

# ORIGINAL

Supreme Court, U.S.  
FILED

AUG 26 2019

OFFICE OF THE CLERK

SHAWN M. THOMAS,

## UNITED STATES SUPREME COURT

: CASE NO.

19-5845

Petitioner,

:

-VS-

:

KAREN SLUSHER, ET AL.,

:

Respondents.

:

---

### ON PETITION FOR WRIT OF CERTIORARI 6TH CIRCUIT COURT OF APPEALS PETITION FOR A WRIT OF CERTIORARI

---

Petitioner, *Pro se*:

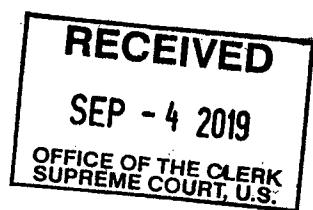
Shawn M. Thomas #561-064  
Richland Correctional Institution  
P.O. Box 8107  
Mansfield, Ohio 44901

Counsel of Record for each Respondent-Party:

Leah Marie Honenberger  
Dickie, McCamey & Chilcote  
127 Public Square  
Suite 2820  
Cleveland, Ohio 44114

Paul J. Schumacher Jr.  
Dickie, McCamey & Chilcote  
127 Public Square  
Suite 2820  
Cleveland, Ohio 44114

Mindy Ann Worly  
Office of the Ohio Attorney General of Ohio  
150 East Gay Street  
16<sup>th</sup> Floor  
Columbus, Ohio 43215



**QUESTION(S) PRESENTED**

- (1) Did the Sixth Circuit Court of Appeals make the right decision in dismissing Plaintiff Thomas' appeal and affirming the dismissal of the District Court regarding Plaintiff Thomas' First Amendment Retaliation Claim against Leann Walker-Williams?
- (2) Did Defendant Leann Walker-Williams attach evidence to support her Motion for Summary Judgment she filed in the District Court to satisfy her burden under Federal Rule of Civil Procedure 56(c)?
- (3) Was it appropriate for the Sixth Circuit Court of Appeals to affirm the District Court's disposition in dismissing Plaintiff Thomas' First Amendment Claim for Retaliation against Leann Walker-Williams when the only evidence Walker-Williams used was an Affidavit, and Plaintiff Thomas replied in his Reply Brief (Doc. #68, filed 6-28-18) with an Affidavit of his own arguing the facts alleged by Defendant Leann Walker-Williams?

## **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 of 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:

**Petitioner, *Pro se* (Plaintiff)**

Shawn M. Thomas #561-064  
Richland Correctional Institution  
P.O. Box 8107  
Mansfield, Ohio 44901

**Respondents (Defendants)**

Aramark Correctional Corporation is represented by  
Counsel of Record:

Leah Marie Honenberger  
Dickie, McCamey & Chilcote  
127 Public Square  
Suite 2820  
Cleveland, Ohio 44114

Paul J. Schumacher Jr.  
Dickie, McCamey & Chilcote  
127 Public Square  
Suite 2820  
Cleveland, Ohio 44114

**Respondents (Defendants)**

Leann Walker-Williams is represented by Counsel  
of Record:

Mindy Ann Worly  
Office of the Ohio Attorney General of Ohio  
150 East Gay Street  
16<sup>th</sup> Floor  
Columbus, Ohio 43215

## TABLE OF CONTENTS

	<u>PAGES</u>
OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	4-8
REASONS FOR GRANTING THE WRIT.....	8
CONCLUSION.....	8-9

## INDEX TO APPENDICES

Relevant Orders, Judgments and Opinions  
Precedent to the Application for Writ:

	<u>APP. PAGE</u>
<b><u>APPENDIX A</u></b>	
OPINION OF THE UNITED STATES COURT OF APPEALS <i>Thomas v. Slusher</i> , 2019 U.S. App. LEXIS 15833 (6th Cir. Ohio, May 28, 2019).....	A

<b><u>APPENDIX B</u></b>	
OPINION OF THE UNITED STATES DISTRICT <i>Thomas v. Slusher</i> , 2018 U.S. Dist. LEXIS 106630, (N.D. Ohio, June. 26, 2018).....	B

<b><u>APPENDIX C</u></b>	
First Amendment of the United States Constitution.....	C

<b><u>APPENDIX D</u></b>	
28 U.S.C. § 1254(1).....	D

APP. PAGE

APPENDIX E

28 U.S.C. § 1291..... **E**

APPENDIX F

28 U.S.C. § 1331..... **F**

APPENDIX G

42 U.S.C. § 1983..... **G**

## **TABLE OF AUTHORITIES**

<b><u>CASES</u></b>	<b><u>PAGES</u></b>
<i>Thaddeus X v. Blatter</i> , 175 F.3d 378 (6th Cir, 1999).....	8
<b><u>STATUTES</u></b>	
First Amendment of the United States Constitution.....	ii,6
28 U.S.C. § 1254(1).....	2
28 U.S.C. § 1291.....	2
28 U.S.C. § 1331.....	2
42 U.S.C. § 1983.....	2
<b><u>RULES OF COURT</u></b>	
FRCP 6(B).....	4
FRCP 56(c).....	ii.4,6-9

**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 Thomas v. Slusher, 2019 U.S. App. LEXIS 15833 (6th Cir. Ohio, May 28, 2019)

The opinion of the United States district court appears at Appendix B to the petition and is Thomas v. Slusher, 2018 U.S. Dist. LEXIS 106630, (N.D. Ohio, June. 26, 2018)

## **JURISDICTION**

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

The date on which the United States Court of Appeals decided my case was May 28, 2019.

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

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

The original jurisdiction of the United States District Court was invoked under 28 U.S.C. § 1331, pursuant to a 42 U.S.C. § 1983 pathway.

The appellate jurisdiction of the Sixth Circuit Court of Appeals was invoked pursuant to 28 U.S.C. § 1291.

**CONSTITUTIONAL PROVISIONS, STATUTES  
AND ORDINANCES INVOLVED IN THE CASE**

**U.S. Constitutional Provisions**

1st Amendment of the United States Constitution  
28 U.S.C. § 1254(1)  
28 U.S.C. § 1291  
28 U.S.C. § 1331  
42 U.S.C. § 1983

**Fed. R. Civ. P.**

FRCP 6(B)  
FRCP 56(c)

## **STATEMENT OF THE CASE**

Thomas filed his Reply Brief (Doc. #68) on June 20, 2018 in opposition of Walker-Williams Motion for Summary Judgment (“MSJ”) (Doc. #53, filed 5-18-18) that was filed on May 21, 2018. Thomas also filed a Motion for Extension of Time for Delayed Filing (Doc. #57, filed 6-6-18) pursuant to Federal Rules of Civil Procedure (“FRCP”) 6(B) for his Reply Brief to be heard. On June 28, 2018 the United States District Court (“U.S.D.C.”) for the Northern District of Ohio (“N.D. Ohio”) granted Walker-Williams MSJ and completely ignored Thomas’ Reply Brief and any reconsideration of it.

Walker-Williams only attached in her MSJ a self-asserted Affidavit made by her alleging allegations against Thomas of misconduct in her housing unit of the prison where Thomas was currently housed. Thomas argued those allegations made against him by Walker-Williams in an Affidavit of his own attached with his Reply Brief. Walker-Williams failed to satisfy FRCP 56(c) by fulfilling her burden of evidence as the moving party pursuant to FRCP 56(c). Thomas specifically challenged these allegations as being bare and bald in nature and the USDC for the ND of Ohio completely ignored his Reply Brief.

The Sixth Circuit Court of Appeals even recognized that the “district court did not receive those filings until June 28, 2018, so it did not address them in its June 26 order.” Speaking of Thomas’ Reply Brief.

The Sixth Circuit Court of Appeals also stated in their order that “The record shows that there is no causal connection between any protected conduct in which Thomas was engaged and any adverse action and that Walker-Williams had a non-retaliatory reason for her transfer decision.” The issue is that Walker-Williams had attached no evidence whatsoever to meet her burden of proof of her allegations against Thomas. And that there were a multitude of incidents

that Thomas cited to in the record that brought this case to the Federal Court in which being that Walker-Williams had called Thomas into her office on specified occasions and threatened him with disciplinary actions for falsified allegations and even threatened to remove him from the Faith-Based unit where Thomas was being productive. Walker-Williams never contended Thomas' assertion that she threatened him in her office on multiple occasions. Thomas cited in his Reply Brief to specific times and dates where Walker-Williams had threatened him prior to being moved from her unit. Therefore, the Appellate Court for the Sixth Circuit is clearly overlooking the factors of Thomas' Reply Brief and is unlawfully granting Walker-Williams a MSJ for her actions against Thomas with no evidence ever being presented by Walker-Williams in the record.

Lastly, the Appellate Court stated in their order that "In an informal complaint, Thomas wrote that Walker-Williams transferred him because he was having sex with another inmate, and a subsequent grievance disposition indicated that Walker-Williams confirmed this allegation, explaining that other inmates had complained about Thomas's behavior." Again though, Walker-Williams never attached any evidence of this in her MSJ. The Appellate Court further stated that "in an affidavit attached to her motion for summary judgment, Walker-Williams averred that she transferred Thomas based on inmate complaints [again never attached to her MSJ], which she confirmed by viewing security camera footage [again never attached to her MSJ].

Thomas contended all of Walker-Williams allegations that she stated in her Affidavit with an Affidavit of his own attached to his Reply Brief, which was never considered by the U.S.D.C. for the N.D. of Ohio. Thomas argued that Walker-Williams only removed him based on him being a high-filer litigator and blanketed her unconstitutional behavior on unsubstantiated allegations of misconduct in her housing unit within the prison.

Thomas was engaged in a Faith-Based unit program as described in his initial Complaint (Doc. #1, filed 4-13-17) filed with the District Court against Leann Walker-Williams. Thomas had a compelled interest and protected right to practice his religion. Walker-Williams violated Thomas' First Amendment Right by retaliating against him for being labeled as a high-filer litigator while being housed in her housing unit. Leann Walker-Williams cloaked her defense with bare and bald allegations against Thomas which went unsupported in her MSJ she filed on May 21, 2018. Thomas attacked collaterally those exact allegation made against him by her and attached with his Reply Brief supported and documented exhibits that were ignored by both the District Court and the Appellate Court.

Leann Walker-Williams was compelled by Federal Rule of Civil Procedure to provide evidence in support of her MSJ in the granting of it by the District Court. The District Court erred in granting Leann Walker-Williams a MSJ. Thomas then appealed to the Sixth Circuit Court of Appeals. That appeal was denied stating Thomas was not engaged in protected conduct and that there was no adverse action taken against him. This is incorrect for the following reasons:

If an inmate is engaged in the “complaint process with the institution/exhaustion of administrative remedies” it is considered to be protected conduct by the Supreme Court of the United States, and;

Because Walker-Williams knew of the informal complaints Thomas was filing against her fellow co-workers and the fact she called Thomas into her office three separate times prior to removing him and removed him from her unit as a result, that would be considered an adverse action. Additionally, she made bald and naked allegations against Thomas and could not support those allegations in her MSJ with any evidence because no evidence existed on her behalf.

### **Standards of Review**

Thomas' Reply Brief was clearly ignored by the District Court and the Sixth Circuit Court of Appeals did not recognize that Thomas' arguments made thereto Walker-Williams MSJ were never even considered the lower court. Therefore, the grant of the District Court should be overturned as no evidence was ever produced in the record by Walker-Williams in accordance with FRCP 56(c). Therefore, the burden was never satisfied, also, Thomas disputed every allegation made by Walker-Williams in an affidavit made by him and attached it to his Reply Brief that was made disputing Walker-Williams affidavit she attached to her MSJ.

"A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

FRCP 56(c) The evidence was not viewed in the light most favorable to Thomas and therefore the grant of the MSJ was inappropriate.

In reviewing the District Court's decision to grant summary judgment, a court of appeal must view all evidence and draw all reasonable inferences in the light most favorable to the nonmoving party.

Walker-Williams failed to file any pleadings, depositions, answers to interrogatories, and admissions on file, together with her affidavits, and further show that there was no genuine issue as to any material fact and show that she was entitled to a judgment as a matter of law.

Additionally, also to be in accordance with FRCP 56(c), a grant of summary judgment for the moving party is affirmed if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.

Thomas filed with his Reply Brief extensive exhibits for evidence to raise a genuine issue of material fact and created a genuine issue of dispute for a jury. Thomas' Reply Brief though was not considered nor even read by the District Court and the Sixth Circuit Court of Appeals erred in affirming the lower court's dismissal granting Walker-Williams a MSJ on this Cause.

Initially, the moving party on a motion for summary judgment has the burden of proving that no genuine issue as to any material fact exists and that it is entitled to a judgment as a matter of law. To meet this burden, the moving party may rely on any of the evidentiary sources listed in Fed. R. Civ. P. 56(c) or on the failure of the nonmoving party to produce more than a mere scintilla of evidence which would create a genuine dispute for the jury.

#### **REASONS FOR GRANTING THE PETITION**

Leann Walker-Williams failed to satisfy her burden pursuant to Federal Rules of Civil Procedure 56(c) and failed to attach or cite to evidence in the record and failed to provide evidence in her MSJ to support her allegations made in her affidavit. The Appellate Court erred in affirming the District Court's dismissal of Thomas' Complaint against Walker-Williams stating that Thomas was not engaged in protected conduct when he in fact was and an adverse action was taken against Thomas for the litigation filings he was engaged in while in Walker-Williams unit.

Thomas met the prongs set forth in *Thaddeus X v. Blatter*, 175 F.3d 378 (6th Cir, 1999) and disputed all allegations made against him and showed that genuine material facts and issues did exist.

### **CONCLUSION**

Thomas was engaged in protected conduct by filing institutional grievances and court pleadings prior to and after the removal of his housing unit and had a compelled interest right to practice his religion when Leann Walker-Williams retaliated against him for filing grievances on the institutional level and court filings while in her unit and this Cause should be remanded back to the District Court consistent with this Court's findings that Walker-Williams failed to satisfy the Federal Rules of Civil Procedure 56(c) prior to the filing of her unsupported MSJ as she failed to attach evidence to support her claims against Thomas in which would have precluded her from entertaining a granting to her MSJ .

Respectfully submitted,

  
Shawn M. Thomas #561-064  
Richland Correctional Institution  
P.O. Box 8107  
Mansfield, Ohio 44901

**Petitioner, Pro se**