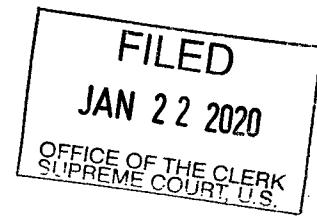


ORIGINAL

19-7493



IN THE
SUPREME COURT OF THE UNITED STATES

CHARLES T. KIRVIN — PETITIONER
(Your Name)

vs.

L. GRANT, et, al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE 9th CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CHARLES T. KIRVIN
(Your Name) C. S. P. - LAC

P.O. BOX 4670
(Address)

LANCASTER, CA. 93539
(City, State, Zip Code)

—
(Phone Number)

(1)

QUESTION(S) PRESENTED

Whether THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT ARBITRARILY AND ERRONEOUSLY DENIED APPELLANT NOTICE OF APPEAL FOR LACK OF JURISDICTION IN ERROR, STATING, "APPELLANT NOTICE OF APPEAL was not FILED OR DELIVERED to Prison OFFICIALS within 30 DAYS AFTER the DISTRICT COURT'S JUDGMENT was entered," when APPELLANT FILED A MOTION FOR SHOWING OF GOOD CAUSE AND EXCUSABLE NEGLECT FOR THE LATE FILING OF CERTIFICATE OF APPEALABILITY with DECLARATION and POINTS OF AUTHORITIES with the U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT, WHICH THE COURT SHOULD HAVE GRANTED.

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) L. GRANT
- (2) C. MEUX
- (3) R. PRICE
- (4) S. PAYAN
- (5) J. Solis
- (6) XAVIER Cano

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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 _____ 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 is unpublished.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 _____ 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 is unpublished.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 OCT. 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: _____, 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

FED. R. CIV. P. 60(b), a party may obtain relief from a judgment by showing: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) the judgment is void; (5) the judgment has been satisfied or released; or (6) any other reason that justifies relief. Fed. R. Civ. P. 60(b). When considering whether a party is entitled to relief under Rule 60(b)(1), the court conducts an equitable inquiry based upon the particular circumstances of the case. In order to obtain relief under Rule 60(b)(6), a party must demonstrate exceptional circumstances, or, in other words, a justification for relief so compelling that the district court is required to grant the motion.

FED. R. APP. P. 4(a)(6), the district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied: (A) the court finds that the moving party did not receive notice under [Fed. R. Civ. P. 77(d)] of the entry of the judgment or order sought to be appealed within 21 days after entry; (B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under [Fed. R. Civ. P. 77(d)] if the entry, whichever is earlier; and (C) the court finds that no party would be prejudiced.

California Code of Regulation, Title 15, Section 3160. Inmate Access To Courts
pertinent part: (a) Inmates access to the courts shall not be obstructed.

STATEMENT OF THE CASE

1) I AM THE APPELLANT HEREIN CASE and I submitted NUMEROUS REQUESTS FOR PHYSICAL ACCESS TO LAW LIBRARY on Oct. 31, 2018 (EXHIBIT 1), NOV. 13, 2018 (EXHIBIT 2), and Filed a C.J.C.R. 602 Inmate APPEAL AGAINST THE LAW LIBRARY Librarian at SATF/@Corcoran STATE PRISON on NOV. 24, 2018 (EXHIBIT 3) FOR denial OF PHYSICAL ACCESS TO LAW LIBRARY.

2) On DEC. 26, 2018 APPELLANT was interviewed CONCERNING the denials of Law Library which PETITIONER REQUESTED physical ACCESS TO Law Library was denied (EXHIBIT 3).

3) On Jan. 8, 2019 PETITIONER APPEALED TO SECOND LEVEL REVIEW (EXHIBIT 3 SECTION D), after First LEVEL OF REVIEW denied Petitioner COMPLAINT and Failed to have the Law Library Librarian call me out for Law Library which was also denied at SECOND LEVEL REVIEW on MARCH 13, 2019.

4) On APRIL 2, 2019 Petitioner APPEALED to THIRD LEVEL OF REVIEW (EXHIBIT 3 SECTION F), after SECOND LEVEL OF REVIEW denied MY COMPLAINT and Failed to have the Librarian to call me out For Law Library which also was denied at THIRD LEVEL OF REVIEW.

5) IN PURSUANT TO THE CALIFORNIA CODE OF REGULATION (C.C.R.),
TITLE 15, SECTION 3123. ACCESS TO LAW LIBRARY.

(a) Physical Law Library Access means physical entry into Facility Law Library for the purpose of using its legal resources. A Facility Law Libraries includes, but not limited to, a Print Law Library or Law Library Electronic

1 DELIVERY SYSTEM (LLEDS) with ANY NECESSARY PRINT
2 SUPPLEMENT.

3 (B) ALL INMATES, REGARDLESS OF their classification or
4 housing status shall be entitle to Physical Law Library
5 ACCESS that is sufficient to PROVIDE meanful ACCESS TO
6 the courts. INMATES ON Priority LEGAL USER (P.L.U.) STATUS
7 MAY RECEIVE A MINIMUM OF 4 hours PER Calendar week
8 OF REQUESTED Physical Law Library ACCESS AS RESOURCES
9 ARE available, and shall be GIVEN higher Priority to
10 Law Library RESOURCES. INMATES ON General LEGAL
11 User (G. L. U.) STATUS MAY RECEIVE A MINIMUM OF 2 Hours
12 Per calendar week OF REQUESTED Physical Law Library
13 ACCESS, as RESOURCES ARE Available.

14 6) THESE denial Access To Physical Law Library ACTIVELY
15 Interferred with Petitioner Preparation and Ability to
16 RESPOND and obstructed Petitioner from Filing a Timely
17 First Amended Complaint which was due Jan. 2, 2019 and
18 a Timely Notice of APPEAL which was due APRIL 1, 2019.

19 7) Petitioner was indigent and needed Physical Access To
20 Law Library TO DO LEGAL Research, Get Photo COPIES, and
21 obtain LEGAL ENVELOPES Needed to File First Amended Complaint
22 And/OR Motion For Extension of TIME TO FILE.

23 8) THE U.S. DISTRICT Court FOR THE CENTRAL District of
24 California Dismissed Petitioner Complaint with Leave To
25 Amend (DKT 6 EXHIBIT 4), on DEC. 3, 2018 which I RECEIVED
26 FIRST NOTICE OF THROUGH THE PRISON LEGAL MAIL DELIVERY
27 SYSTEM December 12, 2018.

28 9) THE U.S. DISTRICT Court For THE Central District of

1 California GAVE Petitioner 30 days which to file first
2 Amended Complaint but due to the denials of Law
3 Library and the failure of SATF/@Corcoran STATE
4 PRISON APPEAL Office REFUSAL at first level of Review
5 REFUSED to GRANT Petitioner APPEAL And Allow Petitioner
6 Physical ACCESS TO Law Library To FILE A First Amended
7 Complaint.

8 10) Petitioner could not file the Amended Complaint
9 within 30 days being Petitioner could not RESEARCH
10 the issues and being that I was indigENT and didn't
11 have the legal MATERIALS neccessary To RESPOND.

12 ii) On Jan. 28, 2019 THE DISTRICT COURT FILED A REPORT
13 and Recommendation RECOMMENDING Petitioner Civil Suit
14 be dismissed due to failure to Prosecute and obey court
15 orders as a Result for not filing A timely First Amended
16 Complaint. (EXHIBIT 5)

17 12) OBJECTIONS to the Report And RECOMMENDATION was due
18 February 11, 2019 but Petitioner Miss that DEADLINE
19 due to continuous denials of Law Library.

20 13) On April 14, 2019, Petitioner wrote a letter TO THE CLERK
21 OF THE DISTRICT COURT (EXHIBIT 6 Dkt 13), AFTER NOT
22 RECEIVING His LEGAL MAIL FROM THE CORRECTIONAL OFFICER.
23 (EXHIBIT 8).

24 14) On APRIL 24, 2019 THE COURT RESPONDED TO PETITIONER LETTER
25 (EXHIBIT 9) warning Petitioner that his case was closed
26 on Feb. 28, 2019 which was Petitioner first Notice THAT THE
27 CIVIL ACTION was dismiss therefore Petitioner was unaware
28 of any deadlines to file an NOTICE OF APPEAL and could not

1 File A TIMELY NOTICE OF APPEAL being that Petitioner was
2 not notified that his Civil Action had been dismiss.

3 15) On MARCH 5, 2019 PETITIONER was SENT TO ADMINISTRATIVE
4 SECURITY UNIT FOR SAFETY CONCERNs (EXHIBIT 8).

5 16) ALL PETITIONER PROPERTY was CONFISCATED when Petitioner
6 was SENT TO THE ADMINISTRATIVE SECURITY UNIT. PETITIONER
7 PROPERTY was not ISSUED to him until April 6, 2019.

8 (EXHIBIT 90) and Petitioner was WITHOUT his PROPERTY
9 FROM MARCH 4, 2019 until April 6, 2019 SO PETITIONER
10 COULD HAVE NOT FILED A TIMELY "NOTICE OF APPEAL."

11 17) Sometime after April 24, 2019 (the date court filed the
12 letter to the court EXHIBIT 7) Petitioner RECEIVED HIS FIRST
13 NOTICE FROM THE COURT ON THAT HIS APPEAL was DISMISS
14 ON FEB. 28, 2019 which was WELL AFTER THE 30 DAY DEADLINE
15 TO FILE NOTICE OF APPEAL after JUDGMENT OR ORDER BEING
16 APPEALED IS ENTERED PURSUANT TO FED. R. APP. P. 4(a)(1)(A).

17 18) PETITIONER PROPERTY was TRANSPACKED ON APRIL 29, 2019
18 and PETITIONER was TRANSFERRED TO NORTH KERN STATE PRISON
19 and PETITIONER was TRANSFERRED TO MULE CREEK STATE
20 PRISON ON MAY 2, 2019 (EXHIBIT 10) which PETITIONER
21 was NOT ISSUE HIS PROPERTY UNTIL June 02,
22 2019 WHICH PETITIONER SUBMITTED NOTICE OF APPEAL
23 TO THE NINTH CIRCUIT JULY 02, 2019.

24
25 I declare under the PENALTY OF PERJURY the foregoing
26 IS TRUE AND CORRECT. EXECUTED AT C.S.P.-LAC ON
27 JANUARY 22, 2020.

REASONS FOR GRANTING THE PETITION

BASE ON THE FACT STATED IN THE STATEMENT OF THE CASE PETITION FOR WRIT OF CERTIORARI should be GRANTED being THE(1) PETITIONER was being denied Law Library during the time of the established deadlines to File First Amendment Complaint, during the time of the established deadline to file objection to the District Judge REPORT And Recommendation, and during the time of the establish deadline to File a timely NOTICE OF APPEAL; (2) PETITIONER NEVER RECEIVE HIS LEGAL MAIL FROM PRISON OFFICIALS therefore PETITIONER NEVER RECEIVE NOTICE OF the Judgment that PETITIONER CIVIL ACTION CLAIM was dismiss and PETITIONER was never alerted of the 30 days deadline to FILE the NOTICE OF APPEAL, (3) PRISON OFFICIALS INTENTIONALLY and ACTIVELY Interferred with PETITIONER RIGHT TO ACCESS TO THE COURTS by denying PETITIONER MEANINGFUL ACCESS TO THE LAW LIBRARY where PETITIONER could do LEGAL Research, obtain LEGAL MATERIALS, and Photo Copies To Mail OUT LEGAL MAIL being THAT PETITIONER was INDIGENT in violation of his FIRST AMENDMENT RIGHT TO PETITION the GOVERNMENT AND PETITIONER'S FOURTEEN AMENDMENT RIGHT TO DUE PROCESS OF LAW and, (4) ALL THESE FACTS SURROUNDING THE CIRCUMSTANCES OF PETITIONER'S FAILURE TO timely MAKE the above mention deadlines was EXCUSABLE NEGLECT and showing OF GOOD CAUSE

1 in connection with the judgment from which Petitioner
2 is seeking relief pursuant to Fed. R. App. P. (4)(a)(6),
3 which the U.S. COURT OF APPEAL FOR the 9th
4 CIRCUIT Court may REOPEN the time to file an APPEAL
5 FOR A PERIOD OF 14 days after the date when its order
6 to REOPEN is entered, but only if all the following conditions
7 are satisfied: (A) the court finds that the moving party
8 did not receive notice under Fed. R. Civ. P. 77(d) of the
9 entry of the judgment or order sought to be appealed
10 within 21 days after entry; (B) the motion is filed 180
11 days after the judgment or order is entered or
12 within 14 days after the moving party receives notice
13 under Fed. R. Civ. P. 77(d) of the entry, whichever is
14 earlier and (C) the courts find that no party would
15 be prejudiced, and being that Petitioner circumstances
16 satisfied all these conditions but the United States
17 Court of Appeals for the NINTH CIRCUIT ARBITRARILY
18 and ERRONEOUSLY dismiss Petitioner APPEAL FOR A
19 LACK OF JURISDICTION when Petitioner could not have
20 POSSIBLY RESPONDED AT AN EARLIER POSSIBLE DATE FOR
21 THE FORE STATED REASON PUT FORTH IN THE STATEMENT
22 OF THE CASE and MY COMPLAINT was dismissed
23 with Prejudice for failure to PROSECUTE AND OBEY
24 COURT orders Pursuant to Federal Rule of Civil
25 PROCEDURES 41(b), Petitioner showed excusable neglect
26 and showing of GOOD cause for LATE filing of
27 First Amended COMPLAINT, Objection to REPORT AND
RECOMMENDATION, and NOTICE OF APPEAL and Pursuant

1 TO FED. RULES OF CIV. PROC. RULE 60 (b)(1). PROVIDES IN
2 PERTINENT PARTS:

3 (b) GROUNDS FOR RELIEF FROM A FINAL JUDGMENT,
4 ORDER, OR PROCEEDINGS ON MOTIONS AND JUST TERMS,
5 THE COURT RELEAVES A PARTY... FROM A FINAL JUDGMENT,
6 ORDER, OR PROCEEDINGS FOR THE FOLLOWING REASONS:

7 (i) MISTAKE, INADVERTENCE, SURPRISE, OR EXCUSABLE
8 NEGLECT.

9 IN TAMMER V. YUKINS, 776 F.3D 434, 438-444
10 (6TH CIR 2015) THE 6TH CIRCUIT FEDERAL COURT OF APPEALS
11 EXAMINED A SIMILAR INSTANCE OF INTERFERENCE BY
12 PRISON OFFICIALS WITH HABEAS PETITIONER'S ACCESS
13 TO THE COURTS AND STATED: "FEDERAL COURT WOULD
14 BE REQUIRED TO ACQUIESCE IN THE UNCONSTITUTIONAL
15 CONDUCT OF PRISON GUARDS WHO DELAY AN INMATE'S
16 ABILITY TO FILE AN APPEAL UNTIL IT IS TOO LATE TO
17 MEET RULE 4 DEADLINES."

18 THE ISSUES INVOLVE A MATTER OF CONTINUING PUBLIC
19 IMPORTANCE BEING ITS LIKELY TO RECURR BETWEEN
20 CDCR AND PETITIONER AND/OR OTHER INMATES
21 BEING PRISON OFFICIAL BLATANT ACTIVE INTERFERENCE
22 AND AGGRESSIVE NATURE WHEN THEY FEEL THEY CAN
23 GET AWAY WITH THE MISCONDUCT UNDER COMPLAINT
24 WITH NO REPROACH FOR THEIR ACTIONS AND WOULD
25 PREVAIL WITH THEIR UNCONSTITUTIONAL ACTIVE INTERFERENCE
26 : IF PETITIONER PETITION FOR WRIT OF CERTIORARI
27 IS NOT GRANTED WHICH WOULD BE AN ENCOURAGE
28 OF JUSTICE PRISON OFFICIAL WOULD CEASE TO

1 STOP REPEATING THE ACT.
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18 I declare under penalty of perjury under the
19 laws of the United States that the foregoing
20 is true and correct. EXECUTED AT CSP-LAC
21 on January 22, 2020.

22
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25
26 Charles T. Kivin
27 PETITIONER
28

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Charles T. Kirvin

Date: January 22, 2020