

No. 21-6517

21-2648

IN THE

SUPREME COURT OF THE UNITED STATES

CLERK

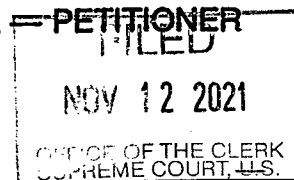
ORIGINAL

MARK STINSON 29908-076 Reg

(Your Name)

vs.

K. CAULEY, ET AL.



RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

MARK STINSON Reg# 29908-076

(Your Name)

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Forrest City, AR 72336

(City, State, Zip Code)

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QUESTION(S) PRESENTED

1. What limits the Due Process Clause of the Fifth Amendment places on the authority of prison administrators to remove inmates from the general prison population and confine them to a less desirable regimen for administrative reasons.
2. Whether the mere possibility of petitioner's rational argument on the law or facts in support of his claim is warranted.
3. Whether there was a violation of the Fifth and Eighth Amendment Rights.

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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☒ is unpublished.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 B 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 AUGUST 20, 2021.

☐ 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: SEPTEMBER 28, 2021, 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 Rights
Eighth Amendment Rights
Violation Of Due Process
Violation Of Fairness
Violation Of Justice
Violation Of Liberty
Cruel And Unusual Punishment
First Amendment Rights

STATEMENT OF THE CASE

On or about Jan. 8, 2020, I was depressed(P.T.S.D.)feeling bad because I was being treated unfairly by the judicial system and didn't stand for count. At that time officer McDaniels told me to get down out off bed and go the message center because he has to take me to the Speaial Housing Unit(SHU). So I did, he took me in the Van to the Low. After sitting up front for a while, Lt. Watkins came out and asked me if I was disrespectful to the officer and I said no it was peaceful protest. He said ok and told me to go back to the camp and the officer at the desk called McDaniels and he came back and took me back to the camp. The next day Jan, 9, 2020, the camp admin Mr. Thomas and the Asst. warden Hall was outside the dinning hall waiting on me to come out. Thomas said to Hall this is the guy that was on protest. Hall asked me, you know that you can't protest in hear. I said yes. Hall then told Thomas to take me to the SHU. Thomas took me to the message center then got another officer to take me to the low. After sitting out front for about 30-45 minutes, Hall came in and told one of the officers coming on duty to take me to the SHU, he put handcuffs on me and walked me back to the SHU. After being stripped searched I was placed in a cell. Later Lt. Watkins gave me an administrative Detention Order stateing A pending Investi- gation. The next day Jan. 10, 2020, I was given an incident re- port from Lt. McAlister, which was not checked by she said the case isn't going to DHO. However, I was not released from the SHU un- til Jan. 16, 2020.

On Aug. 12, 2020, I was feeling even more depressed because of the injustice treatment from the courts and now denied case(2:19CV16-BSM), I did not stand for 1030am count. Then officer Schmidt told me to get your "crazy ass up and put your shoes on because I'm tired of your shit you going to the bucket." I then put my shoes on and put my hands behind my back and officer Schmidt grabbed my left arm and lead me to the message center with officer Ridge. While Schmidt was holding my left arm behind my back he hit arm against the door rail, doing so he reinjury it. After arriving at the low officer Ridge asked me if I had anything sharpe in my pocket, I said no. He then told me to get against the wall so he can search me and he did. After walking to the SHU uncuffed, then once in stripped searched and then placed in a two man cell #128. at 1120am, Aug. 12, Lt. Watkins gave me an administrative Detention order stating a pending investigation. The next day Aug. 13, lt. McAlister gave me an incident report which wasn't checked but she said your case is not going to DHO. On or about the 17th of Aug. I asked Lt. Watkins could I speak with Lt. McAlister, he said she has transferred to another dept. I then asked could I speak with the captain. He said ok. I never seen or spoke to the captain. On or about the 24th of Aug. Lt. McAlister came to the door, and I asked her why have I not left yet. She said you should have left last Tuesday, I wil check. I didn't see her or speak to her again.

On or about the 27th of Aug. I heard the warden Hendrix having a very loud conversation with another inmate. I got up and went to the door and waited until he was done talking with the other inmate. Once he was done, I asked the warden if he could

help me get out of prison. He said I don't know your case, I told him I am the only one here that is sueing you. He then said I can't help you get out of prison. Ok, just help me get out of the Shu, he said he will check. On or about the 28th or 29th, I asked the officer passing out the lunch tray, what was going on he said he didn't know, you should have stood up for count. That same day the C.M.C. can down the hall so I stop her and asked her could she fine out what is going on with my case. "She said she didn't know but will check.

The next day she came back and told me that not standing up for count is only a 300 series shot. The reason why you are still here is because the Delta Team do not want you back at the camp and is writing to the low admin..to keep you at the low, and that they are going to rewrite your shot. I asked how long does that take, she said there is no time frame. On the 2nd of Sept. I heard the warden talking in the hall and again I asked him why haven't I been released yet. He wrote something down and walked away. About one hour or so later I was released from the SHU. I believe that placing me in that torture chamber and holding me hostage first for 7 days then again for 21 days, not able to go outside or to the law library or to church or anywhere is retaliation for the now unjustly denied case(2:19CV16-BSM).

B.O.P. officers is using the SHU for their own personal torture chamber. In violation of the first eight amendments rights, mainly fifth and first. Substantive and Procedual Due Process, violation of fundamental fairness and justice and liberty.

On March 19, 2021, I was told by officer K. Cauley that he was sending me to the low(SHU) if I didn't sign up to work in the dish room. I told him that I wasn't going because of the unfair treatment that I am receiving, but mostly because I didn't want to work there because I was fired In Aug 2019, and the fired again in Dec. 2020. He sent me to the SHU and on March 20, 2021, Walker gave me an incident report and took my statement. I remained in the SHU for another 306 prohibited act code, for 7 more days.

On March 24, 2021, officer Rendon was to take me back to the camp but he didn't. He came to the SHU and talked to me about getting an Management Virable if I kept coming to the SHU and I stay there two more days. Is this B.O.P. policy? or retaliation? It is the later. And violation of the first and fifth and eight amendment rights. All are very depressing because of the war-time condiction due to P.T.S.D. were he was awarded a Service Ribbon and Three Bronze Stars. In the United States Army.

REASONS FOR GRANTING THE PETITION

The loss of FIRST Amendment Freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. The loss of liberty is a severe form of irreparable injury.

FERRARA V. UNITED STATES, 370 F.Supp. 2d 351(D.Mass. 2005). BARONE V. UNITED STATES, 610 F. Supp. 2d 150(D.Mass. 2009).

§6.3.3.--Purpose of isolated Confinement

In addition to granting relief on the basis of the conditions of isolated confinement, federal court have also found a violation of the Eighth Amendment when the punishment is imposed for an improper purpose. The courts view the proper purpose of isolated confinement to be the maintenance of order within the institution... Therefore, any punishment that is not necessary to maintain order is cruel and unusual and prohibited by the Eighth Amendment. The petitioner was not out of control, it was a peaceful event. The procedural aspect of due process deals with the procedures or means by which government action can affect the fundamental rights of the individual; it is the guarantee that only after certain fair procedures are followed can the government affect an individual's fundamental rights.

§ 9.3 Due Process Requirements in a Prison Disciplinary Hearing

The "due process of law" involved in prison disciplinary proceedings is the procedural aspect of the due process requirements of the Fifth and Fourteenth Amendments. In the early 1970s the federal courts began to focus their attention on the specific procedures used in prison disciplinary proceedings. The courts have

provided a forum for the protection of the right of a prisoner to procedural due process. In general terms, administrative agencies are required by due process to act only after adequate notice and only after an opportunity for a fair hearing. BOAG V. MacDOUGALL, 454 U.S. 364; 102 S.Ct. 700; 70 L.Ed.2d 551(1982).

What limits the Due Process Clause of the Fifth Amendment places on the authority of prison administrators to remove inmates from the general prison population and confine them to a less desirable regimen for administrative reasons. HEWITT V. HELMS, 459 U.S. 460; 103 S.Ct. 864; 74 L.Ed.2d 675(1983). The court said that HELMS could not be deprived of this interest without a hearing, governed by the procedures mandated in WOLFF V. McDONNELL, 418 U.S. 539(1974).

While no State may "deprive any person of life, liberty, or property, without due process of law" it is well settled that only a limited range of interest fall within this provision. Liberty interest protected by the Fifth Amendment may arise from two sources-the Due Process Clause itself and the laws. MEACHUM V. FANO, 427 U.S. 215, 223-227(1976)BOAG V. MacDOUGALL, 454 U.S.364; 102 S.Ct. 700; 70 L.Ed.2d 551(1982). Even when a federal court is willing to review a prisoner's complaint concerning isolated confinement, a federally protected right must be involved. The right involved is created by the Eighth Amendment to the U.S. Constitution, which prohibits "cruel and unusual punishments." The Supreme Court has interpreted this clause to prohibit punishments that indicate torture, unnecessary cruelty, or something inhuman and barbarous, when the punishment is disproportionate to the offense, and when a punishment is unnecessarily cruel in view of

the purpose for which it is used. The petitioner was treated with cruel and disproportionate punishment which was also unnecessarily. WOLFF V. McDONNELL.

§ 9.31 WOLFF v. McDONNELL

Federal courts took all or part of the requirements imposed on administrative agencies and held that due process in the prison disciplinary setting required basically the same safeguards. In 1974, the Supreme Court decided wolff v McDonnell, which involved a state prisoner in Nebraska who had filed a civil rights action in federal court, alleging that he had been denied due process during a prison disciplinary proceeding.

Considering the nature of prison disciplinary proceedings, the Court held that the full range of procedures mandated by MORRISSEY and SCARPELLI for parole revocation did not apply. The Court believed that the unique environment of a prison demanded a more flexible approach in accommodating the interests of the prisoners and the needs of the prison. Specifically, the Court held that due process in a prison disciplinary setting requires:

1. Advance written notice of the charges against the prisoner, to be given at least 24 hours before the appearance before the prison disciplinary board;
2. A written statement by the fact finders as to the evidence relied upon and reasons for the disciplinary action;
3. That the prisoner be allowed to call witnesses and present documentary evidence in his or her defense, providing there is no undue hazard to institutional safety or correctional goals.
4. Counsel substitute (either a fellow prisoner, if permitted, or staff) should be allowed when the prisoner is illiterate or when the complexity of the issues makes it unlikely that the prisoner will be able to collect and present the evidence necessary for an adequate comprehension of the case.

5. The prison disciplinary board must be impartial.

§9.3.2 BAXTER v. PALMIGIANO

After the WOLFF decision, the federal courts filled in some of the gaps, a task the Wolff had expressly left to the discretion of prison officials, not-federal courts. The Ninth Circuit held that: Minimum notice and a right to respond are due a prisoner faced with even a temporary suspension of privileges; A prisoner at a disciplinary hearing who is denied the privilege of confronting and cross-examining witnesses must receive written reasons or the denial will be deemed prima facie evidence of an abuse of discretion;

A further basis for granting relief is when the punishment is disproportionate to the infraction committed by the prisoner. The unsanitary conditions of a cell can make the punishment disproportionate to the offense. Another example of a disproportionate punishment is when isolation was imposed for five months for failure to sign a safety sheet. The unconstitutionality of disproportionate punishment also applies to other areas of correctional law. The prison disciplinary board must be impartial. The petitioner did not go to DHO. BAXTER v. PALMIGIANO. BIVENS v. SIX UNKNOWN NAMED AGENTS, 403 U.S. 388(1971). Rule 8(A) Claim for Relief, A pleading that states a claim for relief must contain: 2)a short and plain statement of the claim showing that the pleader is intitled to relief; and 3)a demand for the relief sought, which may include relief in the alternative or different types of relief.

The court notes the well-recognized principle that complaint drawn by pro se litigants are held to a less stringent standard than those drawn by legal counsel. HAINES V. KERNER, 404, U.S. 519, 92 S.CT.(1972); U.S. ex rel. DATTOLA V. NAT TREASURY EMP. UNION, 86 F.R.D. 496(W.D.Pa. 1980).

The text for frivolity is whether the plaintiff can make a rational argument on the law or facts in support of his claim. ANDERS V. CALIFORNIA, 366 U.S. 738 S.CT. 1396 Ed.2d 493(1967); WATSON V. AULT 525 F.2d 886(5th Cir. 1976). BUFORD V. RUNYOU, 160 F.3d 1199, 1203 n.6(8th Cir. 1998). ASHCROFT V. IQBAL, 556 U.S. 662, 678(2009), 28 U.S.C. §1915(e)(2) and 42 U.S.C. §1997e(c)(1).

The loss of FIRST Amendment Freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. The loss of liberty is a severe form of irreparable injury. FERRARA V. UNITED STATES, 370 F. Supp. 2d 351(D.Mass.2005). TWOMBLY, 550 U.S. at 556-7.

Movant asks the Court, where appropriate, to apply the "Rule of Lenity" which requires all ambiguities to be settled in favor of the petitioner, UNITED STATES V. RAINS, 615 F.3d 589(5th Cir. 2010). This petitioner urges the Court to adopt, approve and apply these standards to his pleading for it would be a miscarriage of justice to allow this illegal action to stand. Hall v. BELLMON, 935 F.2d 1110(10th Cir. 1991).

CONCLUSION

Therefore, for the foregoing reasons, of cruel and unusual punishment and violation of the constitution, the petitioner should be awarded Ten Million Dollars(\$10,000,000.00), for pain and suffering and:

The petition for a writ of certiorari should be granted.

Respectfully submitted,

MARK STINSON Reg# 29908-076

Date: NOVEMBER 8, 2021