

No. 19-7619

ORIGINAL

Supreme Court, U.S.  
FILED

JAN 12 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Therion Wimbush — PETITIONER  
(Your Name)

vs.

GWINNETT County Jail — RESPONDENT(S)  
et al.

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the 11<sup>th</sup> Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Therion Wimbush  
(Your Name)

P.O. Box 709  
(Address)

Alto, GA 30510  
(City, State, Zip Code)

N/A  
(Phone Number)

QUESTION(S) PRESENTED

- 1) Is a PRETRIAL DETAINEE required to exhaust the grievance procedure before being able to file a 42 USC § 1983?

- 2) Is a PRETRIAL DETAINEE held in the Guinnett County DETENTION CENTER required to exhaust the grievance procedure for the Guinnett County JAIL?

- 3) Can a PRETRIAL DETAINEE be punished?

RELATED CASES

19-6836  
19-5209  
19-5210  
19-6134

## 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) Atkins, Deputy Sheriff
- 2) Anderson, Nina, Deputy Sheriff
- 3) Barber, Kelvin, Deputy Sheriff
- 4) Bolling, Deputy Sheriff
- 5) Campbell, Martin K., Deputy Sheriff
- 6) Clark, Dawn, Deputy Sheriff
- 7) Conway, R.L. "Butch", Sheriff
- 8) Culbreath, Sean T., Deputy Sheriff
- 9) Elliot, Karen, Deputy Sheriff
- 10) Ferguson, Deputy Sheriff
- 11) Guinnett County Government
- 12) Guinnett County Jail
- 13) Guinnett County Sheriff's Department
- 14) Guinnett County Detention Center
- 15) Hayes, Deputy Sheriff
- 16) Higgins, Tina, Deputy Sheriff
- 17) Hughes, Deputy Sheriff
- 18) Innocent, Martine, Deputy Sheriff
- 19) Johnson, Delores, Deputy Sheriff
- 20) Johnston, Deputy Sheriff
- 21) Little, Kayan, Deputy Sheriff
- 22) Long, Deputy Sheriff
- 23) Lucas, Deputy Sheriff
- 24) McKenzie, Deputy Sheriff
- 25) Mitchell (male), Deputy Sheriff
- 26) Obler, Jeffrey T., Deputy Sheriff
- 27) Pettis, Raymond, Deputy Sheriff
- 28) Richardson, Deputy Sheriff

- 29) Shapire, Myles, H., Deputy Sheriff
- 30) Simons, Deputy Sheriff
- 31) Smith, DeDonne, Deputy Sheriff
- 32) Spears, J. Deputy Sheriff
- 33) Thomas, Mark, A. Deputy Sheriff
- 34) Thompson, Deputy Sheriff
- 35) Thurston, James, Deputy Sheriff
- 36) Walden, Deputy Sheriff
- 37) Walker, Myron, Deputy Sheriff
- 38) White, Mark, Deputy Sheriff
- 39) Wright (Leithen), Deputy Sheriff.

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

Whately v. Smith, 898 F.3d 1072 (11<sup>th</sup> Cir.)

### STATUTES AND RULES

42 USC § 1997e(a)

### OTHER

## TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	N/A
STATEMENT OF THE CASE .....	3
REASONS FOR GRANTING THE WRIT .....	4
CONCLUSION.....	5
PROOF OF SERVICE .....	6

## INDEX TO APPENDICES

APPENDIX A	August 16, 2019 Order Denying ReHearing
APPENDIX B	
APPENDIX C	
APPENDIX D	
APPENDIX E	
APPENDIX F	

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 \_\_\_\_\_ 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 \_\_\_\_\_.

☐ 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: August 16, 2019, and a copy of the order denying rehearing appears at Appendix A.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including January 13, 2020 (date) on October 3, 2019 (date) in Application No. 19 A 479.

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).



## STATEMENT OF THE CASE

On February 5, 2016, plaintiff filed a 42 USC § 1983 Civil rights action in the United States District Court for the Northern District of Georgia, at such time that plaintiff was a PRETRIAL DETAINEE, by court order being held in the Gwinnett County Detention Center, as a direct result of the various PUNISHMENTS, including being placed in 24 hour LOCKDOWN, being denied recreation, hygiene, commissary, and visitation, being denied access to the law library, as a prose criminal litigant, denied ~~every~~ ALL contact with her codefendant husband who was also housed in the Gwinnett County Detention Center, including through regular mail, and being subjected to a POSTCARD only policy for incoming mail.

In the screening stage, the Magistrate dismissed MOST of the claims of PUNISHMENT OF APRETRIAL DETAINEE without explanation, and simultaneously dismissed several of the defendant's culpable. Moreover, the Magistrate recommended that plaintiff only be allowed to continue with the NO CONTACT WITH HER HUSBAND claim and the POSTCARD ONLY POLICY. Said recommendation was adopted and later after plaintiff was UNLAWFULLY transferred to the custody of the Georgia Department of Corrections under a VOID JUDGMENT of conviction (see case no. 19-6836) arguing that the issues were then MOOT because plaintiff was NO LONGER in the custody of the defendant.

Said order/opinion was AFFIRMED on appeal and plaintiff's petition for En Banc Rehearing was denied on August 16, 2019.

## REASONS FOR GRANTING THE PETITION

~~When~~ The US Court of Appeals (11th Cir.) reviews a district court's interpretation of the exhaustion requirement *de novo*. Whitley v. Smith, 898 F.3d 1072 (11th Cir. 2018) Under the Prison Litigation Reform Act, no action shall be brought with respect to PRISON conditions under section 1983 of this title (42), or any other federal law, by a prisoner confined in any JAIL, PRISON, or other CORRECTIONAL facility until such administrative remedies as are available are EXHAUSTED. 42 USC § 1997e(a).

Plaintiff was ~~and~~ (and still is) a PRETRIAL DETAINEE held in the Gwinnett County DETENTION CENTER not the Gwinnett County JAIL. The Gwinnett County Detention Center is NOT a CORRECTIONAL FACILITY, and likewise does NOT have a grievance process associated with it. The Gwinnett County Jail is a CORRECTIONAL FACILITY and likewise has a grievance procedure for its convicted inmates to follow when necessary. In fact, plaintiff offered the "Order on her Motion for Additional Access to the law library which stated" Defendant is hereby ~~granted~~ authorized to utilize the law library in the Gwinnett County DETENTION CENTER, "as evidentiary exhibit to prove that she was NOT being held in the Gwinnett County Jail.

Hence, as the court dismissed several of plaintiff's claims for failure to state a claim and/or failure to exhaust when: 1) PUNISHMENT OF A PRETRIAL DETAINEE, in the various ways listed in her Complaint, did, in fact, state a claim for relief; 2) due to the fact that plaintiff was detained in the Gwinnett County Detention Center which does NOT have a grievance procedure, she could not have failed to exhaust her administrative remedies, required of a convicted inmate in the Gwinnett County Jail.

Plaintiff, thus, asserts that the GRANTING of summary judgment based on an UNLAWFUL, ILLEGAL transfer to the Department of Corrections and dismissing claims of PUNISHMENT of a PRETRIAL detainee for failure to state a claim or for failure to exhaust was a gross abuse of discretion.

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 11/12/20