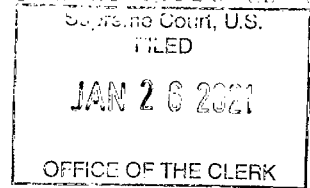


No. 20-7061 ORIGINAL



IN THE  
SUPREME COURT OF THE UNITED STATES

FRANK DURAND TOMLIN — PETITIONER  
(Your Name)

vs.

TODD E. ISHEE — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. District Court for the Eastern District of N.C.  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

FRANK DURAND TOMLIN  
(Your Name)

1300 Western Boulevard  
(Address)

Raleigh, N.C. 27699  
(City, State, Zip Code)

(Phone Number)

### QUESTION(S) PRESENTED

DOES PRISON OFFICIALS ISSUANCE OF HYGIENE  
AND COSMETICS THAT DONT WORK TO PRISONERS  
CONSTITUTE DEPRIVATION OF A BASIC HUMAN  
NEED OBJECTIVELY SUFFICIENTLY SERIOUS  
ENOUGH TO BE GROUNDS FOR A CLAIM OF  
PRISON CONDITIONS VIOLATIVE OF THE  
EIGHTH AMENDMENT

## 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:

## RELATED CASES

FRANK DURAND TOMLIN V. TODD E. ISHEE,  
NO. 5:20-CT-3109-BO, U.S. District Court for  
the Eastern District of North Carolina

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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 \_\_\_\_\_ 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☐ is unpublished.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 \_\_\_\_\_ 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☐ is unpublished.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☐ is unpublished.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 \_\_\_\_\_.

☐ 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: \_\_\_\_\_, 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**



## STATEMENT OF THE CASE

1. At all times relevant to this case Todd I Shee was Director of North Carolina Prisons. He is legally responsible for the operations of North Carolina prisons and for the welfare of all North Carolina prisoners.
2. I Shee has the responsibility to see to it that prison officials provide effective hygiene and cosmetics to North Carolina prisoners.
3. Per prison policy I, a control status prisoner, am not allowed to buy or receive hygiene or cosmetics from canteen or outside vendor. Prison officials provide hygiene and cosmetics to control status prisoners.
4. In October 2019, Maury C.I. officials transported me to the High Security Maximum Control (HCON) Unit at Polk Correctional Institution. HCON officials provided control status hygiene and cosmetics kit to me. This kit includes: 3.25 oz AmeriFresh stick of deodorant, 4 oz AmeriFresh Total Body Shampoo 3 in 1 Soap, Shampoo, Shave Gel, 4 oz Aloe Vera Hand and body moisturizer, 3 oz Freshmint toothpaste, Comb, toothbrush, once a month prison officials issues kit to me.
5. The hygiene and cosmetics don't work. They are not enough in quality, size, or kind to meet my hygiene and cosmetics needs. My mouth often has bad taste and odor. No Floss to floss with. My head is drier out. No grease to moisturize scalp or hair. The moisturizer dries out skin. My skin is drier out. No Q-Tips to clean out ears. Ears are waxy. Deodorant doesn't deodorize. I stink.
6. Essentially prison officials are buying hygiene and cosmetics that don't work... because it is cheap, and providing them to us just so they can say they're providing hygiene and cosmetics to us.
7. Because of all of the above, I am suffering psychological damage from having dignity that comes from being hygienic and cosmetic stripped from me.
8. I submitted grievance on issue. Prison officials rubber stamped their denial of hygiene and cosmetics to me.
9. In 2020, I submitted a section 1983 lawsuit ~~with~~ No. 5:20-CT-3109-BO ~~in~~ The United States District Court for the Eastern District of North Carolina Western Division.
9. July 27, 2020 Judge Terrence Boyle, chief U.S. district judge dismissed hygiene and cosmetics claims besides bloody razor issue.
10. I appealed dismissal to the 4th circuit court of appeals.
11. Fourth circuit court of appeals for the U.S. dismissed my appeal claiming that the ~~appeal~~ order I wish to appeal is not final.

## REASONS FOR GRANTING THE PETITION

The Eighth Amendment promises humane conditions in prison. This includes effective hygiene and cosmetics. Prison is not allowing me access to or providing effective hygiene and cosmetics to me. I am unhygienic and uncoshmetic. The District Court dismissed the hygiene and cosmetics with issue. I exhausted claim in district court. The appeal court for the 9th circuit refused to hear case claiming ~~that~~ that issue is still before district court. Again. The issues in order that I seek to appeal was dismissed. Prison system is wronging me. All courts below the U.S. Supreme Court has wronged me by not ~~allowing~~ allowing me a trial in issue. They've dismissed good claim.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Francis Duane Toner

Date: January 25 2021  
~~September 15, 2018~~