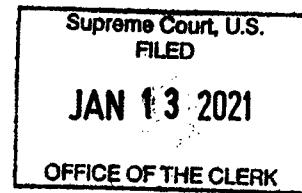


20-6950

UNITED STATES SUPREME COURT

NO. \_\_\_\_\_

IN RE JOHN POULLARD  
Petitioner  
Versus



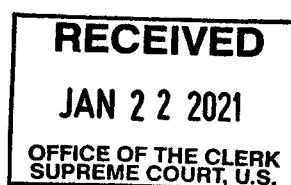
LYLE W. CAYCE  
CLERK OF COURT  
UNITED STATES COURT  
OF APPEALS FIFTH CIRCUIT  
Respondent

PETITION FOR WRIT OF MANDAMUS AGAINST UNITED STATES COURT OF  
APPEALS 5TH CIRCUIT CLERK OF COURT NO. 01-30587 FROM THE U.S. DISTRICT  
COURT MIDDLE DISTRICT OF LOUISIANA 94-CV-777 JUDGE JAMES BRADY

RESPECTFULLY SUBMITTED:

*John Poullard*  
JOHN POULLARD #98999  
Camp D, Hawk  
Louisiana State Prison  
Angola, LA 70712

1



QUESTION PRESENTED

1. Can the United States District Court of Appeals 5<sup>th</sup> Circuit Clerk of Court refuse to file my FRCP(60)(B)(4) motion for relief from the 2-1 decision judgment, when that judgment was made by the United States Court of Appeal 5<sup>th</sup> Circuit and the judgment is being attacked as violation of the United States Const. Amend. 14 and as void in violation of U.S. Const. Art. 3 Section 1, 2, et seg defect to notice, a defect in court of appeal subject matter jurisdiction is an obligation for the U.S. Conrt of Appeals 5<sup>th</sup> Cir. Judges. See Bender v. Williamsport Area School District 106 S.Ct. 1326?
2. Can a FRCP 60(B)(4) Motion for Relief of the U.S. Court of Appeals 5<sup>th</sup> Circuit Judgment as void be filed directly in the U.S. Court of Appeal 5<sup>th</sup> Cir. when that is the court that made the void judgment.
3. Do the United States District Court for the Middle District of Louisiana have subject matter jurisdiction over a FRCP 60B)(4) motion attacking a judgment made by U.S. Court of Appeal 5<sup>th</sup> Circuit as void?

PARTIES

John Poullard petitioner, Lyle W. Cayce Clerk of Court for the U.S. Court of Appeals 5<sup>th</sup> Cir., Louisiana Attorney General Jeff Landry

## TABLE OF AUTHORITIES

Bender v. Area School District, 106 S.Ct. 1326; MSPA Claims 1 LLC v. Tenet Fla Inc, 918 F. 3d. 1312, 1318 (11<sup>th</sup> Cir. 2019); Habitat EDUC Ctr v. U.S. Forest Ser, 607 F.3d 453, 457(7<sup>th</sup> Cir. 2010); Briley v. Hilidalgo, 981 F.2d 246(5<sup>th</sup> Cir. 1993); Aetna Life Inc Hartford v. Haworth, 300 U.S. 227, 240, 57 S.Ct. 416; U.S. Aid Funds Inc V. Espinasa, 599 U.S. 260, 270-71.

## DECISION BELOW

1. Appendix-1 is the letter from the U.S. Court of Appeals 5<sup>th</sup> Circuit telling me they are refusing to file my FRCP 60(B)(4) Motion for Relief from the U.S. Court of Appeal 5<sup>th</sup> Circuit 2-1 Decision Judgment
2. Appendix-2 Is the Motion under FRCP 60(B)(4) with attachments that the U.S. Court of Appeals 5<sup>th</sup> Cir. Clerk of Court refused to file.

## JURISDICTION

U.S. Const. Art. 3 Section 1, 2 standing

U.S. Const. Amend 1st and 14<sup>th</sup>

FRCP 60(B)(4)

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. 1<sup>st</sup> Amend., U.S. Const. Art. 3 Section 1,2. FRCP 60(B)(4) Motion for Relief of the 2-1 Decision Judgment by the U.S. Court of Appeals 5<sup>th</sup> Cir.

### STATEMENT OF CASE

The U.S. Court of Appeal 5<sup>th</sup> Cir. Refused to file my FRCP 60(B)(4) Motion, Directly Into the U.S. Court of Appeal 5<sup>th</sup> Circuit Attacking that same court judgment as a violation of U.S. Const. Amend. 14<sup>th</sup> and as void where that is the same court that made void judgment.

The Clerk of Court wrote me the attached letter Appendix-1 and told me they would not file the motion because that motion can only be filed in the United States District Court. Even when the motion is attacking a U.S. Appeal Court Judgment as void.

I have been denied standing under U.S. Const. Art. 3, Section 12 and denied access to court U.S. Const. Amend. 1<sup>st</sup>. To obtain \$750,000 that was wrongfully taken from me of punitive damages in a 2-1 decision judgment sue sponte after the same 2 judges upheld the jury verdict and found no error on the district court judgment of \$750,000 of punitive damages. Letter from U.S. Court of Appeals 5<sup>th</sup> Circuit dated 10-13-20. Attached Appendix-1.

### BASIS FOR FEDERAL JURISDICTION

The U.S. Court of Appeals 5<sup>th</sup> Circuit Clerk of Court violated United States Const. 1<sup>st</sup> Amend. Access to the Court, U.S. Const. Art. 3 Section 1, 2 standing to file FRCP 60(B)(4) Motion Attacking the U.S. Court of Appeals 5<sup>th</sup> Circuit void judgment directly into that court.

### REASON TO GRANT WRIT

The United States District Court for the Middle District of Louisiana have no subject matter jurisdiction over the U.S. Court of Appeal 5<sup>th</sup> Circuit under FRCP 60(B)(4) Motion to Vacate the Void Judgment by the U.S. Court of Appeal Fifth Circuit.

Petitioner John Poullard have standing to file the FRCP 60(B)(4) motion attacking the U.S. Court of Appeal 5<sup>th</sup> Circuit void judgment directly into that same court that wrongfully took \$750,000 sue sponte of punitive damages awarded to petitioner by a 12 member jury without any error on punitive damages. See MSPA Claims 1, LLC v. Tenet Fla. Inc. 918 F.3d 1312, 1318 (11 Cir. 2019).

By 2-1 decision judgment the U.S. Court of Appeal 5<sup>th</sup> Circuit upheld the jury verdict on liability and found no error on the \$750,000 punitive damages jury award and went against the dissenting judge and sue sponte vacated the \$750,000 of punitive damages violated U.S. Const. Amend. 14 and U.S. Const. Art. 3 Section 1, 2. The U.S. Court of Appeal 5<sup>th</sup> Circuit Clerk of Court denied petitioner access to the court by refusing to file the FRCP 60(B)(4) motion directly into the Court of Appeal 5<sup>th</sup> Circuit violated U.S. Const. 14<sup>th</sup> Amend. and U.S. Const. Art.3 Section 1, 2.

Petitioner have a U.S. Const. First Amend. Right to file his FRCP 60 (B)(4) Motion Attacking the Court of Appeals, U.S. Court of Appeal 5<sup>th</sup> Circuit Judgment as Void FRCP 60 (B) (4) directly into that Court. See Briley v. Hidalgo, 981 F.2d 246 (5<sup>th</sup> Cir. 1993); The court held: there is no time limit on an attack on a judgment as void FRCP 60(B)(4). See Bender v. Area School District, 106 S.Ct. 1326, Court of Appeal Obligation to notice Defect in subject matter jurisdiction.

#### CONFLICT WITH DECISION OF OTHER COURTS

The letter of October 13, 2020 by the U.S. Court of Appeals 5<sup>th</sup> Circuit Clerk of Court refusing to file petitioner FRCP 60(B)(4) motion directly into the U.S. Court of Appeals 5<sup>th</sup> Circuit attacking that same court 2-1 decision as in violation of U.S. Const. Amend. 14 and U.S.

Const. Art. 3 Section 1, 2 and as void is in conflict with U.S. Const. Amend. 1, U.S. Const. Art. 3 Section 12, FRCP 60(B)(4) United States Supreme Court ruling in Aetna Life Ins Co. Hartford Conn v Haworth, 300 U.S. 227, 240, 57 S.Ct. 461; MSPA Claims 1 LLC v. Tenet Fla Inc., 918 F3d 1312, 1318 (11<sup>th</sup> Cir. 2019); United Student Aid Funds Inc v. Espinasa, 559 U.S. 260, 270-71 (2010); Briley v. Hildalgo, 981 F.2d 246 (5<sup>th</sup> Cir. 1993) Bender v. Williamsport Area School District, 106 S.Ct. 1326.

#### IMPORTANCE OF THE QUESTION PRESENTED

Can the U.S. Court of Appeal 5<sup>th</sup> Cir. Refuse to file a FRCP 60(B)(4) motion for relief of that same court judgment and denied petitioner access of court.

Do the U.S. District Court for the Middle District of Louisiana have subject matter jurisdiction on a FRCP 60(B)(4) motion attacking the U.S. Court of Appeal 5<sup>th</sup> Circuit judgment as void.

The question is important because there is no time limit to attack a judgment as void. See Briley v. Hildago, 981 F.2d 246 (5<sup>th</sup> Cir. 1993).

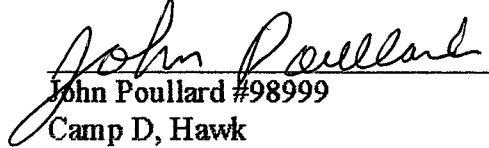
#### CONCLUSION

Wherefore, the reasons assigned in this writ of mandamus it should be granted ordering the Clerk of Court for the U.S. Court of Appeal 5<sup>th</sup> Circuit to file the FRCP 60(B)(4) motion and affidavit.

APPENDICES

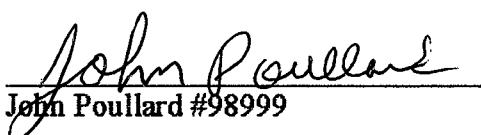
1. Letter dated 10-13-2020 from the U.S. Court of Appeals 5<sup>th</sup> Circuit Clerk of Court refusing to file petitioner FRCP 60(B)(4) motion into that court.
2. Petitioner FRCP 60(B)(4) motion to be filed directly into the U.S. Court of Appeals 5<sup>th</sup> Circuit attacking that court 2-1 decision judgment as void.

Respectfully submitted:

  
John Pouillard #98999  
Camp D, Hawk  
Louisiana State Prison  
Angola, LA 70712

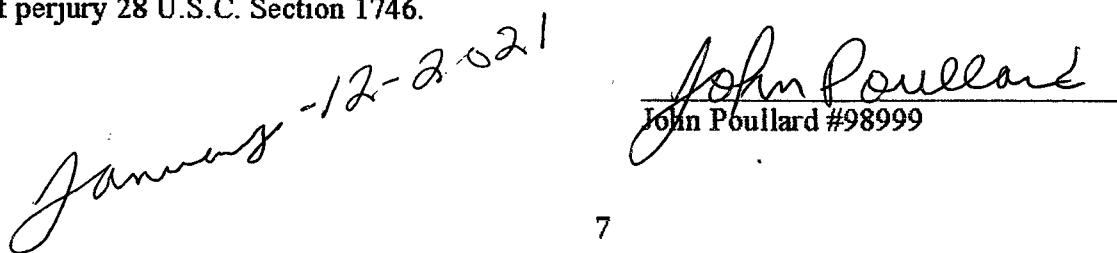
CERTIFICATE OF SERVICE

I petitioner certify that I have served a copy of this Writ of Mandamus upon Attorney General Jeff Landry P.O. Box 94005, Baton Rouge, LA 70804, Lyle W. Cayce Clerk of Court U.S. Court of Appeals 5<sup>th</sup> Circuit, 600 S. Maestri Place, New Orleans, LA 70130-3408, U.S. District Court M.D. La 777 Florida St., Baton Rouge, LA 70802 by U.S. Postal Mail and Electronic filing this 12 day of January 2020.

  
John Pouillard #98999

DECLARATION

The facts in the above certificate of service is true and correct I swear under the penalty of perjury 28 U.S.C. Section 1746.

  
John Pouillard #98999  
January -12-2021

FILED  
U.S. DIST. COURT  
UNITED STATES DISTRICT COURT  
MIDDLE DIST. OF LA.

MIDDLE DISTRICT OF LOUISIANA 20 AM 10:26

SIGN \_\_\_\_\_  
by DEPUTY CLERK

JOHN POULLARD

CIVIL ACTION

VERSUS

NO. 94-777-D

JOSEPH TURNER, ET AL

**RULING ON MOTIONS FOR NEW TRIAL, FOR SANCTIONS,  
TO WITHDRAW MOTIONS, FOR ORAL ARGUMENT AND FOR  
TEMPORARY RESTRAINING ORDER**

This matter is before the court on several post-trial motions filed by both plaintiff and defendants. Jurisdiction remains with this court. There is no need for oral argument and as such plaintiff's motion for oral argument (doc.284) is hereby DENIED.

On March 21, 2001, plaintiff John Pouillard moved for a temporary restraining order against Burl Cain, the Warden at Louisiana State Penitentiary requesting a move due to alleged continued harassment at the hand or direction of defendant Joseph Turner. In response, the Louisiana State Penitentiary transferred Pouillard to another institution, namely Wade Correctional in Homer, Louisiana. As a result, Pouillard's motion (doc. 286) is DENIED as moot.

Plaintiff has moved to withdraw several previously filed motions and there is no opposition by the defendants. As such, the motion to withdraw (doc. 283) is DKT. & ENTERED

DATE 4/30/01  
NOTICE MAILED TO:

Pouillard  
Castaing  
JLB  
SE

1

DATE BY PA

INITIALS	DOCKET#
<i>JP</i>	<i>Z95</i>

hereby GRANTED.

Plaintiff has moved for sanctions against the defendants' attorney Andre Castaing on three occasions contesting argument made by Castaing in the motion for new trial. Those motions have no merit and accordingly the motions (docs. 274, 276 and 282) are hereby DENIED.

Defendants move for a new trial or alternatively they re-urge the motion for judgment as a matter of law. They argue their motion citing both legal error and jury error.

### **Legal Error**

Defendants contest three evidentiary rulings during the course of the trial and urge that these errors entitle them to a new trial on all issues. First, they contend that the court committed error when it excluded from evidence an April 28, 1994 mental health report regarding plaintiff Pouillard and that error effected their substantial right to present evidence that Pouillard pre-planned the incident. At the trial, however, when plaintiff objected to the evidence as being irrelevant, counsel for the defendants did not offer the evidence to show that Pouillard pre-planned the incident. Instead, counsel argued that it was offered to show that the mental health workers did not see Pouillard as a threat to either himself or to others. Tr. Tr. p. 183, II. 11-14. This court sustained the objection since there was no compelling argument to support its relevancy. Now defendants urge a new basis for admissibility,

however that argument was waived by counsel's failure to present it at trial. Under **F.R.E. 103**, the wrong objection is equal to no objection at all. **U.S. v. Gomez**, 908 F.2d 497 (9<sup>th</sup> Cir. 1990); **U.S. v. LeBlanc**, 612 F.2d 1012 (6<sup>th</sup> Cir. 1980).

Next, the defendants argue that the court's striking of the testimony related to the April 30, 1994 mental health report was in error and it effected their substantial right to present evidence that inferred that Poullard instigated the altercation since the record reflected that Poullard made no mental health complaints the day after the incident. This argument has at least two flaws. First, there was absolutely no evidence presented to support any such inference. Second, counsel for the defendants did not argue that the evidence was being offered for this purpose. Instead, counsel offered the evidence to show that the defendants did not have a duty to call mental health after Poullard threatened to tear down the light. Jan. 18, 2001 Tr. Tr. p. 181, ll.1-11. For the reasons set forth above, counsel waived defendants' right to argue this alleged error.

Defendants argue that the court erred when it struck testimony of Levatino that Poullard had previously torn down the light arguing that their substantial right to present evidence of the perceived danger that Poullard posed to the guards. This argument is without merit since this is a mis-characterization of the ruling and since counsel did not object to the ruling, nor offer any argument to support the admissibility of the testimony. Counsel for the defendants essentially questioned

Levatino whether he had beaten Poullard in the manner Poullard had described. Levatino responded to the effect that Poullard presented a constant problem. Poullard objected to the testimony as being unresponsive and the court sustained the objection, striking the testimony. Counsel for the defendants moved forward with his questioning without objection or argument and did not seek to introduce this testimony through direct questioning. Jan. 19, 2001 Tr. Tr. p. 21 ll. 19-p. 23, ll. 19. Under **F.R.E. Rule 103**, that failure amounted to a waiver to argue the error.

Finally, defendants argue that the court erred when it included mental anguish in the jury charge defining compensatory damages. This charge was given to the jury without objection by the defendants. The court was not given the opportunity to take those words out of the charge. Since the erroneous instruction was not brought to the attention of the court at trial, and there is no indication that the inclusion of mental anguish in the charge regarding compensatory damages resulted in a miscarriage of justice, this alleged error does not merit defendants a new trial. **Younis Bros. v. CIGNA Worldwide Insurance Co.**, 899 F.Supp.1385 (E.D.Pa. 1995); **Cruthirds v. RCI Inc.**, 624 F.2d 632 (5<sup>th</sup> Cir. 1980).

On motions for new trial, the evidence must be viewed in the light most favorable to the jury's verdict and the verdict must be affirmed unless the evidence points so strongly in favor of the moving party that the court believes that reasonable minds could not arrive at a contrary conclusion. **Dawson v. Wal-mart Stores**,

Inc., 978 F.2d 205 (5<sup>th</sup> Cir. 1992). A motion for new trial should not be granted and the jury's finding should be upheld, if the evidence is such that a jury could have reached a number of different conclusions, all of which would have sufficient evidentiary support. **Id.** at 208. Such is the case in the instant situation. This court does not find that any evidentiary error occurred such that a substantial right of the defendants was denied.

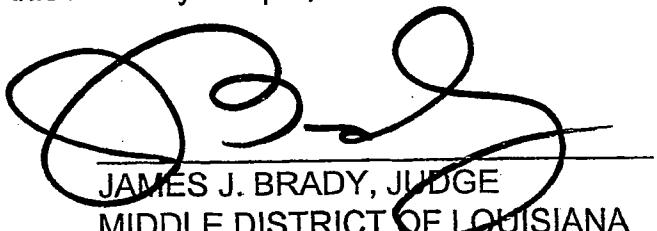
Defendants argue that this court has the discretion to grant or deny new trial on the issue of damages alone and this court agrees. **Eiland v. Westinghouse Electric Corp.**, 58 F.3d 176 (5<sup>th</sup> Cir. 1995). The jury verdict form has been reviewed in all respects and this court finds no indication that the jury's verdict with regard to the cell incident was a result of passion or prejudice or that it was entirely disproportionate to the injuries sustained. As such, defendants are not entitled to new trial with regard to that incident.

With regard to the patrol car incident, however, defendant Lonnie Edmonds correctly argues that the jury verdict finding excessive force for the patrol car incident yet awarding no compensatory damages is inconsistent. **Taylor v. Green**, 868 F.2d 162 (5<sup>th</sup> Cir. 1989). This court does not find that a new trial is necessary, but instead holds that a judgment as a matter of law pursuant to **Fed. Rule Civ. Pro. 50**, in favor of Lonnie Edmonds is warranted, there being no evidence of injury to Poullard as a result of this incident. By definition, a finding of excessive force requires evidence

of some injury.<sup>1</sup> The record is devoid of evidence relating any injury as a result of any action in the patrol car incident.

Accordingly, the motion for new trial and alternatively for judgment as a matter of law (doc. 265) are hereby DENIED in all respects except as it pertains to the jury's finding of excessive force on the part of Lonnie Edmonds for the patrol car incident. Judgment as a matter of law is GRANTED, directing verdict in favor of Lonnie Edmonds and against John Poullard, as a result of the patrol car incident.

Baton Rouge, Louisiana, this 27<sup>th</sup> day of April, 2001.



JAMES J. BRADY, JUDGE  
MIDDLE DISTRICT OF LOUISIANA

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<sup>1</sup>See defendants memorandum at 28-29.

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

FILED  
U.S. DIST. COURT  
MIDDLE DIST. OF LA.

01 MAY -3 PM 4:14

JOHN POULLARD  
(DOC# 98999)

: CIVIL ACTION

SIGN *De*  
by DEPUTY CLERK

VERSUS

: NUMBER 94-0777-D-M2

JOSEPH TURNER, ET AL.

: JUDGE BRADY

: MAGISTRATE JUDGE NOLAND

NOTICE OF APPEAL

Notice is hereby given that Captain Joseph Turner, Lt. Lonnie Edmonds, Lt. Michael Levatino, and Sgt. Don Thames, defendants in the above named case, hereby appeal to the United States Court of Appeals for the 5<sup>th</sup> Circuit from the Judgment entered on 31 January 2001 (docket no. 256) and the ruling entered on 30 April 2001 (docket no. 295) that denied their "Motion for a New Trial and Alternative Renewed Motin for Judgment as a Matter of Law".

Respectfully submitted,

RICHARD P. IEYOUB  
ATTORNEY GENERAL

BY:

*André Charles Castaing*  
ANDRÉ CHARLES CASTAING  
ASSISTANT ATTORNEY GENERAL  
Bar Roll # 17509

DKT. & ENTERED

DATE *2/14/01*  
NOTICE MAILED TO:

DATE *2/14/01* BY *R. P. Cobb*  
*E. Peletier*  
*A. Castaing*  
*GDJJB SE*  
*CNJP*

INITIALS	DOCKET#
<i>YJ</i>	<i>299</i>