19-6992

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2019

TRENT BROWN — PETITIONER
(Your Name)

vs.

MARK MCCULLICK et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS (SIXTH CIRCUIT)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Trent Brown (#210522)
(Your Name)

13924 Wadaga Rd.
(Address)

Baraga, Michigan, 49908
(City, State, Zip Code)

_____
(Phone Number)

QUESTION(S) PRESENTED

1. Whether administrative remedies are exhausted, when a Grievance was decided on the merits, as well as no remedy being actually available?

2. Whether conceded* false reports in administrative hearings, intrinsically violate Due Process, when a guilty-as-charged determination results?

*"conceded/undisputed..."

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:

MARK MCCULLICK, KATHLEEN PARSONS, FORREST WILLIAMS, STEPHEN BARNES

RELATED CASES

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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[✓] is unpublished.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[✓] is unpublished.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[ ] is unpublished.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[ ] is unpublished.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 April 23, 2019.

[ ] 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: September 19, 2019, and a copy of the order denying rehearing appears at Appendix D.

[ ] 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 Amendments I, and XIV, to the United States Constitution which establishes that:

(Amendment I) "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people to peacefully assemble, and to petition the government for a redress of grievances."

(Amendment XIV) Section I: "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 any person within its jurisdiction the equal protection of the laws."

(Amendment XIV) Section V: "The Congress shall have power to enforce, by appropriate legislation,

the provisions of this article."

The Amendments are 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 or 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, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. 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."

STATEMENT OF THE CASE

The petitioner filed a complaint alleging that respondents- McCullick[1] and Barnes, issued a conspiratory (covered up) + falsified report regarding a serious assault. It further alleged that respondents- McCullick, Parsons, and Williams had subsequently improperly denied petitioner's request for a hearing for "excess legal property." Instead, transferring the petitioner to a distant prison (near Canada) the following morning, after, rejection of his step II Grievance. (#080I)

Subsequently, the respondents had determined the merits (at all the steps) on a separate Grievance (0885) that the petitioner had filed, prior to the transfer. The determination stated that the petitioner, did not have legal property in excess, requiring a hearing. And that none of the petitioner's property that had been confiscated was "legal property."

Yet in contrast, prison 5. officials that received

1 The former chief warden (and defendant) Steve Rivard, was terminated from M.D.O.C. employment on November 16, 2018. Respondent Mark McCullick currently substitutes.

the petitioner after transfer, had subsequently determined that the petitioner, possessed enough legal property requiring a hearing.

On January 10, 2017, the respondents filed their first (of two) motion for summary judgment (hereafter "MSJ"), and asserted three issues.:

1.) The petitioner did not properly exhaust his administrative remedies because, of his two Grievances (0807, 0885), only respondent Barnes was named in Grievance 0807, at Step I. Therefore, because the petitioner had "failed to comply with the procedural requirements of the MDOC grievance process at Step I and at Step II," this "prevented" MDOC from addressing and reviewing his claim against Defendants on the merits." (Record 25, MSJ, Pg ID #203.)

2.) The petitioner had "failed to establish a (Id., Pg ID #207) § 1983 defamation claim against Barnes." And that petitioner "asserting a § 1983 defamation claim must show" an alteration of a right or status that had been recognized by state

law. (Id., Pg ID #208)

3.) Lastly, that the respondents are entitled to qualified immunity (id., Pg ID #210), because "there is insufficient evidence that their actions violated clearly established law." (Id., Pg ID #211.)

The petitioner subsequently filed his response to the respondents MSJ. The petitioner's response counter argued that the respondents, had waived the defense of proper exhaustion, when they determined Grievance (0885) on the merits. And that the respondents were not entitled to immunity, because, their actions were committed in bad faith.

On March 31, 2017, the respondents submitted their reply. (Reply, Record 32, Pg ID #402.) The reply again asserted the arguments in the respondents' MSJ.

The respondents' MSJ also conceded, that "there was a final adjudication on the merits," regarding Grievance (0885). (Id., Pg ID #403.)

On June 7, 2017, the Magistrate issued "Report And Recommendation To Grant In Part And Deny In Part Defendants' Motion For Summary Judgment (DE 25)." (Record 33, Pg ID #410.)

The Report and Recommendation stated that the petitioner, had failed to exhaust his Grievances against the respondent- McCullick, Parsons, and Williams. (Id., Pg ID #420.) That this determination was made because the petitioner did "not mention" respondents McCullick, Parsons, and Williams in his Step I grievances. (Id., Pg. ID #420.)

The Magistrate; subsequently determined that- "However," in Grievance "807-21a, Plaintiff specifically mentions Barnes as the individual who filed a false report against him, which echoes the due process claim in his complaint." (Id., Pg ID 420-21.) "Accordingly, Plaintiff did not fail to exhaust his administrative remedies

with respect to Defendant Barnes and his due process claim." (Id., Pg ID #421.)

That the petitioner had alleged respondent "Barnes' personal involvement." (Id., Pg ID #422.) And that respondent Barnes was not entitled to qualified immunity. This because the petitioner had alleged that respondent Barnes had "lied on the misconduct report, filed on June 17, 2014, in which he states that Plaintiff 'had his hands around [his bunkmate's] neck.' (DE 1 at 52.)" (Id., Pg ID #424.)

"As a result of this statement, Plaintiff alleges he was improperly found guilty of the misconduct charge, and required to pay restitution in the amount of $8,936.63. (Id. at 54)" (Id., Pg ID #425.) "During the misconduct hearing, Plaintiff stated that he 'never had him around the neck' and that Defendant Barnes 'told the warden he could not see....' (Id.)" (Id., Pg ID #425.)

That "no one disputes that the right to due process

was clearly established" at "the time" of respondent "Barnes' actions." And that "a prisoner has a right to be free from false accusations by prison officials." (Id., Pg. ID #426.)

And that respondent "Barnes" had "provided no evidence to demonstrate" that the petitioner's "allegations that he lied about those events are false." (Emphasis in original.) (Id., Pg. ID #426.)

On June 7, 2019, the respondents filed their objections to the Magistrate's "Report And Recommendation to Grant In Part And Deny In Part Defendants'" MSJ. (objections, Record 34, Pg ID #430.)

In objection, the respondents argued that the Magistrate "did not properly analyze" their argument, that the petitioner failed to exhaust his defamation claims against respondent Barnes. This because the petitioner did not seek a rehearing of his misconduct determination. (Id., Pg ID #431-34.)

And the petitioner failed to demonstrate how his restitution, of nearly $9,000, resulting from respondent Barnes' "alleged misstatement," imposed an atypical and significant hardship on him. This because the evidence against the petitioner was "overwhelming - the video showed that Brown was 'on top of prisoner Jackson with his hands close to prisoner Jackson's neck,' and Jackson suffered head injuries and incurred over $8000 in medical bills. (R.1, Compl., Pg ID. 54.)" (Id., Pg ID #435-36.)

The petitioner subsequently filed objections to the Magistrate's Report And Recommendation. (Objections, Record 38.)

In objection, the petitioner stated that he - "had believed that his bunkie were possibly horseplaying," when he (the petitioner) had originally been grabbed and taken to the ground - by his bunkie. (Id., Pg. 4.) "That an intense wrestling match" had ensued. And that

hard "impacts against metal, concrete cell furnishings had resulted." (Id.)

That "Plaintiff was able to overcome the challenge to a general degree." (Id., pg. 4-5.) "That (due to exhaustion and fatigue) Plaintiff repeatedly communicated to Defendant Barnes, that he could not extract himself" from the "situation, due to his bunkie holding him." (Id., pg. 5.)

"That ARUS McCormick (standing with Defendant Barnes) stated, that she- 'could not specifically see' Plaintiff's 'hands'." (Id.)

That "video reviewed at the June 26, 2014 hearing had supposedly shown, Plaintiffs hands 'near' and not 'around' or on his bunkie's neck." (Emphasis in original.) (Id.)

And that the "hearings officer may have in fact, actually approximated or assumed, the placement/location of Plaintiff's hands on the video, due to obstruction from depicted (concrete) desk thereon. Which

would be consistent with Defendant Barnes' statements to Plaintiff and Defendants Rivard and McCullick on June 23, 2014, that essentially he could not actually see the placement of Plaintiff's hand, because the 'desk was in the way!'" (Id.)

In objection, the petitioner further argued that "the grievance denials at Steps I-II," was from the respondents, whom were "respondents and reviewers" of the Grievance. (Id., pg. 14.)

That the respondents were "the same staff persons that were involved in issue/s being grieved. Or had close affiliations (e.g., Defendant Parsons) with complicit superiors (i.e., Defendants Rivard, McCullick)." (Id.)

And thus and therefore, because of the petitioner's "grievances and related exhaustion challenges," the petitioner had satisfied the (PLRA) exhaustion requirement. This because "in fact no remedy for either remedy was actually available." (Id., pg 13. 22-23.)

And that the petitioner's Grievance "0885, had been denied on the merits, which Defendants inevitably conceded. (DE 32 at 2)" But the Magistrate had "failed to address." (Id., Pg. 21.)

On August 9, 2017, the district court issued its first (of two) "Opinion And Order" in the case. Adopting the Magistrate's Report And Recommendation, in full. (Or, Record 39; Pg. ID #499.)

Additionally, the district court held that the petitioner's "due process defamation claim" did "not take issue with the misconduct ~~[illegible]~~ decision itself," which as the respondents had argued, "could only be administratively exhausted by requesting a hearing." (Id.) But that rather, the petitioner's claim is that respondent "Barnes defamed him and deprived him of due process by falsifying the misconduct report, resulting in a fine of nearly $900."

(Id., Pg. ID #504-05.)

And that the petitioner did "not seek to have

the misconduct decision overturned." But that he "seeks damages from defendant Barnes for defaming him in an allegedly falsified misconduct report, which is collateral to the misconduct decision itself." (Id.)

The district court further determined that the respondents, had argued that the "Magistrate Judge erred" by finding that the petitioner had established a due process defamation claim against defendant Barnes. (DKt 34 at 5-7)" (Id., Pg. ID #501.)

That the respondents had also implied that the "nearly $9000 fine is insufficient to meet the atypical and significant hardship standard as set forth in Sandin v Conner, 515 U.S. 472, 484 (1995)." (Id., Pg. ID #508.)

And that although circuit precedent had previously held, that- a $4.00 fine did not constitute an atypical and significant hardship in context of prison conditions, that- "the same cannot be said for a disciplinary fine of nearly

$9000." (Id.)

On January 12, 2018, the respondents commenced taking the petitioner's deposition. In answer to one of the respondents' questions the petitioner stated, that he, had also suffered injuries from the incident with his bunkie. But had refused assistance from medical personnel. (Deposition.)

Subsequently, the petitioner on February 13, 2018, filed MSJ. (MSJ, Record 46.)

In his motion the petitioner articulated that the respondents, had produced no evidence, that respondent Barnes did not issue a defamatory false report against him. And that the respondents had only asserted colorable arguments, which were insufficient to overcome his motion. (Id.)

On February 23, 2018, the respondents filed "Motion for Extension of Time" to file response/reply to the petitioner's MSJ. Subsequently,

the respondents' motion was granted by the district court on February 26, 2018. (Motion For Extension of Time, Record 47.)

On April 10, 2018, the petitioner filed motion to compel discovery. (Record 53.)

The petitioner sought to compel the respondents to provide to the district court, video footage, that the hearings officer reviewed at administrative hearing. The motion also sought a copy of the petitioner's deposition transcript. Which had been requested from the respondents twice quondam. (Id.)

On March 27, 2018, respondent Barnes filed documents entitled- "Defendant's Motion For Summary Judgment;" "Defendant's Response To Plaintiff's Motion For Summary Judgment." (MSJ, Record 49, Pg. ID #611; Response, Record 50, Pg. ID #659.)

Respondent Barnes' MSJ argued that the facts determined by the hearings officer, are entitled to preclusive effect. (MSJ, Record 49, Pg. ID #619-22.)

And that although the petitioner had alleged that respondent Barnes "violated his due process rights by issuing the misconduct and allegedly 'lying'" (Id., Pg. ID #622), the facts of the misconduct hearing are set out and determined that- "based upon the video evidence, Brown was engaged in a fight with the prisoner." (Id., Pg. ID #624.) And that the fight resulted in approximately $9,000 in medical bills to treat the injuries that were directly caused by the Plaintiff." (Id.)

The petitioner's subsequent declaration/response counter argued, that respondent Barnes' MSJ should be denied, because there were general issues of material fact in dispute. This being whether his hands were wrapped around his bunkie's neck. And whether the petitioner, simply refused to separate, when ordered by respondent Barnes. (~~Decl/Resp~~ Record 51, Pg. ID #783; Pl's Decl/Resp, pg iii.)

The petitioner's declaration/response further argued that his claim is not precluded. This because

he was unable, to file an appeal to the misconduct decision, due to special circumstances beyond his control. Which involved the petitioner not having funds to mail his appeal out. And therefore relying on another prisoner to mail out his appeal. (Id., pg. v-vi.)

Respondent Barnes did not file a Reply.

Respondent Barnes' response to petitioner's MSJ, asserted that the motion should be denied, because, a lack of general dispute of material facts had not been established. (Response, Record 50, Pg. ID #660-61.)

Respondent Barnes' Response did not argue against the petitioner's Motion to compel a copy of his deposition transcript.

The petitioner's subsequent Reply in support of his MSJ, argued that- respondent Barnes' "bare allegations continue to be merely colorable or not significantly probative." (Reply, pg. 1.)

And that respondent Barnes had recently asserted

that a fight, and not an assault, had been observed. Which essentially proved that the- "hearings officer was not impartial" when he reviewed "relevant video evidence and subsequently imposing the full cost of prisoner Jackson's medical expenses," on the petitioner. (Emphasis in original.) (Id., pg. 1.)

On June 25, 2018, the Magistrate issued- "Report And Recommendation To Deny Plaintiff's Motion For Summary Judgment (DE 46) And Grant Defendant Barnes' Motion For Summary Judgment (DE 49)" (Report And Recommendation, Record 57, Pg. ID #176.)

The Magistrate stated, that the petitioner's due process defamation claim failed as a matter of law, because: False disciplinary charges did not implicate a liberty interest. For "it is well settled that the filing of false disciplinary charges against a prisoner does not constitute a constitutional violation redressable under §1983 where there is a fair hearing on that charge." (Id., Pg. ID #190.)

That the restitution award did "not implicate a protected liberty or property interest." (Id., Pg. ID #795.) This because the petitioner, beared the "burden of establishing that the restitution award," constituted an atypical and significant hardship. (Id., Pg. ID #796.)

And that the petitioner, with respect to due process, had "received all the process he was due." (Id., Pg. ID #798.)

On June 25, 2018, the Magistrate also issued "Order Denying Plaintiff's Motion To Compel." (Or, Record 58, Pg. ID #806.)

The petitioner, subsequently filed objections to the Magistrate's Report And Recommendation, and Order. (Objections, Record 62, 63.)

In objection No. 8 regarding the Magistrate's determination that- "b. 'False' disciplinary charges do not implicate a protected liberty interest-" the petitioner argued that:

"It is established law that defendant's

filing of a false disciplinary charge against Plaintiff, constitutes a constitutional violation redressable under 42 U.S.C. § 1983, when the administrative hearing is improper. and/or when respondent Barnes conceded to have falsified his misconduct report. (Id., pg. 13.)

That the district court had jurisdiction to consider the petitioner's collateral due process defamation claim. (Id., pg. 17.) And that the petitioner's complaint did not seek expungement of the hearings officer's guilty decision as relief. (Id., pg. 18) (The petitioner's latter two arguments, addressing/challenging the Magistrate's determination regarding preclusion. Not Due Process in context of fair hearings.)

The petitioner subsequently objected to the Magistrate- denying his motion to compel production of ECD video, and a copy of his deposition transcript. (Record 63.)

Respondent Barnes did not file any objections. On october 10, 2018, the district court issued

"Opinion And Order" adopting the Magistrate's Report And Recommendation, in full. (Or, Record 61, Pg. ID #888.)

In addition, the district court held that "even if newly litigated facts showed the misconduct report was false, the petitioner, also needed to show that he was not afforded a "fair hearing." Instead, the petitioner did "not object to the Magistrate Judge's finding that he was provided due process." (Id., Pg. Id #901.)

The district court also held, that the petitioner did not have a liberty or property interest, in his trust account (institutional), because he did "not object to the Magistrate Judge's determination that he was not denied due process." (Id., Pg. Id #904.)

And that the petitioner, was "not entitled to a free copy," of his "deposition transcript." (Id., Pg. ID #908.) Because the "Confrontation Clause only applies to criminal defendants." And

that the "same prevents" the petitioner "from relying on the Fourteenth Amendment." (Id., Pg. ID #910.)

On November 15, 2018, the district court issued "Order Granting Plaintiff's Application To Proceed On Appeal Without Prepaying Fees Or Costs." (Or, Record 14, Pg. ID #935.)

The petitioner, subsequently submitted Brief, in the United States Court of Appeals for the Six Circuit. (Appellant's Brief, Record 10.)

On appeal the issues presented were- 1.) The district court failed to address that Grievance 0885, had been, adjudicated on the merits. (Id., pg. 14-18); 2.) The district court committed reversible error in its resolution of the parties' cross-motions for summary judgment. (Id., pg. 18-29); 3.) The district court's unreasonable limit on discovery constituted an abuse of discretion. (Id., Pg. 29-30.)

On January 31, 2019, the respondents filed

Brief in response. (Brief, Record 12.) The respondents essentially reiterated the rulings of the district court. (Id.)

The petitioner subsequently filed Brief in Reply which in part, argued that respondent Barnes, had waived his right to challenge the petitioner's contentions on appeal, because he did not file any objections in the district court. (Id.)

On April 23, 2019, the United States Court of Appeals for the Sixth Circuit, issued its Order affirming the district court's final Order. (Appendix A, Order, Record 15-1, pg. 1.) (Unpublished case opinion.)

By May 14, 2019, the United States Court of Appeals for the Sixth Circuit, entered the petitioner's Petition For Rehearing En Banc. (Appendix D, Record 16.)

On September 19, 2019, the Petition For Rehearing En Banc was denied.

REASONS FOR GRANTING THE PETITION

A. Conflicts with holdings/general principles of the United States Supreme Court and/or published Sixth Circuit precedent.

The express (unpublished case) opinions and/or implied analysis of the courts below that:

1.) A determination on the merits of a Grievance, when there is no available remedy in actual practice- is not enough to satisfy the PLRA exhaustion requirement- is directly contrary to consistent published precedents.

Rosales-Mireles v United States, 138 S.Ct. 1897, 1911, 201 L.Ed.2d 376 (2018) (Regarding fundamental fairness, the "...Circuit abused its discretion in applying an unduely burdensome articulation... the failure to correct... a plain error that affects... substantial rights will seriously affect the fairness, ... of judicial proceedings."); Ross v Blake, — U.S. —, 136 S.Ct. 1850, 1860, 195 L.Ed.2d 117 (2016) ("...an administrative procedure is unavailable when... it operates as a simple dead end- with officers unable or consistently unwilling to provide

any relief to aggrieved inmates.")

Jones v Bock, 549 U.S. 199, 127 S.Ct. 910, 923, 166 L.Ed. 2d 798 (2007)("...; the grievance is not a summons and complaint that initiates adversarial litigation."); Mattox v Edelman, 851 F.3d 583, 591 (6th Cir. 2017) ("Prison officials waive any irregularities in a grievance when they nonetheless address the grievance on the merits."); Reed-Bey v Pramstaller, 603 F.3d 322, 325 (6th Cir. 2010)("the state's decision to review a claim gives us warrant to do so as well.")

2.) That a conceded (as opposed to an alleged defamatory) false report, does not intrinsically violate the fair process requirement indicative of Due Process- in administrative hearings- is directly contrary to the holdings/general principles expressed, by the United States Supreme Court.

Napue v Illinois, 360 U.S. 264, 79 S.Ct. 1173, 1177, 3 L.Ed. 2d 1217 (1959)(stating in a criminal case, that "... a conviction obtained through use of false evidence, known to be such by representatives of the state, must fall under the fourteenth Amendment.");

Giglio v United States, 405 U.S. 150, 92 S.Ct. 763, 766, 31 L.Ed.2d 104 (1972)(Stating like in Napue, that the knowing use of perjured testimony resulting in an adverse verdict, is violative of Due Process.); Edwards v Balisok, 520 U.S. 641, 117 S.Ct. 1584, 1588, 137 L.Ed.2d 906 (1997)(Similarly stating in a civil case, that "a criminal defendant tried by a partial judge is entitled to have his conviction set aside... The due process requirements are not so lax as to let stand the decision of a biased hearing officer who dishonestly surpresses evidence of innocence...")

It is imperative that the Court, finally establish the applicability of its holdings/general principles quondam, to cases like the petitioner's regarding defamatory false reports in, administrative hearings. False reports which had been later conceded/undisputed, as indeed, having been made.

B. Importance of the Questions Presented:

This case presents two questions. Each of which are crucially imperative, with regards to ensuring that the scales of Justice throughout this nation, are

balanced not only with solidarity. But also with fairness to every citizen, within the fifty States of the Union, and the District of Columbia.

Given the Nation's tremendous amount of litigation. And arguably, a substantial amount of questionable fairness because of in part- legal "loopholes" (e.g., the questions presented herein)- the petitioner humbly implores the court, to expressly address the questions presented.

For which the resolution of said enquiries will hopefully, close up these avenues of arbitrariness(?). And thus effectively foster integral fairness. As well as perhaps, promote less incentive within the Nation's judicial process to, "protract proceedings" and "increase costs." But instead properly "ensure expeditious resolution of claims." Perry v MSPB, 137 S.Ct. 1975, 1980, 198 L.Ed.2d 527, 2017 U.S. Lexis 4044.)

The issues' importance is enhanced by the fact that the courts below, not only failed to acknowledge

relevant published in-circuit authority. But also failed to acknowledge this Court's "legal reasoning"(s), that were "directly applicable" to cases such as the petitioner's, for which is now respectfully applying for Certiorari. Northwest Ohio Coalition for the Homeless v Husted, 831 F.3d 686, 720-21 (6th Cir. 2016).

Therefore with regard to each of the two questions presented, the petitioner in good faith, sincerely argues the following.:

1.) To the petitioner's knowledge the Court has not expressly addressed whether, a Grievance decided on the merits, is to be considered exhausted.

Nevertheless, the United States Court of Appeals for the Sixth Circuit, rendered an analysis that was clearly not in accord, with the recent legal analysis and general principle that the Court has prescribed. As well as those of its own published precedents. Moreover, the district court repeatedly

failed to address this question.

Mattox v Edelman, 851 F.3d 583, 591 (6th Cir. 2017)("...prison officials waive <u>any</u> procedural irregularities in a grievance when they nonetheless address the grievance on the merits." (Emphasis added.) (Brief, Record 10, pg. 17; Reply, Record 13, pg. 4; Petition For Rehearing En Banc, Record 16, pg. 7.)

Ross v Blake, — U.S. —, 136 S.Ct. 1850, 1858-60, 149 L.Ed.2d 958 (2016) (unanimous decision) ("...must exhaust available remedies but need not exhaust unavailable ones... an administrative procedure is unavailable when ...it operates as a simple dead end-with officers unable or consistently unwilling to provide any relief to aggrieved inmates." (Id., Record 16, pg. 9; objection, Record 38, pg. 22-23.)

The petitioner, clearly and simply did not

have an "available" remedy to exhaust, in actual practice. The respondents- Mccullick, Parsons, and Williams were the same prison officials involved or related to, the property issue in Grievance 0885. And also whom denied said Grievance in retaliation for Grievance 0801- regarding defamation and conspiracy to defam, against the respondents Barnes and Mccullick.

Hence, respondent Parsons expressly notified the petitioner, that he did not have legal property in excess requiring a hearing. Yet in contrast, prison officials whom received the petitioner, after his transfer from the respondents, rendered a determination to the contrary. Thus, allowing the petitioner a hearing for which he effectively prevailed. (Appendix E-F; see also Grievance submissions: MSJ, Record 25-3, Pg. ID #243, 241, 235, 232, 239.)

The ensuing Order of the United States Court of

Appeals for the Sixth Circuit, without addressing Mattox and Ross, and their applicability to the petitioner's case, conflictingly ruled that: Although Grievance 0885 was in fact addressed on the merits, the petitioner did not name any of the respondents at steps I-II.

Thus, the respondents "cannot be said to have waived the exhaustion defense when they had no way of knowing that they would be subject to a later suit." The Court of Appeals cited published in-Circuit precedent "Reed-Bey"[2] in support. (Emphasis added.) (Appendix A, Record 15-1, pg. 5.)

The petitioner's subsequent Petition for Rehearing En Banc, expressly quoted the statement of the United States Supreme Court:

> "... the primary purpose of a grievance is to alert prison officials to a problem, not to provide personal notice to a particular official that he may be sued; the grievance is not a summons and complaint that initiates adversarial litigation."

Jones v Bock, 549 U.S. 199, 127 S.Ct. 910, 923, 166 L.Ed.2d 798 (2007) (Record 16, pg. 6-7.)

2 A case in which the prisoner plaintiff did not mention any of the defendants that he later sued, at any of the Grievance steps. But was considered to have exhausted remedies.

Subsequently, the Court of Appeals issued its Order, stating that- "No judge has requested a vote on the suggestion for rehearing en banc. Therefore, the petition is denied." (Appendix D; Record 19.)

Likely, through the Nation, prisoners are being forced into an unenviable* "catch 22" State policy requiring that all persons involved in an issue in dispute, be mentioned, in the initial step of the Grievance process. But with the purpose of the Grievance process largely being to- "alert prison officials of problems," and to provide an effective means of redress, through appropriate investigations- oftentimes prisoners can only ascertain all persons involved in an issue in dispute, when investigations have concluded.

Or have reached near conclusion (i.e., an initial Grievance submission at the third or final step).

Nevertheless, if prisoners submit a

*"unenviable..."

subsequent Grievance regarding the same issue that is in dispute, it is likely that it will be rejected, for being "duplicative" and/or "untimely." And thus inevitably, putting prisoners at risk of being placed on "Modified Access" grievance restriction. (MDOC Policy Directive 03.02.130 "Prisoner/Parolee Grievances:" Section J.2., 5.; JJ.)

Which may result if other Grievances (even those not related to the initial Grievance) are later submitted, and rejected, as well.

The United States Court of Appeals for the Sixth Circuit, and likely other Circuits in the Nation, is "applying an unduely burdensome articulation" of the proper exhaustion requirements, to prisoners like the petitioner. Rosales-Mireles v United States, 138 S.Ct. 1897, 1911, 201 L.Ed.2d 376 (2018). Thereby effectively resulting in mass infringements of the First and Fourteenth Amendments, to the United States Constitution.

The petitioner hopes that the Court will, exercise, its judicial preeminence and guidance.

And intervene in this clearly urgent and arbitrary, continuing constitutional crisis.

2.) The district court in denying the petitioner's objections, ruled that he did not object to the Magistrate's finding, that he was provided a fair hearing. And therefore, respondent Barnes' (conceded) false report alone against said petitioner, did not violate due process. (citing unpublished Circuit precedent.)

And hence by extension, the nearly $9,000 in imposed restitution- and the petitioner's property interest in the security of his institutional trust account- was not[3] violative of Due Process. (Or, Record 61, Pg. ID #901, 904.)

The petitioner's subsequent Brief on appeal, and Reply, had continued to argue, that the Magistrate's determination that a fair hearing was provided to the petitioner- was expressly objected to. ((Objection, Record 62, pg. 23, fn *;) Brief, Record 10, pg. 28; Reply, Record 13, pg. 11.)

Subsequently, the court of Appeals determined that: The petitioner acknowledged having an

3 A holding/determination inconsistent with this courts holding in Dolan v City of Tigard, 512 U.S. 374, 114 S.Ct. 2309, 2320, 129 L.Ed.2d 304 (1994). (Objections, Record 62, pg. 24-25.)

administrative hearing. That he argued that he did not have a full and fair opportunity to litigate the misconduct finding because of special circumstances beyond his control.

The Court of Appeals continued, stating that- "However, the failure to pursue an appeal" (of the misconduct report) "through mishap or inadvertence is not the same thing as a denial of a full and fair hearing."

And that- "Accordingly," even if respondent "Barnes accused Brown of false charges,"[4] petitioner "Brown has not stated a deprivation of a constitutional right." (An unpublished Sixth Circuit case is quoted in support.)(Appendix A, Order; Record 15-2, pg. 6.)

No page numbers to the Record in support of the Court of Appeals findings, were cited in its Order.

Truth be told, the sections of the Record that the petitioner cited regarding objecting to the Magistrate's determination, that- the petitioner was afforded Due Process at his hearing, are clearly not

[4] If respondent Barnes would have charged the petitioner with "fighting" instead of "Assault," pursuant to State

located in the parts of the Record, where the petitioner's "full and fair opportunity to litigate" statement can be found. Which was integral to an argument, challenging, the district court's determination of case "preclusion." (Brief, Record 10, pg. 25-26.)

The Court should finally address this contemporary constitutional crisis, through an express acknowledgement that- conceded/undisputed defamatory false reports in administrative hearings, intrinsically violate, the Due Process Clause of the Fourteenth Amendment- when a guilty-as-charged determination is rendered.

Such an acknowledgement from the Court would essentially be consistent with and thus, not deviate from, the general principles expressly articulated in similar notable precedents.:

Edwards v Balisok, 520 U.S. 641, 117 S.Ct. 1584, 1588, 137 L.Ed.2d 906 (1997) ("The due process requirements are not so lax as to let stand a decision of a biased hearing officer who dishonestly

4(continued)-policy, the "confidential" witness would have been issued a "fighting" charge also. And upon a guilty-as-charged finding, both prisoners might have been imposed 508

suppresses evidence of innocence. . . ." (Internal quotation marks omitted.);

Giglio v United States, 405 U.S. 150, 92 S.Ct. 763, 766, 31 L.Ed. 2d 104 (1972) ("...deliberate deception of a court and jury by the presentation of known false evidence is incompatible with the rudimentary demands of justice." (Internal quotation marks omitted.);

Napue v Illinois, 360 U.S. 264, 79 S.Ct. 1173, 1177, 3 L.Ed. 2d 1217 (1959) ("First, it is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment... The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.") (Emphasis added.)

It is likely that prisoners nationwide, have and/or are and/or will be subjected to defamatory false reports, by mendacious prison personnel. Thereby resulting in excessive fines; additional felony charges(?).

4 (continued)- each in restitution, [39] under shared fault. (Or the petitioner may have been rendered guilty of a lesser offense/activity. (MDOC Policy Directive 03.03.105A, pg. 1.)

CONCLUSION

The petition for a writ of certiorari should be granted.

Humbly and respectfully submitted:

Trent Brown (#210522)

Date: December 9, 2019