

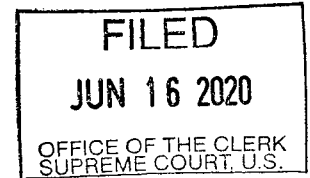
IN THE SUPREME COURT OF
THE UNITED STATES
19-8840
JUNE TERM 2020

NO. 19-3178

ORIGINAL

MR. DARRELL COOPER
PETITIONER

- AGAINST -



WEXFORD HEALTH SOURCES, INC., ET AL.,
RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE CIRCUIT

MR. DARRELL COOPER, # N-71947
HILL CORRECTIONAL CENTER
600 LINWOOD RD., P.O. BOX 1700
GALESBURG, ILLINOIS, 61401

Questions Presented

- 1.) Should Petitioner have been charged with an initial partial filing fee of 20 percent of the \$1,300⁰⁰ dollars Petitioner had in his account, to proceed on appeal in forma pauperis, or the whole filing fee up front?
- 2.) Was the \$275.⁰⁰ enough for the petitioner to proceed on appeal in forma pauperis?
- 3.) Are 3-strike prisoners the "only" one's required to pay the full filing fee up front?

PARTIES

THE PETITIONER IS MR. DARRELL COOPER, #N-719117, A PRISONER AT THE HILL CORRECTIONAL CENTER, 600 LINWOOD, Rd., P.O. BOX 1700, GAITHERSBURG, ILLINOIS, 61141.

THE RESPONDENTS ARE, WEXFORD HEALTH SOURCES, INC., THE HEALTH CARE PROVIDER FOR ILLINOIS DEPARTMENT OF CORRECTIONS;

MR. ARTHUR FUNK, THE REGIONAL DIRECTOR, EMPLOYED BY WEXFORD HEALTH SOURCES, INC.;

MR. KEVIN HOLLORAN, THE CHIEF EXECUTIVE OFFICER FOR WEXFORD HEALTH SOURCES, INC.;

MR. WALLACE STROW, THE DENTAL DEPARTMENT DIRECTOR FOR WEXFORD HEALTH SOURCES, INC., THAT WORK AT HILL CORRECTIONAL CENTER;

MS. ROBIN GILLAM, A DENTAL ASSISTANT, EMPLOYED BY WEXFORD HEALTH SOURCES, INC., THAT WORK AT HILL CORRECTIONAL CENTER;

MR. JOHN R. BALDWIN, WHO WAS ILLINOIS DEPARTMENT OF CORRECTIONS ACTING DIRECTOR;

MS. STEPHANIE DORETHY, WHO WAS THE ~~HEALTH CARE~~ WARDEN ADMINISTRATOR AT HILL CORRECTIONAL CENTER;

MR. STEVE GANS, WHO WAS THE GRIEVANCE OFFICER AT HILL CORRECTIONAL CENTER;

MS. LOIS LINDORFF, WHO WAS THE HEALTH CARE ADMINISTRATOR AT HILL CORRECTIONAL CENTER;

MR. GARETH BEAMS, FIRST LEVEL GRIEVANCE OFFICER/COUNSELOR AT HILL CORRECTIONAL CENTER.

(iv)

Table Of Contents

QUESTIONS PRESENTED — — — — —	iii
PARTIES — — — — —	iv
Table Of Authorities — — — — —	v
DECISIONS BELOW — — — — —	vi
Jurisdiction — — — — —	vii
Constitutional And Statutory Provisions involve — — — —	viii
STATEMENT OF THE CASE — — — — —	ix
Basis For Federal Jurisdiction — — — — —	x
REASONS FOR GRANTING THE WRIT — — — — —	xi
(A) Conflicts with Decisions Of Other Courts — — — —	xi-xvi
(B) Importance Of The Question Presented — — — — —	xvii-xx
CONCLUSIONS — — — — —	xxi

Appendix

Decision Of The United States Court Of Appeals — — — —	xxii-xxiii
Order Of The United States Court Of Appeals Denied Hearing —	xxii-xxiii
Order Of The United States District Court — — — —	xxii-xxiii
EXHIBITS — — — — —	#1-#6A

Table Of Authorities

<u>BRUCE V. SAMUELS</u> , 136 S.Ct. 627 (2016) — — — — —	<u>xii/xviii</u>
<u>HOWELL V. BUTLER, ET AL.</u> , CASE NO. 3:16-cv-00160-RJD, In The United States Southern District Of Illinois — — — — —	<u>ivx/xviii/xx</u>
<u>MCGLORE V. WIGGLEWORTH</u> , 114 F.3d 601, 607-08 (6 th Cir. 1997) —	<u>xviii</u>
<u>THAYER V. DELAHOOR</u> , 281 F.3d 844, 850-51 (9 th Cir. 2002) — — —	<u>ixx</u>
<u>ROBBINS V. SWITZER</u> , 104 F.3d 895, 897-98 (7 th Cir. 1997) — — — — —	<u>xx</u>
<u>LEONARD V. LACY</u> , 88 F.3d 181, 184-85 (2d Cir. 1997) — — — — —	<u>xx</u>

Decisions Below

The United States Court of Appeals 7th Circuit of Illinois

Circuit Rule 3(b)

Federal Rule of Appellate Procedure 24(A)

NEWLIN V. HELMAN, 123 F.3d 429, 434 (7th Cir. 1997)

THESE ARE THE DECISIONS THE UNITED STATES COURT OF APPEALS 7th CIRCUIT OF ILLINOIS RELIED ON TO SUSTAIN THEIR RULING.

The United States Central District Of Illinois

28 U.S.C. § 1915(A)(3)

Federal Rule of Appellate Procedure 24(A)

WALKER V. O'BRIEN, 216 F.3d 626, 632 (7th Cir. 2000)

THESE ARE THE DECISIONS THE UNITED STATES CENTRAL DISTRICT OF ILLINOIS RELIED ON TO SUSTAIN THEIR RULING.

Jurisdiction

The Judgement of the United States Court Of Appeals For The 7th Circuit Of Illinois was entered on February 20, 2020, (A.13). An order denying the Motion to Reconsider was entered January 15, 2020. A copy of this order are attached as A.9. Jurisdiction is conferred by 28 U.S.C. § 1254(1).

The "CORONAVIRUS" (Covid-19) caused this court to extend a 28-day's continuance to file this petition for writ of certiorari.

Constitutional And Statutory

Provisions & Involve

This case involve the 1st Amendment of the United States Constitution And enforce by title 28, SECTION 1915 OF UNITED STATES CODE. which gives prisoner's and poor people alike access to the courts.

Statement Of The Case

The Petitioner is alleging that he is entitled to proceed on appeal in forma pauperis if he pay 20 percent initial partial filing fee of the average amount deposited into Petitioner prison account during the preceding 6-months that Petitioner filed his Notice Of Appeal, and not the full appellate filing fee up front.

Prior to Petitioner filing his notice of appeal, Petitioner had \$1,300-dollar's deposited into his account on or about September 30, 2019, (Doc. 135) from an earlier case that was settled in the United States Northern District of Illinois, (Exhibit 3-A)

When Petitioner filed his notice of appeal on November 8, 2019, Petitioner only had \$275.⁰⁰-dollar's in his prison account.

If the United States Central District of Illinois would have correctly interpreted and assess the PLRA §1915(b)(1), 20 percent of the \$1,300-dollar's (\$260-dollar's) would have been deducted as a initial partial filing fee, which is required by the §1915 statute.

The United States Southern District of Illinois, in contrast, allowed a prisoner to proceed on appeal in forma pauperis who had, at the time of filing his notice of appeal \$1,313-dollar's in his prison account. The Court deducted approximately 20 percent of the average money deposited into the prisoner account 6-months preceding him filing a notice of appeal, which was \$310.⁴⁸ as a initial partial filing fee, (Exhibit's 2 and 3).

From 11-4-19 until 12-9-19, the Petitioner had over \$250-dollar's in his prison account, (SEE EXHIBIT 1, HERETO ATTACHED), and Petitioner would have easily made up the \$50-dollar's or so for the initial partial filing fee deduction.

Basis For Federal Jurisdiction

This case raises a question of interpretation of the Prison Litigation Reform Act (PLRA) 28 U.S.C. § 1915.

The United States District Court Central District of Illinois had jurisdiction under the general federal question jurisdiction conferred by 28 U.S.C. 1331.

REASONS FOR GRANTING THE WRIT

A. Conflicts with Decisions of Other Courts:

The way that the Central District Court of Illinois are applying the PLRA statute is directly contrary to how the Southern District Court of Illinois are applying said statute and how this Court educated the legal community to apply the PLRA to civil complaints and appeals of prisoners who are seeking to proceed on appeal in forma pauperis. The Central District of Illinois are denying prisoner's access to courts, as well as the 7th circuit appeal court.

On BRUCE V. SAMUELS, 136 S. Ct. 627 (2016), This Court concluded that "The Prison Litigation Reform Act of 1995 provides that prisoners qualified to proceed in forma pauperis (IFP) must nonetheless pay an initial partial filing fee, set as '20 percent of the greater of' the average monthly deposits in the prisoners account or the average monthly balance of the account over the preceding six months." 28 U.S.C. § 1915 (b)(1).

The greater of, in Petitioner account was \$1,340-dollars in the preceding 6-months that Petitioner filed his notice of appeal. 20 percent of the \$1,340-dollars is approximately \$260.⁰⁰ dollars.

This Court further stated, "The initial payment may not be exacted if the prisoner has no means to pay it, § 1915 (b)(1)."

The Petitioner had \$275.⁰⁰ dollars in his prison account to pay the initial partial payment at the time that the Central District Court of Illinois and the United States Court of Appeals for the 7th circuit of Illinois denied the Petitioner motion to proceed on appeal in forma pauperis, (SEE: EXHIBIT 1-A; hereto ATTACHED).

There is nothing in the 28 U.S.C.S. § 1915 statute to support the "all or nothing" application that the Central District Court

REASONS FOR GRANTING THE WRIT CONTINUES:

OF ILLINOIS AND THE 7TH CIRCUIT APPEALS COURT OF ILLINOIS IS PRACTICING.

ON DECIDING SAID CASE, THIS COURT EDUCATED THE LEGAL COMMUNITY ON "WHO" IS ELIGIBLE AND "WHO IS NOT" ELIGIBLE TO PROCEED IN FORMA PAUPERIS, AND HOW TO APPLY AND INTERPRET THE PLRA 28 U.S.C.S. § 1915 STATUTE.

THE COURT STATED THAT, "JUST AS 28 U.S.C.S. § 1915(b)(1) CALLS FOR ASSESSMENT OF AN INITIAL PARTIAL FILING FEE FOR EACH TIME A PRISONER BRINGS A CIVIL ACTION OR FILES A APPEAL, SO IT'S ALLIED PROVISION, 28 U.S.C.S. § 1915(b)(2), TRIGGERED IMMEDIATELY AFTER, CALLS FOR MONTHLY PAYMENTS OF 20 PERCENT OF THE PROCEEDING MONTH'S INCOME."

THE COURT STATED FURTHER THAT, "... CONGRESS REQUIRED PRISONERS TO PAY FILING FEES FOR THE SUITS OR APPEALS THEY LAUNCHED. THE PROVISIONS ON FEE PAYMENT, SET FORTH IN § 1915 (b) READ;
"(1)...[I]f A PRISONER BRINGS A CIVIL ACTION OR FILES AN APPEAL IN FORMA PAUPERIS, [***6] THE PRISONER SHALL BE REQUIRED TO PAY THE FULL AMOUNT OF A FILING FEE. THE COURT SHALL ASSESS AND, WHEN FUNDS EXISTS, COLLECT, AS A PARTIAL PAYMENT OF ANY COURT FEE'S REQUIRED BY LAW, AN INITIAL PARTIAL FILING FEE OF 20 PERCENT OF THE GREATER OF -

"(A) THE AVERAGE MONTHLY DEPOSITS TO THE PRISONER'S ACCOUNT; OR

"(B) THE AVERAGE MONTHLY BALANCE IN THE PRISONER'S ACCOUNT FOR THE 6-MONTH PERIOD IMMEDIATELY PRECEDING THE FILING OF THE COMPLAINT OR NOTICE OF APPEAL."

ON THE INSTANT CASE, "IMMEDIATELY PRECEDING THE FILING OF THE APPEAL," THE PETITIONER HAD APPROXIMATELY \$275- DOLLARS

REASONS FOR GRANTING THE WRIT CONTINUES:

in his prison account, (SEE: EXHIBIT 1-A; HERETO ATTACHED).

According to this Court, 20 percent should have been deducted from the Petitioner Account (\$260.⁰⁰ dollars), which Petitioner had, even when the central district of Illinois denied the Petitioner right to proceed on appeal in forma pauperis, the Petitioner had the \$275.⁰⁰.

Notwithstanding, the Petitioner cited a current case that involve the same issue of an inmate seeking to proceed on appeal in forma pauperis that was in the Southern District of Illinois.

The Southern District Judge in the case entitled, Howell v. Butler, et., al., case no. 3:16-cv-00160-RJD. WHEREAS, the prisoner, Howell ("Plaintiff") had \$1,313.⁸³ (SEE: EXHIBIT 2; HERETO ATTACHED), (MORE THAN PETITIONER) "immediately preceding the filing of the ... Appeal," and the Plaintiff in that case was allowed to proceed in forma pauperis after an initial partial filing fee of \$310.⁶⁸, (SEE: EXHIBIT 3; HERETO ATTACHED). On 6-month's, Plaintiff Howell trust fund account average more than \$1,000-dollars, (SEE: EXHIBIT 2-A; HERETO ATTACHED), in contrast, the Petitioner 6-month average did not exceed \$50.⁰⁰ dollars, (SEE: EXHIBIT 1-C; HERETO ATTACHED).

This is a clear inconsistency in the application of the law that is in conflict with the Prison Litigation Reform Act ("PLRA") of 1996 28 U.S.C. § 1915 (1)(A)(B) and § 1915 (b)(4). WHEREAS, "Congress included in it's 1996 overhaul of § 1915 a safety-valve provision to ENSURE

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REASONS FOR GRANTING THE WRIT CONTINUE:

that the fee requirements would not bar access to the courts: 'In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgement for the reason that the petitioner prisoner has no assets and no means by which to pay the initial partial filing fee.'"

This Court made it clear, "who are not" eligible to proceed in forma pauperis when stating, "To further curtail prisoner litigation, the PLRA introduced a three-strike provision: Prisoners whose suits or appeals are dismissed three or more times as frivolous, malicious or failing to state a claim on which relief may ~~(***T)~~ be granted are barred from proceeding IFP unless the prisoner is under ~~imminent~~ imminent danger of serious physical injury." §1915(g). In other words, for most three-strikers, all future filing fees become payable in full upfront."

Within this Court education on the PLRA filing fee ruling, §1915(g) is the only time where this Court states that the "filing fee's become payable in full upfront," and the petitioner is blessed to not be a three-striker.

With a closer/further analysis of the legal authority that the Central District Court of Illinois and the 7th Circuit Appeals Court of Illinois, *Newlin v. Helman* either is not applicable to petitioner or the legal authority support collecting an initial partial filing fee.

In 1997, the 7th Circuit Court of Appeals in Illinois stated, "Newlin is a relatively affluent prisoner. Deposits
(XVI)"

REASONS FOR GRANTING THE WRIT ~~OF~~ CONTINUE:

to his trust account in the six months preceeding his appeal exceeded \$650. But like most inmates he has arranged affairs so that the cupboard is bare most of the time, his money flows out (usually via \$20 postal money orders) as fast as it flows in. The district court permitted Newlin to proceed in forma pauperis ..."

Although Newlin spent his money, as Petitioner did, the Appeal Court still allowed Newlin to proceed in forma pauperis, with a initial partial fee.

As did Griffin, the second Plaintiff in the Newlin case:

"Griffin emptied the account the next day with commissary purchases."

Griffin was assess a initial partial filing fee of \$8.00.

Notwithstanding the third Plaintiff in the Newlin case, Robinson, who had to pay the full filing fee up front, "because he has struck out under 1915(9)."

With the inclusion of Walker v. D'Brien case, all the central district court of Illinois and the 7th circuit appeals court of Illinois are stating that, Petitioner is not entitle to proceed on appeal in forma pauperis because the central district court of Illinois declared that Petitioner appeal is in bad-faith.

This is not logical legally. For a district court to conclude, go ahead and appeal my decision in good-faith to the appellate court, the question becomes, why would the district court make the ruling if that court is going to allow the appellant to appeal it's decision in good-faith? A bad-faith ruling by a district court is ultimately sustaining it's decision.

But in 2019, the Southern district court of Illinois allowed the Plaintiff (Howell) (Howell v. Butler), "is indigent and is unable to certify that this appeal is not taken in good-faith. Accordingly, pursuant to 28 U.S.C. section 1915(b)(1), Plaintiff is assessed an initial partial filing fee of \$310.00" (see: exhibit 3 hereto attached). which supersedes the legal authority cited by the central district court of Illinois. [REDACTED]

B. The Importance Of The Question Presented

This case presents a fundamental question of the interpretation of Congress 1996 Statute 28 U.S.C.S. 1915. The question presented is of great public importance because it affects the operations of how courts will provide U.S. citizens with their 1st Amendment rights on every level in all 50 states, the District of Columbia, and hundreds of cities and county jails. In view of the large amount of poor people litigating in prisons, guidance on the question is also of great importance because it affects their ability to adequately have access to the courts which is why said statute was enacted by Congress.

The issue's importance is enhanced by the fact that the poor lower courts in this case have seriously misinterpreted the statute 28 U.S.C.S. §1915. And their misinterpretation has caused the petitioner his right to appeal.

The common sense understanding is clear that Congress did not intend to deny prisoners or poor citizens access to the courts, "In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee." §1915 (b)(4).

The goal in which the 28 U.S.C.S. §1915(1) statute was created, was to get the full amount of a filing free from the prisoner and to provide the prisoner with access to courts.

The statute goes on to instruct "How" to assess

The Importance Of The Question Presented Continues:

And collect the full amount filing fee.

"The court shall assess and, when funds exist, collect, as a partial payment of any court fee's required by law, an initial partial filing fee of 20 percent ..."

This is why the court in the Southern District of Illinois case, Howell v. Butler, allowed the plaintiff to proceed on appeal in forma pauperis with only paying an initial partial filing fee of \$30⁶⁸ pursuant to 28 U.S.C. section 1915 (b)(1), (see exhibit 3; hereto attached), after the court possess full knowledge that the plaintiff had \$1,313³³ in his prison account at the time in which the court made it's ruling, (see exhibit 2; hereto attached).

The Southern District Court of Illinois did not seek the full filing fee because the plaintiff was not a three-striker as the statute reflects, and not applicable.

The United States District Court Central District of Illinois set forth two reasons why petitioner had should not proceed in forma pauperis, the petitioner had \$1,300-dollars deposited into his prison account on September 30, 2019 and over several weeks the petitioner spent \$641⁶⁶ at the prison commissary, (Doc. 135), (exhibit 3-A; hereto attached).

According to: McGore v. Wriggleworth, 114 F.3d 601, 607-08 (6th Cir. 1997) ("A prisoner cannot be penalized when prison officials fail to promptly pay an assessment.")

The central district court of Illinois reasoning for denying petitioner right to proceed on appeal in forma pauperis is not substantiated by the PLRA, or this court ruling in Bruce v. Samuel. Therefore, again, not applicable.

According to establish relevant law, "immediately
(xviii)

The Importance of The Question Presented Continue:

Following the filing of the Petitioner Notice of Appeal, 20 percent of the funds that was deposited into the Petitioner prison account should have been paid as a initial partial filing fee.

According to: Taylor v. DeLatorre, 281 F.3d 849, 850-51 (9th Cir. 2002) (A prisoner who cannot pay the initial fee must be allowed to proceed with his case and not merely be granted more time to pay.)

The second reason why the Central District of Illinois Court denied the Petitioner right to proceed on appeal in forma pauperis was, "Additionally, the Court has reviewed Plaintiff's issues for appeal listed on his petition to proceed in forma pauperis and see no issue that a reasonable person could suppose... has some merit."

One of Petitioner claims is, defendant Wexford has dental policies that says, Wexford do not treat advance periodontal gum disease. This is the same gum disease which Petitioner is still suffering from, to date.

Petitioner not only presented defendant Wexford Policies at the deposition (and attached to Complaint), (SEE: exhibits 4 and 4-A; hereto attached), but Petitioner also presented his dental records, at deposition, where the dental director, defendant Wallace Strow, stated, advance periodontal gum disease is not cured by cleaning, but is maintain by meticulously home care, (SEE: exhibits 4-A/6 and 6-A; hereto attached. That is also excerpts from the Petitioner deposition in said case.)

Defendant Wexford signed a contract with Illinois Department of Corrections that states, if defendant Wexford cannot provide on-site treatment, off-site treatment will be provided, (SEE: exhibit 4-A).

(iXX)

THE IMPORTANCE OF THE QUESTION PRESENTED CONTINUE:

So when the Central district Court of Illinois stated, "A REASONABLE PERSON COULD SUPPOSE... HAS SOME MERIT," IT JUST IS NOT TRUE. THESE ARE DEFENDANTS WEXFORD OWN DOCUMENTS AND THEIR DENTAL DIRECTOR STATEMENT.

AS TO THE UNITED STATES COURT OF APPEALS FOR THE 7TH CIRCUIT OF ILLINOIS, THE COURT CITED NO REASON AS TO WHY THEY DENIED THE PETITIONER RIGHT TO PAY A INITIAL PARTIAL FILING FEE.

ON JANUARY 9, 2020, THE 7TH CIRCUIT COURT OF APPEALS OF ILLINOIS GRANTED PETITIONER MOTION TO SUPPLEMENT (A.7), WHICH CONSISTED OF THE HOWELL V. BUTLER CASE, IN WHICH THE PETITIONER COMPARED HOW THE APPLICATION OF THE PLRA § 1915(b)(1) IS BEING INCONSISTENTLY APPLIED WHEN THE CENTRAL DISTRICT COURT OF ILLINOIS APPLIES THE PLRA § 1915(b)(1) TO APPEALS, IN CONTRAST TO HOW THE SOUTHERN DISTRICT OF ILLINOIS APPLIES THE PLRA § 1915(b)(1) TO APPEALS.

THE 7TH CIRCUIT COURT OF APPEALS IN ILLINOIS DROPPED THE BALL WHEN IT DID NOT EDUCATE THE CENTRAL DISTRICT COURT IN ILLINOIS ON HOW TO PROPERLY INTERPRET, APPLY AND COLLECT THE PLRA § 1915 INITIAL PARTIAL FILING FEE SO THAT THE PETITIONER FIRST AMENDMENT RIGHT TO ACCESS TO THE COURTS ARE NOT VIOLATED.

THUS, THE LOWER COURTS SERIOUSLY MISINTERPRETED THE STATUTE 28 U.S.C.S. § 1915 BY NOT COLLECTING THE INITIAL PARTIAL FILING FEE PAYMENT FROM THE PETITIONER WHEN IT WAS CLEAR THAT THE PETITIONER HAD SUCH FUNDS IN HIS PRISON ACCOUNT.

SEE: ROBBINS V. SWITZER, 104 F.3d 895, 897-98 (7TH CIR. 1997) ("...[w]e will apply the PLRA to impose any required obligation for filing fees upon all prisoners who seek to appeal civil judgments without prepayment of fees.") ALSO SEE: LEONARD V. LACY, 88 F.3d 181, 184-85 (2d CIR. 1997) (subject to installment payments).

(XX)

Conclusion

For the foregoing reasons, CERTIORARI should be granted in this case.

DATE: 6-15-2020

Respectfully

MR. DARWELL CONPER, #
N-71947

MR. DAN CONPER, N-71947

HILL CORRECTIONAL CENTER

600 LINWOOD RD., P.O. BOX 1700

GALESBURG, ILLINOIS, 61401