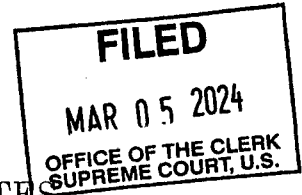


24-5053

ORIGINAL

No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

Petitioner Keith Hirt, Petitioner

v.

State of Oregon, Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE OREGON
SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Petitioner Keith Hirt
SID 20112365

Deer Ridge Correctional Institution

3920 East Ashwood Road

Madras, Oregon 97741

QUESTION PRESENTED

Did the State of Oregon violate this Court's holdings in *Bounds v. Smith*, 430 U.S. 817 and *Lewis v. Casey*, 518 U.S. 343, when prison officials impeded access to courts and proximately caused petitioner procedural default and dismissal of a petition for writ of habeas corpus in an initial-review collateral proceeding where there was no counsel?

LIST OF PARTIES

Petitioner Keith Hirt, Petitioner

Amber Sundquist, Respondent

RELATED CASES

- State v. Hirt, No. 23CR04160, Josephine County Circuit Court
Josephine County, Oregon. Judgment entered March 9, 2023.
- Hirt v. Director ODOC, No. 3:23-cv-00489, U. S. District Court for
the District of Oregon, Portland Division. (2254) Petition Stayed by
Magistrate for exhaustion of state postconviction proceedings. Order
entered on April 2024.
- Hirt v. Sundquist, No 24CV14199, Jefferson County Circuit Court,
Jefferson County, Oregon. (Petition for Postconviction Relief). Petition is
currently pending.

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Bounds v. Smith, 430 U.S. 817
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Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803)
Strickland v. Washington, 466 U.S. 668 (1984)
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Hatfield v. Baileaux, 290 F.2d 632 (9th Cir. 1961)
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Allen v. Sakai, 48 F.3d 1082 (9th Cir. 1994)
Gahr v. Swarthout, 472 Fed. Appx. 753 (9th Cir. 2012)
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Cooper v. Sniezek, 418 Fed. Appx. 56 (3d Cir. 2011)
Beck v. Lynaugh, 842 F.2d 759 (5th Cir. 1988)
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Johnson v. Parke, 642 F.2d 377, 380 (10th Cir. 1981)
Giles v. Tate, 907 F. Supp. 1135 (S.D. Ohio 1995)
Atwell v. Lavan, 557 F. Supp. 2d 532 (M.D. Pa. 2008)
Collins v. Goord, 581 F. Supp. 2d 563 (S.D. N.Y. 2008)
Cottrell v. Jabe, 2012 WL 830469 (W.D. Va. 2012)
Ripp v. Nickel, 838 F. Supp. 2d 861 (W.D. Wis. 2012)
Smith v. Maloney, 55 Mass. App. Ct. 1112, 772 N.E.2d 1098 (2002)

Statutes and Rules

Oregon Revised Statutes § 34.310
Oregon Rules of Appellate Procedure 11.20

Other

USCA CONST Amend. XIV
Article VII, section 2, of the Oregon Constitution
American Bar Association, Standards for Criminal Justice, Treatment of Prisoners, Section 23-9.5 (c) (2010).

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

The order of the Oregon Supreme Court dismissing the petition for writ of habeas corpus appears at Appendices C and D to the petition and is unpublished.

JURISDICTION

The petition intends to seek review of the order February 12, 2024 by the Oregon Supreme Court in case No. S070366, the date on which the highest state court dismissed my case. A copy of that decision appears at Appendix D.

An extension of time to file the petition for writ of certiorari was granted to and including June 25, 2024.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE CONSTITUTION OF THE UNITED STATES, AMENDMENT 1.
The right of access to the courts is a fundamental right protected by the Constitution.

THE CONSTITUTION OF THE UNITED STATES, AMENDMENT XIV, Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the 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 the 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.

ARTICLE I § 10 OF THE OREGON CONSTITUTION. No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury done him in his person, property, or reputation.

STATEMENT OF THE CASE

On January 25, 2023, at approximately 10:43AM, 911 operators received a Call for Service Report ("CSR") that a robbery had taken place at the Washington Federal Bank located in Cave Junction, Oregon. Thirty-Six Dollars (\$36.00) was reportedly taken in cash. The robbers were not armed.

At 10:53AM, thirteen minutes after the bank robbery, Josephine County Sheriff's (JCSO) Deputy Gerald Bayard (hereinafter "Bayard") conducted a traffic stop of Petitioners' motor-vehicle as a vehicle reported as leaving the scene. Bayard held Petitioner, Carol Ann Evans-West, and William Glenn at gunpoint. Additional jurisdictions arrived from JCSO, Oregon State Police, and the United States Marshall's Office.

Ordered separately to exit Petitioner's vehicle, without incident Petitioner and two other vehicle occupants were handcuffed and placed into three separate patrol cars.

Over the next two and one-half hours, Bayard including other investigating officers, conducted a tactical roadside investigation. Petitioner, West, and Glenn denied involvement with the robbery.

Bayard requested permission to search Petitioner's vehicle which Petitioner denied. Bayard advised that he would obtain a search warrant.

In direct observation of Petitioner, including the other two vehicle occupants, investigating officers repeatedly peered through petitioners' vehicle windows with flashlights and would repeatedly leave and return from the scene of the crime to the scene of the traffic stop.

Bayard eventually confronted Petitioner, advised that his body cam was active, and attempted to question Petitioner. Petitioner invoked his right to counsel.

Petitioner observed Bayard and other responders scrambling for physical evidence linking the vehicle occupants to the bank robbery. The investigating officers, however, remained uncertain whether any of the vehicle occupants were actually involved in the robbery. Over the entire course of the tactical roadside investigation, there was no direct evidence identified, seized, or collected from the car that linked Petitioner or the vehicle occupants to the robbery.

Despite noticeable frustration over the lack of investigatory fruits, Bayard arrested and transported Petitioner, West, and Glenn to the Josephine County Adult Jail and booked each on felonies related to the bank robbery.

Defender Services

On or about January 27, 2023, in Josephine County Circuit Court, Petitioner was arraigned on two Measure 11 felonies (Robbery II). State contracted defender Adrianna Reinhart (formerly Martin-Wyatt) (hereinafter “Counsel”) was assigned to represent Petitioner.

On or about February 1, 2023, Counsel conducted an initial face-to-face with Petitioner and advised that Eric P. Fournier, also state contracted, would serve as co-counsel. Counsel informed Petitioner that there was no discovery materials yet received from the government.

On February 15, 2023, Counsel conducted another face to face visit delivering the government’s initial discovery material consisting of the Information, Indictment, Call for Service Report, black and white exterior photographs of the bank, topographical images of the parking lot, and adjacent businesses.

Counsel advised Petitioner that the case was circumstantial and that there was no evidence that placed Petitioner inside of the bank at the time of the robbery.

Petitioner requested color copies of all photographic evidence. On February 20, 2023, Counsel and Legal Assistant Bazan delivered numerous color reproductions of photographs in evidence she had received from the prosecutor as additional discovery material.

Later that evening, Petitioner carefully examined the photographs. Petitioner quickly spotted alterations in the bank surveillance images.

The next morning, on February 21, 2023, Petitioner immediately telephoned Counsel to report his findings in the photographs. Counsel conducted another attorney visit.

Petitioner showed Counsel the material alterations in the photographs. Petitioner demonstrated to counsel that the images in fact had been digitally manipulated to establish Caucasian ethnicity. Petitioner further explained that the ethnicity of Petitioner, due to both robbers being fully clad in clothing, was, at the time of the traffic stop, non-public information and Petitioners' ethnicity could not have been known until the moment of the traffic stop.

Petitioner also demonstrated to counsel that Bayard made inconsistent or fabricated statements, including fraudulent witness statements in his police report to otherwise support the digital image manipulations. But the image tampering, coupled with Bayard's false reporting put Petitioner in a difficult Catch-22. In order for Petitioner to prove to counsel that surreptitious material alterations in the bank surveillance photographs in fact occurred, Petitioner had no option but to acknowledge his involvement in the robbery.

Petitioner adamantly demonstrated to counsel that the pictures of his hands in the bank surveillance photographs were surreptitiously photoshopped (i.e., colored nude). In fact, Petitioner explained that at all times before, during, and after the bank robbery, black-gloves were worn and were never removed until after the he was miles away from the scene approximately thirteen minutes later.

Several other bank surveillance photographs were shown to counsel that

contained easy to spot surreptitious alterations. One digitally manipulated bank surveillance image depicted Petitioner being completely cropped-out and the co-defendants' legs cropped shorter to falsely add images of shoes purportedly matching those worn by the robbers. Yet in fact the shoes were actually planted in the vehicle, then amateurishly photoshopped into the bank surveillance photographs, and then seized as key evidence in a malicious effort to falsely add inculpatory evidence. Bayard then reports falsely that the shoes in question matched those worn during the robbery.

Counsel, in abundant surprise, while observing the bank surveillance video imaging, concurred with Petitioner that there were inconsistencies and alterations in the bank surveillance photographs. Petitioner pointed out one bank surveillance video that captured Petitioner wearing black gloves as he walked in front of an office doorway located inside of the bank. Counsel stated "Yeah, I saw that!"

Counsel then stated to Petitioner that there was "police corruption" in the case. Petitioner then asked Counsel, "What, in term of legal clinical nomenclature, are these altered photographs called, and what precisely do you mean when you say "police corruption." Counsel replied only that it was "a conspiracy."

Petitioner would again vehemently insist that forensic imaging be conducted. Instead of counsel submitting a service request to Oregon's Office of Public Defense Services for forensic imaging services, counsel stated that "Sandi [Legal Assistant] is working on it." At no time, however, did counsel in any way explore the extent and scope of the photographic evidence fabrications.

Instead, on February 22, 2023, dismissing the acknowledged corruption, counsels began engaging in a deliberate barrage of coercion consisting of a salvo of false claims concerning the evidence, trial penalty threats, and other frightening plea inducement tactics and other schemes in a surprising deliberate effort to hatchet-away and crush Petitioner's will to proceed to jury trial and maliciously bully Petitioner into an involuntary plea submission. In this way Petitioners' counsels attempted to submerge the government's corruption in the case.

Given the background of counsel's deception occurring over a period of several consecutive days, Petitioner's will to go to trial in the case became wholly overborne against a backdrop of collusion among police and court official and a government cover-up. This outrageous onslaught of ineffective, conflicted counsel saddled Petitioner under a unbearable constellation of fear, untreated physical and mental illness, and improper coercion. Petitioner's free will and his intention of exercising his constitutional rights and proceeding to jury trial was slowly and methodically overpowered by disloyal counsel, dishonest law enforcement, and an unscrupulous prosecutor.

Counsel Reinhart eventually stated during a face-to-face, "You need a criminal defense attorney." Petitioner wondered what counsel's role really was in the case. Petitioner became confused and conflicted, cycling in serious Bipolar 1 psychiatric illness. Once counsel observed that their inappropriate plea inducement tactics were not having their desired effect, counsel informed Petitioner that she needed to withdraw from the case.

The Plea Change

A plea Change Hearing was held on February 27, 2023. At the commencement of Petitioner's plea change hearing and prior to Petitioner's actual entry of the guilty plea, Counsel requested to withdraw from the case. Brushing aside Counsel's withdrawal request, the trial court proceeded to the change of plea colloquy.

Following Petitioner's entry of guilty plea, the court permitted Petitioner to read into the record a two-page handwritten statement detailing the facts surrounding the "police corruption" including the inadequate defender services, disloyal counsel, and the intimidation used by counsels to cow Petitioner into plea submission. Petitioner also read into the record the coercive and corrosive conditions of confinement he was experiencing every day all day during the pre-trial phase of his proceedings. The trial court, including counsel, turned a blind eye to Petitioner.

The Bank Surveillance Photographs

At the time of the bank robbery, both of the robbers were completely clothed in white zip-up hoodies, red spandex pants, black spandex facial coverings, black mechanics gloves, and blue latex gloves that, collectively, completely prevented identification – especially the ethnicity.

At the time of the robbery, the skin or hair color of the robbery suspects was not and could not have been known to the bank employees. At no time was the ethnicity of the robbers later established. However, the in-color bank surveillance photographs that were eventually included into the case discovery material attempted to paint a different picture.

The bank surveillance photographs that Petitioner received from counsel as government discovery material revealed easy-to-spot surreptitious material alterations. The photographs, in their alteration, attempted to color black-gloved hands a nude color in an effort to manipulate and falsely establish and unlawfully identify Petitioner as Caucasian; identification evidence that would then match that of the vehicle occupants; identification that could only have been determined after the point of the traffic stop.

The digital image manipulations also attempt to add additional false inculpatory evidence, i.e., photographs of shoes planted in the getaway vehicle and thereafter cropping the bank surveillance photographs to display shoes as worn by the robbers that matched those allegedly discovered in the getaway vehicle.

The bank surveillance photographs were not genuine or accurate depictions of the crime scene, were deliberate falsehoods by the government, and despite counsel openly acknowledging the government's falsified photographic evidence, counsels deliberately ignored it. The corruption in this case can never be considered harmless by any stretch of the imagination.

Gross Deviations from Proper Investigatory Procedures and the Government's Deliberate Effort to Hide its Alterations of the Bank Surveillance Images

Three separate investigating agencies responded to the bank robbery – Josephine County Sheriff's Department, Oregon State Police, and the United States Marshall's Service. At the time the investigating agencies processed the crime scene, gross violations of standard investigatory procedures occurred.

At all times throughout the course of the bank robbery, Petitioner wore black mechanics gloves and police responders had absolutely no definitive identification of either bank robber. The government, lacking any identification evidence of the robbers, then digitally manipulates one bank surveillance photograph falsely depicting one of the robbers placing an ungloved right hand on a bank teller counter-top. This was the government's malicious effort to unlawfully and untruthfully match the vehicles occupants to the scene of the crime.

Most interestingly, however, crime scene investigators did not conduct nor did they collect any latent fingerprint, palm print, or contact trace evidence from the bank teller counter top where it is falsely alleged and dishonestly documented that Petitioner had placed an ungloved right hand. Absent any identification evidence, collection of fingerprints would appear vital to the investigation at that point when suspect identification was just not possible. Yet the documentary case record contains no evidence that fingerprint collection was ever in fact conducted.

The reason for the investigators' complete gross deviation from investigatory standards and practices concerning fingerprint collection is that the investigating officers, including bank staff, knew that the bank robbery suspects were wearing gloves. For a government officer acting in an investigatory capacity to fabricate identification evidence against Petitioner, and to intentionally and maliciously avoid investigating and collecting other inculpatory identifying evidence was unwarranted, unreasonable, and unconstitutional acts and were neglected with deliberate

design to conceal their nefarious conduct in falsifying the bank surveillance images. These official acts were gross deviations from proper investigatory procedures and standards and were organized and performed in a purely investigatory capacity.

And Counsels completely ignored it.

The “Hobson’s Choice”

During the critical pre-trial phase of his criminal prosecution Petitioner was put to a Hobson's Choice – either admit his guilt to counsel in order to demonstrate to counsel that the digital image manipulations did in fact occur or give up his right to maintain his innocence and his right to present a complete defense by putting the government’s case to its test - or even to go to trial at all. The choice had grave implications for both petitioner and his attorney and it placed petitioner in an impossible position.

Counsel agreed with Petitioner that the images had been manipulated. The prosecution was using false or misleading evidence.

Counsel stated that the alterations involved “police corruption” and a “conspiracy.” Yet, instead of exploring the extent and scope of the digital image manipulations or requesting that forensic imaging be conducted of the bank surveillance imaging, counsel engaged in a bombardment of pre-mature plea inducement tactics designed to cow petitioner into plea submission. After withstanding counsels’ persistent salvo of pre-mature plea inducements, and counsel observing that her plea inducements were not having the desired coercive effect upon petitioner (to forego the intended jury trial), counsel stated that she was withdrawing from the case.

Petitioner was left to shift for himself. Saddled with conflicted counsel and standing alone, Petitioner was confronted with only two options - proceed to trial with conflicted counsel or plead guilty.

Under these difficult yet peculiar circumstances, Petitioner was unable to make any reasoned determination of whether he should waive his constitutional right to jury trial or to cave-in to a criminal prosecution that was tainted by police and court official corruption. With his criminal defense rendered a complete sham through a constructive denial of counsel and horrific conditions of pre-trial detention, petitioner's will to proceed to trial became wholly overborne. Instead of acting as loyal advocate, petitioner's disloyal and conflicted counsel(s) led petitioner to slaughter.

Counsel, including co-counsel, conducted no defense investigation, failed to interview any witnesses, and failed to explore the extent and scope of the digital image manipulations. Counsels did not examine the physical evidence, never visited the scene of the crime, and made no pretrial motions. Counsels did no work on the case and concerned themselves with nothing more than submerging the corruption issues, and silencing their client by dump-trucking him into Oregon's correctional system.

Petitioner was convicted of Robbery II and sentenced to 70 months imprisonment. Petitioner was not advised by counsel of any appeal opportunity.

Professional Negligence

Adrianna Reinhart and Eric P. Fournier, contractors with the Oregon Office of Public Defense Services who represented Petitioner during the criminal proceedings in this case from January 2023 thru March 2023 were grossly negligent and breached their duty of due care owed to Petitioner. Specifically, in their representation of Petitioner, these contractors breached their duty to use reasonable diligence commonly employed by members of the legal profession. Further, the breach of this duty was the proximate cause of the constitutional violations that saddled Petitioner during the critical stages of his criminal prosecution.

The Denial of Access to Courts

On July 26, 2023 Petitioner filed a timely initial collateral attack via a Petition for Writ of Habeas Corpus in the Oregon Supreme Court.¹

Petitioner appended to his petition several digitally manipulated bank surveillance images that he had received from Counsel as government discovery material.

Petitioner also submitted, contemporaneously with his habeas petition, a Motion for Appointment of Counsel.

On August 7, 2023, completely ignoring petitioner's counsel motion, the Court issued a deficiency notice because petitioner had not served the Attorney General's office a copy of his petition for writ of habeas corpus together with its exhibits. Petitioner responded by motion stating that he was unable to serve a copy of the complete petition with its exhibits because prison officials denied him access to photograph duplication services.²

In-color duplication of the crime scene photographs remained essential for purposes of petitioner attaching the fabricated evidentiary images to his petition for writ of habeas corpus.

In-color photocopying services were requested and yet were denied by Oregon Correctional Officer Dubal, DRCI Law Library Coordinator. Petitioner asked CO Dubal whether he was aware of the actual departmental policy or administrative directive that restricted Petitioner access to in-color photocopies of crime scene photographs.

¹ Petitioner's claims in the petition centered upon the government's constructive denial of counsel under the Sixth and Fourteenth Amendments to the United States Constitution and this Court's holding in *United States v. Cronin*, 466 U.S. 648 (1984) and that representatives of the State fabricated key photographic identification evidence, counsel's own assertions that the case was tainted by "police corruption," and ineffective assistance of counsel.

² Petitioner had appended to his petition original in-color crime scene photographs that were in his possession that he had received from Counsel as case discovery material. The digitally manipulated bank surveillance photographs are currently on file with the Oregon Supreme Court in *Patrick Keith Hirt v. Amber Sundquist*, Case No. S070366 (state habeas proceeding).

CO Dubal stated that he “was not.” That denial of services thus became an unfiled prison regulation that effectively operated to deny Petitioner the tools he needed (i.e., in-color document duplication services) to correctly prepare and serve his court papers. Access to the courts was thereby impeded.

On August 16, 2023, because of the barrier erected by prison officials, and the Court ignoring the counsel motion, Petitioner prepared and filed a pro se motion requesting waiver of the court rule requiring service of his petition upon the Attorney General. Petitioner requested that the Court, in the alternative and under the particular circumstances, issue an instruction to the court clerk to serve a copy of his petition for writ of habeas corpus together with its exhibits on the Office of Attorney General.

On August 30, 2023, the Court denied Petitioner’s motion inserting the following caveat:

“The court offers copies of documents for .25 a page. The petition for writ of habeas corpus consists of 28 pages. The total charge for copies would be \$7.00. Plaintiff shall have 14 days from the date of this order to respond as to whether copies will be requested, or to show proof of service on the Attorney General.” (Order Denying Motion to Serve Petition for Writ of Habeas Corpus, dated August 30, 2023)

Petitioner diligently attempted to timely comply with the Court’s August 30, 2023 gracious 14-day order to remit his personal trust account funds for reproduction of the petition and exhibits.

On September 5, 2023, Petitioner submitted a timely ODOC Request for Withdrawal of Funds to (Acting) DRCI Law Librarian Pherigo in the amount of \$14.00. Petitioner made Pherigo aware of the Court’s 14-day order and explained the timeliness and the importance of his trust account access. Yet despite Petitioner’s diligence, Petitioner’s request for withdrawal of funds sat unprocessed until September 15, 2023 – two days after the 14-day deadline had expired. At the time Petitioner submitted his request for withdrawal of funds, \$36.69 was available in his AIC Trust Account.

Petitioner's access to his trust account funds was obstructed. Through no fault of petitioner, prison officials proximately caused petitioner to default on the 14-day court order and ultimately prevented him from prosecuting the claims and propelled his petition for writ of habeas corpus into procedural default.

On November 9, 2023, the Court issued an Order of Dismissal. That same day the Court issued the Appellate Judgment and Supplemental Judgment with an Effective Date of February 15, 2024.

The failure to appoint counsel in a documentarily supported corruption case and the procedural default and ultimate dismissal of Petitioner's state habeas action through no fault of petitioner has had disastrous consequences and resulting prejudice to petitioner – it has allowed the government to unfairly shunt petitioner's non-frivolous, bedrock constitutional claims into the state of Oregon's long-drawn-out postconviction review procedure that will, conceivably, consume several years.

Access to the Courts

Under the First and Fourteenth Amendments to the Constitution, state prisoners have a right of access to the courts. *Lewis v. Casey*, 518 U.S. 343. “[A]ccess to the courts means the opportunity to prepare, serve and file whatever pleadings or other documents are necessary or appropriate in order to commence or prosecute court proceedings affecting one's personal liberty.” *Id.* at 384, (quoting *Hatfield v. Bailleaux*, 290 F.2d 632, 637 (9th Cir.1961)). This right “requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.” *Bounds v. Smith*, 430 U.S. 817. See also, *Phillips v. Hust*, 477 F.3d 1070, 2007 WL 446593.

Prison Officials' Denial of Color Duplication of The Crime Scene Images

“Litigation necessarily requires some means of accurate duplication because the court and the parties need to refer to the same documents.” *Gluth v. Kangas*, 951 F.2d 1504, 1510 (9th Cir. 1991). A number of courts, therefore, have ordered that provisions for copying be made available so that prisoners can easily make duplicates of the documents that they prepare, or that require appending as exhibits to a petition or other legal pleading, and not be required to engage in the “needlessly draconian.” *Johnson v. Parke*, 642 F.2d 377, 380 (10th Cir. 1981). See also, *Gluth v. Kangas*, 951 F.2d 1504 (9th Cir. 1991) (ordering prison to provide copies for the court and opposing parties within 48 hours of request of all “[e]ligible legal papers and documents includ[ing] petitions, complaints, answers, motions, affidavits, exhibits, memoranda and briefs, including attachments and appendices, and materials needed for discovery and investigation, including interrogatories and freedom of information requests,” and holding that the documents could not be read by employees who photocopied); *Johnson v. Parke*, 642 F.2d 377, 380 (10th Cir. 1981) (right of access includes the right to photocopies); *Abdul-Akbar v. Watson*, 901 F.2d 329 (3d Cir. 1990) (allegation of delay in obtaining photocopies states a claim of a constitutional violation); *Canell v. Multnomah County*, 141 F. Supp. 2d 1046 (D. Or. 2001) (for criminal, habeas corpus, and conditions of confinement cases, prison officials must provide inmate legal research resources as well as photocopying when inmate is obliged to provide copies in connection with prosecution of action). This is in accord with the Standards of the ABA. See, American Bar Association, *Standards for Criminal Justice, Treatment of Prisoners*, Section 23-9.5 (c) (2010).

There is, however, contrary authority. See *Atwell v. Lavan*, 557 F. Supp. 2d 532 (M.D. Pa. 2008), order *aff'd*, 366 Fed. Appx. 393 (3d Cir. 2010) (finding that there is no entitlement to copying privileges since prisoners may submit handwritten papers); *Beck v. Lynaugh*, 842

F.2d 759 (5th Cir. 1988) (lack of photocopying was not a denial of access to courts when evidence showed that prisoner was able to make necessary filings); *Gittens v. Sullivan*, 848 F.2d 389 (2d Cir. 1988) (provision of carbon paper rather than photocopying machine is constitutional).

In any event, actual injury must be shown. *Cooper v. Snizek*, 418 Fed. Appx. 56 (3d Cir. 2011) (no actual injury shown from denial.); *Arflack v. County of Henderson, Kentucky*, 412 Fed. Appx. 829 (6th Cir. 2011) (prison officials' failure to make copies of inmate's motions for his then-pending state court cases did not violate his right to access the courts; their inaction did not prejudice inmate's appeals because the state court had already granted his speedy-trial petition); *In re Maxy*, 674 F.3d 658 (7th Cir. 2012) (Failure to allege actual injury precluded inmate's access to courts claim that prison rules limiting use of the copy machine caused his filing delays); *Gahr v. Swarthout*, 472 Fed. Appx. 753 (9th Cir. 2012) (Access claim properly dismissed because inmate failed to allege actual injury resulting from defendants' refusal to photocopy documents.); *Cottrell v. Jabe*, 2012 WL 830469 (W.D. Va. 2012), report and recommendation adopted, 2012 WL 830499 (W.D. Va. 2012) (No facts supported inmate's allegation that refusing to make copies and denying him access to law library materials impeded his access to the courts); *Collins v. Goord*, 581 F. Supp. 2d 563 (S.D. N.Y. 2008) (an inmate wrote a letter to the prison law library requesting advance funds to make six photocopies of documents, indicating that he qualified for the funds because the documents were required by the court and could not be copied by hand; denying the defendants' motion for summary judgment, the court determined that there is evidence that the defendants acted maliciously and deliberately and that the claim was not indisputable meritless).

However, since the ability to copy documents is so critical for appending supporting evidence for non-frivolous claims, *Canell v. Bradshaw*, 97 F.3d 1458 (9th Cir. 1996) (holding that photocopying can be an indispensable service, denial of which may state a claim), this is an area where the failure to provide the service can result in tangible harm to the inmate affected. See, e.g., *Allen v. Sakai*, 48 F.3d 1082 (9th

Cir. 1994) (denial of a postconviction relief petition stated a claim of actual injury. Inmate should have submitted multiple copies to the court, and they should have been in black ink.); *Giles v. Tate*, 907 F. Supp. 1135 (S.D. Ohio 1995) (failure to create a reasonable alternative for inmate to pay for photocopying state a claim; inmate was charged 35 cents per copy and made only \$9 per week from his prison job). But see, *Smith v. Maloney*, 55 Mass. App. Ct. 1112, 772 N.E.2d 1098 (2002) (holding that inmate was only entitled to copying service for documents that were to be submitted in court).

Prison Officials' Denying Petitioner Timely Access
to his Prison Trust Account Funds, Actual Interference,
and Obstructing Compliance with Court Orders

In light of the difficulties that Petitioner was having with prison official's in duplicating color crime scene images depicting the government's digital image manipulations, the Oregon Supreme Court graciously offered Petitioner 14 days by court order to remit funds for purposes of duplicating the entire petition for writ of habeas corpus with its appended in-color exhibits in order for Petitioner to effect service upon the Oregon Attorney General. However, prison officials obstructed Petitioner's request for timely access to his personal trust account funds.

Withholding access to a prison account to pay for legal fees could effectively "deny access to obtaining an attorney, filing a complaint or mailing other legal documentation." *Chriceol v. Phillips*, 169 F.3d 313 (5th Cir. 1999); *Ripp v. Nickel*, 838 F. Supp. 2d 861 (W.D. Wis. 2012) (prisoner was denied access to the courts because he was not provided postage to mail his summary judgment materials to the court, causing him "actual injury").

The Denial of Habeas Counsel

Petitioner properly requested appointment of counsel by motion to the Court for purposes of prosecuting complex habeas litigation. The Oregon Supreme Court, however, dismissed petitioner's counsel motion which was equally, if not more, damaging and prejudicial than the prison officials' denial of access to the courts.

Appointment of counsel on state habeas remained critical for petitioner in his initial-collateral attack proceeding to further discover and to further prove - and for the court to fully assess - both the government corruption, the deep state effort to cover-up and hide the misconduct, and the scope and magnitude of the evidence fabrications that trial counsel stated were present in the case, deficient trial counsel performance including the resulting prejudice, as is required by Strickland, 466 U.S. at 697.

Generally speaking, to bring claims of government corruption and use of false or misleading evidence by the state prosecutor that occurred as part of a criminal prosecution in a collateral attack, much less an ineffective assistance of counsel claim that involved complicity in the misconduct, a defendant must (a) identify instances where counsel's performance fell below legally permissible standards; (b) conduct an independent investigation into the facts concerning the issues; and (c) frame the issues in collateral review petition in a manner that is legally sufficient. These tasks present clear difficulties for any pro se petitioner who litigates from a jail cell, especially for Petitioner who then also becomes obstructed by prison officials in preparation of legal papers and in presenting his non-frivolous claims of government corruption to the attention of an initial reviewing court at the earliest opportunity possible.

Yet the State of Oregon would not have it.

The U. S. Supreme Court "Actual Injury" Rule Under
Bounds v. Smith and Lewis v. Casey

"Bounds," the Court noted, "guarantees no particular methodology [of legal assistance] but rather the conferral of capability. * * * When any inmate, even an illiterate or non-English speaking inmate shows that an actionable claim * * * which he desired to bring has been lost or rejected, or * * * is currently being prevented, because this capability of filing suit has not been provided, he demonstrates that the state has failed to furnish [the legal assistance required by Bounds]." *Lewis v. Casey*, 518 U.S. 343 (1996), citing *Bounds*, 430 U.S. 817, at 828 (1977); U.S.C.A. Const. Amend. 14.

Petitioner's actual injury in this case is of constitutional significance because all of the obstructions and impediments experienced by Petitioner were not the product of any "prison regulations reasonably related to legitimate penological interests." *Lewis*, 518 U.S. at 362.

In order to state a constitutional claim for denial of access to the courts Petitioner must demonstrate that he has suffered an "actual injury." "Actual injury" means "actual prejudice with respect to contemplated or existing litigation such as the inability to meet a filing deadline or present a claim." *Lewis*, 518 U.S. 343, 348. Due to the repetitive impediments, viewed collectively, created by Oregon prison officials, Petitioners' right of access to courts was obstructed, his petition for writ of habeas corpus was dismissed, and petitioner was actually injured.

REASONS FOR GRANTING THE PETITION

Petitioner urges the Court to hold that the essential privilege of access to courts under *Bounds* and *Lewis* was transgressed when the Oregon Department of Corrections imposed arbitrary administrative barriers to preparation of meaningful legal papers and thereafter also prevented petitioner from accessing his trust account funds to comply with a court order.

This Court could not do so without extinguishing the substance of this right — a right that is “well-established” and that, at its core, forbids government from “actively interfering” with a citizen's “presentation of claims to the courts.” *Lewis v. Casey*, 518 U.S. 343, 349-50 (1996). Indeed, it is hard to imagine a denial of access to the courts more deliberate, pervasive and pernicious than the one at issue in this case — obstructing.

The courts of appeals are uniform in recognizing that parallel action covering up official misconduct, and thereby preventing legal claims for redress, violates the right of access to the courts. The case here is even more compelling, for the State did not merely seek to cover up its own police and court official misconduct that had already occurred to avoid a miscarriage of justice and potential monetary relief. In this case the State of Oregon has engaged in a continuing core campaign of deep state action deliberately designed and implemented to obstruct Petitioner not only the right to use the courts in an effort to try to submerge the exposure of the corruption but today furthers that conduct by completely ignoring petitioner in his attempts to officially report government corruption, handling written complaints to state-level oversight agencies, employing deep state administrative silencing.

Petitioner brought the police and court official corruption issues to the attention of the Oregon Supreme Court via a petition for writ of

habeas corpus. The Oregon deep state systematically obstructed petitioners' access to the courts which proximately caused dismissal of his petition.

It is constitutionally impermissible that Petitioner's right of access to the courts should be subordinated to state government interests that are ostensibly at stake when local officials engage in digital image manipulations of crime scene photographs to maliciously and falsely establish identification evidence. Law enforcement then lie in their police reports in a fraudulent effort to untruthfully support the digital image manipulations, knowingly suppress other key eye witness photographs that would have exposed their misconduct including presenting fraudulent witness statements by feeding the witnesses non-public facts; facts that could not have been known at the time of the robbery until the moment of the traffic stop.

State and federal government agents engaged in a knowing, deliberate, and collective conspiracy to maliciously add false inculpatory evidence that would favor the prosecution, that would fraudulently establish probable cause, then perpetrate that fraud upon an Oregon Grand Jury in an effort to obtain criminal indictments. The effect of this nefarious government conduct was to not merely arrest but to also fix the trial in the event that Petitioner and his two co-defendants refused to capitulate to plea pressure.

Even still, after court-officials dump-trucked petitioner into the Oregon corrections system, Oregon's deep state commences to obstruct the law of access to courts as part of a continuing core campaign of government cover-up to hide the misconduct and to prevent Petitioner from raising an uncounseled, initial collateral attack that involve bedrock state and federal constitutional rights stemming from government misconduct. The conduct by prison officials that Petitioner challenges in this petition for certiorari is and was, at all time relevant to this case, *active interference* with his ability to go to the state's highest court to vindicate his claims causing actual injury, and is thus plainly unconstitutional under governing law.

There are well established rules that serve as checks on the lawfulness of state government action. This Court should take this opportunity to reaffirm the important principles that ours is emphatically “a government of laws, and not of men” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803), and one of access to courts. It is the right of access to courts that ensures that this remains as true today as it was two hundred years ago.

That courts be barrier free—and thus open to all—is vital to the legitimacy of and public confidence in the administration of justice. A lack of equal access to the courts harms not only those persons who are excluded, but also the system itself, which is deprived of the benefits of their inclusion. In addition, the exclusion from the justice system of any segment of society undermines public confidence in the system. It therefore is imperative that the courts ensure that individuals with disabilities are not excluded from participation in any capacity—as litigants, witnesses, attorneys, judges, jurors, courthouse staff, or observers.

Petitioner’s right of access to the courts was violated by prison officials as part of an ongoing deep state effort to submerge police and court official corruption directly related to petitioners’ criminal prosecution. The state court criminal case record, standing alone, demonstrates this corruption.

Next, prison officials deprive petitioner of legal tools necessary for the preparation of meaningful legal papers by denying copying services and timely access to personal trust account funds, which, in its intended effect blocked initial habeas attack of state and federal constitutional rights violations involving government corruption plunging Petitioner into a procedural scheme that would foil any realistic opportunity to have his claims considered. Moreover, the actions of prison officials shunted Petitioner’s non-frivolous claims into Oregon’s long-drawn-out postconviction review procedure. This is particularly problematic for Petitioner concerning delay given growing statistics that reveal structural problems in indigent defense delivery systems throughout the state of Oregon.

Any right of access to the courts, moreover, is functionally a right to judicial process. For this reason, the lower courts that have recognized a right-to-access violation in the context of a government cover-up generally have done so when the plaintiff actually attempted to initiate legal process.

Oregon prison officials violated this Court's holdings in *Bounds* and *Lewis* by obstructing Petitioner's access to facilities and services necessary for preparation and filing of his legal papers. Through no fault of Petitioner, his right of access to courts was systematically violated causing actual injury by procedural default and dismissal of a petition for writ of habeas corpus containing non-frivolous claims.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Patrick Keith Hirt

Date: May 20, 2024