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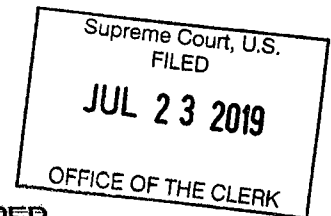
ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

PHILIP WAYNE BERRYMAN, PETITIONER

VS.

RANDALL HAAS, GEORGE STEPHENSON, LISA ADRAY, HEATHER COOPER  
K. STEECE, MIDIZA-PARR, RN . REVIARD. RESPONDENTS



ON PETITION FOR WRIT OF CERTIORARI TO

ON PETITION FOR WRIT OF CERTIORARI  
FROM THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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## **QUESTIONS PRESENTED FOR REVIEW**

In this case, the Sixth Circuit Court of Appeals holds that an essential part of the MDOC's Grievance Process will only benefit a very few litigants when it comes to Resolving a Grievance issue at STEP I of the grievance process and that when prison employees decide to renege on their promise in the resolution of the Step I grievance, the Sixth Circuit claims that the prisoner litigant must file [yet] another grievance on the same issue. Pursuant to the mandate rule, lower courts must adhere to the commands of a Superior Court. In Berryman's case both the MDOC and the Reviewer had sufficient information to identify the problem/issue because they RESOLVED the grievance in Berryman's favor and gave him all the relief he sought in the 2015 grievance. Also Berryman had basis for appealing the grievance of Defendants reneging on the 2015 Grievance as a prisoner CANNOT relitigate an issue by filing a duplicate grievance for fear of getting a misconduct ticket.

### **ISSUE I**

IS THE SIXTH CIRCUIT REQUIRED TO ADHERE TO PRECEDENT UNDER STARE DECISIS, WHEN RULING ON A SAME ISSUE WHICH HAS BEEN RULED UPON BY THE SIXTH CIRCUIT, AND SEVERAL OTHER SISTER CIRCUITS AND THE UNITED STATES SUPREME COURT AND NOT OVER TURNED?

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### **ISSUE III**

WHEN THE SIXTH CIRCUIT HELD THAT PETITIONER BERRYMAN HAD TO FILE YET ANOTHER GRIEVANCE REGARDING THE VERY SAME ISSUE HE HAD ALREADY FILED AND WON IN 2015 AT STEP I (RESOLVED) OF THE MDOC'S GRIEVANCE POLICY. DID THEY VIOLATE STARE DECISIS AND PLAINTIFF BERRYMAN'S CONSTITUTIONAL RIGHT TO BE TREATED THE SAME AS OTHER LITIGANTS, REGARDING HIS EXHAUSTION OF THE ISSUE OF THE SINGLE-PERSON CELL

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## **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 petitioner is as follows.

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**DECISIONS BELOW**

The decision of the United States Court of Appeals for the sixth Circuit is unreported. It is attached as Appendix A to this petition. The order of the United States District Court for the Eastern District of Michigan is not reported. A copy is attached as Appendix Petition.

**JURISDICTION**

The judgment of the United States Court of Appeals for the sixth Circuit was entered on April 2019. An order denying a petition for reconsideration was entered on April 2019 and a copy of that order is attached as Appendix C to this petition. Jurisdiction is conferred on the Supreme Court.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This petition involves a conflict within the Sixth Circuit Court of Appeals regarding the 'Equal Protection' of the XIV to the United States Constitution which provides:

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the **equal protection** of the laws.

Section 3. The Congress shall have powers to enforce, by appropriate legislation the provisions of the article.

The Amendment is enforced by Title 42 USC 42 Section 1983, United States Code. Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State, Territory, or the District of Columbia, subjects or causes to be subjected any citizen of the United States or other person within 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 any action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

### STATEMENT OF THE CASE

The petitioner's verified complaint alleged that he was retaliated against by several of the prison staff, including the Director and Deputy Director of the MDOC and denied equal protection of the laws, regulations and policies of the MDOC regarding his Health, Safety by the same named Defendants for having filed previous grievances and lawsuits against them and their fellow staff members. Petitioner is an elderly Jewish prisoner of the age of (78) years, confined to a Wheelchair for life, he requires Self evacuation of his Feces by hand several times daily and also self Catheterizing several times daily, with the limited use of his arms he must do these requirements while laying nude in his bed on special Blue Pads that absorbs over flow . He has had his own Single-person cell/Room in level II for over (20 ) Years, until a professed Anti Semite (Defendant K. Steece) became an acting Deputy for one week and this

case ensured, as he ordered the single-person Cell/Room status removed by asking another Defendant Heather Cooper to falsify records along with Defendant Adray and Reviard, Defendant George Stephenson and Randall Haas condoned the actions and in fact took an active part in the furtherance of the retaliation against the Elderly prisoner. Pursuant to the usual prison Grievance System Petitioner filed his Step I grievance and both prison Staff Defendant George Stephenson and Health care staff White and Petitioner all agreed to the resolution offered by both the Health Care staff and Deputy Warden Stephenson that Petitioner would remain housed in a Single-person room, thereby **resolving the Grievance at Step I** this took place July 2015, there was no time limit set within the resolution and as Petitioner will remain Wheelchair-bound for the rest of his life there would have been no reason for prison staff to insert one. Over the years health care staff have documented the battered and bruised body of Petitioner, with the swollen eyes and face, it was reported that there had been sexual assault and that his property had been taken by prisoners whom the MDOC staff had placed in his Single-person Room due to their claim that Petitioner stunk from having to Self evacuate his own Feces and Urine, (In Michigan the law makers and the MDOC label prisoners such as Petitioner as Frail and in fact passed into law a law to prosecute those who assault such persons) These assaults continue to this date and still this elderly prisoner is forced to have another prisoner in the cell with him The room was designed for a Single person but now houses TWO prisoners open space consists of approximately 4r' x 6' the Petitioner's Wheelchair is approximately Five' x 2½ 'the rest of the room is filled with two lockers one desk, two beds bunk beds.

#### **DISTRICT COURT'S DECISION**

The district court granted summary judgment to the defendants on the ground that Petitioner had not exhausted his state administrative remedies under the PLRA and 1997e(a) by claiming that the 'Resolution to the 2015 Grievance which was **RESOLVED AT STEP I OF THE GRIEVANCE PROCESS**. The district court judge actually admitted that she may have committed legal error but would leave it up to the Court of Appeals. The court of appeals for the



Sixth circuit affirmed the grant of summary judgment for the reason stated by the district court which violates both the holdings within the Sixth Circuit and the United States Supreme Court as to Resolving of Grievances at Step I of the grievance process.

## **BASES FOR FEDERAL JURISDICTION**

This case raises the question of interpretation of Stare decisis, and Precedent requirements by lower and inferior courts. The district court had jurisdiction under the general federal question jurisdiction conferred by 28 USC § 1331.

## **ARGUMENTS IN SUPPORT OF GRANTING CERTIORARI**

### **ISSUE I**

**IS THE SIXTH CIRCUIT REQUIRED TO ADHERE TO PRECEDENT UNDER STARE DECISIS, WHEN RULING ON A SAME ISSUE WHICH HAS BEEN RULED UPON BY THE SIXTH CIRCUIT, AND SEVERAL OTHER SISTER CIRCUITS AND THE UNITED STATES SUPREME COURT AND NOT OVER TURNED?**

#### **A. Conflicts with Decisions of the Sixth Circuit and Other Courts**

The holding of the courts below that Resolution of the Grievance (State Remedy) at **Step I** of the of the Grievance process, requires a litigant to continuously file grievances on the same **ISSUE**, Is directly contrary to the decision given by the three person panel of the Sixth Circuit Court of Appeals ON February 13, 2019 and April 25, 2019 of not only the Sixth Circuit Court Appeals own decision regarding the very same issue and those of other Circuit Courts, and those of the United States Supreme Court holding in *Booth v. Churmer*. 532 US 736, 121 S.Ct. 1818; 149 L.Ed.2d 058 (2001). Booth made quite clear that the statutory language does not require exhaustion when no permanent relief can be obtained through the internal process. As the Court noted both parties in Booth so recognized; 'Neither of them denies that some redress for a wrong is pre supposedly the statute's requirement of an 'available' remedy; neither argues that exhaustion is required where the relevant administrative procedure lacks authority to provide any relief or to take any action whatsoever in response to the grievance complaint. The district court refused to follow the precedent set forth by both the Sixth Circuit and other Circuit Courts and the United States Supreme Court regarding the issue of Resolving a

Grievance at Step I of the grievance process and holding each party to the resolution that was agreed upon, mandated that those agreements/resolutions are binding upon all parties and a prisoner need not file yet another Grievance regarding the very same issue..

The district court Judge In claiming that Plaintiff Berryman had not exhausted his state remedies, stated that she "may have committed legal error". Therefore, the District Court and the Sixth Circuit's decisions must be reversed and remanded for trial.

## ISSUE II

WHEN THERE EXISTS A CONFLICT WITHIN THE CIRCUITS IS  
THE UNITED STATES SUPREME COURT REQUIRED TO  
RESOLVE THAT CONFLICT?

### **B. Importance of the Question Presented.**

This case presents a fundamental question of the interpretation of this Circuits decision in Booth v. Churmer. 532 US 736, 121 S.Ct. 1818; 149 L.Ed.2d 058 (2001 and similar cases decided by this Supreme Court of the United States. The question presented is of great public importance because it affects the operations of the prison system in all fifty states, the District of Colombia, and hundreds of city and county jails. In view of the large amount of litigation over prison compliance with the medical needs of its prisoners, guidance on the question is also of great importance to the judiciary, In addition, the question is of great importance to prisoners because it affects their ability to receive fair decisions in proceedings that may result in months or years of added pain and suffering while incarcerated or harsher medical treatment.

The issue's importance is enhanced by the fact that the lower courts in this case have seriously misrepresented Booth, and Similar cases. This Court held in Booth That there was no requirement to exhaust "when the relevant administrative procedure lack's authority to provide any relief or to take any action whatsoever in response to a grievance that would be academic because no response would benefit him or her in the slightest.

Under the case law doctrine; "when a court decides upon a rule of law, that decision should continue to govern the same issue in subsequent cases; Alone v. California, 400 US 605 (1983). In the Sixth Circuit Siggers-El v. Campbell, 652 F3d 681 provides the governing standard

for the Sixth Circuit.

The common sense understanding of having a prisoner sign off at the First step of the grievance process is that it gives both the prisoner and prison staff a chance to resolve a problem to both of their benefits. If the prisoner is not satisfied with the resolution offered by the prison staff he or she has the ability to continue the grievance process through the Second and Third steps of the grievance process.

### ISSUE III

WHEN THE SIXTH CIRCUIT HELD THAT PETITIONER BERRYMAN HAD TO FILE YET ANOTHER GRIEVANCE REGARDING THE VERY SAME ISSUE HE HAD ALREADY FILED AND WON IN 2015 AT STEP I (RESOLVED) OF THE MDOC'S GRIEVANCE POLICY. DID THEY VIOLATE STARE DECISIS AND PLAINTIFF BERRYMAN'S CONSTITUTIONAL RIGHT TO BE TREATED THE SAME AS OTHER LITIGANTS, REGARDING HIS EXHAUSTION OF THE ISSUE OF THE SINGLE-PERSON CELL

### GRIEVANCE RESOLVED AT STEP I DEEMED EXHAUSTED

The following cases all agree that once the prison staff and the prisoner has agreed upon the recommended solution and signed off on the grievance, the resolution becomes binding upon all parties. *Brown v. Valoff*, 422 F3d 926 (9th Cir. 2000); *White v. Bukowski*, 800 F3d 392 (7th Cir. 2015); *Yowell v. Booker*, No. 13-10029, US Dist. Lexis 36789; *Manning v. Dolce*, No. 09-13840, 2010 US Dist. Lexis 93213; 2010 US Dist. Lexis 93297; *Booth v. Churnun*, 532 US 736 (2001), Then there is *Berryman, et al. v. Haas, et al.*, Lexis 119262 where in the district judge made the following statement to base her decision upon: " No reasonable jury could find that Berryman's claim's premised on the deprivation of a single-person cell as exhausted-unless Berryman has presented sufficient contrary evidence. To this end Berryman points to a grievance he filed in May 2015 (See R, 40 PID 381) That grievance was against MRF health Care staff doctor and [Physician's assistant] for refusal to issue a Single-man accommodation [Special accommodation Notice] (R. 47. PID 421] as relief Berryman sought a permanent[] accommodation for a Single-person cell. (Id.) **In June or July 2015 that grievance was resolved according to the Step I grievance response** in Berryman's favor. Clearly once the district judge acknowledged the fact that the 2015 grievance regarding the Single-person cell was resolved in

Plaintiff's favor, exhaustion was completed based upon well settled case law.

The district court judge attempted to place her herself in the position of the Jury, but refused to comply with the Precedents of the Sixth Circuit and the Supreme Court of the United States as to their holdings in such cases where a prisoner and prison staff came to a resolution at Step I of the grievance process, such a resolution completed the exhaustion .process.

The Sixth Circuit Panel misrepresented the many cases which support Plaintiff Berryman's position in that he complied with the Grievance policy when he had his Single-person room/cell Resolved at Step I in 2015. there was no requirement that he file any other grievances on the same issue, in fact the MDOC's own Grievance policy prohibits a prisoner from refiling a grievance which relitigates the same issue again. Supposingly in resolving a summary judgment motion, we view the evidence in the light most favorable to the non-moving party.. Had this been the case then the Sixth Circuit court of appeals panel would have reversed and remanded Berryman's case, but they did not do this they even failed to take into consideration the fact that Judge Michaelson stated herself in her summary judgment decision that she may have committed '**legal error**' in deciding against Berryman's Resolving his 2015 Grievance for the Single-person Room/cell at Step I, there are so many cases supporting the Resolving of a Grievance at Step I that it would have been impossible for the panel to honestly over look them, especially those of the Supreme Court.

The panel claims: In Berryman's case, to exhaust his administrative remedies, he had to file a grievance asserting his claims and litigate it through to the end of the prison's grievance process." See *Jone v. Bock*, 549 US. 199, 2017; 127 S.Ct. 910; 166 L.Ed.2d 798 (2007). As to this claim that panel is not only mistaken it has misquoted the Law of the many cases that have been well settled over the years even in its own Circuit and those Circuits of others and the United States Supreme Court itself. If a prisoner has his grievance resolved at Step I it is deemed exhausted, and there is no need to further appeal.

Petitioner Berryman motioned for a rehearing before the Sixth Circuit and again was turned down. The Original panel refused to rehear it and no other panel requested a hearing, yet they were legally bound to do so, to correct their own mistaken belief. See attached hereto both decisions of the Sixth Circuit Court of Appeals.

As prisoner litigator Petitioner must believe that there will be coherence by the lower courts to the higher courts and that the same rule of law will hold fast for all litigants.

Then the Sixth Circuit panel sided with the district judge claiming that even though Berryman had resolved the grievance at Step I, he should have filed yet another Grievance, which the Supreme Court and even the Sixth Circuit and the Federal Courts in Michigan clearly stated in cases they ruled upon in the same court building with the district judge such as in the *Manning v. Dolce*, No. 09-13840, 2010 US Dist. Lexis 93213; 2010 US Dist. Lexis 93297; *Booth v. Churnen*, 532 US 736 (2001); See also *Grear v. Gelabert*, 2008, U S Dist. Lexis 11619, 2008 WL 474098 \* 2 (W. D. Mich. Feb 15, 2008

Since Judge Michaelson's ruling in this case she has stated in writing that in this case she may well be over turned as to the 'legal error she may have committed concerning the exhaustion issue of Berryman'.

What the Sixth Court has done is over looked Plaintiff's argument as to his exhaustion and which he clearly argued in opposition to Judge Michaelson's Order, Opinion and Judgment, where both issues of exhaustion were thoroughly discussed (1) the 2015 Grievance that was resolved at Step I; (2) Plaintiffs exhaustion of their State administrative remedies in the case at bar, where they complied with MDOC Grievance Policy PD 03.02.130 (E)(F) See EX-A.

Plaintiff Berryman was prohibited from filing a Grievance when Grievance Coordinator Ms. E. Taylor instructed both Plaintiffs that because their issues were identical they could not file a grievance in accordance with Grievance Policy PD 03.02. 130 (E)(F). EX-A NEXT

The above section of the Policy is so clear a child can understand it: This Court must keep in mind that Plaintiffs Berryman and Lee even according to Judge Michaelson have the same issues. The word SAME is the operative word for using the grievance policy:

PD-03.02.130(F) (1) A grievant may not grieve the content of policy or procedure **except** as it was specifically applied to the grievant. If a CFA prisoner has a concern with the content of a policy or procedures/he may **direct comments to the Warden's Forum** as provided in PD 04.01.105 "Prisoner Housing Unit Representatives/Warden's Forum".

Simply put the Grievance policy instructs the prisoner to follow the above procedure to exhaust an ISSUE that affects TWO or more prisoners and once due the grievance policy has [N]o procedure for appealing the decision of the Warden's Forum, which gave the prison an opportunity to settle the ISSUE.

Next to answer the Sixth Circuit's decision that a prisoner should file another grievance on the violation of the grievance: See EX-A

PD- 03.02.130 (G)(1): It is vague, illegible, contains multiple unrelated issues, **or raises issues that are duplicate of those raised in another grievance filed by the grievant."**

Next Exhibit-E was the answer from the Warden's Forum on the merits of the issue pertaining to Plaintiff Berryman and the Single-person Room/cell issue. Which shows it was dealt with at the prison by the Acting Warden on the Merit, therefore, it was exhausted as required per the MDOC grievance policy and the PLRA and the well established case law.

Next is the MDOC's Policy 0003 regarding the single-person room/cell wherein it states: "Patients who are wheelchair-bound will be automatically placed in a barrier-free wheelchair accessible cell. This special accommodation will replace the need for health care to order single person cell. Exhibit-F shows that Petitioner Berryman is in a wheelchair **permanently**, he requires Barrier-free, wheelchair accessible, therefore, he complies with 0003 policy which mandates that he be placed in a Single-person room/cell. Next is Exhibit-H which states the following: The wheelchair accessible cell is a current special accommodation. which it was and is and has been for some 20 years. Last exhibit I shows that Plaintiff Berryman suffer with some of the following: Severe lumbar spine degenerative disease & spinal Stenosis, **w/paraplegia**.

Clearly the above prohibits any prisoner from refiling a grievance that he had already filed concerning the same issues, therefore, the Sixth Circuit panel decided that Plaintiff Berryman should do the impossible, that is because they have never read the MDOC's Grievance Policy.

Under the Prison Litigation Reform Act of 1995, a prisoner may not sue under § 1983 unless he has first exhausted his available administrative remedies. 42 USC § 1997e(a). "this requirement is a strong one". *Napier v. Laurel County*, 636 F.3d 218, 222 (6th Cir. 2011). It demands "Proper exhaustion." *Woodford v. Ngo*, 548 US 81, 88 (2016), which "means using all steps that the agency holds out, and doing so properly (so that the agency addresses the issues on the merits)", *Id.* (Quoting *Poso v. McCaughtry*, 286 F.3d 1022, 1024 (7th Cir. 2002)). In Berryman's case, to exhaust his administrative remedies he had to file a grievance asserting his claims and litigate it through to the end of the prison's grievance process. See *Jones v. Bock*, 549 US 199, 207 (2007). Section (G) of the MDOC's Grievance Policy prohibits a prisoner from filing another grievance raising the same issues of a prior grievance filed by the grievant. This Court may not have been aware of this fact when it said Berryman should have filed a new grievance on the 2015 grievance. That would only show that prisoners would have to endlessly file grievances once staff broke their promises.

Clearly the above sections of the MDOC's Grievance Policy is neither Ambiguous and/or Capacious, the following Exhibits are records generated by the MDOC in the course of their daily business and as the following shows:

That Policy PD 03.02.130(F): "Two or more prisoners and/or parolees may not jointly file a single grievance regarding an issue of mutual impact or submit identical individual grievances regarding a given issue as an organized protest. Such grievances shall be rejected by the Grievance Coordinator" Also, PD-03.02.130(G): "A grievance may also be rejected for any of the following reasons: 1. It is vague, illegible, contains multiple unrelated issues or raise issues that are duplicative of those raised in another grievance filed by the grievant. This portion of the MDOC's Grievance Policy is most informative to both the lower court and this

Court in that it shows that Plaintiff Berryman was further PROHIBITED from filing a grievance period regarding the 2015 Grievance as its issues are the same. This Court cannot claim that the issue of the Single Person Room/cell for Berryman was not already raised in another Grievance. Plaintiff Berryman gives acknowledgment to Ms. E. Taylor for her instructions to take his issues before the Warden's Forum as she said Plaintiff Berryman and richie could not file a grievance that had identical issues. See EX-A which is a copy of the Grievance Policy

This Court in stating that Plaintiff Berryman should have filed another Grievance may not have been aware of section (G) of the MDOC's Grievance Policy which does not allow a prisoner to file a grievance 'that raises issues that are duplicate of those raised in another grievance filed by the grievant'.

Once Plaintiff Berryman presented his grievance issue of the Single Person Cell/Room to the Warden through his Representative, their 'Exhaustion' requirement ended, Also as there is no recourse and/or available remedy left.

That being said if Plaintiff Berryman was required to file a second or third grievance every time he won at Step I it would be fruitless, in that the prison staff could simply agree at Step I and then break their promise, thereby requiring Plaintiff to file yet another Grievance on the same issue or issues. Sister Circuits have held that to require the inmate to do so would serve no legitimate purpose.

#### ISSUE IV

**DID THE SIXTH CIRCUIT PANEL VIOLATE THE RULE OF STARE DECISIS? THEREBY DENYING PETITIONER BERRYMAN HIS RIGHTS AND PROTECTION UNDER THE STATE AND FEDERAL CONSTITUTIONS?**

The district court and the Sixth Circuit Court of Appeals seriously misinterpreted the exhaustion issue when it comes to the prison and the prisoner signing off the Step I of the grievance process, the law has been well settled prior to Petitioner Berryman's case, in that he did more than was required in that he (1) Filed a Grievance in 2015 July and it was RESOLVED in his favor and all parties signed off; (2) Petitioner Berryman and his coplaintiff also filed in 2017, 2018 their issues to the Warden's Forum as outlined within the Grievance policy which



the United States Supreme Court ruled upon in Jones v. Bock, and within the MDOC's Grievance Policy it clearly states that prisoner may file with the Warden's Forum if they have a concern with procedures or policies which affect them, it also states that prisoners cannot file a duplicate grievance concerning a same issue they had filed prior. The district court did not understand this issue and in fact admitted that she refused to accept the MDOC's own policy 0003 Single-person cell/room to mean what it stated and that the word Shall was not a mandatory or compelling word. See EX-E attached Policy 0003 Single-person room so that this court can decide for itself if it means what it states.

This case brings a simple issue before this Honorable Court and that is (1) after a prisoner files a Grievance and the grievance is resolved in his or her favor and then the prison reneges on it must that prisoner now file another grievance ; or does the original resolved grievance maintain its full force; (2) must the district court obey the precedent of both the Sixth Circuit and the United States Supreme Court when it holds that a n inmate need not press on to exhaust further levels of review once he has either received all available remedies at an intermediate level of review or been reliably informed by an administrator that no remedies are available. If an inmate had to file another grievance after resolving the first grievance at Step I it would become and endless process of filing grievance after grievance, The decision of the District Court was in error and requires reversal and the decisions of the Sixth Circuit are in error and require reversal..

The district court judge stated that she felt that she may have committed legal error regarding the exhaustion issue, which she did. A simple procedure should have been used at the district court level same being 'Bench Trial on the Exhaustion Issue where Plaintiff could have called witnesses and explained all the established cases regarding Grievances being resolved at Step I and thereby completing exhaustion requirements. Had Berryman had an attorney he or she would have been able to explain it to the court, much better than Berryman could.

On July 2015 Berryman accepted the proposed resolution offered by the MDOC prison staff Defendant G. Stephenson and signed off on the grievance form indicating that the matter had been resolved at Step I. See *Manning v. Dolce*, 2010 US Dist. LEXIS 93213; *Grear v. Gelebert*, 2008 US Dist. LEXIS 11619 (W.D.Mich. 2008) (Evidence that a grievance was signed off as resolved at Step I and, thus, not taken to Step III precludes Summary disposition on the issue of exhaustion.

**Petitioner Berryman's 2015 Resolved Grievance at Step IMRF1505008650121** in which he was interviewed concerning the heading: Grievant states he has a single man cell. and when interviewed the following was said: During the interview prisoner Berryman states that he currently has a single man cell and is satisfied." Which is true and it was at this step of the grievance interview all partys Health Care, Deputy Warden Stephenson and Petitioner Berryman Signed off on the grievance as being resolved at Step I. See EX-1 attached hereto. This grievance show that Berryman had exhausted his state remedies prior to filing his lawsuit.

Other Circuits considering the issue of whether a grievance resolved before Step III should be deemed exhausted under the PLRA have all reached the same conclusion. The Ninth and Tenth Circuits have held that once a prisoner has either received all 'available' remedies at an intermediate level of review or has been reliably informed by an administrator that no administrative remedies are available his administrative remedies are exhausted. *Brown v. Valoff*, 422 F3d 926 (9th Cir. 2005); *Ross v. County of Berraville*, 305 F3d 181 (10th Cir. 2000). Similarly the Second Circuit held *Abney v. McGinns*, 380 F3d 663 (2d Cir. 2004) That additional attempts at exhaustion are unnecessary when there is no further possibility of some relief. *Id.* at 669 (quoting *Booth*, 532 US at 738) ( *Dixson v* Page 291 F3d 485 (7th Cir.2002)(requiring a prisoner who has WON his grievance in principal to file another grievance to WIN in fact is certainly problematic, because it could lead to never-ending cycle of grievances in which the prison always promises resolution but never follows through, preventing the prisoner from seeking redress from the federal courts.

## ISSUE V

DID THE SIXTH CIRCUIT ERROR WHEN IT UPHELD THE LOWER COURTS ERRONEOUS SUMMARY JUDGMENT RULING THAT PETITIONER BERRYMAN HAD NOT EXHAUSTED HIS STATE REMEDIES REGARDING THE SINGLE-PERSON CELL GRIEVANCE IN 2015 AND WHEN THE LOWER COURT JUDGE STATED IN THE RECORDS THAT SHE MAY HAVE COMMITTED LEGAL ERROR IN SO RULING, WHEN ALL PARTIES SIGNED OFF AT STEP I OF THE MDOC'S GRIEVANCE POLICY? AT STEP I, THEREBY RESOLVING THE ISSUE IN PETITIONER'S FAVOR?

In the 2015 Grievance Berryman received all the relief he sought at Step I. The prison promised to keep Berryman in the Single-person room/cell as the solution. But after Defendant Steece got to be acting Deputy for a week and Berryman having helped a Black prisoner file a lawsuit against Defendant Steece, Defendant Steece removed the Single-person restriction that was on Berryman's room/cell and placed another prisoner in the room/cell with Berryman which led to a fight and Berryman being beaten up and threatened for having performed his Self Evacuation of his Feces and self Catheterization several times a day as required due to his medical needs.

A note of concern is that in 2017 prior to the district court's ruling in Berryman's case two Eastern District sitting Judges made the following rulings which were available to Judge Michelson. Federal District Judge Robert H. Cleland on March 2017 ruled that regarding the issue of exhaustion a Bench Trial is a useful tool for a Judge when deciding to take one party's word over the other, See *Doea v. MDOC*, LEXIS 36615 and the Sixth Circuit's holding in *Lee v. Willey*, 789 F3d 673 (6th Cir. 2015) holding that issues of exhaustion that are disputed are appropriately resolved at a Bench trial.

The following is taken from the lips of district Judge Michaelson herself when she admitted that she may have committed **legal error but would leave it to Sixth Circuit to decide**. The following deals with the exhaustion of the Single-person cell/room issue and the 2015 RESOLVED Grievance as to the issue.

To this end, Berryman points to a grievance he filed in May 2015. That grievance was "against MRF Health Care staff doctor and [physician's assistant] for refusal to reissue a single man accommodation [special accommodation notice]." As relief, Berryman sought a "permanent" accommodation for a single-person cell. In June or July 2015, that grievance was **resolved** at the First Step of process, there was no reason to appeal it through the Third. Berryman thus, maintains that he exhausted his administrative remedies before filing this law suit.

Berryman is correct that "a prisoner need not press on to exhaust further levels of review once he has either received all 'available' remedies at an intermediate level of review or been reliably informed by an administrator that no remedies are available." *Brown v. Valoff*, 422 F3d 926, 935 (9th Cir. 2005) (quoting 42 USC § 1997e(2) see also *White v. Bukowski*, 800 F3d 392, 395 (7th Cir. 2015) ("[H]ow could a prisoner be expected to file a grievance that would be academic because no response would benefit him or her in slightest?"). And courts have found that when a prison resolves a grievance by promising to do something, but then reneges on its promise, the prisoner need not exhaust a second grievance- issue is deemed exhausted. See *Yowell v. Booker*, No. 13-10029, 2014 US Dist, LEXIS 36789, 2014 WL 1096398, at \*6 (E.D. Mich. Mar. 19, 2014); *Manning v. Dolce*, No. 09-13840, 2010 US Dist. LEXIS 93213, 2010 WL 3515718. at \* 4 (E. D. Mich. July 12, 2010). Report and Recommendation adopted, 2010 US Dist. LEXIS 93297, 2010 WL 3515715 (E. D. Mich. Sept. 08, 2010).

But unlike the situation in *Brown*, MDOC has not given, or indicated it has given. Berryman all "available" relief. Arguably that was true in July 2015 (but even then Berryman did not receive a "permanent" accommodation for single-person cell). By February 2017, however, Berryman no longer had his own cell. So he could have grieved that issue to obtain one. And, unlike *Yowell* and *Manning*, this is not a situation where, after promising to provide Berryman relief, MRF did not follow through on its promise. MRF providing Berryman a single-person cell for over a year-and-half. In deed, the rationale underling *Yowell* then did not provide the relief, the prison effectively thwarted the prisoner's attempt to exhaust and rendered "administrative" not

"available" "new See 42 USC § 1997e(a) there is no indication that in granting a single-person cell in July 2015 and then revoking in February 27, 2017 MRF was Thwarting the grievance process.

Truly there can be no honest dispute as to the 2015 Grievance being **RESOLVED** in Berryman's favor clearly the written words contained within the 2015 Grievance where it states:

**"SUMMARY. Grievance is resolved. Grievant states that he has a single man cell and is satisfied."** [bold print mine]

There is no mention within the grievance that it was not to last until Berryman no longer needed the accommodation of the Single-person cell/room.

The fact is that an MRF staff person who is named in another suit and who is a professed 'Anti Semitic' and that Berryman is an Orthodox Jewish prisoner MRF staff person K. Steece let it be known that it was he who revoked the accommodation for Berryman's Single-person cell/room, when he was allowed to be the acting deputy warden for five days The only MDOC staff person who has the power to revoke Berryman's Special Accommodation Notice is a **DOCTOR**, medical provider and the fact exist that Berryman has been Wheelchair-bound for over (20) years and will be for LIFE, See attached exhibits. After Steece made the retaliatory act the rest of the MRF staff moved to cover it up, but they had forgotten about the 2015 **RESOLVED** Grievance.

Attached Exhibits shows that Berryman under the policies and rules of the MDOC had and has a SINGLE-PERSON CELL/ROOM Special Accommodation Notice because he suffers from the following: (1) Medical Case Information supplied to the Federal Court in Detroit, Michigan Eastern District showing (1) Severe Lumbar Spine Degenerative Disease & Spinal Stenosis (2) W/paraplegia. even as of 09-27-2018 Special accommodations Orders first line Housing: Barrier Free/wheelchair accessible; and Wheelchair Permanent. It seems that no one can make up their minds as to which LIE they'll the Courts. NEXT is Special Accommodation Notice dated 10-22-2019 signed by the MDOC's Head Medical Provider Michael R. Engelsjerd MD as far back as 2006. Stated that Berryman, #107202 Wheelchair-PERMANENT. Dr. Peter Scuccimarrì, MD stated: With respect to your request for a single-person cell detail, the

guidelines at this time specify that the detail for a wheel chair and a wheel chair accessible cell will replace the need to order a single person cell. The wheel chair accessible cell is a current special accommodation. As any of these policies change, [y]our Special Accommodations will be reconsidered upon request."

Lastly a requirement of the MDOC's Grievance is that on the front page where all three signed off on the resolved grievance Berryman, Health Care and Deputy Warden Stephenson it states "If resolved at Spte I Grievant sign here. Resolution ~~must~~ be described above." Well it was:

"SUMMARY. **Grievance is resolved.** Grievant states that he has a single man cell and is satisfied." [bold print mine]

Clearly Berryman was satisfied with the relief he was given and that he is in a single-person cell and is satisfied and until 2017, when the promise resolution was broken. If Berryman would have to file another grievance every time, the MDOC broke their promises it would be a never ending cycle of filing grievances on the same issue. As stated in the MDOC's own policy 0003 Medical Service Advisory Committee Guidelines on Single person cell eff: Date 1/18/00 which supports Berryman. The fact that Berryman is medically required to lay nude in his bunk while he DISIMPACTS HIS OWN FECES THREE TIMES A DAY OR MORE AND THEN TO SELF CATHETER HIMSELF SEVERAL TIMES A DAY DUE TO THE INABILITY TO TRANSFER TO A TOILET IN THE MIDDLE OF THE NIGHTS AND DAYS. He's been beaten-up robbed, threatened with sexual assaults because MRF staff placed another prisoner in his single-person room/cell as a retaliatory act.

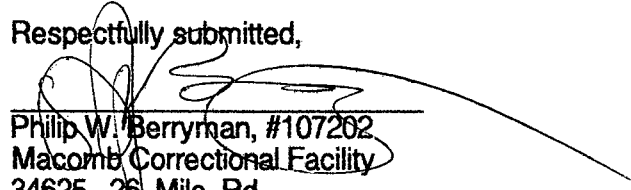
Petitioner Berryman admits that he is no attorney and may not have made his arguments as an attorney would before this Court, but he has told the truth to the best of his ability.

There exists within the Sixth Circuit a SPLIT between judges in applying the same law to cases of the same nature and they are in conflict with out circuits and the United States Supreme Court's decisions regarding the Resolving of the grievance at Step I.

### **CONCLUSION**

For the foregoing reasons Certiorari should be granted in this case, in order to bring the Sixth Circuit Court of Appeals into conformity with the rest of the Circuits and this Honorable Court.

Respectfully submitted,

  
Philip W. Berryman, #107202  
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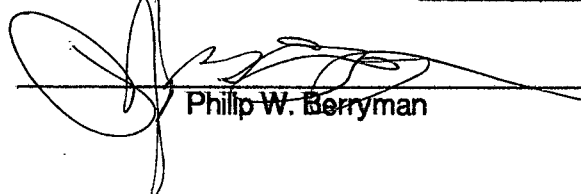
### **DECLARATION OF SERVICE**

### **PROOF OF SERVICE**

I certify that this document was served upon all attorneys of record at their respective address of record, and to the Suoreme Court as listed on 02 day of March 2020 by means of:  
Michigan Attorney General's Office Corrections Dividion

☒ U.S. Mail  
☐ Facsimile

☐ Hand Dillivery  
☐ \_\_\_\_\_

  
Philip W. Berryman