No. 18-9052

IN THE

SUPREME COURT OF THE UNITED STATES

NEIL GRENNING,

Petitioner,

v.

MAGGIE MILLER-STOUT, et al.,

Respondents

ON PETITION FOR REHEARING

Neil Grenning - Petitioner
Airway Heights Corrections Center
P.O. Box 2049 - 872019
Airway Heights, WA 99001-2049

I. GROUNDS

Petitioner, Neil Grenning, respectfully moves this Court for Rehearing of his Petition for Writ of Certiorari, review of which was denied June 10, 2019.[1] Petitioner brings this motion under Rule 44 of the Supreme Court Rules, based on other substantial grounds not previously presented, identification of a number of varying federal authorities where the foot-candle lighting level for daytime use is the same as defendants in the instant case claim doesn't violate the Eighth Amendment for nighttime (sleeping) use.

II. ARGUMENT

Petitioner recognizes that his appeal to this Court was destined for rejection inasmuch as he appealed to the Court to establish a "standard" for nighttime lighting in prisons, an expectation unlikely to be entertained. The United States Supreme Court, despite varying foot-candle measurements nation wide, and the absence of guidance, would not create a 'bright-line' rule that might more easily create challengable lighting conditions. However, it is not beyond this Court's authority to declare what does and does not violate the Eighth Amendment without creating such a rule.

The Second Circuit articulated this concern well. The court reversed a lower court mandate for a a 20 foot-candle remedy where it could not identify if that court held a "belief that the ten foot-candle standard violates the Constitution...[which would have] been impermissible, as the Constitution does not mandate any particular foot-candle standard; it only places outside limits

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1 Petitioner was unable to find any resources or guides at his institution's law library on how to format Rule 44 Rehearing motions, and hopes this format is acceptable to the Court.

on actual lighting conditions." Benjamin v. Fraser, 343 F.3d 35, 55 (2nd Cir. 2003).

It is before this Court, therefore, not to declare bright-line rules, but to place outside limits on lighting conditions in conformance with the Constitution's Eighth Amendment.

As the many case cited in petitioner's Writ of Certiorari show, courts across the country have found Constitutional low-level night-lighting in prisons that registers foot-candle measurements around 1 foot-candle or less. The cases below illustrate that 20 foot-candles is generally considered a desirable standard for daytime use. Squarely in between these two standards are defendants' 9.9 to 12.6 foot-candle lighting in the SMU, which they claim to employ for nighttime sleeping use.

Uncontested by defendants is the sole medical testimony in trial that it "would be cruel and inhumane" to force plaintiff to sleep in the SMU lighting conditions, and that inmates would continue to suffer sleep deprivation even at 7 to 8 foot-candles. Shown a photo of the SMU cell with only the 24-hour light on, Dr. Aronsky testified, "I was shocked by this photo. I was horrified that a person would be placed in this type of environment and be expected to sleep."

Petitioner can find no case where any court in the country has addressed night lighting that exceeded 2.1 foot candles (Shanks v. Litscher, 2003 U.S. Dist. LEXIS 24590 at *11 (W.D.Wis. 2003)(between 1.6 and 2.1 foot-candles)). Thus in the spectrum between day-use light (20 foot-candles) and sleeping light (around 1 foot-candle), this Court could easily conclude 7 to 12 foot-candles violates the Eighth Amendment without declaring a standard, based on uncontested medical testimony of sleep deprivation and harm.

Alternative to arguing what is too much for nighttime lighting, the following cases show what various prisons deemed acceptable daytime lighting. In each, with varying results, courts ruled the light level falling in the middle of 1 and 20 foot-candles was not suitable for daytime activities, and invariably ordered more light. If more light is required to read by, then certainly a court can also order less light to sleep under to avoid the harm of sleep deprivation. See: Gates v. Cook, 376 F.3d 323, 334-35 (5th Cir. 2004) ("While 20 foot-candles is the appropriate level of lighting for the cells [in Unit 32], the maximum foot-candle measured by Russell's expert was seven or eight, with the typical cell being in the 2-4 foot-candle range."); Hendrix v. Faulkner, 525 F.Supp. 435, 487 (N.D.Ind. 1981)(prison considered acceptable daytime lighting that measured between 3 and 15 foot-candles); Russell v. Johnson, 2003 U.S.Dist. LEXIS 8576 (N.D.Miss. 2003)(prison considered 7 to 8 foot-candles to be daytime use lighting, and some measures for daytime activity lighting went as low as 2 to 4 foot-candles); Ramos v. Lamm, 485 F.Supp. 122, 135 (D.Co. 1979)(prison used 10 foot-candles for daytime activity, considered impractical "for close-eye tasks"); Toussaint v. McCarthy, 597 F.Supp. 1388, 1397 (N.D.Cal. 1984)(7 to 15 foot-candles of cell illumination for daytime tasks); Benjamin v. Fraser, 343 F.3d 35, 55 (2nd Cir. 2003)(10 foot-candles used by prison for daytime use tasks); Palmigiano v. Garrahy, 443 F.Supp. 956, 961 (D.RI. 1977)(lighting between 10 and 15 foot-candles used by prison for daytime use).

While in each case (apart from Benjamin) the court considered the lighting level insufficient for daytime tasks, and therefore violative of the Eighth Amendment, all represent cases where a prison deemed light levels as low as 4 foot-candles, and regularly 7 to 10, to be sufficient for daytime use. How

can light levels presumed by prison officials sufficient for daily waking activities ALSO be low enough for sleeping, as defendants in the instant case argue?

The same 7 to 10 foot-candles exampled above for daytime use are those defendants here argue are low enough to sleep under. This cannot be. The above cases amply demonstrate the rift of logic here.

If a court can declare unconstitutional for daytime use middle-ground light levels, why must they be averse to finding unconstitutional the same median light levels for sleeping under, particularly with undisputed medical testimony such levels cause harm and sleep deprivation?

This Court does not have to declare that any nighttime light level over 2 foot-candles violates the Constitution (though if it did, the ruling would net only one prison in America: the Airway Heights Corrections Center); but it can easily grant Writ of Certiorari and rule that 7 to 12 foot-candles is too much.

"It has been known since 1500 at least that deprivation of sleep is the most effective torture". Ashcraft v. Tennessee, 322 U.S. 143, 150 FN6, 64 S.Ct. 921, 88 L.Ed. 1192 (1944)(cited in conjunction with lighting as sleep deprivation torture in Sheperd v. Ault, 982 F.Supp. 643, 648 (N.D.Id. 1997)). Why should this Court acknowledge such understanding, and yet allow sleep deprivation go unchecked? Why condone a level of lighting for daytime use as acceptable for sleeping under? What is the rationale for abdicating the role of defender against the tools of torture we excoriate other nations for employing?

Granting Writ of Certiorari takes a stand against this hypocrisy.

III. CONCLUSION

The right to petition for rehearing, after denial of writ of certiorari, "is not to be deemed an empty formality as though such petitions will as a matter of course be denied." Flynn v. United States, ___ U.S. ___, 75 S.Ct. 285, 99 L.Ed. 1298, 1299 (1955). On a showing that a substantial matter is to be presented, "appropriate opportunity should be given for doing so." Id.

Writs concerning inmate protections may not get the headlines of corporate or politically charged cases, but they are a critical function of this Court, and one Justice Frankfurter, above, understood. While the 2nd Circuit noted the Constitution does not mandate a particular foot-candle standard, petitioner asks this Court grant certiorari to 'place outside limits on actual lighting conditions,' so that an inmate is not made to sleep in a mostly lit cell anymore than one must be expected to read in a badly lit one. 7 to 12 foot-candles serves neither purpose, and causes sleep deprivation with medically understood certainty. The Court has never said, "This is too much"; grant of ceriorari will show the Court comprehends the gravity of the pernicious ways prisons in America exercise deliberate lighting torture and sleep deprivation.

Respectfully submitted this 3 day of July, 2019.

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CERTIFICATION BY UNREPRESENTED PETITIONER
UPON MOTION FOR REHEARING

I, Neil Grenning, declare and certify the following:

1. I am the petitioner in the above cause, over the age of eighteen, and competent to declare in these matters.

2. I make this certification pursuant to Rule 44(2) of the Supreme Court Rules.

3. I received this Court's Order Denying Writ of Certiorari on June 14, 2019, which this Court signed on June 10, 2019.

4. My petition to the Court focused on the argument that it violated the Eighth Amendment for defendants to employ a nighttime use light in excess

of 7 foot-candles where undisputed medical testimony showed it causes sleep deprivation and related serious harms.

5. Review of cases across district and circuit courts showed a repeating use of the precise lighting level used by prisons for daytime use activities, which presented the hypocrisy that a daytime light level cannot also serve as a nighttime sleeping level; this demonstration presented a new argument that might better fit with what the Supreme Court can understand in terms of declaring a light level to be unconstitutional without creating a bright-line rule.

6. I believe this meets the Rule 44(2) clause of "other substantial grounds not previously presented."

7. I present this motion for rehearing in good faith, and not to delay any court process.

I declare that the foregoing, in accordance with the laws of the State of Washington, is true and correct to the best of my knowledge.

DATED this 3 day of July, 2019.

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