

No. 20-6280

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IN THE SUPREME COURT OF THE UNITED STATES

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DEVERICK SCOTT # 131042

Vs.

PAMELA COOK

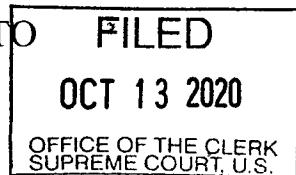
PETITIONER  
**ORIGINAL**

RESPONDENT(S)

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ON PETITION FOR A WRIT OF CERTIORARI TO

8<sup>TH</sup> CIRCUIT COURT OF APPEALS



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PETITION FOR WRIT OF CERTIORARI

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Presented by

Deverick Scott # 131042

Pro Se

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Grady, AR. 71644

## QUESTION(S) PRESENTED

1. Was inmate Scott engaged in an activity he was entitled to perform by writing a prisoner grievance explaining "3 months earlier he had set his cell on fire and was issue old laundry. He need new laundry." Was that an exercise of Scott's constitutional right? CORNELL v. WOODS 69 F3D 1383; HAYNES v. STEPHENSON 2008 WL 4368994; FRANCO v. KELLEY; 854 F2D 584, 589 (2D CIR 1988); SPROUSE v. BABCOCK 870 F2D 450, 452 (8TH CIR 1989).
2. When Appellee Cook stated: "on 9/18/18 I Sgt. Cook stated an investigation on D. Scott # 131042 after receiving a grievance from D. Scott # 131042" in disciplinary she wrote Scott for stating in grievance he set his cell on fire 3 months earlier. Charging him for setting his cell on fire. Is that retaliation of Scott using prison grievance system. GARLAND v. POLLEY 594 F2D 1220, 1222-23 (8TH CIR 1979); CORNELL v. WOODS 69 F3D 1383; MURPHY v. MISSOURI DEPT OF CORRECTION, 769 F2D 502, 503 (8TH CIR 1985); SPROUSE v. BABCOCK 870 F2D 450, 452 (8TH CIR 1989).
3. Do the "some evidence" standard need to be addressed and change in retaliation cases that it automatically check mate a retaliation case. Cause in the instant case shows flaws in that standard. In this case the District Court; Court of Appeals ruled by Scott admitting in grievance he wrote 3 months later explaining his actions and why he needed laundry was "some evidence" needed to check mate Scott retaliation claim, even though Scott had already received disciplinary for some rule violations. If Scott wouldn't wrote grievance about needing laundry,

Cook wouldn't have wrote grievance, cause cook didn't write grievance when Scott first burnt all up and she sent him old laundry cause of it. Should retaliation disciplinary inmates alleging be put to a new standard of today's society.

**CORNELL V. WOODS 69 F3D 1383; GOFF 7 F3D 738; SPROUSE V. BABCOCK 870 F2D 450, 452 (8TH CIR 1989); HAYNES V. STEPHENSON 2008 WL 4368994**

## 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:

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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 C to the petition and is unpublished.

The opinion of the United States district court appears at Appendix A, B

## **JURISDICTION**

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 17, 2020.

No petition for rehearing was timely filed in my case.

No extension of time was filed in my case

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

This case involves:

1. The 1<sup>st</sup> Amendment Violations:
  - a. This Amendment guarantees me to be free from arbitrary abuse of authority including retaliation.
  - b. These Amendments are enforced by the title 42 USCA § 1983 of the United States Code.

## **STATEMENT OF THE CASE**

The Petitioner initiated this case pursuant to his constitutional right to be free from retaliation.

In 2019, the Petitioner sought 42 U.S.C.A. § 1983 relief in the United States District Court for the Eastern District of Arkansas. See Deverick **SCOTT v. COOK 5:19-CV-00101-DPM-JTK**. The Court's denied the Plaintiffs Claims, and asserted, among other things, "Qualified Immunity" and dismissed with said complaint with prejudice. (D.E. # 28.0)

Petitioner Appealed.

Petitioner appealed to the United States Court of Appeals for the Eighth Circuit. See **SCOTT v. COOK No. 20-1323**. Consequently the Eight Circuit Court of Appeals declared that they found no reason/basis for reversal and affirmed the District Court's 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 higher of the 1<sup>st</sup> Amendment retaliation of use of prisoner grievance procedure. The District Court had jurisdiction under the General Federal Question jurisdiction conferred by 28 USCA § 1331.

## **REASONS FOR GRANTING THE PETITION**

### **A. Conflicting decision among Circuit Courts**

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

#### **GOFF 7.F3D AT 738; SPROUSE V. BABROCK, 870 F2D 450, 452 (8TH CIR.**

**1989)** “Just as prison officials cannot lawfully transfer a prisoner for retaliatory reasons alone (they likewise) cannot impose a disciplinary sanction against a prisoner in retaliation for the prisoner’s exercise of his constitutional right.

But see **HEDERSON V. BAIRD 29 F.3D 826 (8TH CIR. 1994)** “Violation of regulation essentially check mated retaliation claim” as it did in Scott case.

Here in the first ruling the Court found the right to respond to a prisoner investigators inquiries is not inconsistent with a person’s status as a prisoner or with legitimate penological objectives of the correction system.

“same as an inmate writing a grievance”

However in the second ruling it is explicitly clear that the Court considers a violation of rules a mechanism that voids a retaliation claim.

These standards conflict and should be sorted so that the true and reasonable test to standardize the right to inmate filing a grievance is known.

**B. Need for broader interpretation of constitution standards of retaliation of use of prisoner grievance system.**

This case presents fundamental questions of how we will interpret the right of inmates use of grievance system.

It also involves the standard of review and burden of proof dealing with “some evidence” rule. Here the lower courts stated cause Scott stated in inmate grievance that he had admitted to setting his cell on fire that satisfy the “some evidence” standard that automatically check mated his retaliation claim. But if Scott wouldn’t wrote grievance explaining he set his cell on fire 3 months earlier, and already receive disciplinary for that rule violation is reason why he needed laundry. Ms. Cook never would have started an investigation and written Scott up for some rule violation again (D.E. 26-0 pg. 15) which two write Scott 2 disciplinaries for same rule violation was against prison policy (D.E. # 34.0 pg. 5; D.E. 26-0 pg.11)

Now we arrive at our questions of this case. Did inmate Scott have a constitutional right to write an inmate grievance he needed some laundry and explain in that same grievance “why” he needed new laundry, that 3 months earlier he set his cell on fire?

The resolution of this question turns to the question and standard revolves around “some evidence” and violation of prison rule essentially checkmated retaliation claim” like in this case is unclear.

The Courts have long held a standard of review that if there was “some evidence” no claim can be stated when the alleged retaliation arose from discipline imparted for acts that a prisoner was not entitled to perform. **GOFF**; And a retaliation claim is precluded if the alleged retaliatory conduct violation was issued for actual violation of a prison rule, but the showing of “Some Evidence” that the inmate actually committed a rule violation. **HARTSFIELD V. NICHOLS 511 F3D 826, 829 (8TH CIR. 2008)**. And it legally suffices as “some evidence” upon which to base a prison disciplinary violation, if the violation is found by an impartial decision maker.”

In Petitioner case District Court fail to actually view case in favor of Scott. (1) Scott was not found guilty by an impartial decision maker for prison disciplinary violation by Appellee Cook (D.E. # 26-0-pg. 13) cause Scott had already receive disciplinary for that rule violation 3 months earlier. (2) it was against ADC Policy for Cook to write the disciplinary on Scott for rule violation he had already been charged. (3) the very fact that Appellee Cook states in disciplinary: On 9/18/2019, I Sgt. Cook, Laundry Supervisor started an investigation on inmate D. Scott #131042 “after receiving a grievance from Inmate

D. Scott." So for Cook to then write Scott a disciplinary for that Grievance is a retaliation discipline. PRATT v. ROWLAND, 65 F.3D 802, 806-07 (9TH CIR. 1995).

The Correct test as set forth in GOFF 7 F3D AT 738 to see if Cook would wrote the disciplinary "but" for Scott writing the inmate grievance.

Scott writing an inmate grievance is "undoubtedly quite consistent with legitimate penological objectives." Under these facts Scott's activity implicated his rights under the First Amendment. Cf. FRANCO v. KELLEY 854 F2D 584, 589 (2D CIR. 1988). CORNELL v. WOODS 69 F.3D 1383

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

In direct retaliation of grievance (D.E. # 26-0 pg.8) Appellee Cook retaliated and wrote Scott a retaliatory disciplinary (D.E. # 26-0 pg.15) was an arbitrary abuse of authority and punishment. MAJLUTA v. SAMPLES, 375 F.3D 1269, 1273 (11TH CIR 2004); HAYNES v. STEPHENSON, 558 F3D 1152, 1156 (8TH CIR).

It is settled law that Scott: right to complain he needed new laundry and seek administrative relief is protected by the First Amendment. "GLUSTON v. COUGHLIN AT 81 F.SUPP 2D 381, 386 (N.D.NY 1999). And FRANCO v. KELLEY

**854 F2D 504, 585 (2ND CIR 1988)** (1) The conduct itself and action by Appellee Cook to write Scott retaliation disciplinary was to harass, retaliate and punish Scott was an adverse employment action. (2) Scott prior filing of prisoner's grievance against Cook was a motivating factor in Appellee Cook adverse employment action. See **JOHNSON v. GANIM 342 F3D 105, 112 (2ND CIR 2003)**. Making Scott injury to his First Amendment was Cook writing the retaliation disciplinary itself. **THADDEUS v. BLALER 175 F3D 378, 394 (6TH CIR 1999)** (en banc) holding in a prisoner retaliation case that the injury is "adverse consequences which flow from the constitutional protection action") **DIXON v. BROWN, 38 F3D 379 (8TH CIR 1994)** (Noting a prisoner case, that the injury in here in the retaliatory conduct itself.)

For Cook to write Scott a disciplinary to intentionally punish Scott is enough to "Chill" an ordinary inmate from further use of grievances which is motivating factor Cook wrote disciplinary cause once she refuse to give Scott new laundry he wrote grievance to make her give him new laundry (D.E. # 26-0 pg. 8) Scott has met his evidentiary burden by submitting direct evidence Appellee Cook wrote Scott disciplinary in retaliation. **MURPHY v. MISSOURI DEPT OF CORRECTION 769 F2D 502-503 (8TH CIR. 1985)** ("Prison officials do not have the discretion to punish him for exercising his First Amendment Rights...") It was not objectively

reasonable for the officials to punish Scott cause he participated in prisoner grievance procedure.

Scott is entitled to compensatory, punitive, and nominal damages for Cook violation of his 1<sup>st</sup> Amendment rights. See SPROUSE v. BOBCOCK 870 F2D 450, 452 (8TH CIR 1999); SIMMONS v. COOK 154 F3D 805, 809 (8TH CIR 1998). Upholding \$2,000 damage award for paralegal inmate placed in solitary confinement for thirty two hours.

**C. The need for a declaration that if “some evidence” is a disciplinary inmate was found guilty of. Then he wrote grievance later explaining an incident concerning that situation. And officer receive grievance and write inmate another grievance once they start an investigation on incident he already found guilty of that’s retaliation of that grievance the inmate previously wrote.**

## 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.

For these reasons the petition for a writ of certiorari should be granted.

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

Executed this 13<sup>th</sup> day of October, 2020.

Respectfully submitted,

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*Mr. Deverick Scott #131042  
10/13/20*