

No. 19-8008

Supreme Court, U.S.
FILED

DEC 26 2019

OFFICE OF THE CLERK

In The
United States
Supreme Court

Jeremy Fontanez - Petitioner

v.

J. Coabley, et al, Warden- Respondent

Date: 12-26-19

ORIGINAL

Questions Presented

- 1) Does B.O.P. Policy 1315.007 "Legal Activities, Inmates," violate a federal prisoner's First Amendment Right to reasonable access to the state court, where that policy allows the B.O.P. not to provide access to state law material for federally housed inmates with state-sentences, and where that lack of legal material negatively affects the prisoner's ability to perfect an appeal?
- 2) Is the Fourteenth Amendment Right to the equal protection of the laws violated where federal inmates and state inmates are treated different in regards to legal materials made available to them in their respective institutions (State as opposed to Federal institutions), and where that difference results in a prisoner's inability to access the state court?
- 3) Is 28 U.S.C. 32241 the proper procedural avenue to challenge the Constitutionality of a B.O.P. Policy?

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:

RELATED 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 Oct. 1, 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

First Amendment

Fourteenth Amendment

Fifth Amendment

B.O.P. Policy 1315.007

28 U.S.C. 2241

42 Pa. C.S. § 9545

Statement of The Case

On July 1, 2004, Petitioner was convicted by guilty plea in Lehigh County Court of Common Pleas in Pennsylvania for Criminal Homicide, Robbery, Conspiracy to commit Robbery, Criminal Attempt Homicide, Aggravated Assault and Reckless Endangering Another Person, at case number 39-CR-2570-2003

The sentence as to the count of Criminal Homicide was life in prison; for count two, Petitioner was sentenced to five to ten years for the robbery; on count four Petitioner was sentenced to ten to twenty years for the Criminal Attempt Homicide; for Count Six, Petitioner was sentenced to one to two years for Reckless Endangering Another Person; and on Count Seven Petitioner was sentenced to eight to sixteen years for the Conspiracy to commit Robbery. Unbeknownst to Petitioner during the guilty plea negotiations, all counts were applied consecutively to each other, equaling a total sentence of life plus 24-48 years

No direct appeal was filed within thirty days. On April 23, 2007, a pro-se notice of appeal was filed, appealing to the Commonwealth Court of Pennsylvania. That appeal was docketed at 1180 CD 2008. The appeal was transferred to the Superior Court on July 2, 2008. It was docketed at 2411 EDA 2008 on September 4, 2008. On April 26, 2007, while his appeal at 2411 EDA 2008 was still pending before the Superior Court, Petitioner filed a second pro-se notice of appeal to the Superior Court. That appeal was docketed at 979 EDA 2007. On January 24, 2008, the court quashed the

appeal at 979 EDA 2007 on the basis that the order purported to be appealed from did not appear on the Common Pleas Court's docket. The appeal docketed at 2911 EDA 2008 sought to have Petitioner's guilty plea withdrawn as involuntary and unknowing based on ineffective assistance of counsel, and a new trial granted.

No hearing was held as to the ineffective assistance of counsel claim. Petitioner filed a brief in support in this matter. The Commonwealth filed both a brief in response, as well as a motion to quash the appeal on the grounds that the Superior Court lacked jurisdiction to hear the appeal. The motion to quash alleged that the Superior Court lacked jurisdiction since Petitioner's appeal was filed two and one half years after the thirty day period for filing a direct appeal had expired. On December 18, 2008, the Superior Court granted the Commonwealth's Motion to Quash appeal as untimely.

Petitioner then filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court on January 7, 2009. This appeal was filed under Pa. Supreme Court No.

55 MAL 2009. The Petition for Allowance of Appeal was denied on May 27, 2009.

Petitioner filed a Petition for writ of Habeas Corpus with the U.S. District Court for the Middle District of Pennsylvania on June 14, 2010. The Petitioner claimed that (1) his guilty plea was unknowing and involuntary; (2) that counsel was ineffective; and (3) that Petitioner was denied his right to appeal. That Petition was denied.

on November 24, 2010. Fontanez v. Holt, 2010 WL 4814694 (E.D. Pa. 2010). The Third Circuit Court of Appeals denied this appeal on November 11, 2011, and denied his petition for re-argument en banc on January 4, 2012. Petitioner's petition for writ of certiorari was denied on October 1, 2012.

All denials were based on the unhelpfulness of the original petition.

On October 23, 2012, Petitioner filed a pro-se Post-Conviction Relief Act (P.C.R.A.) petition based on the Supreme Court decision in Missouri v. Frye, 132 S.Ct. 1399 (2012) and Latter v. Cooper, 132 S.Ct. 1376 (2012).

As argued in his earlier petitions throughout the state process, Petitioner argued that his time bar issue was unjust and unreasonable because he did not have access to state legal resource material in order to actually learn about the proper process of appeal and time limitations, because he was housed in a federal institution that did not supply such material. The P.C.R.A. Court denied the petition on January 14, 2013, finding that petition was unhelpful.

Petitioner again appealed to the Superior Court of Pennsylvania. On March 7, 2014, the Superior Court of Pennsylvania denied the appeal, and affirmed the P.C.R.A. Court's order. Petitioner filed a Petition for Allowance for Appeal with the Pennsylvania Supreme Court, which was denied on August 26, 2014.

Petitioner again attempted to file a petition under 28 U.S.C. § 2254 in the E.D. of Pennsylvania. That

petition was denied on November 10, 2015.

On February 13, 2017, Petitioner filed a petition pursuant to 28 U.S.C. § 2241. In his petition, Petitioner challenged the constitutionality of the B.O.P. Policy 1315.007 "Legal Activities, Inmates," when it does not require the B.O.P. to provide inmates with state sentences state legal resource material in order for them to properly pursue an appeal in a state sentence.

In his Petition, Petitioner asserted a First Amendment violation to access to the courts, stating that he suffered prejudice because he was barred from filing a legitimate state appeal in the Commonwealth Court of Pennsylvania due to his inability to access state law research material and rules of procedure. This prejudice has resulted in the Petitioner's inability to pursue legitimate claims challenging his sentence in the state system.

Petitioner also cited a Fifth and Fourteenth Amendment violation, asserting that a denial to the access to state law material for research violated his due process rights and that, as a state inmate who is also servicing a federal sentence in a federal facility, is treated differently as a specific class of person, i.e., a state inmate as opposed to a federal inmate, and therefore is not afforded the equal protections of the law.

On May 20, 2019, the District Court dismissed Petitioner's 28 U.S.C. 2241 petition. Petitioner filed a timely appeal to the Fourth Circuit Court of Appeals. On October 1, 2019, the Fourth Circuit affirmed the District Court's denial.

Petitioner now brings to this Honorable Court his timely writ of certiorari, urging this Court to grant appropriate relief.

Reasons To Grant The Writ

Petitioner was sentenced in the Commonwealth Court on July 1, 2004. On that very same day, he was transferred to a federal facility, FDC Philadelphia (note: Petitioner was charged in the state and federal system simultaneously; his federal criminal number is 02-813, and his Commonwealth of Pennsylvania criminal number is 39-CR-2510-2003).

Since July 1, 2004, Petitioner has been housed in a federal institution serving both his state and federal sentences.

The instant claim arises from the fact that federal facilities do not provide state sentenced inmates, housed in a federal facility, with state law research and rules - it procedures material. The B.O.P. is not required to provide inmates serving state sentences with state law research material. This creates a barrier between the inmate with a state sentence, and the state court. This barrier creates a First Amendment violation to reasonable access to the court. Petitioner has fully briefed this issue in his initial brief, see Exhibit 2, and fully incorporates that argument here.

Petitioner further contends that the B.O.P. policy not requiring federal facilities to provide state law materials violates the First Amendment Right to access the court because such policy prejudices inmates. Petitioner suffered

prejudice because he was unable to access the procedural rules for the Commonwealth courts in order to comply with the appeals process. This resulted in Petitioner being unable to perfect a timely appeal in the state court, and ultimately being time barred from presenting his non-trivial issues.

Prisoners have a constitutional right of meaningful access to the courts. See Bounds v. Smith, 430 U.S. 817, 821, 97 S. Ct. 1491, 57 L. Ed. 2d 72 (1977). To state a claim for the denial of access to the courts a prisoner must allege an actual injury - that is, actual prejudice to pending or contemplated litigation challenging the prisoner's conviction or conditions of confinement. Lewis v. Casey, 578 U.S. 343, 349-55, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996).

In Lewis v. Casey, the U.S. Supreme Court cited specific tools required to provide access to courts: those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. The Supreme Court has specifically disclaimed the notion that the right of access to the courts requires that the state must enable a prisoner to discover grievances, and to litigate effectively, once in court. The right of access affords only the capability of bringing contemplated challenges to sentences or conditions of confinement.

Petitioner contends that the B.O.P.'s failure to provide state law research material to inmates with state sentences violates his right to access to state courts, because it

inhibits his ability to discover grievances and litigate effectively in the state court. It also inhibits his ability to bring contemplated challenges to his sentence and/or conviction.

Petitioner was unable to challenge his state sentence either directly, or collaterally, because he was unable to access necessary research material need to learn how to comply with state procedural avenues. As a result, Petitioner suffered prejudice in that he was ~~unable~~ unable to file a proper grievance or complaint. Harbin-Boyd v. Rutter, 420 F.3d 571, 578 (6th Cir. 2005), "Examples of actual prejudice to pending or contemplated litigation include having a case dismissed, being unable to file a complaint, and missing a court imposed deadline."

Petitioner has suffered prejudice in all cases where, lack of state court material prohibited him from filing a timely complaint, because he was unable to research state law material. For proper procedural rules, his case was dismissed in the Commonwealth Court as "untimely" as a result of the lack of access of state law material, and he was unable to learn about collateral limitations in the Commonwealth of Pennsylvania in order to comply with deadlines.

Petitioner is, and always has been, a pro-se litigant with no outside support, and no access to requisite legal material to challenge his state sentence. It is unreasonable to expect such a litigant to be able to learn to navigate the complexities of the

Commonwealth Court under such circumstances.

Petitioner was able to pursue his appeals in the Federal courts because he had ready access to Federal law materials for research purposes. And it was only through his diligence in researching Federal law that he eventually learned about the Post-Conviction Relief Act in Pennsylvania. However, by the time he learned of the P.C.R.A., his one year limitation had already elapsed.

In the district court's denial the court claims that petitioner "Challenges his conviction and sentence" (Order of Dismissal, pg. 1, ¶ 2), and that "petitioner asserts that the prejudice is the time bar that has prevented him from presenting his non-trivial appeal to the state court. This is simply not true of the instant facility in which he is incarcerated. Any such time bar occurred years prior to the petitioner being transferred to Hazelton" (Order of Dismissal pg. 6, ¶ 1).

The district court misrepresents the facts in both statements. First, petitioner did not challenge his conviction and sentence in his 28 U.S.C. § 22⁴¹ petition. He challenged the B.O.P. Policy that did not require the B.O.P. to provide state law material, which prohibited his accessing the state court.

Second, petitioner's petition did not allege Hazelton was at fault. again, petitioner specifically challenged the policy.

Petitioner has been raising this specific issue for years,

Since his initial filing in the Commonwealth Court back in 2007. Through due diligence and his continued studies and learning of the laws, Petitioner eventually arrived at the point of challenging directly the B.O.P.'s policy.

Petitioner asserts that this policy has inhibited Petitioner's ability to reasonably access the court, has caused him prejudice in that his legitimate non-trivial claims have been resorted, and that this creates a barrier to the state courts that rise to the level of a First Amendment violation.

Petitioner respectfully requests that this Honorable Court grant the writ to further analyze this issue.

Does The B.O.P.'s Policy Violate The Fifth And Fourteenth Amendment Rights?

The Fifth and Fourteenth Amendments guarantee a criminal defendant the right to due process of the law, and guarantees all citizens equal protection of the law.

As an inmate housed in a federal facility, Petitioner was unable to access the requisite rules and procedures for the Commonwealth Court for purposes of perfecting a timely appeal. This resulted in Petitioner suffering prejudice by being thus barred from filing non-trivial issues for appeal in the state. Petitioner is a pro-se litigant, and has always been a pro-se litigant, without financial resources or outside support. Without direct

access to the state rules of appellate procedures, it would be impossible for Petitioner to follow the due process required to comply with the limitations and relevant case laws pertaining to these particular issues.

Without access to state law material, Petitioner has been denied his due process of the law, because the B.O.P. fails to provide state rules of appellate procedures.

The Fourteenth Amendment guarantees equal protection of the law. As a state sentenced inmate housed in a federal facility, Petitioner suffers from a denial of such equal protection. He is unable to access state rules of appellate or criminal procedures because he is a "specific type" of person, that being a federal inmate as opposed to a state inmate.

Where a state sentenced inmate housed in a state facility has direct access to state rules of appellate or criminal procedures, and has no problem accessing the state court, a federally housed inmate does not have such ready access, and cannot as easily access the state court. This creates a distinction between the two types of inmates, and also creates the treatment of one different from the other based on this status.

Herein lies the violation of equal protection of the laws. Petitioner has been prejudiced by this violation where he was unable to follow the proper procedural rules in the state court due to the lack of access of such material, and has been time barred from presenting his legitimate appeal issues.

IS 28 U.S.C. § 2241 The Proper Procedural Avenue
To Challenge The Constitutionality of a B.O.P. Policy?

28 U.S.C. § 2241 is a procedural avenue to challenge a prisoner's condition of confinement. Petitioner asserts that the violation of a first amendment right ~~to~~ to access the court rises to the level of a "condition of confinement." In Zicka case v. Warden, FCI Danbury, 591 F. Supp. 2d 145, 146, 149, 150 (D. Conn. 2008), the Court found that the, "claim she is receiving constitutionally inadequate medical care [in federal prison] is cognizable under § 2241, regardless of whether she has an additional remedy under 'Bivens'." Section 2241 is "Broad remedy available to federal prisoners challenging the conditions of their confinement."

Petitioner asserts that his First, Fifth and Fourteenth Amendment violation claims fall under the purview of "prison conditions," and are cognizable under Section 2241.

Petitioner requests this Honorable Court grant the writ to answer these questions.

Conclusion

For the reasons stated herein, and in the initial 28 U.S.C. § 2241 Petition (Ex. 2), Petitioner Prays this Honorable Court grant the writ.