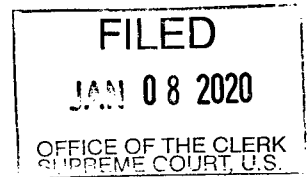


ORIGINAL

No. **20-13**



IN THE
SUPREME COURT OF THE UNITED STATES

BRANDON S. LAVERGNE
PETITIONER

VS.

N. BURL CAIN, ET AL
RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES FIFTH CIRCUIT OF APPEALS

ORIGINAL PETITION FOR A WRIT OF CERTIORARI

BRANDON S. LAVERGNE, DOC#424227
DEATH ROW / CCR, E-TIER, CELL #2
LOUISIANA STATE PENITENTIARY
ANGOLA, LOUISIANA 70712

QUESTION(S) PRESENTED

1. Did the state actors Paul Smith, Amber Vittorio and Michael Vaughn violate my 5th 6th and 14th Amendment rights by finding me guilty of a rule violation for having a defendant served with Legal Mail for a lawsuit?
2. Did N. Burl Cain violate my 5th 6th and 14th amendments rights when he refused to answer the disciplinary appeal for the legal **mail** service?
3. Can a person use a prison negative mail list to both retaliate against a prisoner for a lawsuit and to avoid being served for that same lawsuit?
4. Are blanket out going mail blocks legal?
5. Do I have a greater right to correspondence while in solitary confinement?
6. Can a federal district court evaluate facts and evidence during summary judgment?
7. If a state actor lies in disciplinary reports and steals federal mail can he be granted qualified immunity?
8. Is there a financial penalty for a dismissed disciplinary sentence if it was already **served**, before the report was dismissed?

LIST OF PARTIES

N. BURL CAIN

MICHAEL VAUGHN

AMBER VITTORIO

PAUL SMITH

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW

LIST OF PARTIES

TABLE OF CONTENTS

TABLE OF AUTHORITIES

OPINIONS BELOW

JURISDICTION

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

STATEMENT OF THE CASE

REASONS FOR GRANTING THE WRIT

CONCLUSION

INDEX OF APPENDIX

APPENDIX-A REPORT AND RECOMMENDATION

APPENDIX-B DISTRICT COURT JUDGMENT

APPENDIX-C DENIAL OF APPEAL

APPENDIX-D DENIAL OF REHEARING

APPENDIX-E

APPENDIX-F

TABLE OF AUTHORITIES

CASE NUMBER

PAGE

CONSTITUTIONAL PROVISIONS

First Amendment of the United States Constitution

Fourth Amendment of the United States Constitution

Fifth Amendment of the United States Constitution

Sixth Amendment of the United States Constitution

Fourteenth Amendment of the United States Constitution

STATUTES

28 U.S.C. § 1254(1)

28 U.S.C. § 1257(a)

CASES

LaVergne v. Cain, Et Al, MD of La. 15-34

LaVergne v. Martinez, WD of 6:13-2121

LaVergne v. Martinez, S.Ct. #14-6028

McCathy v. Madigun, 503 U.S. 140 (1992)

Harlow v. Fitzgerald, 457 U.S. 800 (1982)

Anderson v. Craighton, 483 U.S. 135 (1987)

Thornburgh v. Abbott, 109 S.Ct. 1879 (1987)

Procuier v.Martinez, 94 S.Ct. 1800 (1974)

Samford v. Dretke, 562 F.3d at681

Walker v. Bates, 23 F.2d 652, 658-59 (2nd Cir. 1994)

OTHER REFERENCES

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 C 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 LaVergne v. Cain, Et Al, MD of La. 15-34 _____;

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
14 Oct. 19

☐ 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: 18 Nov. 19, and a copy of the order denying rehearing appears at Appendix D.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____
_____ (date) on Application No. A _____

The jurisdiction of this Court is involved under 28 U.S.C. § 1254(1).

☐ For cases from state courts:

The date on which the United States Court of Appeals decided my case was

☐ 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) on Application No. A _____

The jurisdiction of this Court is involved under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1st Amendment right to speech in the courts of association

4th Amendment right to be secure in my property

5th Amendment right to equal protection and due process

6th Amendment right to represent myself

STATEMENT OF THE CASE

From July 2012 – June 2013 I wrote monthly letter to my then 11 year old daughter, Bethany (Who is now 19). At the end of June 2012 I filed a lawsuit against my former wife and the mother of Bethany. (See, LaVergne v. Martinez, W.D. of La 6:13-CV-2121)

The defendant Lainey had not complained about my letters to Bethany prior to the lawsuit, but once the lawsuit was filed she called the prison and placed herself on my negative mail list to retaliate against me for the suit. She knew stopping me from writing my daughter would hurt me deeply.

When that suit finally made its way to this United States Supreme Court [LaVergne v. Martines, S.Ct. #14-6028] this court required me to have Lainey served within three (3) days of signing this court's service affidavit. Under that mandate by this I had Lainey served by my Father, James LaVergne. Lainey's mother called the prison complaining about Lainey being sent the copy of the petition in this court and this court's response waiver paper work. Michael Vaughn the prison investigator wrote a false report claiming I had sent Lainey a personal letter when he (Vaughn) knew it was legal mail. He had me placed in Administrative Segregation and when I went before the disciplinary board consisting of Paul Smith and Amber Vittorio I showed them copies of the legal mail and this court's service affidavit I signed swearing under the penalty of perjury I would have the defendant Lainey served. Paul and Amber still found me guilty and took 30 days phone privileges from me while I was in solitary confinement. I appealed that disciplinary decision to the then Warden, N. Burl Cain with the legal mail and service affidavit from this court attached to the appeal. Warden Cain refused to answer that appeal.

In December, 2014 someone claiming to be my crime victim's mother called the prison saying she had got a letter from me. But this person did not give the correct first or last name of the mother. The prison received a copy of the letter which was not written to this woman or anyone in her family. The prison in particular Michael Vaughn who previously lied about the nature and content of the legal mail sent to my former wife, Lainey lied and said this letter was written to my alleged crime victim's mother. The state maintained that lie for two (2) years until through discovery they were forced to admit the letter had not been written to the crime victim's mother as anyone in her family. None the less the prison blocked all my out going mail to anyone not on my visiting list for about ninety (90) days based on this false allegation. This mail block was put in place without any type of hearing. About a week after the mail block was already in place Michael Vaughn accused me of sending a Christmas card to my son claiming I had been told three (3) years before not to contact my son's mother. A disciplinary board sentenced me to six (6) months of disciplinary lock down citing the legal mail disciplinary conviction as a reason for such a harsh sentence. That was the same legal mail disciplinary conviction the prison refused to answer the appeal on. Now after refusing to answer the appeal the prison used that conviction to justify a harsh disciplinary sentence of six (6) months of disciplinary solitary confinement while I was on the mail block. After I had served almost the entire disciplinary sentence the prison admitted Michael Vaughn's disciplinary report for the Christmas card was based on hearsay and threw out the disciplinary conviction and let me of disciplinary lock down. But not before I had served over five (5) months of the six (6) months sentence.

While I was on the ninety (90) day mail block in solitary confinement Michael Vaughn stole some of my mail. When discovery was carried out in the federal court it was discovered Vaughn had stolen some legal mail the clerk's office of the United States Court of Appeal for the Fifth Circuit was sending to me and even wrote a report admitting he had seized the legal mail.

The federal district court ruled my issues dealing with the disciplinary hearing for the legal mail service and the refusal of Warden N. Burl Cain to answer my disciplinary appeal were "State law issues". The federal district court granted qualified immunity to Cain and Vaughn for stealing my mail, lying in reports and blocking my mail for ninety (90) days. The federal district court also took it upon itself to rule I was the author of the letter to my alleged murder victim's friend when I had neither admitted to writing it or gone to trial.

The federal court also dismissed my claims about the nearly six (6) months of disciplinary lock down for the hearsay.

The United States Court of Appeal for the Fifth Circuit up held all the rulings and the actions of the federal district court.

REASONS FOR GRANTING THE PETITION

Legal Mail Service

I was punished and lost thirty (30) days of privileges for the constitutionally protected activity of having a defendant served with legal documents. I signed this courts service affidavit swearing under the penalty of perjury I would have Lainey Martinez served within three (3) days of signing it. Therefore, I was under a binding mandate for this court to execute that service from this court. Yet the prison with full knowledge of this still punished me for this activity protected by the 1st and 6th amendments.

As this court found in *McCathy v. Madigan*, 503 U.S. 140 (1992) I have a right to represent myself. If I had been represented by counsel and my counsel and my counsel would have had Lainey served with those same documents, I would not have been punished at all. Self representation must be protected.

False Disciplinary Reports and Qualified Immunity

I have shown in this suit where on at least three (3) occasions, Michael Vaughn the prison investigator file false reports. In September, 2014, he intentionally filed a report claiming I had sent Lainey Martinez a personal letter when he knew it was legal mail from this United State Supreme Court.

Mail Block and Qualified Immunity

My out going mail was blocked for ninety (90) days to any one not on my visiting list by Warden N. Burl Cain and Michael Vaughn. This was all based on the lief that I had wrote my alleged murder victim's mother a letter. That was a false allegation this defendants maintain for years until through discovery they were forced to admit I had not within my alleged murder victim's mother or family. This mail block violates both *Thronburgh v. Abbott*, 109 S.Ct. 1874 (1989) and *Proculer v. Martinez*, 94 S.Ct. 1800 (1974). Both these case clearly establish my out going mail can not be blocked like that, especially based on a lie. Yet, the lower courts granted the defendant qualified immunity for these actions. Then in mid December 2014 he filed a false report that I had wrote a letter to my crime victim's mother and based on that false report blocked my our going mail to anyone not on my visiting list for ninety (90) days while I was in solitary confinement. Than Vaughn filed a false report about the Christmas card to my son based on hearsay that landed me in solitary confinement (Disciplinary confinement) for nearly six (6) months.

Yet, this man was granted qualified immunity for the actions. This conclusion violates *Harlow F. Fitzgerald*, 457 U.S. 800 (1982) and *Anderson v. Creighton*, 483 U.S. 635 (1987). If Vaughn thought he was acting correctly and lawfully he would not have been filing false reports to try to cover up his actions.

Stolen Mail and Qualified Immunity

Michael Vaughn was stealing my mail in addition to blocking it, during discovery the state attorney actually gave me copies of legal mail Vaughn had stolen and a report admitting this legal mail was being sent to me by the United States Court of Appeal Fifth Circuit Clerk's Office. Yet again the lower courts granted Vaughn immunity and dismissed my stolen mail claims against Vaughn.

Negative Mail List Used for Retaliation

My former wife, Lainey Martinez used the negative mail list as a tool of retaliation against me for my speech in the courts when I filed *LaVergne v. Martinez*, W.D. La. 13-2121. Lainey knew stopping me from being able to write her home would prevent me from having contact with my daughter, Bethany which was her only way she knew she could hurt me. My daughter is now nineteen (19) years old and I still can't write her because she is living with her mother. Lainey's retaliation has been allowed to stand for nearly seven (7) years now. But for my lawsuit against Lainey she would not have called here. Lainey let me write Bethany for a year and only made a complaint after the suit was filed.

Solitary Confinement Correspondence Rights

When Paul Smith and Amber Vittorio knowingly found me guilty of a false disciplinary report which claimed I had sent a personal letter to Lainey Martinez when they knew it was court order legal mail from this very United States Supreme Court. I attached that legal mail and affidavit proof of service from this court to my disciplinary appeal I sent to Warden N. Burl Cain. Warden Cain refused to answer that appeal during discovery. The lower courts called this a state law issue and dismissed it. Smith, Vittorio, and Warden Cain all knew they disciplined me for 1st and 6th amendment protected activity. And Michael Vaughn had wrote the false disciplinary report to set me up for the false disciplinary charges. Yet, the district court and United States Court of Appeal, Fifth Circuit allow that to stand. This court should not allow anything to be considered a state law issue when the violation of a United States Constitution right is involved. The prison then used this false disciplinary conviction that they refused to answer the appeal on to justify both the ninety (90) day mail block and the six (6) months of disciplinary lock down for the Christmas card to my son.

Damages for Overturned Disciplinary Convictions

It appears there is a dispute between the United States Court of Appeals, Second and Fifth Circuits of which this Honorable Court needs to resolve. The United States Court of Appeal 2nd Circuit in *Walker v. Bates*, 23 F.3d 652, 658-59 (U.S. 2 Cir. 1994) found that if you serve a disciplinary sentence and then you later win on appeal damages is the only remedy. I made the argument I was sentenced to six (6) months of disciplinary solitary confinement for sending a Christmas card to my son who is not my crime victim nor is any member of his family my crime victim.


Michael Vaughn wrote the report based on hearsay that I had been told three (3) years before by a Scotty Kennedy not to write my son's mom's address. Kennedy had been fired and then later plead guilty in federal court to falsifying records in a separate incident prior to Vaughn writing this report. By the time I won my disciplinary appeal I served nearly the whole six (6) months sentence. I sought damages based on the *Walker* case and the federal district court dismissed my claim and the United States Court of Appeal Fifth Circuit upheld the dismissal. I have a first amendment right to assemble with my son and his mother. Further the disciplinary court cited my disciplinary conviction for the legal mail service to my former wife in September 2014 as a reason for such a harsh sentence.

The prison refused to answer the appeal for the legal mail service, but used the disciplinary conviction for that service to enhance the Christmas card sentence. That is a 5th and 14th amendment violation.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted


BRANDON S. LAVERGNE, PRO SE

DATE: 6 Feb. 2020