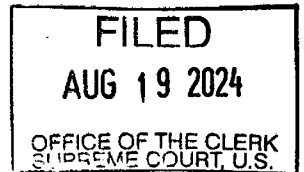


24-5372

No. _____

ORIGINAL



IN THE

SUPREME COURT OF THE UNITED STATES

LELAND T CORSO JR — PETITIONER
(Your Name)

VS.

Todd Ishee — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the 4th Cir.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LELAND THOMAS CORSO JR
(Your Name)

PO. Box 506
(Address)

Mary, NC. 28554
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Has the United States Court of Appeals for the 4th Circuit departed so far from the accepted and usual course of judicial proceedings concerning summary judgment, and sanctioned such a departure by the United States District Court for the Middle District of North Carolina, by denying the Petitioner a certificate of appealability and dismissing the appeal, as to call for an exercise of this court's supervisory power?

Has the Petitioner's 5th and 14th Amendment Right to Due Process been violated by the Court's departure from the accepted and usual course of judicial proceedings concerning summary judgments?

This action arises out of a habeas corpus proceeding, pursuant to 28 U.S.C.A. § 2254, brought by the Petitioner, LELAND CORSO JR., a North Carolina State Prisoner, challenging a prison disciplinary proceeding, where he was denied access to and consideration of video documentary evidence to present in his defense, and denied impartial fact finders, while the District Court granted the Respondent's summary judgment motion when it failed to view all the evidence in the light most favorable to the nonmoving party and deliberately misrepresented evidence in the record when rendering recommendation and judgments concerning summary judgment.

Are prison officials bound by the 4th Amendment as needing probable cause or reasonable suspicion that a prisoner committed an offense, to place him in handcuffs, for an alleged disciplinary offense?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- [] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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APPENDIX E	Step One Grievance Response; and witness statements
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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 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 _____.

☒ 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

The Petitioner initially filed a petition for a writ of habeas corpus in the United States District Court for the Middle District of North Carolina (district court), challenging a prison disciplinary action, asserting that his 14th Amendment Right to Due Process, as recognized in *Wolf v. McDonnell*, 418 U.S. 539 (1974) and *Lenear v. Wilson*, 937 F.3d 257 (4th Cir. 2019), was violated when he was prevented from presenting, accessing, and consideration of video evidence in defense of disciplinary charges; and being deprived of impartial fact finders.

The district court entered a judgment granting summary judgment against the Petitioner, denying a writ of habeas corpus without an evidentiary hearing, and denying a certificate of appealability. While the United States Court of appeals for the 4th Cir. dismissed the appeal and refused to issue a certificate of appealability. The judgments attached as appendix (A) and (B), were abuses of discretion that violated the Petitioner's 5th Amendment Right to Due Process.

The 4th Amendment, applicable to the State through the 14th Amendment, states, The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause... When a prisoner is ordered to submit to handcuff's, as the Petitioner was, the 4th Amendment is implicated because this order would be given when prison staff have reason to believe that the prisoner has or may have committed a disciplinary offense if housed in general population.

STATEMENT OF THE CASE

1.) The events giving rise to the issues presented in this habeas Corpus proceeding by the Petitioner, a North Carolina prisoner, occurred on the evening of April 21, 2021 after a targeted locker search. Prison staff alleged that the Petitioner was hindering staff from performing their duties and causing a disturbance, and was charged with a (B-08) disciplinary offense. After reporting this allegation to the duty sergeant (Sgt.), Staff and the Sgt, returned to the Petitioner's bunk area where he was resecuring his property and ordered the Petitioner to submit to handcuffs, because of what had been alleged. Staff then alleged that the Petitioner refused the order, and was charged with a (B-25) offense. In submitting to handcuffs that were improperly applied to the Petitioner's left wrist, causing him to flinch from the pain, it was alleged that the Petitioner posed an imminent threat to Staff and pepper spray was administered, where he was charged with a (B-18) offense. The Petitioner sustained injuries that were observed by four Staff members who were not party to the incident, appendix (E), two of which saw the injuries the following day and provided a DC-138B statement, appendix (E), one was the investigator for the disciplinary action and the second was the Petitioner's casemanager.

2.) During the investigation of the disciplinary proceeding the Plaintiff provided a written DC-138B Statement, appendix (E), and requested video evidence from (F) Pod on Tan-2, Medium Custody to support his statement. At the

disciplinary hearing the Disciplinary Hearing Officer (DHO) alleged that due to recent upgrades to the unit cameras, the video requested from (F) Pod, where the events took place, was not available, appendix (F). The (B-08) offense was dismissed and the Petitioner was found guilty of the (B-25) and (B-18) offenses. The Petitioner appealed the findings that were upheld by the Chief Disciplinary Hearing Officer (CDHO), pointing to staff statements about the injury to his wrist on appeal, and then filed the petition for writ of habeas corpus in the district court.

3.) The Respondent was ordered to answer the petition and an answer and motion for summary judgment was submitted. The Petitioner responded in opposition to the motion and pointed to the fact that an affidavit submitted by the Respondent from the warden at Scotland Correctional Institution (SCI), appendix (C), showed that (F) Pod video existed and was accessible, in contradiction of the DHO's allegation that video from Tan Unit was unavailable due to recent upgrades.

4.) The Magistrate judge entered a recommendation, (DE 29), on December 13, 2022, appendix (B), saying that the video did not exist and that summary judgment should be granted against the Petitioner. The Petitioner objected and submitted an incident report from April 21, 2021, appendix (C), in support, that showed video from (F) Pod did exist and was accessed on that date, he then pointed again to the warden's March 2023 affidavit, which the court failed to note, showed that he accessed the video from (F) Pod after the April 21, 2021 incident, as

the Warden was not involved with the disciplinary action, evidenced by the disciplinary record, appendix (F) ; nor was he involved in the use of force investigation, evidenced by the incident report, appendix (C). The district court adopted the recommendation; and said that the video from (F) Pod did not show the events for which the Petitioner was found guilty, being the (B-25) and (B-18) offense; nor did the Petitioner have a qualified right to access the video, appendix (B).

5.) The Petitioner entered a notice of appeal, appendix (B), and submitted an informal brief to the U.S. Court of Appeal, appendix (D). The appeal was dismissed on the bases that the requisite showing was not made, appendix (A).

REASONS FOR GRANTING THE PETITION

A petition for a writ of certiorari will be granted only for compelling reasons... A United States Court of Appeals... has so far departed from the accepted and usual course of judicial proceedings; or sanctioned such a departure by a lower Court, as to call for an exercise of this Court's supervisory power.

U.S. Sup. Ct. Rule 10, 28 U.S.C.A.

The U.S. Court of Appeals for the 4th Circuit (4th Cir.), has so far departed from the accepted and usual course of judicial proceedings and has sanctioned such a departure by the U.S. District Court for the Middle District of North Carolina (Middle Dist.), when the 4th Cir. denied the Petitioner a certificate of appealability and dismissed the appeal of the Middle District's grant of summary judgment against the Petitioner's habeas petition and the adoption of the Magistrate judges reasons for the recommendation, after presentation of the issues concerning the Middle Dist.'s departure from the accepted and usual course of judicial proceedings regarding summary judgment motions and evidence.

The Middle Dist. departed from this Court's accepted and stated usual course of summary judgment judicial proceedings in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) and *Scott v. Harris*, 550 U.S. 372 (2007), by failing to view the facts and draw reasonable inferences in the light most favorable to the non moving party (the Petitioner), after the Petitioner presented evidence that he was denied the opportunity to present requested evidence in defense of the charged disciplinary offenses (B-08), (B-25), and (B-18); and that he was

denied an impartial fact finder when he was arbitrarily prevented him from presenting requested video evidence that was available and relevant to the charged disciplinary offenses; from which a jury or impartial fact finder might return a verdict in his favor. This court said in *Tolan v. Cotton*, 572 U.S. 650 (2014) that when considering a motion for summary judgment, the district court's role is not to weigh the evidence, but merely to determine whether there is a genuine issue for trial. Had the middle Dist. properly applied the holdings as stated in *Anderson*, *Scott*, and *Tolan*, *supra*, it would not have departed from this court's accepted and usual course of summary judgment judicial proceeding.

This Court established in *Wolff v. McDonnell*, 418 U.S. 539 (1974); that prisoners have a Due Process Right under the 5th and 14th Amendment to present evidence in defense of prison disciplinary charges, if doing so would not be unduly hazardous to institutional safety or correctional goals; and to an impartial fact finder. In *Lenear v. Wilson*, 937 F.3d 257 (4th Cir. 2019), the 4th Cir. held that prisoners have a qualified right to access and have documentary evidence considered at prison disciplinary hearings.

The record and evidence before the 4th Cir. in this case, show that the facts before the Middle Dist. at summary judgment were; (1) the Petitioner claimed in his habeas petition that he was denied the opportunity to present evidence in defense of disciplinary charges and impartial fact finders; (2) there was no

argument that providing video evidence would be unduly hazardous to institutional safety or correctional goals; (3) the Petitioner faced three disciplinary charges at the disciplinary hearing that he pled not guilty to; (4) the Petitioner wrote a statement in opposition to the disciplinary charges and requested video evidence from (F) Pod where the April 21, 2021 disciplinary incident occurred; (5) the DHO alleged at the disciplinary hearing, that the video from (F) Pod was not available due to recent upgrades to the cameras; (6) an April 21, 2021 incident report showed that video from (F) Pod did exist; (7) an affidavit from Warden Stephen Jacobs, dated March 1, 2023 submitted by the Respondent, confirmed the existence of the (F) Pod video; and (8) after the (B-08) offense was dismissed for insufficient evidence, the Petitioner was found guilty of the (B-25) disobey a lawful order, and (B-18) threaten staff, after being denied access to and consideration of (F) Pod video of the events that led to the disciplinary charges.

The forgone information was known to the Middle Dist., and was shown to the 4th Cir. in the informal brief as evidence that had the information been viewed in the light most favorable to the nonmoving party (the Petitioner), that no reasonable impartial jurist would have granted summary judgment for the Respondent. Making the 4th Cir.'s denial of a certificate of appealability and dismissal of the appeal a departure from the accepted and usual course of summary judgment judicial proceedings, and a sanction of such a departure by the Middle Dist., as this information is a substantial showing of the denial of a constitutional

right, pursuant to Wolff and Lennear, supra; and the 5th and 14th Amendment. This information also demonstrates that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong; that the dispositive procedural ruling is debatable; and that the petition states a debatable claim of the denial of the 14th Amendment Right to Due Process.

Under the reasonable relationship standard, pursuant to *Turner v. Safley*, 482 U.S. 78, 89-91 (1987), the April 21, 2021 video from (F)Pod that showed events from the time prison officials first approached the Petitioner until he was taken out of the Pod, would allow an impartial factfinder to definitively assess and the Petitioner to argue whether prison officials had a valid penological interest to order the Petitioner to submit to handcuffs, which is an essential, material, and relevant fact that has to be determined, because that fact will determine whether the order was lawful, pursuant to the 4th, 8th, and 14th Amendment, or unlawful for lack of probable cause or reasonable suspicion, and excessive, arbitrary, and oppressive improper application of handcuffs that caused physical injury to the Petitioner's left wrist. The valid penological interest at issue is whether the Petitioner hindered staff or caused a disturbance as was the alleged reason for the order, because it is reasonable to presume that the Respondent would argue that the order was necessary to maintain or preserve institutional order, discipline, and security.

To aid in making this determination the Court should apply the factors articulated in *Graham v. Gagnon*, 831 F.3d 176, 184-187 (4th Cir. 2016), which would allow a reasonable impartial jurist to determine from the (F) Pod video: (1) the Petitioner's conduct as known to officers at the time of the incident; and (2) the contours of the offense (B-08) thought by officers, to be committed by that conduct; as to whether one could reasonably believe that the Petitioner was hindering staff and/or causing a disturbance.

The 4th Cir. held, "that Petitioner has a qualified right to access and compel consideration of any video surveillance evidence of the incident giving rise to his loss of good time credits." *Lennear*, *supra*, 937 F.3d 1142 at 279 (4th Cir. 2019). As argued above, evidence shows that there was video from (F) Pod of the incident giving rise to the loss of good time credits, where the incident giving rise, is a question of whether the Petitioner hindered staff and/or caused a disturbance, which gave rise to the subsequent charges for which he was convicted. The fact that the Petitioner was denied access to and consideration of the (F) Pod video prevented the Petitioner from successfully arguing the issues above at the disciplinary hearing and on appeal, and for the DHO to falsely allege that the (F) Pod video was unavailable when other evidence shows that it was available is evidence that the Petitioner was subjected to the arbitrary decision of a biased fact finder, thereby, clearly showing a Due Process violation by the Respondent, Middle Dist., and 4th Cir.

As a prisoner, the Petitioner is a vulnerable member of society, making this case of national importance and interest, because of the lack of confidence the American people have in government institutions, in light of the weaponisation of judicial systems. The core of this case, showcases the abuse of power by an executive branch agency lie, and extends to judicial branch abuses that enable executive branch abuses of the Rights of vulnerable members of society, and it is the duty of this court to protect all members of society by addressing blatant abuses of government and departures from the accepted and usual course of judicial proceedings.

CONCLUSION

For the reasons outlined above;

The petition for a writ of certiorari should be granted.

Respectfully submitted,

By: Richard T. Corcoran

Date: June 21, 2024