

No. 22-5038

IN THE
SUPREME COURT OF THE UNITED STATES

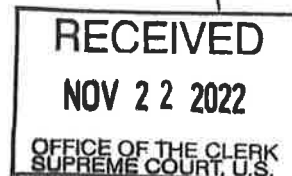
Kevin Kennedy - Petitioner

-VS-

Dan Watts, et, alia. - Respondents

Petition For A Rehearing
Memorandum Of Points And Authorities

Comes pro se, Petitioner Kevin Kennedy to submit motion for rehearing in relation to Writ of Certiorari that is believed to have been denied on October 3, 2022. . and Clerk allowing 15 additional days for petitioner to file, pursuant to Rule-44.(6). However, there was no judgement or order provided for that Writ of Certiorari. . pursuant to Rule-16? That raised issues of related invalid, partial, unfinalized judgements, jurisdictional issue that also involved an unlawfully suspended Habeas Corpus that is meshed into civil 2 1983 complaints that deprived of Court Access and relief during pending cases, and as a result adversely and prejudicially effecting orders and judgements due to Heck-v-Humphrey laws.



Declaration To Facts And Arguments

1. Repeatedly raised and expressed throughout all litigations, motions, complaints and injunctions. - this petitioner is being held illegally under unlawful restraint, conviction, sentencing by unfair trial violations and invalid judgements all shown upon records as prima facie evidence. Civil Rights, 1983 originating from White Pine County Jail, Ely NV. in case # 3:17-cv-00468-MMD-CLB. into Ninth Circuit Court of Appeals case # 20-15414, which was just before this court in October 2022.

Petitioner using all of his records and documents that he has left to convince and prove to this court that rights have been violated continuously for years throughout these proceedings. then when showing such violations that would give relief these people of the State of Nevada steal, destroy and suspend Habeas Corpus and other legal mailings while placing under retaliations by staff and inmates from H.D.S.P. from around March 2021-Presently. Torturing this Petitioner in a locked cell for months without any help from anyone of the State including the Courts, all on court records and many filings. including complaints to the Department of Justice and Federal Bureau of Investigation for conspiratorial attacks and attempts on life! where Petitioner was almost killed during ongoing retaliations and these deprivations.

2. Every single filing for relief has been denied by State and Federal Courts due to having no Habeas Corpus when the facts are that Habeas has been taken away to destroy these meritorious cases that show illegal misconducts by State Officials in Nevada.

These involved violations beginning from unlawful arrest, selective and vindictive prosecution, acts of perjury, falsifying evidence and reports, exculpatory body camera video and photographs, deprivations of witnesses and right to testify on own behalf, erroneous jury instructions, jury tampering, illegal sentencing, ineffective assistance of counsels, actual innocence, etc. . . have become a cover-up and conspiracy case to conceal these illegal acts by numerous officials involved. . hence the reason for the stolen legal mails and Habeas Corpus. . Taking with it all documents and evidence that prove these things giving reversal automatically, while case herein was pending in the Ninth Circuit. . clearly explained and shown in Writ of Certiorari. .

Where Petitioner cannot even receive any records from these courts because it proves the Truth of what occurred here in Ely, NV. implicating these persons for criminals, liars and thieves. . Desecrating the entire Constitution of the United State and all sworn duties to protect it under laws of this country of the U.S. Const. Article 1, 29, 28 U.S.C. 2241-2254. (Chapter 2, 671). . Suspension creating a total procedural impediment to any relief, stonewalling petitioners Constitutional Sacred Rights to seek Redress by The "Great Writ", also violating jurisdictional and custody requirements involving this Supreme Courts clearly established Federal Laws. . Violating all exhaustion requirement of the Prison Litigation Reform Act and the Antiterrorism and Effective Death Penalty Act of 1996. . into the Institutionalized Persons Act 27 under 42 U.S.C. 1997(e), the Civil Rights Act of 1871 under 42 U.S.C. 1983. Nevada Const. Article 1, 5 and N.R.S. 34.720-34.810. .

3. Deprivations of this magnitude violate the entire U.S. Constitution and most Supreme Court precedented case laws.. to include the:

1st Const. Amend. Right To Seek Redress.. Censoring.

4th Const. Amend. Illegal Search and Seizures.

5th Const. Amend. Double Jeopardy.. Due Process.

6th Const. Amend. Fair Trial.. Witnesses.. Assistance of Counsel..

7th Const. Amend. Common Law.. Civil Rights Trial.

8th Const. Amends. Cruel and Unusual Punishment.

14th Const. Amends. Due Process.

All of these rights and laws are in violation in the case of Petitioner Kennedys cases.. where no court or judges are considering these valid claims by a citizen of this State and Country who is held under unlawful restraint without Right To Redress or even provided with Habeas Corpus. Left to only assume that petitioner is being classified as an alien that is an enemy combatant of this United States.. not entitled to privileges of Habeas Corpus or protections under the Suspension Clause Article I § 9.. involving the Military Commissions Act and the Detainee Treatment Act. All unconstitutional suspension of Habeas Writ.. under 28 U.S.C. 2241(e).. This Supreme Court having power and jurisdiction under government Judicial Branches in accordance with U.S. Const. Article III § 1.. to correct this Miscarriage of Justice and Fundamental Defects under.. Reed-v-Farley, 512, U.S. 339, 114, S.ct. 2291, 129, L.ed.2d. 277, (1994).. and Boumediene-v-Bush, 553, U.S. 723, 128, S.ct. 171, L.ed.2d. 41, (2008).. Where this Petitioner is Actually Innocent of his convictions in.. Murray-v-Carrier.. and Sawyer-v-Whitley, 505, U.S. 333, 112, S.ct. 2514, (1992)..

4. Here it is as if Petitioner Kennedy is still a pre-trial detainee because the criminal conviction and sentence judgement is invalid, unfinalized that nullifies the entire appeals process in Nevada Supreme Court case # 76679 rendering the entire process a nugatory. Where the U.S. Districts Summary Judgement was based off of being a "lawfully convicted State prisoner" at the time of civil rights, 1983 complaint violations, not even sentenced at the time while held in E.S.P. segregation from county jail. Then, it is found out much later the criminal judgement was not even filed the entire time.. during the appeals process. not in accordance with NRS. 176. and N.R.S. 177. N.R.A.P. 4 and N.R.A.P. 14-17, Docketing Statement not appealable for jurisdiction was not vested in appeals court due to no filing of judgement involving what would a premature Notice of Appeal under F.R.C.P. 54(b). no final judgements and courts lacked jurisdiction under F.R.A.P. 3 and F.R.A.P. 4, also 28 U.S.C. 1291-1292. F.R.C.P. 59-60.

Due Process protects detainees under the same standard as the 8th Amend. because guilt has not yet been adjudicated. which was the issues raised in this case regarding being held as a "Safekeeper" during jury trial and sentencing. while the prison Warden Filson was upon the jury panel! This also depriving of counsel while the State was railroading petitioners case violating the 5th, 6th and 14th Amendments. in Murphy-v-Walker, 51, F.3d. 714, 718. (7th Cir. 1995). Due to a punitive act of Retaliation for filing civil suits while in county jail, resulting in defendant Sheriff Dan Watts and Lt. Sawyers retirement. prior to jury trial.

5. Inmates retain Due Process rights to freedom from restraint which imposes atypical and significant hardships from the 8th Amend. Cruel and Unusual Punishment. - Farmer-v-Brennan, 511, U.S. 825-832.. (1994). Like being trapped in prison under illegal restraints, convicted by the Warden, sentenced with the aid of the Offenders Management Division and Deprived of Habeas Corpus and Access To Courts. under. Lewis-v-Casey, 518, U.S. 343-354, (1996). Deprived of Due Process under. Wolff-v-McDonnell, 418, U.S. 539-556 (1974). and Equal Protection under. Lec-v-Washington, 390, U.S. 333-34. (1968). All of which can never be denied under. Johnson-v-Avery, 393, U.S. 483-485, (1969). Pratt-v-Tarr, 464, F.3d. 730-731. (7th Cir. 2006). and Gloth-v-Kangas, 951, F.2d. 1504, 1508, (9th Cir. 1991).

Habeas Corpus being a civil remedy to enforce right to personal Liberty and seek Redress under. Fay-v-Noia, 372, U.S. 391, 423. 83, S.ct. 822. 9, L.ed. 2d. 837, (1963). State of Nevada depriving of all relief and exhaustion requirements. O'Sullivan-v-Borckel, 526, U.S. 838, 119, S.ct. 1728, 144, L.ed. 2d. (1999). and as a result considered no longer available. under, Gray-v-Netherland, 518, U.S. 152, 161. 116, S.ct. 2074, L.ed. 2d. 457, (1996).

6. Resulting in a timebarr under State and Federal laws of Equitable Tollings under 28 U.S.C. 2244(d). and A.E.D.P.A. of 1996, where even after unlawful suspension numerous requests and motions also came up missing and not filed by the Seventh Judicial District Court, White Pine County and Nevada Supreme Court, all while under retaliations in segregation unit, where later all other filings denied. shown in filed Writ of Certiorari.

The Ninth Circuit Court goes on to deny the appeal that was pending.. while all these violations were occurring against petitioner where if Habeas Corpus was not suspended the conviction and sentence would have been reversed! far before the Affirmation on January 25, 2022. - Where Habeas was timely perfected and mailed out U.S. Mail on March 2, 2021, State Remittitur had been issued on March 9, 2020.. this is why they took it because this Petitioner would have won! Then, as mentioned these peoples even stole numerous legal mail that followed.. for months! all while this Petitioner was locked in segregation by staff at H.D.S.P. Like they were all involved and ordered to do this to Kennedy by a higher authority figure.?

Then, as explained the U.S. District Court denies the civil 1983 complaint and injunction on March 8, 2022.. based off of not having Habeas Corpus relief.. when the claims were of unlawful suspension, legal mail tamperings and Court Access deprivations.. by using Heck-v-Humphrey, 114 S.Ct. 2364, L.ed.2d. 1827. 512 (1994). The same that was pending appeal in the Ninth Circuit when these ongoing violations occurred, shown upon the filed records in these courts and in Writ of Certiorari.

7. These have got to be Exceptional and Extraordinary Circumstances deserving of special treatment under Rule-10 and Rule-11 that requires determination.. 28 U.S.C. 2101(e).. Issuance of writ under Rule-20.. 28 U.S.C. 1651(a) warranting courts exercise of power and discretion, worthy of a Rehearing under Rule-44.. presented in good faith and not for delay but for Justice.

Petitioner has shown clear violations and impediments by State of Nevada officials that has resulted in not only continued adverse and prejudicial abuses but continued violations that have yet to be corrected or removed by lower courts. under Ferguson-v-Palmateen, 321 F.3d.820-823. (9th Cir.2003). - 18671.02. Shutting completely out of obtaining any guaranteed relief by the State of Nevada who has the motive to see both cases destroyed.

There is not even any case precedent where a persons Habeas petition has been taken and not filed while civil 1983 is pending that is dependant upon its reversal.. it is unprecedented here. This isn't happening to any others that are similiarly situated because it is not occuring where both litigations were conducted in such a way. Even after discovering the suspension impediment, legal mailings were continued to be taken and not filed for months time! Clearly shown upon prison Brass Slips, Monthly Statements, Kites and Case Docket Sheets. with Writ of Certiorari.

Lower courts denial of Substantial Rights claims raise suspicions of undue delays of predjudice while under constant retaliations with numerous complaints, motions and declarations that were not even addressed.. or hearing held on the serious acts that were occuring. All documents filed into the courts showing clear deprivations and petitioners Due Diligence showing outside hindrance and impediments, also as to validity of judgements.. under Johnson-v-United States, 544 U.S. 293, 125 S. ct. 1571, 161 L.ed.2d.542. (2005).

Where a new time period would run after vacating illegal judgement of conviction and sentence which is invalid prior conviction used by State.

8. This involving the Habitual Criminal Act, NRS. 207.010-207.016. where as explained the judgement was not even filed, but priors are voided for the one in question contains incorrect name and social security#. Where during the Safekeeper segregation the Judge Gary Fairman continues sentencing without good cause so those Confidential Records could be obtain from the Offenders Management Division to be used to adjudicate. received by prosecution just prior to sentencing date July 16, 2018 that was continued from around April 16, 2018. showing it was a conspiracy effort! and this Division are the persons who authorized the transfer out to E.S.P. after the Warden convicted!

Then as described in all related civil filings and Writ of Certiorari the Sgt. Mingo from county jail who was a former prison guard from E.S.P. that knows petitioner from last sentence of a 5 to 20 year habitual term for prior petty-theft misdemeanors! He is allowed to testify at sentencing to authenticate this invalid prior conviction! Then, the Judge Fairman clearly admits at the hearing that he has already made his mind up for sentencing since the trial verdict. after Warden Filsen personally told this Petitioner he was going to get the maximum sentencing after he spoke to District Attorney Beecher after trial.

You dont see anything wrong with that through the eyes of the law? but have this Petitioner continuously file surrendering all of his documents and filings. which end in dismissals. Leaving imprisoned while the evidence and time is gobbled up by delays and prejudice to conceal State violators of Petitioners Rights!

9. These violations and Court Access deprivations not conforming with Prison Litigation Reform Act, 18 USC § 3626, involving State exhaustion requirements prior to obtaining relief by 1983, and the relied upon Heck-v-Humphrey, 114, S. ct. 2364. L. ed. 2d. 1827. 512. (1994). . Exhaustion is satisfied when it is no longer available, under 42 USC § 1997(e). and Institutionalized Persons Act § 7, where there is no available remedy under, Thomas-v-Woolum, 337, F. 3d. 720, (2003). . and Gray-v-Netherland, 518, U.S. 152, 161, 116, S. ct. 2074. 135. L. ed 2d. 457, (1996). . These too are Acts of Congress where P.L.R.A. Stays Provisions, permits District Courts to retain equitable powers in accordance with principles. Where a balance of hardship warrants issuance of permanent injunction against unconstitutional aspects. . the Constitution always trumps! even over Heck-v-Humphrey or Lewis-v-Casey.

Carving out an exception to the no-exhaustion rule to govern over certain prisoners claims, where here exhaustion is not required due to the apparent violations and suspension of Habeas Corpus petition under, Patsy-v-Board of Regents, 457, U.S. 496. 73. L. ed 2d, 172. S. ct. (1982). . Exceptional and Extraordinary Circumstances deserving of special treatment in the Interest of Justice in, Aronson-v-May, 85, S. ct. 3, 5, 13, L. ed. 2d. 6, (1964). . and In re Roe, 257, F. 3d. 1077, 1080-81, (9th Cir. 2001).

Where "Imminent Danger Exception" also exists where plaintiff is being a victim of unconstitutional incarceration and actions that are ongoing. . and a threat, Williams-v-Lane, 851, F. 2d. 867. 883-84, (7th Cir. 1988). . warranting Equitable relief.

10. These "Actual Injuries", should be subject to Judicial Review, where any conflicts between the Constitution and laws passed by Congress are an issue, Constitution always takes precedence, in Marbury-v-Madison, 5, U.S. 137, (1803). . in these circumstances with unlawful suspension of U.S. Const. Article I, § 9. . deprivations of Court Access under, Bounds-v-Smith, 430, U.S. 817, 821, (1977). . onto Lewis-v-Casey, 518, U.S. 343, 354, (1996). . not to be obstructed or denied, Johnson-v-Avery, 393, U.S. 483-485, (1969). . Hindering Habeas Corpus filings and legal mail tampering under. Trujillo-v-Williams, 465, F.3d. 1210, 1226-27, (10th Cir. 2006).

Entitling Kevin Kennedy to Declaratory and Injunctive relief to cease retaliations and violations and correct Miscarriage of Justice under the 6th Amendment and aforementioned Articles, In Murray-v-Carrier, 477, U.S. at 496.. also, House-v-Bell, 126, S.ct. 2064, 2076-77.. where violations involved resulted in unlawful conviction and sentence of one who is Actually Innocent. . this is clear Actual Injury causing Irreparable Harms.

11. "Federal Courts to interpose between the States and People as the guardians of federal rights to protect from unconstitutional actions by those acting under color of state law" under. . Mitchum-v-Foster, 407, U.S. 225-32, L.ed 2d. 6705, S.ct. (1972). As to established, Preiser-v-Rodriguez, 411, U.S. 475, L.ed 2d. 439, S.ct. (1973). Civil action was brought in conjunction with Habeas Corpus, viewed as an Adjunct obviating the need for exhausting of State Remedies. . entitling to immediate release

from unlawful restraint and conviction. No need to seek any redress in State Forum under, Monroe-v-Pape, 365, U.S. 167, 5, L.ed2d. 81, S.ct. 473. (1961). . and McNeese-v-Board of Education, 373, U.S. 668, L.ed. 2d. 622. S.ct. 1433 (1963).

12. Plaintiff is entitled to Injunctive relief by way of a "Prisoner Release Order" granted in this civil action to remedy deprivation of Federal Rights under 18 USC § 3626 3(b). . in accordance with 28 USC § 2284 and § 1983 Civil Rights complaint. . To apply all pertinent laws involving F.R.C.P.- 65.01 through 65.21. . . Plaintiff clearly overcoming all requirements set forth in Winters-v- Natural Resources, 555, U.S. 7.129. S.ct. 365. L.ed. 2d.. (2008). where plaintiff is (1) Likely to succeed upon the merits, clearly shown by evidences presented in court records. (2) Likely to suffer irreparable harm, obviously by being trapped in prison illegally without any available relief in violation of Constitutional Rights under Retaliation and danger by State Officials who created and caused it all.. (3) Balance of equity tipping in great favor of plaintiff by was of prima facie evidence that will entitle reversal and or dismissal of conviction and sentencing, the reason the officials involved are unlawfully suspending any Habeas filing or relief. . to destroy these § 1983 actions against themselves. (4) In the Public Interest based off of truth, justice and laws of this State and the Constitution of the United States of America.

13. These violations showing actual harm and irreparable injury to safety, life and freedom under. Wild Rockies-v- Cottrell, 632.F.3d. 1127, 1131-32. (9th Cir. 2010). stating "it is better seen as an element that deserves separate attention where public interest is affected." as in... League of Wilderness-v- Connaughton, 752.F.3d. 755-67. (9th Cir. 2014). showing a likelihood of success in Mazurck-v- Armstrong, 520, U.S. 968, 972, 117, S.Ct. 1865, (1997). This all raising questions of hardship for obvious compelling reasons that tip in Petitioner Kennedys favor. Jones-v-Pacific International, 536.F.2d. 817, (9th Cir. 1976). Involving a Nexus of hardship by conduct or lack thereof by State of Nevada. in Garcia-v-Lawn, 805, F.2d. 1400-1. (9th Cir. 1996). Entitling to Injunctive Relief under F.R.C.P- 65.06. showing irreparable injury without this courts intervention and a Rehearing under Rule-44.

Relief And Remedy Sought

Grant Petition For A Rehearing to a pro se litigant under unlawful restraint without Habeas Corpus and having no other available remedies for relief due to suspension and Court Access deprivations. Involving exceptional circumstances that need intervention to correct ongoing violations of this U.S. Constitution, and allow Petitioner to raise his meritorious claims for relief via Habeas Corpus. based upon Writ of Certiorari filing. Signed and dated this 9th day of November, 2022.

Petitioner,

Kerlin Kennedy

DECLARATION PURSUANT TO: N.R.S. 208.165

I, Kevin Kennedy, OF INMATE IDENTIFICATION
NUMBER: 79138, AM A ~~LAWFULLY~~
COMMITTED PRISONER OF THE NEVADA DEPARTMENT OF
CORRECTIONS, PRESENTLY IN THE ~~LAWFUL CARE~~ AND
CUSTODY OF ELY STATE PRISON, LOCATED AT: 12000 NORTH
BOTHWICK ROAD, (MAILING) P.O. BOX 1989, IN CITY OF: ELY,
COUNTY: WHITE PINE, STATE: NEVADA, 89301. DOES AFFIRM
THAT THE ATTACHED DOCUMENT
ENTITLED: Petition For A Rehearing,
IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE &
BELIEF, AND ANY FALSE STATEMENT OF MATERIAL FACT
MADE THERE IN SHALL BE SUBJECTED TO THE PAINS AND
PENALTIES OF PERJURY PURSUANT TO: N.R.S. 208.165,
THIS, 9, DAY OF: November, 2022

INMATE SIGNATURE: _____

INMATE NAME (PRINTED): Kevin Kennedy

ADDRESS: ELY STATE PRISON

P.O. BOX 1989, ELY, NEVADA 89301