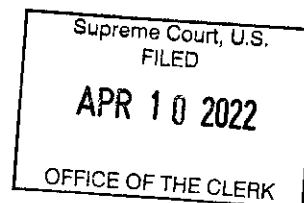


No. ~~21-7653~~ ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Nathan Christopher Braun — PETITIONER
(Your Name)

vs.

Justin DeMars, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eighth Circuit/USDC District of Minnesota
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

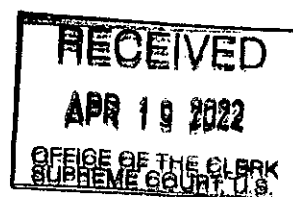
PETITION FOR WRIT OF CERTIORARI

Nathan Christopher Braun OJD #282511
(Your Name)

970 Pickett Street North
(Address)

Bayport, MN 55003-1400
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

Question One: Did the retaliatory transfer from MCF-OPH to MCF-STV on Sept. 9, 2021 and the subsequent deprivation of the Petitioner's legal mail, reference materials and documents until Sept. 29, 2021, as well as depriving him of access to envelopes, paper, and access to the courts bar him the availability to file for an Appeal to the Eighth Circuit due to the States direct interference in his ability to timely file?

Question Two: Does the Petitioner, whom has a Serious and Persistent Mental Illness, has no monetary sustenance, was transferred to another facility separate from that of the witnesses, whom has been within solitary confinement for the entire time and has no way to take depositions from the opposite party, obtain documents, perform medical tests, etc. have the necessary prerequisites for considering appointment of counsel?

Question Three: Did the USDC Dist. of Minnesota err in its use of Summary Judgment by ruling on a case that is entirely based upon what is credibility determinations that are to be made by a jury, and instead ruled most favorable to the Moving party rather than the Non-Moving party, even when the precedent of this court is that "When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jurist could believe it, a court should not adopt that version of the facts for ruling a motion for Summary judgment." And when the MNDOL waited until after the court dismissed the case to finally perform the medical tests necessary to demonstrate the damage done to the Plaintiffs spine which requires surgery to correct?

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:

Justin DeMars; Steve Kriha; Christopher Mitchel; Carolyn Skrypek; Anthony Sunde;
Fergus Gavin; Scott Eitel; Michael Gephart; Dennis Hanson; Lisa Meyer; Benjamin Suttief;
Kathy Halverson; Eric Meemkin

RELATED CASES

Braun v. D.O.C. et al, No. 0:18-cv-03355-JNE-ECW, U.S. District Court, District of Minnesota.
Judgment entered on August 26, 2021

Nathan Christopher Braun v. Justin DeMars, et al, No. 21-3516 U.S. Court of Appeals for the Eighth Circuit.
Judgment entered January 20, 2022.

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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 _____ to the petition and is

☒ reported at Nathan Christopher Braun v. Justin DeMors, et al, No. 21-3516 8th Cir.; 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 Braun v. D.O.C. et al, No. 018-CV-03355-JNE-EW, USDC Dist. MN; 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 January 20, 2022.

☐ 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: January 10, 2022, 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

- U.S. Const. First Amend.; Fourth Amend.; Fifth Amend.; and the Seventh, Eighth and Fourteenth Amendments.
- Stone v. Powell, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976)
- ~~Fed. R. App. P. 4(a)~~ Fed. R. App. P. 4(a)
- Fed. R. App. P. 3(d)
- Fed. R. App. P. 2
- Lucien v. Jarkish, 133 F.3d 464 (CA 7 1998)
- Toolasprashad v. Bureau of Prisons, 286 F.3d 576 (D.C. Cir. 2002)
- Levis v. Casey, 518 U.S. 343, 351-55, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996)
- Jones v. Blanas, 393 F.3d 918, 936 (9th Cir. 2004)
- Fed. R. App. P. 4(c)(1)
- Houston v. Lack, 487 U.S. 266, 275-76, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988)

STATEMENT OF THE CASE

This case involves the consideration of whether the retaliatory transfer of a prisoner to another facility, and then depriving that prisoner of availability to conduct any access to the courts by withholding all of his legal supplies, which included his legal mail needed to reply/respond to the USDC, his envelopes, his reference materials, his documents on the case etc. — was cause to bar him from timely filing for an Appeal to the Eighth Circuit, or whether the untimely filing of his Appeal (by merely two days) was truly the prisoners fault and not due to the retaliation which had been continuously noted throughout the litigation.

It also involves the consideration of whether the lower court erred in not considering the difficulty of this case compounded with the fact that the Petitioner has a Serious and Persistent Mental Illness, no monetary sustenance, was transferred to another facility away from that of the witnesses, has been in solitary confinement for the entire time this case has been at controversy and has no way to take depositions or gather evidence from the opposite party (or even for himself), no way to perform the necessary medical exams, obtain documents — yet refused to consider the appointment of counsel, even when the Petitioner had tried and failed to obtain counsel of his own.

And finally, it involves the full consideration of whether the lower court abused its discretion during Summary Judgment by ruling on the case which is entirely based upon credibility determinations and interpretations that must be made by a Jury, which the Petitioner has a Right to, and preserved previously by requesting, especially as the opposing party has now agreed that they must perform intradural surgery on the Petitioners spine to remove the mass that was caused by the Defendants during the November 6, 2018 incident, but only after the lower court moved to dismiss did the party agree to do the required MRI scans and Medical Tests that the Petitioner had originally requested of the Court.

REASONS FOR GRANTING THE PETITION

This Court should Grant Certiorari due to the following compelling reasons articulated below that are in compliance with Supreme Court Rule 10.

First, it is clear that the Eighth Circuit Court of Appeals entered a decision in conflict with the decision of other United States court of appeals on the same important matters; but has also decided an important federal question in way that conflicts with a decision by a state court of last resort; has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power by barring the Petitioner from filing an Appeal within the 8th Circuit Court of Appeals, claiming that it was "untimely" and that the 8th Circuit therefore lacked jurisdiction, yet the Petitioner clearly showed that he had been interfered with by prison officials whom first transferred him in retaliation to another facility and then further retaliated by withholding his legal papers, his envelopes — all meaningful access to the courts — until after the filing deadline in the case to respond. The ~~retaliatory conduct~~ ^{Right of access to courts} is notably grounded within Article IV of the Privileges and Immunities Clause, the First Amendment Petition Clause, the Fifth Amendment Due Process Clause, and the Fourteenth Amendments Equal Protection and Due Process Clause (Christopher v. Harbury, 536 U.S. 403, 153 L.Ed.2d 413, 122 S.Ct. 2174 (2002)). That right is fundamental to preserve all rights (McCarthy v. Madigan, 503 U.S. 140, 117 L.Ed.2d 291, 112 S.Ct. 1081 (1992)). States are prohibited from impeding this right of access (John L. v. Adams, 964 F.2d 228 (CA 6 1992); Silva v. Di Vittorio, 658 F.3d 1090 (CA 9 2011)). Further, the retaliation of this right is clearly unconstitutional (Crawford-El v. Britton, 523 U.S. 574, 140 L.Ed.2d 759, 118 S.Ct. 1584 (1998)).

Each Circuit Court has unanimously agreed and adopted as precedent from this Court that Access to Courts is a Fundamental Right, and that impeding of that right by government (prison) actors is an unconstitutional act, especially when done so in retaliation — yet here the 8th Circuit has departed from the norm and entered a decision in direct conflict of these holdings and calls for an exercise of this Court's supervisory power.

Similarly, the 8th Circuit Court decided that the lower court (by refusing to answer to the Petitioners Appeal) was correct in denying the Petitioner's Motion for Appointment of Counsel without conducting any of the required determinations as to considering whether there are special circumstances that merit appointment, such as the complexity

of the legal and factual issues involved, the plaintiff's ability to represent himself, the plaintiff's ability to retain counsel without assistance, the necessity of expert testimony, etc. Here, the Petitioner had made clear showing that he had been transferred to another prison away from witnesses involved, suffered from a Serious and Persistent Mental Illness, was/is in solitary confinement during the entire case at controversy, had/has no way to conduct depositions, examinations, obtain documents, etc. This case involved ~~obviously complex~~ obviously complex legal and factual issues which required actual research by experts and expert testimony. Again, the precedent here, although he has no "constitutional or statutory right" to appointed counsel, each circuit court, as well as this Court has been unanimous in the holding that in circumstances such as those described above (and what the Petitioner asserted in his Motion) presented "exceptional circumstances," especially as the case involved medical maltreatment claims and claims of complex medical issues—which the Petitioner had no way of investigating himself and was proven by the opposing party refusing to conduct any of his requested tests until after the lower court and then the 8th Circuit dismissed).

Finally, the 8th Circuit Court decided that the lower court (by refusing to answer the Petitioner's Appeal) was correct in its decision to Grant Summary Judgment in favor of the moving party—the defendants in the case, even when the clear precedent established by this Court and other Circuits is that Summary Judgment is inappropriate when a case turns on credibility; that the Petitioner's self-serving statements based on personal knowledge or observation can defeat summary judgment; that Summary Judgment is not a time for fact-finding, that task is reserved for trial. Rather, on summary judgment, the district court must accept as fact all allegations the non-moving party makes, provided they are sufficiently supported by evidence of record. So when competing narratives emerge on key events, courts are not at liberty to pick which side they think is more credible.

Indeed, if the only issue is one of credibility, the issue is factual, and a court cannot grant summary judgment. And the record is viewed in the light most favorable to the non-movant, so long as their version of events/facts are not blatantly contradicted by the video evidence. And again, here the lower court had gone against clearly established precedent in order to decide a federal question and enter a decision in conflict with all other Circuits, departing so far from the accepted and usual course as to call for an exercise of this Court's supervisory power. The court below did this by refusing to follow precedent, and in fact conducting a de facto fact-finding trial itself, all in favor and in light-most-favorable to the defendants (moving party) on Summary Judgment. The court made its decision when it was blatantly contradicted by the non-moving party (the Petitioner) and his Affidavits and Motions on the Record and in Evidence that were based on personal knowledge and observation, and clearly contradicted the testimony & indicated that the video evidence submitted had been altered, and that significant medical evidence had been deleted and/or altered by the State.

For all of these reasons, the Petitioner seeks certiorari in this Court in order to not merely correct the errors in his case, but to hopefully establish within the Eighth Circuit Courts, should the case be remanded for review, or the rights of others similarly situated, that the distinct clarification of Question One, Two, and Three be answered with respect to the situational factors so described within this Writ. I know that, by personal observation

within my own State that I have witnessed many courts refuse to accept filings merely because they are a day or two late—even when the prisoner has proven it was due to prison interference. I have seen also the direct bias of the USDC, Dist. of Minn Judges in their holdings against Pro Se prisoner litigants, yet those same decisions filed by one that is represented by appointed counsel are met with more favorable results—even when written with the exact same words as the Pro Se prisoner litigant. Finally, I have seen the State withhold, remove, alter, delete, obstruct, obscure evidence, records, testimony, etc. during civil suits, especially those containing medical information.

This is not a one-time issue, nor a one-time fix, and while this Court clearly has limits in its judicial authority, it has the Obligation and Duty in protecting the Constitutional Rights of prisoners to state their claims, which includes protecting them from retaliation for doing so, and preserving the evidence involved in the claim, and placing clear and concise limits upon the laws of the lower courts of what is the accepted and usual course of judicial proceedings.

With that in mind, and our beloved Constitution in heart, I pray these reasons find your minds and are worthy.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted, Nathan Braun
Nathan C. Braun #252511
970 Pickett St. N.
Bayport, MN 55633-1496

Date: April 9, 2012