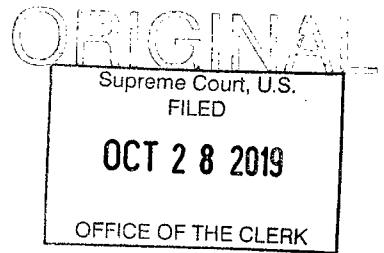


No. 19-6705



IN THE

SUPREME COURT OF THE UNITED STATES

Keenan Wilkins — PETITIONER
(Your Name)

vs.

J. Galvin, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeal, Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Keenan Wilkins

(Your Name)

California HealthCare Facility
P.O. Box 32290

(Address)

Stockton, CA 95213

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

1. Does the Court of Appeal have Jurisdiction to Decide an Appeal Before granting/denying an indigent Appellants Rule 24 request For IFP Status?
2. Does a Court of Appeal Dismissal of an Appeal For "Failure To Prosecute" Count as a Section 1915 Strike?
(*Note: Request to Settle a Circuit Conflict Confer)
3. Were Appeals for Dismissal of entire Complaint for misjoinder "Frivolous" Appeals?

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:

1. J. Galvin
2. Jeff Macomber

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A
Copy Court of Appeal Order 7-31-19

APPENDIX B
Copy of Second Strike Documents
9th Cir Appeal No.

APPENDIX C

Copy of Third Strike Documents
9th Cir Appeal No

APPENDIX D

Copy of Jurist Agreeing Appellant
Does Not have 3 Strikes

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
1. Buck v. Davis (2017) 137 S.Ct 759	5
2. Caughlin v Rogers, 130 F.3d 1348 9th Cir 1997	6
3. Daker v Com. G DOC, 820 F3d 1278 11th Cir 2016	6
4. Gardner v Pogue, 558 F2d 548 9th Cir 1997	6
5. Hafred v Fed Bureau of Prison, 635 F3d 1172 10th Cir 2011	6
6. Meadows v. D.R., 817 F2d 517 9th Cir 1987	6
7. Neitke v Williams (1989) 490 US 319	4, 6
8. Turner v Ducast, 700 Fed Appx 720 9th Cir 2017	6

STATUTES AND RULES

Fed. R. App. P. (Rule 24)	4, 5
Fed R. Civ. P. (Rule 21)	4, 5
28 USC 1915	4, 5

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 A and B and C 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 A, B and C 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 7-31-19

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: _____, 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 _____. 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

1. U.S. Constitution 14th Amendment
(Due Process/Equal Protection)
2. 28 USC 1915
3. Fed. R. App. P. (Rule 24)
4. Fed. R. Civ. P. (Rule 21)

STATEMENT OF THE CASE

Appellant, a Life Term inmate is erroneously being deemed to have 3 strikes under Section 1915.

Two of the strikes are in which Appellant rightfully attempted to appeal the District Courts dismissal of his "Entire" Complaint for "Misjoinder" in violation of Fed. R. Civ. P. 21.

Appellant was granted IFP for the District Court Action. When the Complaint was erroneously dismissed he rightfully filed Notice of Appeal pursuant to Fed. R. App. P. 24.

The Ninth Circuit Called the Appeal Frivolous in violation of Fed. R. C. v. P. 21 and US Supreme Court Authorities (Neitke v Williams (1989) 490 US 319)

When Appellant could not pay the Appeal Fee, the Appeal was Dismissed for Failure To Prosecute and now used as a Strike.

Appellant Filed a Rule 60 Motion and was Subjected to the same actions and another Strike

REASONS FOR GRANTING THE PETITION

Appellant asserts that an extreme miscarriage of Justice has occurred. He is a life term prisoner and the error presents the possibility that he will NEVER AGAIN be able to seek Federal relief for violations of his C.O.J. rights, due to erroneous 3 strike finding.

Appellate seeks the US Supreme Court to address this practice effecting many litigants in the Ninth Circuit, who are indigent and poor.

The Ninth Circuit is "deciding" Appeals at the Rule 24 "Request For IFP" stage. The Ninth Circuit does not have jurisdiction to "address the merits" of the "non-briefed" appeal and only has the issue of IFP before it (see similar case *Buck v. Davis*).

The Ninth Circuit is making a finding of "Frivolous" at the IFP request stage and only allowing an Appellant to proceed if they pay filing fee. If Appellant can't pay the appeal is dismissed as "Failure To Prosecute" and in the Ninth

(Continued →)

REASONS FOR GRANTING THE PETITION

Circuit counted as a strike under Section 1915. There is a conflict among the Circuits as to whether this does count as a Section 1915 Strike (Hafred v. Fed. Bureau of Prison, 635 F3d 1172, 1179 (10th Cir 2011) or does not count as a Section 1915 Strike (Daker v. Com. GDOC, 820 F3d 1278 (11th Cir 2016)). Appellant requests the US Supreme Court settle this conflict to bring uniformity among the Circuits for Appellants.

Moreover, the two strikes being asserted against Appellant are for actions being called "frivolous" when they are clearly not. Appellant sought to appeal the district court dismissing his entire complaint for alleged misjoinder that Appellant disputed (See Caughlin v. Rogers, 130 F3d 1348 (9th Cir 1997); Turner v. Ducart, 700 Fed Appx 720 (9th Cir 2017)). The 9th Circuit called this a "frivolous" appeal at the IFP request stage.

Appellant then sought a Rule 60 void motion on this issue that the district court deemed "untimely" and Appellant sought to appeal (Meadows v. D.R., 817 F2d 517 (9th Cir 1987)).

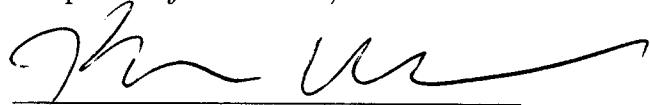
The 9th Circuit also called this a frivolous appeal.

Both of these appeals were non-frivolous (Neitke, *Supra*; Gardner v. Pogue, 558 F2d 548 (9th Cir 1997))

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 10-28-19