

No. 21-7367

FILED

DEC 07 2022

OFFICE OF THE CLERK
U.S. SUPREME COURT

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

21-CV-0400

Adam Shane Swindle — ^{Pro Se} PETITIONER
(Your Name)

vs.

S. Ma'at — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Adam Shane Swindle Bk/A 32320-001
(Your Name)

ELL Yazoo City Low P.O. BOX 5000
(Address)

Yazoo City, Mississippi 39194
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Should an inmate be punished for an act they could not have known to be prohibited?

Should an inmate be punished for an act they did not commit?

Should an inmate be punished based upon assumptions?

Did the lower courts abuse their discretion by not fully examining the facts in the record only to deny habeas relief?

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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copy of §2241 Habeas, original filed in Fifth Cir. Dist. Court)*

APPENDIX F- *Objections to Magistrate's Report and Recommendation with
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STATUTES AND RULES

BOP Program Policy Statement:

- OPI: ADM/TFB NUMBER: 4500.12 DATE: 3/14/18 SUBJECT: TRUST FUND/DEPOSIT

- Fund Manual; Chapter 1; 1.1 Definitions; Contacts

 - Chapter 14; 14.10 e Trulines Service List

 - Chapter 14; 14.10 Trulines Service List (1) Postal Mail

OPI: CPD/CSB NUMBER: 5270.09 DATE: July 8, 2011 SUBJECT: Inmate Discipline Program; High Severity Level Prohibited Act 296

OPI: CPD/CPB NUMBER: 5270.09 CN-1 DATE: November 8, 2020 SUBJECT: Inmate Discipline Program; § 541.3 (4)

OPI: CPD NUMBER 5800.10 DATE: November 3, 1995 SUBJECT: Mail Management Manual

OPI: CPD/CPB NUMBER 5800.16 DATE: April 5, 2011 SUBJECT: Mail Management Manual

OTHER

Equal Protection Act

Constitutional Rights of Prisoners - Prisoner Disciplinary Proceedings § 9.3.12 Evidence

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 6 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 _____ 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 November 22, 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: _____, 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 _____.
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

First Amendment Rights to Correspondance

First Amendment Violation to mail Sensorship .

Fourteenth Amendment Violation of Due Process

Equal Protection Violation of the Fourteenth Amendment

STATEMENT OF THE CASE

On Nov 19 2019, Petitioner received a 296A incident report for attempting to circumvent the mail by writing a letter with a note to a company and directing the company to send items to another address not authorized. A DHO hearing was held on Dec 5, 2019 by A. Thomas DHO. DHO Thomas did not care about the "address unauthorized" part of the incident report, only cared that Petitioner "attempted to circumvent" the BOP mailroom and sanctioned the Petitioner 21 good conduct time. (Appendix A3B) Petitioner appealed the DHO's decision to the BOP regional office on Feb 18, 2020 and was denied by Mr. J. Baltazar. (Appendix C) Petitioner then appealed Baltazar's denial to BOP's central office and was denied by Ian Connors. (Appendix D)

Petitioner then filed a 32241 Habeas to the United States District Court of the Fifth Circuit and was denied by Judge Kay (Appendix E). Petitioner filed an objection to Magistrate Judge Kay's Report and Recommendation for denial and was dismissed by Judge Cain (Appendix F). Next, Petitioner filed for an appeal to the Fifth Circuit Court of Appeals and was denied relief (Appendix G).

This Petitioner did not cite any case law and only cited BOP Policy, Programs, and Statements to support facts throughout the whole appeal process, especially within the United States Court of Appeals for the Fifth Circuit, P. 3-8 (Appendix G). It shows within the record that the facts have been overlooked to deny Petitioner's relief and restoration of his good conduct time. Now this Petitioner will cite case law to support the facts of his claim.

The two key components of this case is when C. Minitrez alleges "...is attempting to circumvent the mail." and "...directing the company to send items to another address not authorized."

REASONS FOR GRANTING THE PETITION

The lower courts abused their discretion by not fully examining the facts of this case. There is absolutely no way this Petitioner "attempted to circumvent" the mailroom because after the rejection, the items would be returned to the company. The provided S.A.S.E. is labeled for the company to send the items to Petitioner's home address, and not to the BOP address to where the Petitioner was housed. Staff authorization is not required because A) All contacts are approved contacts, see OPI: ADM/TFB NUMBER: 4500.12 DATE: 3/14/18 SUBJECT: Trust Fund/Deposit Manual Chapter 1. Definitions 1.1 Contacts; Chapter 14, 14.10c Trulines Service List; 1410 Trulines Services (1) Postal Mail (Appendix G T.5-7), and B) BOP Code 296 does not require "staff authorization" such as required in Code 328: "Giving money or anything of value to, or accepting money or anything of value from another inmate or any person without staff authorization." we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." Adams v. Gunnell, 729 F.2d 362, 368-69 (5th Cir. 1984) (quoting Grayned v. City of Rockford, 408 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed. 2d 222 (1972)).

Also, under OPI: CPD NUMBER: 5270.09 Date: July 8, 2011 SUBJECT: Inmate Discipline Program; High Severity Level Prohibited Act 296, there is no mention of "address not authorized", but only "...to an unauthorized person." (Appendix G P.5). "Prison officials may rely on hearsay in prison discipline proceedings, nonetheless, there must be some indicia of reliability of the information that forms the basis for prison disciplinary actions." Gorrell v. Haynes 2013 U.S. Dist. LEXIS 6365, 4-6 (11th Cir 2013); quoting Cato v. Rushen, 824 F.2d at 705 (9th Cir. 1987); see also Viens v. Daniels, 871 F.2d 1328, 1355 (7th Cir. 1989); Harrison v. Dahm, 911 F.2d 37, 41 (8th Cir. 1990); Kyle v. Hanberry, 677 F.2d 1386, 1390-91 (11th Cir. 1982); see also Hudson v. Johnson 242 F.3d 534 (5th Cir. 2001).

A code, statute, or policy cannot be broken if there is no policy to support the incident. For BOP staff to add to any code, statute, policy, or rule at their own will in order to punish an inmate is a violation to that inmates due process. Inmates are entitled to a fair and impartial decision-maker at disciplinary hearings, see Edwards v. Balisok, 520 U.S. 641, 647, 117 S.Ct. 1584, 137 L.Ed. 2d 906 (1997) ("The due process requirement for a prison disciplinary hearing are in many respects less demanding than those for criminal prosecution, but they are not so lax as to let stand the decision of a biased hearing officer who dishonestly suppresses evidence of innocence.") The Fifth Circuit has declared that the findings of a prison discipline hearing shall not be disturbed unless they are arbitrary and capricious. Banvelau v. McFarland, 41 F.3d 232, 234 (5th Cir. 1995). The right of inmates not to be punished unless officials have evidence establishing a violation is akin to the right not to be punished for committing a lawful act, which this court has found to be a clearly established and specific due process right. Coffman v. Trickey, 884 F.2d 1052, 1063 (8th Cir. 1989), cert. denied 494 U.S. 1056, 110 S.Ct. 1523, 108 L.Ed. 2d 763 (1990).

Determining whether a rule is impermissibly vague requires examining whether he had fair warning that his conduct was prohibited. Reeves v. Petteox, 19 F.3d 1061 (5th Cir. 1994); see also Adams, F.2d at 369. Due process is violated if a prisoner is punished for violating a rule that is so vague as to make it impossible to conform his or her conduct to the rule. Meyers v. Alldredge, 492 F.2d 296 (3rd Cir. 1974); Sagerser v. Oregon State Penitentiary Corr. Div., 597 P.2d 1257 (Or. Ct. App. 1979); Haller v. Oregon State Penitentiary Corr. Div., 570 P.2d 983 (Or. Ct. App. 1977); see also Constitutional Rights of Prisoners - Prisoner Disciplinary Proceedings §9.3.12-Evidence at 68. In Reeves, 19 F.3d 1060, 1062, the court held that it was a violation of due process to punish inmates for acts they could not know were prohibited.

DHO Thomas violated Petitioner's due process rights by giving the greater weight to the reporting staff member and by punishing Petitioner for asking a company to send rejected items to his home address. This does not pose a threat to the ability of the staff to control the use of mail. (Appendix B, section V, last paragraph). The rejected items would be sent back to the publisher and would be out of BOP's control. The items then will be sent to Petitioner's home address and not sent back to the BOP's address. "However, a challenge that goes to the weight of the evidence is irrelevant to the issue of whether the DHO's finding had a constitutionally sufficient evidentiary basis. See *Thompson v. Owens*, 884 F.2d 500, 502 (3rd Cir. 1989) (citing *Superintendent, Mass. Corr. Inst. v. Hill*, 105 S.Ct. 2768 at 455. Prison discipline proceedings are overturned only where no evidence in the record supports the decision. See *Smith v. Rabalais*, 659 F.2d 539, 545 (5th Cir. 1981). (See also Appendix G, Facts of the Case and BOP Policy P. 3+4.)

The facts are plain, clear, and proves to show that certain individuals with power, abuse their authority in siding with others who act arbitrary to bend and manipulate policy and/or rules to take away and punish an inmate, and who disregard the facts and/or truths when an inmate proves he or she is innocent of any violations. This is biased and prejudice forward an inmate.

If this Petitioner is guilty of violating any BOP Policy Statement, he would accept his punishment of loss of good time credit as provided by the DHO, however, the record proves that this Petitioner did not commit any violations against BOP policy, Program Statement, and/or Code.

This Petitioner request the restoration of his lost 27 good time credits/days, recalculation of his custody points, and the record to be expunged.

"The Equal Protection Clause of the Fourteenth Amendment is 'essentially a direction that all persons similarly situated should be treated alike.'" *Wood v. Collier*, 836 F.3d 534 (5th Cir. 2016) (quoting *City of Cleburne v. Cleburne Living Ctr.* 473 U.S. 432, 439, 105 S.Ct. 3249, 87 L.Ed. 2d 313 (1985)). (See Appendix C "Attachment 1")

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

 _____

Date: February 21st 2020