No. 20-5804

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Bobby Burshart — PETITIONER
(Your Name)

vs.

Sarah Beyer, et. al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States District Court For the Eastern District of North Carolina
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Bobby Burshart
(Your Name)

FCI 2 P.O. Box 1500
(Address)

Butner, NC 27509
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

#1 Did the District Court err, and did the Fourth Circuit Court of Appeals compound the error, when petitioner's request for Counsel was denied, because the case had complex medical evidence and petitioner's request for discovery?

#2 Was the Fourth Circuit Court of Appeals affirming the District Court's granting of summary judgment in conflict with its own precedents, other circuit rulings, and rulings of the U.S. Supreme Court, when respondents failed to properly comply with FRCP Rule 56 and prove no geniune issues and that they were entitled to judgment as a matter of Law?

#3 Was the Fourth Circuit Court of Appeals affirmation of the District Court's granting summary judgment in conflict with its own precedents, othe Circuit decisions, or the U.S. Supreme Court rulings, when respondents failed to defend against claims and failed to prove they were entitled to judgment as a matter of law?

#4 Did the Fourth Circuit Court of Appeals err when it found no reversible errors?

#5 Did the Fourth Circuit Court of Appeals allow and/or create a situation of a fundamental miscarriage of justice, when it failed to rule on the merit's of petitioner's issues in his informal brief, when it affirmed the District Courts' granting of summary judgment to respondents?

#6 Did the petitioner receive a fair and impartial trial in the District Court and the Fourth Circuit Court of Appeals?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] 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:

Petitioner - Bobby Burghart

Respondents - Thomas Kane,
J. F. Caraway,
William O'Donnell,
Eric Gibson,
T. Paluch,
J. Andrews,
Kirkpatrick,
B. Neagle,
S. Cox,
S. Martin,
R. Simmons,
J. Derry,
S. Beyer,
L. Lindsay,
Brad Ford,
Bellas

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OTHER

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

[X] 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,
[X] 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,
[X] 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

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 14, 2020.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 26, 2020, 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____.

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

First Amendment – See full text-Appendix F-2

Fourth Amendment – See full text-Appendix F-3

Fifth Amendment – See full text-Appendix F-4

Eighth Amendment – See Full text-Appendix F-5

Fourteenth Amendment – See Full text-Appendix F-6

Federal Rules of civil procedure; Rule 56 - See Full text Appedinx F-7-F-8

42 USC § 1983– See Full text - Appendix F-10

STATEMENT OF THE CASE

Petitioner asserts that the District Court and the Fourth Circuit Court of Appeals, Seperately and/or in conjunction violated petitioner's constitutional right of a Fair and impartial trial and/or hearing, and a miscarriage of justice, when both failed to properly analyze all evidence in the light most favorable to the petitioner, and such analysis is in conflict with Fourth Circuit precedents, other Circuit rulings, and rulings of the U.S Supreme Court.

Petitioner filed a verified amended complaint raising 26 claims of various Constitutional rights violation (ECF 27). The respondents filed a Motion to Dismiss, or in the alternative motion for Summary Judgment. (ECF 43-46), whereupon, petitioner filed his Opposition and Reply to Motion to Dismiss (ECF 58). Petitioner also filed a Motion asking for appointment of counsel for complexity, medical expertise, and need for discovery (ECF 56).

On Sept. 28, 2018, the District Court denied petitioner's motion to serve additional defendants; denied petitioner's Motion for entry of default; denied motion for appointment of counsel; allowed petitioner to exceed page limits; denied to take judical notice; and allowed defendant's summary judgment in part, and denied in part (ECF 62).

On Oct 22, 2018, petitioner filed a motion for reconsideration (ECF 66).

On Oct 25, 2018, respondent Beyer filed a second motion for Summary judgment (ECF 68).

On Dec 14, 2018, petitioner filed his response and memorandum in Support of his objections to motion for Summary Judgment (ECF 75).

On Sept. 17, 2019, the District Court denied petitioner's motion for reconsideration, and granted respondent's second motion for Summary Judgment (ECF 81)

The District Court Ignored facts, review evidence in light most Favorable to respondents; respondent's Failure to show that there were no geniune issues of material Fact(s), and failure to prove that respondents were entitled to judgment as a matter of law; respondent's failure to assert a Fact was not geniune or assert any defense on any particular claim raised by petitioner in Violation of FRCP 56(a), (c)(1) & (2).

The District Court failed to accept as true petitioner's claims and assertions, and made credibility determinations and truth of evidence in Violation of Fourth Circuit precedents, other circuit rulings, as well as rulings of the U.S. Supreme Court. The District Court ignored issues of geniune material fact(s), showed bias and Favortism for the respondents, thereby depriving petitioner of a Fair and impartial trial/hearing.

Petitioner asserts that the Fourth Circuit Court of Appeals deprived petitioner of a fair and impartial hearing, caused a miscarriage of justice, when it failed to properly analyze the evidence in the light most Favorable to petitioner, including all inferences; and Failure to rule on the merits of petitioners appeal, raised in his informal brief. The Appellate Court only appears to have done a de novo review only for reversible errors. The Appellate Court's review, which should have conducted the same Summary judgment analysis, failed to review the evidence in the light most Favorable to petitioner, including all inferences. The Appellate Court's Findings/ruling is in conflict with Fourth Circuit precedents, other Circuit rulings, and rulings of the U.S. Supreme Court.

Within this Writ of Certiorari petitioner provides details, with citing specific parts of the record to expand upon the questions asked of this Honorable Court.

The action(s) and/or inaction(s) of the District Court and the Fourth Circuit Court of Appeals casts doubt on the impartiality, integrity, and judicial process of the judicial system. Petitioner asserts that as a result of these action(s) and/or inaction(s) he has been deprived of his constitutional guaranteed right of a fair and impartial trial/hearing; and caused the petitioner a miscarriage of justice.

REASONS FOR GRANTING THE PETITION

Petitioner asserts and avows that this Honorable Court should grant petitioners' Writ of Certiorari, in order to protect the integrity of the judicial process.

Reason(s) to grant this Writ is that the District Court and the Fourth Circuit Court of Appeals have entered decision(s) that conflict with this Honorable Court and other Circuit Courts. The Courts's decision(s) were based upon faulty and suspect summary judgment analysis. The Courts failed to properly apply the Summary Judgment analysis, by failing to review all of the evidence, including respondents failure to defend against claim(s), in the light most favorable to petitioner, weighing the evidence, and determining credibility. The Courts ignored issues of geniune material facts that were in dispute, and failed to accept that respondants conceeded and/or admitted many of petitioner's claims by failing to defend and/or answer those claims.

It is important, and part of the bedrock of the judicial process, that the public has faith in the integrity of the Federal Court System. The District Court and Fourth Circuit Court of Appeals failure to apply and follow judicial precedents, in order to protect government agents casts doubt upon the judicial system and its integrity to be fair and impartial.

This Honorable Court should grant petitioner's Writ of Certiorari and Vacate all orders, and remand in order to protect petitioner's constitutional rights to a fair and impartial trial and/or hearing, and to correct a miscarriage of justice.

Below petitioner expands his questions presented to this Honorable Court, and provides citation to specific parts of the record, to show why this Writ of Certiorari should be granted,

Question 1: Did the District Court err, and did the Fourth Circuit Court of Appeals compound the error, when petitioner's request for counsel was denied, because the case had complex medical evidence and petitioner's request for discovery?

The petitioner would respectfully ask this Honorable Court to take judicial notice that: 1) petitioner is not properly trained in the law or legal proceedings & procedures; 2) petitioner's instant action is a complex case involving many claims, legal precedents, and medical issues & evidence; 3) petitioner as an inmate cannot request discovery prior to a motion to dismiss or summary judgment; and 4) petitioner's limited access to legal research material and help. To expand upon #4, petitioner would make known to this Honorable Court that BOP is in a national lockdown status, as a result of the covid-19 pandemic, and inmates are only able to interact with inmates on the same housing unit, about 120 inmates, with one exception, Unicore. Petitioner has a prison job working for Unicore, manufacturing face masks for BISM (Blind Industries Services of Maryland), and therefore, is not out in the dayroom with the rest of the inmates, except on weekends if not working overtime. Petitioner's sole means of legal research is a single computer on the housing unit, which petitioner has access to for 2 hours, 1 hour if working over-time, each day. Petitioner must share this computer with 20-30 other inmates

Petitioner requested appointment of counsel on Feb 28, 2018, (ECF 56), raising his inability to acquire needed documentation and depositions to support his claims, and the complex medical issues, that would require medical experts.

The District Court denied this request in the same order where it denied in part and granted in part respondents motion for summary judgment (ECF 62).

Petitioner's Bivens action raised 26 claims concerning a broad range of constitutional rights violations, basically raising claims about condition of confinement, especially deliberate indifference to a serious medical need.

Condition of confinement cases, especially those that raise deliberate indifference, are complex cases that will require expert witnesses, discovery and testimony, which petitioner does not have access to, or ability as an inmate to acquire.

Petitioner asserts that the District Court did not perform a proper analysis of whether appointment would be proper. The Fourth Circuit in Stephens v. Kern, 2019 US Dist Lexis 25641 (4th cir) wrote, "the court should consider the following factors: (1) whether the plaintiff has presented a colorable claim; (2) the nature and complexity of the factual and legal issues; (3) plaintiff's capability to present his own case; (4) the degree of factual investigation involved and the plaintiff's ability to investigate adequately crucial facts related to his claim; (5) the extent to which the case is likely to hinge on credibility determinations; and (6) whether expert testimony must be presented. See U.S. v. $27,000, more or less in U.S. Currency, 865 F.Supp 339, 340-41 (S.D. W. Va. 1994); McNeil v. Lowney, 831 F2d 1368, 71-72 (7th cir 1987); Maclin v. Freake, 650 F2d 885, 87-89 (7th cir 1981); Tabron v Grace, 6 F3d 147, 155-57 (3rd cir. 1993)."

The ~~[illegible]~~ District Court went against 4th circuit precedents in Stephen, Lexis 25641, by failing to analyze the 6 factors, and the 4th circuit Court of Appeals failed to properly review the record for reversible errors. The District Court contradicts itself in its Sept 28, 2016, order (ECF 62). On page 13 of this order court wrote, "... claims are not complex, and where he has demonstrated through the detail of his filing he is capable of proceeding pro-se." and on page 17, "Given the rambling and disjointed nature of plaintiff's allegations..." Without further details of its analysis by the District court the 4th circuit should have found reversible error.

Based upon the 4th circuit precedent, the petitioner should have been provided counsel, at least for discovery purposes. The petitioner had presented colorable claims, satisfying the 1st factor of Stephens. Petitioner alleged the issues were complex, yet the District Court arbitrarily decided the issues were not complex. Petitioner in his request for counsel raised issues of needed discovery and dispositions, and without such could not provide needed evidence to support claims. This shows petitioner could not properly and adequately present his case. Petitioner raised issues of being unable to acquire the needed documentary evidence, this shows he was severely hampered in investigating crucial fact(s) of his claim. Most of petitioner's claims will rely on credibility, which he, as an inmate is inadequate capable of properly presenting. Petitioner raised deliberate indifference to a serious medical need, which would hinge upon expert testimony. Petitioner asserts that pursuant to Stephens Id. counsel should have been appointed, and when the 4th Circuit Court of Appeals failed to adequately and properly review the record, deprived petitioner of a fair and impartial hearing, and cast doubt upon the judicial process.

The denial of appointment by the District Court, and affirming by the 4th Circuit Court of Appeals, guaranteed that petitioner would not be able to present evidence to support his claims, or be able to oppose, with evidence, respondent's assertions and declarations. Both Courts therefore guaranteed that petitioner would not be able to provide evidence, and therefore could dismiss petitioner's action, whereby they could protect government agents.

By not allowing petitioner the ability to acquire evidence, which would require counsel, both Court's action(s) were so egregious and created such harm that a fair and impartial trial was impossible. See Smith v. Texas, 550 US 297, 167 LEd2d 632, 652 (   ).

Appointment of counsel would have allowed petitioner to acquire the following through request for documents and depositions: (1) petitioner's BP-8 not being answered; (2) FCI 2 Food Service failure to follow mandated policy, menus & scaled recipes; (3) proof of turning off copier, denial of legal supplies, illegal search of outgoing legal mail; (4) medical expert opinions; (5) facts of retaliatory action(s) on the part of FCI 2 employees; (6) and other evidence to support claims.

The fact(s) that both Courts action(s) and/or inaction(s) were so egregious, it should shock the conscious of this Honorable Court. Both Courts effectively hampered and restricted petitioner so that he could not provide evidence to support his claims by a reasonable standard, thereby protecting respondents, and allowing violation of constitutional rights to continue.

Petitioner would ask this Honorable Court to review this petition and the entire record and find that the District Court, with the help of the 4th Circuit Court of Appeals, deprived petitioner of a fair and impartial trial, and vacate both Court's orders.

Question 2: Was the Fourth Circuit Court of Appeals affirming the District Court's granting of summary judgment in conflict with its own precedents, other circuit rulings, and rulings of the U.S. Supreme Court, when respondents failed to properly comply with FRCP 56 and prove no genuine issues and that they were entitled to judgment as a matter of law?

Petitioner asserts that the 4th Circuit Court's ruling, affirming the District Court's granting of summary judgment, by allegedly finding no reversible errors was in conflict with its own precedents, at odds and in conflict with other circuit rulings and decisions of the U.S. Supreme Court.

Federal Rules of Civil Procedure (FRCP) Rule 56 governs summary judgment motions. Rule 56(a) states in part, "... A party may move for summary judgment, identifying each claim or defense..." In Rule 56(c)(1), states, "A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (B) showing that the material cited do not establish the absence or presence of a genuine dispute." In Rule 56(e), states, "If a party fails to properly support an assertion of facts or fail to properly address another party's assertion of fact as required by Rule 56(c), the Court may: (1) give an opportunity to properly support or address the facts; (2) consider the fact undisputed for purposes of the motion; (3) grant summary judgment if the motion and supporting material - including the facts considered undisputed - shows that the movant is entitled to it; or (4) issue any other appropriate order."

Petitioner asserts the District Court did not properly analyze respondents motion for summary judgment; and did not review all of the evidence, or lack thereof & undisputed facts, in the light most favorable to petitioner (nonmovant).

When a party fails to respond, challenge or refute another party's claims and/or assertions, they abandon any defense against those claims or assertions. See Warren v. Luzerne County, 2010 US Dist Lexis 11269 (3rd cir); Miller v. Harding, 2000 US App Lexis 38574 (1st cir); and Xerox Corp v. Zenprint, LLC, 386 F Supp 3d 248, 249 (2nd cir 2019). These are only a few cases that petitioner has been able to research in his limited and restricted access to legal research material.

The record shows that respondents never asserted any defense against each claim, or provide any evidence to oppose petitioner's claims, assertions and evidence in accordance with FRCP 56, thereby respondents have abandoned any defense against petitioner's claims, specifically, claims 1,3,4,6,7,9,10,11,12,13,14,16,17,19,20,21,22,25 & 26. See Rodriguez-Vega v. Policinica La Famillia De los Atta, Inc, 942 FSupp2d 210, FN2("... Failed to defend any other cause of action in thier summary judgment brief, any other claim has been waived."). See Levitt v. Wal-mart Stores, Inc, 74 Fed Appx 66, 71 (1st cir 2003). Also see, Greene v. City of New York, 2019 US Dist Lexis 131640 (2nd cir) ("A partial summary judgment may imply an abandonment of some claims or defenses. Jackson v. Federal Ex, 766 F3d 189, 196 (2nd cir 2014)' and "Generally... a partial response reflects a decision by a party's attorney to prsue some claims or defenses and to abandon others."); Xerox Corp v. Zenprint, LLC, 386 FSupp3d 248, 249 (2nd cir 2019) ("When a party against whom a judgment for affirmative relief is sought has failed to defend, and that failure is shown by affidavit or otherwise, that party is in default.")

The record shows and/or reflects that the respondents had full opportunity to challenge and defend against petitioner's claims and assertions, yet choose not to defend against any specific claim, except for claims 8 & 23, thereby abandoning any defense against all other of petitioner's claims. Respondent used improper blanket defense claims: (1) failure to exhaust; (2) absolute immunity for Derry & Kirkpatrick; (3) personal involvement; and (4) fail to establish constitutional rights violation. The record shows "otherwise" as reflected in Xerox, 386 FSupp 3d at 249, thereby the respondents were in default. The record shows petitioner asked for only entry of default for failure to defend.

Since the respondents elected to stand on its motion for summary judgment, and its refusal to answer or otherwise plead to claims, judgment as a matter of law should have been entered for petitioner. See Hummel v. Wells Petroleum Corp, 111 F2d 883 (7th cir 1940). A court can grant summary judgment sua sponte without notice if the losing party had full and fair opportunity to ventilate issues involved on motion. Maitland v. Mitchell, 44 F3d 1431 (9th cir 1995), cert. denied, 515 US 1131, 132 LEd2d 809 (1995).

The 4th Circuit court's affirming grant of summary judgment is in conflict with its own precedents, other circuit rulings, and rulings of the U.S. Supreme Court. The Court of Appeals, in its attached Per Curiam stated, "We have reviewed the record and find no reversible error."

The proper analysis of a motion for summary judgment requires that all evidence be viewed in the light most favorable to nonmovant. See Anderson v. Liberty Lobby, Inc., 477 US 242, 249-255, 91 LEd2d 202 (1986); Adickes v. S.H. Kress & Co., 398 US 144, 157, 26 LEd2d 142 (1970); Tolan v. Cotton, 572 US 650, 188 LEd2d 895 (2014); Curtis v. Caraway, 2019 US Dist Lexis 50622 (4th cir); Walker v. Mod-U-Kraf Homes, LLC, 775 F3d 202, 207 (4th cir 2017); In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Action, 538 F2d 180, 184-85 (8th cir 1976); Trahan v Wayfair Me, LLC, 957 F3d 54 (1st cir 2020); Ali v Woodbridge Twp Sch Dist, 957 F3d 174 (3rd cir 2020); Beardsall v. CVS Pharm, Inc., 953 F3d 969, 972-73 (7th cir 2020).

Both the District Court and 4th Circuit Court failed to review all evidence, including abandonment of any defense claims, in the light most favorable to petitioner, and failed to review all facts and draw all reasonable inference in favor of petitioner. See David v. Winchester Med. Ctr., 2018 US Dist Lexis 2530 (W.D. Va) (citing Tolan, 572 US at 651-53)

Petitioner asserted valid and colorable claims in his amended petition, and the respondents had full and fair opportunity to answer those claims and assertions, but instead choose not to do so, thereby they abandoned and defense against all claims, except for claims 8 & 23, and was in default. Summary judgment is only proper when a party asserts that there are no genuine issues of material facts, and the movant proves they are entitled to judgment as a matter of law. See Anderson, 477 US at 249.

Respondents abandoned all defenses against claims 1,3,4,6,7,9,10,11,12,13,14,16,17,19,20,21,22,25 & 26, except for defense of failure to exhaust and failed to establish constitutional rights violation. If the District Court & 4th Circuit Court of Appeals had reviewed all evidence, or lack of any defense, and all inferences in the light most favorable to petitioner, it would have foreclosed granting summary judgment. Summary judgment was also foreclosed because respondents failed to show or prove beyond a reasonable doubt they were entitled to judgment as a matter of law.

In any summary judgment analysis, the Court must adopt the plaintiff's versions of Facts. See Harris v. Pittman, 927 F3d 266, 276 (4th cir 2016); Witt v. W. Va. State Police, Troop 2, 633 F3d 272, 276 (4th cir 2011).

Since petitioner is a pro se litigant, the Court must not hold petitioner to the same standards as those trained in the law, though petitioner must still meet certain standards, but is given more leeway. A Court must also take a plaintiff's allegations and claims as true unless the defendants provide evidence to oppose those assertions and claims. A defendant filing a motion for summary judgment must show there is no genuine material facts in dispute, and must show that they are entitled to judgment as a matter of law. See Anderson, 477 US at 249, and Tolan, 572 US at 651.

Respondents failed to defend against each claim or assertion, instead pleaded a improper blanket defense in violation of FRCP 56. Respondents allowed the District Court to defend them against petitioner's claims, which the District Court did when it improperly analyzed all evidence and inferences, ignore Facts in order to justify granting respondent's motion for summary judgment.

The District Court showed bias and deprived petitioner his due process rights when it failed to adopt petitioner's claims and assertions as true. When respondents abandoned any defense other than failure to exhaust and failed to establish constitutional rights violation, they admitted to petitioner's claims and assertions. In its analysis, the District Court decided evidence and credibility, and failed to acknowledge that respondents failed to defend against all claims, that if taken as true establish rights violations.

The District Court failed and refuse to accept petitioner's assertions and claims that he had exhausted all available remedies, instead determined petitioner's credibility and accepted as true claims made by respondents that petitioner had used the A.R.P. in the past. This evidence had no bearing on whether respondents hampered or thwarted petitioner's other attempts at the A.R.P. when they refused to answer BP-8. (See Petitioner's Appendix P.A. 19-42, 70, 880-86). The District Court, and 4th circuit Courts affirmation, finding that petitioner failed to exhaust, in light of all evidence provided by petitioner is in conflict with 4th circuit precedents, other circuit decisions and rulings of the U.S. Supreme Court. Spicer v. Riffle, 2019 US Dist Lexis 27987 (4th cir)(citing Celotex Corp v. Catrett, 477 US 317, 322-23, 91 LEd2d 256 (1986)); Tolan, 572 US at (citing Brosseau v. Haugen, 543 US 194, 195 n.2, 160 LEd2d 583 (2004)); and Anderson, 477 US at 249.

Since respondents failed to defend against petitioner's specific claims, and therefore, were in default, the District Court should have granted summary judgment, sua sponte, in favor of the petitioner if he showed he had exhausted all available remedies and his claim establishes a constitutional rights violation. What the District Court did was to take all claims respondents failed to defend, ignore all petitioners assertions and claims, accept respondent's unrelated evidence as facts to support decision on other matters, thereby providing defense for respondents. The District Court acted as counsel for respondents, by ruling upon the merits, ~~[illegible]~~ by weighing the evidence and deciding credibility.

Black's Law Dictionary, third pocket Edition, defines merit as "The elements or ground of a claim or defense; the substantive consideration to be taken into account in deciding a case..." Substantive evidence is defined as, "evidence offered to help establish a fact in issue."

The District Court's decision not to accept petitioner's assertions and claims as true, even when they were not opposed or defended against, and instead proceeded to rule on the merits gives the appearance that the Court was siding with respondents and defended them. A court must not weigh evidence or determine truth, only decide if there is issues that must be submitted to a jury. See Spicer, 2019 US Dist Lexis 27987; Celotex, 477 US at 322-23; Anderson, 477 US at 248. As a matter of law, if a defendant does not defend or provide any evidence to oppose a plaintiff's assertions and claims, then the defendant is admitting to the plaintiff's assertions and claims, therefore, as a matter of law judgment should be rendered on these claims in favor of the plaintiff. The fact that the District Court ignored petitioners assertions, claims & evidence, and used unrelated evidence and ignored facts is reversible error, and the 4th Circuit Court decision is in conflict with other Circuit decisions, and rulings of the US Supreme Court.

Proof of the District Court's failure to accept petitioner's assertions and claims as true can be found in several places. One such place, document (ECF 62, page 18, #4). Here the Court grouped three (3) seperate and distinct claims into one analysis. The Court describes the standard, specifically to show actual injury.

In petitioner's 3rd claim, he asserted he was denied need legal research material to answer a show cause order from the Oklahoma Supreme Court. The Court ignored the fact that petitioner suffered an "actual injury" that being his case was dismissed, when he could not answer the show cause order, because he had no legal research material available. The 4th Circuit Court should have found reversible error. The District Court ignored the fact(s) that respondents failed to defend against this claim, failed to accept petitioner's assertion and claims as true, ignored specific injury suffered and granted summary judgment.

The District Court grouped petitioner's claims together in different groups, ignoring the facts that the claims alleged different constitutional rights violation, and analyze all claims in the groups under one standard, which did not fit all claims in the group. This again shows the District Court was actually defending respondents, instead of being a impartial judge, thereby depriving petitioner of a fair and impartial trial, and creating a miscarriage of justice.

The District Court's summary judgment analysis should have been limited to whether there were issues of genuine material facts to be decided, and grant summary judgment for either party if shows they were entitled to judgment as a matter of law.

When respondents failed to answer or defend against petitioner's specific claims, after having full and fair opportunity, were in default and therefore admitted to those claims not defended. As a matter of law, judgment as a matter of law, or a directed verdict, should have been order in favor of the petitioner; while issues of material facts would be decided by a jury. See City of New York v. Mickalis Pawn Shop, LLC, 645 F3d 114, 129 (2nd cir 2011); (citing Brock v. Unique Racketball & Health Clubs, Inc, 786 F2d 61, 64 (2nd cir 1986)); Hummel

V. Wells Petroleum Corp, 111 F2d 883 (7th cir); Maitland, 44 F3d 1431.

The 4th circuit Court had the entire record, therefore had all of these facts available in its review of petitioner's appeal and informal brief. The Appellate Court Failed to conduct a proper summary judgment analysis, and its decision is in conflict with its own precedents, other circuit decisions, and rulings of the US Supreme Court. In fact the Appellate Court did not rule on any merits of petitioner's appeal, instead performed a de novo review of granting summary judgment. The Appellate Courts' alleged review of the record, ignoring petitioner's informal brief and affirming the District Court's order granting summary judgment is so far outside of precedents and which conflicts with other circuits, therefore deprived petitioner his right to a fair and impartial trial, and caused a miscarriage of justice.

The 4th circuit Court's sanctioning of the District Courts' actions calls for this Honorable Court to exercise their Supervisory power and Vacate both of the District Courts' orders (ECF 62 & 81) and remand back to the District Court with orders to enter default on claims 1, 3, 4, 6, 7, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 21, 22, 25 & 26, and for the District Judge to recuse himself, and proceed to discovery.

Question 3: Was the Fourth Circuit Court of Appeals affirmation of the District Courts' granting summary judgment in conflict with its own precedents, other circuit decisions, or the U.S. Supreme court rulings, when respondents failed to defend against claims and Failed to prove they were entitled to judgment as a matter of law?

Petitioner asserts that both the District Court and the 4th circuit court failed to properly analyze all evidence and motion for summary judgment in accordance with FRCP Rule 56 and precedents.

On Jan 1, 2018, respondents filed a Motion to Dismiss, or in the alternative motion for summary judgment (ECF 43), with a memorandum in support (ECF 44). In respondents

Statement of the case (ECF44), they summarize petitioner's claim and make four(4) blanket defense claims: (1) failure to exhaust; (2) respondents Kirkpatrick and Derry have absolute immunity; (3) personal involvement of some respondents; and (4) failed to establish constitutional rights violations. Respondents failed to support their defense as directed by FRCP Rule 56(c)(1)(A) or (B). Respondent's statement of material facts (ECF45) only describe administrative remedies actually processed by BOP, yet provides no facts, assertions or evidence to support their other 3 blanket defenses, nor does this provide any defense against petitioner's claims. There was a geniune issue of whether petitioner had exhausted his administrative remedies. (See Appedix D, page 1)

Both the District and Appellate Courts failed to properly analyze all evidence in the light most favorable to petitioners. Both Court's decisions shows that truth was determined and creditibility was decided as to failure to exhaust, and their decisions are in conflict with other circuit decisions and rulings of the US Supreme Court.

The District Court weighed the evidence, failing to examine all evidence, or lack of, in the light most favorable to nonmovant (petitioner). In fact, the District Court decided upon the truth, as seen by the judge's statement, "Here plaintiff's allegations are insufficient to indicate that BOP's ARP was unavailable. On the contrary, plaintiff was able to use the ARP at least 17 times." (ECF 62, page 17). The District Court ignored petitioner's assertion and evidence that he had attempted to exhaust his remedies, but FCI 2 staff thwarted his use of the ARP by refusing to answer his BP-8. In petitioners motion for reconsideration (ECF 64), he fully explained how staff was thwarting his use of the ARP, and attached a declaration as evidence. This evidence was ignored by both courts.

Summary judgment analysis requires a court to see if there is a geniune dispute as to facts, See Covarrubias v Citimortage, Inc, 623 Fed Appx 592, 593 (4th cir 2015) ("the relevant inquiry in a summary judgment analysis, then is 'whether the evidence presents a sufficient disagreement to require submission to a jury...'" The Court further wrote, "In our review of summary judgment, we do not weigh the evidence or make creditibility determinations.

Williams v Staples Inc, 372 F3d 662, 667 (4th cir 2004)." Both Courts failed to follow this precedent and weighed the evidence and decided credibility, thereby depriving petitioner of a fair and impartial trial, and a miscarriage of justice.

To stress both Court's decision being in conflict with its own precedents, other circuit's rulings and U.S. Supreme Court decisions, petitioner would point to Calloway v. Lokey, 948 F3d 194 (4th cir 2019) (Lexis page 38-39) "... through subjective word choice and selective inclusion of information, paints the record not in the light most favorable to Ms. Calloway, the nonmoving party, but rather the officers. That runs counter to the most fundamental principles of summary judgment analysis because deciding whose account is more believable is not our task."

Yet this is exactly what both courts did, when it refused to accept petitioner's claims & assertions as true, and ignored petitioner's evidence, and instead gave weight to respondent's evidence.

Though the District Court did not actually perform a Zigler analysis under new context for special factors, petitioner would point out that no such special factors were raised.

The 4th circuit Court failed to examine and rule on the merits of petitioner's grounds for appeal, instead performed a allegedly de novo review, and decided there was no reversible errors.

In a proper analysis a court must not weigh the evidence, nor decide credibility, or what the truth is. See Anderson, 477 US at 251-52; Tolan, 572 US 650 (citing Brosseau v. Haugen, 543 US 194, 195, n.2, 160 LEd2d 583 (2004)); Carter v. US, 694 Fed Appx 918 (4th cir 2017) (citing Rich v. US, 811 F3d 140, 145 (4th cir 2015). The 4th circuit's analysis and decision is in conflict with other circuit Courts. See Alvarado-Escobedo v US, 2020 US App Lexis 15776 (10th cir); Caniglia v. Strom, 953 F3d 112, 120-21 (1st cir 2020); Shotts v. Geico Gen. Ins. Co., 943 F3d 1304, 1317 (10th cir 2019); Daza v. Indiana, 941 F3d 303, 308 (7th cir 2019).

Summary judgment analysis must be liberally construed in determining whether motion addresses all legal issues raised by plaintiff Jones v Evans, 544 F Supp 769 (N D Ga 1982). Although summary judgment under Rule 56 is useful device for adjudicating prisoners civil rights claims under

42 USC § 1983 (or Bivens), it may not be invoked where affidavits or declarations present conflicting versions of facts which require credibility determination. Davis v. Zahradnick, 600 F2d 458 (4th cir 1979)

The 4th Circuit Court's action make it appear that it provided support for respondent's case by either ignoring petitioner's assertions & claims, that were not disputed; declarations & evidence, and not analyzing all the evidence, or lack of, in the light most favorable to petitioner. In fact the Apellate Court seems to intentionally ignore direct evidence of the District Courts' intentionally deciding truth and credibility. An example of such, when the District Court ignored petitioner's evidence and assertions of the harm he suffered by not having the needed legal research material to answer a show cause order from the Oklahoma Supreme Court. In the District Court's order (ECF 62) on page 18, the court grouped 3 different events into one analysis, and only described 2 of the claims, leaving out claim 3, and ruling on all 3 claims that, "petitioner fails to identify any specific injury as a result of this alleged deprivation." (See Appendix D #3, 25, 32, 38, 42, 52, 64 & 65).

Further evidence that both courts ignored petitioner's evidence or weighed such evidence is in the fact the courts ignored petitioner's evidence submitted with his opposition and reply to motion to dismiss (ECF 58) In petitioners Attachments/Appendix he included 11 copies of BP-8 he had submitted to staff that were never answered. (See PA. 19-42, 70 & 80-86). The District Court ruled petitioner failed to exhausted, based upon only respondent's declaration, and 4th circuit court found no reversible errors. This was a miscarriage of justice.

Petitioner asserts the 4th circuit court ignored many errors: 1) respondents did not and failed to defend against each of petitioner's claims, thereby if petitioner showed had exhausted remedies and showed rights violation, respondents abandoned any other defense and admit to the claims; 2) District Court did in fact dismiss petitioner's petition for failure to exhaust; 3) District Court's alternative basis for dismissal based up Zigler, yet no analysis was done; 4) District Court ignored petitioner's assertions & evidence showing harm done; 5) District Court's determination of truth, ignored all petitioner's assertions, claims & evidence; 6) District Court's determination of credibility, shown by analysis of exhaustion of ARP; 7) District Courts conversion of claims of retaliation into other context, whereby analyzed improper context; 8) District Court ignored BOP's intentionally disregard for court orders; 9) District Courts ignored petitioner's evidence of delay of medical treatment, post-deprivation remedies not available. In Fact the 4th Circuit Court ignored so many errors, and then deciding to affirm cast doubt on the impartiality of the judicial process.

In a de novo review, the 4th Circuit Court was to perform a proper Summary judgment analysis, where upon petitioner's claims are to be taken as true, all evidence and inferences to be viewed in the light most Favorable to petitioner; and if any genuine facts are in dispute deny summary judgment. The 4th circuit did not do this, and their decision conflicts with other circuits and US Supreme Court rulings, and therefore create a miscarriage of justice.

A full review of the entire record, shows that if done in the light most Favorable to petitioner, would show the claims asserted, the court should have granted summary judgment Sua Sponte in Favor of petitioner, or ordered respondents to defend against the claims. Instead the District Court decided upon the merits, ignoring all of petitioner's assertions, claims, & evidence, and only accepted respondents claims of Facts, thereby depriving petitioner of a Fair and impartial trial.

This Honorable Court should be shocked at the District and Appellate Court's proceedings, Where their action(s) casts doubt on the impartiality and integrity of the judicial process. The Courts actions deprived petitioner of a fair and impartial trial and caused a miscarriage of justice, therefore this Honorable Court should use its supervisory authority to vacate both District Court's orders, and remand for further proceeding and discovery.

Question 4: Did the Fourth Circuit Court of Appeals err when it Found no reversible errors?

The 4th circuit Court in its Per Curiam note, attached to its order affirming the District Court's order stated, "We have reviewed the record and find no reversible errors." They Further wrote, "we depense with oral argument because the Facts and legal contentions are adequately presented... and arguments would not aid in the decisional process."

Petitioner would ask how those two statements can stand. The Appellate Failed or refuse to look at the merits of petitioner's appellate grounds, Failed to properly review all evidence in the light most Favorable to petitioner, grand all inferences, yet still found no reversible errors.

The petitioner as a inmate in Federal prisons has such hardship bringing a suit for constitutional rights violation because his lack of knowledge in the law, judicial process, limited research ability, lack of discovery, that it makes it almost impossible to vindicate his rights and redress his complaints. Then when the District Court and Appellate court combine to further hamper the inmate in bringing his complaint before the Courts for a fair and impartial trial, it must cast doubt on the judicial process.

Both the District Court and Appellate Courts' decisions are in conflict with 4th circuit precedents, other circuit's decisions, and rulings by the US supreme Court.

Fourth Circuit precedents:

Calloway v. Lokey, 948 F3d 194 (Lexis page 38-39) (4th cir 2019)

held, "through subjective word choice and selective inclusion of information, paints the record not in the light most favorable to ms. Calloway, the nonmovant party, but rather to the officers. That runs counter to the most fundamental principales of summary judgment analysis because deciding whose account is more believable is not our task."

Prince v. Pittson Co., 63 FRD 28 (WD Va 1974) (1974 us Dist Lexis 8566)

held, "summary judgment should not be granted unless entire record shows right to judgment with such clarity as to leave no room for controversy and establish affirmatively that adverse party cannot prevail under any circumstances."

Carter v. US, 694 Fed Appx 918 (4th cir 2017)

held, "where the defendant is contesting not only the jurisdictional basis for a suit, but also the core of a plaintiff's cause of action, then the plaintiff is entitled to the same 'procedural safeguards' that 'would ~~be~~ apply were the plaintiff facing a direct attack on the merits. Kerns v. US, 585 F3d 187, 193 (4th cir 2009), Including a persumption of the truthfullness of the facts alleged. Rich v. US, 811 F3d 140, 145 (4th cir 2015), and the court should resolve factual disputes only after appropriate discovery or, if necessary, at trial, id; Kerns, 585 F3d at 193; see Arbaugh v. Y&H Corp, 546 US 500, 514, 163 LEd2d 1097 (2006) ("If satisfaction of an essential element of a claim for relief is at issue ... the jury is the proper trier of contested facts.")"

Reed v. Wilson, 2015 US Dist Lexis 117262 (4th cir)

held, "... moving party bears the burden of proving that judgment is entitled on the pleadings. See Celotex Corp v. Catrett, 477 US 317, 323, 91 LEd2d 265 (1986)."

Also see: Spicer v. Riffle, 2019 US Dist Lexis 27987 (4th cir); Curtis v. Calloway, 2019 US Dist Lexis 50622 (4th cir); Walker v. Mod-U-Kraf Homes, LLC, 775 F3d 262, 207 (4th cir); Harris v. Pittman, 927 F3d 266, 267 (4th cir 2019); Witt v. W. Va. State Police, Troop 2, 633 F3d 272, 276 (4th cir 2011); Covarrubias v. CitiMortgage, Inc., 623 Fed Appx 552, 593 (4th cir 2013); Williams v. Staples, Inc., 372 F3d 662, 667 (4th cir 2004)

These cases shows that both Courts Failed to follow 4th circuit precedents as to summary judgment analysis.

The 4th circuit court's review and analysis, and its decision, are in conflict with other Circuit Court's decisions and rulings of the U.S. Supreme Court. Below are cases to show other Circuits rulings and that the 4th circuit ruling in petitioner's action conflict with their rulings pursuant to summary judgment analysis.

Supreme Court decisions

Anderson v. Liberty Lobby Inc, 477 US 242, 91 LEd2d 202 (1986)

at page 213, held, "the adverse party 'must set forth specific facts showing that there is a genuine issue for trial.'" Also at page 208, "(a) Summary Judgment will not lie if the dispute about a material Fact is 'genuine', that is if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. At the summary judgment stage, the trial judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial."

Celotex Corp v. Catrett, 477 US 319, 91 LEd2d 265 (1986)

at page 274, held, "... a party seeking summary judgment always bears the initial responsibility of informing the District Court of the basis for its motion, and identifying those portions of the pleadings, deposition, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrates the absence of a genuine issue of material fact."

V. V M & R Indus. Inc, 2015 US Dist Lexis 40180 (3rd cir).

Fifth Circuit decisions

Murrell V Bennett, 615 F2d 306 5th cir (1980)

Court held summary judgment should not be granted before discovery is complete.

~~Walker V. Poveda, 735 Fed Appx 690~~

Wilson V. Exxon Mobile Corp, 575 Fed Appx 309, 312 (5th cir 2014) (citing Davis v. Dallas Area Rapid Transit, 383 F3d 309, 316 (5th cir 2004)).

Keen v. Miller Envtl Grp Inc, 702 F3d 239, 243 (5th cir 2012)

Sixth Circuit decision

Scheffler V Lee, 752 Fed Appx 239, 243 (6th cir 2013)

held, "A factual dispute is material if its resolution might effect the outcome of the suit and it is geniune if the evidence is such that a reasonable jury could return a verdict for the non-moving party."

Also see: Mansfield v. City of Murfreesboro, 706 Fed Appx 231, 240 (6th cir 2017); Jennings v. Cnty of Monroe, 630 Fed Appx 547, 550 (6th cir 2015)

Eighth Circuit decisions

See: City of Benkelman v. Baseline Eng'g Corp, 867 F3d 875, 882 (8th cir 2017)

Nineth Circuit decisions

See: Weil v. Citizens Telecom Servs Co., LLC, 922 F3d 993, 1002-05 (9th cir 2019); Fuller v. Idaho Dept. of Corr., 865 F3d 1154, 1165 (9th cir 2017); Taylor v US, 350 Fed Appx 129, 130 (9th cir 2009)

Tenth circuit decisions

See: Amparan v. Lake Powell Car Rental Co, 882 F3d 943, 947-48 (10th cir 2018); Bornemann v Rozier, 398 Fed Appx 415, 417-18 (10th cir 2018).

Eleventh Circuit decisions

Walker v. Poveda, 735 Fed Appx 690 (11th cir 2018)

held, "That was error, Walker verified his complaint and summary judgment responses in accordence with 28 USC §1746..."

The petitioner asserts that the above cited cases offers and shows proof that the District Court and 4th circuit court's decisions, were based upon analysis that conflict with other circuits, thereby depriving petitioner of a Fair and impartial trial and creating a miscarriage of justice.

FRCP 56 governs summary judgment motions. A party may move for summary judgment, identifying each claim or defense, Rule 56(a). Failing to properly support an assertion or of Fails to properly address another party's assertion of facts as required by Rule 56(c), the court may, (2) consider the fact undisputed for purposes of this motion Rule 56(e)(2). A court may grant summary judgment for a nonmoving party Rule 56(f).

The record shows that the District Court did not properly perform a summary judgment analysis, did in fact weigh the evidence, determined truthfulness and credibility; did not hold respondent's attorney to the law and Federal Court Rules. In fact, the record shows that the District Court argued on behalf of the respondents. It ruled upon the merits of petitioner's claims, even though respondents only defense was failure to exhaust and fail to establish constitutional violation, and made no defense against any specific claim except for claim 18 & 23.

As a matter of law judgment should have been awarded to petitioner if the evidence submitted by petitioner, and taken as true, shows that he had exhausted all available administrative remedies and his claim establishes a rights violation. If the District Court's summary judgment analysis was only to decide if there were geniune issues in dispute, and respondents failed to defend against specific claims, then summary judgment was not proper, and was plain error.

Petitioner would ask this Honorable Court to review Appendix D, "Material Facts" where petitioner listed each claim, with supporting evidence location, and respondent's defenses. Petitioner also lists the issues of geniune facts that the district court ignored, and undisputed Facts. All of these facts and evidence is found within the court records.

If the District and Appellate Court had taken petitioner's assertions, claims and evidence as true, and respondents failed to show there was no issues in dispute and prove beyond a reasonable doubt they were entitled to judgment as a matter of law,' then how is it that the District Court granted summary judgment for respondents, and the 4th Circuit Court found no reversible errors.

Petitioner asserts and asks this Honorable Court to grant oral arguments so that the errors can be properly brought before this Honorable Court.

This Honorable Court should find both the District Court and 4th circuit court erred in their analysis of the record, and their decisions are suspect, and should vacate both of the District Court's orders (ECF 62 & 81) and remand for further proceedings and discovery, with an order that respondents are in default on petitioner's claims 1, 3, 4, 6, 7, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 21, 22, 25 & 26.

Question 5: Did the Fourth Circuit Court of Appeals allow and/or create a situation of a fundamental miscarriage of justice, when it failed to rule on the merits petitioner's issues in his informal brief, when it affirmed the District Court's granting of summary judgment to respondents?

The petitioner asserts that he has suffered a miscarriage of justice as a results of the District and Appellate Court's action(s).

The petitioner is a Federal inmate, incarcerated in a federal prison, and is not trained in the law or proper judicial proceedings, and is extremely hampered in his ability to properly present and litigate his causes of actions.

Petitioner asserts that the District Court committed plain error when it failed to accept petitioners claims as true, grant all reasonable inferences, and ignored petitioner's assertions and evidence. It is well established that Courts should correct plain errors that effects substantive rights, if the error seriously affects the fairness, integrity or public reputation of judicial proceedings. See Rosales-mireles v U.S, 201 LEd2d 376, 385 (2018) (citing U.S. v. Olano, 507 US 725, 735, 123 LEd2d 508 (1993)).

Petitioner asserts that as a result of errors by the District Court (see Appendix E,

1-49), he was deprived of a fair and impartial trial.

The District Court failed to properly apply summary judgment analysis, by accepting as true petitioner's assertions claims, and evidence, there by committing plain error. (See Appedix E, #s 2, 3, 4, 16, 18-20, 27 & 29). The District Court committed plain error by converting petitioner's claims into different civil rights violation, and thereby improperly analyzed them.

The District Court weighed the evidence, in conflict with court precedents, (See Appendix E, #s 1, 5, 6, 9, 11-15, 17, 21-23, 24-26, 28, 30-36, 39, 40-45, 47-48) The Court's refused to accept petitioner's assertions, claims and evidence as true, and failed to grant all reasonable inferences in light most favorable to petitioner.

The District Court's failure to properly accept petitioner's assertions, claims, and evidence as true, grant all reasonable inferences, and ignore evidence, or create evidence is plain error and a miscarriage of justice. The District Court's errors are egregious and deprived petitioner of a fair and impartial trial, and should shock the conscious of this Honorable Court.

The Appellate Court created a miscarriage of justice when it allegedly review the record and found no reversible errors, and failed to rule on the merits of petitioner's issues in his informal brief, this is plain error.

To establish plain error, the Court in U.S. v. Minter, 2020 U.S App Lexis 5534 (Feb 24, 2020, 4th cir) held, "... a defendant has the burden of showing: (1) that an error was made; (2) that the error was plain; and (3) that the error affected his substantial rights. U.S v Carthorne, 726 F3d 503, 510 (4th cir 2013)." See petitioner's informal brief, (Appellate docket # 2).

The multitude of errors were plain, and they affected petitioner's substantive rights to due process and a fair and impartial trial. See U.S. v. Walker, 934 F3d 375, 378 (4th cir 2019) Also see, Dixon v Edwards, 290 F3d 699, 719 (4th cir 2002).

The Appellate Court's review, appears to be only de novo review of summary judgment, failed to consider the merits of petitioner's issues raised in his informal brief, where petitioner asserted bias and abuse of discretion.

In Cohen v. Rosenstein, 2020 US App Lexis 3640 *1-2 (4th cir), the court held, "A district court abuses its discrection if it relies on an error of law or a cleerly erroneous factual findings. US ex rel. Obers v. Pa Higher Educ. Assistance Agency, 912 F3d 731, 735 (4th cir 2019)." As seen in petitioner's Appendix E (Errors), the Appellate Court ignored many errors of laws and cleerly erroneous factual findings. This and its allowance of the District Court to ignore summary judgment analysis precedents, is a miscarriage of justice that only this Honorable Court can correct.

The petitioner is asking this Honorable Court to use its supervisory authority to vacate both District Court orders (ECF 62 & 81) and remand back to the District Court for further proceedings, appointment of counsel so that discovery can be done.

Question 6: Did the petitioner receive a fair and impartial trial in the District Court and the Fourth Circuit Court of Appeals?

Petitioner asserts that he was deprived a fair and impartial trial and/or hearing, thereby depriving him of his due process and equal protection rights, and suffered a miscarriage of justice

Petitioner brought his verified amended complaint, with 26 claims, before the District Court. The respondents failed to answer each of petitioner's claims, relying instead of a blanket defense of failure to exhaust, personal involvement, and failure to establish a constutitional violation, but provided no specifics or evidence.

Petitioner did ask for the Court to enter an entry of default because respondents failed to answer petitioner's claims. In fact, respondents failed to assert or defend against petitioner's assertion of facts as required by FRCP Rule 56(c).

When the District Court committed the errors (See Appendix E) it deprived the petitioner of a fair and impartial trial, and casts doubt on the integrity of the judicial process. The following category of errors occured: 1) wrongfully converting petitioner's claims of one Amendment rights violation into a different Amendment violation; 2) when it weighed the evidence; 3) determined creditibility; failed to grant all reasonable inferences; 4) ignored petitioner's evidence; and 5) giving the appearance of siding with respondents. The Court weighed evidence and determined creditibity, as seen by the fact that petitioner asserted he had exhausted all available remedies, and provided evidence, unanswered BP-8's, that showed staffs thwarting petitioner's use of the ARP. Instead the District Court only accepted respondent's declaration that petitioner had used the ARP in the past.

There are so many errors, and petitioner does not know how to properly bring them before this Honorable Court, that petitioner would ask this Honorable Court to review Appedix D & E. All through the record examples can be found where the District Court showed partiality for respondents, failed to properly analyze all evidence in the light most favorable to petitioner, and deprived him of a fair and impartial trial.

The 4th circuit continued this deprivation in its alleged review of the record when it found no reversible errors, thereby casting doubt on its impartiality. The 4th Circuit did not even review the merits of the issues raised by the petitioner. Court rules and procedures allow the Appellate Court to review de novo all grants of summary judgment. The petitioner filed his notice of intent to appeal and a informal brief. The petitioner was charged the filing fee for filing an appeal, but the Appellate Court only did an denovo review. Petitioner feels he was defrauded by the Appellate Court because he filed his informal brief in good faith, raising what he believed to legitimate grounds, errors and bias, yet the Appellate Court did not even look at or review the informal brief, but petitioner is still responsible for the full filing fee.

Petitioner asks this Honorable Court to review the record and then grant petitioner's Writ of Certiorari and remand back to the District for further proceedings and discovery.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: Aug 28, 2020