

20-6741
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

PETER J. McDaniels — PETITIONER
(Your Name)

vs.

KATHLEEN PREITO et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeals for the Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Peter J. McDaniels
(Your Name)

SCCC H2 B 39L, 191 Constantine Way
(Address)

Aberdeen, WA 98520
(City, State, Zip Code)

n/a
(Phone Number)

QUESTION(S) PRESENTED

No. 1

SHORT - Is spoliation a burden shifting mechanism?

LONG - Does the destruction of video surveillance by state defendant/actors shift to a greater burden of proof upon the state defendants (for the purpose of summary judgment) when the video surveillance is primary, objective evidence concerning plaintiff, state prisoners' claims?

No. 2

SHORT - Does a citizen of the United States have the right to refuse to sign a false narrative report?

LONG - Is a claim for retaliation perfected against a state actor/defendant when after a state prisoner/plaintiff refuses to sign a false narrative report, said state actor/defendant writes a false infraction report that states no less than three times, "He still refused to sign," which ultimately lead to the plaintiff's termination from a high quality prison job?

Are the infraction report, spoliated surveillance, and plaintiffs' well briefed (w/ exhibits) testimony grounds for trial?

QUESTIONS PRESENTED PAGE 2

No. 3

SHORT - In reference to a claim for retaliation, is the timeline of events, when compounded by relative documents and facts supporting state actors/defendants' interests for motive and proximity to the retaliatory act and timelined events, enough to warrant trial?

LONG - Defendants filed a false misbehavior infraction against Plaintiff. The day before the infraction was written, plaintiff wrote a 12 page grievance against defendants. Plaintiff appealed the baseless finding of guilt on the infraction with a 7 page appeal that threatened to sue the defendants.

The 7 page appeal was received by the hearings department on Nov 25 2014. Plaintiff was terminated from his job, by defendants, on Nov 25 2014 at the end of defendants shift.

Supporting facts

1. Plaintiff witnessed defendants being presented with his 12 page grievance (by Coordinator McTarsney) the day before the bogus infraction was written. This is the same, "He still refused to sign" infraction which qualifies as compounding motive.

2. The office of the hearings officer that stamped REC NOV 25 2014 on my 7 page appeal is proximate (within feet) to defendants. They eat lunch together etc. daily; He showed them my appeal - they terminated me later that day for my threatening appeal.

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:

PETER J. McDANIELS

v.

KATHLEEN PREITO, MARCIA McCORMICK, GARY BOHAN

RELATED CASES

McDANIELS v. PREITO et al. No. 3:17-cv-05801-RBL-DWC
U.S. District Court for the Western District of Washington.
Judgment entered April 9th 2019.

McDANIELS v. PREITO et al. No. 19-35297 U.S. Court of
Appeals for the 9th Circuit. Petition for Rehearing denied
September 16th 2020.

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APPENDIX A MEMORANDUM OF NINTH CIRCUIT COURT OF
APPEALS (NOT FOR PUBLICATION) FILED JULY 21 2020.

APPENDIX B ORDER ADOPTING R&R OF U.S. DISTRICT
COURT, WESTERN DIST. OF WASHINGTON AT TACOMA FILED 04/05/19.

APPENDIX C REPORT AND RECOMMENDATION OF U.S. DISTRICT COURT,
WESTERN DIST. OF WASHINGTON AT TACOMA FILED 03/11/19.

APPENDIX D ORDER DENYING PETITION FOR REHEARING OF NINTH
CIRCUIT COURT OF APPEALS FILED SEP 16 2020.

APPENDIX E

APPENDIX F

I do not have access to my legal materials for a fed. Spoliation argument.
* This case is regarding Spoliation; however, it is a state case.
* Sisters of Providence

(2nd Cir. 2011).

Jackson v. Brugue, 658 F.3d 225, 241

~~OTTER~~

(9th Cir. 1995);

Pratt v. Rowland, 65 F.3d 802, 808

(9th Cir. 2009);

Broadbent v. Cry, 584 F.3d 1262, 1271

76 (March 23, 2015) USDC 2nd Circuit;

Lozada v. Weinstein, 92 F. Supp. 3d

488, 495 (3rd Circuit 2002);

Ambrose v. Township of Robinson, 303 F.3d

~~STATUTES AND RULES~~

(Sept. 11, 1967 U.S. Dist. for 16th Circuit);

Ehren v. Londerholm, 273 F. Supp 178

1297, 164 L.Ed.2d 156 (2006);

Institutional Rights, Inc., 547 U.S. 47, 61, 126 S.Ct.

Rumsfeld v. Forum for Academic &

51 L.Ed.2d 752, 97 S.Ct. 1428 (1977);

Woodley v. Magnard, 430 U.S. 705, 714,

2218, 85 L.Ed.2d 588 (1985);

Nation Enterprises, 471 U.S. 539, 559, 105 S.Ct.

CASES Harper & Row, Publishers, Inc., v. PAGE NUMBER

TABLE OF AUTHORITIES CITED

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 A 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 B 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.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

[] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was July 21st 2020.

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

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Sept. 16th 2020, 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. § 1254(1).

[] For cases from state courts:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES [freedom of expression and speech and the right to be protected against retaliation for exercising expression/speech to include the right to be silent and refuse to sign fabricated documents] *

* I do not have verbatim language of the Bill of Rights with me, so please refer to the actual First Amend. for verbatim wording.

STATEMENT OF THE CASE

Petitioner filed 42 USC § 1983 civil action on 10/04/17 claiming a spree of retaliation by two of the defendants, Preito & McCormick, which is outlined in what the district court refers to as "first" through "fourth" retaliation claims. I am not asking this Court to review those first four "spree" of retaliations.

The district court evaluated "fifth" and "sixth" retaliation claims starting on page 23 of Dkt 69 which is the dist. Court magistrate's report and recommendation. Although that court did not fully understand the premise and ignored many facts to include the "tell all" Spoliated video Surveillance, it is those two distinct claims I am asking for this Court to review.

fifth: Petitioner filed a 12 page grievance and refused to sign a false narrative report. Defendants retaliated first with verbal threats to fire him followed up the next day with an infraction that focuses on his refusal to sign.

sixth: Petitioner filed* a 7 page infraction appeal on Nov 25 2014. Defendants Bohan and Preito terminated his job later that day on Nov 25 2014 saying he was never supposed to be hired in the first place 13 mo. prior.

* Received by Bohan's Subordinate office - non defendant.

REASONS FOR GRANTING THE PETITION

Rather than asking this Court to focus on the great mishandling of this case by the lower courts, I ask that the look through the lens of American Law and how the rulings made by the Supreme Court will guide the legal community concerning citizens' right to expression. The lens must focus on the fact that the one and only piece of objective, recorded evidence was a video surveillance feed that was destroyed by the defendants and or co-conspirators. If that video were on record, the defendants testimony becomes perjurious. Petitioner asks this Court to respond themselves or send the "fifth" and "sixth" retaliation claims back to the Ninth Circuit to make legal precedence in response to the U.S. Dist. Court magistrate's words: (He said)

"b. Analysis

Plaintiff has argued the fact that his refusal to sign the observation report was noted in the infraction indicates it was, in fact, the substantial

REASON FOR GRANTING PETITION PAGE 2

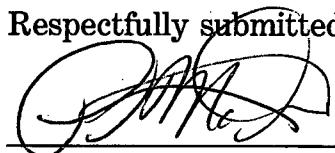
or motivating factor for the infraction. Initially, Plaintiff has provided nothing showing a prisoners' refusal to sign an observation report is protected speech under the First Amendment. See *Collins v. Williams*, 2012 WL 3262862, at *6 n.1 (D. Nev. Aug. 8, 2012) (a prisoner failed to provide any precedent indicating the refusal to sign a liability waiver was protected conduct under the First Amendment); See also *McGarvey v. Borgan*, 2004 WL 11447822, at *2 (W.D. Wis. June 24, 2004) ("[I]t is not clear that [a prisoner's] refusal to sign a waiver of work restrictions is protected speech under the First Amendment"). Dist. Courts' R&R Dkt 69 page 26 of 95 starting at line 10.

On behalf of the American people and legal community, I ask this Court to clarify the answer to the questions of law surrounding the above magistrate's observations. Secondary is the fact that I lost a good, career oriented job, and I have been prevented from acquiring a job other than in-unit janitorial: ERD 2038.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Peter J. McDaniels

Date: December 16, 2020