

no

20-5504

ORIGINAL

In

supreme court of the united states

petition For writ of certiorari

FILED

AUG 19 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

KEVIN L martin # 169789
Appellant - plaintiff

X

CATHLEEN CAPRON ET AL
Appellee - respondents

on petition For a writ of certiorari To
united states supreme court

united states supreme court petition For writ certiorari
Prison - number N.A

KEVIN L martin # 169789

Indiana Department of correction

Westville correctional Facility

5501 south 1100 WEST

Westville IN 46391

RECEIVED

AUG 19 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

question presented

(1-) whether the court of appeal of seventh circuit follow the letter of the law deal with the merit and martin due process in good FAITH mean Equal protection protect martin in this CASE.

(2) district court ABUSE OF DISCRETION refuse martin to Filed motion for leave to file an amended complaint in this case?

List of parties

✓ All parties appears 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 list of parties to the proceeding in the court whose judgment is the subject of the petition is as follow.

- (1) Cathleen Capron Etal (2) Lt Michael Cain
(3) Cpl Gibson (4) Sgt Chilling (5) Cpl Blatty
(6) J Harvill (7) Sgt Spates

related cases

SEE Gomez v Toledo 441 US 635 640
100 Sct 1920 1923 64 LE2d 572
1980

SEE Thornburgh v Abbott 490 US 401
109 Sct 1874 LE2d 1989)

Table of content

opinions Belows	7
Jurisdiction	8
constitutional and statutory provisions involved	9
statement of the case	19
REASONS FOR granting the writ	19
conclusion	213
proof of service	21
question presented	21
Table of Authorities cited,	5 thru 6

Index To Appendices

Appendix-A	June 25-2020 by court of Appeal
Appendix-B	July 14-2020 by court of Appeal
Appendix-C	Warkes and Hanger Attorney-client correspondence?

Table of authorities cited

CASES

- mathews v Eldridge 424 US 319 96 sct 893 47 L ed 2d 18 (1976-) 20
- Copper v pate 378 US 546 89 sct 1733 (1964) p 19
- Gomez v Toledo 446 US 635, 640 100 sct 1980-1) p 18
- Marshall v Knight 445 F 3d 965 968 7th cir (12/06) p 16
- Thornburgh v Abbot 491 US 461 109 sct 1879 (1984) p 16
- Frust v Symington 197 F 3d 348 9th cir (1999) p 14
- Wolff v McDonnell 418 US 539 576, 577 (1974) p 14
- Late v Short 28 L ed 2d 130 401 US 395 p 13
- Maint v Ortiz 484 US 301 304 1988 p 12
- Marbury v Madison 5 US 137 1803) p 12
- Haines v Kerner 404 US 519 (1972) p 11
- Coppedge v US 369 US 438 (1962) p 11
- May v Cowen 958 F 2d 768 170 7th cir (1992) p 11
- Knight v Wiseman 590 F 3d 458 462 63 7th cir (2009) p 10
- Frickson v Pardo 551 US 89 94 2009) p 9
- Casa v Meats 851 F 3d 714 720 7th cir (2017) p 9
- Foman v Davis 371 US 178 182 1962) p 16

Statutes and rules

42 USC 1983- p 19

Fed civ rule rule 26 and 33, 34, 36) p 19

Ind code 5-14-3-1 et seq p- 18

Ind code 5-14-3-1 et seq p. 17

1915-b) 2) p 13

28 USC 1915.g. p 12

28 USC 1915-b) p 12

28 USC 1915 2.) p 12

28 USC 1915. p. 11

Fed R App p 28 A) A) B) p 10

Rule 14.5. p 10.

28 USC 1257 9) p. 9)

28 USC 1254-1. p- 8

Fed CN - p 159 p 16

Fed R civ 19-9 p 16

(6)

In the
Supreme court of the United States
petitioner respectfully prays that a writ
of certiorari issue to review the
judgment below

opinions below

For cases from Federal court

The opinion of the United States of Appeal appears at appendix D and
is to the petition and is

☒ repeated at index, to appendices re-view

☐ has been designated for publication but is not yet reported or

☐ is unpublished NA

☐ For cases for state court NA

The opinion of the highest state court to review the
merits appears at appendix (B) to the petition and is

motion for discovery NA

☐ repeated at NA

☐ has been designated for publication but is not yet reported
or NA

☐ is unpublished NA

The opinion of the United States court of appeal court
appears at appendix D and is to the petition and is

☒ repeated at appendix - E NA

☒ has been designated for publication but is not
yet reported or is unpublished NA

(7)

Jurisdiction

For cases from Federal courts
The dates in which the United States court of appeal

decided my case was

✓ no petition for rehearing was timely filed in my case

✓ no petition for rehearing was timely filed in my case

✓ a timely petition for rehearing was denied by the
United States of appeal on the following date and a copy
of the order denying rehearing appears at appendix 7-14-20

□ An extension of time to file the petition for a writ
of certiorari was granted to and including date on and
date in application no A, A A

The jurisdiction of this court is invoked under 28 USC
1254-1.)

□ For cases from state courts A A
The date on which the highest state court decided my
case was a copy of that decision appears at appendix
An extension of time to file the petition for a writ
of certiorari was granted to the including date on
date in application on A A A

THE JURISDICTION OF THIS COURT IS INVOLVED UNDER 28 U.S.C. 1257-9) CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

(A) PROPOSE COMPLAINTS SUCH AS THAT FILED BY THE PLAINTIFF ARE CONSTRUED LIBERALLY AND HELD TO A LESS STRINGENT STANDARD THAN FORMAL PLEADING DRAFTED BY LAWYER SEE *ERICKSON V PARSONS* 551 US 89 94 2009) QUOTATION MARKS AND CITATIONS OMITTED.) 1983 COMPLAINT ALSO IN DETERMINING WHETHER THE COMPLAINT STATE A CLAIM THE COURT APPLIES THE SAME STANDARD AS WHEN ADDRESSING A MOTION TO DISMISS UNDER FEDERAL RULES OF CIVIL PROCEDURE SEE *CECIL V MERTS* 851 F3d 714 720 7th CIR 2017) TO SURVIVE DISMISSAL MOTION COMPLAINT MUST CONTAIN SUFFICIENT FACTUAL MATTER ACCEPTED AS TRUE TO STATE A CLAIM FOR RELIEF THAT IS PLAUSIBLE ON ITS FACE A CLAIM HAS FACIAL PLAUSIBILITY WHEN THE PLAINTIFF PLEADS ON ITS FACE A CLAIM HAS

FACIAL plausibility when the plaintiff pleads Factual content that allows the court to draw the REASONABLE inference that the defendant is liable for the misconduct alleged Fed R App p 28 (d) (9) (B) relevant part,"

Plaintiff must establish that a defendant was personally responsible for the deprivation of the constitutional right SEE Knight v Wiseman 590 F3d 458 462 (3rd Cir 2009)

To be personally responsible must know about the conduct and facilitate it approve it conduct, "it not whether he play a part or then he turn a blind eye to the conduct Id,"

Martin submitted to the United States Supreme within 60 day under rule

14.5 and corrected Form within the time frame and all defendant knew about the withheld legal document but refuse to give Martin a notice see doc. policy 02-01-103-) of Federal correspondence speaking for itself see doc policy 02-03-114.) (-10-)

(B) good Faith Formula

martin Haines notes the court has sufficient discretion to the account of the special circumstances that often arise in precise situation see *Haines v Kerner* 404 US 519 (1972) The court of appeal of seventh circuit denied martin to process because martin could pay the filing fee of \$65 in cash and this appeal was in good faith under 28 U.S.C 1915, within the meaning must be judged by an objective standard see

Coppage v US 369 US 438 (1962)

martin who brings an appeal must have standing to do so, so if the constitution guide this instrument see *May v Cowin* 958 F.2d 768

170 7th Cir (1992)

martin notes it is a well-settled rule that only parties to a lawsuit or those that, properly because or become parties may appeal an adverse judgment see

MARINE V. ARTIZ 484 US 301 304 1988)

it is authorized by the constitution and the constitution authorizes a Federal court system in article III which provides that Federal court shall have judicial power over case and controversies and also however judicial review of other branches of the Federal government was established see Marbury v. Madison 5 US 137 1803.) per Marshall C.J. THE constitution is law and it is the province and duty of the judiciary to declare what the law is. Martin crucial piece of the plan) as provided for the plan if he can't pay it in full the judge shall issue an order to the ~~DEPARTMENT~~ DEPARTMENT OF CORRECTIONS directing the withdrawal of percentage usually 20% from all means coming into the prison account and the provision 28 USC 1915.9.) and 28 USC 1915.6) Also income under 28 USC 1915.2)

if martin dont have the money you dont Have
the money but you're still entitled to justice
martin accumulated and attached a six-month
account balance and show he is a poor-man which
required that martin remain deny of his Fundamentals
to appeal because he poor and the time to satisfy
the application by martin only request the provision
up above the 1915.6) 2) that martin be afforded
Equal-protection of the court and Law as would
be afforded his more, "Affluent counterparts
It is the duty of this court to Follow the Letter
of the Law and it's members have take an oath
to uphold the constitution of the united states
of Americans, It is incumbent upon this court
to meaningfully address Each claim presented and
to render the appropriate decision in accordance
to the constitution and it's provisions SEE
take V short 28 Fed 2d 130 401 45395

Martin notes mail-room at Westville Facility
confiscated his document in his criminal case that
Martin could use dispute the district court allege
Have Fourteenth Amendment right to receive notice
when prison officials withholding incoming mail SEE
Frost v Symington 197 F3d 348 9th Cir 1999
under case 218-cv-0441-DWS-MJD

though the mail was related to legal proceedings
most of the items identified were legal-mail
and to preventing prison guard from opening
legal-mail outside of the presence of an inmate
is to protect the sixth amendment right to
counsel and the attorney-client privilege by
ensuring that prison officials merely inspect
for contraband and do not read confidential
communications between an inmate and his
counsel SEE Wolff v McDonnell 418 US
539 576 577 1974.)

When a prisoners receives a letter for an inmate that is marked with an attorney's name and a warning that the letter mail officials potentially violate the inmate right if they open the letter outside of the inmate presence, "The material mailed from various court although not specifically identified was likely part of public record and if any rate would not have included communications, protected by either the sixth amendment or attorney-client privilege.

In other words the mere denial of access of a prison right in prison law library or to other legal-materials is not itself a violation of a prisoners right his right is to access the court and only if the defendant conduct prejudices a potentially

meritorious legal claim has the right been
infringed see *Marshall v Knight* 445 F 2d
965 968 7th Cir 2006)

Martin filed a motion with both Attorney
that represent Martin in his criminal case
try to obtain discovery before the hearing
and both response and denying Martin never
receive the document with the response back
from both Attorney who response April 1
Howe and Charles L. Leahy and confidential
communications between an inmate and his
counsel, prejudice not receive a notified of
confiscated of documents SEE

Thornburgh v Abbott 490 US 461 109 S
ct 1874 LE d 2d 1989.)

This court mean district should allow Martin
motion for leave to file an Amended complaint pursuant
to Fed R. Civ P 15a) and 19a) leave to file an
Amended ~~complaint~~ should grant leave freely to Amend
a praying was abuse of discretion SEE
Forman v Davis 371 US 178, 182 1962.)

(16)

This document would show, martin was not
at the crime scene on 7-19-66, " at the time of
the shooting at 11:45 am, ' under public ApRA
Access & public Record Act ApRA) Ind code
5-14-3-1. ~~et~~ seq.) In try to seeking information
that was not turn-over, At my trial And it
no way it my Fault And if this defendant open
Legal out of my presence And confiscated
document, I never receive a document From
Address Charles W Cahoy Attorney At Law
THE manse 502 west Washington Avenue South
Bend IN 46601 or Arvel Ray Howe Attorney
At Law 502 west Washington Avenue South
Bend Indiana 46601 that prejudice, THE DUE
process clause of the Fifth Amendment made
Applicable to the state through the
Fourteenth Amendment DUE process contemplates
Fair procedures which requires at least an

opportunity to present objections to the proposed action and a fair and neutral decision maker by St. Joseph circuit who granted request access to APRA) and code 5-14-3 et seq the court receive and reason did provide a notified of this confiscated document by the court deprived martin of his sixth amendment and First Amendment right was deprive in this case.

Furthermore the supreme court recently held that to state a claim under 1983 plaintiff need only allege that some person acting under color of state law that deprive martin of a Federal right SEE *Gomez v Toledo* 446 US 635 640 100 Sct 1920 1923 64 L Ed 572 (1980) martin complaint met these two requirement and state a

Valid 1983- claims THE Supreme must
view all allegations imploding as true SEE
Copper v. Pate 378 US 546 84 Sct 1733
12 L Ed 2d 1030 1964-)

STATEMENT OF CASE

THE plaintiff filed a civil right when in
action under 42 USC 1983 because the
Westville Correctional Facility open Martin Legal
out of his presence and confiscated Martin
incoming legal mail and did provide, no notified
of the confiscated document DUE PROCESS

REASON FOR GRANTING THE petition

Based upon the constitutional violation the petitioner
is entitled to relief, if the court is not inclined
to afford the petitioner his request relief the
petitioner prays this court will permit him
the opportunity to obtain a discovery request under
Fed CIV rule 26 and 33 and 34 and 36 and
prove my merit, whether existing procedures

(19)

ARE inadequate to prevent erroneous
deprivation see *Mathews v. Eldridge* 424 US
319 96 sct 893 47 L2d 2d 18 1976)

Conclusion

THE petition For A writ of certiorari
should be granted respectfully submitted



Kevin L Mathews

DATE  30-2020