

20-5946

no.

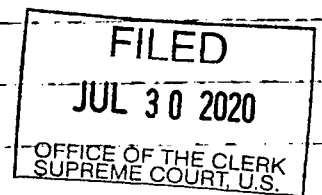
ORIGINAL

IN THE
SUPREME COURT OF THE U.S.

Roberto Antoine Darden,
Petitioner,

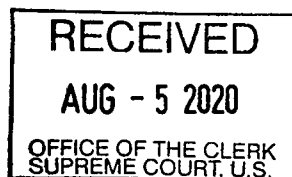
v.

Barbara A. Von Blanckensee,
Respondent.



ON PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED
STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT.

PETITION FOR A WRIT OF CERTIORARI



Roberto Darden (pro per)
USP- Tucson
PO BOX 24550
Tucson, AZ 85734

III. Questions Presented

I. If a prison provides inmates with their own personal locker is a disciplinary notice wrote in fact if nothing wrote links the culprit to the secured locker where the weapon is discovered?

II. May a tribunal limit its review of a prison disciplinary notice claim to simply just the clarity of the prohibited act charged?

I. Table of Contents

	<u>Page</u>
I. Table of Contents.	i-ii
II. Table of Authorities.	iii-iv
III. Questions Presented.	v
IV. Statement of Jurisdiction.	1
V. Issue Presented.	2
VI. Statement of Case:	3-4
A. Nature of the Case; Course of Proceedings.	
B. Statement of Facts.	

VII. Summary of Argument. 5

VIII. Argument:

The Ninth Circuit's Decision That Due Process Was Satisfied Because The Officer's Report Was Written In Fact Conflicts With Other Appellate Courts Decisions On The Same Important Matter. 6

1. The Supreme Court's due process requirements are met when an inmate receives a disciplinary notice written in fact. 6

2. The Wolff notice requirement was not met
in this case because the officer's report
was not wrote in fact.

6

IX. Conclusion.

9

X. Certificate of Compliance.

10

II. Table of Authorities

PAGE

CASES

Wolff v. McDonnell, 10, 7
418 U.S. 513-72 (1974).

In re Gault, 387 U.S. 30, 33 (1967). 10, 7, 8

Hamilton v. O'Leary, 8
976 F.2d 341, 346 (7th Cir. 1992).

Denny v. Schultz, 8
708 F.3d 147 (3rd Cir. 2012).

Sira v. Morton, 380 F.3d at 70 (2nd Cir. 2004). 8

Dean-Mitchell, v. Reese, 9
337 F.3d n. 5 (11th Cir. 2016).

Tyler v. Hooks, 9
945 F.3d at 172 (4th Cir. 2019).

STATUTES

28 USC Section 2101(c). 1

28 USC Section 1254 (1). 1

28 USC Section 2241. 3

FEDERAL CODE

28 CFR Section 553.11(b).

8

CONSTITUTIONAL AUTHORITIES

Article Three.

1

IV. Jurisdictional Statement

The Petitioner sought Appellate review on November 12, 2019, and the Ninth Circuit denied to issue a COA on May 13, 2020. See Appx. I, Docket Sheet and Ninth Circuit opinion. Therefore, pursuant to the United States' Constitution at Article III, Section 2, Clause 2; 28 U.S.C. Sections 2101(c) and Section 1254(1), this Supreme Court has jurisdiction to entertain Petitioner's petition for a writ of certiorari.

V. Issue Presented

The petitioner was disciplined at a prison hearing for possessing a weapon. The Ninth Circuit affirmed the district court's decision to deny petitioner's petition for habeas corpus on the basis that the disciplinary notice was wrote in fact and thus due process was satisfied.

VI. Statement of the Case

A. Nature of the Case; Course of Proceedings

The petitioner filed a petition for habeas corpus under 28 U.S.C. Section 2241. See Appx. 1, Docket Sheet. The Warden filed its answer to the petition. (Id.) The petitioner traversed. (Id.) The district court adopted the magistrate's R and R and dismissed the petition. (Id.) The Ninth Circuit affirmed on May 13, 2020. Appx. 1, COA opinion.

B. Statement of Facts

In 2017, the petitioner was an inmate in federal prison in Tucson, Arizona. In December 2017 during a mass shake down, officer Tate, a participant who actually works in the R and D section of the prison, discovered a weapon in one of the two secured lockers where the petitioner and his cell mate resided, and he subsequently wrote an incident report stating that the petitioner possessed the aforesaid weapon without evidence linking him to the purported locker. Appx. 1, Ofc. Tate Report.

The DHO found the petitioner guilty after he stated that his combination lock "didn't look like that." (Id.)

VII. Summary of Argument

The Appellate Court improperly limited the notice requirement held in *Wolff v. McDonnell* to simply just the "clarity of the charge" when in fact the *Wolff* Court opined that the function of notice is to not only apprise the Petitioner of what the charge was, but to also particularize any one fact that linked him to one of the two secured lockers where the weapon was discovered so that he not have to explain away conclusory allegations.

In other words, the aforesaid limitation undercut the Petitioner's procedural due process right to be provided a disciplinary notice that is written, in fact. Therefore, the Appellate Court abused its discretion, because its decision is in conflict with the decision of another United States Appellate Court on the same important matter. The judgment should be reversed.

VIII. Argument

The Ninth Circuit's Decision That Due Process Was Satisfied Because The Officer's Report Was Written In Fact Conflicts With Other Appellate Courts Decisions On The Same Important Matter.

1. The Supreme Courts due process requirements are met when an inmate receives a disciplinary notice written in fact.

Due process is satisfied in a prison disciplinary hearing if certain procedural protections are provided to an inmate. *Wolff v. McDonnell*, 418 U.S. 563-72 (1974). First and foremost, a disciplinary notice must "give the charged party a chance to marshal the facts in his defense and to clarify what the charges are, in fact." *Id.* at 564. The *Wolff* Court was guided by its wisdom in *In re Gault*. See *In re Gault*, 387 U.S. at 33 (1967) ("Notice, to comply with due process requirements, ... must set forth

the alleged conduct with particularity"). "Due process of law requires notice of the sort we have described - that is, notice which would be deemed constitutionally adequate in a civil or criminal proceeding." (Id.)

2. The Wolff notice requirement was not met in this case because the officer's report was not wrote in fact. /

Here, the reporting officer failed to satisfy due process when he provided the petitioner with a notice that did not "clarify what the charges are, in fact."

Wolff, 418 U.S. at 564; Appx., etc. Tate's notice.

Specifically, it was imperative for said officer to include in his notice the essential fact that in the secured locker where the weapon was

found, he also discovered an item bearing the petitioner's name because access to the purported locker was limited to the person who knew the combination code. See e.g. In re Gault, 387 U.S. at 33

(1967) ("Notice, to comply with due process requirements, ... must set forth the alleged misconduct with particularity"). This essential fact was

tantamount to the petitioner's defense because he can only "marshal the facts in his defense", not conjecture.

Wolff 418 U.S. at 564. More importantly, the

prison institution provided the petitioner and his cell mate with their own personal locker, a fact that the government did not dispute. See 28 C.F.R. Section 553.11(b) ("Storage Space. Staff shall set aside space within each housing area for use by an inmate. The designated area shall include a locker... in which the inmate stores authorized personal property").

However, the Ninth Circuit overlooked the aforesaid points of law and fact, because its decision conflicted with the Second Circuit's decision regarding the Wolff notice requirement. See *Sira v. Morton*, 380 F.3d at 70 (2d Cir. 2004) ("there is a particular due process interest in requiring some factual specificity in the misconduct notice... due process requires more than a conclusory charge; an inmate must receive notice of at least some specific facts underlying the accusation"); see also *In re Gault*, 387 U.S. 33 ("Due process of law requires notice of the sort we have described that is, notice which would be deemed constitutionally adequate in a civil or criminal proceeding"). Also,

footnote: The fact that the Petitioner was a tenant of the room where the weapon was discovered is irrelevant, because said weapon was not in the common area of the cell. See e.g., *Hamilton v. O'Leary*, 976 F.2d 371, 374 (7th Cir. 1992); *Denny v. Schultz*, 708 F.3d 117 (3d Cir. 2012).

the Ninth Circuit's decision conflicted with other
Courts of Appeals on the same important matter.
SEE Dible v. Scholl, 506 F.3d 1106 (8th Cir. 2007);
Denn-Mitchell v. Reese, 837 F.3d at n. 5 (11th Cir.
2016); Tyler v. Hooks, 945 F.3d at 172 (4th Cir. 2019).

Therefore, the petitioner's procedural due process
right to be provided a disciplinary notice wrote,
in fact, was violated in this case.

Conclusion

The Ninth Circuit's conflicted decision cannot
stand. The wisdom of the Wolff Court regarding
prison disciplinary notices being wrote, in fact,
and the Appellate Courts which agreed, requires this
Honorable Court to reverse the Ninth Circuit's
decision.

Respectfully,

Roberto Darden 72636-083

USP-Tucson

PO BOX 24350

Tucson, AZ 85734