

no USCA7 no. 21-1550

ORIGINAL

21-5026

In the

Supreme court of the United States

FILED

JUN 16 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

KEVIN martin - petitioner

✓

Ashlynn Ledford - respondent

PETITION FOR WRIT OF HABEAS CORPUS

Attorney For petitioner:

KEVIN L martin

DOC # 169789

Indiana department of correction

Wabash Valley Correctional Facility

P.O. Box - 1111

Carlsburg, IN 47838-1111

petitioner / pro, SE

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JUL 1 - 2021

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

1. whether district court abuse of discretion by deny martin a Fundamental right to a Fair trial - a constitutional right to use the court system?
2. whether district court abuse of discretion by refuse to appointment a counsel in martin case before set up timeline show prejudice by this district court disregard martin claim
3. whether court of Appeal deny martin a Fundamental right to obtain access to court to show how this would prove he was innocent had this defendant did retaliation?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Ashlynn Ledford
Defendants

Final Judgment
date 2.17.2021
order dismissing action
For Failure to prosecute

Court of Appeal deny
motion to move in Form 9
papers,

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**IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI**

The Petitioner respectfully prays that this Honorable Court issue a writ of certiorari to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix NA to the petition and is-

- ☐ reported at NA; or,
☐ has been designated for publication but is not yet reporter; or, NA
☒ is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is- B-C-D-?

- ☒ reported at Appendix A-13-C-D-2; or,
☐ has been designated for publication but is not yet reporter; or, NA
☐ is unpublished. NA

☐ For cases from **state courts**: NA

The opinion of the highest state court to review the merits appears at Appendix NA to the petition and is-

- ☐ reported at NA; or,
☐ has been designated for publication but is not yet reporter; or, NA
☐ is unpublished. NA

The opinion of the NA court appears at Appendix NA to the petition and is-

- ☐ reported at NA; or,
☐ has been designated for publication but is not yet reporter; or, NA
☐ is unpublished. NA

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States court of appeals decided my case was NA.
A copy of that decision appears at Appendix NA.

☒ No petition for rehearing was timely filed in my case. NA

☒ A timely petition for rehearing was denied by the United States court of appeals on the following date: NA, 20__, 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 NA, 20__, on NA, 20__, in Application No. __, and a copy of the order granting said extension appears at Appendix ____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

☐ For cases from **state courts**: NA

The date on which the highest state court decided my case was NA, 20__.
A copy of that decision appears at Appendix NA.

☐ No petition for rehearing was timely filed in my case. NA

☐ A timely petition for rehearing was denied on the following date: NA, 20__, and a copy of the order denying rehearing appears at Appendix NA.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including NA, 20__, on NA, 20__, in Application No. __, and a copy of the order granting said extension appears at Appendix ____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

motion demonstrate he SEEKING review under
rule 12- And motion demonstrate he request
a review rule-14.) In good - Faith -
SEEKING REVIEW under rule 12.4 in your
jurisdiction mean Equal-protection HERE

CONSTITUTIONAL PROVISIONS AND STATUTES

(1-) whether district court abuse of discretion by deny martin a fundamental right to a fair trial - a constitutional right to use the court system?

martin demonstrate this appeal - in good-faith under 28 U.S.C. 1915-g.) Also martin demonstrate he imminent danger of a serious physical-injury-pursuant to 1915-g- SEE *Taylor v Watkins* 623 F3d 483 7th cir 2010) martin demonstrate he made two attempt on his life by try-to-commit suicide behind this miscarriage of justice and going-blind-in-his-left-eye and have health problem arthritis in his right hand prevent martin from write and make it hard for the court to understand my write sometime and pain overwhelming. Furthermore there is a objectively mean good-faith under 1915- reasonable argument the plaintiff could present against the imposition of sanctions against martin demonstrate under 28-U-S-C-1915-b-2.) However under no circumstances can a prisoner without the cash to pay the initial filing fee be prevented from filing suit and under 28-usc 1915-b.) the same with 1915.) IF martin dont have the money - martin dont have the money but he still entitled to justice.)

prejudice-part

martin demonstrate, SEE *Martin v Catter* 318-cv-900 NO and and mr martin filed a complaint on november 1-2018 the court dismissed the case because the complaint did not state a claim on november 15-2019)

SEE martin v capron 319-cv-1018 n.d. ind. - mr martin filed a complaint on november 6 2019, and the court dismissed the case because the complaint did not state a claim on april 10 2020.)

see martin v meeks 218-cv-395 s.d. ind.) mr martin filed a complaint on september 7 2018 and the court dismissed the case because the complaint did not state a claim on april 29 2020 while, the language of the operative statutory provision prohibits a prisoners from bringing a civil case without prepayment of the filing fee if he has accrued three-strikes, in this context bring bring mean's to commence something not to prosecute it SEE Hill v madison county illinois 2020 WL 7584943 at 27th cir 2020) court therefore count a prisoner's strikes as of the date the prisoner files the complaint on appeal - SEE millhouse v Health 866 F3d 152, 157 3d cir 2017)

strikes that accrue before the filing of the notice of appeal count as-strikes - while-strikes that accrue after the notice of appeal is filed do not and this deny a fundamental because if your complaint filed in the district court before the strike's - should-give-you-the right to challenge that judgment because prevent (martin) from proceeding in forma pauperis in this case - deny martin of 5th amendment - and 14th amendment - because martin would show by demonstrate the procedural default by show cause by submit chevanne Fox would exonerated martin) under cause Kevin martin v richard brown 218-cv-0044 / JAS - mid southern of Indiana Trade Haute division

For this reason - chevanne Fox would testify that martin never enter the room on 7-17-66 or ms Fox never saw martin that what the statement said, SEE coleman v Thompson 501 US 722, 750 (1991) would excuse martin default under cause 218-cv-00441 - JAS - MSID - A prisoner can overcome procedural default by showing cause for the default and resulting prejudice or by showing he is actually innocent of the offense chevanne Fox done that HERE -) injustice martin demonstrate he preserving a Fair trial with in arbitrary act within its jurisdiction deny martin Equal-protection of the law's because he a poor-man without the money to pay violation the Equal-protection right, An accused or plaintiff might be a sufficient basis for prior restraint, However the restraint will be upheld, only if it is the only sure of preserving a Fair trial SEE nobleska press association v Stewart 427 US 539 (1976) However the harm must be more than theoretical - liberty life or property A Fundamental deny access to the court 1 and 5 Amendment's The constitution is law and it is the province and duty of the judiciary to declare what the law is, Fact.

(2.) whether district court abuse of discretion by REFUSE to appointment a counsel in martin case before set up timeline show-prejudice by this district court disregard martin claim.

SEE mallard v united states dist court of southern dist
490 US 296 may 1-1989 DECided.)

martin demonstrate he request for a writ of mandamus to compel the district court to allow pro/se litigate time to obtain the money because martin was unfamiliar with the legal issues that district claim martin failure to comply why he dismissing action, SEE appendix.)

martin demonstrate it a clear abuse of discretion or conduct amounting to usurpation of the judicial power to be entitled to issuance of the writ,

The 1915.d) request the district court to appointment counsel before set up time frame - trial setting and notice of final-pactrial conference show arbitrary act by this district-court and martin was-sanctioned for Filed A text claim against the attorney represent (martin) under, Kevin martin v christopher nicholson 218-cv-00391-mjd-jms had nothing to do with martin v Ledford. 202022 martin demonstrate that why the district court claim he sanctioned under 218-cv-00391-mjd-jms

standard of review?

martin demonstrated he filed his objection with the magistrate judge claim martin did follow Federal rule's 41-b.)

martin demonstrated he filed grievance under policy 00-02-301 to challenge those part of pindleton correction facility not return my objection -)

on 3-16-21 due martin transfer from pindleton facility to wabash valley martin demonstrated his property got lost, at his fault, he could attached other document

SEE coleman v Thompson 501 US 722, 750 1991.) cause must be something external to the petitioner something that cannot fairly be attributed to martin to custody fault id.

martin demonstrated the district court abused of discretion by dismissal as a sanction for failure to prosecute for an abuse of discretion see Williams v Chicago Bd of Educ 155 F3d 853, 857 7th Cir (1998.)

Although abuse of discretion is a deferential standard

it is nonetheless a meaningful one see Dumpy v McKee

134 F3d 1297 1300 7th Cir (1998) This supreme court

must find that this court of appeal and district

court waive this issue - where both court commits

an error of law SEE Ichan v Galitane 180

F3d 829 837 7th Cir (1999)

martin dispute district court Failure to prosecute looking
at the Appendix-) show martin Follow this rule and the
district deny martin DUE PROCESS right Equal protection of
law and First amendment Access to court, ' This court of
Appeal and district court Fails to consider an Essential
Factor see Robyns v Reliance Standard Life Insurance Co
130 F 3d 1231-1236 7th Cir 1997)

martin demonstrated he met the dead-lines but contending
that the sanction of dismissing was too harsh Despite the
Fact that in SEE Lerner v Quaker Oats Co 84 F 3d
239-241-42 7th Cir 1996) SEE Dict 93) martin show
prejudice this district court set a trial but still claim
the order still remain in Effect, martin demonstrated
he don't have, no money from person deny martin of Justice.
This would have obligated the district judge to review de novo
Anything martin objected- to in the magistrate Judge
recommendation see Johnson v Zema 845 Corp 170 F 3d
734 739 7th Cir 1999) martin demonstrated under
Either the de novo of clear Error should had a
standard of review - warning see Krugier v APF 41
214 F 3d 784 7th Cir 2000).

martin demonstrated under the mailbox rule

See US v Craig 368 F 3d 738, 740 7th Cir 2004.)

The objection and witness list and Exhibit list should
be deemed as of that date.

(3.) whether court of appeal deny martin a fundamental right to obtain access to court to show how this would prove he was innocent had this defendant did retaliation

martin demonstrate this appeal was in good faith of this formula but must point the sufficient discretion to the account of the special circumstances that often arise in pro'se situation like martin see *Haines v Kerner* 404 US 519 1972.)

martin demonstrate the supreme court however explain and recognized that the cause and prejudice requirement has an actual innocence exception sometimes known by other names such as the fundamental miscarriage of justice exception see *Murray v Carrier* 1986 477 US 478 91 L ed 2d 397 106 S Ct 2637-

martin is required to show that a constitutional violation has probably resulted in the conviction of one who is actually innocent subsequently

however see *Sawyer v Whitley* 1992 505 US

333 120 L Ed 2d 269 112 S Ct 2514.) martin would pass through the gateway of innocence if this counsel did lost my affidavit by chevanne Fox behind martin filed grievance on counsel Ledford was at least a motivating factor in the

defendant's decision to take the retaliatory action see *Gomez v Randle* 680 F3d 859, 861 7th Cir 2012.)

martin not change no rule by the district court or court of appeal or state court show how, I could prove the reason to excuse my default martin demonstrate his actual innocence?

martin demonstrated this trial-court have to guarantee martin a litigants a due process right to an impartial judge reflecting the principle that no man is permitted to try cases, where he has an interest in the outcome SEE RE-murchison 349 US 133, 136 75 Sct 623, 99 LEd 992 1955.)

martin demonstrated he filed complaint on Judge James A. Sweeney a judge with court of appeal about him abuse his power against, martin demonstrated the presumption is that judges are honest upright individuals and that that they rise above biasing influences by a judge intent and martin demonstrated he could find something in the background of most judge which in many cases would lead that person to conclude that the judge has a possible temptation to be biased, but not all temptations ARE created equal SEE DELVECCHIO 31 F3d at 1372) lost property I could attached complaint against this judge show BIAS HERE this right to access to court is based on the First Fifth and Fourteenth Amendment to the constitution martin right to use court a fundamental right.

STATEMENT OF THE CASE

martin demonstrate he filed usc. 1983
civil right complaint with district court southern
in Indiana And pass the screen own All his
complaint but this one was Fox, retaliation claim
A plaintiff must show that he engaged in activity
protected by the First Amendment (2) he suffered a
deprivation that would likely deter First Amendment
activity in the future and (3) the First Amendment
activity was at least a motivating factor in the
Defendants decision to take the retaliatory action
see *Cromer v. Nardle* 680 F.3d 859 866
7th Cir 2012.) martin demonstrate he met
All the standard because the defendants did not file
on Failure to ^{file} motion for summary judgment in
'this case,' show the created by this Bias
Judge.

REASONS FOR GRANTING THE WRIT

man to demonstrate his First Amendment right was violation and his Equal protection right to law, was violation For this reason HERE, The Supreme court has required a waiver of government fees when the imposition of a fee would deny a fundamental right to the indigent -) Fundamental right are examined in the substantive due process and Equal protection section of this outline deprive a indigent Appellant to access to court A First Amendment right and due process right HERE within this jurisdiction the Equal protection of the Law that been deny and injustice around the table of unfair, was unfold in a malice way HERE

CONCLUSION

The petition for a writ of certiorari should be granted.

Executed on: 6-5, 2021,
6-5-2021

Respectfully submitted,

Kevin Martin
KEVIN MARTIN
Petitioner / pro se