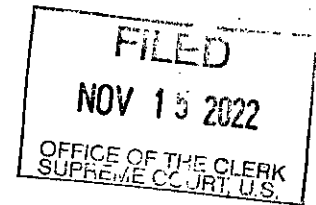


No. **22-6188**

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Marlon Jermaine Johnson — PETITIONER
(Your Name)

vs.

Bo Thorpe, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court Of Appeals For The Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Marlon Jermaine Johnson
(Your Name)

440 Hammock Road
(Address)

London, KY 40744
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- 1) Does the denial of law library access, legal materials, and the refusal to notarize certain documents constitute sufficiency to state an access-to-the-courts claim without actual injury in a pending or contemplated case?
- 2) Does an inmate 'proof of record' substantiate 'actual injury' occurred?
- 3) Does the Plaintiff have to provide the court with proof of a certain level of substantial injury to prevent dismissal by the court?
- 4) When jail standards, policies, and statutes provide an effective grievance procedure for inmates to follow, does an inmate have a right to be provided with that information?
- 5) When an effective grievance procedure is available in the jail standards, policies, and statutes does an inmate have a right to due process?
- 6) Does the duration of an inmates solitary confinement deny the inmate of the minimal civilized measure of life's necessities" when an inmates medical records verify his/her ongoing medical treatment for depression and anxiety?
- 7) Does 'proof of the record' (Inmate Requests, Incident Reports, DOC documents, etc.) constitute evidence proving an inmates retaliation claim?
- 8) When a prison fails to provide an inmate with the institutional policy directing inmates now to properly exhaust his/her administrative remedy, does this establish a due process violation?

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:

- | | |
|---------------------------|----------------------------|
| 1) Chief Deputy Bo Thorpe | 6) Kevin Lodgson |
| 2) Jason Van Meter | 7) Officer Jason (Unknown) |
| 3) Jason Woosley | 8) Kimberly Stevenson |
| 4) Jennifer Johnson | 9) Gail Houchin Basham |
| 5) Officer Kyle Travis | 10) Tristan (Unknown) |

RELATED CASES

- 1) Marlon Jermaine Johnson v. Chief Deputy Bo Thorpe, et al., No. 4:20-CV-P149-JHM
U.S. District Court for the Western District of Kentucky, Filed 11/19/21.
- 2) Marlon Jermaine Johnson v. Chief Deputy Bo Thorpe, et al., No. 21-6197,
U.S. Court Of Appeals For The Sixth Circuit, Filed 4/12/22.

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<u>Grayson County Detention Center Inmate Rules and Handbook</u>	pg. 12

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 2022 U.S. App. LEXIS 9765; 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 2021 U.S. Dist. LEXIS 223855; 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 April 12th, 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: June 14th, 2022, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

- 1) A party that makes the requisite showing of poverty may be granted leave to proceed in forma pauperis only if his or her appeal is being taken in good faith, i.e., is not frivolous. See 28 U.S.C. 1915(a)(3); Callihan v. Schneider, 178 F.3d 800, 804 (6th Cir. 1999).
- 2) An appeal is frivolous "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).
- 3) In a retaliation claim, the harm suffered is the adverse consequences which flow from the inmate's constitutionally protected action. Thaddens-X v. Blatter, 175 F.3d 378, 394 (6th Cir. 1999).
- 4) Instead of being denied access to the courts, the prisoner is penalized for actually exercising that right. Cf. Hines v. Gomez, 108 F.3d 265, 269 (9th Cir. 1997) ("The injury asserted is the retaliatory accusation's chilling effect on Hines' First Amendment rights... We hold that Hines' failure to demonstrate a more substantial injury does not nullify his retaliation claim."), cert. denied, U.S. 118 S.Ct. 2339, 141 L.Ed. 2d 711 (1998); Dixon v. Brown, 38 F.3d 379, 379 (8th Cir. 1994) ("Because the retaliatory filing of a disciplinary charge strikes at the heart of an inmate's constitutional right to seek redress of grievances, the injury to this right inheres in the retaliatory conduct itself.")
- 5) See 501 KAR 3:140 Section 1. Policy and Procedure.; Section 6. Grievance Procedure.; and Section 7. Disciplinary Rights..
- 6) See Madrid v. Gomez, 889 F. Supp. 1146, 1231-32 (N.D. Cal. 1995) Regardless of whether there is an 'exact syndrome' associated with incarceration in solitary

STATEMENT OF THE CASE

The Defendants claim that Johnson has failed to demonstrate any genuine dispute of material fact, and the Defendants are entitled to judgment as a matter of law. The Defendants claim that Johnson failed to exhaust the administrative remedies available to him and that Johnson didn't suffer a physical injury as a result of his allegations. The Defendants also claim that Johnson failed to present any proof to support his claims, and that they're entitled to qualified immunity as to Plaintiff's claims. Contrary to the Defendants claim, Johnson has demonstrated a genuine dispute of material facts, and has provided proof to support his claims. Johnson provided the court with inmate requests, grievances, incident reports, Kentucky Administrative Regulations, Grayson County Detention Center policies and procedures to prove the Defendants' denial of law library access, legal materials, and the refusal to notarize Johnson's documents. The Plaintiff has provided the court with the jail standards, policies, and statutes in which provides an effective grievance procedure. The Plaintiff has also provided the court with GCDC's Inmate Handbook proving the absence of an effective grievance procedure. The duration of Johnson's solitary confinement has been provided to the court. The court is also aware of Johnson's mental health status. Lastly, Johnson has proven that GCDC's Inmate Handbook fails to provide inmates with the institutional policy directing inmates how to properly exhaust his/her administrative remedy.

confinement or security housing units, the Court is well satisfied that a severe reduction in environmental stimulation and social isolation can have serious psychiatric consequences for some people.").

7) See *Davenport v. DeRobertis*, 844 F.2d 1310, 1316 (7th Cir.) (noting that there is "plenty of medical and psychological literature concerning the ill effects" of segregation of prison inmates), cert. denied, 488 U.S. 908, 109 S.Ct. 260, 102 L.Ed.2d 248 (1988).

8) A pretrial detainee's claim that he has been subjected to unconstitutional conditions of confinement implicates Fourteenth Amendment liberty interests. The parameters of such an interest are coextensive with those of the Eighth Amendment's prohibition against cruel and unusual punishment. See *Burrell v. Hampshire County*, 307 F.3d 1, 7 (1st Cir. 2002).

9) Summary judgment is appropriate where the moving party demonstrates that there is no genuine dispute as to any material fact. See *Celotex, Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); Fed. R. Civ. P. 56(a).

10) If a prison plays hide-and-seek with administrative remedies, then they are not 'available.' *Goebert v. Lee County*, 510 F.3d 1312, 1323 (CA11 2007).

11) That which is unknown and unknowable is unavailable; it is not 'capable of use for the accomplishment of a purpose.' *Booth*, 532 U.S. at 738, 121 S.Ct. at 1823.

2) An administrative remedy that's not discovered, and which could not have been discovered through reasonable effort, until it was too late for it to be used is not an "available" remedy. *Goebert v. Lee County*, 510 F.3d 1312, 1324 (2007).

3) When a prison official inhibits an inmate from utilizing an administrative process through threats or intimidation, that process can no longer be said to be 'available.' *Tuckel v. Grover*, 660 F.3d 1249, 1252-1253, 1253 (CA10 2011).

4) The touchstone of due process is protection of the individual against arbitrary action of government. *Dent v. West Virginia*, 129 U.S. 114, 123, 9 S.Ct. 231, 233, 32

..Ed. 623 (1889).

3) Qualified immunity "protects public officials from civil liability insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Cox v. Hainey*, 391 F.3d 15, 29 (1st Cir. 2004) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 3727, 73 L.Ed.2d 396 (1982)).

REASONS FOR GRANTING THE PETITION

The Petitioner has attached the 'Motion For Panel Rehearing' and asks the court to allow him to incorporate his reasons described in his 'Motion For Reconsideration' of the district court's 'Order' denying his 'Motion For Leave To Proceed In Forma Pauper' to the "Reasons For Granting The Petition." Explanations on why the Court should grant certiorari are addressed to the district court in the Motion For Panel Rehearing. The petitioner submits these explanations and asks the Court to review them. The petitioner has showed why the decision of the lower court was "erroneous," and provides the national importance of having the Supreme Court decide the outcome. Johnson cites other cases that are in conflict with the decision of the district court that decided this case. The importance of this case to Johnson and others have also been described. Exhibit's are included to verify that 'proof of the facts' were previously presented to the lower court. See attached Motion For Panel Rehearing and Exhibit's. Additional Exhibit's that were presented to the district court do exist. However, the petitioner may not exceed 40 pages excluding the pages that precede Page 1 of the form. The following Exhibit's serve as proof that Johnson has provided the court with an arguable basis in law and fact. His appeal was submitted in good faith, and was not frivolous at all. If the Supreme Court is interested in reviewing the remaining exhibit's Johnson will gladly forward this information to the Court upon notice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Marlon Johnson

Date: 11/10/22