

10-7206

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 2019

Dmitry Pronin

(Your Name)

— PETITIONER

vs.

Charles Wright et al.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Fourth Circuit

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

PETITION FOR WRIT OF CERTIORARI

Dmitry Pronin

(Your Name)

Sheriff Al Cannon Det. Center, 3851 Leeds Ave.

(Address)

N. Charleston, S.C. 29405

(City, State, Zip Code)

not available

(Phone Number)

QUESTION(S) PRESENTED

① May an United States District judge construe legal argument for a party in a civil rights lawsuit, an argument that the party itself never raised?

② Did Honorable Henry M. Herlong construe such argument for Sheriff Charles Wright, Neal Urich and L. Blackwell?

③ Can circumstantial evidence create an issue of material fact barring summary judgement?

④ Did the U.S. Court of Appeals for the 4th Circuit impermissibly allow the District Court to assess credibility on a summary judgement motion, and to decide disputed facts?

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:

Dmitry Pronin, Petitioner

Charles Wright (Sheriff), Neal Urch, L. Blackwell, Respondents

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(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☒ is unpublished.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(B) to the petition and is

- ☐ reported at not known to petitioner whether it is reported or not; 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☐ is unpublished.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☐ is unpublished.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.

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III. U.S. District Court cases:

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JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was November 15th, 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: _____, 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, Amendment 5:

"No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a Grand jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation."

2. U. S. Constitution, Amendment 8:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

3. 42 U.S.C. § 1983: "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 U.S. 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." page 5 of 13 Continued →

STATEMENT OF THE CASE

1. The action, with unsuccessful appeal of grant of summary judgement in, which Petitioner respectfully asks this Court to review, started sometime in autumn 2016. The initial reason for the civil action was overcrowded cells and habitual undernourishment of inmates in Spartanburg County Sheriff's Detention, South Carolina, in violation of U.S. Const. Amdt. 8. The jurisdiction in the Court of first instance was by 42 U.S.C. § 1983.

From the outset of the action, the claim of cells in SCSD being overcrowded was dismissed, due to the fact that that violation was not connected to any other, more pronounced, violations of more serious nature. The Honorable Henry M. Herlong, District judge assigned to the case, also initially entered a stay, for the duration of about two months, in order for the interlocutory appeal of denial of class certification be resolved. (Eventually, U.S. Court of Appeals for the Fourth Circuit affirmed that denial.)

Pronin filed a verified amended complaint on Nov. 13, 2017. Defendants Charles Wright (Spartanburg County Sheriff), Neal Urch (corr. major), and Larry Blackwell (food service administrator) filed a motion for summary judgement on September 28, 2018. Pronin filed his response in opposition on October 29, 2018. Defendants filed their reply on November 8, 2018. Pronin filed a sur-reply on November 15, 2018.

Dmitry Pronin [STATEMENT OF
THE CASE] Continuation

The Magistrate judge, Kaymani D. West, issued the Report and Recommendation (attached as Appendix C) on April 2nd, 2019, and recommended granting the defendants' motion for summary judgement. Pronin filed objections to the Report and Recommendation on May 3rd, 2019. Despite the objections, and on the ground (indeed, only one ground) different from those raised by either the defendants in their motion for summary judgement, or by Magistrate Kaymani D. West, on May 13, 2019, Hon. Henry M. Herlong granted the summary judgement to defendants (Attached as Appendix B). Appeal was timely filed.

U.S. Court of Appeals for the Fourth Circuit affirmed on appeal. Pronin now petitions this Honorable Court for certiorari. (U.S. Court of Appeals for the Fourth Circuit decision is attached as Appendix A.)

2. A Court May Not Construct A Party's Argument for Him (Them).

U.S. District Judge Henry M. Herlong granted the defendants their motion for summary judgement based on a single piece of evidence that neither defendants themselves, nor U.S. Magistrate in her Report and Recommendations ever mentioned: a grievance where Pronin allegedly wrote that he was already just 138 pounds on intake; disregarding, at the same

Dmitry Pronin [STATEMENT OF
THE CASE] Continuation

time, the whole array of evidence Pronin leveled against the defendants.

In *House v. Aiken County Nat'l Bank*, 956 F.Supp. 1284, 1290 (D.S.C. 1995) (citing *Weller v. Dept of Social Services*, 901 F.2d 387 (4th Cir. 1990)) we can clearly read that a court may not construct a party's legal argument for him (them). *Id.* citing *Small v. Endicott*, 998 F.2d 411 (7th Cir. 1993).

Nor should a court "conjure up questions never squarely presented". *House v. Aiken County Nat'l Bank*, *supra*, quoting *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985). Hon. Henry M. Herlong introduced the argument for the defendants, and such that is based on a single piece of evidence. The argument which defendants themselves never presented. Nor did U.S. Magistrate ever mention it.

3. Circumstantial evidence can create an issue of material fact barring summary judgement

Pronin provided multiple pieces of his Federal Bureau of Prisons medical records, as well as his first-hand accounts, under penalty of perjury, of violations having happened in SCSD.

Dmitry Pronin [STATEMENT OF
THE CASE] Continuation

Hon. Henry M. Herlong, ignoring Pronin's first-hand accounts (including Verified original and Amended complaints that have to be counted as affidavits on summary judgement stage) points out that evidence from Pronin's FBOP medical files is circumstantial.

True, the records in question establish only what weight (165 pounds) Pronin was in Florence USP not long before he went for a writ to Spartanburg County, S.C., and that he didn't have "fatigue or anorexia". Those Pronin's FBOP records from Florence USP (Colorado) also establish that on Sept. 2nd, 2016, the day Pronin returned to Florence USP from the writ in Spartanburg, physician assistant Sattinder Rattan noted: "Abnormal weight loss" and further "unintentional".

True enough, those records are circumstantial, for they do not directly reflect what weight Pronin was while in Spartanburg. But just how much weight Pronin (who is 6'1" tall) could lose during 4 day transfer from Spartanburg, S.C., back to Florence, Co.?

Circumstantial evidence can create an issue of material fact barring summary judgement. *Simms v. Hardesty*, 303 F. Supp. 2d 656, 667 (D. Md. 2003), *aff'd*, 104 Fed. Appx. 853 (4th Cir. 2004). Unfortunately, *Simms* is an unpublished

Dmitry Pronin [STATEMENT OF
THE CASE] Continuation

opinion which, in the Fourth Circuit, is not a binding precedent. However, there is also *Smith v. Maschner*, 899 F.2d 940, 949 (10th Cir. 1990), which says the same: circumstantial evidence can bar a summary judgement. The latter decision is also a published one and a binding precedent in the 10th Circuit.

When two U.S. Courts of Appeals don't differ in opinions, but still differ in precedential value of them, it's one more reason for the Supreme Court to step in and settle the issue.

Summary judgement was improper where defendants' material (one piece of evidence recited by Henry M. Herlong) did not meet burden of negating Plaintiff's allegation of severe undernourishment and abnormal weight loss while in SCSD, in violation of Const. Amolt. 8, fortified by direct (verified original and amended complaints, affidavits under penalty of perjury based on the personal knowledge) as well as circumstantial (Pronin's FBOP medical records before, and directly after Spartamburg) evidence. *Adickes v. S. H. Kress and Co.*, 90 S.Ct. 1598, 398 U.S. 144 (1970). Pronin also submitted verified statement of the disputed facts.

4. The U.S. Court of Appeals for the Fourth Circuit has decided an important federal question in a way that conflicts with relevant decisions of this Honorable Court, and sanctioned such a departure by a lower court as to call for exercise of this Court's supervisory power.

The court is not supposed to decide disputed facts or assess credibility on a summary judgement motion. *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 520, 115 Ct. 2419 (1991); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505 (1986); *Wilson v. Williams*, 997 F.2d 348, 350-51 (7th Cir. 1993); *Gray v. Spillman*, 925 F.2d 90, 95 (4th Cir. 1991); *Titran v. Ackman*, 843 F.2d 145, 147 (7th Cir. 1990).

The U.S. District Court for the District of South Carolina, by giving the one defendants' piece of evidence (the grievance) more weight than all Pronin's direct and circumstantial evidence, impermissibly assessed credibility, and decided disputed facts on summary judgement motion. And the U.S. Court of Appeals for the Fourth Circuit deviated from their own

Dmitry Pronin [STATEMENT OF
THE CASE] Continuation

precedent in *Gray v. Spillman*, *supra*, by not correcting the U.S. District Court error in summary judgement stage procedure. Not to say about the U.S. Court of Appeals for the Fourth Circuit nullifying, in one stroke, all the above Supreme Court precedents. Indeed, the text of the decision of the U.S. District Court (Appendix B) is short, 5 pages only, and the text of the decision by the U.S. Court of Appeals for the 4-th Circuit is even shorter - less than 1 page.

Pronin specified which portion of the Magistrate Judge's Report (Part B) he objected to, since it was the only part where Hon. Kaymani D. West recommended the grant of summary judgement. But when the one and the only piece of defendants' evidence Hon. Henry M. Herlong used to explain the grant of summary judgement was "not in the order" (Rule 72 Fed. R. Civ. P.), there was nothing to object to.

After all, Pronin cannot predict all arguments the District Court might raise on review!

REASONS FOR GRANTING THE PETITION

1. Summary judgement is an important integral part in civil litigation process. There are the whole classes of cases — such as, for instance, actions under Freedom of Information Act — that are appropriately decided on summary judgement motion.

Allowing an U.S. District Court to further deviate from accepted summary judgement procedure by weighing evidence and assessing credibility on summary judgement motion would create a bad precedent for other U.S. District Courts in the Circuit; and allow erosion of the Supreme Court precedents, such as *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 111 S.Ct. 2419 (1991), and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505 (1986) to go unchecked.

U.S. Court of Appeals for the 4-th Circuit, in sanctioning such a departure in the course of judicial proceedings by a lower court, calls for an exercise of this Court's supervisory power, in order to avoid negative implications to U.S. Const. Amdt. 5.

2. In granting summary judgement to defendants Wright, Uroh, and Blackwell, by basing its argument on the single piece of evidence (grievance) that neither defendants themselves (in their motion for summary judgement), nor U.S. Magistrate Judge in her Report and Recommendation ever mentioned, U.S. District Court constructed legal argument for a party, in disregard of *Small v. Endicott*, 998 F.2d 411 (7th Cir. 1993). Such situation has even further negative implications to U.S. Constitution Amendment 5 (Due Process of Law).


Nor should a court "conjure up questions never squarely presented." *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985)

By making up legal argument for a party, the argument that defendants themselves never raised, and conjuring up a question of fact never squarely presented by them, the U.S. District Court so much deviated from the course of regular judicial proceedings as to put into question the relevant precedents above, and the 5-th Amendment to Constitution validity. This petition for common law certiorari seeks to improve that situation.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

 Dmitry Pronin

Date: 12/30/2019