

No.

22-7831

IN THE

SUPREME COURT OF THE UNITED STATES

Charles A. Mcrae — PETITIONER
(Your Name)

vs.

Shannon W. Myers et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the 7th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE) 22-1821

PETITION FOR WRIT OF CERTIORARI

Charles A. Mcrae B-62645
(Your Name)

2848 W. McDonough Street
(Address)

Joliet, IL, 60436
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Did the Appellate Court Err In Affirming the District Courts Decision?
2. Did petitioner "never say when he learned of possible constitutional claims" (page 4 paragraph 3 sentence 2 of order dated 3-9-23; Appendix A)
3. Did the Appellate Court draw all reasonable inferences in petitioners favor?
4. Did petitioner fail to state a claim?
5. Did the Appellate Court Err in denying Appointment of Counsel?

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:

Jane Doe. 1
Jane Doe 2
D. Beardson
R. Tetters
L. McCarty
D. Knauber
S. Johnson
J. Edler
E. Jackson
M. Delta
R. Nottingham
A. Tack
C. Larry
M. Nurse
D. Wilson
T. Williams
O. Jamison
D. Marano
K. Renz

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

** Petitioner is unsure how to fill this section out?*

☐ For cases from **federal courts**:

The opinion of the United States court of appeals 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☐ is unpublished.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 United States district 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☐ is unpublished.

☐ 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☐ is unpublished.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 March 9, 2023.

☐ 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: April 18, 2023, 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).

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TABLE OF AUTHORITIES CITED

CASES

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* petitioner is unsure how to
fill this section out?

STATUTES AND RULES

OTHER

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

* Petitioner is unsure how to
fill this section out?

STATEMENT OF THE CASE

The Appellate Court Erred In Affirming The District Courts Dismissal Of Petitioners Claims As Untimely And For Failure To State A Claim For The Following Reasons:

Petitioner was a victim of sexual assault (see 720 ILCS 5/11-1.20(9)(2)) and custodial sexual misconduct (see 720 ILCS 5/11-9.2 Appendix D page 141 Ex. 31.1 and pages 143-145 Ex. 33.1-33.3) while in Bdg Muddy River Correctional Center (BMRCC) and while on home monitor/parole and in the care and custody of the Illinois Department of Corrections (IDOC) in 2009 by defendant Myers (an IDOC staff member) a dental assistant at BMRCC and petitioners work supervisor.

Petitioner attempted to rebuff (say no to) Myers advances unsuccessfully while at BMRCC. Petitioner was led to believe that he had consented to these actions because he had not forcibly stopped Myers advances. Petitioner knew that these actions violated IDOC departmental rules but had no idea that they were criminal on behalf of defendant Myers and that he was unable to give "knowing consent" (see 720 ILCS 5/11-9.2(e) Appendix D pages 143-145 Ex. 33.1-33.3 and 720 ILCS 5/11-0.1 Definition 5).

Petitioner had no way of knowing that defendant Myers actions while he was on home monitor/parole violated departmental rules, state law, and his constitutional rights.

Statement Of The Case Cont.

This was concealed from petitioner by Myers and IDOC by approving Myers' home as a host site for his home monitor/parole while she still worked at BMRCC.

Petitioner was unaware of his injury of sexual abuse as defined by Illinois Law and any constitutional claim and its cause while he was on home monitor/parole, until August 2019. At which time he reported this and later filed his complaint in 2020 within 2 years of learning of his injury and the cause of it. Petitioner was diagnosed with Post Traumatic Stress Disorder in 2022 in relation to these events and revelations. Petitioner receives medication and weekly trauma counseling for this injury. Petitioner also suffers from anxiety and receives medication and treatment for this disorder in relation to these revelations. That he had been sexually abused while at BMRCC and while on home monitor/parole, which led to the birth of his daughter.

Once petitioner did report that he had been a victim of sexual abuse, defendants (IDOC officials) did not simply mishandle petitioners grievances by accident or negligence. Congress has passed legislation to offer the protection of laws to those who make allegations of sexual abuse in a prison facility. In the Code of Federal Regulation (CFR) and Illinois Administrative Code (Adm. Code). By IDOC officials

Statement of The Case Cont.

not following the CFR, Adm. Code, and their own Adm. Directives, even after being notified of this on multiple occasions by petitioner and the Governor, defendants were deliberately indifferent in denying petitioner the equal protection of these federal and state laws. Defendants (INOC officials) refused to perform their duties and responsibilities imposed by legislation, violating a legal and moral obligation to follow these laws. All laws. There can be no rational reason for state employee's to willingly and knowingly violate Federal and State Laws. Failing to act as the law obligates them to act. Petitioner has received two memos from defendants (see Appendix F) that verifies these claims and would remove certain defendants and claims from this case.

Petitioner does rely on 735 ILCS 5/13-202.3 for his state claims. The Appellate Court has stated that this does not apply to petitioners federal constitutional claims and that petitioner "never says when he learned of possible constitutional claims". Petitioner did state that he learned of a state claim against him (sexual assault and custodial sexual misconduct) in August 2019 and that

Statement of The Case Cont.

these crimes violated his eighth amendment to be free of cruel and unusual punishment while in the care and custody of the IDOC, as cited in paragraphs 256, 257, 311, 312, 313, and 314 of petitioners Second Amended Complaint (see Appendix D pages 38, 39, 45, and 46).

The Appellate Court did not draw all reasonable inferences in petitioners favor (see *Perez v. Fenoglio*, 792 F.3d 768, 776 (2nd Cir. 2015)). It would be a reasonable inference that once petitioner became aware of a crime committed against him, he became aware of a constitutional claim in relation to that crime. Without petitioner knowing he was a victim of sexual abuse while on home monitor/parole, he could not know of the constitutional claim to be free of cruel and unusual punishment while in the care and custody of the IDOC. In stating one, petitioner states both. The filing of petitioners complaint alleging violations of his constitutional rights was filed once he became aware of them and after he exhausted all administrative remedies.

Statement of the Case Cont.

This complaint was timely as stated in the Second Amended Complaint. Petitioner submits an Affidavit in support of this (see Appendix G).

Petitioner did not fail to state a claim. Petitioner did allege that he was "intentionally treated differently from others similarly situated and that there was no rational basis for the difference in treatment" while petitioner was unable to provide examples of this without discovery, petitioner did, in the alternative, put forth in his complaint what amounts to direct evidence of arbitrary treatment. Identifying the specific harassers, a plausible motive for concealing liability towards themselves and employees that are liable in a criminal and civil nature, and denying protections owed to petitioner by violating Federal and State laws.

Petitioner made two allegations, sexual assault and sexual misconduct (see Appendix D page 61 Ex. 2.1), of which

Statement Of The Case Cont.

IDOC Investigated the sexual misconduct allegation only (see Appendix F memo) despite both allegations being substantiated (see Appendix F memo). IDOC and the Illinois State Police have refused to investigate petitioner's sexual assault allegation which was substantiated, despite multiple grievances, letters, Federal, and State laws, of which there is no statute of limitations for criminal prosecution (see Appendix I 720 ILCS 5/3-5(a)(2)).

Petitioner was denied appointment of counsel by the Appellate Court (see Appendix H). Petitioner is not an attorney. Petitioner is diagnosed with a language-based learning disability, attention deficit hyperactivity disorder, major depressive disorder, anxiety disorder, anti-social personality disorder, and post traumatic stress disorder. Petitioner was found guilty but mentally ill and is designated as seriously mentally ill. Petitioner has not had the opportunity to petition the District Court for appointment of counsel to assist him in filing a proper and competent complaint. Petitioner had

Statement of The Case Cont.

the assistance of a law clerk back in 2019 at the Joliet Treatment Center (JTC) where he is housed but he quit and there is no law clerk currently at the JTC. Petitioner has contacted over 20 law firms throughout the State of Illinois multiple times seeking representation in this matter without success. Petitioner does not have the funds to secure legal representation to assist him with the filing of a legally competent complaint.

REASONS FOR GRANTING THE PETITION

Granting this petition is in the vital interest of all those similarly situated (inmates who have had a substantiated allegation of sexual assault and/or misconduct) and is critical to public safety in this case.

The legislative findings of the Illinois General Assembly finds: a small percentage of these crimes (sexual assault/misconduct/abuse) are reported, less than 1%. The trauma of this often leads to severe mental, physical, and economic consequences for victims. The diminished ability of victims to recover from this is directly linked to the response of others to this trauma. The response of law enforcement can directly impact a victim's ability to heal. Identification and successful prosecution of sexual predators prevents new victimization. For this reason, improving the response of the criminal justice system to these victims is critical to public safety (see Appendix I 725 ILCS 203/5).

The 7th Circuit Court of Appeals has entered a judgment in conflict with the decision of the 7th Circuit Court of Appeals

Reasons For Granting The Petition Cont.

on the same important matter, Petitioner did file his complaint within two years of finding out of his injury of sexual abuse and its cause by defendant Myers and IDOC in August of 2019, as stated in his second Amended Complaint. (*O'Gorman v. City of Chicago*, 727 F.3d 885, 889 (7th Cir. 2015).

The 7th Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power.

The 7th Circuit Court of Appeals did not draw all reasonable inferences in reviewing petitioner's complaint. (*Perez v. Fenoglio*, 792 F.3d 768, 776 (7th Cir. 2015).

The 7th Circuit Court of Appeals wrongly cites *Tobey v. Chibucos*, 840 F.3d 634, 646 (7th Cir. 2018). Petitioner did not know of a crime being committed against him while he was on home monitor/parole as it pertains to this case. Petitioner draws a distinction between the events that took place while he was in BMRC and while he was on home monitor/parole.

If allegations and documentation of this nature can go unanswered or uninvestigated contrary to Federal and state laws, prison

Reasons For Granting The Petition Cont.

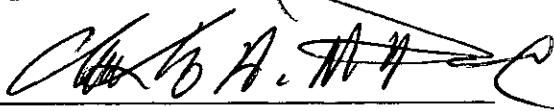
officials would be given carte blanche to violate prisoners rights, laws, and regulations in the handling of substantiated sexual assault allegations within IDOC. This would "chill" future inmates from reporting sexual assault by staff if they are not provided the legal protections established by legislation. This would frustrate the very intention of the legislative findings and intent.

Injunctive Relief is critical to not only the petitioners safety and ability to heal, but to all those similarly situated within IDOC and those in the future as well.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: June 5, 2023

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Charles A. Mcrae — PETITIONER
(Your Name)

VS.

Shannon N. Myers et al RESPONDENT(S)

PROOF OF SERVICE

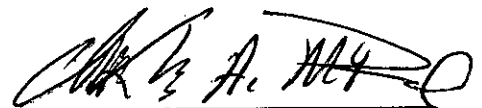
I, Charles A. Mcrae, do swear or declare that on this date, June 5, 2023, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Supreme Court of the United States
1 First Street, NE
Washington, D.C. 20543

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 5, 2023


(Signature)

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