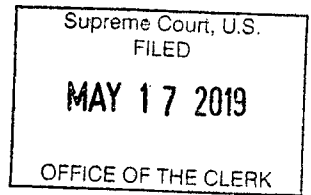


No. 18-9777



IN THE
SUPREME COURT OF THE UNITED STATES

Earnest S. Harris — PETITIONER
(Your Name)

vs.

E. McCumsey — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States 9th Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

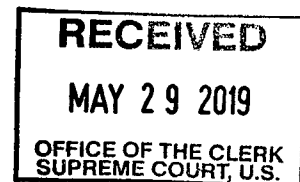
PETITION FOR WRIT OF CERTIORARI

Earnest S. Harris
(Your Name)

4001 King Avenue; P.O. Box 3476
(Address) ○

Corcoran, Cd. 93212
(City, State, Zip Code)

2/A
(Phone Number)



ORIGINAL

QUESTION(S) PRESENTED

Did respondent E. McCumsey Senior Law Library at Pelican Bay S.H.U. deny Petitioner Earnest S. Harr Access to the Court.

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:

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TABLE OF AUTHORITIES CITED

CASES: West v. Atkins, 487 U.S. 42, 48 (1988). PAGE NUMBER
Lewis v. Casey 518 U.S. 343, 350 (1996) 6[#], 8, 11[#]
Bounds v. Smith, 430 U.S. 817, 812 (1977) 6[#], 8, 11[#]

STATUTES AND RULES

42 U.S.C. § 1983

OTHER

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☒ is unpublished.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☐ is unpublished.

☒ 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☒ is unpublished.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 _____.

☒ 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 ND State Court.
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

Do prisoners housed inside Pelican Bay S.H.U. have a constitutional right to access to the High Court ^{without} being hindered by the Pelican Bay S.H.U. Law Librarian. Whom threw away one of Petitioner's writ of Certiorari's, withheld another writ of Certiorari 3rd months causing Petitioner to miss the deadline to file it, and withheld Petitioner's legal transcripts, that Petitioner needed as evidence to prove a claim to a non-frivolous litigation.

STATEMENT OF THE CASE

From 8.9.95 until 5.8.15 Petitioner was housed in C.D.C.R. Pelican Bay S.H.U. From 7.30.09 until 6.4.13 Petitioner had 4[#] constitutional violations involving being denied access to the Court by the Defendant.

The Defendant E. McCumsey was the Senior Librarian for C.D.C.R. Pelican Bay Prison from 2007 until December 2016. Defendant's job entitles supervising the entire Librarian and Law Library for the Prison. Which includes photocopying and mailing out all legal mail.

Petitioner and his Attorney, J. Edward Jones were in litigation in the United States Ninth Circuit Court of Appeals case no. 08-15718; D.C. 04-CV-01906-FCD, which was denied by the Court (Appendix C). After the denial, Petitioner attempted to file a timely writ of Certiorari in the United States Supreme Court. Appendix D shows a printout of Petitioner's request for photocopies and mailouts while housed in Pelican Bay S.H.U. Box 42[#] 7.30.09 shows that writ was photocopied and given to the Defendant for mailout. As of today, the Petitioner has not received any notification from the United States Supreme Court that they had received the writ of Certiorari. Leaving Petitioner to believe the Defendant threw the writ away instead of mailing it to the United States Supreme Court.

On this claim the United States Northern District Court abused its discretion on error stating that Appendix D Box 42 shows that the Defendant hadn't delayed Petitioner in filing the writ of Certiorari. The error in the judgement is the fact the Petitioner never stated to this claim that Defendant delayed the filing of the writ. What Petitioner claim is "the Defendant was given the writ to mailout to the United States Supreme Court and the Court never notified Petitioner that the Court had received it."

The District Court Judge misinterpreted Petitioner's claim. Defendant never mailed it out. The Second claim occurred after Petitioner was denied in the United States 9th Circuit Court of Appeals case no. 08-15965, D.C. 06-CV-06231 and Petitioner attempted to file a writ of Certiorari in the United States Supreme Court. Appendix D Box 37[#] shows the date the photocopies was requested by Petitioner but the date the writ was received and photocopied is blank. (this chart was provided by Defendant in the District Court). The reason it is blank, is that, Defendant withheld the writ until 3.6.09 from 11.14.08, that's 84[#] days, causing Petitioner to miss the deadline to file the writ in the U.S. Supreme Court, and the writ was denied Appendix E.

The District Court Judge never answer whether Petitioner was denied access to the court by the Defendant for withholding Petitioner's writ over 80 days causing Petitioner to miss the deadline to file in the United States Supreme Court.

Statement of The Case

The third claim is in regards to Petitioner being in litigation and sent transcripts, (which was Petitioner's evidence to a claim) to the Law Library. Petitioner explained to Defendant that it was a deadline and Petitioner needed the Court transcripts (evidence) back before 9.1.02. Defendant withheld the Court transcripts for three weeks causing Petitioner to miss the deadline to file the Petition with the Court transcripts which was the evidence to prove Petitioner's claim. So, Petitioner had to file the Petition without the evidence causing Petitioner to lose the case.

Petitioner filed a 602 Prison Grievous Appeals case no. PBSP-12-02906. Within the 602 it's stated that Defendant was in charge of photocopies and legal mail outs. Appendix F.

This type of incident occurred again on 6.11.13 this time the Defendant lost Petitioner's Court transcripts (evidence) that was to be used to prove Petitioner's claim. The Court transcripts was lost by Defendant for over 40 days, causing Petitioner to miss another deadline, and file a petition without the evidence to prove the claim, resulting in petitioner losing the case.

Petitioner file grievous Appeal 602 on this issue as well, being that the first grievous did not solve the problem with the Defendant losing legal transcript given to Defendant to photocopy, or mail out. Case no. PBSP-13-01578. Appendix F.

In regard to Prison grievous case no. PBSP-12-02906, and case no. PBSP-13-01578. The District Court judge error in attempting to try and determine which litigation case PBSP-12-02906 and PBSP-13-01578 prison grievous refers to. Several litigations were filed upon the District Court by Petitioner: Harris v. Brown;

Harris v. Horel; Harris v. Horel (II); Harris v. Lewis; Harris v. Harold; Harris v. Locker; As well as California Supreme Court citations, California Appeals Court, and Del Norte Co. Superior Court citations. Appendix G.

Instead of trying to determine for himself which case is in regard to prison grievous PBSP-12-02906, and PBSP-13-01578. The Court should have granted Petitioner "leave to amend" and allow

Petitioner to state which case refers to PBSP-12-02906, and PBSP-13-01578. The lower Court judge also error by stating that Petitioner could not cure the quarrel by motion to amend, which was wrong and

Statement of the Case

in error.

Furthermore, the District Court judge error in judgement. The High court has ruled and the lower court must obey, and the District Court refuse to obey the ruling in Bounds v. Smith,; Lewis v. Casey,; Silva v. Di Vittorio,; In ruling on first Amendment Denial of access to the Court claims, which are simple, was a inadequacy in the prison's law library cause Petitioner actual injury. And injury is requirement is, Did the prison law library hinder Petitioner from filing a non-frivolous claim. No case filed upon the District Court by Petitioner was frivolous, or denied as frivolous. The Defendant admitted to losing Petitioner's legal court transcripts (evidence) for three weeks, and ~~seven~~ weeks, which Petitioner claims hinder him in filing a non-frivolous petition. Petitioner is within the means of denying Access to the Court, first Amendment Constitutional violation.

The United States District judge gave two conflicting rulings. On page 10th lines 12th-23th states the Petitioner was denied 1st Amendment Access to the Court by the defendant, Appendix B. Then, the District judge ruled the Defendant was entitled to qualified immunity and Defendant had not violated Petitioner's 1st Amendment right to Access to the Court, lines 3rd-4th page 14th Appendix B. On page 9th lines 19th-21st. The United States District Court ruled the Petitioner stated a recognizable first Amendment claim, but no evidence of injury. Appendix B. Petitioner contends, if Defendant admits to losing Petitioner's legal transcript for 3rd weeks and 7th weeks to a non-frivolous claim, that is injury.

In C.O.C.R.'s title 15 § 3162 which governs photocopies, states in part that to be in compliance with this section all photocopies must be copied and return to inmate within 5th working days. (not 16th days as stated by the Court).

To qualify for qualified immunity, (1) did the conduct violate a constitutional right, (2) was the right established at the time of the incident. The right to access to the Court was clearly established at the time of the incident. And the court ruled that Defendant violated Petitioner's 1st Amendment right to the Court. Defendant is not entitled to qualified immunity.

REASONS FOR GRANTING THE PETITION

The High Court has set the bar for the Lower Courts to rule on in-prison petitions involving Denying access to the Court in cases Bounds v. Smith; Lewis v. Casey; Silva v. Di Vittorio; once the Highest Court determines that the Lower Courts are not obeying by the Higher Court decisions, the High Court must remand the case back to the Lower Court with instructions on how 42 U.S.C. § 1983 claims for being denied access to the Court must be determined and obeyed by.

This petition should not have left the District Court, the Court determined not to grant Petitioner leave for motion to amend, when it should have allowed Petitioner a chance to amend. And the decision to grant qualified immunity does not follow protocol on how it is determined by the High Court. It has two categories to determine if a person is entitled to qualified immunity: (1) Did the conduct violate a constitutional right, (2) Was that right established at the time of the incident. The Lower Court did not use any of these factors to determine qualified immunity.

Petitioner was granted leave to file in forma pauperis but was still ordered to pay \$380.00 for the District Court ruling that misinterpreted the Petitioner's claim, refuse to grant leave to amend which would have cured the issue to which Court prison grievous PBSP-12-02906, and grievous PBSP-13-0157 are addressing. And the granting qualified immunity without considering the ~~right~~ determination/qualifiers to do so.

The Ninth Circuit Court of Appeals also granted forma pauperis and still ordered Petitioner to pay \$505.00 and all it did was confirm the horrible ruling received in the District Court.

I do not have money, I depend on my family for financial help, this \$855.00 debt is a huge burden on me, then, the 9th circuit wanted another \$170.00 for rehearing, I cannot afford that as well, why have forma pauperis if the Court is going to charge me \$1,000.00 for horrible rulings. Hopefully, I can get justice in this Court and its remanded back to the District Court to grant motion for leave to amend the complaint.

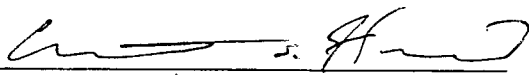
The \$855.00, not including mailing, and photocopies the Petitioner has spent on this petition, after being granted forma pauperis, the Petitioner deserves a right to a ruling in accordance with the decision sent down by the United States Supreme Court and not a ruling that was not liberally constructed and not in accordance with qualified immunity criteria.

Thank you.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: Mar / 17, 2019