No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Marc Hall — PETITIONER
(Your Name)

vs.

M. Inch, et. al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S Court of Appeals 4th Circuit (19-7252)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Marc Hall 11691.058
(Your Name)

POB 2000 USP Hazelton
(Address)

Bruceton Mills, WV. 26525
(City, State, Zip Code)

Prison Phone: (304)379.5000
(Phone Number)

QUESTION(S) PRESENTED

1. Whether Plaintiff sufficiently showed that the fee requirement pursuant 28 USC 1915(g) caused actual injury of deprivation of his access to the Court to vindicate basic fundamental rights, that warrants reversal under due process of law.

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. Director; M. Inch; 2. Regional Director Angela P. Dunbar; 3. Warden Holland; 4. Warden Andrews; 5. Associate Warden Rupska; 6. Associate Warden Myatt; 7. Captain Rule; 8. Legal Counsel M. Bredenberg; 9. Dr. Reginald Hall; 10. Dr. Patrick Craft; 11. Dr. C. Duchesne; 12. Captain - Wright; 13. Nurse Borges; 14. Dr. V. Cahill; 15. P.A Shaw; 16. Hospital - Administrator Henry McMillan; 17. Dr. Sarah Beyer; 18. Central Office - medical Designator; 19. Lieutenant Loyd; 20. Lieutenant More; 21. Unit Manager K. McKoy; 22. Unit Manager Lesley (continued)...

RELATED CASES

1. District no. 5:19-CT-3048-D
2. Appeal no. 19-7252

LIST OF PARTIES
(Continued)

23. Counselor T. Billingslea; 24. Case Manager Hauk; 25. Case - Manager Harris; 26. Administrative Remedy Coordinator; 27. Disciplinary Hearing Officer Mr. Wartz; 28. Physical Therapis O. - Marsigli; 29. Former Chief Physical Therapist Mr. Payne; 30. Acting - Chief Physical Therapist Mr. Chorosevic; 31. Captain D. Avery; 32. BOP Agency; 33. United States; 34. Physician Assistant - Brandon Wyche; 35. Hospital Administrator; 36. Counselor Brooks; 37. Physical Therapist G. Hall - Defendants; Appellees.

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CASES

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 B 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 2/12/20.

[ ] 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 C.

[✓] 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. Requested - unknown.

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

5th Amendment - Equal protection of law; (In relevant part):
"No person shall be . . . deprived of life, liberty or property, without due process of law . . ."

28 USC § 1915(g): "In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

STATEMENT OF THE CASE

First, Mr. Hall suffers from numerous chronic care conditions, e.g.: 1). chronic persistent asthma; 2). chronic persistent copd; 3). Lung capacity depletion to 49%; 4). history of intubations; 5). 7mm Nodule right lower lung; 6). bronchial wall thickening; 7). lung scaring at bases; 8). chronic arthritis; 9). muscle deterioration in low back and hips; 10). ligament damage right Knee meniscus tears; 11). Right Knee loss of Rom -8%; 12). gait; 13). chronic spondylosis of lumbar and spine; 14). chronic degenerative disc disease; 15). spinal nerve partial compression; 16). spinal edema; 17). Leg bone edema; 18). poor heart voltage; 19). High blood pressure requiring special care clinic outside services of pulmonary; rheumatology; neurology; physiatry; orthopedic; cardiology; and physical therapy. Second, Hall was transferred from USP Hazelton to FMC Butner, NC. between 5/16 thru 4/18 on a defective transfer limited only to his ACL/meniscus reconstruct and physical therapy. The BOP Agency Policy directive required Hall to be designated to a MRC due to having a history of intubations alone. While at the Medical Referral Center Butner, NC. several MRI's were performed and an epidural spinal injection into the spinal nerve was performed, due to Hall's chronic pain and limited response and ability to physical therapy. Hall was also in addition to his regular asthma & copd medicines, placed on nebulizer treatments and a (30) day injection. The MRI showed that Hall suffered the above chronic Lumbar and spinal spondylosis and stenosis, including chronic degenerative disc disease and herniation with partial nerve compression and recent spinal edema; chronic arthritis that deteriorated muscles in low back and hips, including showed new meniscus tears in the same Knee of reconstruct. As time progressed, Hall begun noticing discriminative practices at FMC, Butner and unsafe conditions. Hall then begins to file his ad-remedies when defendants retaliated for filing. Mr. Hall was then subjected to discriminative treatment re:

STATEMENT OF THE CASE
(continued)

1). not being able to verbally address staff while other inmates could; 2). discriminative cell placement; 3). discriminative medical mattresses and beds issued against policy in favoritism of whites over black prisoners; 4). discriminative practices of physical therapy equipment use allowing others use while making Hall go to recreation without equal access; 5). placing Hall in segregation under a false investigation at another facility FCI 2 Butner, NC where he was to suffer being denied proper standard of care for the numerous chronic care conditions - including asthma and copd medicines from 1/18 thru 4/18. No sickcall was allowed for Hall for several months. cell conditions were extremely could during winter, that included lack of proper bedding, which exacerbated chronic arthritic and neurological conditions causing extreme and intolerable untreated pain. Medical staff at FCI 2 Butner, NC. had falsified medical records that led to Hall suffering untreated asthma attacks with risk of death due to lung damage, capacity and copd. Ad. remedies if issued at all even handwritten, were interfered with so that no actions would be taken. Hall's mother had to contact a state Senator, the Facility Warden and facility doctor by phone, at which point Hall was then transfered. Upon arriving at the Oklahoma transfer center, medical staff discovered that someone at Butner, NC deleted his medical records and upon investigation, reinstated Hall's asthma medications. Upon arriving at USP Hazelton, WV. Hall filed nearly 72 civil rights claims and 5 injunctions against FMC/FCI 2 Butner, NC defendants under IFP status fundamental interest at stake. Because Hall had 3 previous strikes the court dismissed the civil rights complaint stating Hall was not in imminent danger and did not consider the access to the court injury for Hall's constitutional rights. Upon direct appeal . . .

STATEMENT OF THE CASE
(continued)

. . . The 4th Circuit denied IFP status, however Chief Circuit Judge Gregory voted to grant the motion. The 4th Circuit is inconsistant with this Court's precedents and the DC. Circuit on the issue of access to the Court for 1915(g) provision inmates to vindicate basic fundamental rights. Here, Mr. Hall has actually been injured by 1915(g) under due process of law equal protection and had constitutional standing under ART. III case and controversy under this Court's precedents to access the Courts to vindicate basic fundamental rights. Mr. Hall has now lost all means to redress the constitutional rights in his civil rights complaint. Mr. Hall cannot afford to pay the up front Court fee of $400 but can pay over time on a payment plan.

For these reasons, Mr. Hall respectfully requests the Court to supervise this matter and GRANT-VACATE-REMAND with instructions to reinstate the civil rights complaint on a payment plan.

REASONS FOR GRANTING THE PETITION

A United States court of appeals has entered a decision In conflict with the decision of another United states Court of appeals on the same important matter; as to call for an exercise of this Court's supervisory power; as follows:

the court in In re Green, 669 F.2d 779, 215 US App. DC. 393 (DC. Cir. 1981) in adopting the S.Ct. holding in Wolff v. McDonnell, 418 US 539, 94 S.Ct. 2963, 41 Led2d 935 (1974) in perceiving in this regard "no reasonable distinction between" habeas and civil rights actions, id at 580, held that the right encompasses prisoner litigation, seeking to vindicate "basic constitutional rights", id at 579; Bounds v. Smith, 430 US at 828, 97 S.Ct. 1491. Moreover, to the right to "access to the courts", these claims must qualify as non-frivolous. Lewis v. Casey, 518 US at 352, n.2, 353, n.3. See Thomas v. Holder, 750 F.3d 899 (DC. Cir. 2014) (Denying (3) strike motion for reconsideration of dismissal for failure to prosecute on the ground claims were "wholly without merit"); citing 409 US. App. DC. 403 (PLRA's (3) strike rule might raise constitutional concerns when a prisoner seeks access to the courts to vindicate certain fundamental rights). Here, the PLRA's 1915(g) (3) strike provision has actually injured Mr. Hall under equal protection of law 5th amendment as supported below.

In Green, supra, because he had filed a plethora of frivolous lawsuits, the district court issued an order that he can only file an action in the DC. Court by paying all filing fees

upfront and a deposit of $100 as security for cost. Id at 784. The Court of Appeals vacated this order for two separate and independent reasons. Most important and relevant here is the second -- the court held that the order violated Green's right of "meaningful access to the courts" because it "erect[ed] a potentially prohibitive financial barrier that encompasses all civil suits including habeas corpus petitions, as well as those involving a "fundamental constitutional right." Id. The court held "because Green cannot comply with the court's order if he is without the necessary funds, the order effectively denied Green any and all access to the district court." Id. And because "[e]ven a new, nonfrivolous claim submitted in good faith would not be heard if Green could not meet the filing fee and cash deposit", the district court's order was unconstitutional. Id.

The (3) strike provision therefore has no statutory safety valve, and creates a "total barrier" to bringing fundamental constitutional rights to prisoners without the ability to pay upfront, as in Green. 669 F.2d at 785. Though the financial conditions at issue in Green differ from those imposed by the (3) strike provision, nonetheless, Green was deprived of his right to a "meaningful access to the courts" because he was without the necessary funds, whatever that sum might be, he would be completely unable to file a claim. Id at 786. The same is true of prisoners like Mr. Hall who are subject to the PLRA's (3) strike provision; some (15) years after Green's decision. See Cassell v. County of Ramsey (US Dist. 8th Cir.) 2015 U.S Dist. Lexis 173246 (the court should be mindful not to place any restrictions on the

party that would be "so burdensome as to deny the litigant "meaningful access to the courts"; citing Green, supra; Carter v. United States, 733 F.2d 735, 737 (10th Cir. 1984) cert. denied 469 US 1161 (1985) (citing In re Green) cited by Hammon v. Cody, 1993 US App. Lexis 22774 (10th Cir. 1993); Harris v. Bush, 2005 US Dist. Lexis 48856 (4th Cir.); Crawford v. Fimel, 197 Fed. Appx. 144 (3rd Cir. 2006) ("[a]part from the necessity of a case by case determination of poverty, frivolity, or maliciousness, a court may impose conditions upon a litigant - even onerous conditions - so long as they assist the court in making such determination"; and do not deny the litigant his constitutional right to access the courts). Id at 786, citing Green; Abdul-Akbar v. McKelvie, 239 F.3d 307 (3rd Cir. 2000) (adopting Green); 2018 U.S Dist. Lexis 229181, Phillips-Berry v. Kenner Police Dept. (E.D. LA. 2018) (adopting Green). Meaningful access to the courts extends as well to those sorts of claims that seek to vindicate "fundamental constitutional rights". Lewis, US at 351; Wolff, 418 US at 579. The fatal flaw in the Green order was that it would have prevented the prisoner from filing claims that he had a constitutional right to access the courts in order to file. Green, 669 F.2d at 786. The (3) strikes provision suffers from the very same deficiency.

This Court held that IFP status is recognized as a privilege and not a right. See In re Sindram, 498 US 177 (1991).

Reasons for Granting the Petition
(continued)

The Sindram Court reasoned that it has a duty to deny IFP status to those individuals who have abused the system, and ordered that an especially abusive litigant be denied IFP status in "all future petitions for extraordinary relief." Id. at 180. Sindram and cases like it overruled Green's statutory holding that sec. 1915(g) prohibits a court from imposing "prospective denials of IFP status". But the S.Ct's order in Sindram, like other orders the Court imposed in similar case, see In re Anderson, 511 US 364, 365 (1994), was limited, applying only to requests for 'extraordinary relief' from the Court itself, closing just one of the potential avenues of access to that or any court. Sindram therefore did not affect or overrule Green's separate Constitutional holdings as suggested in Hurt v. Social Security Administration, 544 F.3d 308 (D.C. Cir. 2008) which stated that "[s]ubsequent Supreme Court cases 'suggest' Green was wrong when it held section 1915(a) prohibited prospective denials of IFP status," that "the Supreme Court has regularly issued blanket prohibitions against granting IFP status for non-criminal petitions from abusive filers," and noted that "in 1996, Congress amended 28 USC 1915 to prevent prisoners who have filed three frivolous, malicious or meritless claims from proceeding IFP in future cases unless they are 'under imminent danger of serious physical injury.'" 554 F.3d at 310. Green's Constitutional holdings remains binding. see Aamer v. Obama, 742 F.3d 1023, 1033, 408 US App. DC 291

(DC. Cir. 2014) ("[A]lternative grounds for a decision are nonetheless precedential"). The DC. Circuit held that the same goes for a court's own decision denying litigants leave to proceed IFP in circumstances that did not require the court to consider whether denial would prevent a prisoner from raising a nonfrivolous constitutional claim. See Mitchell v. Federal BOP, 587 F.3d 415, 417, 388 US App. DC. 346 (DC. Cir. 2009) (denying application to proceed IFP of prisoner who complained of improper notation in administrative files and made vague claims regarding need for medical treatment); Hurt, 544 F.3d at 310.

The S.Ct. has unequivocally held that waiver of filing fees in some cases constitutionally requires the court to do so. Smith, 365 US at 712; Griffin, 351 US at 18-19 and the Green decision makes clear, that prisoners have a right to a reduction in fees if necessary to enable them to vindicate fundamental constitutional rights. Green, 669 F.2d at 786.

Several Courts of Appeals have left open the possibility that the plaintiff or a prisoner might bring a successful 'as applied' challenge to the PLRA (3) strike provision. E.g. although the 11th Circuit rejected a claim that the (3) strikes provision impeded access, it did so only after observing that the plaintiff's, "well pled allegations . . . plainly advanced no cognizable 'fundamental interest'". See Rivera v. Allin, 144 F.3d 719, 724 (11th Cir 1998). Likewise the 9th Circuit held that, "where a fundamental right is not at stake, 1915(g) does not infringe upon an inmates 'meaningful access to the Courts'"); Rodriquez v. Cook, 169 F.3d 1176,

1180 (9th Cir. 1999) accord White v. State of Colorado, 157 F.3d 1226, 1233-34 (10th Cir. 1998); Carson v. Johnson, 112 F.3d 818, 821 (5th Cir. 1997). Other circuits have not so held and are in conflict with the circuits above including Green and the S. Ct., in that some courts have reasoned that a (3) strikes litigant may simply find a way to pay the required fees. As the 7th Circuit put it, prisoners may pay "using assets on hand," "[s]ave up in advance", "[b]orrow the filing fee from a lawyer." Lewis v. Sullivan, 279 F. 3d 526, 530 (7th Cir. 2002); accord Higgins v. Carpenter, 258 F.3d 797, 800 (8th Cir. 2001). As denied in Green, 669 F.2d at 786.

This Court has applied in holding that even minimal fees must sometimes be waived. As the Court explained in Smith, "while $4 is, as the state says, an extremely nominal sum, if one does not have it and is unable to get it, the fee might as well be $400." 365 US at 712. Other courts have held that the (3) strikes provision does not deny indigent prisoners access to the courts because such prisoners may simply "[s]ue in state courts rather than federal courts." Lewis, 279 F.3d at 530; accord Abdul-Akbar v. McKelvie, 239 F.3d 307, 318 (4th Cir. 2001)(en banc); Wilson v. Yaklich, 148 F.3d 596, 605 (6th Cir. 1998). But prisoners may be unable to bring some claims in state courts. See Richard S. Arnold, Yale L.J. 1385 (1964)(discussing limits on state court's ability to entertain claims against federal officers). Green was also capable and did file in the state. 669 F.2d at 781. This logic was denounced by this Court in

Smith, 365 US at 713. Further this court holds that if the applicant shows that he would be forced to give up the the basic necessities of life if required to pay the costs of the lawsuit, he qualifies for IFP status. See Adkins v. E. I. Duponte de Nemours & Co., 335 US 331 (1948).

In concluding, the DC. Circuit holds that, in order to meet constitutional concerns, the restrictions the court imposes, (1) - must assist the court in making "a case by case determination of poverty, frivolity or maliciousness", Green, supra and (2) - must not be "so burdensome as to deny the litigant meaningful access to the court." Id.

This Court requires the district courts to use more searching judicial review to afford litigants a meaningful access to the courts. See Tennessee v. Lane, 541 US 509 (2004) (referring to "the right of access to the courts" as one of the "basic constitutional guarantees, infringements of which are subject to more searching judicial review"). The 4th Circuit as well several other circuits are split and inconsistent with this same matter as well inconsistent with this Court's precedents.

Mr. Hall not only qualified under Adkins, supra "a showing of the basic necessities of life" at the time his civil complaint was filed under 1915(g) IFP status, where the record clearly showed that Hall's prison account for the past six months averaged about $50.00 to $75.00 per month; was encumbered for $141.00 and had insufficient funds to pay the up front cost of court fees. But Hall also qualified under this Court's

REASONS FOR GRANTING THE PETITION
(continued)

precedents for basic fundamental rights at stake for constitutional standing under ART. III US Constitution for case and Controversy. Lewis v. Casey, 518 US at 352, n.2, 353, n.3; Bounds v. Smith, 430 US at 828, 97 S.Ct. 1491. where 1915(g) provision now has actually injured Mr. Hall under due process of law equal protection and loss of his constitutional claims as stated in the civil complaint deserving of more judicial review under Tennessee v. Lane, supra to access the court under basic fundamental rights. Mr. Hall's civil complaint was not frivolous, malicious and did not fail to state a claim.

Whereas, Mr. Hall respectfully requests this Court's supervision in this matter to cure injury of the statute 28 USC 1915(g) and to finally put this circuit split to rest on this issue; Mr. Hall requests to be restored his Constitutional rights by this Court by GRANT-VACATE-REMAND with instructions to reinstate the civil rights complaint under a payment plan. May the Court also reassign this case.

CONCLUSION

The S.Ct. should in the interest of Justice and law of uniformity, supervise this case, and restore Mr. Hall's constitutional rights lost in this matter and align the lower courts on how to proceed under 1915(g) nationally.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: 4/26/20