No. 20-7639

IN THE

SUPREME COURT OF THE UNITED STATES

JOSEPH A. HARRIS

PETITIONER

v.

MICHAEL PACHECO, WARDEN

RESPONDENT

On Petition For A Writ Of Certiorari To

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joseph A. Harris #19961
(YOUR NAME)

W.M.C.I., 7076 Rd. 55F
(ADDRESS)

Torrington, Wyo. 82240
(CITY, STATE, ZIP CODE)

N/A
(PHONE NUMBER)

QUESTION(S) PRESENTED

1.) Is the Department of Corrections above the Judicial Branch in such a way that it may increase a judicially given Maximum sentence without judicial order?

2.) Can the Department of Corrections uphold a "lawful violation" disciplinary on an inmate when a judge says the inmate did not commit the crime?

3.) Has the Department of Corrections violated the inmate's fundamental liberties without the required due process of law?

4.) Was this violation done for purpose of religious discrimination?

5.) Were the Courts decisions conflicted with previous holdings of their own Court, other appellate Courts, and the U.S. Supreme Court's mandate?

6.) Is the Department of Corrections imposing an illegal restraint on Mr. Harris?

LIST OF PARTIES

[X] 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

JOSEPH HARRIS V. EDDIE WILSON, NO: Cv-2018-26-DC; Wyoming District Court of the Eighth District. Judgment entered Jun 22, 2018.

JOSEPH HARRIS V. MICHAEL PACHECO, NO: Cv-2019-0095; Wyoming District Court of the Second District. Judgment entered July 11 2019.

JOSEPH HARRIS V. MICHAEL PACHECO, NO: S-19-0175, Wyoming Supreme Court. Judgment entered Aug 27, 2019.

JOSEPH HARRIS V. MICHAEL PACHECO, NO: 19-Cv-00193-F, U.S. District Court, District of Wyoming. Judgment entered Feb 7, 2020.

JOSEPH HARRIS V. MICHAEL PACHECO, NO: 20-8011, Tenth Circuit Court of Appeals. Judgment entered Oct 2, 2020.

JOSEPH HARRIS V. MICHAEL PACHECO, NO: 20-8011, Tenth Circuit Court of Appeals Denial of rehearing En Banc. Judgment entered Oct 26, 2020.

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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 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 C 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 OCTOBER 2, 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: OCTOBER 26, 2020 , and a copy of the order denying rehearing appears at Appendix A .

[ ] 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

Fifth Amendment of the United States (Amendment V)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Eighth Amendment of the United States (Amendment VIII)

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Fourteenth Amendment of the United States (Amendment XIV)

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Wyo. Const. Art. 1, § 2

[Equality of all] "In their inherent right to life, liberty and the pursuit of happiness, all members of the human race are equal."

Wyo. Const. Art. 1, § 6

[Due process of law] "No person shall be deprived of life, liberty or property without due process of law."

STATEMENT OF THE CASE

Mr. Harris, an inmate housed by the Wyoming Department of Corrections (WDOC), presents abnormal circumstances that asks for the United States Supreme Court to take interest on a matter and assert its discretionary supervisory powers on a subject it has previously upheld as one of National importance, and that is for the violation of one's fundamental liberties without due process of law.

This issue arises from a 2015 out-of-norm disciplinary that Mr. Harris received, administered by the Cheyenne Transition Center (CTC), *via*, a WDOC major disciplinary, for the alleged ("lawful violation") of 'escape' wherein there were **excessive** procedural defects which included the denial of: the right to "Notice" of the hearing; the right to an impartial fact finder; allowance of council or any other form of assistance at the hearing; prevention from arbitrary action of Government (in a few forms), and the removal of Mr. Harris's presentence confinement time that was granted by judiciaries but removed by the department of corrections. In every aspect this inmate was wholly deprived the required due process given by the United States Supreme Court under *Wolff v.*

McDonnell, 418 U.S. 539, 41 L Ed 2d 935, 94 S.CT 2963 (1974).

This matter will be presented chronographically as it occurred, and not in the order of importance.

Mr. Harris was given an internal disciplinary charge for an alleged escape. In the beginning before the disciplinary hearing, the institution had failed to give Mr. Harris "notice" of the hearing 24-hours before hand. The inmate does aver that he did eventually receive a notice, but the "notice" that he remembers being given was about a week (approx. 7-days) after the fact of the hearing and had absolutely no signatures to verify the sender, a copy of this unsigned "notice" was given to the Courts throughout litigation as evidence by the Wyoming Attorney General's Office (henceforth AG's).

Even if Mr. Harris would have actually received a notice of his hearing, it is presumed that it still would not have reduced the severity of negligence that occurred involving the rest of his complaint because even though an inmate's rights are "defined more narrowly" than a free persons, a prisoner should still not be wholly stripped from certain procedural due process which affects their fundamental liberties.

The Department of Corrections should have been made to uphold the mandated language of their own policies and prevented from being arbitrary in their actions, the same values that the Supreme Court of the United States has made to be mandatory. Instead, the WDOC applies their policies and due process to inmates as being discretionary instead of being an obligation to inmate's rights. This present matter affects the entirety of Wyoming's prisoners' due process rights.

The aspect of "Notice" has by far been well established by both State and Federal Courts, see e.g. *In re Guardianship of MEO*, 2006 WY 87, ¶ 34 138 P.3d 1145, 1156 (Wyo. 2006) ("Notice and the opportunity to be heard '"are unquestionably incidental to affording due process of law."' *Barker Bros., Inc. v. Barker-Taylor*, 823 P.2d 1204, 1208 (Wyo. 1992)"); *Ela, v. AAB*, 2016 WY 98; 382 P.3d 45; 2016 Wyo. LEXIS 109, S-16-0090, (Decided Oct. 13, 2016), "The touchstones of due process are notice and the opportunity to be heard"; *see also Wolff v. McDonnell*, 418 U.S. 539, 558, 94 S. Ct. 2963, 2976; *Sandin v. Conner*, 515 U.S. 472, 132 L Ed 2d 418, 115 S. Ct 2293;*Vitek v. Jones*, 445 U.S. 480, 63 L Ed 2d 552, 100 S. Ct 1254, "Advance written notice of charges must be given to the

disciplinary action inmate, no less than 24 hours before his appearance".

The U.S. Supreme Court on this accord of "fair notice" has recently applied these long standing values as still being an integral requirement of due process, see *Gray v. Netherland*, 518 US 152, 135 L Ed 2d 457,116 S Ct 2074, (1996), "accused be granted a writ of habeas corpus on the ground that he had been denied due process, under the Federal Constitution's Fourteenth Amendment, because the prosecution had failed to provide fair notice"; *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 2020 U.S. LEXIS 3546, (July 8, 2020),"The object [of notice and comment], in short, is one of fair notice,"; *Georgia v. Public.Resource.Org, Inc.*,140 S. Ct. 1498,(April 27, 2020) "concerns of fair notice, often{2020 U.S. LEXIS 40} recognized by this Court's precedents as an important component of due process".(Katsas, J., concurring). Mr. Harris has been shown extreme prejudice and has not had any of this apply to him.

In the beginning before being given the disciplinary hearing, the administrator should have recused himself because of his non-impartiality with Mr. Harris's disciplinary. While at the CTC, Mr. Harris was being

harassed by this person and turned him in for harassment to administrators, and when the inmate complained to those higher authorities about that person, he was told that if he got anyone in any trouble because of the harassment he would be sent back to prison, which is one of the reasons that made that disciplinary administrator a non-impartial individual. Although he himself wasn't the issuer of the disciplinary, the administrator had direct involvement in the disciplinary, and he had part in the investigative aspect of it which included to also making him biased. While this violates *Wolff*, 418 U.S. 539, *supra*, WDOC Policy and Procedure (P&P) #3.102 (pg. 21 of 28)(IV)(H); says that "Disciplinary hearings of conduct violations will be conducted by an impartial hearing officer or board who has had no direct involvement with the alleged incident of misconduct. (ACA 4-4240) Direct involvement shall include but not be limited to the observation of the incident, submission of a report regarding the incident, or investigation of the incident. A written record will be made of the decision and the supporting reasons."

That person still went forward to arbitrate that hearing where Mr. Harris had asked the administrator for some assistance to help him in the matter because of its nature or

that he would be able to consult with Counsel because the disciplinary was also a violation of law. It was told to him that he was not going to receive neither assistance nor attorney help. This denial had directly conflicted again with WDOC P&P #3.102(pg. 20 of 28) (IV)(F)(2) which says in pertinent part "The inmate may consult with private counsel". Mr. Harris was also not told to remain silent as required by institutional rules which precluded him from lawful requisites of the same virtue, nor was Mr. Harris told that silence may not be used against him, and he was forced to testify against himself which it is also written in institutional policy, WDOC P&P #3.102(pg. 20 of 28)(F)(7) "If the violation involved possible criminal misconduct, the inmate shall be advised that he/she may remain silent. The violations shall be read and the inmate shall plead to the charge. Silence shall be considered as a plea of not guilty. The warning shall be documented in WDOC Form #341, *Disciplinary Hearing Record*." No such mandatory record written on a #341 form in this matter exists for Mr. Harris, and this was because of the administrator's partiality.

In the aspect of the denial of assistance and involuntary testimony, Mr. Harris assumes that had not only violated

policy but had also conflicted with the U.S. Supreme Court's decision of *Baxter v. Palmigiano*, 425 U.S. 308, 315,316, 47 L Ed 2d 810, 96 S Ct 1551(1976), "Relying on *Miranda v Arizona*, 384 U.S. 436, 16 L Ed 2d 694, 86 S Ct 1602, 10 Ohio Misc 9, 36 Ohio Ops 2d 237, 10 ALR3d 974 (1966), and *Mathis v United States*, 391 U.S. 1, 20 L Ed 2d 381, 88 S Ct 1503 (1968), both Courts of Appeals in these cases held that prison inmates are entitled to representation at prison disciplinary hearings where the charges involve conduct punishable as a crime under state law, not because of the services that counsel might render in connection with the disciplinary proceedings themselves, but because statements inmates might make at the hearings would perhaps be used in later state-court prosecutions for the same conduct...As the Court has often held, the Fifth Amendment "not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings." *Lefkowitz v Turley*, 414 U.S. 70, 77, 38 L Ed 2d

274, 94 S Ct 316 (1973)"; see also *Connelly*, 479 U.S. 157, *infra*.

While this was an assumed minor violation of institutional Policies and case law that assistance be given, *Miranda* warnings be given and forced self-incrimination, there are many more violations to this inmate's rights that occurred which are significantly more grievous.

After the disciplinary hearing during the appeals process, the CTC had also violated mandated institutional time requirements which it is said in the *Inmate Rulebook*, (page 53)(K)(1)(*Appeal Process*), and in *WDOC P&P 3.102* (pg. 25 of 28) (IV)(K)(1) both being identical dictation that the "Warden of the said facility **will** issue a decision on the appeal within thirty (30) calendar days of the receipt from the inmate". It took administrators approximately 83 days to respond to Mr. Harris's appeal, in which the hearing took place on April 30, 2015; Mr. Harris sent his WDOC Form #342 *Inmate Disciplinary Appeal Form* on May 4, 2015 and he did not receive a response until July 24, 2015. The envelopes with the actual signed responses were photocopied and presented to the Courts as evidence that showed the staff signatures validating the obvious time violation, yet the AG's Office has

"on paper" throughout litigation consistently denied any violations had occurred regarding institutional policies. The Wyoming AG's have betrothed themselves in an act tantamount to conspiracy for their knowledge of the illegal actions done by WDOC, but have done nothing to correct it and have been more concerned with trying to convince the courts that the petitioner had escaped, which should have been deemed res judicata, and they have **not even attempted** to address the illegal increase to Mr. Harris's sentence.

This inmate had been separately charged with an external charge for that "escape" previous to the disciplinary, which was distinct and separate, but the first Judicial District Court had dismissed the matter for the first time "without prejudice" because it was in the interest of justice.

After being found guilty of the disciplinary Mr. Harris had then been seen by the Wyoming Parole Board where they told him that they were going to parole him but couldn't at this hearing because the WDOC had him recharged for the escape, so he was told that if he beat the charge, he was going to be paroled. An "escape" disciplinary is a non-typical disciplinary where the board is the final administrative arbitrator of the disciplinary, because a disciplinary of

"escape" also prevents parole as well, and if they were going to parole him they would first have to dismiss that disciplinary or this would have intentionally violated legislative intent, to which dismissals had been done for other inmates before.

Mr. Harris was then eventually taken to the County for which he had the charge in February 2016, which was 12 months after the fact of Mr. Harris being charged, where he stayed for the next several months. The First Judicial District Court again said verbatim that what Mr. Harris did "was not escape", and that the state had violated his due process rights and fast and speedy rights, so that Judge dismissed the matter "with prejudice". It is assumed the court thought that any prudent jury would have come to the same decision because of the judge's conclusion of innocence and for the constitutional violations, which the U.S. Supreme Court should agree that dismissal is quintessentially a pre-trial acquittal. So, this brings to question whether or not the WDOC can uphold such a "lawful violation" disciplinary of "escape" over Mr. Harris in lieu of this adjudication. In this aspect WDOC's decision of upholding the "lawful violation" infraction assumptively conflicts with other Courts decisions

on the matter, *see e.g. Barrows v. Hogan*, 379 F. Supp. 314; 1974 U.S. Dist. LEXIS 7320, which says in pertinent part "In view of the judicial determination that this prisoner is not guilty of the offense charged, it is impermissible for the prison administration to determine otherwise and punish the prisoner...". The courts have refused to take this into any consideration, to which it is assumed should have been afforded to the petitioner.

After this second dismissal by the court, Mr. Harris was then returned to the custody of WDOC from the county jail and again had seen the parole board, with different members, where they told him that they were not going to uphold their predecessor's agreement with him, which forced Mr. Harris to file several appeals with the board. That appeals process took several months leading Mr. Harris into his 2017 hearing, where the parole board's final determination in the matter was to uphold the disciplinary, preventing the inmate from ever being parole eligible, yet they had paroled several others in his similar or identical situation, making their actions arbitrary and capricious.

The next occurrence was the main reason for filing with the Court(s), and that is for the disciplinary of escape the

WDOC also removed Mr. Harris's "pre-sentence confinement time", and had also increased his maximum sentence.

Not knowing what else to do after fully exhausting his administrative remedies, Mr. Harris had filed a State Habeas Corpus governed under Wyo. Stats. Ann. § 1-27-101 through § 1-27-134. He did so in February 2018 just a few months after seeing the Board of Parole, for what he felt was an illegal restraint on the facts that, 1) the parole board's actions were wholly arbitrary, 2) he was significantly deprived proper due process for his disciplinary hearing, *i.e.* the lack of notice, 3) unequal treatment by the WDOC and the Parole Board, 4) and the WDOC took his presentence confinement time as if it were institutionally given good time.

The court could have construed Mr. Harris's request as a motion for a correction of illegal sentence under 35(a) or any other form of relief that they deemed appropriate, but the court simply said that Mr. Harris "failed to state a claim". But if this matter of "notice" had previously been deemed as "unquestionably incidental to affording due process of law", the question to the United States Supreme Court is why wasn't this matter adjudicated as being such for Mr. Harris, didn't this prejudice constitutional requirements?

The courts have seemly been negligent on the matter simply because Mr. Harris has proceeded as *Pro Se* rather than with competent attorney assistance. If Mr. Harris was to have had the funds to acquire help or given attorney assistance from the court when he requested it, this matter more than likely would not have been neglected or the attorney would have known how to handle the matter far better than this inexperienced inmate who is not legally adept.

The obligatory language of institutional policies coupled with the above case law(s) should have been seen as unambiguous by the court, as the claims made by Mr. Harris were sufficiently obvious "on its face" to show that there were serious deprivations to this inmate's secured mandatory due process rights. It has also long been upheld by the United States Supreme Court that there needs be uniformity in the lower courts decisions, and in this case there was none.

It was clearly explained to the court(s) that for Mr. Harris's disciplinary of "escape", the WDOC had taken time from his "Pre-sentence Confinement time" granted to him by his sentencing judge some 22 years before hand in 1999. As Mr. Harris was originally placed in County jail on February

9, 1999 and sentenced to 22-40 years on October 7, 1999, his judge gave him 240 days off his minimum and maximum sentence, see Appendix G -- S.I.D.S. (Part A shows Mr. Harris's full maximum time as it was in the original to be 2-9-2039 and Part B shows the WDOC added 64 days to his full maximum sentence to be 4-14-2039). This very unique violation has increased Mr. Harris's adjusted maximum and full maximum sentence not because that is what the disciplinary has done but because the WDOC had unlawfully altered that judicially given time. The WDOC has put themselves in the authoritative position of a judiciary and this should be seen as a violation of the Separation-of-Powers and repugnant to the laws of the United States.

This case expresses several violations had occurred to the petitioner's rights in regards to that institutional disciplinary, which all inclusive infractions have clearly created atypical and significant hardship on the inmate, and the lower Court's contravention to protect such Constitutional amended rights of due process conflicts with a serendipitous and excessive amount of federal mandated case law, *see e.g.*, *Bell Atl. Corp. v. Twombly*, 550 U.S. at 570, "But Dismissal is not appropriate, however, where the complaint contains

"enough facts to state a claim to relief that is plausible on its face""; see also *Colorado v. Connelly*, 479 U.S. 157,163, 93 L Ed 2d 473, 107 SCT 515 , "The Due Process Clause of the Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law"(decided also in *Wolf v. McDonnell,* 418 U.S. at 556); see also *Zinermon v. Burch*, 494 U.S. 113, 125, 110 S. Ct. 975, 108 L. Ed. 2d 100 (1990),"In procedural due process claims, the deprivation by state action of a constitutionally protected interest in 'life, liberty, or property is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest without due process of law"; *Wilkinson v. Austin*, 545 U.S. 209, 162 L Ed 2d 174, 125 S Ct 2384; *Sandin v. Conner*, 515 U.S. 472, 484, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995); *Steffey v. Orman*, 461 F.3d 1218, 1221 (10th Cir. 2006). "Because a prisoner's conditions of confinement do not impinge on a liberty interest unless they involve the "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life,""; see also *Beebe v. Heil*, 333 F. Supp.2d 1011, 1016-17 (D. Colo.2014), (IV. The Law) dictates "the Due Process Clause of the Fourteenth Amendment guarantees due process when a person may be

deprived of life, liberty, or property. U.S. Const. amend. XIV, {2006 U.S. Dist. LEXIS 10} § 1. The Due Process Clause "shields from arbitrary or capricious deprivation those facets of a convicted criminal's existence that qualify as liberty interests.'" *Harper v. Young*, 64 F.3d 563, 564 (10th Cir. 1995), aff'd, 520 U.S. 143, 117 S. Ct. 1148, 137 L. Ed. 2d 270 (1997). "Thus, before determining whether a plaintiff's procedural or substantive due process rights have been violated, the court must determine whether the plaintiff has a liberty interest"; see *Whitmore v. Shifflett*, 2019 U.S. Dist. LEXIS 67923 (10th Cir. 2019) ""The Fourteenth Amendment prohibits states from depriving citizens of liberty without due process of law." *Wilson v. Jones*, 430 F.3d 1113, 1117 (10th Cir. 2005), Although this guarantee applies {2019 U.S. Dist. LEXIS 10} to prison inmates, "prisoners' due process rights are defined more narrowly." Id. In the prison context, the Supreme Court has established that protected liberty interests are at issue when the prison inmate is subjected to: (1) conditions that "impose atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life," or (2) disciplinary actions that "inevitably affect the duration of his sentence." *Sandin v. Conner*, 515 U.S. 472,

484, 487, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995); see also *Wilson*, 430 F.3d at 1117""; see also *Buchalter v. People of the State of New York*, 319 U.S. 427, 63 S. Ct. 1129, 87 L. Ed. 1492 (1943), "The due process clause of the Fourteenth Amendment requires that action by a state through any of its agencies must be consistent with the fundamental principles of liberty and justice". The prisoner has not had any of these rights apply to him.

At the present time Mr. Harris had terminated his minimum sentence in November 2014, and because the WDOC has went above the judicial determination of innocence and declared him guilty of a lawful "escape" and has taken his presentence confinement time **and** also increased his maximum sentence, he must now fully terminate *more than* his judicially given sentence for a single institutional infraction making him akin to the decision of *Conner*, 515 U.S. 472, 484, 487, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995), *supra*, which the disciplinary has greatly affected his mental health because of the stresses involved where the petitioner had tried to commit suicide over the continued violations that have occurred to him because of his religion and the disciplinary does "inevitably affect the duration of his

sentence". Which in skipping forward, it is asked of the U.S. Supreme Court to decide whether or not the WDOC has by effect superficially illegally resentenced Mr. Harris, or if they impose an illegal restraint on him because of removing his Presentence Confinement time, or both, as the term "False imprisonment consists of the illegal restraint of one person's liberty by the act of another person." *Holland v. Lutz*, 194 Kan. 712, 714, 401 P.2d 1015, 1018 (1965) (citing 22 Am. Jur., False Imprisonment, 2,3 (1967)). Similar circuit decisions on this matter have said that an administrative error or decision is not to be allowed to increase a sentence and "Any addition to a sentence not imposed by a judge is unlawful". *Earley v. Murray*, 451 F.3d 71, (CA2 2006). *Murray, Id,* clearly expressed that "The United States Supreme Court, in *Wampler*, [citing of *Hill v. United States ex rel. Wampler*, 298 U.S. 460, 56 S. Ct. 760, 80 L. Ed. 1283 (1936)] noted that the choice of pains and penalties, when the choice is committed to the discretion of the court, is part of the judicial function. This being so, it must have expression in the sentence, and the sentence is the judgment. Had the Supreme Court stopped there, the holding of *Wampler* might extend only to those cases where punishment subsequently added to the

defendant's sentence by administrative personnel relates to a matter within the court's discretion; it might have no application to a case which involves a mandatory provision. But *Wampler* goes on to articulate a broader holding: The judgment of the sentencing court establishes a defendant's sentence, and that sentence may not be increased by an administrator's amendment."

In this aspect, this increase of time to Mr. Harris should also be upheld as illegal and it is asked that the U.S. Supreme Court apply this provision to Mr. Harris as it was in the above stated case and take interest in this matter and utilize its discretionary authority granting Mr. Harris relief. This case shouldn't have to be argued further, but for the effect of thoroughness the Court should have a full accounting of the "whole" for the record.

Mr. Harris had been charged for the lawful "escape" charge twice, and the Courts had (2) two distinctly separate times to discern if what Mr. Harris had did was escape, and both times it was dismissed in Mr. Harris's favor. Again, the disciplinary is not an ordinary disciplinary but it is a "lawful violation" charge that prevents parole eligibility and forces

an inmate to fully terminate their sentence without consideration of any early release.

The violations continued in regards to the disciplinary as arbitrary action had occurred when other inmates had their time violated by one (1) single day concerning when administration answered the inmates disciplinary. An inmate who is significantly closely related to this matter as he too had an 'escape' disciplinary is WDOC inmate Jeffery Niggemeyer #30898, and he was told by WDOC administrators that because of that 1-day time violation they were forced to dismiss his charge for policy failure. Douglas Short #25137 is another inmate with an escape write-up that had his dismissed for a time violation. It was shown that Mr. Harris had been violated by approximately 83 days. This arbitrary and capricious action is in conflict with, *Wolff v. McDonnell*, 418 U.S. 539, 558, 94 S. Ct. 2963, 2976, 41 L. Ed. 2d 935 (1974); *Dent v. West Virginia*, 129 U.S. 114, 123, 9 S. Ct. 231, 233, 32 L. Ed. 623 (1889), which says "the touchstone of due process is protection of the individual against arbitrary action of government".

In relevance, it is thought that this matter should have been handled by the State Courts, but they failed to consider

relief, instead the District Court said that Mr. Harris cannot contest the parole boards decisions under W.S. §7-13-402. However, this too is in conflict with the decision made in *Pisano v. Shillinger*, 835 P.2d 1136, 1992 Wyo. LEXIS 96 (Wyo. 1992) which tells a much different story, it was said "[d]efendant appealed from a judgment of the District Court of Carbon County (Wyoming) that dismissed defendant's petition pursuant to the Wyoming Administrative Procedure Act (WAPA) and W.R.A.P. 12 for review of a decision of the Wyoming Board of Parole". The court held that "Section 7-13-402(f) allows the Board to conduct hearings using procedures which are not consistent with the contested case provisions of the WAPA, assuming, of course, that the Board's procedures have no constitutional impediments. This freedom to conduct hearings in a manner other than that prescribed by the WAPA does not preclude judicial review of the ultimate decision. In our view, the Board's right to adopt its own procedures simply means that, barring any constitutional limitations, a parolee cannot seek judicial review of the Board's decision upon grounds relating to the conduct of the Board's hearings. However, the fact that the conduct of the hearing is not subject to review does not mean that the decision itself is not

subject to review...the Board's final decision is still reviewable by the district court pursuant to § 16-3-114(c), which requires, among other things, that the Board's findings be supported by substantial {835 P.2d 1140} evidence and that its actions not be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law". The case further dictates "The privilege of the writ of habeas corpus shall not be suspended unless, when in case of rebellion or invasion the public safety may require it. Wyo. Const. Art. 1,. Furthermore, maybe sometimes--sometimes maybe-exceptions written into these definitive Wyoming constitutional standards would, for example, justify review on appeal in a civil case and deny similar access within the Wyoming criminal justice structure. That conclusion does not seem to me to be acceptable and, certainly, would not provide either equal protection or due process to the criminally charged defendant. *Riggins v. Nevada*, U.S., 112 S. Ct. 1810, 118 L. Ed. 2d 479 (1992); *Lockett v. Ohio*, 438 U.S. 586, 98 S. Ct. 2954, 57 L. Ed. 2d 973 (1978); *Betts v. Brady*, 316 U.S. 455, 62 S. Ct. 1252, 86 L. Ed. 1595 (1942)".

The above Federal case law is what is seemed to be most important here, and the Court can see that in this present

case there was absolutely zero consistency in the court(s) judgment(s). In the case of *Scarpa v. Dubois* 38 F.3d1 (CA 1 1994) it dictates that state courts are bound to enforce federal law and protect constitutional rights. There has been no protection here. Mr. Harris **was not** arguing that he was entitled to discretionary parole, but he was indeed arguing that he should not be dissimilarly treated than others in his same exact situation, the parole board's actions should not be arbitrary, and there shouldn't be an increase to his sentence.

After seeking review from the State District Court Mr. Harris appealed to the Wyoming Supreme Court, but was told that they had reached their limit on Habeas Corpus Cases to "jurisdiction over subject matter", and they concurred with the District Court that Mr. Harris failed to state a claim.

After exhausting administrative and state remedies as required by the PLRA and *Woodford v. Ngo*, 548 U.S. 81 (2006), Mr. Harris placed an unspecified habeas corpus to the U.S. District Court for them to liberally construe the proper avenue of relief, and that Court construed Mr. Harris's request as a §2241 instead of any other assignment such as a §1983 or a §2254. Mr. Harris had again tried to obtain attorney assistance from this higher court as he had tried in

every other court because the complaint asserted an illegal restraint wherein Mr. Harris described it was because of "the removal of that judicially given good time" which seemingly confused the court to think that this matter involved the loss of institutional good-time, which should have been unmistakably conceived as removal of "presentence confinement time" as there is nothing else that a judge can give someone for sitting in county jail before being sentenced. That Court then pronounced a procedural time bar on Mr. Harris and said that Mr. Harris failed to seek judicial review within the 1-year statute of limitations in which they apply 28 U.S.C.§ 2244(d)(1)(D) and *Burger v. Scott*, 317 F.3d 1133, 1138 (10th Cir. 2003), and dismissed his due process claims. If that Court thought there was some barment to Mr. Harris, the court should have however used a *Martinez* report, (*Martinez v. Aaron*, 570 F.2d 317, 319 (10th Cir. 1978)), as an aid to the Court in determining whether an inartfully drawn pro se complaint has some possible legal barsis, but it cannot by itself support the resolution of material factual issues, see e.g. *Swoboda v. Dubach*, 992 F.2d 286, 290 (10th Cir. 1993); (citing *Reed v. Dunham*, 893 F.2d 285, 287 n.2 (10th Cir.

1990)); *Sampley v. Ruetgers*, 704 F.2d, 493 n.3 (10th Cir. 1983).

While in argument with that Court, the AG's *Memorandum In Support of Motion to Dismiss Petition for Review of Habeas Corpus*, had said that 'Harris needed to file his petition on or before March 21, 2018...on Feb. 26, 2018, twenty-four days before the statute of limitations expired, Harris filed a state habeas...'.So why that Court placed a procedural time barment on Mr. Harris by virtue of a violation to the Statute of Limitations is unknown and further unknown why they would bar his due process claims. However, it is thought that their decision is in contention with the decisions made in *Wainwright v. Sykes*, 433 U.S. 72 (1977); *Caldwell v. Mississippi*, 472 U.S. 320, 327 (1985); *Michigan v. Long*, 463 U.S. 1032 (1983); and *Harris v. Reed*, 489 U.S. 255 (1989) (wherein the United States Supreme Court said that a procedural default will not bar consideration of a federal claim on habeas corpus review unless the last state court rendering a judgment in the case clearly and expressly stated that its judgment rested on a state procedural bar). That courts determination was also inconsistent with *Fay v Noia*, 372 U.S. 391, 9 L Ed 2d 837, 83

SCT 822, (speaking of the various functions of exhaustion of remedies and the citing of historical relevance of Habeas Corpus requiring relief be given); it also had incoherent disregard with *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974) which says "[w]hen specific guarantees of the Bill of Rights are involved, this Court has taken special care to assure that prosecutorial conduct in no way impermissibly infringes them."

As was described above, the Wyoming AG's office have denied there was ever a violation of institutional policies in regards to the disciplinary when physical evidence was presented to the Court(s) which showed that the WDOC had violated the Petitioners rights **guaranteed** under the Fourteenth amendment, which to be included, the AG's had convinced the lower state court that they did not have the authority to even appoint counsel when it was sought.

The U.S. District Court then failed to issue the inmate a COA when he was entitled saying Mr. Harris didn't show constitutional errs and failed to show equitable tolling to his claims. In appealing the U.S. District Court's judgment to the Tenth Circuit Court of Appeals, that Circuit Court stated that they affirmed the order of dismissal of appointment of

counsel, and refused to "disturb the district court's decision" of the matter, seemly contrary to that Courts own previous holdings, see *Castner v. Colo. Springs Cablevision*, 979 F.2d 1417 (10th Cir. 1992) (Both the Ninth and the Tenth circuit have held that indigent litigants are presumptively incapable of prosecuting civil rights cases, and a denial of a request for appointment of counsel is therefore inherently prejudicial). There again were no consistencies with the Courts decisions because that Circuit Court also claimed a time barment by virtue of a violation of the Statute of Limitations because it perceived that Mr. Harris had exhausted his State remedies on April 4, 2019 to which he didn't. That Court made judgment and said that "Mr. Harris had 24 days remaining to file his application. Mr. Harris did not file his § 2241 application, however, until September 2019".

It was clear that the petitioner had to exhaust his State remedies as made mandatory by *Woodford*, 548 U.S. 81 (2006),*supra*, by seeking exhaustion of his State remedies in full. It was explained to that Court that Mr. Harris had sought further relief from the State Courts decision through appeals and did not fully extinguish his State remedies until August 27, 2019 when he had adjudication from the Wyoming

Supreme Court on the matter. Mr. Harris then sought Federal review of Habeas Corpus on September 2, 2019, well within the 24 days provided by the Statute of Limitations.

The Circuit Court continued to say "Nor could reasonable jurists debate whether the district court correctly dismissed Mr. Harris's equal-protection claim. To prevail on his class-of-one equal protection claim, Mr. Harris must show that others "similarly situated in every material respect were treated differently." *Kansas Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1216 (10th Cir. 2011) (internal quotation marks omitted)."

On this aspect, any prudent jury would have granted Mr. Harris relief and the Circuit panel's citing conflicted with the authoritative decisions of its own previous holding, see *Lamb v. Biggs*, 2012 U.S. Dist. LEXIS 93105, (10th Cir. 2012), (Quoting Templeman v. Gunter, 16 F.3d 367, 371 (10th Cir. 1994)), which said "an inmate argued that he was not treated the same as similarly situated individuals upon his move to administrative segregation. The Tenth Circuit found it "clearly baseless" to "claim that there are other inmates who are similar in every relevant respect." They "recognized that inmates could be classified differently based on slight

differences in their histories or because some present a higher risk of future misconduct than others" and "concluded that the plaintiff's claim that there were no relevant differences {2012 U.S. Dist. LEXIS 32} between him and other inmates that might account for their disparate treatment was not plausible or arguable." *Gilkey v. Kansas Parole Bd.*, 147 P.3d 1096, *4 (Kan.App. 2006)(Table)(citing id.)".

Why would that Circuit court go backwards in time rather than forwards or at least be equivalent to this decision?

Mr. Harris on the aspect of a "class-of-one" was akin to the decision made in *Jornigan v. N.M. Mut. Cas. Co,* 2004 U.S. DIST. LEXIS 28287(2004), which said "The Equal Protection Clause of the Fourteenth Amendment provides that "no State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV. The Supreme Court has recognized that the Equal Protection Clause of the Fourteenth Amendment applies to claims brought by a "class of one," where the plaintiff alleges that he or she "has been intentionally treated differently from others similarly{2004 U.S. Dist. LEXIS 29} situated and that there is no rational basis for the difference in treatment." *Village of Willowbrook*

v. Olech, 528 U.S. 562, 564, 145 L. Ed. 2d 1060, 120 S. Ct. 1073 (2000)(per curiam). Courts have upheld "class of one" cases "in which a governmental body treated individuals differently who were identically situated in all respects rationally related to the government's mission." *Indiana State Teachers Ass'n v. Board of School Comm'rs of the City of Indianapolis*, 101 F.3d 1179, 1181 (7th Cir. 1996)(citing *Rubinovitz v. Rogato*, 60 F.3d 906, 911-12 (1st Cir. 1995); *Zeigler v. Jackson*, 638 F.2d 776, 779 (5th Cir. 1981); *LeClair v. Saunders*, 627 F.2d 606, 609-10 (2d Cir. 1980)). "While the principal target of the equal protection clause is discrimination against members of vulnerable groups, the clause protects class-of-one plaintiffs victimized by 'the wholly arbitrary act.'" *Indiana State Teachers Ass'n v. Board of School Com'rs of the City of Indianapolis*, 101 F.3d at 1181 (quoting *City of New Orleans v. Dukes*, 427 U.S. 297, 304, 49 L. Ed. 2d 511, 96 S. Ct. 2513 (1976)(per curiam)).".

Mr. Harris had shown the Court that the relevance of the other persons similarly situated and given parole was that they either had disciplinaries for escape or they "escaped or attempted to escape or they committed another "non-parolable" offense" as it is defined in institutional policies or

by Wyoming Statute(s) but the Parole Board still had paroled those persons, however, telling Mr. Harris that he was not eligible for parole because he had an escape write-up, and the best that Mr. Harris could provide to the Court on at least one of the individuals, was that he had an escape write-up, **identical** to Mr. Harris, and there was no rational basis for the parole board to treat Mr. Harris indifferent than others in his same situation making their actions arbitrary.

The Tenth Circuit Court also refused to grant the petitioner a COA when he was entitled, but it seems they still decided on the merits of the case also being inconsistent with previous rulings saying that they cannot judge the merits of a case without first issuing a COA. Mr. Harris did indeed show a substantial denial of his constitutional rights and should have been entitled to such and Mr. Harris had showed the Tenth Circuit Court how the disciplinary tolled time because of him being placed in County Jail and explained that he fully exhausted his state remedies in late August 2019 with the Wyoming Supreme Court, not in April. Mr. Harris had a clear showing of Constitutional errors to the Court, however, it seems that they simply refused to accept it. In the case of *Turner v. Safley*, 96 Led2d 64, 482 US 78; it says "Federal

courts must take cognizance of the valid constitutional claims of prison inmates; prison walls do not form a barrier separating prison inmates from the protection of the United States Constitution; for example, prisoners (1) retain the constitutional right to petition the government for the redress of grievances, (2) are protected against invidious racial discrimination by the equal protection clause of the Fourteenth Amendment, and (3) enjoy the protections of due process; when a prison regulation or practice offends a fundamental constitutional guaranty, federal courts <*pg. 68> will discharge their duty to protect constitutional rights."

In the aspect of his disciplinary and unequal treatment, Mr. Harris feels that all of these violations to him had occurred because of his religious affiliation of Judaism. On a separate matter Mr. Harris had caught several institutional staff continuously violating his religion at the State penitentiary who said to his face they "hated f*n dirty Jews" and other discriminating vulgar things and treating him poorly because of him being Jewish, and intentionally violated his religious meals, and when Mr. Harris grieved the matter to WDOC they did nothing and always took the officers side on matters. Mr. Harris contacted the ACLU and begged

them to help, they then also caught the WDOC in a lie in the matter, and the ACLU are now at current in argument with WDOC and the Wyoming Attorney Generals for Mr. Harris and another inmate against the State penitentiary because the penitentiary violated religious mandate and Court ordered decree. But it can really only be assumed what their real intent or reason was for blatantly and intentionally violating Mr. Harris during his disciplinary or for treating him different with denying him parole and granting others parole who were in his identical situation, however this above given reason seems to fit most decisively as religious discrimination. This should be seen as non-tolerable by the U.S. Supreme Court and the inmate should not be made to feel worthless because of his religious practice to the point of wanting to commit suicide.

All aspects of violations were shown well beyond thoroughly which should have brought forth a mandatory overturning of the disciplinary by itself at a minimum, not including the aspect of the illegal restraint claimed and the case law provided describing such, but the Federal Court(s) have thought it would be easier to dismiss the case on a false procedural time barment. After being denied by the Tenth

Circuit, Mr. Harris appealed for a rehearing enbanc, which was also denied.

This petition may seem excessively written, but there were excessive violations that occurred to Mr. Harris and if the United States Supreme Court passes on this matter, Mr. Harris will be wholly deprived any rights given to an individual under the Constitution.

It is asked if the Courts should have issued the inmate a COA because he did have a substantial showing of violation(s) to his constitutional rights. It is further asked of the United States Supreme Court to consider if one or more of these violations described herein have stand-alone value enough to grant relief, or if the Court should consider the cumulative error analysis. It is then finally asked that the Court forgive the Petitioners inexperience of law and anything disproportionate in this petition, and asks that if the Court feels that anything not mentioned herein should also be granted as deemed appropriate by the Court, that it too be considered. Mr. Harris further feels that he should be entitled to monetary recovery for what he has been forced to endure, and for being forced into debt with the facilities.

The Supreme Court should overturn the decision of the Federal Courts judgment(s) for their decisions not being consistent and relief should be granted for the WDOC's illegal increase of Mr. Harris's sentence.

Mr. Harris is at the complete mercy of the United States Supreme Court to intervene in this matter, or the WDOC will continue to abuse their authority as they have just recently again with adding yet another 40 days to his sentence without **any** due process. On July 1, 2020 a new Wyoming law passed that said that goodtime is to be applied to presentence confinement. Instead of reducing Mr. Harris's sentence by the required 185 days, they increased his sentence 40 days, and it is assumed that this has occurred because the Courts thus far have not intervened in this matter by putting the WDOC's treachery and illegal actions to a halt. The presented matter to this Court has shown excessive violations have occurred to Mr. Harris which shows that relief should be granted.

REASONS FOR GRANTING THE PETITION

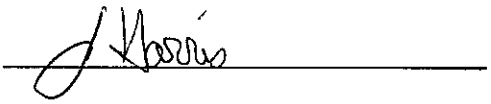
It has been noted that the primary concern of the Supreme Court is not to correct errors in lower court decisions, but to decide cases presenting issues of importance beyond the particular facts and parties involved. This matter asserts an illegal restraint and deprived protections granted under the Constitution of the United States of America which does have a broader holding than violating one inmate's rights.

However, the Court should not ignore that there were excessive conflicts with the lower courts decisions that contradict the United States Supreme Court's mandate in certain aspects and so it is hoped that this case be selected this term for the Supreme Court to review.

It is felt that there were sufficient Constitutional violations that occurred which show that relief should be granted.

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

Respectfully Submitted, 

DATE: JANUARY 22, 2021