

ORIGINAL

20-5592
No. _____

FILED

AUG 24 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Christopher Lipsey^{JR} — PETITIONER
(Your Name)

VS.

D. Goree, et al, — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Ninth Circuit Court of Appeal
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Christopher Lipsey^{JR}
(Your Name)

Kern Valley State Prison po. box 5107
(Address)

Delano CA 93216
(City, State, Zip Code)

N/A
(Phone Number)

1 OF 14

QUESTION(S) PRESENTED

- (1). Does 42 U.S.C. § 1983 complaints that sound, in part, like habeas constitute strikes under 28 U.S.C. § 1915(g)?
- (2). IF so, does said complaint naming Judges as defendants explicitly stating they are being sued in their official capacity only and Plaintiff is only seeking an injunction to have the District Court order the Court of Appeal give him a new criminal direct appeal sound in habeas in part?
- (3). IS it in the interest of Justice for a Court of Appeal to issue a Published Opinion in this instance?
- (4). Is it Proper to Challenge a third strike when a Court of Appeal revoked an individual's IFP status for having incurred three strikes or when a district Court in a separate case imply said individual suffered three strikes (prior to the Court of Appeal decision)?
- (5). IS it Proper for a Court of Appeal to Find an individual suffered three strikes by referring to one out of three cases which defendants didn't claim was a strike, without giving said individual an opportunity to contend that one case wasn't a strike?
- (6). IF so, does a Court of Appeal abuse discretion by stating any future motions will not be entertained and don't consider a motion for hearing/rehearing En Banc?
- (7). IS the central question whether a dismissal rang the PLRA bells of frivolous, malicious, or failure to state a claim the only factors the Court should consider to determine whether the dismissal counts as a strike?
- (8). Does an individual who was granted an opportunity to amend their complaint but doesn't, sufficient reason to assess a strike? IF so, how about when there were state law claims included in the complaint which the Court failed to reach.

LIST OF PARTIES

- ~~X~~ 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:

D. Goree ; M. Oliveira and D. Davey
Respondents

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TABLE OF AUTHORITIES CITED

CASES

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Lipsey v. Court of Appeal, NO. 2:17-cv-08985, 9 (C.D. Cal. 12-27-2017);	
Lipsey v. Medina, NO. 1:17-cv-01705 (E.D. Cal., 9 1-8-2020);	
Nettles v. Grounds, 830 F.3d 922, 935 (9th Cir., 13 2016) (En Banc);	
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STATUTES AND RULES

U.S.C. 28 U.S.C. § 1915(g)	2, 8, 9
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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. I believe.

The opinion of the United States district 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.

☐ 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 5-22-2020.

☐ 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: 7-15-2020, and a copy of the order denying rehearing appears at Appendix B.

☐ 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. § 1254(1).

Yes

☐ 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

28 U.S.C. § 1915(g)

42 U.S.C. § 1983

California Code of Regulations (CCR) Title 15,
3405

- (1). The District Court Found Christopher Lipsey, JR (hereafter Petitioner) stated a claim of retaliation by Correctional Lieutenant D. Goree (acting Captain / appeal coordinator). The parties agreed to an early settlement conference which took place on 2-12-2019. The parties came to an agreement on the terms and conditions that day. Part of the terms were California Department of Corrections and Rehabilitation (CDCR) were to provide Petitioner with miscellaneous property valued between \$100,00 to \$150,00, when Petitioner returned to prison the receive and release (RRR) building gave him said property then Petitioner was escorted to his assigned housing. When Petitioner arrived two officers took some items from Petitioner. Petitioner informed the court and the deputy attorney general that night via (legal mail). Petitioner sought to rescind the settlement for breach of contract, the district court ordered defendants to respond then found Petitioner's remedy was to file a separate suit. Petitioner appealed.
- (2). The Ninth Circuit asked the district court to answer whether or not they believe the appeal was filed in good faith. Petitioner was never notified of the district court's finding. The Ninth Circuit ordered Petitioner to file a response as to why the court should not revoke his in forma pauperis (IFP) status for having incurred three or more strikes under § 1915(g).
- (3). Petitioner argued the three cases the Ninth Circuit cite as strikes Lipsey v. Medina, NO. 1:17-cv-01705 (E.D. Cal. Jan. 8, 2020); Lipsey v. California Courts of Appeal, NO. 18-55052 (9th Cir. Sep. 20, 2018); Lipsey v. Court of Appeal of the State of California, NO. 2:17-cv-08985 (C.D. Cal. Dec. 27, 2017) shouldn't constitute strikes because the Medina case had both federal and state claims and since the district court decided to exercise discretion to reach the state claims when it found he failed to state a federal claim under controlling Ninth Circuit authority it doesn't constitute a strike. Petitioner argued the California Court of Appeal cases shouldn't constitute strikes because under controlling Ninth Circuit authority claims that sound, in part, like a habeas do not constitute strikes.
- (4). The Ninth Circuit found Petitioner's IFP status is revoked and ordered Petitioner to pay \$505.00 within 21 days and that no motions for reconsideration, clarification, or modification of the denial of Petitioner's IFP status shall be entertained.
- (5). Petitioner filed a timely motion for hearing or rehearing en banc. The Ninth Circuit replied by ordering/stating its prior order stated that "no motions for reconsideration, clarification, or modification of the denial of appellant's in forma pauperis status shall be entertained."

(6). Petitioner's motion for hearing or rehearing en banc asked the court to answer how and why his case differs from the controlling cases? Petitioner also asked if the court could issue an opinion and have it published in the interest of justice.

(7). Petitioner argued it would be in the interest of justice to issue a published opinion because it will put future litigants on notice which in turn would cause most of them to think twice before filing litigation with little or no merit. This would also save scarce judicial resources, the purpose of the Prison Litigation Reform Act (PLRA).

(1). The National importance of having the Supreme court decide the questions involved are to have clearly established law as to what the standard for review of the lower courts should be to determine strike(s). Petitioner asserts what should also be considered is the individual's intent, whether he was an indigent inmate proceeding pro se and a layman in law.

Another consideration should be whether or not said individual was given notice said filing would constitute a strike and allowed to either stand on the complaint or withdraw it.

The reason being most indigent inmates are pro per, have little to no legal experience, and limited law library access so they may misunderstand the proper vehicle to use to assert a particular right or lack the proper form(s) and misunderstand the law. For instance, petitioner and other inmates have asked for the proper form(s) to attack their conviction and the law librarian or clerk would say they can't give legal advice or assistance and cite California Code of Regulation (CCR) Title 15, 3405. This in turn cause us to randomly pick a form such as a 42 U.S.C. §1983 form.

We get no warning that we are filing the wrong form(s) before we suffer the severe consequences. Petitioner assert Congress didn't intend for 28 U.S.C. §1915(g) to be a legal booby trap that systematically strip inmates of their privilege to proceed IFP which essentially is to close the court doors to the poorest of inmates.

The court in Harris v. Harris realized that the "denial of [IFP] status effectively, if not physically, denies many indigent prisoners access to the courts at *5 Citing - Simone Schonenberger, Access Denied: The Prison Litigation Reform Act 86 KY. L.J. 457, 474 (1998).

REASONS For Granting The Petition

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IF this court clearly establish an indigent pro se inmate should get one warning to either withdraw the Complaint or stand on the Complaint and risk incurring a strike it wouldn't be contrary to the PLRA nor would it be adding to the language of the PLRA. Instead it would prevent courts from having to decide the constitutionality of the PLRA. The same amount of judicial resources would be used by having the lower courts give said inmates warnings as would be used determining if prior dismissals constitute strikes. In fact a warning may save judicial resources because by giving a warning a court would have necessarily determined a dismissal would constitute a strike if they stand on the Complaint.

(2). Requiring a court to distinguish the difference in what appears to be similar facts and/or writing a brief opinion would put individuals on notice that their argument(s) lack merit. This would save judicial resources because it will eliminate the need for remand solely to establish a record. Most of the time the higher courts find after remand with the record established the lower court(s) judgment was correct, so the failure to write a brief opinion also waste time by trying to save time.

1 (3). Another reason for granting the petition is
2 assessing strikes without a warning disproportionately
3 effect lifer inmates because they are more
4 likely to not have financial support to pay
5 filing fees once stricken out, they are more likely
6 to be the inmates challenging prison conditions
7 because they have to live with them for the rest
8 of their lives. Most importantly though, lifer
9 inmates must use 42 U.S.C. § 1983 to challenge
10 the denial of parole and/or unconstitutional
11 convictions in the Ninth circuit and United
12 States District Courts of California per
13 Nettles v. Grounds, 830 F.3d 922, 935 (9th Cir. 2016) ^{En Banc}
14 As of now, if petitioner's strikes are sustained
15 because of unforeseen consequences ^{to him} that have
16 irreparable damages solely because he was a layman
17 would be a miscarriage of justice.

18
19 (4). The last reason for granting the petition is to
20 clearly establish an individual's decision not to
21 amend (or even attempt to amend) also shouldn't
22 constitute a strike. The reason being, it saves
23 judicial resources since the court no longer have
24 to screen the complaint again and all the other
25 proceedings if s/he successfully amended the complaint.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Christopher Phipps^{JR}

Date: 8-18-2020