

19-7240

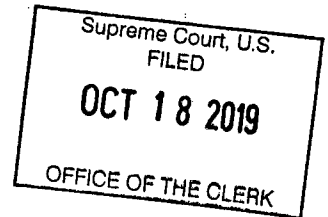
In The Supreme Court  
United States

Damon S. Allen-Bey  
Petitioner,

V.

United States Of America  
Respondent,

ORIGINAL



On Petition for Writ of Certiorari to the United States Court of Appeals for  
the Sixth Circuit.

Petition for A Writ of Certiorari.

Damon S. Allen-Bey #570060  
Kinross Correctional  
4533 W. Industrial park Dr  
Kincheloe, MI, 49788

QUESTIONS PRESENTED

Whether the trial Court violated the defendants protected constitutional rights by abusing its discretion where in parsing out Appellant's argument it rendered a decision which is contrary to law, essentially was effectively a miscarriage of justice.

Defendant-Appellant answer: YES

Plaintiff-Appellee would answer: NO

Trial Court would answer: NO

Whether the trial court by miscalculating the total amount sent to the defendant, where as only 90% of \$1,003, not 90% of \$1313.99 should have been taken for reimbursement, based on the judges decision, the defendant should be returned the amount of \$278.00.

Defendant-Appellant answer: YES

Whether the trial court erred by not applying the Michigan administrative rule 791.6639, which states that a prisoner can accumulate funds without limits", whereas the evidence shows that the funds in question was accumulated over a 8 year period?

Defendant-Appellant answer: YES

Whether the trial court erred by considering the funds in question "Assets" whereas as the evidence shows that these funds were a loan and by law, loans are considered debt not assets.

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## INDEX OF AUTHORITY

### FEDERAL CASE LAW

Chapman v. California, 386 U.S. 18; 875 Sct 824

Henkin v. Finnel, 964 F.2d 853; 33 Fed R. Serv. (8th Cir 1992)

Denton V. Hernandez, 504 U.S. 25, 33 (1992)

### STATE CASE LAW:

People v. McSwain, 259 Mich App 654, 667

Helw V. City Of Sterling Heights, 257 Mich.App 688, 694 800.401

### STATES AND COURT RULES:

Mich.Adm. R. 791.6639; MCR 7.209 (A) (i)

Federal Rule Of Civil Procedure 59(E)

12 U.S.C.S. § 24

Jurisdictional Statement

Petitioner seeks review of an Michigan Supreme Court order on September 10, 2019.

The petition is filed within ninety days of that date, as required by rule 13 of the Supreme Court rules. This court has jurisdiction pursuant to 28 U.S.C. § 1254(1), 1251 U.S. Const., Andrt.14

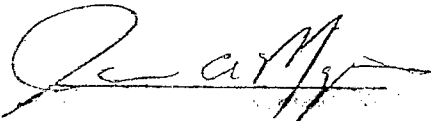
### STATEMENT OF FACTS

On January 8, 2017, Defendant-Appellant Damon S. Allen filed a motion to cease restitution to the third circuit court of Michigan in the County of Wayne. On March 03, 2017, The Honorable Judge Rober J. Colombo Jr. granted the defendant's motion and order to remit prisoner funds, vacated court cost fees and restitution. The Honorable Robert J. Colombo decided that the Michigan Department of Corrections was in error for improperly taking restitution from the defendant, account for over 8 years. The honorable judge ordered \$2855.74 to be returned to the defendant's account, on March 03, 2017 the state treasurer (MDOC) filed a complaint to receive reimbursement pursuant to MCL 800.401. on May 19, 2017 hearing where the Defendant the Honorable Daniel A. Hathaway held a show cause hearing where the Defendant was present via telephone. At the hearing the defendant testified that the funds that was ordered to be remitted back to his account was protected by Michigan administrative rule 791.6639 because the funds was accumulated over 8 years and defendant testified that the fund was a loan which he had a verbal agreement to pay back upon being released for parole. on July 19, 2017, Honorable Judge Daniel A. Hathaway decided that \$ 1988.99 was exempt because that was the total of state wages earned by the defendant. The judge erroneously substracted that total from \$3,302.20 stating that \$3,302, was the approximate amount in the Defendant's account. He then awarded the state 90% of \$1,313.01 and took \$1,181.70 from Defendant's account.

On 7-21-2017, Appellant filed a motion to amend or later the judgement pursuant to : Federal Rule of civil procedure 59 (E). Stating that \$3,302.00 was not the right amount in the defendant's account. The correct total was only \$2,992.46. Defendant sent copies of the receipt he received from the checks sent by the Wayne County Clerk as evidence for the correct total and informed the judge Daniel A. Hathaway the defendant was owed \$ 278.59 Judge Daniel A. Hathaway never responded.

Affidavit Of fact

I, Damon S. Allen, declare under the penalty of perjury that the above stated facts are true to the best of my knowledge, information and belief.



Notary Public

James A Myers  
Notary Public, State of Michigan  
County of Chippewa.  
Expires: 10/16/2019  
Acting in the County of Chippewa



Damon S. Allen

(I)

The trial court violated the Appellant's 14th amendment rights by abusing its discretion where in parsing out Appellant's argument, it render a decision which was contrary to the law,. Essentially was effectively a miscarriage of justice miscalculated the total amount to be reimbursed based on its own decision.

#### Standard Of Review

Where the question in this matter intially embraces due process questions of constitutional magnitude, that question is reviewed de novo, *Chapman v. California*, 386 U.S. 18; 87 S Ct 824; 17 L.Ed 2d 705, while the trial court determination is reviewed for an abuse of discretion *People v. McSwain*, 259 Mich App 659 677 N.W. 2d 236 (2003), also see *Walsh v City of Sterling Height*, 257 Mich. App 689, 594, 708-09 (2003) Standard of review in the interest of justice.

#### Discussion.

Defendant-appellant has the right to be protected from any miscarriage of justice, a circuit court judge has a sworn duty to be fair and impartial when deciding on a case. The circumstances of this case may be considered a First Impression Case due to the fact that no case law was found to be similar to the facts of this case..



ARGUMENT # 1

APPELLANT ARGUES THAT HIS 14TH AM RIGHTS WAS VIOLATED  
WHERE AS, THE JUDGE FAILED TO APPLY THE SUPREMACY  
CLAUSE TO THE ISSUE AT HAND

Judge Daniel A. Hathaway abused his discretion by ordering reimbursement to The State Treasure's pursuant to S.F.R.A. 800.401: The Honorable Robert J. Colombo's decision should be considered a legal judgement against the M.D.O.C. and the State of Michigan, which means the funds that were ordered to be returned to the Defendant are protected by the Supremacy Clause.

In Hankins v Finnel, 969 F2d 853; 53 Fed. R. Serv 32 (8th Cir. 1992) the U.S. Supreme Court stated that it would be un-constitutional to apply the State facility reimbursement act on a prisoner, when the prisoner won the funds in question from the State. In this case, the Honorable Judge Robert J. Colombo decided in favor of the Defendant, his decision was based on the fact that the Michigan Department of Corrections was in error by taking Restitution from the Defendant.

Knowing the facts previously mentioned, the Honorable Judge Daniel A. Hathaway violated the Defendant's 14th AM rights by abuse of discretion when he decided that the M.D.O.C. was entitled to Reimbursement of 90% of \$ 1,313.01. The Honorable Daniel A. Hathaway breached his duty to protect the Defendant which is his sworn duty to protect all citizens of the United States of America. The Honorable Daniel A. Hathaway did not properly apply the law, by not considering where the funds came from, by not considering the fact the M.D.O.C. technically embezzled those funds from the Defendant before the Court ordered the funds to be returned.

ARGUMENT # 2

JUDGE DANIEL A. HATHAWAY VIOLATED THE DEFENDANTS 14TH AM RIGHTS BY ORDERING THE DEFENDANT TO PAY REIMBURSEMENT WHEN THE FACTS SHOW THAT THE FUNDS IN QUESTION WAS ACCUMULATED, ORDERING REIMBURSEMENT VIOLATED MICHIGAN ADMINISTRATIVE RULE 791.6639

All parties agree that the funds in question were accumulated over a 8 year period and was improperly taken from the Defendant. All parties agree that these funds was Granted to the Defendant by the Chief Judge of Wayne County Honorable Robert J. Colombo Jr. Due to these undisputed facts, the Honorable Daniel A. Hathaway was in error on his decision to grant the Michigan Department of Corrections reimbursement pursuant to 800.401. Michigan Administrative Rule 791.6639 clearly states that a prisoner can accumulate funds without merit.

By law, the Michigan Department of Corrections is entitled to follow the Administrative Rules without deviation. Appellant argues that: It would be a disgrace in the United States Constitution if this Honorable Court allow the M.D.O.C. to illegally embezzle funds from the Appellants account, considering the fact that the M.D.O.C. was responsible for the error of taking the finds and these funds was accumulated over 8 years.

This Court should Order all of the funds to be remitted to the Appellant based on the accumulation rule in Michigan Administrative Rule 791.6639

ISSUE 3

Defendant's 14th amendment rights was violated by Judge Daniel A. Hathaway when he considered that the funds sent to defendant was asset, where as the evidence shows that the funds was a loan and by law loan are considered a debt.

At the show cause hearing on May 19, 2017 the defendant presented evidence that all the income which was sent to his account, was a loan. Defendant Allen testified that he has a verbal agreement with his brother. Who is the sole provider for the defendant, that upon release for parole Defendant Allen is obligated to pay any money sent to him during the time of incarceration, back to his brother. This verbal agreement is binding in a court of law. Due to the fact that these funds sent to the defendant was a loan, by law, they can not be considered assets. The Honorable Daniel A. Hathaway erred by not properly applying the law concerning the defendants assets and or debts, his decision was abuse of discretion and a violation of defendants 14th amendment rights, appellant's testimony at the show cause hearing should be accepted as truth, unless they are clearly irrational or wholly incredible. Denton v Hernandez, 509 U.S. 25, 33 (1992) Federal Statute 12 U.S.C.S 24 states that a loan is not assets.

TRIAL JUDGE VIOLATED THE DEFENDANT 14th AMENDMENT RIGHTS TO LIFE, LIBERTY AND JUSTICE, WHEREAS HE GRANTED MORE THEN 90% OF THE TOTAL AFTER SUBTRACTING THE \$1,988.99, WHICH THE JUDGE DEFINED AS "PRISONER WAGES."

Based on the Circuit Court Judge, Daniel A. Hathaway decision, the total fund exempt from reimbursement was \$1,988.99 (see exhibit (A) final order line 6).

Based on the notice of submission filed by the Attorney General on May 25, 2017, the defendant had a total of \$2,855.00 in his prisoner account. (See exhibit (B) notice of submission) the honorable judge mistakenly stated that "approximate" amount was \$3,302.00. This error is a clear miscarriage of justice. First the amount was never submitted to be no more then \$2,855.00 Second "approximate" is not a definite number and should not be use in a Court of law. The correct total was \$2,992.48.

Based on the judges own decision, \$278.59 should be remitted to the defendant's account. Enclosed as exhibit (C) is the three deposit receipt label as deduction exempt receipt, directly from the checks send by Wayne County.

#### CONCLUSION

Due to the fact that M.D.O.C. improperly took funds out of defendant's prisoner trust account for restitution and accumulated these funds for approximately 8 years, it will clearly be a miscarriage of justice to apply (S.F.R.A.) 800.401 appellant should not have to pay the restitution twice, which would be the case if this court allows this erroneous decision to stand.

#### RELIEF SOUGHT

For all the reasons argued above, Appellant prays that this Honorable Court reverse the trial courts' erroneous decision, remit all the funds in question back to the Appellant's prisoner accoount and close this case for good.  
Waive or return Filing Fee.

Respectfully Submitted

  
Damon S. Allen 979060