

23-6105

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
NOV 08 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

DALTON — PETITIONER
(Your Name)

vs.

VOTARI — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS, FOR THE NINTH CIRCUIT, #23-2052
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Alvin Dalton, AI9497
(Your Name)

San Quentin S.P.
(Address)

San Quentin, CA 94974
(City, State, Zip Code)

(916) 464-3805
(Phone Number)

RECEIVED
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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Respondent forcing Petitioner to live in an unhealthy living environment.

U.S. Court of Appeals, for the Ninth Circuit (9th Cir.), contradicted itself by first, Ordering the U.S. District Court, Northern District of California (DC) to Vacate and Remand its Dismissal of Petitioner's claims, finding cause by Respondent's act or omission. Second, the 9th Cir. Dismissed the Petitioner's appeal after a second denial by the DC, ignoring [cause].

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:

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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 B 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 is unpublished.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 is unpublished.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 is unpublished.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 is unpublished.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 10/26/2023.

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

Eight Amendment Cruel and Unusual Punishment

Fourteen Amendment Due Process Violation

STATEMENT OF THE CASE

Almost six years ago, the California Health Care Services (HCS) diagnosed petitioner as high risk medical. The respondent represents the HCS and makes decisions pertaining to the petitioner's claims. Around 9/1/2021, petitioner's cell mate started smoking cigarettes daily. The Correctional Officers (C.O.) do not enforce the no smoking rule in X-wing. Petitioner asked C.O. Salmon for a cell change, around the end of September, 2021, but was denied. Petitioner requested single cell status from the respondent on 10/15/2021, due to his high risk medical condition and the exposure to the hazards from cigarette smoke, but was denied. The petitioner is a senior citizen and his cell mate is thirty years his junior.

REASONS FOR GRANTING THE PETITION

Prison medical officials have the authority restricting or limiting inmate's housing options, but refuse to do so. Therefore, the petitioner's only option for relief is to petition the court for deliberate indifference.

Petitioner sought medical services intervention for single cell status from HCS, on 10/15/2021, but was denied, the reason being that Respondent claimed they had no jurisdiction over the issue. Allegedly, respondent violated petitioner's Fourteenth Amendment rights because the right to live in a no smoking environment, Title 15 §§ 3188(2)(d), 3189(a), is a protected liberty interest recognized by the Due Process Clause of the constitution, U.S.

1 Const. amend. 14 [which [protects] all inmates in all facilities,
2
3 U.S. Supreme Court Rule 10, because state statutes that cre-
4
5 ate liberty interests are entitled to the procedural protect-
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7 ions of due process, Wolff v. McDonnell, 418 U.S. 557 (1974).
8
9

10 The vehicle for enforcement of this right is 42 U.S.C. § 1983, for
11 deliberate indifference, Branch v. Tunnell, 937 F.2d 1382, 1386
12 (9th Cir. 1991). It is reasonable to presume that the Respondent's
13 [deliberate indifference] extends to all [inmates] subject to
14 cigarette smoke exposure, [Rule 10].
15
16

17 Judgement as a matter of law is reviewed de novo by the ap-
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19 pellate court, Pierce v. Multnomah County, 76 F.3d 1032 (9th
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21 Cir. 1996). In order to avoid an injustice, we may consider a
22
23 legal argument not presented in the district court, Dono-
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25 van v. Crisotomo, 689 F.2d 869, 874 (9th Cir. 1982). (See, Appen-
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1 dix (Appx.) B, E (bit D, lines 2-3).
2

3 Title 15 § 3188(2)(d), tobacco or tobacco related products, on
4 7/1/2005 and thereafter, smoking, possession, or use of tobac-
5 co products by inmates under the jurisdiction of the De-
6 partment, or any other persons where inmates are housed
7 or detained is prohibited. Title 15 § 3189(a), inmates violating
8 the provisions of Section 3189 shall be subject to the inmate
9 disciplinary methods.

10 The 9th Cir. has likewise used the mandatory language test
11 to determine that state statutes or regulations have created
12 a liberty interest within the meaning of the Fourteenth
13 Amendment, Mendoza v. Blodgett, 960 F.2d 1425, 1429 (9th
14 Cir. 1992). In finding a state-defined protected liberty
15 interest, the court noted that the regulation contained
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1 particularized standards and criteria, and used "explicitly
2 mandatory" language, Id.

3
4 Title 15 §§ 3188(d), 3189(a), 3269(b)(f), are statutes that
5 use mandatory language to bind an official's discretion.

6
7 Under, Hewitt v. Helms, 459 U.S. 472 (1983), the state has cre-
8
9 ated a protected liberty interest that officials must adhere to.

10
11 [Title 15 § 3269(b)(f)], states that in cases where single
12 cell status is recommended by clinical staff due to medical
13 concerns, restrictions which may limit the inmate's hous-
14
15 ing options... a classification committee shall consider
16 the clinical recommendations... by the evaluating clini-
17
18 cian with assistance from the clinician who participates
19
20 in the committee... review the inmates case factors when
21
22 determining the housing assignment.

1 Respondent contended that they have jurisdiction
2 over the issue. In denying petitioner a clinical commit-
3 tee review of his case factors, respondent allegedly VIOL-
4 lated his due process (continued on pg. 10)...

1 rights, Carlo v. City of Chino, 105 F. 3d 490 (9th Cir. 1997).

2 The appellee's "deliberate indifference" to the appellant's
3 medical concerns regarding single cell status is cruel and
4 unusual punishment, violating the Const. Amend. 8; Estelle v.
5 Gamble, 429 U.S. 97, 104-06, 50 L. Ed. 2d 251, 97 S. Ct. 285 (1976).

6

7 C. District Court's Errors

8

9 1. Errors in Discussion

10 The appellee alleges a "but-for" cause of appellant's allega-
11 tion of an unhealthy living condition and that they are not
12 directly responsible for it, however, appellee has a duty to
13 initiate a clinical committee review of appellant's medical
14 conditions, under Title 15 § 3269(b)(f), supra, because neither
15 the appellant nor the person violating §§ 3188(2)(d), 3189(a),
16
17 have the authority to enforce facility rules and regulations.

1 The appellant's only obligation is to abide by the [rules] or
2 or face disciplinary actions, only if the C.O.'s would perform
3 their duty to enforce the no smoking policy. Appellant does
4 not need to specifically name all of the persons responsi-
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bible for the incident, Irvin v. Zamora, 161 F. Supp. 2d 1125
(S.D. Cal. 2001). The C.O.'s directly responsible for enforcing
[rules and regulations] in X-wing, were witnessed by the
appellant to walk by cells with a strong odor of cigarette
smoke and say or do nothing about it.

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The appellee claims they do not have the power to stop
the smoking or ensure appellant's exposure to such smoke
will not continue. This is untrue, because appellee has the
authority to initiate a move of the appellant, Title 15 § 3269
(b)(f), who was diagnosed as high risk medical by the HCS

1 almost four years ago (Appellant met with a doctor, on
2 2/18/2022, to discuss his health and the hazards of cigarette
3 smoke), to a single cell, Id., where the appellant could
4 significantly remove exposure to external (outside of his
5 cell) second hand cigarette smoke with the use of a door
6 sock, at the bottom of the door, an internal fan, and open
7 the window for effective ventilation.

8
9 The U.S. Supreme Court has held that officials can be on
10 notice that their conduct violates the constitution even in
11 novel factual circumstances. The appellee's conduct may
12 be clearly established as being in violation of constitu-
13 tional standards of "protected liberty interests" even if this
14 specific conduct has not previously been addressed by
15 code or cases, Hope v. Pelzer, 536 U.S. 730 (2002).

1 D. STANDARD OF REVIEW

2

3 1. State's No Cognizable Claims Defense

4

5 The district court (DC) determined that appellant has not

6 identified any cognizable claims for relief, however, pro-

7

8 tected liberty interests created by state statutes, Title 15 §

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10 § 3188(2)(d), 3189(a), 3269(b)(f), supra, are entitled to the pro-

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1 in the present case, because that error could not be deemed
2 harmless, Clemons v. Mississippi, 494 U.S. 738 (1990). Dismis-
3 sal is inappropriate if petition "set[s] forth facts giving
4 rise to a cause of action," Bounds v. Smith, 430 U.S. 817 (1977).

5
6 Also, pro se petitions will be held to less stringent standards
7 than formal pleadings drafted by lawyers, Haines v. Kerner,
8 404 U.S. 519, 520 (1972).

9
10 Error is when DC surmised, under 42 U.S.C. § 1983, appellant's
11 lack of two essential elements. First, because protected liber-
12 ty interests that are recognized by the Due Process Clause
13 of the Constitution were violated, U.S. Const. amend. 14;
14
15 Wolff v. McDonnell, supra. Second, the appellee, as repre-
16 senting the HCS, is a person acting on behalf of a govern-
17 mental authority, that deprived appellant of his due pro-
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cess rights, C.C. § 52.3, by which, including medical officials, may be sued, Lopez v. Dept. of Health Services, 936 F. 2d 881, 883 (9th Cir. 1991).

2. DC's Duplicativeness Reasoning

The DC found that Appellant's claims are duplicative (Order Vacating Order of Dismissal With Leave to Amend; Of Dismissal, 8/31/2023, line 14) (attached). However, it is constitutionally permissible for an appellate court to reweigh aggravating evidence that is based in part on an improperly defined circumstance, harmless error review, Clemons v. Mississippi, supra, or clear error, Lopez v. Thompson, 202 F.3d 1110, 1116 (9th Cir. 2000).

It is sufficient if the issue briefly is fairly encompassed within the issue for which the [certificate] (Certified Issues) was

1 issued, Jorss v. Gomez, 311 F.3d 1189, 1192-13 (9th Cir. 2002), esp.,
2 with the DC's refusal to order an evidentiary hearing to help re-
3 solve the issue, Davis v. Woodford, 384 F.3d 628, 637-638 (9th
4 Cir. 2003).

5 3. Ninth Circuit (9th Cir.) Vacated and Remanded

6
7 DC's dismissal of Appellant's claims were vacated and remand-
8 ed on 1/26/2023 and mandated on 2/17/2023 by the 9th Cir.,
9 finding that proximate cause exists where a defendant's
10 act or omission played a substantial part in bringing about
11 or actually causing injury to the plaintiff, Harper v. City
12 of Los Angeles, 533 F.1010, 1026 (9th Cir. 2008) (attached).

13 Upon prevailing, appellant should also be entitled to court
14 costs, including fees incurred on appeal, Morales v. City of San
15 Rafael, 96 F.3d 359, 364-65 (9th Cir. 1996), from the appellee.

1 The 9th Cir. found that the petitioner did not challenge any
2 final or immediately appealable order entered in DC (Ap-
3 pendix (Appx.) B, Exhibit D, Order, 10/26/2023, lines 2-3). However,
4 after DC Dismissed his case with Leave to Amend (Appx. A,
5 Exhibit A, 10/18/2023), petitioner decided not to amend and
6 appeal his case to the 9th Cir., due to the previous Vacate
7 and Remand Order (Appx. B, Exhibit A, 1/26/2023). (See, Appx.
8 A, Exhibit C; Appx. B, Exhibits B, C).

9 On the contrary to the [9th Cir.] finding, Petitioner vi-
10 g-
11 ourously opposed orders and motions against his claims
12 (Appx. A, Exhibit B, Judicial Notice of Defendant's Failure to
13 Serve Papers Timely, 10/14/2023; Order Granting Extension of
14 Time, 7/19/2023; Exhibit C, Opposition to Defendant's Motion
15 or Actions Against Plaintiff's Civil Claim, 8/15/2023).

1 Also, Petitioner diligently responded to the Respondent's
2 motions in the 9th Cir. (Appx. B, Exhibit B, Opposition to Mo-
3 tion to Dismiss Appeal, 9/19/2023; Exhibit C, Response to Ap-
4 pellee's Reply, 9/28/2023).
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7 The 9th Cir. dismissing the appeal of the Petitioner, alle-
8 gedly, is the equivalent of a Summary Dismissal, Black-
9 ledge v. Allison, 431 U.S. 63, 76 (1977), which violates stare
10 decisis, that not only creates inconsistencies in orderly find-
11 ings, it provides the application of a procedural default de-
12 fense that prevents resolving the merits of any petitioner's
13 federal claim, Rule 10; Batchelor v. Cupp, 693 F2d 859, 864¹

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28 Independent state procedural grounds to bar all considera-
tion of claims under the national Constitution are subject
to federal review, James v. Kentucky, 466 U.S. 341, 349 (1984).

1. (9th Cir. 1982).

1 Previously the [Judge] abused his discretion by ignoring
2 the fact that the Defendant failed to meet a court
3 deadline (8/7/2023), with no consequences (See, Appx.
4 A, Exhibit B, Judicial Notice, 8/14/2023) and only responded
5 after the then plaintiff filed a [Judicial Notice]. It is
6 reasonable to presume that the [judge] would not have
7 extended the same favor to the petitioner, due to bias,
8 U.S. v. McFall, 558 F.3d 951 (9th Cir. 2009).

16 Petitioner alleges that the [judge's] rulings were bias and
17 prejudicial that, even with a vacate and remand order (See,
18 Appx. B, Exhibit A, Order of Vacate and Remand, 1/26/2023;
19 Mandate, 2/17/2023), the [judge] had motivation to vindicate
20 a prior conclusion when confronted with a case
21 for the second time and that a judge may find it diffi-
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1 cult to put aside views formed during one earlier
2 proceeding, in which event disqualification might be
3 appropriate, Liteky v. U.S., 114 S.Ct. 1147, 1160-62 (1994).

4
5 A healthy living environment in all correctional fa-
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7 cilities is mandatory and enforceable by the U.S. Con-
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9 stitution, Rule 10, and Petitioner requests the Court to
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11 grant him single cell status, and award him compensato-
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13 ry and punitive damages in the amount of \$1,000,000.00,
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15 due to the exposure to his heart and lungs from the ci-
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17 garette smoke for the last years during the incident,
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19 grievance, complaint proceedings, appeals, and hazards
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21 to the facilities health.

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23 Circuits that contradict their own rulings, barring man-
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25 fest injustice, violate rights under Article III, U.S. const.,
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1 the First Amendment, Due Process, Equal Protection Clause,
2 and the Separation of Powers Doctrine, which deny litigants
3 to the right of a full and fair hearing with the
4 [circuits], and harm from the inability, Schmier v. U.S.

5
6 Court of Appeals for the Ninth Circuit, 279 F.3d 817 (9th Cir.
7
8 2002); Powell v. Lambert, 357 F.3d 871, 872, 879 (9th Cir 2004);

9
10 Rule 10.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Alvin Dalton

Date: 11/8/2023