

No. 18-9165

**ORIGINAL**

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED

APR 18 2019

OFFICE OF THE CLERK

ROBERT WARREN — PETITIONER  
(Your Name)

vs.

BOBBETTE RAMAGE, et al., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. District Court, Central District of Illinois  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Robert Warren, #B50436  
(Your Name)

P.O. Box 1700, Hill Corr. Ctr.  
(Address)

Galesburg, Illinois 61401-1700  
(City, State, Zip Code)

(Phone Number)

## QUESTIONS PRESENTED

1. Whether or Not prison authorities failure to follow state law procedures for rule making denies due process.
2. Whether or Not Supreme Court cases on the same issue are in direct conflict with each other as to what due process is due in prison disciplinary proceedings.

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#### 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:

The petitioner is Robert Warren, a prisoner at Henry Hill Correctional Center in Galesburg, Illinois.

The respondents are Bobbette Ramage, a correctional officer at Henry Hill Correctional Center, James Carothers, a correctional Lieutenant at Henry Hill Correctional Center, Anthony Buckley, a correctional Lieutenant at Henry Hill Correctional Center, Gary Millard, a Correctional Lieutenant at Henry Hill Correctional Center, and Leslie McCarty, Chairperson, Administrative Review Board, Springfield, Illinois.

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	5
REASONS FOR GRANTING THE WRIT .....	8
CONCLUSION.....	11

## INDEX TO APPENDICES

APPENDIX A Decision of federal Court of Appeals.

APPENDIX B Decision of federal district Court.

APPENDIX C Decision of federal district Court rehearing.

APPENDIX D Decision of federal Court of Appeals rehearing.

APPENDIX E Incident Report by Corr. Ofc. McCune, 1/24/15.

APPENDIX F Disciplinary Report by Anthony BUCKLEY, 2/3/15.

APPENDIX F-1 Adjustment Committee Final Summary report.

APPENDIX G Appellate courts final order.

CASESTABLE OF AUTHORITIES CITEDPage

<u>Albert v. Sheriff of Harris County, Texas</u> , 937 F.2d 984, 1001 (5 <sup>th</sup> Cir. 1991) . . . . .	8
<u>Benjamin v. Malcolm</u> , 803 F.2d 46, 50-52 (2 <sup>nd</sup> Cir. 1986) . . . . .	8
<u>carey v. Piphus</u> , 435 U.S. 247, 259, 98 S.Ct. 1042 (1978) . . . . .	11
<u>Castro v. McCaughtry</u> , 176 Wis.2d 571, 500 N.W.2d 277, 282 (Wis. 1993) . . . . .	8
<u>Cumo v. Koehler</u> , 480 U.S. 910 (1987) . . . . .	8
<u>Cleveland Board of Education v. Loudermill</u> , 470 U.S. 532, 541, 105 S.Ct. 1487, 1492 (1985) . . . . .	12
<u>Daniels v. Williams</u> , 474 U.S. 327, 330-31, 106 S.Ct. 662 (1986) . . . . .	11
<u>Hall v. Unknown Agents of New York State Dept' of corr. services</u> , 825 F.2d 642, 645-46 (2 <sup>nd</sup> Cir. 1987) . . . . .	8
<u>Hudson v. Palmer</u> , 468 U.S. 517, 104 S.Ct. 3194 (1984) . . . . .	11
<u>Mendoza v. Blodgett</u> , 960 F.2d 1425, 1431-33 (9 <sup>th</sup> Cir. 1992) . . . . .	8
<u>Parratt v. Taylor</u> , 451 U.S. 527, 537, 101 S.Ct. 1908 (1981) . . . . .	11
<u>Quinn v. Nix</u> , 983 F.2d 115, 118 (8 <sup>th</sup> Cir. 1993) . . . . .	8
<u>Richard v. Lindsay</u> , 112 S.Ct. 1994 (1992) . . . . .	8
<u>Smith v. Shettle</u> , 946 F.2d 1250, 1253 (7 <sup>th</sup> Cir. 1991) . . . . .	8
<u>Spruette v. Walters</u> , 753 F.2d 498, 514 (6 <sup>th</sup> Cir. 1985), cert. denied, 474 U.S. 1054 (1986) . . . . .	9
<u>Twining v. New Jersey</u> , 211 U.S. 78, 110-11, 29 S.Ct. 14, 24-25, 53 L.Ed. 97 (1908) . . . . .	9, 11-12
<u>United States v. State of Michigan</u> , 680 F. Supp. 928, 998 (W.D. Mich. 1987) . . . . .	8
<u>Wolff v. McDonnell</u> , 418 U.S. 539, 94 S.Ct. 2963 (1974) . . . . .	9, 10, 12
<u>Zinermon v. Burch</u> , 494 U.S. 113, 110 S.Ct. 975 (1990) . . . . .	9, 10, 11, 12

Statutes and RulesPage

U.S. Constitution Amendment XIV.....	3,6,8
U.S. Constitution Amendment XIV Section 1 and 5.....	3
42 U.S.C. Section 1983.....	3-4,10,11
ILL. Admin. Reg. (A.R.) 804 (II)(G)- (II).....	4,6

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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 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 United States district court appears at Appendix B 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 decided my case was 2/20/19.

[ ] 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: 3/18/19, and a copy of the order denying rehearing appears at Appendix "O".

[ ] 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 \_\_\_\_\_.

[ ] 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).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment XIV to the United States constitution which provides:

Section 1. ALL persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

Section 5. The Congress shall have power to enforce, by appropriate legislation the provisions of this article.

The Amendment is enforced by Title 42, section 1983, United States Code:

Every person who, under color of any statute, ordinance, regulation, custom or usage of any State, Territory, or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws shall be liable to the party injured in an action at law, suit in equity,

or other proper proceeding for redress. For the purposes of this section, Any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

ILLinois Administrative Regulation (A.R.) 804(II)(G)-(II), states:

The Adjustment Committee shall decide whether or not the resident committed the chargeable offense based upon the evidence it admits at the hearing. ALL evidence submitted, including all oral and written statements, shall be summarized in the written record prepared by the committee. The committee members shall specifically refer to the evidence which convinced them to decide the resident did or did not commit the chargeable offense. A short explanation shall be stated of why information purporting to exonerate the resident was discounted - if the resident was found in violation. It will not be sufficient for the committee's decision to simply adopt and copy the exact wording of the resident Disciplinary report. In addition, the disposition of the hearing, the disciplinary action, taken, the duration of a Segregation placement, as well as the reasons for the disciplinary action and the length of the segregation placement shall be specified in the written record. The written record must be signed by all the members of the Adjustment Committee.

## STATEMENT OF THE CASE

The petitioners' pro se complaint alleges that he was found (wrongfully) guilty for a serious disciplinary offense by prison officials, (Respondents), that he couldn't have done, and that they had acted with deliberate indifference regarding the investigation, and procedures of I.D.O.C. denying petitioner due process, and that petitioner had spent in segregation 363 for an assault, going to segregation on 1/24/15 and released on 1/22/16. (days).

During the investigation, respondents, Ramage and carothers had interviewed petitioner, where carothers had read petitioners rights under miranda. Respondents, Ramage and Buckley interviewed inmates and took statements from confidential sources all claiming petitioner had assaulted inmate Kelliher. An incident report by officer, McCune, indicating that several inmates had told him that inmate Kelliher had passed out and fallen down. putting the reliability of the informants into question. Respondent, Buckley wrote petitioner a disciplinary report for assaulting any person, inmate Kelliher. solely on the statements of the informants.

The reports all went to Respondent, Millard when petitioner heard his ticket. Millard read the entire ticket, petitioner had pleaded not guilty. "I did not hit anyone". Millard had found petitioner guilty based on the informants statements in the ticket, and sentenced him to One year Segregation, Loss of privileges, C-grade, restitution, and six months good time revoke. The petitioner wrote his grievances on not receiving a fair hearing by the adjustment committee. Petitioners'

grievances were heard and reviewed by respondent, McCarty who denied them, and approved the actions by the committee in her report. Petitioners good time was restored by the Prisoner Review Board. (P.R.B.).

In the District Court, petitioner raised that he was entitled to a written statement as to the evidence relied upon and the reasons for the disciplinary action taken by the Adjustment Committee. Yet, this was not done. The Adjustment Committee simply had adopted, and incorporated by reference, the entire disciplinary report, issued by Buckley, into the "basis for decision" in the Adjustment Committees' final Summary Report; violating Administrative Regulation (A.R.) 804 (II) (G)-(II). The district court had granted Summary Judgment to defendants on the following grounds:

\* Plaintiff's placement in segregation before being found guilty by the Adjustment Committee did not implicate a protected Liberty interest. (p.9).

\* The court finds that plaintiff received the required due process protections. therefore, any alleged misconduct on part of defendants prior to the hearing fails to state a claim. (p.10).

\* State regulations do not establish what procedures satisfy due process under the fourteenth Amendment. (p.10).

\* The court concludes that Seventh circuit case law precludes any finding of liability regarding defendant, McCarty for her role in reviewing and responding to plaintiff's grievances. (p.11).

\* The court finds that the adjustment committee finding of guilt with some evidence. (p.14).

\* The court finds that the H.C.U. staff's initial assessment does not directly undercut the reliability of the confidential sources. (p.15).

\* The court finds that the adjustment committee clearly informed plaintiff of the evidence on which they relied and the reasons for their finding of guilt. (p.16).

and terminated the case. Petitioner filed a motion to alter or amend judgment, said motion was denied, and the court also denied petitioners' motion to proceed in forma pauperis on appeal, certifying that the appeal is taken in bad faith.

The appellate court had denied petitioner's Affidavit accompanying motion for permission to appeal in forma pauperis and, memorandum in support of PLRA motion for leave to proceed on appeal in form pauperis. The court also denied petitioner's motion to reconsider en banc. The appellate court issued its mandate order dismissing petitioner's appeal for failure to pay the required docketing fee.

Petitioner now petitions this honorable court for writ of Certiorari.

\* This statement is as concise as petitioner can get.

Respectfully,

## REASONS FOR GRANTING THE PETITION

### A. Conflicts with Decisions of Other Courts

The holding of the courts below are in serious conflict that "state regulations do not establish what procedures satisfy due process under the fourteenth amendment" is directly contrary to the holding of the seventh circuit in Smith v. Shettle, 946 F.2d 1250, 1254 (7<sup>th</sup> cir. 1991). In addition, the appellate courts are in conflict as well. Mendoza v. Blodgett, 960 F.2d 1425, 1431-33 (9<sup>th</sup> cir. 1992), cert. denied, 113 S.Ct. 1005 and 113 S.Ct. 1027 (1993); Quinn v. Nix, 983 F.2d 115, 118 (8<sup>th</sup> cir. 1993) ("Guidelines for determining what are and are not acceptable hair styles" create a liberty interest) see Hall v. Unknown Agents of New York State Dept. of Correctional Services, 825 F.2d 642, 645-46 (2<sup>nd</sup> cir. 1987); also CasteeL v. McCaughy, 176 Wis.2d 571, 500 N.W.2d 277, 282 (Wis. 1993) (similar reasoning applied to "Temporary Lock up" procedure), cert. denied, 114 S.Ct. 327 (1993) Albert v. Sheriff of Harris County, Texas, 937 F.2d 984, 1001 (5<sup>th</sup> cir. 1991) cert. denied sub nom. Richard v. Lindsay, 112 S.Ct. 1994 (1992); Benjamin v. Malcolm, 803 F.2d 4650-52 (2<sup>nd</sup> cir. 1986), cert. denied sub nom. Cumo v. Koehler, 480 U.S. 910 (1987) and United States v. State of Michigan, 680 F. Supp. 928, 998 (W.D. Mich. 1987) (court can order state to comply with state law "when noncompliance with state law implicates... constitutional rights" and "when compliance with state law is

the most effective remedy for any specific unconstitutional conditions.") and whether state law creates a liberty interest. See Spruette v. Walters, 753 F.2d 498, 514 (6<sup>th</sup> Cir. 1985), cert. denied, 474 U.S. 1054 (1986).

### **B. Importance of the Question Presented.**

This case presents a very fundamental question of the correct interpretation of Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963 (1974) and Zinermon v. Burch, 494 U.S. 113, 110 S.Ct. 975 (1990). Which both cases are in direct conflict with Twinning v. New Jersey, 211 U.S. 78, 29 S.Ct. 14 (1908), on the very same issue, cited in Smith, at 1253.

The question presented is of very great public importance because it affects the operations of prison systems in all fifty states, the District of Columbia, and hundreds of city and county jails, and hospitals. In view of the large amount of litigation over prison disciplinary proceedings, guidance on the question is also a very great importance towards the judiciary system as a whole. In addition, the question is of very great importance to prisoners, because it affects their ability to receive fair decisions in proceedings that may result in months or even years of added incarceration or harsh punitive confinement. The issue importance is also enhanced by the fact that the Seventh Circuit Court of Appeals in this case have seriously misinterpreted this court's decisions in Wolff, and Zinermon.

This Court held in Wolff, that due process sets limits on prison disciplinary hearings when a state has provided by statute or regulation certain substantive rights

regarding that hearing. One of these due process protections is "a written statement of the factfinders as to the evidence relied upon and the reasons for the disciplinary action taken." WOLFF, at 563, 94 S.Ct. at 2978. The considerations underlying this requirement, according to the court, included protection from a prisoner from collateral consequences of disciplinary action and encouragement of fair administrative decision making:

written records of proceedings will...  
protect the inmate against collateral  
consequences based on a misunderstanding  
of the nature of the original proceeding. Further,  
as to the disciplinary action itself, the provision  
for a written record helps to ensure that  
administrators, faced with possible scrutiny by  
state officials and the public, and perhaps even  
the courts, where fundamental Constitutional  
rights may have been abridged, will act fairly.  
Without written records, the inmate will be at a  
severe disadvantage in propounding his own  
cause to or defending himself from others.

*Id.* at 565, 94 S.Ct. at 2979.

This Court held in ZINERMON, that the Due process Clause also encompasses a third type of protection, a guarantee of fair procedure. A 3 1983 action may be brought for a violation of procedural due process, but here the existence of state remedies is relevant in a special sense. In procedural due process claims, the deprivation by state action of a constitutional protected

interest in "Life, Liberty, or property" is not itself unconstitutional; what is unconstitutional is the deprivation of such an interest without due process of law. Parratt v. Taylor, 451 U.S. 527, 537, 101 S.Ct. 1908 (1981) (overruled in part not relevant here, by Daniels v. Williams, 474 U.S. 327, 330-31, 106 S.Ct. 662 (1986)) and Hudson v. Palmer, 468 U.S. 517, 104 S.Ct. 3194 (1984), carey v Piphus, 435 U.S. 247, 259, 98 S.Ct. 1042 (1978) ("Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of Life, Liberty, or property").

The constitutional violation actionable under § 1983 is not complete when the deprivation occurs; it is not complete unless and until the state fails to provide due process. Therefore, to determine whether a constitutional violation has occurred, it is necessary to ask what process the state provided, and whether it was constitutionally adequate.

This inquiry would examine the procedural safeguards built into the statutory or administrative procedure of effecting the deprivation, and any remedies for erroneous deprivations provided by statute or tort law.

Zinermon, at 125-27, 110 S.Ct. 975.

The District Court's reasoning that "the barebones constituents of fair procedure and therefore of due process are, (besides jurisdiction), notice and an opportunity to be heard, is unconvincing. It relied on a case from the Supreme Court that does contain that holding, cited in Twining v. New

Jersey, 211 U.S. 78, 110-11, 29 S.Ct 14, 24-25, 53 L.Ed. 97 (1908). However, Twining, based its conclusion on 'uncontradicted affidavits' that the inmates, in that case, received both. To the contrary, Wolff and Zinermon, held that due process sets limits on prison disciplinary hearings when a state has provided by statute or regulation certain substantive rights regarding that hearing. Wolff, 563-65, 94 S.Ct. 2978-2979; Zinermon, 125-27, 110 S.Ct. 975. The only thing the state law must do is create an entitlement. Cleveland Board of Education v. Loudermill, 470 U.S. 532, 541, 105 S.Ct. 1487, 1492 (1985). Furthermore, the Smith court did not reach whether or not Indiana law created a liberty interest. Smith, at 1254. This standard requirement includes protection for a prisoner from collateral consequences from disciplinary proceedings, and encourage of fair administrative decision making, enforcing their own laws.

The district court seriously misinterpreted Wolff and Zinermon, by failing to determine whether or not state law had entitled petitioner to a liberty interest. The court should correct this misinterpretation and make it clear, that state law can create a liberty interest, when entitlement restricts a person's actions. This application keeps the integrity of the judiciary system, at the same time, promotes the safety and security of constitutional rights stemming from constitutional law.

## CONCLUSION

For the foregoing reasons, certiorari should be granted in this case.

date: April 25<sup>th</sup>, 2019.

Respectfully submitted,  
Robert Warren  
Robert Warren  
#B50436  
Henry Hill Corr. Ctr.  
P.O. Box 1700  
Galesburg, Illinois  
61401-1700

Petitioner  
Pro se