NO. 20-5845

IN THE

SUPREME COURT OF THE UNITED STATES

DEVERICK SCOTT # 131042 – PETITIONER

VS.

DANNY BURL, ET AL – RESPONDENT(S)

ORIGINAL

ON PETITION FOR A WRIT OF CERTIORARI TO

THE 8TH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

DEVERICK SCOTT # 131042

P.O. BOX 600

GRADY, AR. 71644

QUESTION(S) PRESENTED

1. If the A.D.C. authorizes a prisoner to have his personal property in Isolation Confinement by giving to him on his 48hr relief after he served 30 days consecutive in punitive measures and forget to come back and get that property, can A.D.C. on shakedown "confiscate", and "Destroy" that very property for being in possession of that very same property while housed in Punitive Isolation.(Property that have sentimentally value). And after several administrative grievance complaints properly still destroyed... Is this Constitutional? **CODY V. WEBER. 256 F 3D 764, 771 (8TH CIR. 2001)**. **SHAW V. MURPHY 532 U.S. 223, 232-31 (2001)**.

2. If an prisoner is allowed to buy hygiene items in Punitive Isolation for Oct. Nov. 2015 but after constant redressing of grievances of his personal property being destroyed then Major refuse to sign off on prisoner 48hr relief slip to by hygiene items. Its denied now saying inmate is not allowed to buy hygiene items in Punitive Isolation having inmates living and smelling like criminals. Is that cruel and unusual punishment? **CODY V. WEBER,256 F 3D 764, 771 (8TH CIR. 2001)**. **SHAW V. MURPHY 532 U.S. 223, 232-31(2001)**, **FARMER V. BRENNAN , 511 U.S. 825, 825, 834 (1970)** **OWENS V. SCOTT COUNTY JAIL, 328 F. 3D 1026, 1027 (8TH CIR. 2003)**.

3. Did 8th Circuit, and District Court abuse its discretion by failing to liberally construe Scott complaint as a complete failure to treat abscess, cause his hair was twisted and locked for his religious beliefs. "By Scott being out his cell for 1hr at medical jacket review. The D.O.N. of infirmary telling guards to escort Scott infirmary once he left medical jacket review. Scott being already strip search

before he left his cell, and walking in infirmary door to be medically treated in full handcuffs, and shackles" . By A.D.C. officers Stout and Clark telling guards stop! Take Scott back to his cell and don't let him out to he take his hair down. is that denial, delayed of serious medical attention? More importantly is that a violation of Scotts religious beliefs. He had wait 6 hours till next shift to receive medical attention. Is that cruel and unusual? And 1st Amendment violation? **ATKINS V. BOKIN, 91 F. 3D 1127, 2128-29 (8TH CIR. 1999)**; **SEA LOCK, 218 F. 3D AT 1211**; **LOVE V. REED, 216 F. 3D 682 8TH CIR. 2000** U.S.C. A; **THOMAS V. COLLINS, 323 U.S. 516, 530 (1945)**.

4. If in Discovery process of 42 U.S.C. complaint Defendants admit that the "false disciplinary hat was written in retaliation" and inmate was found guilty on "some evidence" standard. But officer admit in Discovery another officer had told them to write disciplinary. None of allegations in disciplinary are true against plaintiff. In today; society should that plaintiff then receive some type of relief? Should retaliation disciplinaries inmates alleging be put to new standard of today's society standards. Cause if an officer is already retaliating on an inmate and falsifying a disciplinary, they gone fabricate the evidence to find him guilty. **JOHNSON V. GANIM 342 F 3D 105, 112 (2D CIR. 2003)** **THADDEUS-X V. BLATTER 175 F. 3D378, 394 (6TH CIR. 1999)** **DIXON V. BROWN, 38 F. 3D 379 (8TH CIR. 1994)**; **HARTSFIELD V. NICHOLS, 511 F. 3D 826 (8TH CIR. 2008)**.

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 proceedings in the court whose judgment is the subject of this petition is as follows: See next page.

RELATED CASES

PARTIES

The Petitioner Deverick Scott, is a prisoner of the Varner Supermax of the Arkansas Department of Correction.

The Respondents are:

Danny Burl, Warden Tucker Max Unit.

Aundreo F. Fitzgerald, Asst. Warden, Tucker Max.

Carl E Stout, Major Tucker Max Unit, Cochoran.

Angelah Kennedy, Sgt. Tucker Max Unit.

Cornelius Christopher, Sgt. Tucker Max Unit.

Eddie Thompson, Corporal, Tucker Max Unit.

Hunter Neal Officer tucker Max Unit.

Reena Harrison, Commissary Supervisor Tucker Max Unit.

Wendy Kelly, Director ADC.

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

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

The opinion of the United States court of appeals appears at appendix **B** to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[✓] is unpublished.

The opinion of the United States district court appears at Appendix **A** to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[✓] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix_____ to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was April 1, 2020

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

[ ] A timely petition for a rehearing was denied by the United States Court of Appeals on the Following date:_____, and a copy of the order was denying rehearing appears at Appendix___.

[✓] An extension of time to file the petition for a writ of certiorari was granted to and including **July 10, 2020** (date) on US Const Amend _____(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

This case involves:

1) The 1st Amend Violations.
2) The 8th Amend Violations.
3) The 14 Amend Violations.
4) 42 U.S.C. §200cc-1(a)(c)-(2)/RLUIPA violation.

These Amendment's guarantee the right to practice my religion freely, procedural due process, due process of the law, to be from cruel and unusual punishment, arbitrary abuse of authority including retaliation, and the right to adequate medical treatment.

These Amendment's are enforced by the title 42 U.S.C.§1983 of the United State's Code.

STATEMENT OF THE CAUSE

The Petitioner initiated this case pursuant to his constitutional right to practice his religion freely, Due process, Procedural Due process, Adequate medical treatment, and to be free of cruel and unusual punishment; including retaliation.

In 2017, the petitioner sought 42 U.S.C. §1983 relief in the United States District Court for the Eastern District of Arkansas. See **DEVERICK SCOTT V. DANNY BURL,5:17-CV-0098DPM**. Defendants denied the Plaintiffs claims, and asserted, among other things. Qualified immunity along with many other affirmative defenses. The District Court agreed , and Dismissed with Prejudice said Complaint. See Doc entry No. #1. Petitioner appealed.

However, Petitioner appealed to the United States Court of Appeals for the Eighth Circuit. See **DEVERICK SCOTT V. DANNY BURL NO. #19-2759**. Consequently, the Eighth Circuit Court of Appeals declared that they found no reason/ basis for reversal, and Affirmed the District Courts decision; And Petitioner's reasoning of petitioning the Supreme Court of the United States.

BASIS FOR FEDERAL JURISDICTION

This case asks for an expanded interpretation from the high court of the **1st Amendment** Religious Practice doctrine, **5th Amendments** Due Process Clause, the **8th Amendment** application of Cruel and Unusual Punishment, and the **14th Amendment** standard of liberty interest. The District Court had jurisdiction under the General Federal Question Jurisdiction conferred by **28 U.S.C.A 1331**

REASON FOR GRANTING THE WRIT

A. Conflicting Decision among Circuit Courts

B. Need for Broader interpretation of Constitution standards of Cruel and Unusual punishment in interference with medical treatment context

C. Need for broader interpretation of the Constitution Standards in the excursive of religion in prison context.

D. The need for a declaration that lack of possession of contraband render a Disciplinary in violation of due process where no other evidence is presented.

E. Need for a broader interpretation of Constitution standards of Retaliation for use of prisoner grievance procedure.

a. NOTE: Destruction of property authorize to have, and refusal to buy basic necessities hygiene items all in punitive segregation. Is this cruel and unusual punishment. Due process of law violations?

A. Complicit with decisions of other courts

Retaliation

Otherwise proper acts are actionable under § 1983 if done in retaliation for grievance filed under established grievance procedure.

OREBOUGH V. CASPORIL 910 F 2D 396 (8TH CIR. 1990)

But See ⇨ **HENDERSON V. BAIRD 29 F 3D 826 (8TH CIR 1994)** 's "Violation of Regulation essentially checkmated retaliation claim"

Here, in the first ruling the Court made it clear that in a situation where a disciplinary that was a "proper act" was written in retaliation for filing a grievance, that disciplinary write up was "actionable" (thus unconstitutional)

However, in the Second Ruling it is explicitly clear that the Court considers a violation of rules a mechanism that voids a retaliation claim. Furthermore,

Religion

Some Circuits hold officials "must demonstrate and not just assert, that rule at issue is the least restrictive means of "achieving a compelling interest"

O'BRYAN V. BUREAU OF PRISONS 349 F 3D 399 (7TH CIR. 2003)

However, under the reasonableness standard, in contrast the Burden is on prisoners to point to an alternative that fully accommodates the Prisoners rights at minus the cost to valid penological interests in order to prevail.

TURNER V. SAFLEY 107 S.CT 2254 (1987)

These standards conflict and should be sorted so that the true test to standardize the right is known. This is a task only for this High Court.

B. Importance of questions presented

This case presents fundamental questions of how we will interpret the right to exercise free religion in the prison setting and whether a minor security interest should outweigh the right to immediate medical treatment for a serious condition (for the purpose of granting summary judgment).

This case also involves the standard of review and burden of proof in prison disciplinary proceeding dealing with "some evidence "rule. And it lack thereof precludes summary judgment.

We'll begin with the third question did previous courts abuse its discretion by failing to liberally construe Stout / Clark complete failure of medical attention of Scott by denial, and delays. In this case at bar, Scott believed he had been bitten by a spider because of facial swelling... he sought medical attention by telling nurse who informed security to have him escorted to the infirmary for evaluation. {NOTE: Scott was housed in a maximum security area that requires a strip search prior to leaving his cell, then submitting to full restraints of handcuffs behind back, shackles and a security belt attached to handcuffs the entire time out of his cell.}

While entering the infirmary door the escort officers was told by Defendants Clark and Stout "STOP! Take him back to his cell and don't let him back out until he takes his hair down" (D.E#51-0 pg.99 Admission No. 7 LR Clerk)

As a result of this interference, Petitioner suffered all day before finally being taken to medical after cutting out his Religious Dreadlocks. And being diagnosed as abscess put on K-flex on antibiotics and referred to dental on an emergency basis (D.E.#No. 51 at 122) **ATKINS V. BOHN, 91 F 3D 1127, 1128-29 (8TH CIR. 1999)**; **HARRISON V. BARKLEY, 219 F 3D 132, 134, 136-38 (2D CIR. 2000)**.

The Petitioner here contends this violated his **8th Amendment** right to be free from Cruel and Unusual Punishment? And should've precluded summary judgment.

Deliberate indifference occurs when prison officials prevent an inmate from receiving treatment or deny his access to medical personnel capable of evaluating he need for treatment... it ... the medical professionals knows that his role in a particular medical emergency is solely to serve as a gatekeeper for other medical personnel capable of treating the condition and if he delays or refuses to fulfill hat

gatekeeper role due to deliberate indifference from denying access to medical care. **SEA LOCK, 218 F 3D AT 1211; HOWELL BURDEN 12 F 3D 190, 191 NI*(11TH CIR. 1994).**

Whereas, if Defendant were deliberately indifferent to serious medical needs this establishes a violation of the **Eighth Amendment** to the United States Constitution. **ESTELLE V. GAMBLE 429 US 97 (1976)** .

A medical need is serious if it has been evaluated by medical staff mandating treatment or is so obvious that a lay person would easily recognize the need for medical attention. **JOHNSON V. BUSBEE 953 F 2D 349 (8TH CIR. 1991)** .

The **Eight Amendment** explicitly prohibits the unnecessary and wanton infliction of pain. See, **BLACK MOORE V. KALAMAZOO COUNTY 390 F. 3D 890 (6TH CIR. 2004).**

It was held, "**Eight Amendment** right to avoid the pain from officer delay in access to treatment."

There is no dispute that the treatment was interfered with and that the Defendants were responsible.

There is evidence in the record that it was determined later that swelling was due to abscess. Moreover, there's evidence medical requested he be brought to infirmary.

Here the Petitioner satisfied both objective and subjective test to establish that not only was staff directed to bring him to infirmary but the swelling, thus need for treatment, was obvious.

In **JOHNSON-EL V. SCHOEMEHL 828 FED 1043 (8TH CIR. 1989)** it was held "conditions that is medically serious r painful in nature creates a claim."

The question then turns to granting of summary judgment

The standard of review for summary judgment mandates that, it is only appropriate when the moving party show there is no genuine dispute of material fact, and the moving party is entitled to judgment as a matter of law **CELOTEX V. CATRETT 477 US 317 (1987)**

When reviewing a motion for summary judgment the court must view the evidence in light most favorable to the non-moving party. **NONCKE V. CITY OF PORT HILLS 284 F 3D 923 (8TH CIR. 2000).**

A dispute is genuine if the evidence is such that it court cause a reasonable jury to return a verdict for either party, a fact is material if its resolution affects the outcome of the case **OTHOMAN V. CITY OF COUNTRY CLUB HILLS 677 F 2D 622 (8TH CIR. 2012).**

Whereby, as to the **8th Amendment** claim that the Petitioner was denied medical treatment there was a genuine dispute of material facts, and summary judgment for Defendants should have been precluded.

Now we look at the 1st Amendment Violation. Whether the practice of religion should be infringe upon by Security interest. When no Security reason exist. Cause Scott was out his cell for 1 hour already and handcuff and shackle being escorted by 2 officers.

When judging whether a prison rule should interfere with the practice of religion the courts have said, "Officials must demonstrate and not just assert, that the rule at issue is for least restrictive means of achieving a compelling interest" **O'Bryan v. Bureau of Prisons Supra.**

In the case at bar, as afore mentioned, Scott was being escorted to medical then told by officers he was being returned to his cell until he took his hair down.

Scott is part of the "One God" religion which observed the Rastafarian style of hair in dreaded twists. Anyone familiar with this style knows that once they set in, the only way to take them down is to cut or tear the hair(D.E#44-4).

The Petitioner was in so much pain he agreed to do this in order to be taken to medical. However he contends that his rights under the **1st Amendments** to the United States Constitution was violated in being made to do so.

Whereas, the standard in this issue is cruel and where Defendant did not attempt to inquire if he had permission to wear his hair in this style and where Defendants allege there was a policy prohibiting this type of hair. The Defendants **and** policy violated the **First Amendment** Rights of Petitioner.

In **BENJAMIN V. COUGHLIN 905 F 2D 571 (2ND CIR. 1990)** The court held that "Rastafarian inmates could not be made to cut their hair because an adequate ID could be made with Hair pulled back."

This claim, thus presented a obvious issue of genuine dispute of material fact and should have precluded summary judgment for Defendants.

Next we arrive at our fourth question: does a lack of possession of actual contraband render a disciplinary for same unconstitutional?

The resolution of this question turns to the question of due process in prisons. These procedures revolve around a "some evidence" entails is sometimes unclear.

The courts have long held a standard of review that if there was "some evidence" to convict an inmate of a disciplinary rule violation the conviction would be up held. **SUPERINTENDANT V. HILL 105 S.CT 3768 (1985).**

So what constitutes "some evidence"

In Petitioners case it was said a weapon was found in the cage he had previously been in before he was transferred to an entirely different ADC Unit. There is evidence in the record that hall cages are transit and many prisoners frequent them in a day, not to mention the fact the hall itself may have many inmates up and down it.

The Petitioner asserted that he knew nothing about the weapon and was at a whole new unit when he received this disciplinary, Defendants would not produce recording of video surveillance of hall cages.

One case worth reviewing in deciding in whatever the lack of **any** evidence should've precluded summary judgment for Defendants is:

YOUNG V. LYNCH, 846 F 3D 960 (4TH CIR. 1988) " Due process may require production of evidence " when it is the dispositive item of proof, it is critical to the inmates defense, it is in the custody of the prison officials, and could be produced without impairing institutional concerns.

In **YOUNG**, the inmate was accused of smoking marijuana cigarette (joint) which he said was only tobacco. There was apparently no evidence but the officials

opinioned that the substance was marijuana. Then court ruled in favor of the prisoner due to failure to produce proof.

In this case. Just as in Young, it is claim that the "Same Evidence " rule was no t satisfied and should have precluded summary judgment.

See also, **CARDENAS V. WIGEN 921 F. SUPP 286 (ED PA 1996)** stating that only 98.3% likelihood of guilt arising where contraband was found in area shared by 12 inmates was not "some Evidence".

Similarly, **BRAUSSAND V. JOHNSON, 253 F 3D 874 (8TH CIR. 2001)** the only valid evidence that the prisoner possessed and escape related contraband was the presence of a pair of bolt cutters in his work area, but they were not the "some evidence of the offense since 100 inmates had access to the area.

The Eight Circuit Court of Appeals has held that "if the discipline which the prisoner claims to have been retaliatory was in fact imposed for and actual violation of prisoner rules or regulation, then the prisoner, claim that the disciplinary was retaliatory in nature must fail." **GOFF V. BRUTON, 7 F 3D 734, 738 (8TH CIR. 1993)**. See Also **HENDERSON V. BAIRD, 29 F 3D 464, 469 (8TH CIR. 1994) .**

In this case we have here today, it makes up face a reality that inmates deal with everyday. Correctional Officers are human, with good and bad behavior as all inmates. This makes us see and question how bias the due process requirements for an inmate to really get a due process disciplinary hearing. Only way Scott got the truth out of Thompson was through discovery that only came with filing a §1983 complaint. Inmates don't have that luxury, or the right to due process disciplinary procedures to asked they witnesses the question to get answers that'll prove they innocence, thousands of inmates still in prison now cause they was lack the justice

to prove they innocence which lead to not being eligible for parole. And disciplinaries no overturned like Scotts not so they still denied justice.

Scott had been writhing grievances every month prior year of Appellee Kennedy refusing to give him his legal books, she then retaliated on and destroyed Scott property twice see **SCOTT V. KELLY 5:16-65 DPM-JTK** D.E.# 58-0 Pg 16 (for each and copy of their grievances.) the recently had just file grievance (D.E.#51-0 pg 24, D.E. #51-0pg) were Appellee Kennedy had just retaliated on Scott by destroying his property.

As Higgs implicitly recognized, a Plaintiff alleging retaliation must reference at a minimum, the suit or grievance spinning the retaliation and the acts constituting retaliatory conduct. **HIGGS, 286 F 3D 437, AT 439**. Absent these allegations a Defendant would know how to respond to complaint.

In retaliation of these grievances Scott filed on her. On 2/5/16 as Scott was being ship to another unit. Appellee Kennedy had Thompson write a falsified disciplinary that Thompson found shank in Scott possession. (D.E.#51-0 pg 63)

Scott was found guilty at disciplinary hearing by a judge that was bias and not impartial. Scott told Judge he was not there. Ask officer Neal, Neese they strip search him and shackle him once he left his cell and in their eyes the whole time before he was put in the cage. Kennedy and Thompson had set up fake evidence so well that Judge automatically (bias) found Scott guilty for being in possession of shank on 005 form from staff supporting F-1 report, photo endorse, witness statement. Scott was found guilty at new unit Varner unit and locked up out of population (D.E. #51-0 pg 63-65, D.E.#44-1 pg.)

Once Scott appealed disciplinary and wrote grievances Scott voice was not ever heard. Warden Burl, and Assist Director Payne (D.E.#51-0 pg. 62, D.E. #51-0

pg. 106 answer No. 10) The shank was found after you were removed from holding cell. (this is lead to believe once Scott was immediately pulled out cage. Its invasion, and manipulation. Now after all this injustice Scott is force to file §1983 complaint, and do to discovery Appellee Thompson admits in admission that the shank was not found while Scott was being removed from cell, that Scott was handcuffed and shackled while he entered the cage, that the shank, and that shank was found while Scott wasn't at unit. For Kennedy have Cpl. Thompson to write disciplinary is a arbitrary abuse of authority and punishment **MAJLUTA V. SAMPLES, 375 F 3D 1269, 1273 (11TH CIR. 2004)**

It is settled law that Scott: right to complain about Kennedy conducted and to seek administrated relief is protected by the **First amendment.**" **GLUSTON V. COUGHLIN AT 81 F. SUPP 2D 381, 386 (N.D.NY 1999)** See **CHO TAYLOR V. SULLIVAN 980 F . SUPP 697, 704 (S.D.N.Y. 1997).** And **FRANCO V. KELLY 854 F 2D 504, 585 (2ND CIR. 1988).** (1) The conduct itself and action by Appellee Kennedy to have Appellee Thompson write a falsified disciplinary on Scott was inhumane, harass, retaliate and punish Scott, Kennedy, Thompson, retaliation disciplinary they wrote on Scott on 2/5/16 was an adverse employment action (2) Scott prior filing of Prisoner's grievance against Kennedy was a substantial and motivating factor in Appellee Kennedy, Thompson adverse employment action. See **JOHNSON V. GANIM. 342 F 3D 105, 112 (2ND CIR. 2003).** Making Scott injury to his **First Amendment** was Kennedy, Thompson writing the falsified retaliation disciplinary itself along with 30 days punitive isolation suffering in a cell (he can't sleep form being put in mental health isolation , all the banging on toilets, beating on toilets, and screaming) **THADDEUS V. BLATTER 175 F3D 378, 394 (6TH CIR. 1999)**(en banc) holing in a prisoner, retaliation case that the injury is "adverse consequences which flow from the constitutional protection action")

DIXON V. BROWN, 38 F 3D 379, (8TH CIR. 1994) (Noting a prisoner case, that the injury inheres in the retaliatory conduct itself.)

In this case for Appellee Thompson to now admit after all Scott charges for state to correct they wrong, and more importantly know that shank was not found on Scott while he was being search or pulled out visitation cage, or even at unit. (D.E.#51-0 pg 111 at 5, D.E. #51-0 pg 110) and allow Kennedy to have him write falsified disciplinary to intentionally punish is enough to "chill" an ordinary inmate from further use of grievances. Scott was punished 30 days punitive segregation for a "ADC prison rule violation he did not actually commit.)"

HARTSFIELD V. NICHOLS, 511 F 3D 826 (8TH CIR. 2008) .

Now the 1st Question of property.

Property: If an inmate is authorize by ADC to have property in punitive segregation can that property now be destroyed as contraband for having in your possession in punitive segregation.

In this case, Scott bought Nike Size 11 shoes for ADC Commissary D.E.#51-0pg. 34 and gave back to Scott on 48 hr. relief on 8/24/2015. And on his 48 hour relief in October, November, Mailroom brought him 4 magazines he had just bought from Wall Periodicals. ADC Officers brought him his property. Books, pictures, non-nude catalogs, radio (D.E.#51-0 pg 79)

So now the question in this 20th century is this. Can you now in this case say this property you authorized and gave Appellant Scott on 48 hour relief in his punitive isolation cell is now considered contraband, cause come shake him down and say it considered contraband because you were found in possession of this contraband while housed in punitive isolation. (D.E. #51-0pg 24) (D.E.#44-16 pg

2) and it will be destroyed. But not his authorized property that Appellee's brought him on 4 hour relief in his punitive cell in isolation because they couldn't move him out of isolation by ADC policy cause of bed space (D.E.#51-0 pg 79). See D.E.#44-12 pg 6 section H. Consecutive punitive sentences: Inmates serving consecutive punitive sentences shall have their privileges restored for a 48 hour period at the end of each 30 day punitive period. This relief shall b known as "48 hr relief." These 48 hr relief periods are to be in housing outside the Punitive Isolation area if at all possible . And since they didn't move Scott out of his punitive isolation cell on 48 hour relief they brought Scott hi property. There is a certain belief that the powers that be when they made our laws they didn't foresee a case like this in the future. They didn't foresee officers "correctional officers" acting under color of state law to abuse they authority. To act criminal mind like the alleged convicted felons they are guarding. Is there a difference between inmate's criminal actions and a C.O.'s there is a substantial body of authority holding that convicted prisoners do retain limited privacy interest under the **Fourth Amendment** and the **Fourteenth Amendment** Due Process Clause in connection with unreasonable searches and unjustified confiscation of personal property by prison officials, See e.g. **UNITED STATES V. LILLY, 576 F 2D 1240, 1244-47 (5TH CIR. 1978); UNITED STATES V. STUMES, 549 F 2D 831, 832 (8TH CIR 1977); BANNER V. COUGHLIN 517 F 2D 1311, 1315-17 (7TH CIR. 1975); STEINBERG V. TAYLOR, 500 F. SUPP 477, 479-80 (D. CONN. 1980).** This Court need not decide in this case the full extent to the constitution protection afforded convicted prisoners against unreasonable search and confiscations. The Court does conclude, however that a prisoner has in protectable property interests in items of personal property he legitimately possess, and that these interests are infringed when prison officials seize such property in an unreasonable manner or without a legitimate justification. One a prisoner has proven the confiscation of legitimately possessed property, the

burden is in the prison officials to establish the reasonableness of the seizure. See, e.g. **UNITED STATES V. LILLY, 576 F 2D AT 1245; BONNER V. COUGHLIN 517 F 2D 317.**

2. Which leads to the main reason Scott property was unreasonably confiscated and destroyed. See on 12/15/2915 Sgt. Lt. Cpts. " Appellee Clark" told Scott his "Books, magazines, shoes, family pictures, non nude catalogs" would be put in his property.(D.E #51-0 pg 24). On 12/23/2015 Scott talk to Appellee's weekly (Fitzgerald/ Culclage, Stout) about his property since Appellee Kennedy the Property Officers was the officer didn't come get Scott property once he came off punitive which she herself actions is what now they considered made Scott property now contraband(D.E#51-0 pg27).

Kennedy knowing this knew that property was not contraband. But do to motives of retaliation Scott filing grievances on her every month refusing to give his legal books and destroying some more property in retaliation. See **SCOTT V. KELLY 5:16-65 DPM-JTK;** (D.E.#58-0 pg 16)

And due to these facts. Kennedy retaliated on Scott destroying his property and Appellee's weekly, Stout, Clark failure to take corrective action. By telling her to not destroy Scott property he could have legitimately or replacing it and District Court erred in granting summary judgment in favor of Defendants/ Appellee's when evidence was sufficient to raise genuine issue of material fact. **PARTL V. TAYLOR 451 US 527, 536, 1010 S.CT. 1908, 1913, 68 L.ED. 2D 420 (1981). LOGAN V. ZIMMERMAN BUSH CO. 455 US 442, 102 S.CT 1148 71 L.ED 2D 265 (1982); ;** U.S. Court of Appeals.

3. To further prove Kennedy actions was done in retaliation and to punish Scott by destroying his property where to only get some more he was gone have to have his

family sent him more money. See D.E.#51-0 pg 43 Same officer Watson found more property in Scott cell and punitive isolation "Sweat pants" confiscated them and Kennedy didn't destroy them and gave back to Scott his next 48 hour relief This shows her conduct amounted to reckless and callous indifference to Scott's **First Amendment** right to submit grievances and may all for deference and punishment over and above that provided by a compensatory award. See **WILLIAMS V. BRIMEYER 116 F 3D 351, 352-355 (8TH CIR. 1997)** (Defendants who unconstitutionally denied inmate incoming mail were callously indifferent to inmate's **First Amendment** rights and $1,000 punitive damage award was appropriate. Scott has met his evidentiary burden by submitting direct evidence that Defendant Kennedy destroyed Scott property as a retaliatory measure Prison officials do not have the discretion to punish an inmate for exercising his **First Amendment** rights...)

Scott is entitled to compensatory , punitive , nominal damages for Kennedy, Thompson violated of his **1st Amendment** Rights. See **SPROUSE V. BOBCOCK 870 F 2D 450, 452 (8TH CIR. 1999)**; **SIMMONS V. COOK 154 F 3D 805, 809 (8TH CIR. 1998)** upholding $2,000 damage award for paralegal inmate placed in solitary confinement for thirty two hours. Scott was placed in there for 30 days.

CONCLUSION

Here the lower courts have spoken and Petitioner humbly requests the Higher Court to grant Certiorari and re-order these questions. Reverse, remand to District Court for trial, and appointment of counsel.

I swear under penalty of perjury the foregoing is true and correct and best of my knowledge, understanding and belief

This 26 day of August, 2020.

Mr. Deverick Scott#131042

P.O. Box 400

Grady, AR. 71644

Mr. Deverick Scott #131042