

20No. 7425

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Cornelius Kenyatta Craig-Petitioner,

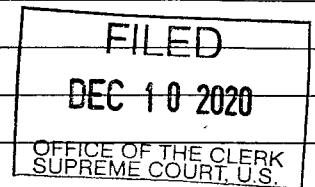
vs.

Andre Matevosian, Warden, Respondent.

On Petition For A Writ Of Certiorari To

United States Court Of Appeals

For The Sixth Circuit



Petition For A Writ Of Certiorari

Cornelius K. Craig, prose
Register No. 07425-003
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QUESTIONS PRESENTED

- 1.) Whether the United States Court of Appeals for the Sixth Circuit pronouncement on the 'some evidence' standard has departed from accepted and usual course of judicial proceedings nationwide?
- 2.) Whether the Federal Bureau of Prisons (BOP) created a liberty interest for Petitioner requiring due process protections under the Fifth and Fourteenth Amendment?

LIST OF PARTIES

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

RELATED CASES

Craig v. Kizziah, No. 6:19-cv-141-REW, U.S. District Court for the Eastern District of Kentucky. Judgment entered Dec. 27, 2019. Appendix B.

Craig v. Matevosian, No. 20-5155, U.S. Court of Appeals for the Sixth Circuit. Judgment entered July 17, 2020. Appendix A.

Craig v. Matevosian, No. 20-5155, U.S. Court of Appeals for the Sixth Circuit. Judgment entered Sept. 11, 2020, rehearing request. Appendix C.

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Appendix A: Decision of the United States Court of Appeals

Appendix B: Decision of the United States District Court

Appendix C: Decision of the U.S. Appeals Court Denying Rehearing

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Burns v. Pa. Dept. of Corr.</u> , 642 F.3d 163 (3 rd Cir. 2011)	10.
<u>Edwards v. Balisok</u> , 520 U.S. 641 (1997)	9.
<u>Howard v. U.S. Bureau of Prisons</u> , 487 F.3d 808 (10 th Cir. 2007)	10.
<u>Lenneer v. Wilson</u> , 937 F.3d 257 (4 th Cir. 2019)	10.
<u>Meis v. Gunter</u> , 906 F.2d 364 (8 th Cir. 1990)	10.
<u>Piggie v. Cotton</u> , 344 F.3d 674 (7 th Cir. 2003)	11.
<u>Ponte v. Real</u> , 471 U.S. 491 (1985)	8.
<u>Smith v. Mass. Dept. of Corr.</u> , 936 F.2d 1390 (1 st Cir. 1991)	11.
<u>Superintendent v. Hill</u> , 472 U.S. 445 (1985)	7.
<u>Whitmore v. Parker</u> , 525 Fed. App'x 865 (10 th Cir. 2013)	10.
<u>Wolff v. McDonnell</u> , 418 U.S. 539 (1974)	9.

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

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is reported at Craig v. Kizziah, 2019 U.S. Dist. LEXIS 221524 (E.D. KY. Dec. 2019).

JURISDICTION

The United States court of appeals for the Sixth Circuit decided my case on July 17, 2020. A timely petition for rehearing was denied by the Sixth Circuit court of appeals on September 11, 2020, and a copy of the Order denying rehearing appears at Appendix C.

Thus, jurisdiction of this Court is invoked under 28 U.S.C. section 1254(1)

CONSTITUTIONAL PROVISION INVOLVED

Fifth Amendment - Due Process Clause

STATEMENT OF THE CASE

Petitioner is a federal inmate serving a nearly 80-year sentence from a 1998 convictions for use of a firearm during or in relation to a crime of violence, and conspiracy to use a firearm during or in relation to a crime of violence. In November, 2017, Petitioner arrived and was housed at the Bureau of Prisons-United States Penitentiary Big Sandy in Kentucky. On December 8, 2017, he was placed in Special Housing Unit at U.S.P. Big Sandy following the investigation of a altercation between inmates. In January, 2018, U.S.P. Big Sandy staff issued Petitioner an Incident Report determining that through its review of video he had committed an homicide and assault of other inmates. The Bureau of Prisons (BOP) then reported and referred its reports of the incident to the United States Attorney's Office for the Eastern District of Kentucky for prosecution. Then on September 17, 2018, the Attorney's office released the reports back to the BOP, absent prosecution for processing in the BOP. On October 4, 2018, the reports were referred to a Disciplinary Hearing Officer(DHO)

The DHO subsequently ordered that the reports be placed in pending investigation. On October 18, 2018, staff upon order by the DHO rewrote the incident reports and delivered it to Petitioner on October 23, 2018, whereupon Petitioner requested staff representation due to the complexity of the case. Finally on November 6, 2018, the DHO conducted its hearing where Petitioner requested a review of the video by the DHO and staff representative. The DHO denied Petitioner and staff representative request and ultimately determined he committed both offenses. The DHO then sanctioned Petitioner to, 54-days of disallowed Good-Credit Time (GCT) earned, 864-days of forfeited non-vested GCT, 270-days disciplinary segregation, among other prohibited privileges, and \$500.00 monetary fine for the alleged homicide of another inmate. The DHO also imposed sanctions for the alleged assault of another inmate with, 41-days of disallowed GCT earned, among other prohibited privileges.

Petitioner then appealed the DHO's decision first to the Regional Office and next to the Central Office of the BOP. Both

Offices failed to consider Petitioner's claims for review of video, inter alia, to the application of its policies by absences of response.

Petitioner then sought relief to the district court for the Eastern District of Kentucky. The district court denied his request for relief in a Order dated Dec. 27, 2019. He then timely appealed to the Sixth Circuit court of appeals, and the appeals court denied his request for relief in a Order dated July 17, 2020. Still, he petitioned for a panel and en banc rehearing to the Sixth Circuit court of appeals, but was denied in a Order dated Sept. 11, 2020.

He now seeks certiorari review to this Court.

REASONS FOR GRANTING THE PETITION

A. The Sixth Circuit reasoning conflicts with other United States court of appeals on the same important matter and with relevant decisions of the Supreme Court

As a principle matter, this case rests largely on the Sixth Circuit's misapplication of the 'some evidence' standard in Superintendent v. Hill, 472 U.S. 445 (1985), whereas its application stands in stark contrast of other court of appeals and this Court. So, this Court's intervention is necessary to secure uniformity among the lower courts.

To be precise, the Sixth Circuit reasoning categorically rejects any notion that after some evidence is alleged a defendant's claim of denial to present documentary evidence (in this case video review) could never amount to a due process violation, regardless of how arbitrary the denial is. See Appendix A, pg. 2 ("Even if the video might have been helpful to Craig, the hearing officer's decision was supported by some evidence").

To compound its erroneous holding the court went on to find

that "The failure to review the video also did not deny Craig due process." Appendix A, pg. 2.

These decisions by the appeals court are inconsistent with the usual course of judicial proceedings nationwide and conflict with relevant decisions of this Court.

First, this Court has long noted that a defendant can require a DHO to review the video or explain why he could not review the video. See Ponte v. Real, 471 U.S. 491, 497 (1985) ("prison officials may be required to explain... the reason why witnesses were not allowed to testify... in the disciplinary proceeding, or by presenting testimony in court if the deprivation of a liberty is challenged because of that claimed defect at the hearing"). Noting that the Court drew no distinction between the standard prison officials may use to refuse requests by an inmate to introduce documentary evidence and that applying to request to present witness testimony. Id. Ponte at 495.

For the record, Petitioner had in fact requested of the DHO at his hearing in Nov., 2018, to review the video for exculpatory purposes since the BOP staff claimed its evidence was based on

the video. Yet, the DHO refused Petitioners request and the BOP has refused to explain why video is unnecessary.

In short, the failure to review the video after request or explain later why its unnecessary violates the Federal due process requirements under the Fifth Amendment. Wherefore, the Sixth Circuit decision conflicts with relevant decisions already decided by this Court, *id. Ponte* at 497, and the Court should intervene.

Next, turning to the Sixth Circuit's misapplication of *Hill's* some evidence standard. In *Hill* the Court then address only evidentiary requirements of due process. *Id. Hill* at 455-56. But it did not seek to declare that exculpatory evidence can never amount to a due process violation when some evidence is alleged. See *Wolff v. McDonnell*, 418 U.S. 539, 563 (1974) (denying a prisoner access to potentially exculpatory evidence can implicate his procedural due process rights). The Court again later in *Edwards v. Balisok*, 520 U.S. 641 (1997) expressly rejected the assumption that *Hill's* some evidence standard may nullify defendants "due process requirements enunciated in *Wolff*."

Id. at 648.

Similarly, other court of appeals have rejected the Sixth Circuit pronouncement of the same evidence standard in regards to defendants right to present documentary evidence under Wolff.

In fact, as recent as last year the Fourth Circuit held in Lenneer v. Wilson, 937 F.3d 257, 262 (4th Cir. 2019) (prison video surveillance evidence constitutes documentary evidence subject to procedural due process protections required in Wolff). Other courts also, see Burns v. Pa. Dept of Corr., 642 F.3d 163, 173 (3rd Cir. 2011) (considering an inmates request for videotape to be a request for documentary evidence); Howard v. U.S. Bureau of Prisons, 487 F.3d 808, 815 (10th Cir. 2007) (The Bureau's refusal to produce and review a videotape... violated his due process right to present documentary evidence in his own defense); Whitmore v. Parker, 525 Fed. App'x 865, 866 (10th Cir. 2013) (Gorsuch, J.) (It is surely true... that denying a prisoner access to potentially exculpatory evidence can implicate his procedural due process rights) (citing Wolff, 418 U.S. at 563); Meis v. Gunter,

906 F.2d 364, 367 (8th Cir. 1990) (Inmates have a right to reasonable access to information necessary to put on a defense); Smith v. Mass. Dept. of Corr., 936 F.2d 1390, 1401 (1st Cir. 1991) (if an inmate has a circumscribed right to present documentary evidence, logic dictates that he must also have some possible means for obtaining it); also Piggie v. Cotton, 344 F.3d 674, 679 (7th Cir. 2003).

By contrast, the Sixth Circuit application of a defendant's right to put on proof under Wolff remains categorically nullified by Hill's some evidence standard. Surely this was not the Court's reasoning.

As such, this Court should intervene, because the Sixth Circuit has entered a decision conflicted with this Court relevant decisions, and it has departed from the accepted and usual course of judicial proceedings nationwide. Additionally, defendants such as Petitioner may be required by the BOP to suffer an unusual and substantial punishment without receiving his right to due process of law, where he is currently housed at the Super Max in Florence indefinitely.

CONCLUSION

The petition for a writ of certiorari should be granted because the Sixth Circuit remains an outlier on denying defendants right to present documentary evidence when some evidence is alleged. Petitioner also request to be appointed an attorney in this matter by the Court, as this case presents a complex of issues, and he remains on 'shelter-in-place' due to COVID-19 without adequate to no access to the institutional law-library.

Respectfully submitted,

Cornelius H. Craig.

Date: 12-9-20