

No. 19-7186

ORIGINAL

Supreme Court, U.S.
FILED

DEC 23 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

JAMES R. YOUNG — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JAMES R. YOUNG

(Your Name)

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QUESTION(S) PRESENTED

- (1) - Did the Eleventh Circuit Court of Appeals abuse Petitioner's 5th Amendment due process right to be heard on his Bivens claim on appeal by summarily dismissing his appeal without ever hearing or addressing his Bivens claim of complaint [which is a due process violation].
- (2) - Did the District Court abuse it's discretion when it dismissed Petitioner's Bivens claim of complaint without hearing or addressing his Bivens claim.
- (3) - Does a denial of a federal Bivens claim review involving "theft" of an inmate's property by a BOP officer warrant 'new perspective' federal review consideration under the Parratt v. Taylor doctrine by this Court.
- (4) - Can a Petitioner file in forma pauperis in the Supreme Court in a Civil Case [particularly when the BOP is already under investigation for similar inmate abuse violations pending in another case recently filed in the lower court]. Senator Marco Rubio (R-Florida) demanded the BOP conduct a thorough review at Coleman due to the pending case and the 'systemic' abuse.

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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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: the 11th Circuit Court's denial as frivolous [without Bivens review] & the ultimate denial for reconsideration.

☐ 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☒ is unpublished.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: the District Court's denial as frivolous [without Bivens review] & the ultimate denial for reconsideration.

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

N/A ☐ 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 August 20, 2019.

N/A ☐ 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: October 2, 2019, and a copy of the order denying rehearing appears at Appendix "A".

N/A ☐ 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).

N/A ☐ 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).

STATEMENT OF THE CASE

As an outline statement of this case - **"The 4th Amendment provides that: 'The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated ...'".**

In Bell v. Hood, 327 US 678, 90 L. Ed. 939, 66 S. Ct. 773, 13 ALR 2d 383 (1946), this United States Supreme Court reserved the question whether violation of that command by a federal agent acting under color of his authority gives rise to a cause of action for damages consequent upon his unconstitutional conduct. It was there ultimately held in that case **'that it does'**.

In the instant case, I, the Petitioner, would like to present the gist of my request for Writ of Certiorari by presentation of an example - [e.g. - Just because an officer may have the same shoe size as an inmate under his/her authority, that doesn't mean that officer can also proclaim ownership of, have, or take the inmate's shoes for his/her own taking or purpose].

When this type situation does happen [no matter the property], the result of the abuse of authority in that matter and the **'theft'** itself, it is classified as an injury to the inmate victim. The act also offends the 8th Amendment and is certainly **unusual**.

In the present case, a similar styled situation transpired. On 7-28-2016, I the Petitioner filed a grievance about 6 photos that had been 'stolen' from me [without remorse] by education staff. Those staff on or about 9-20-2016, in response to the grievance, stipulated: "The Education Department Staff are in possession of your photographs. You may report there and pick up your photos".

Therefore, there is a factual BOP record that all six (6) photos were being retained by the education department at the initial stages of the grievance and they were also physically then available by the staff that took them. [Petitioner was denied the recovery of the photos upon his return to the library to request them].

Since that date of denial of return [up to the present date of this request for **Certiorari**], the personal photos have still not been returned. Such acts create a quintessential Bivens claim.

However, a resolution to this matter has never been reviewed, heard, discussed, or permitted redress.

The 8th Amendment does apply to prisoners and ensures that they will not be subject to cruel and **unusual** punishment [or acts] by officers of prisons.

Prisoners further enjoy the protections of the 5th Amendment's due process and those of the 4th Amendment against unreasonable searches and **seizures**.

Therefore, this Court should vacate the judgments made in the lower courts in this matter due to error and allow Petitioner to at least be afforded a trial on his factual Bivens claims that were ignored.

The 5th & 8th Amendment's protections of due process and bars against **unusual punishment**, are unconstitutionally denied and offended where there is no BOP federal remedy for the "**theft**" [**and not deprivation**] of a federal inmate's property by a BOP officer.

The critical question, therefore, is where it concerns a federal BOP inmate's property, should the law determine the inmate's property "**deprived**" or "**stolen**" by a BOP officer when that officer[s] take the inmate's property [for no work related reason] and simply determines to keep the property for him/her self.

Because there is no remedy under BOP Policy or laws for this particular type of **systemic constitutional violation** [**which is also derived from a criminal act**], the act by BOP officials causes "**an intended loss**" of property that offends the 5th & 8th Amendments by providing no due process for compensation involving the criminal act. Officer's acts were not negligent or unintended.

Petitioner is, thus, entitled to a trial on this matter.

The Eleventh Circuit Court of Appeals and the district court abused their authority by refusing to acknowledge or conduct any form of review on Petitioner's Bivens claim.

See Clisby v. Jones, 960 F.2d 925 (11th Cir. 1992).

Officers being allowed to simply take [unchecked] an inmate's personal property consistently for his/her own use or consumption would ultimately threaten the internal security and safety in prison facilities for inmates and officers.

In addition, because the criminal act of "**theft**" in these cases have no specific vehicle for inmates to demand a '**civil**' restitution in a **civil court** for the criminal act done against them, the **Parratt/Hudson doctrine** now needs to be revised to incorporate a federal vehicle for redress in these type inmate violations by officers.

Prison Policy also has not covered this issue and does not have an adequate deterrent available to assist in specifically diminishing this from of "specific" illegal and criminal behavior. Therefore, Petitioner is entitled to a Circuit Court reversal and a hearing or trial in the district court involving the officers' wrongful behavior and '**theft**' against him; as should be the available avenue for any inmate wronged in a prison.

As a second issue filed in the initial complaint [**but was completely ignored - See Clisby**], Petitioner filed all of his grounds of complaint of "**theft**" also under Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics, 403 US 388 (1971) [against all the named defendants in this case who weren't the U.S. Gov't], and the lower courts blatantly denied any form of response to Petitioner's Bivens claims. See Clisby v. Jones, 960 F.2d 925 (11th Cir. 1992).

Petitioner, then attempted to rectify the lower courts not responding to his Bivens complaint grounds in his "Pro se Motions For Reconsideration" due to clear errors of law under Clisby, to prevent a Manifest Injustice.

However, those motions were also ultimately denied without any remark or address to my Clisby violation or Bivens claims.

Petitioner now again requests to be remanded back to the district court for a hearing or trial on his claims of complaint.

Petitioner's Bivens claims do warrant a hearing or trial due to the holdings in Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics, 403 US 388 (1971),

and Clisby v. Jones, 960 F.2d 925, 935-936 (11th Cir. 1992((en banc).

Petitioner's injury in this instance is the "**theft**" of his property by the act of [**theft**] by officers involved in this instance and the misappropriation of his property.

Petitioner, and any similarly situated inmate violated by a prison official in this form of prohibited act, are entitled to some form of redress after proof has been shown to verify the violation.

Justices would debate these presented matters, and Petitioner, therefore, requests their review.

REASONS FOR GRANTING THE PETITION

The opinion in Bivens states: "The Fourth Amendment provides that: "The right of the people to be secured in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated ...".

Further, in Bivens also, Respondents **did not** argue "that petitioner should be entirely without remedy for an unconstitutional invasion of his rights by Federal agents."

Accordingly, they argued, "Petitioner may obtain money damages to redress invasion of his rights only by an action in tort." Especially where "the Fourth Amendment's protection [is] against unreasonable searches and seizures by federal agents."

Wherefore, as established above, Petitioner has thus shown, his claims presented in this matter are debatable [or would be] amongst jurists; and that they warrant the vacating of the lower courts' judgments along with a remand for further review.

Supreme Court precedent on this issue is found in United States v. Lee, 106 US 196 (1882)(citing Ex parte Young).

In addition, due to the complexities of the issues involved above in this case, counsel should therefore also be appointed for the Bivens claim argument in the event the judgments from the lower courts are vacated and the case is remanded for further review.

Lastly, but of critical importance, it was never decided if Petitioner's Bivens complaint itself was frivolous or whether it could survive a motion to dismiss.

Therefore, "because there has never been an examination of Petitioner's Bivens claim at all whatsoever" ... in either the district court or that of the Eleventh Circuit, a constitutional abuse is shown because there has been no determination at all made to establish whether Petitioner's claim under Bivens was "without arguable merit in fact".

It has been held in lower courts that to employ fair procedure, those courts must generally "provide the plaintiff with notice of its intent to dismiss or offer an opportunity to respond." Am. United Life Ins. Co. V. Martinez, 480 F.3d 1043, 1069 (11th Cir. 2007).

That 'fair procedure' opportunity was never afforded in this case.

Wherefore, a civil tort does exist in this matter and warrants further review to avoid a global penal problem in federal correctional institutions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James R. Young

Date: December 21, 2019