

No. 21-5888

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

SEP 14 2021

OFFICE OF THE CLERK

WES JOSEPH PERTGEN — PETITIONER

WILLIAM A. GITTERE, WARDEN — RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PETITION FOR WRIT OF CERTIORARI

WES J. PERTGEN #23790
HIGH DESERT STATE PRISON
POST OFFICE BOX 650
INDIAN SPRINGS, NV 89070
PETITIONER PRO

QUESTION(S) PRESENTED

GROUND NO. Q1: Does Due Process and a Liberty Interest exist in Nevada's Disciplinary Proceedings; and when Disciplinary Constitutional Rights are Violated?

GROUND NO. Q2: Was the Petitioner's Constitutional Right to Present a Defense Violated because Denied Witnesses?

GROUND NO. Q3: Was the Petitioner Denied to have Undisclosed Medical and Incident's Reports to be Reviewed that evidence therein used against him is a Denied Due Process?

GROUND NO. Q4: Was the Notice Of Charges insufficient that additional Evidence was used against him to convict a Violation of Due Process?

GROUND NO. Q5: The recitation of the evidence used to convict Petitioner is "Staff Report" only is a Violation of Due Process?

GROUND NO. Q6: It is a Violation of Due Process only the Disciplinary Chairperson used Petitioner's alleged prior Disciplinary History against him?

GROUND NO. Q7: Is it a Double Jeopardy Violation to immediately conduct a new Disciplinary Hearing and Change a Disciplinary Panel Member when the charged Disciplinary Member replaced was not Disqualified?

1 GROUND NO. 08: Did the Petitioner in his GROUND's Support the
2 Record that his Disciplinary Constitutional Rights were Violated and
3 is Entitled to Relief?

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5 GROUND NO. 09: Because the Petitioner was Denied his Filed Stamped
6 copy of a Propose Court Order he was Court Ordered to Submit and
7 did so and the Proposed Court Order is not included in the Record
8 On Appeal as being Filed does these occurrence Violate Due Process?

9 GROUND NO. 09 (A): Did the District Court abused its discretion
10 in Striking From the Record the Petitioner's Reply to the Respondent's
11 Answer to Petition for Writ of Habeas Corpus; and this Reply is still
12 in the Record On Appeal can this Court too De Novo consider this
13 Reply; And Nevada Supreme Court is erroneous did Petitioner's
14 Substantial Rights to Present his Habeas Corpus is establish he is
15 Entitled to Relief including a Evidentiary Hearing?

16
17 GROUND NO. 10: Is is a Violation of Due Process the District Court
18 and Nevada Supreme Court did not Rule on a Petitioner's in District
19 Court & Motion Objecting to the Fabrication of a Audio Recording
20 of the anew Disciplinary Hearing?

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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.

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RELATED CASES

• WES JOSEPH PERTGEN v. WILLIAM A. GITTER, WARDEN, FIRST JUDICIAL DISTRICT COURT CASE NO. 19 EW 00027 1B • ORDER TO TRANSFER PETITIONER Filed JUN 14, 2019.

• WES JOSEPH PERTGEN v. THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CARSON CITY, Respondent, and SUSAN HERRIWETHER COUNTY CLERK OF THE FIRST JUDICIAL DISTRICT Real Party in Interest • NEVADA SUPREME COURT NO. 79451, ORDER DENYING PETITION Filed SEP. 19, 2019.

1 WES JOSEPH PERTGEN v. WILLIAM A. GITTERE, WARDEN. SEVENTH JUDICIAL
2 DISTRICT COURT CASE NO. HC-1907020, DEPT NO. 2

3 FILED APRIL 21, 2020 ORDER DENYING PETITIONER'S FIRST MOTION FOR
4 EXTENSION OF TIME TO FILE A REPLY TO ANSWER TO PETITION FOR WRIT
5 OF HABEAS CORPUS; ORDER DENYING PETITIONER'S MOTION FOR LEAVE
6 TO REPLY TO ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS; ORDER
7 DENYING PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL; ORDER THAT
8 PETITIONER AND RESPONDENT FILE PROPOSED ORDER: WES JOSEPH
9 PERTGEN v. WILLIAM A. GITTERE, WARDEN; NEVADA SUPREME COURT NO.
10 81163, ORDER DISMISSING APPEAL FILED JUNE 24, 2020.

11 FILED JUNE 29, 2020 ORDER DENYING PETITION FOR WRIT OF HABEAS
12 CORPUS: WES JOSEPH PERTGEN v. WILLIAM A. GITTERE, WARDEN; NEVADA
13 SUPREME COURT NO. 81409, ORDER OF AFFIRMANCE FILED APRIL 23, 2021;
14 ORDER DENYING PETITION FOR REVIEW FILED JUNE 22, 2021.

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3
4 APPENDIX N: Dated 10-07-17 • DISCIPLINARY FORM II SUMMARY OF HEARING
5 OFFICER'S INQUIRY AND DISPOSITION, STATE OF NEVADA DEPARTMENT OF
6 CORRECTIONS OIC#431612 at Pages 046, 047

7
8 APPENDIX O: Dated 12-07-17 • DISCIPLINARY FORM III SUMMARY OF DISCIPLINARY
9 HEARING, STATE OF NEVADA DEPARTMENT OF CORRECTION OIC#431612 at pages 048
10 to 051

11
12 PLEASE TAKE NOTICE the Petitioner herein is Submitting
13 Filing an PETITIONER'S APPENDIX IN SUPPORT OF PETITION
14 FOR WRIT OF CERTIORARI and therein is enclosed, attached
15 is all the APPENDIX A through APPENDIX O cited above with
16 their Page's No's. 004 through 051

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TABLE OF AUTHORITIES CITED

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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

OPINION BELOW

☐ For cases from Federal courts:

The opinion of the United States court of appeals 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 United States district 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.

☒ For cases from state courts:

The opinion of the highest state court to review the merits 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.

1 The opinion of the ~~IN~~ THE COURT OF APPEALS OF THE STATE OF NEVADA
2 court appears at Appendix A to the Petition and is
3 ☐ reported at _____; or
4 ☐ has been designated for publication but is not yet reported; or,
5 ☒ is unpublished

6 The opinion of the ~~IN~~ THE SEVENTH JUDICIAL DISTRICT COURT OF THE
7 STATE OF NEVADA, ~~IN~~ AND FOR THE COUNTY OF WHITE PINE COURT
8 appears at Appendix B to the petition and is
9 ☐ reported at _____; or,
10 ☐ has been designated for publication but is not yet reported; or,
11 ☒ is unpublished

12
13 The opinion of the highest state court to review the writ appears at
14 Appendix E to the petition and is
15 ☐ reported at _____; or,
16 ~~has~~ has been designated for publication but is not yet reported; or,
17 ☒ is unpublished

18 The opinion of the ~~IN~~ THE SEVENTH JUDICIAL DISTRICT COURT OF THE
19 STATE OF NEVADA ~~IN~~ AND FOR THE COUNTY OF WHITE PINE COURT
20 appears at Appendix D to the petition and is
21 ☐ reported at _____; or,
22 ☐ has been designated for publication but is not yet reported; or,
23 ☒ is unpublished

JURISDICTION

☐ For cases From Federal courts:

The date on which the United States Court of Appeals decided my case was N/A

☐ 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: _____ 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. §1254(1).

☒ For cases From state courts:

The date on which the highest state court decided my case was April 23, 2021

A copy of that decision appears at Appendix A.

☒ A timely petition For rehearing was thereafter denied on the following date: June 22, 2021, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition For 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).

☒ For cases From state courts:

In addition the date on which the highest state court had decided

1 a First opinion incorporated in the above Case #181409 was JUN 04, 2020,

2 A copy of that decision appears at Appendix E Nevada Supreme Court No.

3 E I A timely petition for rehearing was thereafter denied on the following

4 date: _____ and a copy of the order denying rehearing appears at

5 Appendix _____.

6 E I An extension of time to file the petition for writ of certiorari was

7 granted to and including _____ (date) on _____ (date) Application No.

8 A _____.

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

10 and any other applicable authorities for this Court to apply their

11 authority and discretion in this matter.

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1 CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

2
3 The Petitioner has a Fourteenth Constitutional Guaranteed Amendment
4 Rights to Due Process and on Liberty Interest in prison Disciplinary
5 Proceedings in WOLFF V. McDONNELL, 418 U.S. 539 (1974) and these
6 guaranteed rights are (1) advance notice of charges (2) a qualified opportunity
7 to call witnesses and present documentary evidence, (3) a written statement by the
8 Footfinder of evidence relied upon, (4) and a impartial disciplinary panel, (5)
9 and some evidence in the record to support the disciplinary conviction & also
10 See SUPERINTENDENT V. HILL, 472 U.S. 445 (1985). All the above guaranteed
11 Rights have been Violated demonstrated in the GROUND'S herein that Petitioner
12 has in addition a First Amendment Guaranteed Constitutional Rights too
13 Petition a Court For Redress and an Habeas Petition is the appropriate
14 vehicle to so as in the instant Case, disciplinary conviction Petitioner was
15 sanction thirty (30) days loss of good time days.

16
17 Nevada Department Of Correction Administrative Regulation 707. et
18 seq. concerning Disciplinary Process and Procedures does established Due
19 Process and Liberty Interest Fourteenth Amendment Constitutional Rights because
20 well over 100 times in these suppose to be Disciplinary Rules to be applied
21 is states the word "shall" happen, occur in the Disciplinary Process and Procedures
22 and this therefore amounts to a Due Process Violation For Violating AR 707 et seq. Rules.

23
24 Also pursuant to under 28 U.S.C. § 1257(a) and any other
25 Applicable Law and Court Rules the Petitioner is unwavering of that
26 gives this Court Jurisdiction to here and resolve this Petition For Writ
27 Of Certiorari.

STATEMENT OF THE CASE

At all relevant times Wes Joseph Pettgen (hereafter Petitioner) is a prisoner in Nevada Department Of Correction (hereafter NDOC) since 1987 and is not eligible for parole and was imprisoned at Northern Nevada Correctional Center (NNCC) from 2011 to Jan. 2, 2018 wherein in the instant matter one of the disciplinary imposed sanctions he was transferred to Ely State Prison (ESP) to be classified close custody or maximum custody prisoner for a minimum of five (5) years before he is eligible to have his custody reduced until Sept. 25, 2022.

On 9-5-17, at NNCC a Correctional Officer DO Velez had wrote up a NOTICE OF CHARGES againsts Petitioner for allegedly stabbed inmate Russell Fietze #1136442 one (1) time in hand a Major Violation (Class A) MJ3 - Battery per NDOC ADMINISTRATIVE REGULATION 707 INITIATE DISCIPLINARY PROCESS at AR 707.02 5. MJ3 Battery.

Subsequently on 9-5-17, Petitioner was Administrative Segregated in the hole, and on 10-8-17, Sergeant Candice Madieros appeared at the closed cell door and told Petitioner he was wrote up for Battery ~~and~~ ^{only and} asked if he wants any witnesses, Petitioner said yes Fietze, and Paul Morgan (his cellie on 9-5-17) and to see all Investigation Reports (hereafter Incident Reports or IR) S. Madieros only said she needs to make copies and will be back, and didn't read or show Petitioner the NOC.

S. Madieros returned on 10-20-17, and told Petitioner to sign a copy of the NOC and the Preliminary Hearing papers, "SUMMARY OF HEARING OFFICER'S INQUIRY AND DISPOSITION (hereafter PH) and he could have any witnesses at the Disciplinary Hearing and See the Incident Reports, SEE the

FOOTNOTE NO. 1: Petitioner was originally sentence to death until 1994 and resentence 2000.

FOOTNOTE NO. 2:

1 NOC at APPENDIX M and PH papers at APPENDIX N.

2 Subsequently on 12-7-17, out of the blue a Disciplinary Hearing had
3 COMMENCED wherein towards the conclusion of the Disc. Hearing the Chair-
4 person a Lt. John Henley claims to notice the tape recorder wasn't
5 recording the Disc. Hearing and said because Officer Miller who was
6 one of the Disc Committee Panel Members was getting off work soon he
7 was replacing C/O Miller with a C/O D. Santos and then the Disciplinary
8 Hearing commenced started over anew with Lt. Henley and C/O Santos
9 and CCS2 Mr. Alishio who was also present in both above Disc Hearings.

10 The alleged audio recording of the anew Disc. Hearing does still
11 establish in the conclusion of the Disc. Hearing that Lt. Henley reads the
12 NOC out loud and immediately pronounces thereafter without any
13 consultation or deliberation with C/O Santos and Mr. Alishio that the
14 Petitioner is guilty and imposes sentences to wit: 60 days Disciplinary
15 Segregation; 60 days Loss of Good Time Days; Restitution; Institutional
16 Transfer: SEE the Disciplinary Hearing papers at APPENDIX O, also these
17 Disc Hearing Forms were printed out upon being found verbally guilty.
18 Also on 2-12-18, NDOC Director signed off only 30 Good Time Days is Forfeited.

19 Petitioner on 12-13-17, submitted an Disciplinary Appeal (Disc. App.)
20 in a First Level Grievance that was rejected in a Improper Grievance Memo
21 on 12-28-17, that Petitioner received on 5-24-18, and subsequent on 5-28
22 -17, submitted the Disc App in a Second Level Grievance that was also rejected
23 in a Improper Grievance Memo dated 6-1-18, Petitioner rec'd on 6-27-18,

24 Petitioner in the First Judicial District Court CASE NO. 19 EW 00027 IB
25 Filed a PETITION FOR WRIT OF HABEAS CORPUS (PRISON DISCIPLINARY PROCEEDINGS)
26 the Court entered an ORDER TO TRANSFER PETITION "Filed on Jun. 14, 2019"

27 FOOTNOTE NO. 1: C/O Miller was an Senior Correctional Officer.

28 FOOTNOTE NO. 2: CCS2 is a abbreviation for Correctional Caseworker Specialist Level 2.

1 to the Seventh Judicial District Court and the Habeas and related Pleadings
2 were Filed on July 8, 2019 in CASE NO. HC-1907020

3 In addition on 8-21-19, Nevada Supreme Court No. 79451 received an
4 PETITION FOR WRIT OF MANDAMUS and related Pleadings that Requested
5 the Court would ORDER the Court Clerk of the First Judicial District Court
6 to File the above Habeas Petition and return to Petitioner a Filed stamped
7 copy he already had provided originally when he submitted the Habeas.
8 The Petitioner made this Request because he hadn't then received any
9 responses From the Court Clerk if the Habeas was even received
10 and or Filed etc. On 9-19-19, Nevada Supreme Court entered a ORDER
11 DENYING PETITION, SEE at APPENDIX F, and on OCT. 14, 2019 entered a
12 NOTICE IN LIEU OF REMITTUR at APPENDIX G, "NEV. SUP. CT. No. 79451."

13 Petitioner much later after finding out the Habeas was Filed all
14 along in the 1ST and 7TH Jud. Dist Ct's had on 9-25-19, Filed a Motion
15 For Judicial Action On [Habeas] Petition and the Court, CASE NO. HC
16 1907020 ON 10-8-19 ORDER TO RESPOND within 45 days, Respondent
17 was Granted an Extension of Time until 1-6-20 to Respond and Filed
18 their Answer To Petition For Writ OF Habeas Corpus and Index And
19 Exhibits... ON 1-6-20.

20 Petitioner ON 1-21-20, Motion the Court For a Extension Of Time
21 To Reply To Respondents Answer, and then on 1-24-24, Respondent
22 Had Opposed the Motion

23 Subsequently on 3-2-20, Petitioner had Filed a Motion For Leave
24 To Reply To Answer... and the Reply To Answer To Petition For Writ OF
25 Habeas Corpus along with a Motion For Appointment Of Counsel.

26 In addition on 3-25-20, Petitioner had Filed a Motion he Object's
27 to the Fabrication OF the 12-7-17 audio recording OF the Disc Hearing.
28 ...Respondent had Submitted this allege Tape in the Exhibit on 1-6-20, and

1 the District Court took no action of this Motion, Petitioner did Appeal
2 this Nevada Supreme Court No. 91168 of APPENDIX I and E, and No. 91409

3 Subsequent the District Court at APPENDIX D issued an ORDER etc.
4 Denying the Petitioner's Motions to File a Reply and Stricken the Reply
5 FROM the Record and Denied Appointment of Counsel, and Ordered the
6 parties to File a Proposed Order concerning the Habeas Petition. Petitioner
7 Filed a Notice Of Appeal of APPENDIX I Nevada Supreme Court Dismissed
8 the Appeal of APPENDIX E.

9 Respondent subsequently submitted a untimely Proposed Order the
10 District Court Filed at APPENDIX B therein Denying the Petition For Writ
11 OF Habeas Corpus. Petitioner did a percie Notice Of Appeal Please SEE
12 at APPENDIX I that included again Appeal the District Court's Order of
13 APPENDIX E and the subsequent Appeal of APPENDIX A and the District
14 Court didnot Rule on Motion Audio Tape been Fabricated, the Petitioner
15 had Appealed everything that all GROUND'S Raised herein have been
16 exhausted in Nevada Supreme Court. Petitioner also File a Designation Of
17 Record On Appeal See at APPENDIX J.

18 At APPENDIX A Nevada's Appeal Court had Denied the Appeal
19 the Petitioner timely submitted a Petition For Review of APPENDIX H,
20 at APPENDIX C on JUN 23, 2021, Nevada Supreme Court, ORDER DENYING
21 PETITION FOR REVIEW, this Petition For Writ Of Certiorari is Timely sent
22 to this Honorable Court on September , 2021.

23

24 FOOTNOTE NO : at APPENDIX I and A

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REASON FOR GRANTING THE PETITION

Petitioner didn't go to high school and otherwise is limited self-taught educated and it would be extremely much easier to base his Request Grounds to be Ruled on by this Honorable Court by way of using APPENDIX H as an Foundation as in the same order he will Raise his GROUND'S herein.

GROUND NO. XI

Per NEVADA DEPARTMENT OF CORRECTIONS ADMINISTRATIVE REGULATION 707. INMATE DISCIPLINARY PROCESS AR 707, and INMATE DISCIPLINARY MANUAL AR 701.1, Petitioner is suppose to in Fifteen (15) days to be served a NOTICE OF CHARGES (NOC) and have a PRELIMINARY HEARING (PH); and afterwards in thirty (30) days have a DISCIPLINARY HEARING (DISC. HEARING).

SEE APPENDIX M and APPENDIX N, Petitioner wasn't actually served the NOC and a so-called PH process until 10-20-17, Fortyfive (45) days from the dated 9-17, NOC and even though these OFFICIAL documents were originally going to be served on 10-8-17, regardless the 10-7, 8-17, PH papers therein claiming "PH - Late due to revision to AR 707" Petitioner has found no such then occurrence and even if so AR 707 et seq. always establishes any revision is not retroactive. Also SEE APPENDIX Q, From 10-20-17 until 12-07-17 to hold a so-called DISC HEARING this is Fortyeight (48) days

Petitioner did suffered much prejudice consequently being served the NOC and PH papers and subsequent DISC HEARING outstandingly late especially as established and demonstrated throughout in the GROUND'S Raised herein and Request the Court would Consider these additional GROUND'S de novo herein.

1 Pursuant in AR 707 and AR 707.1 well over one hundred (100) times
2 it instructs that certain disciplinary procedures specifically stating the
3 word "shall" occur this does establish a Liberty Interest in disciplinary
4 proceedings and repeated intentional or any violation of these sup-
5 pose to be valid disciplinary rules is a violation of Due Process and
6 just because theres an disclaimer in AR 707 that there is NO due
7 process violation for violating the disciplinary procedures this is
8 Unconstitutional the Petitioner does have a Liberty Interest and Due
9 Process in Nev. Dept. Of Corr. AR 707. et seq. Disciplinary proceedings
10 and the Violations in AR 707. et seq. Rules that occurred that presented
11 in the GROUND'S in this Petition are in addition a clear violation of
12 WOLFF V. McDONNELL 94 ^{Sup.} Ct. 2963 (1974), and SANDIN V. CONNER, 515
13 U.S. 472 (1995) should not diminish the Disciplinary Constitutional Rights
14 Guaranteed in WOLFF supra and especially because Petitioner was
15 disciplinary sanction loss of good time days that a Liberty Interest and
16 Due Process is

17

18 GROUND NO. ~~02~~

19 Petitioner's defense was that both inmates Russell Fietz and Paul
20 Morgan had stabbed Fietz's hand and also self-inflicted like superficial
21 stabbs or poked themselves together this is more presented throughout this
22 Petition. Petitioner was denied to call Fietz and Morgan as witnesses
23 the Disc. Chairperson Lt. Henley saying no because they were both victim
24 Morgan was in the cell the entire time. and Morgan in the NOC at
25 APPENDIX 11 that he was taken to medical and when he returned he was told
26 to roll up Petitioner properly and when C/O Velez's was inventorying
27 Petitioner's property he C/O Velez found an 7 1/2 inch prison nude weapon,
28 what is most inconceivable here is in the NOC previously C/O Velez and an

1 C/O Sandborn completed a thorough and systematic search of Petitioner's and
2 Morgan's cell and no weapon was found in the cell. The Disciplinary
3 Panel should have at a minimum question Morgan without Petitioner present
4 and asked, question Morgan, when and how did the weapon appear and
5 then disappear too and then reappear especially it was not there in the
6 systematic cell search and tell him the video shows Petitioner leaving
7 the cell three (3) times the preceding thirty (30) minutes and it appears
8 Petitioner ~~just came out of the blue and attacked and too because~~ ^{had each time been in some kind of a altercation, don't tell us}
9 Petitioner just out of the blue attacked and too because during the cell to
10 lock up Petitioner went to the cell and waited for Fietz to leave the cell
11 it was count time and didn't realize anything else was going on until the
12 yelling by Fietz at Petitioner, "put your hands on me again see what
13 happens" and why were you Morgan yelling
14 And did you Morgan have any stab superficial injuries
15 Fietz also should have been questioned by the Disciplinary Panel Why do
16 you have the major injury in the palm of your hand and why did you yell
17 at Petitioner put your hands on me again see what happens.
18 Petitioner not only in the First but too in the new disciplinary hearing
19 requested C/O Velez even though the audio recording of the new disciplinary
20 hearing does not reflect this because it's been tampered with but regardless
21 C/O Velez should be asked about him finding a weapon that wasn't there
22 etc. etc. and what about Fietz and Morgan's above statements and the
23 video he reviewed because we C/O checked C-Wing the Petitioner only went
24 to A Wing that was checked like B-Wing, and ask him additional things
25 Fietz said and Morgan said? Petitioner was also suppose to call
26 witness pursuant APPENDIX N "WITNESS INFORMATION. INMATE WILL BE AFFORDED THE
27 OPPORTUNITY TO CALL FOR WITNESS AT THE FULL DISCIPLINARY HEARING COMMITTEE"
28 FOOTNOTE NO. 1: Easily you can pass something to your cell neighbor by opens
both cell windows, this is how Morgan got the weapon to put in Petitioner's
property he put together.

GROUND NO. 03

In addition at signing the PTH papers Petitioner was told investigation reports, "Incidents Report's (IR's)" will be available in the Disciplinary Hearing and at the 12-7-17, Disc. Hearing he was completely denied access to them including the Request's the Disc. Panel examine them, given the unusual circumstances of Petitioner defense at least the Disc. Panel should have examine Friezt and Morgan's medical injuries and too because Lt. Henley said that Nev. Sup. Ct. confirmed there was more injuries then said in the NOC, and to who and what extent of these additional established injuries is unknown to date and they Friezt and especially Morgan had to give a written IR made out somewhere and this isn't speculated as Nev. Sup. Ct. opinion APPENDIX A claims. Due Process allows Petitioner to present a Defense he was Denied to Present and establish his Defense

GROUND NO. 04

The NOC at APPENDIX A was insufficient to included all the information used in Finding Petitioner to be guilty of a battery, First the NOC didn't enable Petitioner to ^{Marshal} ~~marshal~~ all the facts to prepare a defense WOLFE, 419 U.S. at 564 only the Disc Chairperson Lt. Henley had considered unknown additional injuries in Finding Petitioner to be guilty and also Morgan to be a claimed victim this evidence is not in the NOC, also Nev. Sup. Ct. is mistaken Lt. Henley said there was additional injuries to the hands and legs and did not specify Friezt or Morgan or both of them. Petitioner was Denied Sufficient NOC to Prepare a Defense the Undisclosed Evidence was used against him a Violation of Due Process

GROUND NO. 05

The recitation of the evidence used stated to support the Battery

1 Disciplinary Conviction based on solely "Staff Report" apparently referring to
2 the NDC at APPENDIX O and APPENDIX M respectively.

3 It is a violation of Due Process to support the disc. battery conviction on
4 the Staff Report solely WOLFF, supra the recitation is too bare and naked and
5 too because additional evidence was used against Petitioner to wit additional
6 injuries and Morgan considered a victim and here to what extent is he allegedly
7 a victim. The evidence used to convict Petitioner was inadequate and insuff-
8 Ficient the Staff Report did not list all the evidence used to convict Petitioner
9 and C/D Velez didn't see and or hear the alleged battery and just because
10 inmate Fritz claimed Petitioner allegedly stabbed her in the hand this doesn't
11 prove it actually occurred at all a violation of Due Process in WOLFF, supra

12

13 GROUND NO. 06

14 Even though Nev. Sup. Ct. claims Petitioner didn't demonstrated that prior
15 disciplinary was considered by the disc. hearing committee, the Court is first
16 mistaken only the Disc. Chairman said he was considering prior disciplinary
17 and didn't share this with the other Disc. Committee Panel regardless it's not on
18 the audio recording of the Disc. Hearing because it's been tampered with and
19 it is a violation of Due Process that Lt. Henley consider prior disciplinary etc. etc.

20

21 GROUND NO. 07

22 It should be establish by this Court it is a Double Jeopardy
23 Violation did occurred because after suspiciously Petitioner towards
24 the end of the defense that Lt. Henley claimed he then notice that the
25 recording tape wasn't recording the disc hearing and pursuant to AR-
26 707 et seq. before the commencement of the disc hearing the recorder
27 is suppose to be checked its in working accordingly.

28 What should be a Double Jeopardy Violation is that immediately

thereafter Lt. Henley said that because Officer Miller who was sitting on the Disciplinary Panel was getting off work soon he is replacing C/O Miller with a C/O Santos and a new Disc Hearing commenced.

I was wrong to excuse C/O Miller the new Disc Hearing just should have been continued until the following day, etc. there wasn't cause to excuse C/O Miller to proceed in a immediate new Disciplinary Hearing and its possible C/O Miller could have found Petitioner to be not guilty or guilty of Fighting not a battery. Once a Disciplinary Hearing is almost completed and immediately starts anew it should be a Double Jeopardy Violation to replace a Disc. Hearing Member with any good reason not to have just continued the renewed Disc. Hearing for any reasonable amount of days and considering Petitioner received the NOC thirty (30) days overdue and the Disc. Hearing was subsequently Fifteen (15) days overdue too.

GROUND NO. 8

Petitioner did present ^{specific} facts in the record that he is entitled to Habeas Corpus Relief that his Constitutional Rights in a Disciplinary Hearing were Violated in WOLFF supra and reiterates these Errors in the Ground's raised in this Petition and attend belied by the record and Petitioner was Denied that Medical Report and IR were not reviewed that would support Petitioner's his Defense etc. etc., and Petitioner should have been entitled to a Evidentiary Hearing etc.

GROUND NO. 9

Petitioner was Denied a Court Filed Stamped copy of his Submitted, Proposed Order Granting Habeas Relief that the District Court had Order the Petitioner to Submit and wrongly it is not made

included in the Record On Appeal in this instant Nev. Sup. Ct. Appeal No. 81409, BYFORD V. STATE, 156 P.3d 691 (2007)

(A) In addition the District Court did abuse its discretion it STRICKEN the Petitioner's timely submitted Reply to the Respondent's Answer to Petition For Habeas Corpus. Petitioner had Motion the District Court For 45 days to Reply to Respondent's Answer, the Respondent had Opposed the Extension the Court took no action, subsequently over 40 days later timely Petitioner had Motion the Court For Leave to File a Reply along with the Reply to Respondent's Answer. The District Court over a month and a half later Filed it ORDER etc. etc. Denying the 45 Extension, Denying Leave to File a Reply and STRICKEN the Reply For the Record, and Denied Appointment Of Counsel, and Ordered Petitioner and Respondent to File Proposed Orders SEE at APPENDIX D, the Petitioner had Appealed SEE at APPENDIX K, Nevada Supreme Court had ORDERED] DISMISSING APPEAL SEE at APPENDIX E.

Subsequent soon thereafter the District Court ORDERED] DENYING PETITION FOR WRIT OF HABEAS CORPUS, SEE at APPENDIX B, Petitioner had Appealed including again APPENDIX K and E above and note Please SEE these Appeals at APPENDIX I, DESIGNATION OF RECORD ON APPEAL at APPENDIX J. Every GROUND Raised in the Petition has been Fully exhausted in Nevada Supreme Court and the Respondent has not claimed at any time Petitioner had ~~Procedurally~~ Procedurally Defaulted at anything.

Surprisingly the Reply to Respondent's Answer is still in the Record On Appeal in this Appeal Nev. Sup. Ct. No. 81409, "even though the Petitioner Proposed Order above wasn't not Filed or made a part of the R.O.A. No 81409.

Petitioner believes regardless this Court has the authority to consider the Petitioner's Reply in this Reply the Petitioner had submitted alot of Points And

1 authorities concerning AR 702 et seq. and the GROUND'S Raised in more detail
2 Respondent complained for in their Answer to Petition. In APPENDIX A, the Court
3 is erroneous Petitioner his Substantial Rights to adequately Present his Habeas
4 Petition Pleading's was established and is Entitled to Relief pursuant to NRS
5 178.598 and WOLFF supra including an Evidentiary Hearing pursuant to
6 NRS 34.770, to present Frietz and Morgan's prior prison, and medical injuries
7 record in the District Court even in the Court's Chambers without Petitioner, the
8 Disciplinary Panel C/D Millet, C/D Santos, CCS2 Alshio and Lt. Henry what did
9 occurred in the back to back Disc Hearings and C/D Velez who wrote the NDC
10 and along with C/D Sandborn they conducted the systematic cell search now weapon
11 found then found after Morgan etc., and Morgan what happen in the cell
12 and Frietz should give a more reasonable account what allegedly occurred etc.

13 GROUND NO. 10

14 The Court in APPENDIX A is erroneous the District Court should have
15 Ruled on Petitioner's Pro Per Motion Objecting to the Fabrication of Audio
16 Recording of Disciplinary Hearing submitted by Respondent

17
18 CONCLUSION: Petitioner respectfully Request this Honorable Court to Consider
19 that Petitioner is Pro Per in all the litigation and would Review De Novo
20 this entire Petition and or the entire Records On Appeal's Nev. Sup. Ct. No 81409
21 and No 81, APPENDIX A and APPENDIX, and or Appoint Counsel to Repre-
22 sent Petitioner in this Court concerning this Petition and or Grant Petitioner
23 any Relief in this Petition For Writ Of ^{Certiorari} ~~Exhonorati~~ in this Honorable Court
24 on Nevada Supreme Court or the District Court or in Nev. Dept. Of Corr.

25 Dated this 13th day of September, 2021. Respectfully Submitted,

26
27
28
Wes J. Peterson
Wes J. Peterson #23790
High Desert State Prison
Post Office Box 650
Indian Springs, NV
89070

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

WES JOSEPH PERTGEN — PETITIONER
(Your Name)

VS.

WILLIAM A. GITTERE, WARDEN — RESPONDENT(S)

PROOF OF SERVICE

I, Wes Joseph Pertgen, do swear or declare that on this date, September, 2021, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Michael J. Bangard,
Senior Deputy Attorney General
1539 Avenue F, Suite 2
Ely, NV
89301

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 15th, 2021

Wes J. Pertgen
(Signature)

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

WES JOSEPH PERTGEN — PETITIONER

WILLIAM A. GITTER, WARDEN — RESPONDENT(S)

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(b), I certify that the Petition
For Writ OF Certiorari contains ^{around} 3,000 words, excluding the parts of
the Petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury pursuant to 28 U.S.C. §1746
that the foregoing is true and correct.

Executed on September 13, 2021.

Respectfully Submitted,

Wes J. Pertgen

Wes J. Pertgen #23780
High Desert State Prison
P.O. Box 650
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89070