

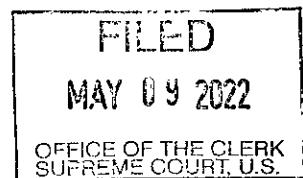
ORIGINAL

IN THE UNITED STATES SUPREME COURT

MARK LOWE
1489162

21-8005

Lunenburg Correctional Center
690 Falls Road
Victoria, Va 23974



v.

Case : _____

Appeal: 21-7527 & 21-6861
US District Court No: 3:20 - CV -390

Harold Clarke - Director
Department of Corrections for
the Commonwealth of Virginia
and
Major David Hamlette Chief of Security
by counsel
Jason Miyares
Commonwealth Attorney for the Commonwealth of Virginia
202 North 9th Street
Richmond, Va 23219

PETITION FOR WRIT OF CERTIORARI

Comes Now, Mark Lowe, Pro Se, and in proper person with a petition for
'Writ of Certiorari' on the merits and asserts:

QUESTIONS PRESENTED FOR REVIEW

1. Whether the denial of basic human needs violates individual rights under the 6th, 8th, and 14th Amendments to the United States Constitution.
2. Whether any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might be questioned.
3. Whether the Department of Corrections denied access to the courts.

PARTIES

MARK LOWE

1489162

Lunenburg Correctional Center

690 Falls Road

Victoria, Va 23974

Pro Se

Appellant

and

Harold Clarke - Director

Department of Corrections for

the Commonwealth of Virginia

and

Major David Hamlette Chief of Security

by counsel

Jason Miyares

Commonwealth Attorney for the Commonwealth of Virginia

202 North 9th Street

Richmond, Va 23219

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LAW

5 CFR §1201.36

6th Amendment to the United States Constitution

8th Amendment to the United States Constitution

14th Amendment to the United States Constitution

42 USC §1983

Prison Litigation Reform Act

Title II of the Americans with Disabilities Act 42 USC §12131

OPINION BELOW

The court's decision is unpublished. In compliance with United States District Court Rule 14 b(iii), this case began in the Richmond United States District Court as 3:20 - CV - 390. The petitioner filed an interlocutory appeal and requested the disqualification of Judge Henry Hudson. Judge Henry Hudson was a named defendant in a 42 USC §1985 and §1986 action. (Case 3:21 - CV - 193 Lowe v. Hudson) While the interlocutory appeal was pending, the District Court dismissed the petition on October 18, 2021. A timely appeal to the final decision was entered in the 4th Circuit Court of Appeals. The Fourth Circuit Court of Appeals denied the interlocutory and final appeal on January 24, 2022. A timely appeal and Motion for rehearing was entered. The 4th Circuit Court of Appeals denied the Motion for Rehearing on March 1, 2022.

JURISDICTION:

Pursuant to Rule 10, of the Rules of the Supreme Court of the United States, the United States Supreme Court has judicial discretion to review this case for compelling reasons. This brief has been submitted within 90 days of the final decision from the Fourth Circuit Court of Appeals. Pursuant to United States Supreme Court Rule 13, this petition for writ of certiorari has been filed within 90 days of the final decision of the Fourth Circuit Court of Appeals.

CONSTITUTIONAL AND STATUTORY INVOLVED

The petitioner asserts a violation of his 6th, 8th, and 14th Amendment rights.

The law in dispute is 5 CFR §1201.36, 42 USC § 1983, prison Litigation Reform Act, and Title II of the Americans with Disabilities Act 42 USC § 12131.

United States Constitutional Amendment VI

The Sixth Amendment guarantees the rights of criminal defendants, including the right to a public trial without unnecessary delay,.....

United States Constitutional Amendment VIII

The Eighth Amendment prohibits cruel and unusual punishment.

United States Constitutional Amendment XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protections of the law.

This case involves an interlocutory appeal of judicial disqualification which is necessary and suitable for adjudication on the merits. There are no convoluted variables and/or complications which prohibit the clear resolution and procedure governing the disqualification of a judge.

STATEMENT OF THE CASE:

The Appellant, Mark Lowe, request for this court to reverse the final decision from the Richmond United States District Court dated October 18, 2021. Mark Lowe is a prisoner of the Commonwealth of Virginia. Mark Lowe asserted a deprivation of rights and violations of the 6th, 8th, and 14th Amendments to the United States Constitution while incarcerated in Baskerville Correctional Center at 4150 Hayes Mill Road Baskerville, Va 23913.

Mark Lowe was petitioning the court for an injunction and punitive damages after the denial of clothing, warm blankets, toilet paper, outside exercise, exercise, and/or basic human needs during the COVID - 19 pandemic. Mark Lowe was assaulted and suffered a broken jaw. Mark Lowe was told to remain silent about the conditions at Baskerville Corrections. Officers of the court concealed the incident and refused to prosecute the gang member who assaulted Mark Lowe. Judge Henry Hudson refused to consider or review any evidence or testimony. Judge Henry Hudson testified for the Commonwealth of Virginia. Judge Henry Hudson violated Federal Rules of Evidence 605.

A timely objection and request for judicial disqualification was submitted to the United States District Court and Fourth Circuit Court of Appeals.

The deprivations of human rights during the COVID19 pandemic are severe enough to warrant and justify system wide relief. Access to law libraries and the court hindered and adversely affected the outcome and decision of the District Court. The petitioner, Mark Lowe, presents a compelling argument and case to the United States Supreme Court for change.

Assignment of Error

1. Whether the denial of basic human needs violates individual's rights under the 6th, 8th, and 14th Amendment to the United States Constitution.

2. Whether any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might be questioned.

3. Whether the Department of Corrections denied access to the courts.

Standard of Review

a. Mark Lowe moves the court to review this case under the standard established in (i) Williams v. Griffin, 952 F.2d 820, 825-26 (4th Cir. 1991) and (ii) Rhodes v. Chapman, 452 U.S. 337, 347-49(1981)

b. Mark Lowe moves the court to review the retaliatory complaints under the objective standard for obscure and wanton indifference established in Wilson v. Seiter, 501 U.S. 244, 297-303(1991)

2. Whether any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might be questioned.

Standard of Review

a. The Appellant request a de novo review of whether the District Court Judge should have disqualified himself. The petitioner request for the court to apply the standard of review established in Blizzard v. Fielding, 454 F.Supp. 318, 320 (D. Mass. 1978) and United States v. Zipkin, 729 F.2d 384 (6th Cir. 1984).

(i) Judge Henry Hudson improperly allowed himself to become a witness and

introduce hearsay into the record of the court.

(ii). Judge Henry Hudson improperly took an expert position medical care and determinism.

(iii). Judge Henry Hudson improperly refused to certify the appeal for review and grant Informa pauperis status to a prisoner of the Commonwealth of Virginia.

(iv). Judge Henry Hudson failed in his affirmative duty to protect access to the court by prisoners in the Commonwealth.

b. The Appellant, Lowe, request for this court to review denial of a timely request for disqualification under the abuse of discretion standard established in *Highmark Inc. v. Allcare Health Mgmt. Sys.*, 572 U.S. 559, 559, 134 S.Cut. 1744, 1745, 188 L.Ed.2d 829, 829, 2014 U.S. LEXIS 3106, *1, 110 U.S. P.Q.2D(BNA) 1343, 1344, 82 U.S.L.W. 4328, 24 FLa. L. Weekly Feds 729, 2014 WL 1672043 (U.S. April 29, 2014)

3. Whether the Department of Corrections denied access to the courts.

Standard of Review

a. The petitioner, Lowe, moves the court for a de novo review of denial of access to the court under the standard established in *Bounds v. Smith*, (1977) 430 US 817, 52 L Ed 2d 72, 97 S Ct 1491.

STATEMENT OF FACT:

Mark Lowe is over the age of 18 and currently incarcerated under violations of Virginia common law in the Commonwealth of Virginia. The petitioner, Mark Lowe, herein identified as 'Lowe', asserts the deprivations of human rights and violations of the 6th, 8th, 14th Amendment of the United States Constitution occurred while incarcerated at Baskerville Correctional Center, 4150 Hayes Mill Road Baskerville, Va 23915.

Mark Lowe is currently housed at Lunenburg Correctional Center at 690 Falls Road Victoria, Va 23974. Mark Lowe was moved after an incident and assault which fractured his jaw. As a function of Virginia common law 53.1, the Commonwealth of Virginia prohibits the Department of Corrections and/or employees from implementing boot camp and concentration camp conditions in state prisons. However, Major David Hamlette of Baskerville Correctional Center, implemented 5 conditions which were inhumane.

- 1) Major David Hamlette published a policy which required the Baskerville Correctional Center staff to search and seize all prisoner blanket(s), coat(s), and/or protective clothing during the COVID 19 pandemic. 'Lowe' submitted a complaint through the Virginia Department of Corrections internal grievance process and complied with the Prison Litigation Act. (Exhibit # 4)
- 2). The Department of Corrections denied salt and basic quantities of food to prisoners. Lowe' submitted a complaint through the Virginia Department of Corrections internal grievance process and complied with the Prison Litigation Act. All conditions and caveats of the Prison Litigation Act and the 42 USC §1983 process was met prior to the submission of a complaint to the United States District Court.
- 3). Major David Hamlette implemented a full lighting and sleep deprivation program 24 hours per day. The lights in living quarters and housing dorms were maintained at full for more than 24 hours in retaliation for security incidents. The

Department of Corrections 861.1 policy does not allow the staff to implement group punishment. David Hamlette continued the retaliation after the Warden prohibited the behavior. Major David Hamlette applied sleep deprivation to prisoners who were not involved in an incident; without due process of law or internal procedures; and without medical supervision. Lowe' submitted a complaint through the Virginia Department of Corrections internal grievance process and complied with the Prison Litigation Act.

4. The Department of Corrections prohibits indoor exercise within living quarters and dorms. David Hamlette, Chief of Security at Baskerville Correctional Center prohibited outdoor exercise and violated the internal Department of Corrections COVID 19 response policy dated December 4, 2020.

5. Lowe was prohibited from all exercise for over 45 contiguous days.

6. Judge Henry Hudson testified that Baskerville Corrections allows indoor exercise. However, he did not produce any records. The facility does not contain a gym or other appropriate area.

7. Major David Hamlette took constructive measures to directly retaliate against Mark Lowe before and after this civil complaint was filed in the United States District Court.

A. David Hamlette denied 'Lowe' access to toilet paper as part of a perverse, racist, petulant, and juvenile prank.

B. For sleep deprivation, David Hamlette and the security staff searched 'Lowe's' living area for toilet paper between the hours of 12:00 am and 5:00 am. (Exhibit

2,3,11)

C. The Department of Corrections does not categorize toilet paper as a threat, weapon, or risk.

8. Prior to filing this civil complaint, 'Lowe' complied with the 'Prison Litigation Reform Act' and utilized the Department of Corrections internal grievance/arbitration process on the following dates A) April 7, 2019 - Diabetic Meals delayed; B)September 26, 2019 - Light Policy Complaint; C) November 15, 2019 - Complaint Search of Living Area; D) January 9, 2020 - Complaint No incentive Program; E) January 29, 2020 Complaint Light Dimmers; F) February 6, 2020 - Military Tactics; and G) March 3, 2020 - Complaint Frequent searches (Exhibit 1-12)

9) Lowe was the only prisoner denied toilet paper. White prisoners were given toilet paper upon request and/or at will.

10) The Department of Corrections imposed disciplinary tactics against Mark Lowe. However, he was not charged with a crime or violation. The tactics of David Hamlette were intended to incite and injure prisoners.

11. All incentives and programs were suspended during the COVID 19 pandemic.

12). Civil Action Complaint No 3:20 - CV - 390 was filed within one year of the last overt action of discrimination and injury. The complaint is timely under 42 U.S.C. §1983.

REASONS FOR GRANTING THE PETITION

The Appellant moves the court to grant the Writ of Certiorari. The Fourth Circuit Court of Appeals entered a decision in conflict with other Circuit Courts and has so far departed from the accepted course of judicial proceedings, and sanctioned such a departure by lower court, as to call for an exercise of this Court's supervisory power. An important question of prisoner protected access to the court has been presented to the United States Supreme Court. A modification will result in needed system wide changes in the Commonwealth of Virginia.

In this instance the Appellant and petitioner suffered actual and imminent harm due to judicial interference with the political branch of government.

The courts duties are to provide relief to claimants.

1. Whether the denial of basic human needs violates an individual's rights under the 6th, 8th, and 14th Amendment to the United States Constitution.

There is no iron curtain drawn between the Constitution and prisons. citing - Cruz v. Beto, 405 U.S. 319 (1972) The Fourth Circuit Court of Appeals has decided to deviate from the baseline established by the United States Supreme Court and implemented by the District Courts. Prisoners may not be deprived of life, liberty, or property without due process of the law. citing - Haines v. Kerner, 404 U.S. 519 (1972); Wilwording v. Swenson, 404 U.S. 249(1971) and Screws v. United States, 325 U.S. 91 (1945)

Major David Hamlette was a subversive employee of the Department of Corrections.

David Hamlette had a wanton and perverse desire to cause indirect harm or injury to prisoners of the Commonwealth of Virginia. David Hamlette distributed used cloth mask to prisoners which were infected with COVID 19. The Warden and supervisor of David Hamlette, died after contracting COVID 19. The virus infected almost 50% of the prison population in Baskerville Correctional Center. David Hamlette is culpable and liable. Harold Clarke, the Director of the Virginia Commonwealth Department of Corrections, was given notice of incidents and deviants at Baskerville Correctional Center through the grievance process. Harold Clarke is culpable and liable.

There is no evidence to the contrary enclosed in the file. Judge Henry Hudson error and violated Rule 605 of the Rules of Federal Evidence. Judge Henry Hudson introduced his opinion as fact or facts in the case. There is no response of record from the Commonwealth Attorney, Harold Clarke, or David Hamlette.

David Hamlette denied Mark Lowe toilet paper as an obscure and perverse prank. The officer David Hamlette, demonstrated a wanton and juvenile indifference to basic human needs. There is no testimony to the contrary enclosed in the file. Lowe was the only prisoner denied toilet paper. White prisoners were given toilet paper upon request and/or at will. David Hamlette took constructive measures to further a conspiracy to injure prisoners. Mark Lowe is entitled to relief. citing - Hobson v. Wilson, 556 F.Supp. 1157, 1982 U.S.Dist LEXIS 16758(D.D.C. 1982) and Howard v. State Dept of Highways, 478 F.2d 581, 1973 -1 Trade Cas. (CCH)74509

1973 U.S. App Lexis 9882 (10th Cir. 1973)

2. Whether any justice, judge, or magistrate judge, of the United States shall disqualify himself in any proceeding in which his impartiality might be questioned. Federal question 2 is a clear error of fact and law. Pursuant to Federal Rules of Evidence Judge as Witness. "The Judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point."

Federal Rules of Evidence 605

28 U.S.C. §455 (a) and (b) requires the mandatory disqualification of a judge in any proceeding in which his impartiality might reasonably be questioned". citing States v. Brown, 539 F.2d 467, 1976 U.S. LEXIS 6954 (5th Cir. 1976)

"If there is a factual basis for doubting the judge's impartiality, he should disqualify himself." - citing - Blizzard v. Fielding, 454 F.Supp. 318, 320 (D. Mass. 1978). It is clear that no opposing testimony, arguments, documents, and or any other contrary facts were included in the courts record. Judge Henry Hudson used his opinion as 'fact'. The court and Appellant Court error. The incident is a violation of Mark Lowe's rights to due process of the law under the 6th and 14th Amendment. Judge Henry Hudson should have disqualified himself.

Judge Henry Hudson is a senior justice, skilled attorney, and he has chosen to tactically impose an unfair and prejudicial ruling. His decision must be confronted and challenged in context.

"Traditionally, decisions on questions of law are reviewable *de novo*, decision on questions of fact are reviewable for clear error, and decisions on matters of

discretion are reviewable for abuse of discretion." Highmark Inc. v. Allcare Health Mgmt. Sys., 572 U.S. 559, 559, 134 S.Cut. 1744, 1745, 188 L.Ed.2d 829, 829, 2014 U.S. LEXIS 3106, *1, 110 U.S. P.Q.2D(BNA) 1343, 1344, 82 U.S.L.W. 4328, 24 FLa. L. Weekly Fed.s 729, 2014 WL 1672043 (U.S. April 29, 2014) Mark Lowe asserts he was unfairly prejudiced by the trial judges refusal to disqualify himself. citing - United States v. Wolff, 1989 U.S. App. LEXIS 20838, *30-31, 11 Employee Benefits Cas. (BNA) 2511 (4th Cir. N.C. December 12, 1989)

Judge Henry Hudson disregarded intelligence, expertise, eye witness testimony, and undermined his own decision. Judge Henry Hudson abused his discretion and assumed an omnipotent position of Judge-witness. The "improper view, e.g. by judge presiding at bench trial without providing parties notice or opportunity to attend with no court reporter present, is to be judge by general standard regarding erroneous admission of evidence." citing - Lillie v. United States, 953 F.2d 1188, 34 Fed. R. Evid. Serv. (CBC) 938, 1992 U.S. App. LEXIS 258(10th Cir. 1992) app. after remand, 40 F.3d 1105 30 Fed. R. Serv. 3d (Callaghan) 1008, 1994 U.S. App. LEXIS 33136(10th Cir. 1994) and United States v. Bonas, 334 F.3d 945, 2003 Cal. Daily Op. Service 8507 2003 D.A.R. 10631, 2003

3. Whether the Department of Corrections denied access to the courts.

The Commonwealth of Virginia, the Department of Corrections, and the United States District Court has an affirmative duty and obligation to assure all prisoners 'meaningful access to the courts'. citing - Gideon v. Wainwright, 372 U.S. 335(1963)

and Argersinger v. Hamlin, 407 U.S. 25(1972) As a right, prisoner are expected to have access to the court during and in appeals. citing · Douglas v. California, Supra. 12. Neither United States District Court or the Department of Corrections protected the due process rights of prisoners to access the courts and law libraries during the pandemic. The trial courts error.

The United States Supreme Court held that a fundamental federal constitutional right to access the courts required prison authorities to assist inmates in preparation and filing of meaningful legal papers by providing the inmates with adequate law libraries or adequate assistance from persons trained in the law. " citing Bounds v. Smith (1977) 430 US 817, 52 L.Ed 2d 72, 97 S.Ct. 1491, However, the Commonwealth of Virginia and the Department of Corrections denied all meaningful and physical access to the law library during the litigation of case 3:20 - CV - 390.

A) The Commonwealth of Virginia and/or the Department of Corrections failed to comply with constitutional standards with respect to access to the courts in a number of areas relating to adequacy and availability of law libraries and legal assistance programs.

b) groups of individuals, prisoners, or inmates in lock down were particularly and adversely affected.

- c). Regardless of the level or existence of COVID 19 infection, all prisoners were denied access to the law libraries.
- d) Prisoners were denied physical, electronic, and other access due to the COVID 19 pandemic.
- e) The staff was unable to locate US Code or complete simple inquiries.
- f) The District Court failed to appoint a special master to investigate and report about the appropriate relief.

The United States District Court denied the Appellant's 'Motion for Counsel'. This complaint was dismissed for failure to satisfy some technical requirements which the prisoner could not because of deficiencies in the legal assistance facilities.

Mark Lowe suffered substantial, tangible, and physical harm and presented the issues to the court. However, 'Lowe', was so 'stymied by inadequacies of the law libraries and the inmate was unable to file a correct complaint" .citing · Lewis v. Casey, 518 U.S. 343, 346, 116 S.Ct. 2174, 2177, 135 L.Ed.2d 606, 614, 1996 U.S. LEXIS 4220, *1, 64 U.S.L.W. 4587, 96 Cal. Daily Op. Service 4559, 96 Daily Journal DAR 7362, 10 FLa Weekly Fed. 539 (U.S. June 24, 1996)

Lowe was unfairly prejudiced by the arbitrary and capricious decision to deny all access to the courts and law. The argument submitted by the Appellant was noted as technically flawed. However, there was no access to the courts and law library to take corrective action. The court error in its denial of relief requested. The

Appellant was unfairly prejudiced. citing · United States v. Young, 470 U.S. 1, 16 n.14, 84 L.Ed.2d 1, 105 S.Ct. 1038 (1985)

The denial of all prisoner access to law libraries during the COVID 19 pandemic justifies system wide relief. The pandemic was used as a pivot point to impede prisoner access to the court, limit prisoner 6th Amendment rights, injure prisoners, and violate known state or federal protective policies and procedure. The Constitution of the United States was not suspended during the COVID 19 pandemic. The staff took advantage of fear and panic to run amok and contrary to law.

Conclusion:

Judge Henry Hudson made a tactical and political decision to disrupt due of the law for the petitioner Mark Lowe. The actions of Henry Hudson are prohibited by law and violate equal protections.

The catalysts for change are (1) loss of the life of Warden Barksdale; (2) violations of prisoner's 6th Amendment rights, 8th Amendment rights, and 14th Amendment rights; (3) denial of access to the courts; and (4) fraudulent concealment by officers of the court. The trial judge overstepped the lines of permissible liberties. citing - Ouachita Nat'l Bank v. Tosco Corp., 686 F.2d 1291, 34 Fed. R.Serv.2d (Callaghan) 1131, 11 Fed. R. Serv.(CBC) 714, 1982 U.S. App. LEXIS 16420 (8th Cir.1992).

Judge Henry Hudson has acted as a political counsel for the Commonwealth of Virginia and pseudo judge. Judge Henry Hudson has not acted impartially. It is cruel and unusual to violate Department of Corrections and federal policies during a crises and pandemic. Major David Hamlette contributed to the COVID 19 emergency and caused additional problems which resulted in death.

Judge Henry Hudson has asserted that Mark Lowe has not complied with his technical guidelines. However, during the entirety of litigation in the United States District Court, the Commonwealth of Virginia Department of Corrections denied access to a law library or legal assistance. Judge Henry Hudson undermined the integrity of the court and gave an unneeded political or legal

advantage to the Commonwealth of Virginia's Department of Corrections.

The Appellant urges the court to reverse the decision. The Appellant Mark Lowe request for this court to reverse the October 18, 2021 decision of the District Court.

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

Certificate of Compliance with Type Volume Limitation, Type Face, Requirements, and Type Style Requirement

1. This brief complies with type - volume limitations of Federal Rules of Appeal Procedure 32(a)(7)(B) because:
this brief contains 4355 words, excluding the parts of the brief exempted by Federal Rules of Appeal Procedure 32(a)(7)(B)(iii)

This brief is 22 pages long.

2. This brief complies with the type face requirements of Federal Rules of Appeal Procedure 32(a)(5) and type style requirement of Federal Rules of Appeal Procedure 32(a)(b) this brief has been prepared in mono spa CED type face using 12 point Century Style.

I swear the attached Writ of Certiorari and attached
documents are true and accurate under penalty
of perjury 28 U.S.C. § 1746.

by MFH

Mark Hare

148916 Z

Buenaigua Correctional
Center

690 Falls Rd

Victor V. 23974.

April 27, 2022

Certificate of Service

I swear pursuant to 28 U.S.C. 51746, a true and accurate copy of the attached Writ of Certiorari has been mailed via first class mail, postage pre-paid to counsel Jason Miyares on the 25th day of May 2022 at 202 North 9th Street Richmond Va 23214.

by: MPL

Mark Lowe 1489162

Lunenburg Correctional Center
690 Falls Rd

Victoria Va 23974

Certificate of Service

I swear pursuant to 28 U.S.C. §1746, a true and accurate copy of the attached Writ of Certiorari has been mailed via first class mail, postage pre-paid to counsel Jason Miyares on the 25th day of May 2022 at 202 North 9th Street Richmond Va 23214.

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