No. 19-846

In The

Supreme Court of the United States

GEORGE ARTEM &
OTHERS SIMILARLY SITUATED,

Petitioner,

v.

KING COUNTY ADULT & JUVENILE
DETENTION, WILLIAM HAYES, DIRECTOR,

Respondents.

**On Petition For Writ Of Certiorari To
The Washington State Court Of Appeals**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether clearly established Eighth and Fourteenth Amendment and Federal Disability Law permits jail officials to sanction inmates with mental health disabilities awaiting trial with solitary confinement and deprive them of due process, commissary, family visitation and other programs and activities.

RELATED CASES

State of Washington v. Artom Katkoff, King County Superior Court, 14-1-05284-3 SEA

State of Washington v. Artom Katkoff, King County District Court, 514MH5087

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CITED CASES

TABLE OF AUTHORITIES – Continued

PETITION FOR A WRIT OF CERTIORARI

Petitioner George Artem respectfully petitions this Court for a writ of certiorari to review the judgment of the Washington State Court of Appeals Division I and the Washington State Supreme Court Order Terminating Review.

OPINIONS BELOW

The Washington State Court of Appeals Division I judgment is unpublished at App. 1.

JURISDICTION

The Washington State Supreme Court Order Terminating Review was entered on October 3rd, 2019 (App. 13). This Court has jurisdiction pursuant to 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth Amendment of the United States Constitution provides: excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment of the United States Constitution provides: 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.

INVOLVED ACTS OF CONGRESS

The Americans with Disabilities Act Title II prohibits discrimination against qualified individuals with disabilities in all programs, activities and services of public entities.

STATEMENT OF THE CASE

Introduction

The Constitution of the United States of America enshrines the right of citizens facing trial with the ability to defend their good name without the imposition of undue hardship and without encumbrance to the judicial proceedings being drawn against them.

Indeed, the Constitution, and this Court are the final recourse for when the accused have done nothing while in the custody of the local government but demand their natural rights, only to be sanctioned with cruel and unusual measures, de facto denying their right to due process and additional protections granted by the Congress.

It is categorically un-American for a local government to circumvent our nation's highest law and press

down on the scales of justice by its entire faculty in order to win a conviction without ever taking a case to trial.

Artom George Katkoff, whose legal name is George Artem, now appearing pro se, was accused of attempted kidnapping in the second degree on the 6th of September 2014. After briefly standing in the doorway of a preclassification holding tank at the King County Jail and requesting an attorney, Mr. Artem was taken to solitary housing and kept from arraignment until his condition had decompensated to a degree that prevented him from assisting in his own defense after he suffered what is commonly referred to as a manic episode.

Mr. Artem's initial arraignment occurred on October 28th, without his presence, nearly eight weeks after his arrest. Instead of timely arraigning Mr. Artem, a King County Superior Court Judge ordered that Mr. Artem be taken to a hospital in order to have his competency restored. The King County Jail disobeyed, keeping Mr. Artem in solitary housing until his spirit was broken and he agreed to plead guilty to a lesser assault charge.

Notwithstanding the disregard to Mr. Artem's constitutional protections, King County also failed to provide adequate accommodation to Mr. Artem's mental health needs. The conditions in solitary confinement are deliberately indifferent to the needs of a manic depressive and expose him to substantial risk of serious harm, as evidenced by the conditions being the

proximate cause that induced a manic condition and prevented Mr. Artem from assisting in his own defense.

In addition, the King County Correctional Facility and the King County Department of Adult & Juvenile Detention discriminates under the Americans with Disabilities Act when it:

1. Isolates mentally ill inmates on the basis of their disability;

2. Prolongs the isolation of inmates due to their mental decomposition in solitary confinement;

3. Fails to provide equal access to aids, benefits and services to mentally ill inmates; and

4. Fails to provide inmates with due process while in solitary confinement.

To put it simply, the local government has for too long violated the rights of the mentally ill, and the current situation prays for a high Court to set the record straight.

Trial Court Decision on Cross Motions for Summary Judgment

Once respondent entered default by not timely providing a response to the complaint, petitioner introduced a motion for summary judgment on the grounds of default. Respondent entered a removal from King County Superior Court to the United States District Court of Western Washington in order to circumvent local rules governing default. The United States

District Court sided with the petitioner in his request for removal to the local Court and respondent entered a motion to summarily dismiss.

A week before the summary judgment hearing, petitioner introduced an amendment to his original motion for summary judgment, citing partially the body of law and argument presented in this petition as well as a prayer to declare the petitioner as a class. The trial court deemed the amended motion for summary judgment procedurally deficient and sided with the respondent motion to summarily dismiss the action for failing to state a claim.

However, examination of the court docket will reflect that the respondents submitted their motion to dismiss on February 28, 2017 and processed service by mail, which the record reflects to be their custom. By the rules governing service by mail, petitioner was served with the motion on March 3rd and submitted the amended pleading on March 24th – making him wholly entitled to have his amended motion for summary judgment heard in full.

"The 2009 amendment changed Rule 15(a), inter alia, by permitting amendment once as a matter of course in response to, inter alia, a motion to dismiss . . . provided leave to amend is sought within the twenty-one (21)-day period prescribed therein" *Gallagher v. Bd. of Educ. of E. Hampton Union Free Sch. Dist.*, 16-CV-0473 (SJF)(SIL), at *2 (E.D.N.Y. Mar. 24, 2017).

In this case, leave was not sought as it was not necessary, seeing that the appellants' amended motion

for summary judgment was made within the 21-day period prescribed by Fed. R. Civ. P. 15(a)(1). The trial court erred in accepting the respondents' undue hardship claim that the amended motion was presented "seven days before the [cross] summary judgment hearing" (App. 6) which might have been applicable under 15(a)(2). Although leave was not sought, it should be pointed out that in *Ramirez v. AMPS Staffing, Inc.*, Civ. No. 17-5107 (DWF/BRT), at *5 (D. Minn. Apr. 27, 2018) it was noted that,

> "[t]he court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). Despite this liberal standard, a party does not have an absolute right to amend (citation omitted). It is well established that a motion to amend should be denied if there are compelling reasons such as undue delay, bad faith, or dilatory motive.

No such conditions existed, as the petitioner, a pro se party, was merely seeking to clarify the claims in his complaint and provide legal justification for summary judgment in addition to default, which was warranted on its face without any such additional justification.

Even so, if the trial and appellant courts somehow otherwise characterize the petitioner amended motion to be untimely, which they do not, under the precedent established in *Shady Grove Orthopedic Associations v. Allstate Ins. Co.*, 559 U.S. 393 (2010) and *Ramirez*, Fed. R. Civ. P. 15 is the "required standard to apply"; as "[f]ollowing the test proscribed in Shady Grove, if [State law] is merely procedural and Rule 15 does not alter the substantive rights, then the Rules Enabling Act is not violated" (11).

The Court of Appeals' Decision Ignores the Question

Despite both petitioner and respondent allegations of procedural deficiency over the course of litigation, the Washington State Court of Appeals sides with the respondent on the procedural questions but wholly ignores the paramount questions of law presented by the petitioner.

Furthermore, the Washington State Court of Appeals cites the claims presented by the appellant as "unsubstantiated allegations" (App. 9) and concludes that the petitioner "may not rely on speculation, argumentative assertions that unresolved factual issues remain, or its affidavits considered at face value" (App. 8). Yet there is clear precedent to allow the petitioner to proceed with the discovery process in *Carey v. Piphus*, 435 U.S. 247 (1978) holding that:

> "[b]ecause the right to procedural due process is 'absolute' in the sense that it does not depend upon the merits of a claimant's substantive assertions, and because of the importance to organized society that procedural due process be observed(citation omitted), we believe that the denial of procedural due process should be actionable for . . . damages without proof of actual injury."

Furthermore, in *Partridge v. Two Unknown Police Officers*, 791 F.2d 1182, 1185-86 (5th Cir. 1986) it was held that a Court should "accept all well-pleaded facts as true and view them in the light most favorable to the plaintiff. [And that it] . . . cannot uphold dismissal

'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim'" and in *McClary v. Coughlin*, 87 F. Supp. 2d 205 (W.D.N.Y. 2000) where it was held that "the relevant regulations [cited in the appellants amended motion,] . . . set forth the mandatory due process rights inmates have with respect to being placed and maintained in administrative segregation." And that "*Carey v. Piphus* also ma[kes] clear that even where the procedure causing liberty deprivation was flawed but the resulting deprivation was nonetheless justified, a plaintiff may properly seek damages for '*mental and emotional distresses actually caused by the denial of the procedural due process itself.*'" *Carey*, 435 U.S. at 263, 98 S.Ct. 1042; *McClary*, 87 F. Supp. 2d at 216. This may seem self-serving, yet as was held in *Sanders v. Melvin*, 873 F.3d 957, 960 (7th Cir. 2017) "whether the statement comes in a complaint, an affidavit, a deposition or a trial . . . [it] may be put to test before being accepted, but [it] cannot be ignored."

As corroborated by the record in *Hearn v. Rhay*, 68 F.R.D. 574, 577 (E.D. Wash. 1975) appellants further contend that in Washington State, the term "mental health unit [or administrative segregation unit] . . . is a euphemism for a punitive isolation tier where [as the respondents themselves admit] prisoners with behavior problems are kept in filthy, double lock cells without adequate heat, hygienic materials, exercise, reading materials and occasionally without clothing or bedding."

ARGUMENT

Conditions in Solitary Confinement Are Inadequate and Impose Substantial Risk of Serious Harm

"The basic concept underlying the Eighth Amendment is nothing less than the dignity of man. * * * The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society. *Trop v. Dulles*, supra, 356 U.S. 86, 100-101, 78 S.Ct. 598 (1958)." *Landman v. Royster*, 333 F. Supp. 621, 646 (E.D. Va. 1971).

Notwithstanding the procedural error of the courts, the questions posed by the petitioner are focused on the conditions imposed by the respondents on inmates awaiting trial, and perhaps our readiness to mature in our standards of decency. Since as early as 1890 this Court has raised serious objection to the practice of solitary confinement. Much has been written concerning the effect conditions in solitary confinement have on the mental health of inmates and convicts alike. Cells are no bigger than a compact parking space and the lights are turned on 24 hours per day.

The extensive findings of *Braggs v. Dunn*, 257 F. Supp. 3d 1171 (M.D. Ala. 2017) underscore the level of inadequacy of solitary confinement to the needs of the mentally ill across the Alabama correctional system. The ongoing situation at the King County Correctional Facility is not dissimilar.

People in solitary confinement find it difficult to sleep or rest. Inmates become disoriented, not knowing the time, date, or even if it is night or day. Inmates go weeks or months without being able to communicate with another human being. The only interaction they are permitted are at mealtimes through the slit in their door when food trays are passed and during minimal contact with mental health staff, known as cell front encounters.

The most well documented consequences of solitary confinement are psychological, including: anxiety, stress, full blown panic attacks, depression, increased anger, which ranges from irritability to outbursts of violence, and cognitive disturbances including disorientation and hallucination, paranoia and psychosis which lead to an increased risk of suicide and self-harm.

The adverse effects of solitary confinement are especially significant for persons with serious mental illness that is commonly defined as a major mental disorder (e.g., schizophrenia, bi-polar disorder and major depressive disorder) usually characterized by psychotic symptoms and/or significant functional impairments. The stress, lack of meaningful social contact, and unstructured days can exacerbate symptoms of illness and provoke recurrence; all too frequently, mentally ill prisoners decompensate in isolation, requiring crisis care or psychiatric hospitalization. Many of the roughly 80,000 mentally ill prisoners nationwide will not get better as long as they are isolated.

A relatively stable inmate, when placed in solitary confinement without the advent of yard time, displays a series of predictable symptoms akin to the above. Not only is despair a feeling, it is an objective reality. Solitary confinement as a policy offers no privileges or amenities, and instead breeds a culture of punishment driven by cruelties like cell extractions, cage therapy, clothe and mattress removal and so-called behavior management. Policies like these, that are normally reserved for super max prisons, have been alarmingly extended to inmates awaiting trial at local jails. Indeed, the hypothesis that prison policies act as a trial balloon for what people will stand for and stand against given our Constitutional protections rings true.

In *Trueblood v. Wash. State Dep't of Soc. & Health Servs.*, 73 F. Supp. 3d 1311 (W.D. Wash. 2014), the United States District Court for Western Washington held that:

> "unlike . . . state psychiatric hospitals, jails cannot provide the environment or type of care required by class members, especially where class members are held in solitary confinement . . . , and as a result, jails actively damage class members' mental condition. Each additional day of incarceration causes further deterioration of class members' mental health, increases the risks of suicide and of victimization by other inmates, and causes illness to become more habitual and harder to cure, resulting in longer restoration periods or in the inability to ever restore that person to competency . . . [and that] the protections

> afforded by the Constitution require that society treat all individuals fairly, including our most vulnerable citizens, and require that we organize our institutions so that they do not cause harm to the very people they are created to protect" (Findings of Fact & Conclusions of Law, 19).

Isolation at the King County Correctional Facility involves isolating inmates for 23 hours per day or more and depriving them of mental health care and other interactions, preventing inmates with serious mental illness from receiving even a fraction of the out-of-cell activities they need, and providing no treatment whatsoever except psychotropic medications.

In *Dunn*, it was found that "inadequate treatment and monitoring [of the mentally ill prisoners in solitary confinement] – pose a substantial risk of serious harm to prisoners with serious mental-health needs." (1245) And that "Constitutionally adequate mental-health care in prisons requires more than simply providing psychotropic medications to mentally ill prisoners. Prison systems must provide not only psychotropic medication but also psychotherapy or counseling to prisoners who need it to treat their serious mental-health need." (1208).

These practices are disturbing in a prison environment, but even more appalling when implemented against inmates awaiting trial for whom the scales of judgment have not yet been weighed. In *Littlefield v. Deland*, 641 F.2d 729, 731 (10th Cir. 1981), it was held that:

> the constitutionality under a due process analysis of the nature or duration of pretrial detention turns on whether such detention amounts to "punishment" in the constitutional sense. "For under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law." *Bell v. Wolfish*, 441 U.S. 520, 534, 99 S.Ct. 1861, 1872, 60 L.Ed.2d 447 (1979).

And in *Lynch v. Baxley*, 744 F.2d 1452, 1458-59 (11th Cir. 1984) it was found that "Even if the purpose being pursued is legitimate, the government cannot attain it by means that "broadly stifle fundamental personal liberties when the end can be more narrowly achieved." *Shelton v. Tucker*, 364 U.S. 479, 488, 81 S.Ct. 247, 252, 5 L.Ed.2d 231, 237 (1960)."

The petitioner concedes that prison is a sanctioned punishment for certain crimes, but imposition of solitary confinement is a decimation of life skills, and in the case of inmates awaiting trial, a humiliation without conviction that cannot be construed as anything but a use of force. In *Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015), this Court held that a pretrial detainee must show only that the force purposely or knowingly used against him was objectively unreasonable and that a pretrial detainee is protected from "excessive force that amounts to punishment" (2473) and in *Oviatt by and Through Waugh v. Pearce*, 954 F.2d 1470 (9th Cir. 1992) it was held that the respondents "approach to jail procedure failed to provide inmates with the

protection that they were due, and therefore contravened the Fourteenth Amendment" (1477).

Denial of Commissary, Family Visitation & Other Accommodations Are Violations of the ADA

The Americans with Disabilities Act (ADA) defines a "disability" as: a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; b) a record of such an impairment; or c) being regarded as having such an impairment.

For the purposes of the ADA an impairment substantially limits major life activities only if it prevents or severely restricts the individual from performing tasks of central importance to daily life like the ability to assist in one's own defense, visit with family members and partake in policies that are otherwise available to inmates who are not in isolation.

Title II of the ADA states:

> [N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

In *Pennsylvania Department of Corrections v. Yeskey*, 524 U.S. 206 (1998), this Court confirmed that: "State prisons fall squarely within the statutory definition of 'public entity' " (210) and has recognized that inmates are not excluded from the definition of "qualified individual" simply because they are incarcerated. The Court also recognized that nearly all aspects of incarceration are a service, program or activity. In *Yeskey*, Justice Scalia parsed the application of Title II in the prison context, concluding that "[m]odern prisons provide inmates with many recreational 'activities,' medical 'services,' and educational and vocational 'programs,' all of which at least theoretically 'benefit' the prisoners (and any of which disabled prisoners could be 'excluded from participation in')" (210).

Based on Justice Scalia's analysis, a jail is a public entity, as a "public entity" refers to "any department, agency, or other instrumentality of a State or local government" and individuals with mental health disabilities have a right to "reasonable modifications" to jail policies under ADA Section 12131.

Petitioners argue that providing adequate mental health care to inmates with serious mental illness requires meaningful out-of-cell activities such as group therapy, peer and other counseling or skills building, as well as unstructured activities such as showers, recreation or eating out of cell. Furthermore, denial of access to family visitation severely limits inmates' ability to make much needed human contact and serves no safety purpose. Even so, jails must still provide mentally ill inmates who are isolated for safety reasons

access to aids, benefits and services that are the same or "equal to that afforded" to inmates in general population.

In *Olmstead v. L.C.*, 527 U.S. 581 (1999), this Court recognized that the "unjustified isolation" of the mentally ill is "regarded as discrimination based on disability" (597). Justice Ginsburg, writing for the majority, held that the ADA explicitly prohibited the discriminatory segregation and isolation of individuals with disabilities. Ginsburg rested her analysis on two evident judgments: that the segregation of those with disabilities "perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life," (600) and that "confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment" (601). Ginsburg concludes that individuals with mental health disabilities are entitled to appropriate community-based treatment, so long as they do not oppose such treatment and there are resources available from the States to accommodate them.

CONCLUSION

For the foregoing reasons, the Court should grant either the petition for a writ of certiorari, summary reversal, or remand to the trial court in order to proceed with unobstructed discovery.

Respectfully submitted,

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