive and judicial officers, both of the United States and the several states, shall be bound by Oath or Affirmation, to support this Constitution

U.S. Const. Amd. 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. Amd. 14

… 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.

STATEMENT OF THE CASE

1. Was it error to not consider the DOC's role in filing delays when ruling Writ of Habeas corpus moot?

While in SEG at STW, the DOC did not permit Petitioner any envelopes, his address book, legal papers or even his shower shoes despite repeated requests and being required to by policy. They also refused to allow him to even see the disciplinary rules that he was charged with violating. He also lacked paper or writing implements sufficient to create any pleading. No legal assistance is provided to prisoners while they are in SEG and they are denied any physical access to the law library. You only can do kites. Requests to the LLSP for case law take a week to nearly a year and even then are only for looking up specific cases you already have the citation for. You have no source of forms and Plaintiff was not even permitted court addresses. It was impossible for him to file a habeas petition or anything else with the courts during this time. Even when he got out of SEG the DOC staff systemically conspired to impede his ability to get together the materials needed to file his petition and to send it out. They even retaliated against him for his intent to file it, destroying multiple pieces of evidence, putting him in SEG again, transferring him, and having people go through his property and take his years of research and the legal papers needed to pursue his cases.

It defies any concept of justice if the DOC is permitted to prevent any review of constitutional violations it has committed simply by doing so in the guise of prison discipline and then preventing him from being able to plead while in SEG.

There is a Mootness exception for issues capable of repetition but evading review (*In re Schmidt*, 443 N.W.2d 824, 826 (Minn. 1989)). Mootness Doctrine Exception if : a) challenged conduct too brief to be fully litigated prior to cessation or expiration **and** 1) if it is reasonably likely complaining party will be subject to same action again. *Daywitt v. State of MN*, 2015 U.S. Dist. LEXIS 87951 (D.Minn. 2015)(citing *Smith v. Hundley*, 190 F.3d 852, 855 (8th Cir. 1999)). The DOC ensures litigation cannot even be begun while in SEG. The DOC's conduct has shown Petitioner will again and again be punished when no rule has been violated, and that they will utilize each instance to further cripple his access to the courts and harm his court cases.

Petitioner asks this court to rule the exception applies even when petitioner is prevented from filing while in SEG.

This is an important question on which the Supreme Court should rule and the resolution has nationwide impact.

2. Did Court error by holding his petition was moot?

The Minnesota Court of Appeals rejected my Petition for Writ of Habeas corpus as moot.

Mootness is flexible discretionary doctrine, and generally requires situation arise rendering Court "unable to grant effectual relief". *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005); *State v. Barrientos*, 837 N.W.2d 294, 304 (2013). Crucial question for if case is moot is "whether granting a present determination of the issues will have some effect in the real world." *Abdulhaseeb v. Calbone*, 600

F.3d 1301, 1303, 1311 (10th Cir. 2010). As the following argument will show, meaningful relief can still be granted.

a. Appeal not moot when collateral consequences attach to judgment. *In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999).

> *Adult Facilities OFFENDER HANDBOOK* (2006 and 2011) page 5: "Repeated minor violations may result in a major penalty." Referencing DOC Policy 303.010.
>
> *DOC Policy 303.010(H)(3)(b)*: Hearing officer determines what penalty is imposed on completion of hearing. Penalty based on seriousness of violation, presence of aggravating/mitigating factors, and offender's disciplinary record.
>
> *St. Cloud Facility Handbook* page 13: "All formal discipline will remain a part of your discipline file forever." DOC Policy 303.010 supports this assertion.
>
> *DOC Policy 303.010(K)*: 1) Original notice of violation and hearing findings retained in offender's base file, unless hearing officer dismisses all charges (in which case neither notice or findings are placed in base file). Copies must be retained in offender's discipline unit file whether charges are dismissed or not. 2) All notices of violation and dispositions, even if withdrawn or dismissed, are entered into correctional operations management system (COMS) for statistical purposes.

Discipline **will** have collateral consequences for rest of Petitioner's life. *Favors*, 2013 U.S. Dist. LEXIS 11230, 2013 WL 4052668 noted discipline was "part of Petitioner's record and could adversely affect any future proceedings, which means that the [discipline] could have collateral consequences for Petitioner in the future." "[C]ase is moot **only if it is shown** that there is no possibility that any collateral legal consequences will be imposed on basis of challenged conviction." (emphasis added) *U.S. v. Walgren*, 885 F.2d 1417 (9th Cir. 1989). There is a "presumption of collateral consequences" and the government has the burden of disproving this presumption. Id. The State has made no effort to prove a lack of collateral consequences and the policies quoted above prove beyond a

doubt that there are collateral consequences that will affect Plaintiff for the rest of his life. This is not speculative, as DOC has repeatedly engaged in retaliatory discipline against Petitioner.

Further, the direct order, which was challenged and is directly linked to the discipline, is still active and has had an adverse impact on Petitioner. It is not speculative.

So the case was not moot.

b. Court can grant relief requested. Nothing prevents Court ruling on habeas petition from 1) declare rules unconstitutional, 2) vacating convictions, 3) expunging it, 4) vacate direct order.

Court may order expungment of DOC records in Habeas proceding. See *State ex rel. Djonne v. Schoen*, 299 Minn. 131; 217 N.W.2d 508; 1974 Minn LEXIS 1425 (Minn. 1974)(Reversed discharge of **writ of habeas corpus**. Remanded with instructions to enter judgment ordering DOC afford appellant hearing on alleged work-release violations or **expunge department's records**.); *State v. C.A.*, 304 N.W.2d 353 (Minn. 1981)(Inherent judiciary authority to order expungment.).

Clearly the Court had power to grant relief.

c. Mootness exception for issues capable of repetition but evading review (*In re Schmidt*, 443 N.W.2d 824, 826 (Minn. 1989); *U.S. v. Sanchez-Gomez*, 798 F.3d 1204, 1204-5, 1206 (9th Cir. 2015) does apply. Cannot file until administrative process exhausted. As explained previously, the DOC cannot prevent filing from SEG.

Note that infringement of personal liberty for even a short period of time "cannot immunize constitutional deprivation" See *Pritchard v. Perry*, 508 F.2d 423, 424, 425 (4th Cir. 1975). "De minimis rule is not a limitation on right of action by individual for

admitted violation of constitutional rights, nor are constitutional rights separable into redressable rights and nonredressable rights, or major and minor unconstitutional deprivations." *Pritchard* at 424, 425.

Mootness doctrine exception applies.

d. Mootness Doctrine Exceptions exist if : a) challenged conduct too brief to be fully litigated prior to cessation or expiration **and** 1) if it is reasonably likely complaining party will be subject to same action again. *Daywitt v. State of MN*, 2015 U.S. Dist. LEXIS 87951 (D.Minn. 2015)(citing *Smith v. Hundley*, 190 F.3d 852, 855 (8th Cir. 1999); *Hickman v. State of Mo*, 144 F.3d 1141, 1141-2, 1143 (8th Cir. 1998)(Exception to mootness doctrine for challenged activity whose very nature is short in duration so it could not be fully adjudicated. "segregation w[ould] normally terminate and the inmate would be returned to the general…population long before a challenge to his segregation…c[ould] be litigated fully." at 1143 (quoting *Clark v. Brewer*, 779 F.2d 226, 229 (8th Cir. 1985))); see also *Roe v. Wade*, 410 US 113, 125 (1973); *Van Bergen v. Minnesota*, 59 F.3d 1541, 1547 (8th Cir. 1995). The DOC ensures litigation cannot even be begun while in SEG and its culture of unconstitutional conduct proves it will violate inmate rights over and over under guise of prison discipline.

Exception to mootness doctrine applies.

e. If *Heck* applies then allowing the DOC to moot habeas relief not only fully suspends the privilege of habeas corpus but also completely suspends the right to petition as well. All of the rights the Supreme Court has claimed inmates retain will be rendered unenforceable.

See *Atwell v. Lavan*, 557 F.Supp.2d 532 (M.D.Pa. 2008)(excessive confinement *Heck* barred until declared invalid). *Heck* even applies when Plaintiff is no longer in custody. *Parks v. Dooley*, 2011 U.S. Dist. LEXIS 23189 (D.Minn. 2011)(referencing *Entzi v. Redmann*, 485 F.3d 988, 1003 (8th Cir. 2007)); *Bronowicz v. Allegeny County*, 804 F.3d 338, 345 n. 12 (3rd Cir. 2015) (Even a plaintiff who has never been incarcerated and who has no recourse under habeas is subject to *Heck*.). State Habeas corpus is only remedy to challenge discipline, which must be overturned before claims can be raised in federal lawsuit. See *Heck v. Humphrey*, 512 US 777 (1994). Federal complaints seeking redress for things related to prison discipline fail if they have not first overturned conviction. *Bronowicz v. Allegeny County*, 804 F.3d 338, 339,344, 344-5 (3rd Cir. 2015); *Favors v. Hoover*, 2014 US Dist. LEXIS 140714 (D. Minn. 2014); *Wilkinson v. Dotson*, 544 US 74, 82 (2005); *Edwards v. Balisok*, 520 US 641 (1997); *Portley-El v. Brill*, 288 F.3d 1063 (8th Cir. 2002); *Case v. Pung*, 413 N.W.2d 261,262 (Minn.App.1989)(Petitioner has burden to show that he was confined in violation of fundamental constitutional rights). Many cases exist where relief has been denied due to *Heck*.

f. Relief is not moot where "the resumption of the challenged conduct…depend[s] solely on the defendants' capricious actions by which they are 'free to return to [their] old ways.'" *Jones v. Federal Bureau of Prisons*, 2010 U.S. Dist. LEXIS 78 912 (D.Minn.)(quoting *Steele v. Van Burden Public School Dist.*, 845 F.2d 1492, 1494 (8th Cir. 1988)(quoting *Allen v. Likins*, 517 F.2d 532, 535 (8th Cir. 1975))). See also *City News & Novelty, Inc. v. Waukesha*, 531 US 278, 284 n.1 (2001).

g. Summary

Petition was not moot. Failure to approve this request tells DOC and Courts that they are free to violate the rights of prisoners so longer as they do so under the guise of prison discipline.

3. Did Court error in equating mootness with frivolousness in this case?

Given the facts of the case, Petitioner believes it was unjust for the district court and court of appeals to equate mootness with frivolousness. Even if this court finds that relief is moot, Petitioner asks this court to look at the facts of the case. The prior case did not unequivocally say that there is no habeas petition possible for prison discipline. In fact, its ruling that there were no collateral consequences when collateral consequences had not been disputed (and thus were not even an issue argued on appeal) seemed to imply that if he had argued policy created collateral consequences that it would not have been considered moot by the court. Which he has done. The facts of this case were also different. Part of the 1st case was due to the Court's finding that the discipline was warranted (while ignoring the actual arguments made). In this case the rule definitions facially are unrelated to the behavior that triggered the discipline. It is a case where no rational person could believe the given behavior was covered by the rules in question. Though similar, the two cases differ considerably. It was reasonable for the Petitioner to not believe the court's rulings on the prior

petition were a bar to the current. Therefore it is unjust to label it frivolous even if the court decides relief is moot.

REASONS FOR GRANTING THE PETITION

S.Ct.R. 10 states a non-exhaustive list of reasons for which review may be granted. This list includes:

(a) has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court,
(b) state court of last resort decided a federal issue contrary to another state court of last resort or a US Circuit Court,
(c) state court decided a federal question [1] that has not been, but should be settled by this Court, or [2] in a way that conflicts with relevant decisions of this court.

It further states the list is "neither controlling nor fully measur[es] the Court's discretion". I would argue that any time the Federal Constitution has been violated this Court has a duty to see that violation is redressed and in fact that upholding the Constitution is the primary duty of this Court.

1. Was it error to not consider the DOC's role in filing delays when ruling Writ of Habeas corpus moot?

The prisons of this nation contain thousands of inmates at the mercy of corrections officials.

It is undisputed that the DOC controls whether an inmate can file from within SEG. To let them moot habeas actions would be to render void all of the rights this court has said inmates retain. It rewards unconstitutional conduct by allowing them to get away with even more unconstitutional conduct.

Failure of this Court to act leaves inmates without remedy for unconstitutional discipline.

Important question upon which Supreme Court should rule. See *S.Ct.R. 10(a)+(b)+(c)*.

2. Did Court error by holding his petition was moot?

The prisons of this nation contain thousands of inmates at the mercy of corrections officials. Most prison discipline is too short in nature (and your access to the courts too impeded during it) for an inmate to seek relief during it. It is also clear that the collateral consequences of the discipline are far reaching and long lasting. Clearly exceptions to the mootness doctrine apply.

Failure of this Court to act leaves inmates without remedy for unconstitutional discipline.

Important question upon which Supreme Court should rule. See *S.Ct.R. 10(a)+(b)+(c).*

3. Did Court error in equating mootness with frivolousness in this case?

The prisons of this nation contain thousands of inmates at the mercy of corrections officials.

Labeling an action as frivolous is a very severe step. Petitioner had no reason to believe that the present case would be labeled as moot. It would be an injustice to label a pro se prisoner's petition that was filed in good faith as frivolous solely because of a determination of mootness, particularly given that the other party was the cause of the mootness, not any lack of due diligence on Petitioner's part.

Important question upon which Supreme Court should rule. See *S.Ct.R. 10(a).*

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Joel Marvin Munt

Date: January 3, 2019