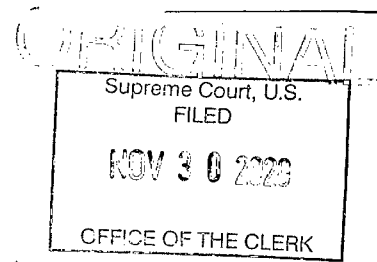


Case No. 20-7092



In The Supreme Court Of The United States

Marlon L. Watford

Petitioner

VS.

Rob Jeffreys, et al.

and

Randy Pfister, et al.

On Petition For A Writ Of Certiorari To

United States Court Of Appeals
For The Seventh Circuit

Petition For Writ Of Certiorari

Marlon L. Watford #B-15678
Menard Correctional Ctr.
P.O. Box 1000
Menard, IL 62259

Question Presented

The federal law of the McElroy holding mandates that a policy, rule, or regulation must not be inconsistent with the law under which it was drafted: Is the Eighth Amendment violated when prison officials draft a "financially oppressive" legal photocopy fee administrative policy—— inconsistent with the law under which it was drafted—— in violation of the federal law of the McElroy holding that subsequently leads to the infliction of unnecessary pain and injury???

List Of Parties

All parties appear in the caption of the case on the cover page.*

Sarah Wooley

Misty New

Steven Richards

Kimberly Butler

Richard Harrington

John Baldwin

Rob Jeffreys

*Footnote: None of the parties were served in the lower court in respect to Respondent Pfister.

Table Of Contents

Table Of Authorities	i-ii
Opinions Below	1
Jurisdiction	2
Constitutional And Statutory Provisions Involved	3
Statement Of The Case	4-9
Reasons For Granting The Petition	10-27
Conclusion	28

Index To Appendices

Appendix A: U.S. Court Of Appeals July 1,
2020 Order; Case No. 19-
3221

Appendix B: U.S. District Court For The
Northern District Of Illinois
July 19, 2019 Order

Appendix C: U.S. Court Of Appeals August
28, 2020 Petition For Rehear-
ing Order; Case No. 19-3221

Appendix D: U.S. Court Of Appeals Novem-
ber 5, 2020 Order; Case No.
18-3736

Appendix E: U.S. District Court For The
Southern District Of Illinois
July 23, 2018 Order

Appendix F: Respondents 2013 Photo-
copy Fee Policy

Appendix G: Petitioner's Amended Complaint
Case No. 15-CV-0567; Filed
In Southern District

Appendix H: Deposition Of Marlon L.
Watford February 13, 2018

Appendix I: U.S. Court Of Appeals
April 21, 2020 Motion To
Consolidate Appeals Order;
Case No. 19-3221

Table Of Authorities

U.S. Supreme Court Cases

Cafeteria & Restaurant Workers v. McElroy, 81 S.Ct. 1743 ————— 11, 13, 20

Celotex Corp. v. Catrett, 106 S.Ct. 2548 ————— 15

Cruz v. Beato, 405 U.S. 319 ————— 18

U.S. Court Of Appeals Cases

Campbell v. Miller, 787 F.2d 217 (7th Cir. 1986) — 25

Collins v. Kibort, 143 F.3d 331 (7th Cir. 1998) — 16, 17

Reynolds v. Wagner, 128 F.3d 166 (3rd Cir. 1997) — 21

Illinois State Cases

Cerbertowicz v. Baldwin, 86 N.E.3d 374 — 12
(i)

Hadley v. Illinois Dept. of Corrections, 864 N.E.

2d 162 ————— 12, 13

Opinions Below

The opinion of the United States Court of Appeals For The Seventh Circuit appears at Appendix A to this petition and is unpublished. The opinion of the United States District Court For The Northern District Of Illinois appears at Appendix B to this petition and is unpublished.

* * *

The opinion of the United States Court of Appeals For The Seventh Circuit appears at Appendix D to this petition and is unpublished. The opinion of the United States District Court For The Southern District Of Illinois appears at Appendix E to this petition and is unpublished.

Jurisdiction

The date on which the United States Court of Appeals For The Seventh Circuit decided the Petitioner's case ~~was~~ on July 1, 2020. A timely petition for rehearing was filed and denied by the same court on August 28, 2020. A copy of the order denying rehearing appears at Appendix C.

Also, the date on which the United States Court of Appeals For The Seventh Circuit decided the Petitioner's case was on November 5, 2020. No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

Constitutional And Statutory Provisions Involved

The Eighth Amendment of the U.S. Constitution holds that: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

The Fourteenth Amendment of the U.S. Constitution holds in relevant part that: " . . . No State shall . . . deprive any person of life, liberty, or property, without due process of law. . . ."

The First Amendment of the U.S. Constitution holds in relevant part that: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."

Statement Of The Case

On March 28, 2016 the Petitioner filed an amended 1983 Complaint in the Southern District of Illinois alleging that his Eighth Amendment right was violated when Menard prison officials on September 11, 2013 drafted a legal photocopy fee administrative policy that increased the legal photocopy fee from five cents to ten cents (see Appendix F), causing him the physical injury of re-developed H. Pylori, chronic stomach inflammation, I.B.S., re-aggravation of his H. Pylori scar tissue, and mental and emotional distress (see Appendix G (at P. 3-6)). On August 11, 2017 the District Court found that the Petitioner stated a valid Eighth Amendment claim and let his complaint pass 28 U.S.C. § 1915 A screening (see

Case No. 15-CV-0567; Doc. 50 (at P. 5)). On February 13, 2018 the Petitioner testified in his deposition that the increase in photocopy fee sent him into financial ruin and caused his I.B.S. condition, stomach inflammation, and H. Pylori scar tissue to be aggravated (see Appendix H (at P. 79-80)). On July 23, 2018 the District Court granted the Respondents' motion for summary judgment on the merits on the ground that the increase in the copy costs has nothing to do with the Eighth Amendment and there's nothing that indicates that the Petitioner was being deprived minimal civilized measure of life's necessities and no indication of harm, and on the ground of qualified immunity (see Appendix E (at P. 4-5)).

On January 2, 2020 the Petitioner

filed his opening brief in the Court of Appeals for the Seventh Circuit arguing that the McElroy holding was violated and as a result the Eighth Amendment and his injuries created a genuine issue of material fact, and that the McElroy holding precluded a grant of qualified immunity (see Case No. 18-3736; Doc. 32).

The Court of Appeals affirmed the grant of summary judgment on November 5, 2020 on the ground that the federal constitution is not offended simply because a statute has been violated (see Appendix D (at P. 3)). Said court also allotted the Petitioner two strikes at one time (see *Id.* (at P. 4)).

* * *

On June 10, 2019 the Petitioner filed a pro se 1983 complaint in the Northern District of Illinois
(5)

alleging that his First, Eighth, and Fourteenth Amendment rights were violated when Stateville prison officials on September 1, 2017 increased the legal photocopy fee from zero (0) cents to ten (10) cents, causing him aggravation of his H. Pylori scar tissue, stomach inflammation, I.B.S. condition, and mental and emotional distress; and prevented him from performing six (6) acts of worship (see Doc. 1 (at P. 10)) (N. Dist. Ill. Case No. 19-CV-3868). Further, the Petitioner specifically claimed that the federal law of the McElroy holding was violated (see Id. (at P. 8-10)).

On July 19, 2019 the District Court for the Northern District of Illinois dismissed the complaint, inter alia, for failure to state a claim on the ground that the U.S. Constitution is not violated

from noncompliance with state law and on the (first impression procedural) ground of the Petitioner is making an "end-run" around his *Watford v. Jeffreys* case pertaining to the photocopy fee increase and allotted him his third strike (see Appendix B (at P. 3-4)).

On April 21, 2020 the Petitioner filed his opening brief and a Motion To Consolidate Appeals in the Seventh Circuit, arguing that his complaint stated a claim because his Southern District case dealt with the photocopy fee being increased from five cents to ten cents; whereas, his case in the Northern District dealt with the fee being increased from zero cent to ten cents, and particularly addressed the violating of the federal law policy drafting mandates established by the

McElroy holding (see Case No. 19-3221; 28 U.S.C. § 1746). On April 21, 2020 the Court of Appeals denied the Motion To Consolidate Appeals (see Appendix I).

On July 1, 2020 the Court of Appeals affirmed the dismissal of the Petitioner's complaint in the Northern District of Illinois for failure to state a claim on the ground that the violation of the state administrative code is immaterial to the question of whether the federal constitution has been violated. And that the ten cent photocopy fee policy does not substantially burden the practice of his religion nor does he have a Fourteenth Amendment legitimate property interest right based off 20 Ill. Admin. Code 430.40(a) (see Appendix A (at P. 3)).

Reasons For Granting The Petition

It is the Petitioner's position that the Court of Appeals For The Seventh Circuit abused its discretion when it failed to discharge its affirmative duty to look to the federal law in analyzing whether the Petitioner's Eighth Amendment right had been violated when prison officials drafted a legal photocopy administrative policy on September 11, 2013 in contravention of the federal law of the Mc Elroy holding—— as a part of said court reviewing the correctness of the Southern District of Illinois, District Court grant of summary judgment to the Respondents.

The federal law mandates that when

federal or state public officials draft a policy, rule, or regulation that they do so in a manner not inconsistent with the law under which it was drafted. See Cafeteria & Restaurant Workers v. McElroy, 81 S. Ct. 1743 (at 1746) (in administering his Department, the Secretary has been given statutory power to "prescribe regulations not inconsistent with law," for the government of his department, and the custody, use, and preservation of the property appertaining to it.).

On September 11, 2013 under 20 Ill. Admin. Code 430.40(a) the Respondents "drafted" a legal photocopy fee administrative policy changing the Petitioner ten (10) cents (\$) per page for the reproduction of legal pleadings, etc (see

Appendix F and G (at P. 3-6)). 20 Ill. Admin. Code 430.40(a) is a state law that requires that the cost for reproduction will be. . . based on actual cost per copy and charged to the committed person (see Appendix F). It "actually" only cost the Respondents one (1) cent (\$) to reproduce a legal photocopy. See Cebertowicz v. Baldwin, 86 N.E. 3d 374 (at 376).

Without a doubt or contradiction when the Respondents "drafted" their September 11, 2013 ten cents legal photocopy fee administrative policy under 20 Ill. Admin. Code 430.40(a) they had did so in a manner that was very inconsistent with that state law. Which renders the 2013 ten cents policy invalid, inter alia. See e.g., Hadley v. Illi-

nois Dept. of Corrections, 864 N.E.2d 162
(at 173) (Where an administrative rule conflicts
with the statute under which it was adopted, the
rule is invalid.).

Moreover, when they did so they also violated the federal law of the Mc Elroy holding due to the inconsistency of the 2013 policy with § 430.40(a). See Cafeteria & Restaurant Workers v. Mc Elroy, 81 S.Ct. 1743 (at 1746).

Needless to say, when the federal law is violated undoubtedly the U.S. Constitution is violated as well. The Court of Appeals For The Seventh Circuit has erroneously concluded that the Constitution is not offended when the federal law is violated. Certiorari must be granted to answer the question
(13)

of: did the Eighth Amendment of the U.S. Constitution
violate when prison officials draft an administrative
policy that transgress the federal law of the McEl-
roy holding? This is so because the 2013 ten
cents photocopy fee policy that the Respondents
drafted caused the Petitioner unnecessary gastroin-
testinal pain, etc.

And, answering this question is of national
importance because there are millions of state and federal
prisoners, etc., who will be continually subject to prison
officials drafting administrative policies on a regular basis
that can lead to physical harm/pain or deprivations.

In furtherance, in the Petitioner's opening
brief he argued that the District Court abused its
discretion in granting summary judgment because

the Respondents never met their initial burden of showing that no genuine issue of material fact existed and that the Petitioner couldn't prove injury at trial (see Case No. 18-3736; Doc. 32). On July 13, 2020 the Respondents filed their response brief and argued that the District Court's grant of summary judgment was correct because the Petitioner had no evidence to prove his claim at trial. (see Case No. 18-3736; Doc. 46 (at P. 24)).

The burden on the moving party may be ~~be~~ discharged by "showing"—— that there is an absence of evidence to support the non-moving party's case. See Celo* ex Corp. v. Catrett, 106 S. Ct. 2548 (at 2554).

It was erroneous for the Court of Appeals to affirm the District Court's grant of summary judgment on the merits to the Respondents—because the drafting policy conduct of the Respondents violated the federal law of the Mc. Elroy holding and consequently the Constitution (viz 8th) was violated.

And, when adding in the fact that the Petitioner was injured / suffered pain from the September 11, 2013 policy makes summary judgment affirmance inappropriate due to the fact said violation of the federal ^{law} and subsequent injuries created a genuine issue of material fact in dispute for a jury to decide because the Petitioner could testify about his injuries at trial. See Collins v. Kibort, 143 F.3d 331 (at 337) (7th Cir. 1998) (Amit-

ness does not need to be a doctor to discuss his or her health in general terms. See Fed. R. Evid. 601, 701, 702). That is to say, the Petitioner could testify at a trial about his deposition injury testimony (see Appendix H (at P. 79-80)).

* * *

(Case No. 19-3221)

In regards to the Petitioner's Northern District financial oppression ten cent photocopy fee Complaint not stating a claim, the Court of Appeals For The Seventh Circuit abused its discretion for affirming the dismissal of said complaint for failure to state a claim.

A complaint should not be dismissed
(17)

for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. See Cruz v. Beto, 405 U.S. 319 (at 322).

As an initial matter, it is critical to denote that on April 20, 2020 the Petitioner presented to the Court of Appeals a Motion To Consolidate Appeals in respect to Watford I (viz: 18-3736) and Watford II (viz: 19-3221) becoming one appeal case for the sake of judicial economy in light of the fact that the latter case was dismissed predicated off the first case.

However, on April 21, 2020 the Court of Appeals denied the Petitioner's consolidate request (see Appendix I); and, penalized him

with two strikes on the first case for bringing two appeals just because the second case got decided first (see Appendix D). That is to say, the Court of Appeals abused its discretion for stopping the Petitioner from making his two cases one and punishing him for his unsuccess in doing so.

Be that as it may, the Petitioner alleged in his complaint in paragraph 19 "that the federal law (viz: Mc Elroy holding) was violated on September 1 and 6, 2017 when prison officials "drafted" or wrote out a photocopy ten cents fee policy that was inconsistent with the law (viz: 430. 40(a)) under which it was drafted and caused the Petitioner physical injuries (see Case No. 19-CV-3868; Doc. 1 (at P. 8-9)).

The Court of Appeals abused its discretion for ruling that the Petitioner didn't state a claim under the First, Eighth, and Fourteenth Amendment because all his claims turn on a violation of state law (see Appendix A (at P. 3)). However, the Mc Elroy holding is a U. S. Supreme Court case that establishes the federal law that governs the conduct of federal and state public officials when they "draft" an administrative policy, rule, or regulation. See Cafeteria & Restaurant Workers v. McElroy, 81 S. Ct. 1743 (at 1746). Which means that when the federal law is violated then the U. S. Constitution is also violated.

When the Petitioner pled facts to that affect in his complaint made his Eighth Amendment claim and Fourteenth Amendment claim

plausible on its face because he set-forth that the federal law was violated. See Reynolds v. Wagner, 128 F.3d 166 (at 179) (3RD Cir. 1997) (inmates have a property interest in funds held in prison accounts. Thus, inmates are entitled to due process with respect to any deprivation of this money.).

The same is true when it comes to the facts pleaded concerning the Petitioner's First Amendment claim. Particularly, he pled that the unlawfully "drafted" ten cents photocopy fee policy on September 1 and 6, 2017 prevented him from performing six (6) acts of worship/religious practices and caused him physical injuries (see Case No. 19-CV-3868; Doc. 1 (at P. 8-9)). Thus, when

the Court of Appeals ruled that the Petitioner didn't state a claim because the unlawfully "drafted" policy didn't make his religious practice effectively impracticable was patently erroneous and undoubtedly an abuse of discretion because said court never discounted that those six (6) acts of worship/religious practices could still be performed——notwithstanding the fact that his complaint must be viewed in a light most favorable to him (see Appendix A).

Furthermore, the Petitioner's Northern District case was dismissed because it was purportedly attempting to make "an end-run" around the *Watford v. Jeffreys* case from the Southern District (see Appendix B (at P. 4)). The Southern District case was found to have stated an Eighth Amendment claim (see *Id.* (at P. 4) and (22))

Case No. 15-CV-0567; Doc. 50 (at P.5)).

Therefore, axiomatically the Northern District case (viz: Watford v. Pfister) Watford II had to state an Eighth Amendment claim too because the ground of denial was predicated off the Watford II case "re-packaging" or cloning the Watford v. Jeffreys case.

However, the two cases operative facts are different, distinct, and remote in time and place from each other. For example, in Watford I (viz: Watford v. Jeffreys) the photocopy fee policy went into effect in September of 2013 (see Appendix F); whereas, in Watford II (viz: Watford v. Pfister) the photocopy fee policy went into effect in September of 2017 (see Case No. 19-CV-3868; Doc. 1).

In Watford I the place of the violation was Menard in the Southern District; whereas, in Watford II the place of the violation was Stateville in the Northern District (see Appendix B). Finally, in Watford I the fee went from five cents to ten cents (see Appendix F); whereas, in Watford II the fee went from zero (0) cent to ten cents (see Case No. 19-CV-3868; Doc. 1).

Thus, the two cases are respectively different and the Court of Appeals erroneously found them to be the same and that Watford II failed to state a claim because the Constitution is not offended when prison officials draft a policy that does not comport with state law while simultaneously violating the federal law; whereas, Watford

I was found to have stated a claim for those very same reasons. Which is very conflicting to say the least.

And, it is critical to denote, that it is beyond dispute that the Petitioner has a Fourteenth Amendment due process of law "property interest right" in his funds. See Campbell v. Miller, 787 F.2d 217 (at 222) (7th Cir. 1986) (It is beyond dispute that Campbell has a property interest in the funds on deposit in his prison account.).

So when prison officials (e.g., Respondents) are taking nine (9) cents of every ten (10) cents that the Petitioner spends on legal photocopies unlawfully through their financially oppressive legal photocopy fee administrative policy that contravenes the federal law of the McElroy holding the Petitioner

(25)

without a doubt has stated a claim in that respect; and, the Seventh Circuit has totally abused its discretion when finding otherwise.

In summation, the Court of Appeals' ruling that the Petitioner didn't state a claim because the U.S. Constitution is not offended if the federal law is violated is clearly erroneous because the federal law is predicated and developed therefrom. That is to say, developed from the U.S. Constitution. Thus, if the federal law is violated then by rational deduction the U.S. Constitution is likewise violated.

The federal law of the Mc Elroy holding dealt with a Fifth Amendment due process of law violation. Today, the Petitioner respectfully request this Supreme Court to extend the federal

(26)

law of the Mc Elroy holding to cover the First, Eighth, and Fourteenth Amendment——in respect to federal and state public officials must write/draft administrative policies, rules, and regulations in a manner not inconsistent with the law under which they are drafted.

In so doing, the Nation will be rightly guided concerning whether or not a complaint states a claim and that summary judgment on the merits resolutions are rightly decided——because there are millions of federal and state prisoners, etc., who rely heavily on the protections of the Mc Elroy holding to safe-guard them from the oppressive administrative policies that prison officials have the tendency to draft in violation of Mc Elroy.
(27)

Conclusion

THEREFORE, the Petitioner, Marlon L. Watford, pro se, respectfully request the above entitled Court to grant him the following relief: 1) grant his petition; 2) vacate the Court of Appeals order on case 18-3736 with instructions; and 3) vacate the Court of Appeals order on case 19-3221 with instructions.

Marlon L. Watford

Marlon L. Watford #R-15678
Menard Correctional Ctr.
P.O. Box 1000 (N. Uppers 6-08)
Menard, IL 62259

Date: November 20,
2020. Signed under
28 U.S.C. § 1746(18)
U.S.C. § 1621.

(28)