

NO. \_\_\_\_\_  
IN THE  
SUPREME COURT OF THE  
UNITED STATES

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FAIRLY W. EARLS,  
Petitioner-Appellant,  
v.

KARI BUSKE, et al.,  
Respondent-Appellee.

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On Petition for Writ of Certiorari from the United States  
Court of Appeals for the Seventh Circuit, Case No. 22-1193  
in a 42 U.S.C. § 1983 Civil Rights Complaint.

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PETITION FOR WRIT OF CERTIORARI

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Dated: 12-24-2022

Fairly W. Earls  
Jackson Correctional  
P.O. Box 233  
Black River Falls, WI. 54615

QUESTION PRESENTED

- I. Whether the District Court and Court of Appeals Abused there Discretion on its Original and Supplemental Jurisdiction by an erroneous application of Section 28 U.S.C. § 1367(c)(3) on Earls Constitutional Claims by not considering those claims in a 42 U.S.C. § 1983 petition.
- II. Whether the United States District Court Abused it's Discretion by denying Earls 42 U.S.C. § 1983 Civil Rights Complaint at the Screening Stage of the process for failure to State a Claim, when a Constitutional Claim with Evidence was presented where the defendants violated.
- III. Whether the United States District Court erroneously applied the Law pursuant to Section 28 U.S.C. § 1915A and denied Earls his Right to pursue a Civil Rights Claim.

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- Appendix 2 Opinion and Order by the United States Court of Appeals for the Seventh Circuit denying Earls 42 U.S.C. § 1983 Complaint.
- Appendix 3 Opinion and Order by the United States district Court, Western district of Wisconsin denying Earls 42 U.S.C. § 1983 Complaint.
- Appendix 4 Earls 42 U.S.C. § 1983 Civil Rights Complaint filed in the district Court on 02-08-2022 alledging 8th and 14th Amendment Violations.
- Appendix 5 Civil Docket Text's of filings in the United States District Court.

TABLE OF AUTHORITY

## CITATIONS - ORDERS ENTERED

The Order of the United States Court of Appeals for the Seventh Circuit denying the Petition for Rehearing (App. 1), Order Entered by the United States Court of Appeals, Seventh Circuit denying Earls 42 U.S.C. § 1983 Civil Rights Claim (App. 2), Opinion and Order of the United States district Court denying Earls 42 U.S.C. § 1983 Civil Rights Complaint at the Screening Stage (App. 3).

## JURISDICTION STATEMENT

The United States Supreme Court has jurisdiction on Writ of Certiorari's taken from a final order of the United States Court of Appeals pursuant to 28 U.S.C. § 1651 and the United States Constitution Article III Section § 2. This Writ is timely filed pursuant to 28 U.S.C. § 2101(c) and pursuant to Rule 14(1)(e)(v) and 28 U.S.C. § 2403(b), the Attorney of record has been served via the U.S. Postal Service.

## CONSTITUTIONAL - STATUTORY PROVISIONS

The United States Constitution 14th Amendment Right to Due Process and Equal Protection.

The United States Constitutional 8th Amendment.

42 U.S.C. § 1983

28 U.S.C. § 1915A

## STATEMENT OF THE CASE

On September 4th, 2020 the Plaintiff, Fairly W. Earls filed a 42 U.S.C. § 1983 Civil Rights Complaint in the United States District Court alledging 14th and 8th Amendment Rights were Violated by the Defendants. see (Appendix 4, page 3 and 7).

On September 16th, 2020 the Plaintiff Earls paid the required filing fee of \$400.00. The plaintiff's complaint was taken under advisement on the same day the fee was paid. On that same day 09-16-2020 it was listed on the Docketing Text that the Complaint was being Screened, (Appendix 5).

On April 29, 2021 the Court requested Earls to file an Amendment to his pleading. On May 11, 2021 Earls filed his Amended Complaint. On 01-27-2022 the District Court Dismissed Earls Complaint at the Screening Stage 28 U.S.C. § 1915A for failure to State a Claim upon which relief can be granted. Even thou Earls 42 U.S.C. § 1983 Complaint did indeed state a Federal Claim upon which relief could be Granted. see (Appendix 4).

On 02-08-2022 Earls timely filed the Notice of Appeal and the Civil Rights Case was Docketed in the Seventh Circuit Court of Appeals. However the Court made an error of Law in Dkt. 2 that no Notification was served on the Appellee, Earls has Certified Evidence from the U.S. Postal Service that the Appellee was Served in the United States District Court and the United States Court of Appeals. On 03-15-2022 Earls paid the \$505.00 Appellate Filing Fee in the District Court for the Seventh Circuit. A Briefing Schedule was Re-established, see (Dkt. 1 & Dkt. 6). On 05-20-2022 Earls filed his Appellant Brief.

On 08-31-2022 the United States Court of Appeals entered a "Nonprecedential Disposition" per curiam, affirming the District Court Judgment as to Earls Claim for Damages. Then Court then Vacated Judgment request for injunctive and declaratory relief with remand with instructions to dismiss the Claim as moot.

Earls Claim never became Moot while on its way to the Court of Appeals, and Earls never ask the Court of Appeals for damage relief. So the Seventh Circuit Decision is by Law an Unreasonable Application of Law by Unreasonably applying the facts and the purpose of the Appeal by Earls.

On 09-15-2022 Earls filed a petition for Rehearing, and on 10-07-2022 the Rehearing was Denied.

#### ARGUMENT

Issue I. Whether the United States district Court and the Seventh Circuit Abused there Discretion on an Original and Supplemental Jurisdiction by an erroneous application of Section 42 U.S.C. § 1983, 28 U.S.C. § 1915A and 28 U.S.C. § 1367(c)(3) to Earls Constitutional Claims at the Screening Stage by not considering those Constitutional Claims.

The United States District Court Western District of Wisconsin did Abuse its Discretion, Authority and Credibility by misapplying the Law to Avoid considering Earls Constitutional Claims that were Violated and clearly presented in Earls § 1983 Complaint.

A Court Abuses it's discretion when it committs an error of Law or makes a clearly erroneous finding of Fact. see (Christmas v. City of Chicago, 682 F. 3d 632, 638 (7th Cir. 2012)).

Earls presented Constitutional Claims to the District Court under his Eighth and Fourteenth Amendments and Wisconsin Law for negligence that did indeed give the United States District Court for the Western District of Wisconsin jurisdiction, see (Appendix 4 ¶ 2). The United States District Court had subject matter Jurisdiction on Earls Claims pursuant to 28 U.S.C. §§ 1331, 1333(a)(3).

A District Court may strongly suspect that an inmates Claim lack's merit, but that is not a Legitimate ground for Dismissal under § 1915A. see (Simpson v. Nickel, 450 F.3d 303, 307 (7th Cir. 2006) ("A complaint is sufficient if

it gives Notice of the Plaintiff's Claims" id. @ 306). It cannot be dismissed for failure to State a Claim unless "it appears beyond doubt that the plaintiff can prove no set of facts that would entitle his to relief", see (Marshal v. Knight, 445 F.3d 965, 968 (7th Cir. 2006).

It is not necessary for the plaintiff to plead specific facts and his Statement need only "give the defendants Fair Notice of what the...Claim is and the grounds upon which it rests". see (Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.CT. 1955 (2007)(quoting, Conley v. Gibson, 355 U.S. 41, 47 (1957). To state a Claim, a Complaint must contain sufficient Factual Matter, accepted as true, "that is plausible on its face". ("A Claim has Facial Plausibility when the plaintiff pleads Factual content that allows the Court to draw the reasonable inference that the defendant's are liable for the misconduct alleged", citing (Twombly, 550 U.S. @ 556).

The United States District Court decided (quoting) "because the Court will Dismiss all Claims over which it has Original Jurisdiction, the Court has also declined to exercise supplemental jurisdiction over plaintiff's proposed State Law negligence Claims in accordance with 28 U.S.C. § 1337(c)(3) and has not considered those Claims for purposes of Screening".

The District Court Abused it's Discretion by Dismissing Earls Constitutional Claims at the Screening Stage of the Complaint. This is clearly an error of Law as stated by the higher Courts and Congress in 28 U.S.C. § 1915A.

Earls has a Constitutional Right to have incorrect information expunged from his record. see (Pruett v. Levi, 622 F.2d 256, 258 (6th Cir. 1980) (Recognizing Constitutional Claim, where, following a proper request for correction, False information is used to deprive a person of Liberty); (Silverman v. Pennsylvania, 527 F. Supp. 742, 745 (W.D. Pa. 1981), aff'd, 707 F. 2d 1395 (3rd Cir. 1983). More specifically, "A plaintiff has a clearly established Constitutional Right to have accurate information in his prison

file, see (Lowrance v. Coughlin, 862 F. Supp. 1090,1119 (S.D.N.Y. 1994); also see Terrell v. White, 2020 WL 636500 (U.S.D.C. Penn.) citing Williams v. Fed. Bureau of Prison, 85 F. App'x 299, 303 (3rd Cir. 2004) citing (Johnson v. Rodriques, 110 F. 3d 299, 309 n. 13 (5th Cir. 1997).

In Paine v. baker, 595 F.2d 197 (4th Cir. 1979) cert. denied 100 S.C.T. 263 (1979) ("If the false information is relied on to deny an inmate a condition the inmates conditional Liberty interest is at stake and the Due Process Clause is called into play. Paine, 595 F. 2d @ 202, and a Claim for relief under Due Process will lie") also see Terrell v. White, 2020 WL. 636500 (D.C. Penn.).

Earls presented plausible Claims of United States Constitutional Rights being violated under his 8th and 14th Amendments. The District Court Abused it's Authority and Discretion at the screening Stage by Dismissing its jurisdictional authority on Earls Claims, at which the district Court had original jurisdiction pursuant to 42 U.S.C. § 1983.

Earls Federal Claims did not fall out as the District Court cited, the Case was at the Screening Stage pursuant to 28 U.S.C. § 1915A. Earls did meet his required standard for his Constitutional Rights Violations to proceed to the passing of the Screening Stage of 42 U.S.C. § 1983 and then proceed to the Scheduling portion.

Issue II. Whether the United States District Court abused it's Discretion by denying Earls 42 U.S.C. § 1983 Civil Rights Complaint at the Screening Stage for failure to State a claim, when 2 Constitutional Claims were presented under the 8th and 14th Amendments.

The District Court unreasonably denied Earls 42 U.S.C. 1983 Civil Rights Claim at the Screening Stage of the Complaint, when in fact Earls did present a Constitutional Right being denied. A District Court may strongly suspect upon review that an inmates claims lack merit, but that is not a Legitimate Ground

ground for dismissal under § 1915A. see (Simpson v. Nickel, 450 F.3d 303, 307 (7th Cir. 2006) ("A complaint is sufficient if it gives Notice of the plaintiff's claims", Id. @ 306). It cannot be dismissed for failure to State a claim unless it appears beyond doubt the plaintiff can prove no set of facts that would entitle him to relief. see (Marshall v. Knight, 445 F.3d 965, 968 (7th Cir. 2006)).

It is not necessary for the plaintiff to plead specific facts and his statement need only "give the defendants fair notice of what the...claim is and the grounds upon which it rests". see (Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.CT. 1955 (2007) Quoting, Conley v. Gibson, 355 U.S. 41, 47 (1957). To state a claim, a complaint must contain sufficient factual matter accepted as true, "that is plausible on its face"). ("A claim has factual plausibility when the plaintiff pleads factual content that allows the Court to draw the reasonable inference that the defendants are liable for the misconduct alleged", citing Twombly, 550 U.S. @ 556).

To state a claim the plaintiff must allege that particular information is false, that it is probable that such information will be relied upon for decision making, not merely about internal matters such as work assignments. see (Farinaro v. Coughlin, 642 F.Supp. 276, 281-82 (S.D.N.Y. 1986)) (The Court held that plaintiff's allegations that a Deputy Superintendent placed incorrect information regarding his conduct in records that are used for transfer determinations and refused to correct such information are Sufficient to State a Claim). cited by (Amaker v. Fischer, 2014 WL 8663246 (D.C.N.Y.); Amaker v. Shiraldi, 2017 WL 4402443; citing Paine v. Baker, 595 F.2d 197, 201-03 (4th Cir. 1979); cert. denied 100 S.CT. 263 (1979), cited by (Williams v. Bishop, 2020 WL 4698064 (D.C. MD.); also see (Johnson v. Simon's, 2021 WL 10870059 citing Williams and Paine).

In the Case at hand the District Court acted like the Respondent and Litigated Earls Claims without input from the State. The District Court failed to correctly articulate Earls Constitutional Claims at the screening stage. Earls did establish his § 1983 Complaint, that he has a Constitutional rights to his 8th and 14th Amendments to have accurate information in his Record. see (Earls Appendix 4 at page 3 and 7). Any rules cited by Earls are facts of the case in support of the wrong doing by the defendants but not the complaint.

The seventh Circuit Court in (Montgomery v. Anderson, 262 F.3d 641, 643 (7th Cir. 2001) stated ("More restrictive custody must be challenged under § 1983), see (Brown v. Plaut, 131 F.3d 163, 167 (D.C. 1997); Toussaint v. McCarthy, 801 F.2d 1080, 1102 (9th Cir. 1986), also see (Tool v. B.O.P., 286 F.3d 576, 586 (D.C. 2002) ("holding that falsifying a transfer memorandum resulting in reclassification did state a Constitutional Claim.

False information that is used to deprive a person of Liberty, does violate the 14th Amendment right to expungement. see (Pruett v. Levi, 622 F.2d 256, 258 (6th Cir. 1980). In Pruett, the Court said "We have today announced a Right secured to State Prison Inmates by the United States Constitution to have prejudicial erroneous information expunged from their prison files.

This Court said that a Claim such as the one here is a Plausible Claim in (Munson v. Gaetz, 673 F.3d 630, 632 (7th Cir. 2012). Other Federal Courts have held the same. Earls has a Constitutional Right to have incorrect information expunged from his record. see (Pruett v. Levi, 622 F.2d 256, 258 (6th Cir. 1980) (Recognizing Constitutional claim where, following a proper request for correction False Information is used to deprive a person of Liberty). also see (Silverman v. Penn. 527 F.Supp. 742, 745 (W.D. PA. 1981) ("More specifically, "A plaintiff has a clearly established Constitutional Right to have accurate information in his prison file. see (Lawerance v. Coughlin, 862 F.Supp. 1090 (S.D.N.Y. 1994), also see Terrell v. White, 2020 WL 6365000 (D.C.Penn.).

The district Court abused its discretion and misapplied the Law by deciding that the Federal Claims fell out before Trial. The Claims did not fall out and it's at the screening stage. Earls Claims were for the 8th and 14th Amendments, thereby the Court abused it's discretion and Earls Constitutional Rights to these Rights. This is the Screening Stage of a Civil Complaint and Earls did indeed present his 8th and 14th Amendments Rights to have False Information expunged from his Record. Further Earls did meet his burden by establishing factual matter that the defendants were the ones who were violating his Constitutional rights, both rights because the defendants inserted False Information into his Record, and they used the False Information in their decision making process, and they refused to correct the Record.

At the Screening Stage of a 42 U.S.C. § 1983 Claim Earls needs only to give the defendants "Fair Notice of what the...Claim is and the grounds upon which it rest". Earls did exactly this in his Complaint. see (Appendix 4). also see (Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.CT. 1955 (2007) quoting (Conley v. Gibson, 355 U.S. 41, 47 (1957). To state a claim, a Complaint must contain sufficient factual matter, accepted as true "that is plausible on it's face". "A Claim has facial plausibility when the plaintiff pleads factual content that allows the Court to draw the reasonable inference that the defendants are liable for the misconduct alleged, Id. @ Twombly, 550 U.S. 556".

The Federal Court have held "if the False Information is relied on to deny an inmate a condition, the inmates Conditional Liberty interest is at stake and the Due Process is called into play. see (Paine 595 F.2d @ 202, and a Claim for Relief under Due Process will lie"). also see (terrell v. White, 2020 WL 636500 (U.S.D.C. Penn.).

Issue III. Whether the United States District Court Unreasonably applied the Law pursuant to Section 28 U.S.C. § 1915A and denied Earls his Right to pursue a Civil Right Claim.

Earls was seeking to bring a Claim under his 8th and 14th Amendments and Wisconsin Law for negligence thereby giving the District Court Supplemental and Original Jurisdiction because Earls was stating viable Constitutional Claims. Earls was in compliance with rule 8 providing the Court in the § 1983 claim the requirements as rule 8(a) Standards have set forth. see (Appendix 4).

#### FOURTEENTH AMENDMENT RIGHT

To state a Claim the plaintiff must allege that particular information is false, that it is probable that such information was relied upon for decision making, not merely about internal matters such as work assignments. see (Farinaro v. Coughlin, 642 F.Supp. 276, 281 (S.D.N.Y.1986) (the Court held that plaintiff's allegations that a Deputy Superintendent placed incorrect information regarding his conduct in Records that were used for transfer determinations and refused to correct such information are Sufficient to State a Claim. cited in (Amaker v. fischer, 2014 WL 8663246 (U.S.D.C.N.Y.); (Amaker v. Shiraldi, 2017 WL 4402443; citing Paine v. baker, 595 F.2d 197, 201 (4th Cir. 1979); cited by (Williams v. Bishop, 2020 WL 4698064 (U.S.D.C. MD.); also see (Johnson v. Simon's, 2021 WL 10870059, citing "Williams and Paine".

#### EIGHTH AMENDMENT RIGHT

The Eighth Amendment, written as part of the Bill of Rights in 1791, states that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted", U.S. Const. Amend. VIII.

In (Furman v. georgia, 408 U.S. 238, 92 S.CT. 2726, 2742 (1972) this Court stated that there is a principal inherent in the Eighth Amendment that "The State must not arbitrarily inflict a condemnation of the arbitrary infliction of severe punishments.

The very words of cruel and unusual punishment imply condemnation of the infliction of severe punishment. A punishment is excessive under this principal if it is unnecessary, and the infliction of a severe punishment by the State cannot comport with human dignity when it is nothing more than the pointless infliction of suffering and, there is a significantly less severe punishment adequate to achieve the purposes for which the punishment is inflicted, the punishment is unnecessary and therefore excessive.

The District Court did abuse its discretion by deciding Earls did not present a Constitutional Claim at the Screening stage. Thereby the district court did misapply and erroneously applied 28 U.S.C. § 1915A.

#### CONCLUSION

It's clear from the Record and Evidence submitted as cited in Earls § 1983 Complaint that he did meet the Standard to pass the Screening Stage by putting forth United States Constitutional Claims. The seventh circuit tried to muddy the water to cover up for the district court's abuse of discretion. This Court has exclusive Authority to overturn both Courts and remand with directions to allow Earls to proceed on his Civil Rights Claim and let claim shake out with evidence.

Dated: 12-24-2022

Respectfully,

Fairly W. Earls

Fairly W. Earls 369129  
Jackson Correctional  
P.O. Box 233  
Black River Falls, WI. 54615