

20-7693

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

MAR 24 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Keenan Wilkins

— PETITIONER

(Your Name)

vs.

C. Joksch, et al.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals For the Ninth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Keenan Wilkins

(Your Name)

California Health Care Facility
P.O. Box 213040

(Address)

Stockton, CA 95213

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

1. Is a prisoner who is found to have THREE STRIKES pursuant to 28 UCS 1915 entitled to a ONE TIME appeal on the merits of this finding?

NOTICE 1

Petitioner respectfully additionally presents TWO questions/arguments that were CONCEDED by Respondants in prior proceeding No.19-6705 by their FAILURE to argue against them when ordered to do so by this court(See Medelin v. Dretke (2005) 544 US 660; Clem v Lomeli, 566 F3d 1177 9th Cir. 2009; Tapia v. Wells 2015 UD Dist Lexis 102836).

2. Does the Court of Appeal have jurisdiction to DECIDE an appeal BEFORE granting/denying an indigent Appellants Rule 24 request for In Forma

Pauperis status?

(Confer: Buck v Davis (2017) 137 S. Ct. 759 establishing that the Court of Appeal does not have jurisdiction to proceed with the appeal until it has settled the question of granting/denying a COA).

3. Were Petitioner's appeal for the District Court's dismissal of his ENTIRE complaint for Misjoinder a FRIVILOUS appeal?
(Confer: Neitke v Williams (1989) 490 US 319).

NOTICE 2

After this Court ordered a response on these claims (Question 2 and 3) and Respondant conceded the claims by failure to argue against----Petitioner's Pro Bono retained counsels focused ONLY on the 1 claim Respondants addressed. Petitioner sought to address in pro per afterwards but was rejected as being untimely for Reconsideration(See Appendix C).

LIST OF PARTIES

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

[X] 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:

1. C. Joksch

2. F. Folk

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A

Copy of 9th Circuit Order on appeal--reversing imminent danger denial and failing to address at all the 3 strike finding claim

APPENDIX B

Copy of the 9th Cir order denying Re-hearing

APPENDIX C

Copy of the Motion for rehearing/reconsideration to US Supreme Court denied as untimely in Case No. 19-6705.

APPENDIX D

Copy of a jurist order deeming Petitioner NOT TO HAVE 3 Section 1915 strikes.

APPENDIX E

APPENDIX F

4 of 12

TABLE OF AUTHORITIES CITED

CASES

	PAGE NUMBER
1. Buck v Davis (2017) 137 S ct. 759	2
2. Clem V lomeli, 566 F.3d 1177 9th Cir. 2009	2
3. Medelin v Dretke (2005) 544 US 660	2, 10, 11
4. Neitke v Willaiams (1989) 490 US 319	2
5. Richey v Dahne, 807 F3d 1202 9th Cir 2015	11
6. Tapia v Wells 2015 US Dist Lexis 102836	2

STATUTES AND RULES

1. 28 USC 1915	8
2. F.R.C.P. 60	9
3. F.R.C.P. 21	8
4. F.R.A.P. 24	8
US Constitution 14 th Amendment	8

OTHER

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

[X] 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 N/A 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.

1.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 8-18-20.

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: 11/3/20, and a copy of the order denying rehearing appears at Appendix B.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. .

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

1. Constitutional Due Process under the 14th Amendment
2. Constitutional Equal Protection under the 14th Amendment.
3. 28 USC 1915
4. Fed. R. App. P. (Rule 24)
5. Fed. R. Civ. P. (Rule 21)

STATEMENT OF THE CASE

Petitioner, a LIFE TERM inmate is ERRONEOUSLY being deemed to have 3 Section 1915 strikes.

Two of the 3 Strikes arose from Appellant attempting to appeal :

- a. The district court improperly asserting misjoinder contrary to statute and established authorities;
- b. The district courts dismissal of Petitioner's ENTIRE complaint for misjoinder in conflict with statute and established case law.

PETITONER HAS NEVER BEEN ALLOWED TO APPEAL THE ASSERTED ERRONEOUS ACTION OF THE DISTRICT COURT IN 2012. The Ninth Circuit had a practice in 2012 that when an indigent inmate made a request for IFP status on appeal, the Ninth Circuit would decide the appeal without jurisdiction (before/without granting IFP status). A MERITORIOUS appeal would be called FRIVILOUS and the indigent Appellant would not be allowed to appeal unless they paid the enormous filing fee.

In 2016 a District Court determined that this practice (and Petitioner's attempt to vacate the erroneous judgment pursuant to Rule 60) were strikes. Petitioner attempted to appeal this finding but the appeal was erroneously denied as MOOT after his family paid the filing fee to proceed in the district court.

PETITIONER HAS NEVER BEEN ALLOWED TO APPEAL THE 3 STRIKE FINDING. Petitioner attempted to raise the claim in this action on appeal with the imminent danger issue----but the Ninth Circuit did not address the issue. (See Appendix A).

Petitioner is seeking a ONE TIME appeal of the 3 Strike finding

REASONS FOR GRANTING THE PETITION

Appellant respectfully asserts that a GROSS miscarriage of justice and infringement upon constitutional right to Due Process/Equal Protection has occurred.

In light of the courts holding and reasoning displayed in Buck, it would appear that the same principles would apply in a civil action----pointedly, that The 9th Circuit is deciding appeals without the jurisdiction to do so. All that is before the 9th circuit at the IFP stage is whether to grant IFP status for the appeal. The Ninth Cir is circumventing the appeal process and deciding NON-BRIEFED appeals BEFORE it has jurisdiction to do so. This practice also places a huge roadblock before indigent inmates---as the 9th Cir is calling otherwise MERITORIOUS appeals (such as Petitioner's) frivilous (when they are not) and only allowing a Petitioner to proceed if they can afford to PAY hundreds of dollars to be heard. It is important for this court to see the fact that THE CLAIMS THE NINTH CIRCUIT IS ASSERTING AS FRIVILOUS WAS NOT SO (Neitke, Supra). This error/mistake is the primary reason that Petitioner is asking this court to intervene on this claim that the State has conceded (Medelin, Supra)

Additionally, this matter could have been addressed with a simple fix----allowing Petitioner a ONE TIME APPEAL so he can present the errors properly to the Court of Appeal. The Ninth Cir has placed this FOREVER RESTRICTION OF IFP status on Petitioner without giving him the due process to be heard and challenge the finding. If it has not already done so

REASON FOR GRANTING THE PETITION

Petitioner is respectfully seeking for the Supreme Court to firmly establish that a litigant found to have three strikes under Section 1915 is entitled to a ONE TIME appeal of that finding (Note: The Ninth Circuit has established this rule, but has not applied the rule to Petitioner-See Richey v Dahne, 807 F3d 1202 9th Cir 2015).

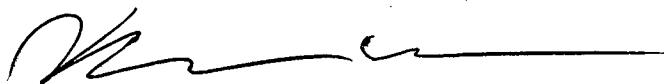
In Case No. 19-6705, Petitioner raised the unconstitutional practice of the Ninth Circuit to decide appeals without jurisdiction to do so and the fact the 9th Cir was improperly assertin appeals as frivilous in conflict with US Supreme Court authority. Respondant failed to address these claims in their response ordered by this Court and as such CONCEDED THE CLAIMS (See Medelin, Supra). Pro Bono counsel for Petitioner failed to address the claims and concession (despite repeated requests to do so) and focused on the only claim Respondant addressed. In addition to the one new clsim presented herein (ability to have a ONE TIME appeal of Section 1915 three strike finding), Petitioner respectfully requests that the Court again order response on these meritorious claims or decide them out right as the Respondant has previously conceded them.

A prisoner only has THREE strikes before they forever lose the right to proceed IFP to redress the denial of constitutional rights and other wrongs . As the penalty for having three strikes is very serious and life time, it is important that due process be given to address what very well may be errors in the finding. Here, Petitioner was not only found to have three strikes in error, but he was then prevented for seeking relief.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Keenan W. Wins

Date: 3/23/21