

JUL 04 2023

OFFICE OF THE CLERK

23-5729

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Titus Henderson — PETITIONER
(Your Name)

vs.

Gary Boughton, et al RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT APPEALS
FOR THE SEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Titus Henderson
(Your Name) GBCI-RH
2833 Riverside Dr.
(Address)

Green Bay, WI 54307
(City, State, Zip Code)

920-432-4877
(Phone Number)

QUESTION(S) PRESENTED

I.) WAS IT ERROR FOR SEVENTH
CIRCUIT TO DENY APPOINTMENT
OF COUNSEL TO CHALLENGE
CERTIFICATION OF DISTRICT
COURT 28 U.S.C. § 1915 THAT
APPEAL IS NOT TAKEN IN GOOD
FAITH?

II.) DOES TWOMBLY/IGBAL DIRECT
MAGISTRATE/DISTRICT JUDGE
RECHARACTERIZE LONG
PLEADINGS WITHOUT NOTICE,
RESULTING IN DISMISSAL
CONTRARY TO 28 U.S.C. § 636?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

X 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:

Cory Boughton, Peter Haddrege, Tim
Haines, Lt. Tom, Lt. Hanfield, Lt. Boisen,
Lt. Primer, Ellen Roy, J. Shannon-Sharpe,
Troy Hermans, J. Sweeney, D. Gardner,
Lebbeus Brown, Lynda Schwaardt, Kevin
Carr, Paul Kemper, Jason Aldana, W.S. DOC

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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 IX 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☒ is unpublished.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 I 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☒ is unpublished.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☐ is unpublished.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 _____

April 7, 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: _____, 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. § 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

Amendment XIV to U.S. Constitution:
Section 1.) All persons born or naturalized in United States, and subject to jurisdiction thereof, are citizens of United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 636

28 U.S.C. § 1915

STATEMENT OF THE CASE

Petitioner Titus Henderson's Complaint (Oct. 1) plead challenge to long-term Prison Policy 303 Wisconsin Supermax Prison imposing Indefinite Discipline upon inmates without Due Process; extending inmates Mandatory Prison Release Dates, and Indefinite Solitary Confinement. Defendants-Respondents acted as a "Committee" (not as individuals) to deny Petitioner Henderson request for Time/Date/Place of Hearing to prepare and present a defense to the charges. Since 1999, Defendants-Respondents Boughton used separate rules that apply to Supermax inmates were harsher disciplinary policy than those imposed on similarly situated inmates not incarcerated at Supermax. Petitioner Henderson requested Disciplinary Committee allow Prison Guards as witnesses; which DOC Policy mandates "Automatic" denial of prison guards as witnesses. Defendants-Respondents acted as a "Committee" to find

Petitioner Henderson guilty of all charges based upon Secret Evidence not presented at hearing. Committee approved 15 years Solitary Confinement as punishment in Supermax exacerbating mental illness. Respondents reviewed and denied administrative appeals.

Petitioner Henderson following Tabor/Twombly pleading facts of plausibility. Caused Complaint to be extensively long (Dkt. 1). District Court Dismissed action for Failure to state a claim as "too long" violating Rules 18/20. (Appendix A) Petitioner filed Motion for Extension of Time To File Amended Complaint (Dkt. 10).

District Court claim Motion was granted (Dkt. 11), but Court fail to mail Order to Petitioner Henderson (Dkt. 14). Petitioner Henderson filed Notice Of Appeal (Appendix 16-18). District Court filed "Certification That Appeal Is Not Taken In Good Faith". (Appendix D). Petitioner Henderson filed Motion For Appointment Of Attorney

(Appendix E). Seventh Circuit Denied
Appointment of Counsel (Appendix E).
Seventh Circuit Dismissed Appeal for
Failure to pay filing fees. (Appendix F).

REASONS FOR GRANTING THE PETITION

A) Conflicts With U.S. Supreme Court Precedence.

The Decisions by Seventh Circuit that Appointment of Counsel challenge to District Court Certification That Appeal Is Not Taken In Good Faith purs. 28 U.S.C. § 1915(a)(3), do not apply to prisoners; is in direct conflict and contrary to U.S. Supreme Court preced-
ence. see *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780 (1971); *Johnson v. U.S.*, 352 U.S. 565, 77 S.Ct. 550 (1957); *Ellis v. U.S.*, 356 U.S. 674, 78 S.Ct. 974 (1958).

In addition, U.S. Supreme Court precedence prohibit dismiss of appeal because party too poor to pay filing fees. *Boddie*, 401 U.S. at 376-78; *Ellis*, 356 U.S. at 676.

I. SEVENTH CIRCUIT WAS REQUIRED TO APPOINT ATTORNEY FOR PETITIONER TO CHALLENGE DISTRICT COURT CERTIFICATION 28 U.S.C. 51915 THAT "APPEAL IS NOT TAKEN IN GOOD FAITH."

Seventh Circuit Court Appeals has implemented "Policy" to deny "Indigent Prisoners" in civil action right to appeal erroneous District Court decisions to Dismiss civil action; after Court Certify "Appeal Is Not Taken In Good Faith", not applied to "Affluent" appellants. Appendix D

U.S. Supreme Court precedence in Johnson, Boddie, Burns, Ellis, et al mandate Seventh Circuit shall not deny an "Indigent" access to court based on "inability to pay" after District Court Certify appeal is not taken in good faith. See Boddie v. Connecticut, 401 U.S. 371, 91 S.Ct. 780

(1971), Johnson v. U.S., 352 U.S. 565, 77 S.Ct. 550 (1957); Ellis v. U.S., 356 U.S. 674, 78 S.Ct. 974 (1958).

Rule 28 U.S.C. § 1915(a)(3), Fed. R. App. P. 24;
"Good Faith" has been defined as a requirement that an appeal presents a nonfrivolous question for review. Oct. 20 and 21.

Does Intemperate Acts By Judge
Create Conflict of Interest?
Gonzalez v. Thaler, 132 S.Ct. 641 (2012)

Should A Racially Bias Judge Recuse
Himself From Action Involving Family
Members?

When a bias Judge/District Court
certify that an appeal is not taken in good
faith to proceed in forma pauperis, an
Indigent Appellant/Petitioner may ask
Court of Appeals to proceed in forma
pauperis. (Appendix F)

Seventh Circuit failed to conduct the
"Good Faith" test to Petitioner Henderson's
renewed Motion To Proceed In Forma

Paupeis: Appendix F.

Seventh Circuit erroneous holdings has steadily chipped away at the proposition that appeals of the poor can be disposed of solely on summary and abbreviated inquiries into frivolity, rather than upon the plenary consideration granted to "Paying Appellants".

In *Ellis*, U.S. Supreme Court held "Criminal appellant seeking to establish nonfrivolity purs. §1915(a)(3), is entitle to more than appointed counsel private review." at 356 U.S. at 675.

Seventh Circuit was required to scrutinize District Court Certification that appeal is not taken in good faith. *Johnson*, 352 U.S. at 566.

In *Boddie*, U.S. Supreme Court held "Courts can not deny access to the court for failure to pay filing fees, without violating Due Process and Equal Protection."

401 U.S. at 371. This should be expanded to civil and criminal filing fees". Id. at 387. (Appendix D)

The crucial foundation of *Boddie* also forbids denial of indigents right to appeal in civil cases merely because he is too poor to pay appeal cost.

"Equal Protection Clause require reversal for denial of appeal for inability to pay filing fees, because Courts should not be a private preserve for the affluent". Petitioner Henderson's case demonstrate invidious discrimination based on poverty, a suspect legislation classification. *Griffin v. Ill.*, 351 U.S. at 12; and *Boddie*, 401 U.S. at 383, 387.

Because Seventh Circuit Court Appeals did not exercise discretion to displace District Court Certification §1915(a)(3); Denied right to Appointed Counsel to Challenge Certification §1915(a)(3) and Fed. R. App. P. 24;

Did not justify finding that appeal was not sought in good faith, Appendix

Did not assign counsel to assist Petitioner in prosecuting application for leave to appeal in forma pauperis; and

Did not assure Petitioner Henderson adequate means of presenting it with a fair basis for determining whether District Courts Certification was warranted; contrary to precedence;

Petitioner Henderson request U.S. Supreme Court to Vacate judgment denying leave to appeal in forma pauperis as plain error contrary to establish law; and

Remand to Seventh Circuit Court of Appeals (Appendix E + F)

II.) DOES TWOMBLY/IRBAL DIRECT
MAGISTRATE/DISTRICT JUDGE TO
RECHARACTERIZE LONG PLEADINGS
WITHOUT NOTICE, RESULTING IN
DISMISSAL CONTRARY 28 U.S.C. § 636.

Petitioner Henderson filed Civil Com-
plaint (DK# 1) challenging Wisconsin Dep-
artment Correction Disciplinary Policy
303, that "Disciplinary Committee Members"
violated Due Process by denying
1.) Right To Notice of Hearing; 2.) Denial
of Staff Advocate In Supermax Prison;
3.) Denial of Right To Present A Defense,
Extending Sentence.

District Court conducted Screening
Order per 28 U.S.C. § 1915A (DK# 9)
"Recharacterizing" pleadings as "Too Long";
directing Petitioner Henderson to Amend
Complaint and shorten pleadings specif-
ically "What each Committee Member
did". (Appendix I, pg. 5-7)

September 8, 2021, Petitioner Henderson file Motion For Extension Time To File Amended Complaint that will be 'Long' (Dkt. 10).

Feb. 18, 2022, District Court GRANTED Extension of Time, but did NOT notify Petitioner Henderson (Dkt. 11).

Petitioner Henderson filed Motion For Reconsideration (Dkt. 14) explaining Court Dismiss Action without Notice (Dkt. 12).

Petitioner Henderson Complaint pled "Committee acted as a whole to deny Due Process" (Dkt. 1, pg. 3-6) to comply with Fed. R. Civ. P. 8 required by *Wolff v. McDonnell*, 418 U.S. 539, 557, (1974) Dkt. 1.

Magistrate/District Judge Dismissed Civil Action because Complaint violated Fed. R. Civ. P. 18/20 as "Too long lacking individual pleading." (Dkt. 9). *Kad masas v. Stevens*, 706 F.3d 843, 845 (7th Cir. 2013).

U.S. Supreme Court decision in *Iqbal* and *Twombly*, did not create a heightened

pleading standard in prison actions
contrary to Fed.R.C.P. "Short plain
Statement" Challenging "Committee
Decision". Bell Atlantic Corp. v. Twombly,
550 U.S. 544, 127 S.Ct. 1955 (2007)
("We do not require heightened fact plead-
ing of specifics..."); Ashcroft v. Iqbal,
556 U.S. 662, 129 S.Ct. 1937, 1949 (2009).
Appendix I, pg. 5-8

Since Twombly nor Iqbal mandate
heighten pleading to comply with FRCP 8(a),
prisoner complaints should NOT be dismiss
as too long, violating FRCP 18/20; because
prisoners complaints will be "longer
and legitimately so to establish fact
plausibility." see Kenneth S. Klein,
"Ashcroft v. Iqbal Crashes Rule 8 Pleading
Standards On To Unconstitutional Shores,"
88 Nebraska L. Rev. 261, 280 (2009).

It was plain error and abuse of
discretion by District Court Dismissing

Civil Action as violation of Fed. R. Civ. P 18 and 20 as "too long"; because "The peculiar perversity of imposing heightened pleading standards in prisoner cases ... is that it is far more difficult for a prisoner (Pro-Se) to write a detail complaint than for a free person to do so, and again; this is not because he is not able to know law, he is not able to investigate (Discovery) before filing Suit." see *Bilmon v. Indiana Dept. Corr.*, 56 F.3d 785, 789 (7th Cir. 1995).

As an Article I Magistrate Judge, is prohibited to dismiss prisoner civil action for failure to state a claim, if dismissal is part of initial Screening per §1915A that occurs in In Forma Pauperis cases before Defendants are served. *Khanh P. Nguyen v. U.S.*, 539 U.S. 69, 77-80, 123 S.Ct. 2130 (2003) (Decision is a nullity, if Statute prohibit Judge to act).

Pur. 28 U.S.C. § 636(c)(1) Magistrate Judge Act, valid consent is not optional, it is essential to upholding § 636(c) constitutionality against arguments that it improperly vests judicial power of United States in non-Article III Judges! *Kalan v. City of St. Francis*, 274 F.3d 1150, 1152 (7th Cir. 2001).

Eighth and Seventh Circuit Court Appeals held "Magistrate Judges cannot finally dispose of the cases on § 1915A Screening nor otherwise; without Def. endants consent." *Henry v. Tri-Services Inc.*, 33 F.3d 931, 933 (8th Cir. 1994); *Geaney v. Carlson*, 776 F.2d 140, 142 (7th Cir. 1985).

Under Henry and Geaney, a Magistrate Judge evaluates complaints, take any nondispositive actions that are appropriate and recommend an action for District Judge. § 636(b)(1)(c). Dismissal pur. § 1915(e)(2)(B)(iii) for failure to state a claim is covered by language

in Magistrate Judge Act that "prevents" District Court from designating Magistrate Judges to hear and determine a Motion To Dismiss for failure to state a claim. § 636(b)(1)(A). § 636(c)(1) of Magistrate Act refers to "Consent of the parties."

In Geaney, "We hold that this Court lack jurisdiction to review magistrate judge dismissal, Cause Magistrate Judge lack authority to enter final judgment." 776 F.2d 140, 141-42.

Seventh Circuit disregarded their own "precedent" to assist Magistrate/District Judge bias "Targeting" of Petitioner Henderson. Appendix F.

U.S. Supreme Court held a Judge recharacterization without Notice was improper, so long as the theory could be plead. Caterpillar Inc. v. Williams, 482 U.S. 386, 396-97, 107 S.Ct. 2425 (1987); Castro v. U.S., 540 U.S. 375 (2003).

The decision of a bias Judge directing Magistrate Judge to violate ethics and Due Process; should never be valid, see

Coperton v. A.T. Massey, 556 U.S. 129 S. Ct.
2252, 2272 (2009).

Therefore, Petitioner Henderson request
United States Supreme Court GRANT Writ of
Certiorari to Reverse Seventh Circuit affirm-
ing Dismissal by District Court "Recharacter-
izing Long-Plausible Pleadings Without
Notice" and violating § 636; was plain error
and abuse of discretion; and
Remand to District Court to proceed on
the merit of pleadings.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Titus Henderson 249317

Date: July 4, 2023

Green Bay Corr. Inst.
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Green Bay, WI 54307