

22-7172

**IN THE SUPREME COURT OF
THE UNITED STATES**

Supreme Court, U.S.

FILED

FEB 15 2023

OFFICE OF THE CLERK

NO: _____

HENRY A. HARMON

PETIONIER

VS.

KAYLA NOEL- EMSWELLER, ETAL.

RESPONDANTS

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR
THE EIGHTH CIRCUIT**

NO:22-2834

ORIGINAL

Henry A. Harmon
ADC No. 103609
Barbara Ester Unit, 6A-3
7500 Correction Circle
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QUESTION PRESENTED

1. Did petitioner have a complete fair denovo review of his legal findings that Kayla Noel- Emsweller, et.al., and defendants deny him his constitutional eighth amendment right to equal protection under the law and to be fairly sentenced under correct statutes, acts and accredited time served of 1,888 days, with good time, as all other inmates are treated as such.
2. Did petitioner Harmon have a constitutional right under, Fed. R. App. P. Rule 40 (a) to a complete rehearing en banc by all the active judges of the court to get a complete unbias decision according to law, after Harmon petitioned for this rehearing En Banc, at which the Eighth Circuit of the U.S. Court of Appeals affirmed U.S. District Court of Eastern District of Arkansas- Central Division -(4:22- CV-00629-BRW),without addressing the true particulars presented by Harmon, to warrant their decision to affirm the district court summarily.
3. Whether petitioner stated with particulars the points of law and facts that the courts over-looked and misapprehended, when the court specifically failed to acknowledge the Bosnick Rule, see Bosnick v. Lockhart, 283 Ark 206,672 S.W. 2d 52 (1984), in failing to have defendants to produce factual documentation to support their allegations that plaintiff / petitioner was in fact sentenced under the correct acts, statutes and accredited time served of 1,888 days, with good time credit, accredited towards his complete sentence, as the record can and did reflect that an audit was completed on July 01, 2020 by ADC - Arkansas Division Corrections records department, C. Rushing, totally contradicting Kayla Noel- Emsweller's e-mail to records personal Ms. Alexander of Tucker Maximum Security Unit.
4. Did records supervisor Kayla Noel-Emsweller, Director Dexter Payne, ADC Secretary Solomon Graves and Assistant Attorney General Adam Jackson, refuse to correct illegal sentence, that it was in fact illegal to sentence Harmon to Community Corrections Center-(CCC) of a presumptive sentence of 108 months at an Alternative

Sanction for manslaughter and 60 months also within ADC, at which petitioner was not eligible to be sentenced as such, at which defendants failed to produce legal documentation to support that his claim was not plausible constitutionally for relief under 42 U.S.C. § 1983.

5. Whether the U.S. District Court of the Eastern District of Arkansas saw the illegality by United State Magistrate Judge Ervin, stated considering converting this action to a habeas corpus action under 28 U.S.C. § 2254, if their was no plausible claim as stated within their earlier ruling, see ruling by Judge Billy Ray Wilson U.S. District Judge, Recommended Disposition, with Magistrate judge Ervin ruling also for 20th day of July, 2022 case NO.4:22-CV-00629-BRW-ERE, why would they even consider this if there was no illegal acts in this case, apparently their was.

PARTIES

The petitioner is Henry A. Harmon, a prisoner at Barbara A. Ester Unit Correctional Facility of Arkansas, 7500 Correctional, Pine Bluff, AR. 71603.

The Respondents are ADC Record Supervisor Kayla Noel- Emsweller, ADC Director Dexter Payne, ADC Secretary Solomon Graves and Attorney General Leslie Carol Rutledge, Assistant Attorney General Adam Jackson, all state officials of Arkansas.

JURISDICTION

Petitioner entered a Civil Rights action under 42 U.S.C. § 1983, for constitutional rights violations, filed on or about July 08, 2022 within U.S. District Court of Arkansas Eastern District Central Division Case No:4:22-CV-00629-BRW-ERE, against Arkansas Division of Correction (“ADC”).

Recommended Disposition by United States Magistrate Judge Eddie R. Ervin was filed on July 20, 2022 to dismiss complaint, at which was sent to United States District

Judge Billy Ray Wilson to adopt this recommendation without independently reviewing all evidence in the record, (See A-1, A-2).

Petitioner filed objections to disposition recommendations on August 03, 2022, under F.R.C.P. Rule 72 (b) (2) did in fact specify specific written objections, with factual law and exhibits to support his objections. Order by U.S. District Judge Billy Ray Wilson filed on August 08, 2022 to except recommendations by Magistrate Judge Eddie R. Ervin to dismiss complaints. (See A-3).

Petitioner filed notice of appeal and designation of record on September 02, 2022 within U.S. District Court of Appeals of the Eighth Circuit and record lodged within for appellant purposes. (See A- 4).

Petitioner filed IFP status to proceed with appeal, No: 22-2834 within U.S. Court of Appeals for the Eighth Circuit, at which forma pauperis was granted before Shepherd, Kelly and Grasz, Circuit Judges on October 24, 2022 . (See A- 5). The same Circuit Judges summarily affirmed district court and denied motion for appointment of counsel as moot within judgment decision.

Petitioner filed for Rehearing En Banc on or about November 08, 2022 for all active judges, to review and hear, rather than the usual three panel judge, per Rule 40 (a), F.R. App. P., at which was denied by order on December 13, 2022 by U.S. Eighth Circuit Court of Appeals. Mandate was issued for November 14, 2022 in accordance with judgment of October 24, 2022 by Eighth Circuit Appeals Court. (See A-6)

Petitioner has met burden for U.S. Supreme Courts jurisdiction under the U.S. Const., Act III and federal statute 28 U.S.C. Section 1254 (1), at which the Supreme Court of the United States has the power to review any decisions of the Federal Court of appeals.

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. Petitioner's 8th, and 14th constitutional rights where violated.

A. Petitioner's 8th Amendment right to equal protection was in fact violated, due to violating sentencing order contract, sentence structure, Acts and statutes in place for the ADC to abide by. See, **Abdullah v. Gunter**, 949 F.2d 1032,1037 (8th circuit 1991).

B. Petitioner's 14th Amendment right to due process was violated, due to liberty interest and administration failure to correct inaccurate information 5 U.S.C. Section 552 a (g)(4), 5 U.S.C. Section 552 a(g)(1).

2. Pursuant to 28 U.S.C. Section 1983 1951 A;

A. The court must review merits of a prisoners complaint and dismiss it "if" the action is frivolous or malicious and fails to state a claim upon which relief may be granted and/or seek monetary relief against defendants.

B. Pursuant to 28 U.S.C. Section 1983, in order to state a claim under 1983 a plaintiff/petitioner must allege;

- 1.) the defendants deprived him of a federal constitutional right and;
- 2.) the defendants were acting under color of state law, see Savory v. Lyons, 469 F.3d 667, 670 (7th Cir. 2006).

3. United States Supreme Court has the power by Federal Statute 28 U.S.C. Section 1254 (1); Sup. Ct. R.10, 12-14 to review any decisions of a Federal court of appeals rulings.

STATEMENT OF THE CASE

The petitioner's complaint factually alleged that (ADC)- Arkansas Division of Corrections personnel has allowed petitioner to serve illegal sentences, contrary to the in acted laws statutes at the time petitioner was convicted. Petitioner brought this claim through several grievances, affidavits and e-mails, specifically sent to Kayla Noel-Emsweller records supervisor, showing factually through sentencing data sheet within (ADC's) data system, that Harmon's case docket NO:1999 - 1301 for 20 years, at which his prison time computation states 420 months, contrary to the 240 months, it should state, at which 20 year sentence is 240, not 420 makes sentence illegal. There was an audit done on July 01, 2020 by records personnel C. Rushing, at which the 1888 days that petitioner had served before the negotiated plea deal on case 2012- 0515, was moved only giving petitioner one year and approximately eleven months, making petitioner's other credited days to be placed on 5 year sentence, making Harmon serve most of it day for

day, as to him serving that sentence within Community Correction Center- (CCC), at which Harmon was ineligible to participate in such department, or for the ADC to do so.

Petitioner exhausted all administrative remedies as required by the Prison Litigation Reform Act (PLRA) and produced legal documentation to support his legal findings, that these state officials have disregarded petitioner's constitutional rights, at which assistant attorney general Adam Jackson has never produced legal documentation of sentencing statutes, acts and institutional data files to contradict or refute petitioner's allegations. Petitioner moved for under the Bosnick Rule, for these state officials to put forth factual legal documentation proof, that petitioner has been sentenced under the right acts, statutes, his time computation is correct with factual proof, as the petitioner has produced the factual proof, specifically ADC's records to all the wrongs defendants have failed to right, by refusal to correct all their inaccurate information, has totally disregarded petitioner's constitutional rights "intentionally and willfully" as such.

United States Magistrate Judge Eddie R. Ervine recommended disposition, clearly stated in foot note 4, that the court considered converting this action into a habeas corpus action under 28 U.S.C. § 2254, which can only lead to that, the court saw factual reasons that there was an unlawful act or actions on the part of these state officials, regardless to the fact that petitioner did have a pending habeas corpus.

BASIS FOR FEDERAL JURISDICTION

This case raises a question of interpretation of the Due Process Clause, the right to equal treatment and equal protection of the 8th and 14th Amendment to the United States Constitution, for erroneous release dates of improper calculations.

The district court had jurisdiction, under the general federal question jurisdiction confirmed by 28.U.S.C. 1331, making United States Supreme Courts have jurisdiction under the U.S. Const., Act III and federal statute 28.U.S.C. Section 1254(1), at which the Supreme Court of the United States, has the authority and power to review any decisions of the federal court of appeals.

REASONS FOR GRANTING THE WRIT

A. Particularity points of law and facts that the Courts have over-looked and address the true particulars.

1. The Court failed to acknowledge the **Bosnick Rule**, See **Bosnick v. Lockhart**, 283 Ark. 206, 672 S.W. 2d 52 (1984), failing to produce factual documentations to support their reasons, that petitioner has failed to state a plausible claim constitutionally for relief under 42 U.S.C. § 1983.

The Courts failed to have defendants counsel, produce legal documentation in writing to refute petitioner's claim, specifically, statutes, acts and true time calculation with true accredited time served of 1888 days, at which the **Bosnick Rule**, stipulates this to be done within court proceedings.

Most courts say that prison officials must investigate the merit of the prisoner's claim and respond to it; See **Toney-El v. Frazee**, 777 F.2d 1224, 1229 (7th Cir. 1985) (mathematical calculation and opportunity to contest in writing where sufficient); **Royal v. Durison**, 319 F. Supp. 2d 534,539(E.D.Pa. 2004)(due process requires all meaningful and expeditious consideration of claims that the term of prisoner's sentence has been miscalculated), aff'd on other grounds, 254 Fed Appx. 163 (3d Cir.2007)(unpublished), cert, denied, 128 S.Ct. 2502 (2008); **Brown v. Coughlin**, 704 F. Supp. at 44 (prison official with actual notice of an error must obtain the paperwork necessary to discern the correct release date); See. Also. **Campbell v. Illinois Dept. of Corrections**, 907 F. Supp. 1173, 1180 (N.D. Ill.1995)(magnitude of the error in plaintiff's / petitioner's sentence calculations, and the ease with which it could have been detected, supported deliberate indifference claim; submitted by above petitioner.

2. Petitioner has not argued seeking immediate or speedier release, His case does fall within the narrow class of cases in which this prisoner can file a section 1983 action seeking equitable relief. See. **Wilkinson v. Doston**, ___ U.S. ___, 125 S.Ct. 1242, 1245, ___ L.Ed.2d ___ (2005); **Atey v. Hopkins**, S F.3d 1125, 1139-32 (8th Cir.1993).

Petitioner attached several exhibits to his complaint that was factually from within the (ADC's) computer database, pointing directly to how the state employees have acted arbitrarily and using false illegal Acts, Statutes, and sentencing structure to house a inmate.

Sentencing Guidelines specifically stipulate, that if any official document is not completed or incorrect, the Arkansas Division of Corrections are to notify the courts and admit that if anything is incorrect or illegal, by the inacted laws, they must not except prisoner as such.

Petitioner used A.C.A. Section 16-93-1202 as an exhibit within all his petitions, at which it factually showed that Harmon's Sentencing order was illegal, due to being sentenced to Community Corrections Center-(CCC), at which petitioner was not "a eligible offender" of sentence, it stipulates on the A.C.A.section 16-93-1202(10)(A)(i) "Target Group", at which Manslaughter -5-10-104 (a) (3) was not within this section A.C.A. section 16-93-1202 (10)(A)(i). Petitioner also was given a Presumptive Sentence of 108 months at an Alternative Sanction, making petitioner serve as though he had to serve 85% of this charge, at which most of his accredited 1888 days served day for day was accredited to the manslaughter, he was also given 60 months within ADC.

Petitioner had a stacked sentence, that was to run together consecutively, not separately as the ADC has done.Petitioner's underlying offense was robbery,both cases was same case No. incident of 2012-0515 with same victim. Petitioner was to receive the entire 1888 days towards the complete sentence, Not 3 years and some months towards count 1 manslaughter, then 2 years and some months towards Count 2 Robbery of 480 months.

Petitioner has in fact showed with exhibits, the new release date calculations dated for July 10, 2020, sentencing data within ADC was and still incorrect, C. Rushing did in fact do an audit on July 01, 2020, however they failed to recalculate petitioner's sentence as such, just moving the 1888 days, is not going to correct the sentence.

3. Defendants have in fact violated petitioner's 8th, 14th Amendment rights to equal treatment, equal protection and liberty rights interests, due to his illegal sentence structure, violating plea agreement contract, failing to produce discovery legal documentation of correct acts, statutes, that petitioner was sentenced under, at which the

courts have failed to request this documentation for open transparency, to ensure petitioner's constitutional rights are not in fact being violated as such. Petitioner has a constitutional right to be treated as all other persons within a penal situation.

Defendants have failed to present evidence from their own (ADC) database, to confirm that Harmon's claim is in fact frivolous, at which the evidence the defendants would use would only confirm, supporting the petitioner's claim as factual and would be unable to refute his allegation's.

Petitioner states again that the Bosnick Rule stipulates the productions of written legal documentation proof, according to state law, the exact sentence structure, what statutes and acts applied to petitioner's sentence and how he is to serve the complete sentence and how was the 1888 days accredited to his sentence, at which the record clearly shows that the defendants have failed to produce and explain that documentation as required by law, See again, Bosnick v. Lockhart , 283 ARK. 206, 672 S.W. 2d. 52 (1984). The Courts failed to request discovery from defendants for actual legal proof that petitioner's constitutional rights are not being violated as his complaint stipulates that has happened to him.

Petitioner produced evidence by way of exhibits of factual proof, at which his complaint was more than formulaic recitation of the elements of his course of action, at which as stated before it contained factual allegations sufficient to raise a right to relief above the speculative level. See. Bell Atlantic Corp. v. Twombly , 550 U.S. 544, 555 (2007).

Petitioner's complaint contained sufficient factual matter, accepted as true, and has stated a claim to relief that is plausible on its face. See. Ashcroft v. Iqbal , 556 U.S. 662, 678 (2009) (quoting Twombly , 550 U.S. at 570).

Petitioner cannot force the Courts to investigate his exhibits and demand the courts to have defendants put forth discovery factual evidence to refute Harmon's factual evidence, as not being factual with law to support his claim as such. Petitioner's claim had and has facial plausibility, when the petitioner pleads factual content that allows the court to draw the reasonable inference, that the defendants are liable for the misconduct alleged.

In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the pleading, in the light most favorable to the plaintiff /petitioner, and resolve all doubts in the plaintiff's / petitioner's favor.Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

B. Petitioner was only required to serve 1/3 of count -1- manslaughter charge, towards transfer eligibility date of 10 months, before being transfer eligible and not the almost whole sentence as (ADC) has tranmited within calculations.

Petitioner was required to serve 1/2 of 1/2 of Count -2- robbery that was required to serve before transfer eligibility date, at which that would have been 10 years on this charge.

Petitioner would have been required to serve 10 years and ten months on both Count-1 and Count-2 consecutively as stipulated within the original plea agreement. The way that the Arkansas Division of Correction has petitioner serving this sentence, he would be required to serve over fifteen years before transfer eligibility date. The plea agreement on March 08, 2017 was breached and the contract was in fact void at the point of the notification to the state officials.

Petitioner plead for within plea agreement to lesser charges, at which good time credit should have been accredited towards both counts 1 and 2, for the 1888 days served day for day already within prison, at which the prison administration has failed to credit plaintiff / petitioner all good time credit and calculate his sentence accordingly to reflect a class C felony for manslaughter and a class B felony for robbery, at which these charges according to law warrant Harmon, must receive good time credit, especially if his class status never changed, to not warrant him not to receive the accumulated good time credit for the 1888 days served day for day within the Arkansas Division of Correction -(ADC), at which they have failed to credit petitioner his good time, that is prescribed by enacted law at the time petitioner received original charges on case NO: 2012-0515, See. Edward v. Balisok, 520 U.S. 641, 643-647 (1997).

Accordingly, in Edward v. Balisok, 520 U.S. 641 (1997), Heck was applied within this circumstance of this section 1983 action claiming damages and equitable relief for a procedural defect in prison administrative process, where the administrative

action and inaction taken against petitioner, could and did affect his credits towards his release, based on good time served of 1888 days served day for day, that he should have received towards his complete sentence as such. Petitioning a claim for relief, turning on the circumstances of confinement may in fact be presented within section 1983 action.

As petitioner has stated before, some cases are hybrids, with a plaintiff / prisoner seeking relief unavailable in habeas corpus, notably damages, but one allegation that not only support a claim for recompense, but imply the invalidity either of an underlying conviction and / or a particular ground denying release short of serving the maximum term of confinement. See. Heck v. Humphrey , 512 U.S. 477, 486-78 (1994), it is held that where success in a prisoner's section 1983 damages actions would implicitly question the validity of his conviction and / or duration of sentence.

Again, request for relief turning on confinement circumstances may be raised under 42 U.S.C. section 1983.

As in this case, the court's has a mistaken view that Heck applies categorically to all suits challenging prison circumstances and proceedings, See. Muhammad v. Close, 540 U.S. 749 (2004)

CONCLUSION

Petitioner, Henry A. Harmon, pro se , moves for his Writ of Certiorari be accepted as read, due to the fact that he has met his burden of proof, providing substantial proof with legal documentation, affidavits and case law to show that, (1.) the defendants did deprive petitioner of his Federal Constitutional right's, and (2.) defendants did in fact, act under the color of state law within their official capacity, violating their oath of office to fulfill their duties, See. Savory v. Lyons , 469 F.3d 667, 670 (7th Cir. 2006).

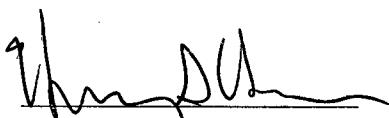
Pursuant to 28 U.S.C. 1915 (A), Section 1983, the court must review the true merits of petitioner Harmon's complaint and dismiss it if the action is frivolous or malicious, fails to state a claim upon which relief may be granted, and or seeks monetary relief, at which petitioner has petitioned this higher court to review the entire records

filed, due to the factual legal documents were never refuted by said officials / defendants, as not being true.

Petitioner has provided case law, specifically the **Bosnick Rule**, at which it stipulated the production of legal documents by these defendants, to factually refute Harmon's rights had not been violated, by providing Acts, laws and Statutes of actual proof, that Harmon's sentence is in fact correct, removing all doubt, that these state official's haven't committed illegal acts or infractions, besides one audit was done by C. Rushing ADC records employee that was performed on July 01, 2020, readjusting the 1888 days served towards count 1 and count 2 offenses, has shown that his claim was not frivolous or malicious, due to the fact there was an issue with his sentence, that petitioner continued to petition, filing grievances, exhausting his administrative procedures, in order for petitioner to receive an audit, in fact was true and factual to even warrant the audit that Harmon's complaint was established as true when this audit was performed. By a preponderance of evidence, petitioner did in fact meet his burden of proof, proving that something is more likely so, than not so.

In conclusion, Petitioner states that the United States Supreme Court rule in his favor according to law, for the foregoing reasons, certiorari should be granted in this case.

Respectfully Submitted, on this 8 day of February, 2023



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