23-6509 ORIGINAL

UNITED STATES SUPREME COURT

JONATHAN JOSEPH GOOD

Petitioner,

-v-

WENDI WALWORTH, JEREMY BUGBEE, JULIUS MAYFIELD, BARBARA FINCH, DUJUNA VANDECASTEELE, STEVE RIVARD

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SIXTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIRORI

December 15, 2023

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STATEMENT OF JURISDICTION

(A) Date of Judgment Sought to Be Reviewed

On August 22, 2023 under case no. 21-1429 the 6th Circuit Court of Appeals issued an order affirming the Eastern District Court of Michigan's dismissal of the case. (See Exhibit A)

(B) Extension of Time for Rehearing

On September 11, 2023 Petitioner Good filed a Motion to Extend Time to Date of Filing, which had attached to it his Motion for Rehearing En Banc. The order granting that Motion for Extension was issued on September 25, 2023 (See Exhibit B)

(C) Denial of En Banc

On October 18, 2023 the 6th Circuit Court of Appeals denied Rehearing En Banc.

QUESTIONS PRESENTED

Question No. 1

Should this Court grant Certiorari where Petitioner Good was denied notice when, despite an order of Stay for further discovery and an order that notice would be given for a newly set response deadline, a newly assigned magistrate issued a report and recommendation for dismissal, following which the district court denied Petitioner's objections brought under the higher burden of Fed. R. Civ. P 72?

Question No. 2

Should this Court grant Certiorari where the 6th Circuit Court of Appeals departed from the accepted and unusual course of judicial proceedings, contrary to this Court's precedent in University of Tennessee v Elliot, 478 U.S. 788, 799, 106 S. Ct 3220, 92 L. Ed 2d 635 (1986), granting preclusive effect to the unfounded and unsubstantiated allegations of Respondent Walworth's Notice of Intent (charging document), despite that there was never any administrative resolution of disputed facts, or administrative hearing?

Question No. 3

Should this Court grant Certiorari where, compounded by question 1 and 2, the 6th Circuit Court of Appeals, contrary to Anderson v Liberty Lobby Inc, 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed2d 202 (1986), failed to accept any of Petitioner Good's allegations as true, and drew every inference in favor of Respondents, despite in hundreds of cases that Court correctly acknowledged and applied the standard of review for summary judgment?

CONCISE STATEMENT OF THE CASE

On January 13, 2017, in the Eastern District Court of Michigan Petitioner Good filed a civil complaint pursuit to 42 U.S.C. 1983. In that complaint, under Case No. 12-cv-10140 Petitioner Good alleged three specific claims of constitutional violations. Claim I, Mr. Good alleged that in response to numerous acts of protected conduct, Respondent Walworth retaliated in bringing a false notice of intent (charging document, ECF No. 1, PageID 10, ¶41-43), to have Petitioner Good terminated from his legal writer assignment. Ultimately, in furtherance of that retaliation Respondent Finch suppressed and covered up the impropriety of Respondent Walworth's charging document. (ECF No. 1, PageID 10, ¶43). Under Claim II, Mr. Good alleged that Respondent Bugbee, VandeCasteele, and Mayfield when they retaliated by providing an alternate pretextual basis to Respondent Walworth's "Notice of Intent" when they filed a false work report. (ECF No. 1, PageID 16-19). Under Claim III, Respondent Good alleged that Respondent Walworth and Rivard retaliatorily transferred Petitioner Good based on the unheard Notice of Intent (no hearing), and other pretextual policy violative basis, to the most northerly Level IV facility, where his ailing aunt could not visit him. (ECF No. 1, PageID 19-24).

Pertinent Procedural History

Following initial discovery, on May 2, 2019 Respondents filed a Motion for Summary Judgment. (ECF No. 56). On June 4, 2019 Mr. Good filed a Motion for Extension of Time to file Response to Respondent's Motion for Summary Judgment, (ECF No. 58), and on June 5, 2019 Petitioner Good filed a Motion for Modification of the Scheduling order. (ECF No. 59). Subsequently on June 17, 2019, Respondents filed their response to Mr. Good's Motion for Modification of the Scheduling Order. (ECF No. 60). Shortly after that on June 27, 2019 Respondent Good filed a Motion for Stay of Respondent's Motion for Summary Judgment to allow case determinative discovery. (ECF No. 61), However, 4 days later, having not received any decision on the earlier

filed procedural motions, (ECF No. 58 and 59), Respondent Good filed a "Reply" to Defendant's response to his Motion for Modification of the Scheduling Order, (ECF No. 62), and the filed "objections" under Fed R. Civ. P. 56(f)(2) against those exhibits attached to Respondent's Motion for Summary Judgment in bad faith. (ECF No. 63).

Ultimately, on October 31, 2019 Magistrate Judge Mona K. Majzoub issued an Opinion and Order directed at ECF No. 58, ECF No. 59, and ECF No. 61. In doing so Magistrate Judge Majzoub ordered both Modification of the Scheduling Order, and Stay of Respondents' Motion for Summary Judgment were granted. (See ECF No. 65) In that order Magistrate Judge Majzoub indicated that following the Petitioner's discovery motions, a new deadline date for Petitioner's response to Respondent's Summary Judgment motion would be set. (See ECF No. 65)

In compliance with that order, on November 25, 2019 Petitioner Good filed his "Motion to Compel," (ECF No. 67); Respondents' filed their response to that Motion to Compel," (ECF No. 68), and Petitioner Good filed his "Reply" to Respondents' Response. (ECF No. 69) Each of those pleadings were filed before December 27, 2019. Notably however, on December 30, 2019 another order referring Respondents' Motion for Summary Judgment was direct to a new Magistrate Judge, R. Steven Whalen and though placed on the docket, (ECF No. 70), that order was never served on Petitioner Good, (See ECF No. 70 through 73) as the docket demonstrates a complete lack of service of ECF No. 70. In fact, Petitioner Good only received notice of ECF No. 72, an Order referring Pretrial Matters to Magistrate Judge R. Steven Whalen, and ECF No. 73, Referring all other matters to Magistrate Judge Whalen; Settlement Conference, as the docket entry of January 21, 2020 demonstrates.

Next, while there was no order lifting the "Stay" under ECF No. 65, or deciding the Motion to Compel issued, Magistrate Judge R. Steven Whalen, instead issued a report and recommendation that Respondents' Summary Judgment Motion be

granted, (ECF No. 74). However, while that Report and Recommendation was issued on March 30, 2020, and Petitioner Good filed a Motion for Extension of Time to File Objections by mail on April 14, 2020, (ECF No. 78; entered on April 30, 2020) Petitioner Good's Motion was granted, however, while Petitioner Good filed his Objections (ECF No. 80), Judge Drain under the higher standard of Rule 72, denied Petitioner Good's Motions, and adopted the Report and Recommendation:

> "Contrary to Plaintiff's argument Magistrate Judge Whalen correctly relied upon the relevant test for establishing a prima facie case of retaliation and determined that Plaintiff had engaged in protected activity and Defendants took adverse actions against him with a causal connect5ion between the two. See Thaddeus-X v Blatter, 175 F 3d 378, 394 (6th Cir. 1999). However, because Defendants provided legitmate non-retaliatory reasons for their adverse actions and Plaintiff failed to come forward with any argument that their reasons were merely pretext for unlawful retaliation, the Magistrate Judge recommended granting the Defendants' Motion for Summary Judgment." (ECF No. 84, PageID 1862).

Despite the lack of the promised notice, (ECF No. 65) Judge Drain relied on the fact that Petitioner did not respond, granting summary Judgment.

Subsequently, Petitioner Good filed a Notice of Appeal on April 6, 2021 and submitted his "Brief on Appeal" on August 2, 2021 raising three issues 1) that he was not provide notice to respond to Respondent's Motion for Summary Judgment, 2) that the trial judge granted preclusive effect to a "notice of intent" (charging document) without an Administration Hearing having been conducted, and 3) drew all inferences for Respondent, capitalizing on the fact that Petitioner Good was denied notice, which had he been permitted to respond, Petitioner Good submitted that there would be ample evidence of material dispute, which no reasonable juror could reach a decision in favor of the Respondent.

Ultimately, while it was clear that the District Court denied notice, in the absence of an Administrative Hearing, granted preclusive effect to the unsubstantiated charging document, and denied Mr. Good the opportunity to demonstrate a material dispute to the single element in dispute, the Court of Appeals affirmed the granting of summary judgment. (See Exhibit A).

In doing so, as the dissent emphasized the improprieties in the majority opinion, (Exhibit A), Petitioner Good sought Rehearing Enbanc (Exhibit B), which was ultimately rejected on October 18, 2023. (See Exhibit C), despite indisputable evidence that both the District Court and Court of Appeal disregarded the lack of notice, the unauthorized preclusive effect granted to Defendant Walworth's "Notice of Intent" charging document, and the accepting by both of movant's allegation as true, and the drawing of all inferences in their favor.

(A)

Due Process of Law and Rule 83 guarantee that the Order of Magistrate Majzoub entitled Petitioner Good to notice to file an answer to Defendants' Motion for Summary Judgment, contrary to what both the District Court and 6th Circuit Court of Appeals held

Often persuasively stated and reiterated by this Court, an essential principle of due process is that denial of life, liberty, or property be preceded by notice and opportunity for hearing appropriate to the nature of the case. Cleveland Bd of Ed v Loudermill, 470 U.S. 532, 542, 105 S. Ct. 1487, 84 L. Ed2d 494 (1985). Clarifying the principle, and emphasizing the controlling meaning of due process, this Court explained that all:

> "Parties whose rights are to be affected are entitled to notice; and in order that they may enjoy that right they must first be notified.' It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.

Fuentes v Shevin, 407 U.S. 67, 80, 92 S. Ct. 1983, 32 L. Ed2d 556 (1972).

Nothing may erode this essential constitutional promise. Hamdi v Rumsfeld, 542 U.S. 507,, 533, 124 S Ct 2633, 159 L. Ed2d 578 (2004), and where applicable due process protection must still be implemented in a fair manner. Matthews v Eldridge, 424 U.S. 319, 335-336, 96 S. Ct 893, 47 L. Ed2d 18 (1976).

In this case that promise was not adhered to, nor was the protection of due process provided. While Magistrate Mona K. Majzoub issued an order granting stay over Respondent's Summary Judgment Motion, and set out that Petitioner Good would be given a new deadline to respond to that motion after completion of discovery, (See ECF No. 65), that promised notice was never given. That is, Magistrate Majzoub issued her order consistent with the spirit and intent of Fed R. Civ. P 83, yet that order was ignored. Fed R. Civ. P. 83 has been recognized as appropriate, especially in the manner used by Magistrate Majzoub:

> "Under the terms of Rule 83, courts, in any case, not provided for by rule" may regulate their practice in any manner not inconsistent with" federal or local rules."

Hoffman-La Roche v Sperling, 493 U.S. 165.

This is the exact steps Magistrate Majzoub took in this case. She issued an order regulating the practice of the court and providing the protection of notice Petitioner Good would recieve before a decision would be undertaken on Respondents' Motion for Summary Judgment; a date Magistrate Majzoub ordered would not be set until the completion of issue controlling discovery motions were decided. An effective and appropriate exercise of authority:

> "This authority is well settled, as courts traditionally have exercised considerable authority "to manage their own affairs so as to achieve the orderly and expeditious disposition of cases. Link v Wabash R. Co. 370 U.S. 626, 630-631 (1962)."

Despite that no specific rule provided for that order, it was nonetheless appropriate, and Petitioner complied with those provision he had notice of. (ECF No. 65) However, contrary to Rule 83, he was disadvantaged when following the retirement of Magistrate Majzoub, Magistrate Whalen took the Motion for Summary Judgment under advisement without issuing the promised new deadline; denying Petitioner Good notice to file his responsive pleading to Respondents' Motion for Summary Judgment. This was contrary to this court's precedence, and the intent of Rule 83:

> "(b) Procedure When There is No Controlling Law. A judge may regulate practice in any manner consistent with federal law, rules adopted under 28 U.S.C. §§2072 and 2075, and the district's local rules. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement."

No notice was provided to Petitioner Good, despite Magistrate Mazjoub's very specific order requiring the setting of a new deadline. Beyond that however, Magistrate Whalen, not only disadvantaged Petitioner Good for not filing a response, (ECF No. 76, PageID 1680), but the District Court sanctioned Petitioner Good, holding Mr. Good to the heightened standard of review for objections, (prejudicial as a response to a Motion for Summary Judgment only requires proof a material dispute, while objections must demonstrate clear err or an abuse of discretion)

adopting Magistrate Whalen's report and recommendation, capitalizing on Petitioner Good's unnoticed failure to respond:

> "Contrary to Plaintiff's argument Magistrate Judge Whalen correctly relied upon the relevant test for establishing a prima facie case of retaliation and determined that Plaintiff had engaged in protected activity and Defendants took adverse actions against him with a causal connection between the two. See Thaddeus-X v Blatter, 175 F 3d 378, 394 (6th Cir. 1999). However, because Defendants provided legitimate non-retaliatory reasons for their adverse actions and Plaintiff failed to come forward with any argument that their reasons were merely pretext for unlawful retaliation, the Magistrate Judge recommended granting the Defendants' Motion for Summary Judgment." (ECF No. 84, PageID 1862).

(See Exhibit A, Page 5)

Clearly, the District Court sanctioned Petitioner Good for not responding, (Exhibit A, Page 5) despite that he had no notice to do so. Had the promised notice been provided, Petitioner Good would have merely had to establish material dispute in front of Magistrate Whalen, against the single element the court claimed Respondents advanced; legitimate reasons for their adverse actions. However, while in relation to the report and recommendation, which Petitioner was denied notice of, he did present opposition to that contention of a legitimate reasons for their adverse actions, yet both the District Court and the Court of Appeals, like in the report and recommendation, based their decision on an unheard "Notice of Intent"; granting it preclusive effect.

(B)

Contrary to this Court's precedence, the Magistrate, the District Judge, and the Majority of the Court of Appeals panel, granted preclusive effect to an unheard agency's charging document (Notice of Intent)

In University of Tennessee v Elliot, 478 U.S. 788, 799, 106 S Ct 3220, 92 L. Ed2d 635 (1986) this court made clear where an agency acting in a judicial capacity fails to render a decision, it is not entitled to preclusive effect:

> "Accordingly, we hold that when a state agency "acting in a judicial capacity . . .resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate; Utah Construction & Minning Co, Supra at 422, federal courts must give the agency's fact-finding the same preclusive effect to which it would be entitled in the

state courts."

In this case, Petitioner Good, through an act of retaliation, was issued a "Notice of Intent" (charging document) seeking Petitioner's termination from his legal writer assignment. (ECF No. 56-7). That Notice of Intent was issued on November 18, 2013, however, no hearing was ever conducted on that charging document, (ECF No. 56-7), and despite that Petitioner Good submitted a defense to that charging document, (Exhibit D) his disputes went unresolved, and he was never returned to his legal writer position.

Despite that no hearing was conducted, no disputes were resolved, and there was no semblance of any act in a judicial capacity", the Magistrate, (ECF No. 76), the District Judge, (ECF No. 84), and the Court of Appeals (Exhibit A, Page 2 and 3) all granted preclusive effect to the unheard "Notice of Intent", the basis of all claims premised on a legitimate reason for the adverse actions in this case:

> "The defendants here have proved that "no rational jury" could find that they suspended Good from his legal-writer job, increasing his security clearance, or transferred him because of his grievances. Lemaster, 65 F.4th at 310. The evidence is undisputed that Good wrongly accepted money from other prisoners' families and possessed their legal materials. He continued to break rules even after several warnings.

(Exhibit A, Page 6-7)

It is beyond dispute that the only basis for these claims was from the Notice of Intent, which the language above demonstrates that the Court of Appeals, and the district court granted preclusive effect to. In fact, even Judge Siler's dissent took issue with the Court of Appeals improper granting of preclusive effect to the unheard "notice of intent":

> "The majority holds that summary judgment is appropriate because it is "undisputed that Good wrongly accepted money from other prisoners' families and possessed their legal materials." I disagree. First, even if it was undisputed that Good committed the alleged misconduct, this does not "preclude[] him from being able to establish retaliation." Maben v Thelen, 887 F 3d 252, 262-63 (6th Cir. 2018)(citation omitted). And here, the evidence is disputed. There is no evidence that Good's alleged misdeeds were substantiated by a hearing as required by Department of Corrections procedure. See Mich. Admin. Code R791.5501(2)("A prisoner charged with

minor misconduct shall be provided a fact-finding hearing conducted in accordance with R 791.3310.")

It is clear there was no hearing, and the majority relied on those unsubstantiated allegation in the Notice of Intent to reach its claimed "undisputed" conclusion. The Court's reliance on that "Notice of Intent, in the absence of a hearing, is contrary to this Court's precedence.

(C)

The Magistrate, the District Court, and the Court of Appeals, contrary to this court's precedence, misapplied the standards for summary judgment, accepting all of Respondents' allegation as true, and drew all inference on their behalf.

In a case on point with this argument, in Tolan v Cotton, 572 U.S. 650-651, 134 S. Ct. 1861, 188 L. Ed2d 895 (2014) this court vacated the Court of Appeals decision finding it had violated precedence:

> "In articulating the factual context of the case, the fifth circuit failed to adhere to the axiom that in ruling on a motion for summary judgment, "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." Anderson v Liberty Lobby, Inc. 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed2d 202 (1986).

That is exactly what the Court of Appeals did in Petitioner Good's case. They accepted Defendants' allegation as true, and drew all inferences in their favor in setting forth both, the factual context of the case, and in finding that Defendants' advanced a legitimate reasons that they would have taken the adverse actions anyway. The factual contentions clearer advance the favorable view of the evidence for Defendants:

> "In October 2013, Walworth learned that Good had been performing legal work for nonqualifying prisoners (including prisoners who had left SLF). Walworth discovered Good's communications with the relatives of these prisoners about their cases. Email, R.56-3, PageID 118, 1190. The message (and other evidence) suggested that these other prisoners were paying for his services. Notice, R. 56-7, PageID 1231. One prisoners, for example, told his sister that he had paid Good $150 for his appeal. Id Walworth also learned from a librarian (defendant Bugbee) that Good had kept the prisoners' legal materials in his cell. Bugbee Aff. R56-5 PageID 1193. Worried Good might improperly have more legal materials in his cell and be improperly charging for his services, Assistant Deputy Warden Kelly Barnett

> ordered a search of his cell. Walworth Aff., R56-6, PageID 1202. Prison staff found legal materials in his possession. Id Bugbee thus gave Good a "poor work evaluation" as a result of this misconduct, and Good was suspended (laid-in) from his legal-writing job during an investigation. Bugbee Aff., R.56-5 PageID 1193; Walworth Aff., R. 56-6, PageID 1202; Evaluation, R.56-5 PageID 1196; Resp., R. 56-9 PageID 1235.
>
> The next month, Walworth "prepared a Security Classification Screen for Good[.] Walworth Aff., R. 56-6, PageID 1202. Good says that he graded out a Security Level II on the Security Classification Screen worksheet, which allegedly would have allowed him to transfer to a lower security institution. But Walworth determined that he should be classified at a higher "Level IV" security category because "he was serving a life sentence and escaped from the County jail on November 26, 2008." PageID 1203. Given that he had repeatedly violated the rules for the Legal Writer Program, the prison also classified him as a high risk property violation. Id see Transfer Order, R.56-10, PageID 1241. In December 2013, Good was transferred to another prison to make "bed space for [an] incoming VPP prisoner. Transfer Order, R. 56-10, PageID 1241. The Michigan Department of Corrections sent him to Alger Correctional Facility (LMF), a remote Level IV prison in the Upper Peninsula."

(Exhibit A, Page 2-3).

A simply review of the quote above, demonstrates that every fact set out by the Court of Appeals, is taken from Defendants' pleadings, (See Exhibit A, Page 2-8) and not a single reference was made to the facts or contentions advanced by Petitioner Good. That is, each reference to a supporting document are clearly defendants. First, the reference made to "Notice" is based on the preclusive effect granted to the unheard "Notice of Intent". (See Argument B; and Exhibit A, Page 2-3). Second, ECF No. 56 is exclusively relied on, which is Defendants' Motion for Summary Judgment and supporting exhibits filed in the District Court.

Beyond that however, while each of the Defendants allegations relied on were accepted as true, and the Court of Appeals drew inferences from them, Petitioner Good's pleadings, Brief on Appeal, and Reply Brief contradicted and disputed each fact relied on. (Exhibit A, Page 2 and 3). In example, Petitioner Good submits evidence of those material disputes, overlooked by each court below. As to the Court of Appeals articulation of the factual context, it refused to acknowledge there was material dispute, as argued by Petitioner Good in his brief and reply:

1) "Walworth learned Good had been performing legal work for nonqualifying

prisoners."

First, as Mr. Good made clear in his brief on appeal, (Exhibit G, Page 20) it was following Ms. Walworth's participation in grievance identifier SLF-13-08-1051-17g as respondent, (ECF No. 1; PageID 32) on August 15, 2013, and when she participated in a mail rejection hearing, (ECF No. 1; PageID) on September 17, 2013 for a public legal pleading pending in court, which family friend Ms. Carroll had mailed to Mr. Good. Once respondent Walworth learned of Mr. Good's grievance SLF-13-09-1221-07A against her (from her co-worker respondent Finch who was the respondent to that grievance), on October 11, 2013, (ECF No. 1; PageID 13 ¶59-60) Ms. Walworth took efforts to secure Mr. Good's termination from his legal writer assignment. That is, on October 17, 2013 Respondent Walworht prodded Respondent Bugbee, Vandecasteele, and Ms. Barnett, (See ECF No. 67, Page 92-94), prompting them to pursue Mr. Good on the false basis that Mr. Good had materials from another prisoner in his cell. (ECF No. 43-5, PageID 804).

However, it became clear who was behind this confrontation when Respondent Bugbee, Vandecasteele, and Ms. Barnett ordered Mr. Good to return to 3 unit and Ms. Walworth to mail out any legal documents Mr. Good had received from Ms. Carroll. (ECF No. 43-5, PageID 804). That comment, (the name Carroll; the focus of the mail rejection hearing by Respondent Walworth, (ECF No. 1, PageID 79), and grievance No. SLF-13-09-1221-07A; (ECF No. 1, PageID 28) left no doubt that Ms. Walworth was the catalyst to this confrontation, (See also ECF No. 43-5, PageID 804; Email from Mr. Bugbee to Ms. Walworth), and it was clear those grievances were the motivation for her retaliation.

Ms. Carroll was not a prisoner, and was not receiving legal services from Mr. Good. She was both a family friend who visited Mr. Good regularly, and who would obtain example pleadings, and law books for Mr. Good.

2) The messages (and other evidence) suggested that these other prisoners were paying for his service. Notice, R.56-7, PageID 1231

While this stated fact is premised on the unheard "notice of intent", the message referenced was the product of misinformation, as Respondent Walworth intentionally omitted the reply message to that same person. That is, Respondent Walworth omitted Mr. Good's response to Ms. Allen where Mr. Good explained that she did not need to reimburse postage fees for Mr. Good. (See ECF No. 67, Page 94; email November 14, 2013 @ 10:0 6 am). Another act of Respondent Walworth's false allegations.

> 3) Walworth also learned from a librarian (defendant Bugbee) that Good had kept the prisoners' legal work in his cell. Bugbee Aff. R. 56-5 PageID 1193).

First, this contention is based on an unheard contraband removal form, which was the product of acts beyond the control of Mr. Good. That is, while Plaintiff Good was at work, his cellmate reported to the library and informed him a the prisoner, Mr. Smith, in the next cell had came over and handed him a stack of papers belong to Mr. Bentley which were left behind when Bentley's property was packed up when Mr. Bentley was sent to segregation. This was setout by Mr. Smith's affidavit (Exhibit G, Appellant's Brief in the Court of Appeals, attachment A), when he made clear the officers told Smith to give the materials to legal writer Good so the materials could be given to Bentley. Nonetheless when Mr. Good, having been previously warned by Respondent Bugbee, immediately informed him that his cellmate had placed Bentley's left behind materials in his cell, and that since it was not his, Mr. Good tried to get it removed. However, instead, Respondent Bugbee, acting in concert with Respondent Walworth, called Ms. Walworth and told her that Good had another prisoner's legal work in his cell, despite they were put there by someone else, as directed by the officer, when Mr. Good was at work.

Shockingly, Respondent Walworth destroyed all that evidence while the grievance process was still pending, and when she learned Mr. Good was bringing this suit. (See ECF No. 80, Page 91-92).

4) One prisoner, for example, told his sister that he had paid Good $150 for

his appeal.

First, again this relied on fact was the product of belief of the Notice of Intent based on the preclusive effect given to it be the court. Despite the direct evidence Respondent Walworth was proven to be manipulating the process when she implied falsely that Mr. Bentley's grandmother indicated she spoke with Good who wanted more money to get it done right away. (See Notice). However, Respondent Walworth admitted that Mr. Good had never spoke to any of prisoner Bentley's family, (ECF No. 67, Page 93). Notably, while the fact that Mr. Good never spoke with Bentley's family was stated clearly in an email authored before the Notice of Intent, Respondent Walworth still used the false claim, implying in the notice that Petitioner Good had spoken with Bentley's Grandmother. (See Exhibit G, Appellant's Brief, page 27)

> 5) Worried Good might improperly have more legal materials in his cell and be improperly charging for his services, Assistant Deputy Warden Kelly Barnett ordered a search of his cell. Walworth Aff. R.56-6 PageID 1202).

In another example of the court granting belief and inferences to Defendants, it endorsed the Bad Faith Affidavit of Respondent Walworth, ignoring the truth that Ms. Walworth in an email, coaxed Ms. Barnett into asking whether a misconduct or notice of intent could be written. (ECF No. 67, Page 94, email 11/14/2013 @ 10:25 am). In fact, Petitioner Good made it very clear to the Court of Appeals that Respondent Walworth was the source of the order to have the cell searched again:

> "Nonetheless, Ms. Walworth continued her pursuit and though she admitted having no basis for writing a Class I or II misconduct, (ECF No. 67, Page 94) in here email of November 14, 2013 at 10:42 am, she then asserted "but I may be able to write a class III depending on what is found after we shake down his cell." (ECF No. 67, Page 94). A careful review of all the emails of that day reveal a significant point, no other Defendant, nor Ms. Barnett advanced a contention or order that Mr. Good's cell be shook down. Id. That is, until Ms. Barnett falsely asserted she told Ms. Walworth to shake down Mr. Good's cell in response to a grievance, (ECF No. 67, Page 86) no other evidence contradicted the email chain that clearly demonstrates the shake down was the idea of Ms. Walworth, and the result of her prodding. (ECF No. 67, Page 94). The email message at 10:42 a.m. is

clear evidence of Ms. Walworth's prodding, as she sought to find a reason to justify or overcome or obscure the absence of a basis for a misconduct." (Appellant's Brief, Page 22-23)

Clearly, the conclusion that Assistant Deputy Warden Kelly Barnett ordered the search is not true, it was Respondent Walworth who orchestrated the events on November 14, 2013. This was an additional demonstration of the improper granting to Defendants allegations belief and inferences drawn in their favor contrary to this Court precedence.

6) Prison staff found legal materials in his possession. Walworth Aff. R. 56-6, PageID 1202)

Once again Respondent Walworth was responsible for these events, and again the court granted preclusive effect without a hearing being conducted. Significantly, while CO Ott was prompted to search Mr. Good's cell, when he finished and authored a contraband removal form, he called Petitioner Good back to his unit. Once Petitioner Good returned, and upon being reviewed on the form he demanded a hearing, and was given a copy of the document. (ECF No. 1, Page 82). In response, CO OTT indicated this was not his doing, it was Walworth's. (ECF No. 1, PageID 15, ¶ 65).

Ultimately, there was no hearing conducted on that Contraband removal form, and there could never be one after Respondent Walworth destroyed all the materials seized. (See ECF No. 80, Page 91-92).

7) Bugbee thus gave Good a "poor work evaluation" as a result of this misconduct, and Good was suspended (laid-in) from his legal-writing job during an investigation. Bugbee Aff. R 56-5, PageID 1193; Walworth Aff. R. 56-6, PageID 1202; Evaluation, R 56-5, PageID 1196; Resp., 56-9 PageID 1235.

The contention that Respondent Bugbee wrote the 363 is false, as is the 363 itself. Petitioner Good argued just that to the Court of Appeals, demonstrating a material dispute:

"Following the submission and notice of SLF 13-11-1424-02g (ECF No. 1, PageID 60), on November 18, 2013 Mr. Mayfield, (who worked in the same office as the grievance coordinator) entered the library and commenced complaining to Ms. Vandecasteele that Mr. Good had written a grievance on

them demanding $50,000.00 dollars. Ultimately, this conversation was overheard by a number of prisoner workers who were within ear-shot. It was upon realizing the presence of prisoners that, Mr. Mayfield left, only to return a few hours later when Mr. Bugbee and Ms. Vandcasteele was present. Immediately Mr. Bugbee and Ms. Vandecasteele closed the office door, and Mr. Mayfield could be heard complaining, and planning to retaliate against Mr. Good. In fact, their conversation was overheard by Jason Rose and Gerald Rinks, who were in adjacent rooms to the main office and could hear Mr. Mayfield ranting. Further, in demonstrating pretext, Mr. Mayfield falsely answered his interrogatories indicating no such meeting occurred, (ECF No. 67, Page 69, Response to Question No. 9), Mr. Bugbee, ECF No. 67, Page 58) and Ms. Vandecasteele's indicated in her statement to grievance response for SLF-13-11-1423-17A that meeting did occur. (See ECF No. 67, Page 154)

Notably, as planned by them, Mr. Good received a completed false 363 work evaluation. (See ECF No. 80, Page 223). In fact, while Ms. Vandecasteele indicating she scored the "363", she denied recalling why she scored the evaluation the way it was scored, See Exhibit B to this document) where Ms. Vandecasteele admits to completing the evaluation but does not remember the basis of the score, and ECF No. 67, Page 60, Admission Response No. 2 where Mr. Bugbee falsely claims he is the person who wrote the evalutaion). It does not make a difference who among them scored the evaluation or whether Ms. Vandecasteele truly remembered, as this subjective evaluation can amount to evidence of pretext. Beyond the comparison of ECF No. 67, Page 83, ECF 80, PAge 223, and ECF 80, Page 229, and there is evidence that demonstrates that the "363" scoring was false." (Appellant's Brief, Page 32-33)

Clearly, the factual context articulated regarding the "363" was not entitled to belief as it was clearly under a material dispute. Nonetheless, the Court of Appeals concluded it was believable and drew inferences from it, despite the direct proof that the "363" was false. See Appellant's Brief, Page 33-34.

8) But Walworth determined that he should be classified at a higher "Level IV" security category because "he was serving a life sentence and escaped from the County Jail on November 26, 2008." PageID 1203.

Again, the Court of Appeals relied on the unheard Notice of Intent, as Respondent Walworth's justification for departing from Mr. Good's true security classification relied on the notice of intent, with qualifications:

"A screen has been entered in OMNI which requires CFA approval because prisoner has now passed 5 years since his escape attempt and he screens II/I

Prisoner does not appear to be a good candidate for Level II for the following reasons: Prisoner is serving a life sentence and escaped from the county jail on 11/26/08. In addition, he was recently issued an NOI relative to his position as a legal writer because it was found that he was

charging fees to prisoners he was serving as a legal writer. I am recommending a departure based on his escape history." (ECF No. 80, Page 232)

First, Respondent Walworth's email not only relied on the Notice of Intent (which the Court of Appeals did as well), but she falsely conflated that document by claiming "it was found." There was no hearing on the Notice of Intent, so it cannot be relied on as Respondent Walworth did.

Second as to her pretext of a reason to seek a departure, where a prisoner does not screen out on a particular criteria, i.e. escape under question no. 1, that criteria cannot be asserted again to seek a departure. Beyond that, if Mr. Good was being classified for an escape he would have been placed in a Level V facility, where he had already been reduced from to Level IV, over a year and a half earlier, with no new misconducts. Respondent Walworth's departure was pretext for retaliation. (See Exhibit G, Page 36 through 43), as it was unauthorized, and simply pretext to her adverse action. (See Exhibit G).

CONCLUSION

Since every conclusion as to the claimed legitimate reason for the adverse action are based on the unheard "Notice of Intent" and Contraband Removal", if this court agrees that they were improperly granted preclusive effect, then absence that preclusive effect, there is a material dispute which is reserved to the jury to decide. However, since the District Court disregarded this argument made in ECF No. 80, and since the 6th Circuit Court of Appeals disregard that entire argument (Compare Exhibit A and G), Petitioner prays this Honorable Court will exercise is supervisory power, order the Court of Appeals and District Court's decisions vacated and trial conducted.

In the alternative, Petitioner Good prays this Honorable Court grant Certiorari, and full briefing so that the constitutional violations by Respondents do not go unanswered and uncorrected, which a juror of our peers would hold them accountable for.

January 4, 2024

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