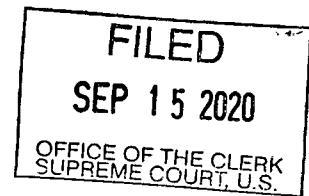


ORIGINAL

20-5817
No. _____



In The
Supreme Court of the United States

Thomas Lewis 133200

Petitioner

Jonathan Decker et al.,

Respondents

On Petition for Writ Certiorari
To the Sixth Circuit Court Appeal

Petition for Writ of Certiorari

Thomas Lewis 133200

10274 Boyer Rd

Carson City, Mich

48811

Questions Presented

1 In an extraordinary departure from accept usual Judicial proceedings The appeals Court granted Summary Judgment to defendants based on a defense forfeited pursuant FRCP provision 12 (g) h (1) (A) and contravened numerous FRCP mandates and many decisions of The Court.

9 Can The Court of appeals disregard FRCP 12 (g) h (1) (A) and introduce that "Waived defense" as a basis to award defendants Summary Judgment and contravene Rules 8(c), 56 and This Court's decisions?

2 The Court of appeals did not give Controlling Weight deference To Grievance Policy 03 02 130 sec G(1) prior to giving defendants Summary Judgment Victory contravening FRCP and numerous decisions of The Court.

9 Wasn't The appeals Court obligated To Justify its extraordinary departure and Carry The burden of persuasion by Show Through analytical application of policy 03 02 130 G(1) That Mr. Lewis did raise multiple Unrelated issues and defendants were entitled by Law?

3 Corrections Through manipulation in processing grievance 18 3 26 7 28C made Steps II and III of a 3 Step system functionally unavailable and The appeals Court still Sanction Petitioner for failure To exhaust. See next page →

Question Presented

Q Was The Court of appeals required to give Controlling Weight deference To Sec. U of policy 03 02 130 which procedurally barred Warden Burt from being involved in The redress process but she did anyway and rendered The process functionally unavailable?

4 The Court of appeals Order of July 14 2020 created a Jurisdictional Defect when it used a Jurisdictionally barred forfeited defense pursuant FRCP Rule 12 (g) h (1) (A) as a reason to divest The Courts of subject matter Jurisdiction.

Q Could The Court use a Jurisdictionally barred defense pursuant FRCP Rule 12 h (1) (A) as The basis To divest The Courts of Subject matter Jurisdiction?

LIST OF PARTIES

☐ 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:

Thomas Lewis 133200
Petitioner

Jonathan Decker, Barbara Hoover, Warden Burt,
HUM Wilkerson, Megan Tanner, John Does 1-5
Respondents

RELATED CASES

a. Magistrate's R&R Aug 7 2019 case No 1:18 CV 1093

Appdx A pgs 30-35

b. District Court Adopts R&R Sep 16 2019

Appdx A pgs 36-39

c. Appeals Court Order July 14 2020 appealed from

Appdx A pgs 37-41

d. Petition Rehearing En banc denied Aug 28 2020

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United States v Ellison 462 Fed3 557 (6 cir 06) pgs 2, 7

Ross v Blake 136 S.Ct 1850 (16) 13, 16, 21

Sator v Arkansas Natural Gas Corp. 321 US 620 (1944) pg 9

Statute

42 USC 1997e (a)

Jurisdiction

This Court has Jurisdiction pursuant 28 USC 1252 (a); 28 USCA 2101 (c) to review Court of appeals actions 28 USC 1254 (1)

42 USC 1997e(a) " [N]o action shall be brought with respect to prison conditions under sec 1983 ... by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies are available are exhausted.

Petitioner Mr. Lewis bring an Order from The Sixth Circuit Court of appeals issued July 14th 2020, to The Court's attention seeking relief from it, with regard to exhaustion pursuant 42 USC 1997e(a).

Rehearing En banc denied Aug 28 2020

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1
42 USC 1983: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or Territory subjects or causes to be subject, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law suit in equity, or other proper proceeding for redress.

2
28 USC 1343(3): To the redress the deprivation, under color of any state law, statute, ordinance, regulation, custom or usage of any right, privilege or immunity secured by the Constitution of the United States or by any act of Congress providing for equal rights of citizens or of all person within the jurisdiction of the United States.

3
42 USC 1997e(a) [No action shall be brought with respect to prison conditions under Sec. 1983 ... by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies are available are exhausted.]

4
United States Constitution Art III sec. 2, Amendments 5th, 8th and 14th and 1st amendment right to redress.

STATEMENT OF THE CASE

On January 26 2018 a disc slipped in Mr Lewis' back, and his condition deteriorated over the next 3 days, unable to use the bathroom, shower, or go to chow hall or medication window, he checked in to Segregation where cells have toilet, sink. He was denied all reasonable medical care by the prison. Hoping to be able to care for himself in detention, he was literally forced sic carried to the cell by 2 guards and put on a bed. For the next 10 days Corrections left Mr. Lewis totally bedridden by pain and physically disabled was left in his own defecations and urine. He was starved 10 days, no food. He had no water at all for the first 3 days, and moved to a cell where the toilet was so close to the bed he was able to scoop toilet water to drink to avoid death because they would not so much as give him a glass of water. Pain was so overwhelming and torturous he could not move and they let him lay there uncared for 10 days.

Corrections manipulated processing of his grievance 18 3269 28C. Policy 03 02 130 sec U bars any person named in a grievance from being involved in "any capacity" but Warden Burt did any way and refused to process the

grievance 183267 on phony/procedural grounds claiming multiple unrelated issues were in it violating Sec. 6(i) of policy 0302130. She illegally inserted herself to stop the grievance process and create a dead end. To deny any and all redress. She was the first person named in grievance 183267.

The phony claim of multiple issues was so without merit Corrections never raised it in their Summary Judgment motion. Nor did the Chapman Group representing the doctor and PA. Corrections Legal Dept. knew it was totally devoid of factual support per policy 0302130 so they hatched another phony scam and claimed they never got Mr Lewis' Step III appeal in the mail. They've used that as their defense throughout these exhaustion proceedings.

In Michigan they have published documents called "Expedited Legal Mail Form," this form is produced by the State, for the express purpose of providing "proof service of legal documents for the courts" and accepted as proof pursuant to FRAP 4(c)(1). The procedure requires authorized staff to sign for the mail, take it from the inmate and mail it. The mailroom then signs for it and mails it.

If you are indigent as Mr. Lewis is, The Mail Policy requires prison officials to closely inspect the contents to ensure it is what it says it is i.e. grievance 183267. Mr Lewis used these procedures to mail his Step III appeal to final exhaustion.

Corrections by falsely claiming they never got his Step III, made Step III unavailable. Mr Lewis was denied Steps II and III.

The magistrate refuse to consider Mr Lewis' proof of mailing during review violating Rule 56 which requires a court to give due regard to both parties defenses. *Colotex Corp v Cotrett*, 477 US 327. The magistrate gave no analytical application of Sec. V of policy 0302130 to determine if Burt did render the process functionally unavailable. By failing to present on the record through analytical application of Agency regulation as it relates to *Booth v Chornier* 532 US 731 (01), *Ross v Blake* 136 S. Ct 1850 (16), *Jones v Bock* 549 US 199 (07) to determine if in fact there was a functioning available remedy, The magistrate and district Court have not shown defendants were entitled to dismiss Mr. Lewis' Complaint.

The Court of appeals reversed The district Court who granted Summary Judgment To Corrections who claimed Mr Lewis did not go To Step III. On appeal Mr Lewis motioned The Court To Take Judicial Notice of his proof of mailing as a public document issued by The State. Finally, in Thier Order of July 14 2020 They conceded Mr Lewis went To Step III with grievance 18 3 267.

However, in an extraordinary departure from accepted usual appellate proceedings The Court awarded defendants Summary Judgment on a defense They forfeited by not raising it in Thier Summary Judgment motions. The Court claimed Mr Lewis raised multiple issues in grievance 18 3 267. Because The defendants did not raise it below the district Court did not address it.

The court of appeals in effect waived defendants burden to plead an affirmative defense pursuant FRCP 8 (c); waived Rule 12 (g) which prohibited defendants from even raising as a defense because Rule 12 h (1) (A) mandates "its forfeited" "barred" and The Court canceled That mandate Too.

Further, The Court shifted The burden of

proof by effectively Cancelling defendants burden to plead and prove The burden of entitlement by law, FRCP Rule 56 provisions. Furthermore, The Court canceled and denied Rule 56 procedural protections for Mr Lewis allowing him to introduce issue of dispute as as to material fact to rebutt and overcome a Summary Judgment Challenge.

The Court's unprecedented breach of normal procedure runs afoul of This Court's cases Anderson v Liberty Inc 477 US at 251-52, Jones v Bock 549 US at 212-218, Colotex Corp v Cotrett 477 US 317 and many more.

The appellate Court Order fails to present Justification for The extraordinary departure and Sixth Circuit precedent requires a showing of "exceptional case" of "manifest injustice" see United States v Ellison 462 F3 557.

The Court's order presents Virtually no analytical application of Agency regulation as a prerequisite to showing a defendants' entitlement. The Court is mandated by 1997e(a) To show defendants pled and proved Thier burden. See Kramer v Wilkerson 226 Fed Appx 461 (a2). Jones v Bock 549 US 212-218.

Reasons For Granting The Writ

The Court of Appeals has violated its Art III Sec. 2 Constitutional duty To perform Congressional mandate pursuant 28 USC 1343 (3) and 42 USC 1983 (1) To provide redress for 8th Amendment Violations in accordance with Due Process mandated by The 5th and 14th Amendments; by purposely and intentionally withholding That due process required in processing Summary Judgment motions in review of exhaustion pursuant 42 USC 1997e(c); by purposely and withholding all procedural process in Violation of Federal Rules of Civil Procedure and intentionally breaching Them. (2) By proceeding in a manner so contrary to This Court's precedents and FRCP provisions, The appeals Court has unlawfully relinquished subject matter Jurisdiction and unlawfully deprived Petitioner of his right To Trial by Jury as 1983 and 1343 (3) guarantees OS redress.

When a court of appeals acts so unlawfully This Court is The only Court Petitioner may resort To, The petition of redress. If This

Court declines To exercise its Art III sec. 2 Supervisory powers, it would be an extraordinary moment for The Court To fail To address So important an issue. Literally millions now incarcerated and millions To Come have an interests in This Case. If federal Courts can act with impunity and by its will withhold citizens Constitutional rights and Thier due process, without This Court To protect us, Such a moment is unthinkable.

The extraordinary departure from The accepted and usual Course of Judicial proceedings presented To The Court, has not been addressed by This Court; and The importance of The underlying fundamental principles of The Judiciary functioning in uniformity with This Court's precedents and Rules of Civil Procedure are involved and present opportunity for supervision

Finally, a poor poverty stricken uneducated man ask you To protect his right To be Treated with The dignity of redress after being subjected To Cruel and unusual Treatment by officials in Michigan's penal System. You are our only Guardians when all is Said and all is done. My humanity appeals To you.

The Sixth Circuit Court of Appeals Contravene Federal Rules of Civil Procedure granting defendants Summary Judgment based on a defense they did not raise in The district Court in Thier Summary Judgment motions Introduction

1 During review pursuant 42 USC 1997e (a) defendants pleaded Two defenses: (1) Corrections claimed Mr. Lewis did not exhaust grievance 18 3 267 failing To go To Step III as policy 03 02 130 requires See Appendix A. (2) The Chapman Group claimed Mr. Lewis filed untimely grievances but not 18 3 267. All documents mentioned herein are in Appendix A. Defendants Summary Judgment motions in Appdx B. The district Court awarded defendants Summary Judgment based on These defenses, see R & R and Adoption of it. Appdx A.

2 The appeals Court reversed The district Court's finding Petitioner did not go To Step III, accepting his proofs of mailing where officials signed for and took it To mail for Mr. Lewis. See COA Order and proof of mailing in Appdx A. However, Then The Court in an extraordinary departure from The usual accepted Judicial proceedings proceeded To award defendants Summary Judgment based on a defense not raised in The district Court in Thier Summary Judgment motions. By doing So The Court contravened FRCP mandates.

The COA found:

*** he failed to properly exhaust this grievance because it was rejected at Step I and II for raising multiple unrelated issues. COA Order pg 2 para 3.

Arguments

3

The Court of appeals granting defendants relief based on a issue they could not raise on appeal FRCP 12 (g) and was in fact waived 12 (h)(1)(A), See FRCP 12 (g) h(1)(A) Advisory Committee notes, The appeals Court action is an unprecedented departure from the accepted and usual course of appellate Court proceedings. The Sixth Circuit has held such a departure can only be justified based on "exceptional circumstances" or "manifest injustice" necessitating such a departure. In United States v Ellison 462 F3 557 (6 cir 06) The attorney general was allowed to argue an issue not raised in district Court where the Court granted Ellison's motion to suppress based on a 4th amendment claim, The Court held:

An exception can be made, however, for "exceptional cases" or failing to consider the argument would result in "manifest injustice." ~~per~~ (sic)

The appeals Court Order of July 14 2020 failed to articulate the "exceptional" or "manifest injustice" The Court requires to justify such an extraordinary departure.

The Panel's failure to meet the Court's Standard of explaining the extraordinary departure from accepted usual Judicial proceedings can only be the result of having no justification and thus, in error.

4

Mr Lewis briefly points to the FRCP Rules The COA Panel contravened and the prejudice Mr Lewis suffered. Rule 8(c) which provides notice See Jones v Bock 549 US 212-218 affirming 48 USC 1997 e (c) mandates the affirmative defense pleading of Rule 8(c). The COA Panel effectively waived defendant's burden to plead a defense and by doing so bush-wacked Mr Lewis with surprise and all its disadvantages at law.

5

Rule 56 in its entire scope was contravened. The burden of proof and burden of pleading was canceled. Defendants did not have to plead a Summary Judgment defense and was relieved of the burden they had to carry and was not required to prove a thing, about "multiple issues" policy 03 02 1306, before being awarded Summary Judgment to Mr. Lewis' prejudice. Contrary to this Court's decisions, See Anderson v Liberty Inc 477 US at 251-52 Colotex Corp v Cotrett 477 US 317 (86).

6 Rule 56 provisions providing Mr Lewis with the opportunity to show a genuine dispute as to a material fact and rebutt and overcome a Summary Judgment challenge was denied to Mr. Lewis. He was simply served notice the Court had granted defendants what they wanted and was not entitled to. Mr Lewis was prejudiced.

7 Rule 12(a) precluded defendants from raising sec 6 of 0302130 as an exhaustion defense and subset h(i)(A) mandates it is waived. That mandate of waiver has finality intent, as though it did not exist. The COA Panel introducing a dead issue as a basis to grant defendants what they are clearly not entitled to, is a clear contravention of FRCP of manifest injustice.

8 Justice Stevens dissenting opinion in Woodford v Ngo 548 US 81 (06) addresses this Court's position on this issue of an appellate court considering what a district court did not. Moreover, the rule appellate Tribunal will not consider claims not properly exhausted below prevent parties from being unfairly surprised on appeal by resolution of issue which they lacked opportunity to introduce evidence.

Our precedent makes clear that we will not impose waiver sanction when judicial

review of administrative decision does not resemble appellate review of The lower Court decision. N.7 in dissent.

9 If The Court would review The Lower court and appellate Court decisions Appdx A with defendants motions Appdx B, it is obvious they do not resemble one another.

10 The appellate Court could not grant defendants Summary Judgment based on a defense that was procedurally forfeited according to FRCP Rules 12 (g) h (1) (A). Just like a prisoner's procedural misstep during exhaustion of remedies is fatal to his opportunity to exhaust Agency regulations - is irretrievably lost and unforgiven - so too is defendants failure to plead "multiple issues" in their Summary Judgment motions as Rule 8 (c) mandates. Rule 12 (g) mandates it cannot be raised in another Summary Judgment motion and h (1) (A) mandates it is irretrievably lost as a defense and the loss unforgiven.

Mr Lewis humbly submits The appeals Court's departure from acceptable procedure has resulted in miscarriage of Justice The Court is requested to correct in its Supervisory powers.

The appeals court in review of Summary Judgment refuse to give Controlling Weight deference to Agency regulations about "multiple issues" contravene Federal Rules of Civil Procedure and conflicts with numerous decisions of This Court and its own precedents in The Sixth Circuit.

Introduction

Corrections grievance regulations policy 03 02 130
G states in relevant part:

A grievance shall be rejected * * * if it contains profanity, threats of harm etc. etc

A grievance also may be rejected for

G (1) It is Vague, illegible, contains multiple unrelated issues, or raises issues duplicative of those raised in another grievance by The Convict See Appendix A.

11 Mr Lewis advanced a defense claiming a dispute as to a material fact challenging The Agency's denial of review based on the "claim he raised multiple unrelated issues in grievance 18 3 267, See Step I and II rejections in Appdx A. See Mr Lewis' defense Declaration in

Response To Summary Judgment district of
DKT # 44 pg 3 para 6 ; Objections To R & R
DKT # 93 pg 8 para 12. Mr Lewis Specifically
argued policy 03 02 130 G and G (1) as proof
of a material fact in dispute.

12 The appeals Court Panel Stated :

*** he failed to properly exhaust
this grievance because it was rejected
at Step 1 and 11 for raising multiple
unrelated issues. Appdx A

13 In United States V Ellison sixth Circuit Justice
Karen Moore in dissent explains what The above
Comment of The Panel amounts to :

Because This issue was not raised below
the district Court merely stated in
passing, without any detailed discussion
that The use of The lein was improper
*** and thus The Statement Cannot be
considered a legal Conclusion on The
matter. 462 F3 at 564.

Without discussion or analysis The passing Com-
ment by The Panel about multiple unrelated issues
is just that - a passing Comment.

Arguments

14 In The preceding issue Mr Lewis in paragraphs
4-7 presented the FRCP mandates The Panel's
July 14 2020 Order contravenes and is incorporated
by reference as argument here. This Court in

Bowels v Simnole Rock Co 325 US 410 (1945)

Woodford v Ngo 548 US 81 (06) Jones v Bock

549 US 199 (07) has held agency regulations must be given controlling weight by a reviewing Court determining exhaustion of remedies pursuant 1997e

(a). De novo review of a lower court granting Summary Judgment, a reviewing Court must apply

15

The same standard Anderson v Liberty Lobby Inc

477 US 242, 251-252 To find if movant shows

There is no dispute as to any material fact and is entitled as a matter of law. Fed. R. Civ. P 56

(a). The non-moving party pursuant R. 56(c)(1)

must come with evidence that shows there is a

dispute as to a material fact, citing particular material parts of the record. And evidence and

all reasonable inference must be construed in

the light most favorable to non-moving party

Matsushita Elec. Indus. Co. v Zenith Radio

Corp 475 US 574, 587 (86). The non-moving

party need only demonstrate the minimal

standard a jury could find in his favor

Anderson 477 US at 248. A reviewing Court

must give due regard to both parties

defense Coltex Corp v Catrett 477 US 327 (86)

16 Mr Lewis' defense as The record shows para 11 above, argued policy 03.02.130 G(1) as a material fact a Jury could find in his favor. See Fountain V Martin 334 Fed Appx 738 (6 cir 07) recognizing Corrections abuse of claiming multiple issues.

17 When The appeals Court Took The extraordinary action of introducing a forfeited defense as grounds for granting Summary Judgment to defendants, The Court was obligated to present on The record showing defendants pled a affirmative defense and proved Thier burden. In Sartor v Arkansas Natural Gas Corp 321 US 620 (1944) The Court held:

The Court of appeals below heretofore has correctly noted rule 56 authorizes Summary Judgment only where The moving party is entitled to Judgment as a matter of law, where it is quite clear what The Truth is, that no issue remains for Trial, and That The purpose of The Rule is not to cut litigants off from Thier right of Trial by Jury, if They have issues to Try.

18 The appeals Court Order of July 14 2020 does not present the essential discussion of analytical application of policy 03 02 130 (G) To grievance 18 3 267 as Jones v Bork 549 US 212-218 requires as a prerequisite To dismissal pursuant 1997e(6). See also Kramer v Wilkinson 226 Fed Appx 461 (6 cir 07).

19 The absence of record development contravenes Rule 56 mandate of Due process and conflicts radically with even/decision cited above, has denied Mr. Lewis development of his defenses and disenfranchised him of all favorable inferences.

20 The defendants did not plead multiple issues in Summary Judgment [hereafter SUMJ] Rule 8 (c); nor prove the burden of entitlement. Rule 56 (a). The multiple issue defense was fatally forfeited pursuant Rule 12 (g) h (1)(A), irretrievable and unforgiven as a procedurally barred defense. The Court of appeals proceeding as it has usurps Mr Lewis' right To Trial by Jury based on grounds That are unsupported by law and facts and Constitutionally questionable under Art III U.S Const. Where the Court divest Subject matter Jurisdiction on such grounds.

There was no functioning and available remedies to exhaust, Corrections officials through "manipulation-in-processing" made Steps II and III of a 3 step process functionally unavailable. The COA Order conflicts with this Court's decisions about what "available" is and its denial.

Introduction

21 Step II was unavailable when defendant Burt a named party in grievance 18 3 267 28C See Appendix A, violated administrative regulation by involving herself in review investigation and response acting in the capacity of an appellate official administering Agency policies. Grievance Policy 03 08 130 Sec. V mandates: "Staff involved shall not participate in any capacity - investigation - review or response." See Appdx A. Warden Burt's review and response to the Grievance Coordinator Mr Barnes' Step I reply to Mr Lewis' Step II appeal is in Appdx A. Warden Burt's decision rejects processing grievance 18 3 267 on procedural grounds as discussed already in Issues One and Two.

22

Officials realizing the phony reason warden Burt

used to refuse to process grievance 183 at 7 was

plot another defense and claimed they never got
petitioner's step III appeal in the mail. This

manipulation made step III unavailable as a

functioning remedy.

Mr. Lewis argued there was no functioning

available remedy to exhaust: Response to sum

1:18 cv 1093 # Dkt 44 pg 3 para 6: Objections

to R & R FCF Dkt 93 pg 8 para 12. The magistrate

and Judge denied Rule 510 process of his defenses
by remaining silent. The COA addressed it:

Lewis failed to show the alleged violation

rendered the grievance policy unavailable.

Because the warden merely affirmed a

procedural ruling and did not address the

merits of the grievance, Lewis is unable

to demonstrate that she thwarted him

from taking advantage of the grievance process.

24

The appeals court's holding above is in error,

Burt did more than affirm a ruling, she ordered

grievance 183 at 7 procedural barred from review

based on false grounds and did so intentionally. To

obstruct justice and cover-up liability and she

did so in lawless disregard of policy/Sec. 17.

- 25 The documents proving Warden Burt Violated Sec. U of 03 02 130 by acting in The capacity of an appellate administrator during Step II proves no functionally available remedy was offered by Corrections to Mr Lewis. Sec. U explicitly with mandatory Language procedurally barred Warden Burt from acting in any Capacity. When She breached That procedural mandate She denied a legal means of redress and Thus, a functioning available remedy vanished.
- 26 Corrections manipulated denial of a Step III remedy Claiming They never got Mr Lewis' appeal in The mail. 2 Steps of a 3 step process was manipulated and With held by officials.

Arguments

- 27 The appeals Court refuse to give controlling Weight to Sec. U of policy 03 02 130 and That refusal directly Conflicts with This Court's decisions in Bowels v E Simnole Rock Co., Woodford v Ngo, Jones v Bock. Warden Burt committed a procedural default That is fatal to defendants Claims about exhaustion. 42 USC 1997e (a) cuts both ways and not Just prisoners. In Ross v Blake 136 S.Ct 1850 at 1863 n.1 The Court noted:
 "We note our adherence to the PLRA texts runs both ways: The same principles applies regardless whether it benefits The inmate or The prison."

28 In Booth v Churner, 532 US 731 (01) This Court define
The Terms "available" and "remedy" as :

- (1) having sufficient force power To achieve an end;
- (2) To use for a purpose that may be obtained.

Remedy : Legal means To obtain redress.

Sec. V of 0302 130 using mandatory Language did
order Warden Burt to recognize she "had no
Legal authority to act in "any Capacity". That
administrative mandate left no discretion to
be exercised by Burt.

29 An Agency providing for redress, excludes The
accused or guilty party for obvious reasons.
Letting The guilty to investigate herself, handle
The evidence or introduce and exclude evidence
or explain away or cover-up-it by refusing to
even process The grievance based on phony
reasons; all The factors above are inherent in
Rule V of 0302 130 ordering Burt to Stand
down.

30 In Woodford v Ngo 548 US at 102 The Court
recognize Corrections incentive To manipulate
impediments, of one type or another. The panel
finding, "she merely affirmed a procedural
ruling" ... suggesting her action was benign
or harmless. In The Real World her action
ended inquiry, investigation. Her action exclude
evidence gathering, and introduced a dead end
alley to stop The grievance process. Mr Lewis

has been trapped in that dead end alley since 7/12-
/18 when Corrections filed SJM.

31 The lower court and appeals Court Contravene Rule
56 by denying due regard Mr Lewis' defenses, see
Colotex Corp 477 US 327. The record before The
Court shows neither Court proceeded in The usual
accepted procedure of review, where Judicial
discussion analytically applying Agency policy or
statute or precedents develops The record as
Rules of procedure intends. this "Judicial proof"
"of adjudication" historically is The accepted and
usual course of a Court's proceedings. Without
Such a record, a pro se litigant has scarce hope
of knowing if a Court proceeded correctly or know-
ing how to defend against it. A litigant unknowing
is lead into a maze in The dark and not even told
to get out. The denial of record development at
both courts below has prejudice Mr Lewis
by simply withholding development of his defen-
ses. By doing that The Courts usurp The power
to what belongs to a Jury in processing a claim
under 42 USC 1983.

32 Warden Burt's Violation of administrative law left
no legal means to obtain redress. Her illegal review
had no force or power at law. She intended a
dead end to happen and it did.

33

In Ross v Blake 136 S.Ct 1850 at 1859 Justice Kagan made clear what is and what is to be concluded when a Agency official renders The grievance process functionally unavailable, by having no authority to potentially provide a remedy of redress, but still mis-processes The grievance without authority to do so, simply to create "a dead end" and wrongly deny "redress or remedy", holding:

"Some redress for a wrong is presupposed by the Statute's requirement of available remedy" where relevant administrative procedure lack authority to provide any relief The inmate has nothing to exhaust.

And

The modifier available requires possibility of some relief. When the facts on the ground demonstrates that no such potential exist The inmate has no obligation to exhaust.

34

Warden Burt had no authority to provide relief, policy 03 02 130 sec. V explicitly states she did not. The facts on the ground demonstrate no potential existed she could or would provide relief. In fact The record shows she lawlessly contravene policy for the express purpose of denying relief by refusing to process

grievance 18 3 267 28C on phony/procedural grounds.

35 The appeals court refuse to give Controlling weight deference to Sec. U of policy 03 02 130 and did not analytically apply it in de novo review of Summary Judgment FRCP Rule 56 as required in Anderson v Liberty Inc., Colotex Corp v Catrett Jones v Back. That fundamental Due Process mandated by the 5th and 14th Amendments of 8th amend Violations pursuant 42 USC 1983 28 USC 1343(3) is not a discretionary power to be used by a federal court. Art III Sec. 2 of the U.S. Constitution does not permit a federal court to unconstitutionally withhold Due Process in suit before its Subject matter Jurisdiction. That Jurisdiction mandates Due Process under Art III sec. 2 US Const. The appeals court has breached its Art III duty.

36 Further, by withholding its Constitutional Art III duty The appeals court has usurp Mr. Lewis' right to a Jury determination. By denying Due Process intentionally The court unconstitutionally contravenes Congressional intent in 1983 and 1343(3) to provide for Trial by Jury of 8th amend Violations under 1983.

37 Petitioner submits The appeals Court has departed so far from The accepted usual appellate proceedings contravening Civil procedure, conflicts with This Court's decisions, and resulted in a miscarriage of Justice. This Court's Supervisory powers are needed To Correct This breach of a federal Court's Art III duty. It is of great importance To The millions incarcerated That Such denial of fundamental fairness is not Tolerated and up held by This Court who is The only Guardian we have in Such Circumstance.

Four

The Court of Appeals Order of July 14 2020 is based on a Jurisdictional Defect which The The Court Refuse To Consider

Introduction

38 On 7/23/20 Petitioner accidentally mailed "a draft copy of a Petition Rehearing En banc" but Corrected The mistake The following day 7/24/20. On 8/9/20 Petitioner Submit a Supplement raising The Jurisdictional Defect. The clerk did not Submit The Petition Rehearing or Jurisdictional Defect

To The Court for Consideration. The Clerk did not notify Mr Lewis Contrary to FRAP Rule 45 (b). On 8/9/20 Mr Lewis wrote his Case manager Karen Fultz to ensure his intended Petition Rehearing was Considered See Appdx A pg 43. No response was forthcoming until Aug 19 2020 from En banc Coordinator Beverly Harris, who informed petitioner The Clerk had not filed his pleadings See Appdx A pg 44. On 9/2/20 petitioner filed motion challenging The Clerk's denial pursuant FRAP Rule 45(c) and presenting The Jurisdictional Defect pursuant 12th h (3) FRCP. Arguing a Clerk Cannot Contravene Federal Rule of Civil Procedure Rule 12 h (3) and deny review of a Jurisdictional Defect. On 9/9/20 En banc Coordinator Beverly Harris informed Mr. Lewis The Court would not Consider his motion raising The Jurisdictional Defect. See Appdx A pg 45.

Argument

39 42 USC 1997e(a) is an Congressional abstention

doctrine which promotes the furtherance of harmony between State and Federal authority providing enforcement of administrative remedies prior to a 42 USC 1983 action may commence Porter v Nussle 534 US 516, 524 (02) Woodford v Ngo 548 US 81, 90-95 (06). Failure to exhaust those remedies allows a federal court to exercise abstention which is mandatory pursuant 1997e(a). However, a federal court cannot invoke abstention without demonstrating on the record defendants actually pleaded specific exhaustion defense pursuant FRCP Rule 8(c) and proved their burden according to Rule 56(a). This Court in Jones v Bock 549 US 199, 212-218 held a federal court cannot dismiss a 1983 Civil Rights Complaint if defendants did not plead and prove the failure to exhaust.

40 The Sixth Circuit Court of Appeals has based its July 14 2020 Order on the claim Petitioner raised Multiple unrelated issues violating policy 0302130G(1). Defendants did did not plead nor prove that defense in their Summary Judgment motions, see Appx B.

Petitioner incorporates by reference the facts and arguments presented in issues One and Two as it relates to defendant's failure to plead and prove the defense. The Order of July 14 is based on.

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The appeals Court Order created a Jurisdictional Defect when it grounded its July 14 2020 Order on an issue that was jurisdictionally barred review according to Federal Rules of Civil Procedure 12 (g) and h (1)(A). Rule 12 h (1)(A) waiver sanction jurisdictionally forfeited that defense from being considered by the appeals Court.

That defense could not be considered by the Court anymore than the Court could consider a non-exhausted issue pursuant 1997e(a). This Court in Ross v Blotke 136 S.Ct at 1863 n.1 held the PLRA cuts both ways, if officials proceed incorrectly that error is unforgiven and final. Petitioner submits the waiver forfeiture mandated by this Court in Rule 12 (g) h (1)(A) is no less authoritative than Congressional intent in 1997e(a).

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The Court of appeals was presented original Jurisdiction pursuant 42 USC 1983, 28 USC 1343 (3) and required under Art III sec 2 of The U.S Const. To provide Due Process in accordance with The 5th and 14th Amendments in 8th amend Complaint. The record before The Court shows The appeals Court contravened FRCP Rule 8 (c) 12 (a) h (1) (A) and 56 in its entirety and withheld every procedural process and Standard of review This Court mandates in Anderson v Liberty Lobby Inc. 477 US 242 Colotex Corp v Cotrett 477 US 327 (86) Jones v Back 549 US 212-218 (01). The record before The Court is nothing less Than an abdication of its Art III Constitutional duty.

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The appeals Court has used a Jurisdictionally forfeited Claim to impose abstention pursuant 1997 e (a) and divest The Courts of Jurisdiction. This Court in Cohen v Virginia 19 US 264 (1821) held, "Federal Courts have no more right to decline Jurisdiction which its given Than To usurp That which is not." In England v Louisiana Bd Medical Examiners, 375 US 411, 415 (1964) The Court held: When a federal Court is properly appealed To in a Case

over which it has by law Jurisdiction it is its duty To Take Such Jurisdiction." The appeals Court has committed a miscarriage of Justice by relinquishing Jurisdiction and dismissing Mr Lewis' Civil Rights Complaint based on a Jurisdictionally barred reason That Cannot Serve as a basis of dismissal.

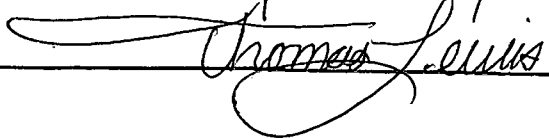
44 The appeals Court usurps Mr Lewis' right To a Trial by Jury by its unlawful action. It has abdicated its Art III duty and wrongly withheld The redress as Congress intended in 42 USC 1983, 28 USC 1343 (3).

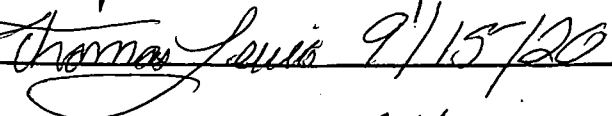
45 If a federal Court of appeals can act outside The Law as The Sixth Circuit has in This Case, with impunity, The implications of Where we are at as a Nation, in contrast To what The Founding Fathers intended The Constitution To be in Continuation of its guaranteed Freedoms, rights, would be a startling moment for This Court.

This Court, This body of Nine, is The only Guardians we have. I ask You To not deny me my dignity and humanity out of prejudice The lower Courts allowed defendants To introduce a 30 year old Crime. Such extrajudicial poison manipulated To inflame prejudice is wrong.

Conclusion

- 46 Mr Lewis prays The Court will remand to The district Court based on a finding that remedies were functionally unavailable by officials interference as presented in Issue Three.
- 47 Find That The appeals Court erred by imposing Waiver Sanctions pursuant 1997e(a) based on an issue defendants did not present to The district Court, based on Mr Lewis' Issues One and Two, and remand.
- 48 Remand To The Court of appeals instructing it To address The Jurisdictional Defect as presented in Issue Four.
- 49 Grant Writ of Certiorari and allow These important issues To be addressed.

Respectfully Submitted
9/15/20 

I swear under penalty of perjury based on personal knowledge That all statements, facts, documents, exhibits, are True accurate and reliable and presented pursuant 28 USC d746.  9/15/20