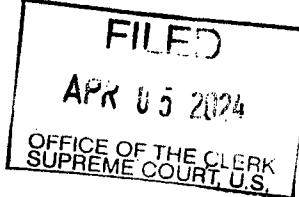


23 - 7552
No. 23-3337



IN THE
SUPREME COURT OF THE UNITED STATES

Jermeal White — PETITIONER
(Your Name)

vs.

Warden Ronald Erdas, et.al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court of Appeals for the Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jermeal White #A654040
(Your Name)

878 coitsville-Hubbard Rd
(Address)

Youngstown, Ohio 44505
(City, State, Zip Code)

216-633-4533
(Phone Number)

QUESTION(S) PRESENTED

1. Did the United States Court of Appeals for the Sixth Circuit review the full facts of the videotape? Did the United States Court of Appeals error when it found that the real use of force report by the committee determined that force was used and justified against petitioner? Should the Appeals court have reversed this matter on that fact alone?
2. Is the United States Court of Appeals decision in conflict with its own case law in Combs v. Wilkinson 315 F.3d 548 in light of the real facts that the use of force committee completely determined that force was employed against petitioner under O.A.C. Rule 5120-9-02 which the District failed to acknowledge, so did the District on its own strike the real facts of the report making this matter consistent with Combs v. Wilkinson?
3. Did the District court error by not addressing the evidence and material within petitioner's motion for Summary Judgment?
4. Is this matter in conflict with this United States Supreme Court decision in Scott v. Harris in light of the videotape?
5. Did the District court error by not addressing O.A.C. 5120-9-02 as provided by petitioner in whole within his motion for Summary Judgment that force was affirmed against him which would make clear of the so called unremarkable decision by the District Court?
6. Did the District court error by stating that force was not used against petitioner for the entire matter, but then stating that no force was used against petitioner?

7. Will this United States Supreme Court exercise its supervisory power and review the real facts of the ~~real~~ videotape and record, as sanctioned by this court's decision in Scott v. Harris along with the real records and determination of the use of force reports under O.A.C. Rule 5120-9-02 that was completely processed against petitioner, that will make the unremarkable determination by the District Court markable?

8. Is the United States Court of Appeals decision along with the District Court decision in error in regard to O.A.C. 5120-9-02 in light of Fed.R.Evid 803⁽⁸⁾ and ~~803~~ Fed.R.Evid 401

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:

Unit manager chief, Cynthia Davis
Correction officer, Wes Welch
Correction officer, Tyler Parish

RELATED CASES

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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 A 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 B 1-3 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 February 21, 2024.

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

This matter involves petitioner right under the Eighth Amendment to the United States constitution as a prisoner to be free from cruel and unusual punishment by prison correction officers. and petitioner Constitutional right under 42 U.S.C. § 1983 Civil action for deprivation of rights, which states that every person under color of any statute, ordinance, regulation, custom, or usage of State or territory or the District of Columbia subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof the deprivation of any right rights, privileges or immunities secured by the constitution and Laws shall be liable to the party injured in a action at Law, suit in equity, or other proper proceeding for redress except that in any action brought against a judicial officer for an act or omission taken in such officer judicial capacity injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section any act of congress applicable to the District of Columbia shall be considered to be a statute of the District of Columbia.

This case also involves petitioner's constitutional and statutory rights under Ohio Administrative code 5120-9-02 to the real facts and conclusion under Fed R. Evid 803(8) and Fed R. Evid 401

And petitioner Constitutional right to summary judgment under Federal Rule of civil procedure 56(a)

STATEMENT OF THE CASE

On November 25, 2019, petitioner filed suit against Warden Erdos, unit manager Administration, Cynthia Davis, Wes Welch and Tyler Parish. In the Civil complaint, petitioner made it clear that he was wrongfully housed on the K2-unit within the Southern Ohio Correctional Facility, and that Administration was aware of that fact. and that on August 17, 2019 extreme excessive use of force was used against petitioner for no explainable reason. by Respondents, petitioner made it clear that the video and record will prove his version of the events. The magistrate Judge allowed petitioner to proceed with his Eighth Amendment, claim against Davis, Welch, and Parish at the Sua Sponte review pursuant to the Prison Litigation Reform Act of 1995. § 804, 28 U.S.C. 1915(e)(2)(B) § 805, 28 U.S.C. 1995(e)(b)

on April 28, 2021 petitioner filed a motion for Summary Judgment pursuant the civil Rule of procedure 56(a) against Parish. On January 20, 2022 the magistrate Judge issued a report and recommendation that petitioner motion for Summary Judgment should be denied. the District Court adopted the report and recommendation. On April 28, 2022 petitioner then filed a motion for Summary Judgment, against Welch. petitioner provided material and evidence, proving that force was applied against him. And that liability can be imposed against Davis. The District court did not address the facts within petitioners motion for Summary Judgment. The District Court denied petitioners motion for Summary Judgment and granted respondent cross motion for Summary Judgment on March 23, 2023. On April 14, 2023 petitioner did file a timely notice of Appeal to the United States Court of Appeals for the Sixth Circuit, the Appeals court did not address cogent facts and affirmed the District court decision on February 21, 2024

REASONS FOR GRANTING THE PETITION

The reason this Honorable Supreme Court of the United States should grant this petition is because the decision of the United States Court of Appeals for the Sixth Circuit order (Appendix A) is in complete conflict with the decision and law of this court in the case of Scott v. Harris, 550 U.S. 372 380 172 S.Ct. 1769 L.Ed. 2d 686 (2007) which states that when opposing parties tell two different stories one of which is blatantly contradicted by a video record so that no reasonable jury could believe it - a court should not adopt that version of events of the facts for purposes of ruling on a motion for summary judgment. Instead those facts should be viewed in a light depicted by the videotape at. 381 :

The Appeals court Adopted the version of events that were blatantly contradicted by the record, which Secure the facts within the videotape. This entire use of force incident was captured on video camera, attached to a use of force report under OAC-Rule 5120-9-02. on August 17, 2019 petitioner was on the KA-unit within the Southern Ohio Correctional facility. By policy of the Prison Administration rules and Law, petitioner had every right not to be housed on that unit at that time, because he was pending legal litigation against the unit Sergeant and correction officers of that same unit before the United States District court in case NO. 19-cv-00033 for a serious matter which alleged that petitioner assaulted the Sergeant and the same correction officers within this matter. The unit manager Administration did place petitioner in harms way by having him housed on that KA-unit while he was pending litigation against the same staff of that unit. Based on that petitioner stated to the corrections officer that he will not cuff up for them, because they had already threatened harm toward petitioner. When the Lt. Arrived petitioner explained the facts of the situation including that he was pending litigation against the officers. The Lt. processed the extraction team for no reason, petitioner did not refuse to cuff up for the Lt. The extraction used extreme force

hand cuffing and removing petitioner from the cell. Respondents Welch and Parish applied extreme force on petitioner throughout this entire incident, respondents escorted petitioner from the cell through the hall-way bending and twisting his wrist and arms, and then bending his hands and arms all the way up his back snapping his right elbow out of place. Petitioner made it clear that the video will completely prove his version of events along with the record.

In Appendix B 1-3 the magistrate Judge made it clear that petitioner was escorted in a unremarkable fashion. The magistrate Judge did not address the facts, evidence and law within petitioners motion for Summary Judgment. The district court decision was completely and blatantly contradicted by the record. Petitioner cogently provided the full Law of Ohio Administrative code 5120-9-02 which controls Ohio use of force incidents only.

5120-9-02(D)2 The committee shall determine what actually happened and shall make a conclusion as to whether or not the staff member was justified in using force and whether or not excessive force was applied under the circumstances. A brief statement of the facts found by the committee, and its conclusion as to whether or not excessive force was employed along with the reasons supporting these conclusions. 5120-9-02(D)5 states:

Therefore the use of committee report contains findings resulting from the committee's investigative made pursuant to the Ohio Law fall within

Fed R. Evid 803(B) The Appeals court recognize that the committee and Warden determined that force was used against petitioner, (See Appendix A)

The Appeals Stated that the Warden determine the force to be slight. The Appeals court should of reversed the district court decision when it found that the committee affirmed force against petitioner, when the district court never addressed the real use of force reports in this matter, which the court would have to, to make clear of the video. The District court similarly ~~concluded~~ on its own striked the real facts of the reports and investigations that make clear of the video when the committee Affirmed force against petitioner

Under OAC, Rule 5120-9-02 making this matter exactly the same as *Combs v. Wilkinson* 315 F.3d 548. The Appeals court did not process the facts of the video as well. petitioner arms and hands were forced all the way up his back by respondents, the District court recognize that fact In Appendix B 1-3 The prison unit manager administration can be held liable in this because she placed petitioner in harms way by having him housed on a unit with staff that alleged petitioner assaulted them, while petitioner was pending litigation that he have never assaulted staff and that he was lied on. Administration encouraged this incident of misconduct by placing petitioner on the ka-unit. *Shehee v. Latrell* 199 F.3d 295 300 (6th 1999)

petitioner has shown under Federal Rule of civil procedure 56(a) that summary judgment was proper for him, and that there was no genuine dispute as to any material fact and he was entitled to judgment has a matter of law. *Anderson v. Liberty Lobby Inc.*

Again the committee Affirmed the force against petitioner in this matter. The LT, admitted in his conduct report, and use of force report that petitioner was restrained in this matter. The District court was right to an extent that a major part of the matter was unremarkable. See ~~the~~ Appendix B-1-3. their was a shield man covering and blocking petitioners hands and arms during the escort. And the force was completely markable when respondents bent petitioners hand and arms all the way up his back outside the cell. But giving the Law of OAC, Rule 5120-9-02 that force was affirmed against petitioner and the law addressed in *Scott v. Harris*. It is clear that this matter is directly by the record which prove petitioner version of the events. In the light depicted by the video

The district court never addressed the reports, the District court recognized that force was used against petitioner but it stated not for the entire matter. See Appendix B-13. Also the United States Court of Appeals failed to process the real facts of the District court still which make clear that the District Court did not address OAC Rule 5120-9-02 which makes clear of the video to the admission of guilt of force by respondents to the so called unremarkable matter.

Even more the court of Appeals decision contradicts its own case law in Combs v. Wilkinson 315 F.3d 548 which petitioner addressed in support of his appeal. In Combs the District court struck the use of force reports without explanation the reports asserting that the real record satisfies the definition of relevant evidence under Fed R. Evid 403(g)?

Fed R. Evid 401 defines relevant evidence having any tendency to make the existence of any fact that is of consequence to the determination of action more probable or less probable than it would be with the evidence under Fed R. Evid 803(g) the following are not excluded by the hearsay rule records, reports, statements or data compilations in any form of public offices or agencies setting forth civil action proceeding, factual finding resulting from an investigation made pursuant to authority granted by law unless the sources of information or other circumstances indicate lack of trustworthiness

The Appeals court decision was in conflict with Scott v. Harris at 381, and the Appeals court and the United States was in complete conflict with its own case law in regard to Combs v. Wilkinson. The District court never addressed the fact that the use of force documents contained the real findings of

the investigation under O.A.C. Rule 5120-9-02 the Appeals Court did make it clear that those documents did contained the finding that the Committee determined that force was justified. Under the facts presented by petitioner he has shown that respondent's evidence, and the decisions of the Appeals court, and the district court lack trustworthiness. under Fed. R. Evid. 803(8) and Fed R. Evid 401 If the District court felt that a major part of the incident was unremarkable, then it should have relied on the real reports of the investigation that would make the video completely markable, again as it was determined that force was used against petitioner.

The videotape shows that respondents Welch, and parish bent petitioner's hands and arms all the way up his back in a fatal position. And the unremarkable escort would have to go to the record and factual finding of the investigation which was determined that force used against petitioner under O.A.C. Rule 5120-9-02

The District court striked the real findings of the record that was determined. The Deputy Warden determined that complete force was applied against petitioner. The Warden approve the force, and petitioner provided the evidence of those reports within his motion for Summary Judgment.

The united states court of Appeals has entered a decision in conflict with its own decision in Combs v. Wilkinson see that the district court striked the real reports that was determined that force was used against petitioner and more. Also the Appeals court and the District court decision is in conflict with this court decision in Scott v. Harris, the video will show that extreme force was used against petitioner in this matter for no reason. The Appeals court based on the facts presented has so far departed from the accepted and usual course of judicial proceedings and has sanctioned such a departure by the lower court as to call for the exercise of this court's supervisory power

Also petitioner provided certification that he was allowed to review the videotape by order of the District court in this matter. petitioner clearly provided the court with the fact that the extraction team bent his arms and hands all the way up his back in a execution style snapping his right elbow out of place before placing petitioner on Suicide Watch inside a Suicide cell. Id. at 11:20-12:20 of the video, which the District court acknowledge that fact at page 10 of Appendix B-1-3 Doc.#84. Even more petitioner was indeed denied medical attention, respondents placed petitioner on Suicide Watch without petitioner ever stating that he was suicidal. The Shift Supervisor denied petitioner to make any real statement in regard to any injuries petitioner may have suffered, and stated that petitioner was not allowed to make a statement because he was on Suicide Watch. Doc# 58 from the United States District court, will show this court the real reports, from the Deputy Warden of operations use of force file, that prove under O.A.C. Rule 5120-9-02 petitioner was not allowed to make a statement because he was on Suicide Watch. Also under O.A.C. 5120-9-02 the Deputy Warden Mr. Cool affirmed this matter as extreme use of force justified by respondents, stating that respondents struggled with petitioner and more, Deputy Warden Mr. Cool checked the use of force box in this matter see Doc.# 58 from the District court. petitioner presented the real reports and facts within his motions for Summary Judgment. Doc.#86, and 51 before the District court, and he made it clear to the United States Court of Appeals for the Sixth circuit that his motions was not addressed on the facts and evidence he presented under the law to overcome ~~the~~ respondents cross-motions. The real reports surrounding the August 17, 2019 use of force against petitioner have been struck by the District court. Respondents knew full well that petitioner could not have a fair medical assessment when they on their own immediately placed petitioner on Suicide Watch

without petitioners consent, again the real reports prove this, and the video is not consistent with the medical reports they are fabricated, which petitioner proved in his motions as well. Even more petitioner had to snap his own elbow back into place.

Also this matter would be of importance to the public because it would show the public the real facts of the videotape and record, under Scott v. Harris and Combs v. Wilkinson giving the public the perfect understanding how important it is to address real public reports and investigation determination reports made pursuant to any revised Code, such as O.A.C. Rule 5120-9-02 involving a videotape, for any misunderstanding of the tape the determination of the record, and real reports will make clear to the facts unless the record lacks trustworthiness under the Law as explained by petitioner within the petition.

CONCLUSION

petitioner prays that this Honorable court exercise its supervisory powers in this matter and review the video and record under the Law.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jermeal G. White

~~APR 13 2004~~ MAY 13th 2004

Date: ~~APR 13 2004~~