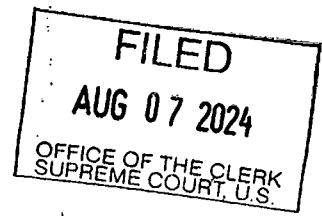


24-5466

No. 23-1986



IN THE
SUPREME COURT OF THE UNITED STATES

In Re Jarell Davis Terry — PETITIONER
(Your Name)

ON PETITION FOR A WRIT OF MANDAMUS

Certiorari
PETITION FOR WRIT OF MANDAMUS

Jarell Davis Terry
(Your Name)

2501 State Farm Rd
(Address)

Tucker AR 72168
(City, State, Zip Code)

—
(Phone Number)

QUESTION(S) PRESENTED

Does the use of force against a handcuffed and compliant Mr. Terry, along with the use of fighting words and deliberate action of fabricating evidence and falsifying documentation, not violate clearly established Eighth Amendment rights to be free from cruel and unusual punishment?

Was the District Court ^{or} and Court of Appeal for the Eighth Circuit fair and unbiased towards Mr. Terry, as a pro se prisoner without ~~all~~ adequate counsel, legal education, or ~~legal resources~~ adequate legal resources / assistance?

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:

RELATED CASES

Felix v. McCarthy 939 F.2d 699 (9th Cir. 1991)
Green v. Branson 108 F.3d 1296 (10th Cir. 1997)
Johnson v. Bi-State Justice Center 12 F.3d 133 (8th Cir. 1993)
Scott v. Harris 550 U.S. 372, 380 (2007)
Hudson v. McMillian 503 U.S. 1 (1992)

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE.....	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

Recommended

APPENDIX A	<i>Recommended Disposition of the Eighth Circuit District Court by Magistrate J. Thomas Ray</i>
APPENDIX B	<i>Order of the Eighth Circuit District Court by District Judge Brian S. Miller</i>
APPENDIX C	<i>Judgement of the Eighth Circuit District Court by District Judge Brian S. Miller</i>
APPENDIX D	<i>Judgement of the Eighth Circuit Court of Appeals</i>
APPENDIX E	<i>Opinion of the Eighth Circuit Court of Appeals</i>
APPENDIX F	<i>Denied Rehearing En Banc</i> <i>Exhibit A - Judicial Complaint</i>

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Crawford-El v. Britton 523 U.S. 574	18, 20
Felix v. McCarthy 939 F.2d 699 (9th Cir 1991)	17
Furman v. Georgia 408 U.S. 238 (1972)	14
Green v. Branson 108 F.3d 1296 (10th Cir. 1997)	21
Hudson v. McMillian 503 U.S. 1 (1992)	15, 16, 18
Johnson v. Bi-State Justice Center 12 F.3d 133 (8th Cir. 1993)	18
Pearson v. Callahan 555 U.S. 223 (2007)	18
Scott v. Harris 550 U.S. 372, 380 (2007)	17
Terry v. Arnett 2:20-cv-66-DPM-PSH	B.
Terry v. Dycus 2:20-cv-30-JM-JJV	8, 19
Terry v. Dycus 2:21-cv-56-LPR-PSH (Appeal No. 23-3415)	8, 13
Terry v. Kelly 2:20-cv-42-DPM	20
Terry v. Payne 2:22-cv-170-LPR-JTK	12, 19
Terry	
STATUTES AND RULES	
Arkansas Code of Judicial Conduct Rule 1.1	21
Arkansas Code of Judicial Conduct Rule 1.2	21
Arkansas Code of Judicial Conduct Rule 1.3	21
Arkansas Code of Judicial Conduct Rule 2.2	21
Arkansas Code of Judicial Conduct Rule 2.3	21
Federal Rules of Civil Procedure 8	18
Federal Rules of Civil Procedure 12	18
Federal Rules of Civil Procedure 26	19
Supreme Court Rule Part III Rule 10	21
28 U.S.C.A. § 455	21
42 U.S.C.A. § 1983	8, 12, 19, 21
42 U.S.C.A. § 1997e	8, 12
OTHER	
U.S. First Constitutional Amendment	7, 19, 20
U.S. Eighth Constitutional Amendment	7, 8, 13, 14, 15, 16, 18, 20
U.S. Fourteenth Constitutional Amendment	7, 19, 20

Cases Continued

Page Number

Terry v. Straughn 2:20 CV 145-BSM-JTR 8

~~SCOTT v. Harris 550 U.S.~~

Trop v. Dulles 356 U.S. 86 (1958) 14

~~Terry v. Scott v. Harris 550 U.S. 372, 380 (2007)~~

IN THE
SUPREME COURT OF THE UNITED STATES
Certiorari
PETITION FOR WRIT OF MANDAMUS

Petitioner respectfully prays that a writ of *mandamus* issue.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix A 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.

1.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 13, 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: June 25, 2024, 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

United States First Constitutional Amendment

United States Eighth Constitutional Amendment

United States Fourteenth Constitutional Amendment

Statement of Case

I, Mr. Jarrell Davis Terry, am pursuing pro se 42 U.S.C. § 1983 action under 42 U.S.C. § 1997e. I have litigated several cases in which cruelty and unusual punishment in violation of the Eighth Amendment is clearly seen by undeniable evidence some instances even being akin to assault and battery. See under sealed document surveillance footage at Terry v. Dyeus et al. 2:20cv-30 JM-JJV DN admitted, Terry v. Arnett et al. 2:20cv-66-DPM-PSH DN 50 (Writ of certiorari sought 2023 - no response/unheard), Terry v. Straughn et al. 2:20cv-145-BSM-JTR DN 145, and Terry v. Dycus et al. 2:21cv-56-LPR-PSH DN 7. I have litigated with unadulterated integrity as the agency of the A.D.C. have only been protected by bias and unjust decisions of the lower Eighth Circuit District Court and Court of Appeals. Injuries caused by Mr. Dennis Ugbaja (former Sergeant of E.A.R.M. of the A.D.C.) had been blatantly overlooked by the judges of the lower courts when considering (the nature and extent of injuries) the use of force applied. Please READ carefully with sound perspective, thank you

On May 11, 2020 Incident

On May 11, 2020, Mr. Terry had been incarcerated at the East Arkansas Regional Max Unit of the Arkansas Division of Corrections. Mr. Terry had been awaiting cell placement in the hall-cages of E.A.R.M. after several hours when Mr. D. Ugbaja had approached Mr. Terry ordering him to submit to hand restraints. Although confused Mr. Terry had due to Mr. Terry's request for a

restroom break, had placed his hands to the front to be cuffed. Upon being ordered to turn around by Mr. D. Ugbaja, Mr. Terry simply said, "yes sir", in which Mr. Ugbaja had stated "Don't make no sudden movements you already on my bad side", in an aggressive and threatening matter. Mr. Ugbaja had been with Ms. Mya Conley (A.D.C. corporal) (whom remained silent on the verbal exchange between Mr. Ugbaja and Mr. Terry. See Declaration of Mya Conley at 2:20CV145 DN____). In response to Mr. D. Ugbaja's comment, said "you must aint got yo summons yet?", (this intending to be a smart-alec remark, and not a verbal threat), Mr. Ugbaja then hand-cuffed Mr. Terry saying "Fuck a summons!". Mr. Terry had then submitted ~~hand restraints~~^{to} hand restraints with no incident.

While being escorted to the cell (Isolation 240 cell) Mr. Terry asked why was he going on behavioral control. Mr. Ugbaja had responded aggressively. Mr. Ugbaja then even attempted to escort Mr. Terry off camera. Mr. Terry stated, "I'm not going off camera so you can do anything to me. Mr. Terry turned to be escorted the proper way Mr. Ugbaja saying "fuck yo Momma" (guards knew of my mother's Elizabeth Ann Avery's death being a cause of my depression, Mr. Ugbaja used this to taunt and agitate me). Mr. Terry then stated out anger "fuck you bitch ass nigga, now I

¹ Mr. Ugbaja had been inadvertently added as Defendant in case Terry et al. v. Arnett et al., in which incarcerated person Mr. Ramon Huntley had been brutally beaten. Mr. Terry had been punched in the jaw and kicked in the rib cage as he lay flat being handcuffed. Writ of cert. sought 2023, but UNHEARD.

want some pain." Mr. Ugbaja then stated "ain't gone be no one on ones", then radioing Mr. Devine Maiden (former Lieutenant of E.A.R.M. Mr. Ugbaja told Mr. Maiden that Mr. Terry "is being combative and refusing to go in the cell", this being before Mr. Terry had even arrived to the cell with escorting officers. Mr. Maiden had returned radio traffic stating "get my gear ready" in which Mr. Terry yelled "tell him how you said fuck my dead Momma!" Mr. Terry, McLoney, and Mr. Ugbaja continued to Isolation 240 cell.

Once we had arrived at the cell door instead of Mr. McLoney or Mr. Ugbaja ~~slapped~~ opening the cell door. Mr. Ugbaja slapped his head in frustration as Mr. Terry quietly awaited cell placement. Mr. Ugbaja then grabbed Mr. Terry and, as he was still handcuffed posing no substantial risk of physical threat, Mr. Ugbaja then used a takedown move, that's difficult to explain, however it caused Mr. Terry to be slammed face first to the concrete ground. Mr. Ugbaja then placed his knee onto Mr. Terry's back at the spinal area and applied pressure in a grinding type fashion, dropping his dead weight on Mr. Terry's back. Even through Mr. Terry screaming that Mr. Ugbaja was hurting his spine Mr. Ugbaja did not remove his knee from Mr. Terry's spine until back-up arrived. this being 30 seconds-1 minute.¹ Back-up

¹ It was determined stated by U.S.M.J. J. Thomas Ray that Mr. Ugbaja had his knee on Mr. Terry's spine for 5 seconds although this is nowhere in the record.

then arrived which included Mr. Maiden, Mr. M. Lyles (former Sergeant of E.A.R.M), Ms. Fundren (Corporal of E.A.R.M), Mr. D. Williams, Mr. L. Williams, and Mr. J. Streeter (all former E.A.R.M Corporals). At this time Mr. Terry had been lifted by guard(s) which is when Mr. Terry's spine popped causing Mr. Terry to briefly see all white. Security then escorted Mr. Terry to the infirmary.

Due to Mr. Terry already being on Keppra for pain management pictures were taken¹ and Mr. Terry was dispensed Keppra upon request by Nurse Morrison since pill pass had already been conducted. Mr. Ugbaja being nearly 50-60 pounds heavier than the 150-160^{lb} something Mr. Terry, Mr. Ugbaja caused was the approximate cause of significant spinal injury (Mr. Terry also suffered jaw pain). On May 24, 2020 Mr. Terry ~~was~~ was seen for sick call by Nurse Brown in which I was referred to the provider. After not being seen by the provider in a timely fashion I had to repeat the sick call process on June 16, 2020. On June 24, 2020 I was prescribed 500 mg Naproxen for (6/six) months. X-Rays were required in which something made X-Rays show mild scoliosis although I'd never been diagnosed with it. After last mental damage of fear, paranoia, nightmares, and difficulty sleeping due to guard brutality Mr. Terry had been prescribed 10 mg Buspirone on November 2, 2021 by Dr. Kirtrell.

¹ Pictures were taken by Mr. Maiden. Mr. Terry was placed in Isolation 240 with but the clothes ~~he~~ he wore. ~~as~~ The cell had nothing no bedding, property, not even tissue and the toilet had been broken. Pictures were black & white therefore could not show redness

Mr. Terry was placed back into Isolation continuously taunted harassed and humiliated by Mr. Ugbaja See DNS 12, 13, 18, 19, 81, and 99. Eventually Mr. Ugbaja was terminated or forced to resign, due to the inability to afford adequate counsel. Mr. Terry was denied access to Mr. Ugbaja's Human Resource Files and Unit ^{Personnel} Files; which could have also proved motive/intent and character along with a pattern of misconduct.

District Court Proceedings

This action was commenced 7.15.2020 naming Mr. Dexter Payne, Mr. William Straughn, Mr. Devine Maiden, Ms. Ciara Brown, Ms. Mya Conley and Mr. Dennis Ugbaja. Mr. Terry proceeding this 42 U.S.C.A § 1983 pursuant to 42 U.S.C.A § 1997e was granted ifD status. DNS 1-3. Ms. Ciara Brown was voluntarily dismissed at DN 62, as Mr. Maiden was dismissed voluntarily at DN 142, 163 other defendants, with the exception of Mr. Ugbaja, were eventually denied due to failure to exhaust.

Mr. Terry had requested the Human Resource Files and Unit ^{Personnel} Files of Mr. Maiden and Mr. D. Ugbaja to prove character and evil intent, but was denied by AAG. Mr. Terry did not compel due to lack of education and professional experience in the legal field. pursuing pro se. Mr. Terry then twice motioned for appointment of counsel to gather witness statements to demonstrate conflict testimony, both request were denied DNS 67, 68, 85, and 88. Mr. Terry motioned to view video of the May 11, 2020 incident at DNS 74 and 75, this motion was granted at 75

1 Ms. Kyra Jones and a prisoner had been present but due lockdown and being an inmate staff members were told they cannot sign statements on my behalf. see Terry v. Payne 2:20-cv-170-IPR-JTR
DN 53

however Mr. Moreno Kelly did not allow full disclosure of the video, as the video froze at the moment right before Mr. Terry slammed by Mr. Ugbaja. Mr. M. Kelly, a defendant in Terry v. Dycus et al. 2:21-cv-56-LPR-PSH (Appeal No. 23-3415), then forged the signature of Mr. Terry with the incorrect date. When Mr. Terry notified the District Court and requested to view the video in full this motion was still denied at 84 and 92 DNS, 84 and 92, causing a confusion in the type of takedown used in which the District Court determined as a balant contradiction. Due to the District Court's failure to remain fair and abide by the Federal Rules of Civil Procedures Mr. Terry motioned for recusal against U.S.M.J. J. Thomas Ray which was denied at DN. 107 see also DN. 106.

Mr. Terry motioned for summary ~~for summary~~ judgement, in which Mr. Middlebrook cross motioned for summary judgement at DN. 144 and 151. Mr. Ugbaja was granted qualified immunity dismissing Mr. Terry's Eighth Amendment claims at DN. 163. Given prison mail-box rule and extension given til March 27, 2023 objections had been filed in a timely fashion at DN. 172. U.S.M.J. J. Thomas Ray's decision was adopted at DN. 173 by District Judge Brian S. Miller. Notice of appeal timely filed at DN. 178.

Court of Appeals For the Eighth Circuit proceedings

On de novo review summary judgement grant was affirmed by the Court of Appeals after the filings of briefs. No abuse of discretion was found in the District Court's denial of Mr. Terry's motion regard the viewing of surveillance footage, and the Eighth Circuit Court of Appeals denied jurisdiction to review U.S.M.J. orders denying appointment of counsel and motion for recusal.

REASONS FOR GRANTING THE PETITION

The Eighth Amendment introduced into the Bill of Rights in 1791 states "that excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." The basic concept underlying the Eighth Amendment is nothing less than the dignity of man. While the State has the power to punish, the Amendment stands to assure that this power be exercised within the limits of civilized standards. Fines, imprisonment[,] and even execution may be imposed depending upon the enormity of the crime, but any technique outside the bounds of these traditional penalties is constitutionally suspect. The words of the¹ are not precise, and that their scope is not static. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society. There ~~no physical treatment~~ may be no physical mistreatment, no primitive torture. Trop v. Dulles 356 U.S. 86 (1958)

A punishment is "cruel and unusual" if it is disproportionate to the offense. If the punishment is too severe or harsh, compared to the general ideas of dignity, decency, and civilized standards, it is proscribed by the Eighth Amendment. See 7. Cruel and Unusual Punishment, Bulletin 7.1 Assaults and Beatings. Lewisburg Prison Project (Updated April, 2008). In Furman v. Georgia 408 U.S. 238, 92 S.Ct 2726, 2742-47 (1972)

1 "Amendment"

Force Used By Mr. Ugbaja Had Been Excessive and Without Justification Against the Eighth Amendment

Surveillance footage, as depicted by the District Court reflects that Mr. Terry had not lunged at, attempt to evade, nor spit at Mr. Ugbaja.¹ See DN.163. Mr. Terry had merely been argumentive WITH Mr. Ugbaja whom had started the arguement. Mr. Ugbaja had made threats and disrespected Mr. Terry whom had been handcuffed and not combative nor refusing to go into his ~~at no~~ cell at no time.¹ In fact Mr. Terry had made it all the cell with no incident as conceded by the District Court at DN.163 pg 6-12 aside from arguing and the remark "y'all gone have to fight me", this being after the threats and offense remarks of Mr. Ugbaja (Mr. Terry had been denied appointed counsel to present conflicting testimony to Mr. Ugbaja Declaration at DN.151-1).

Mr. Terry did not touch Mr. Ugbaja at no time, when Mr. could have simply placed Mr. Terry into the cell Mr. Ugbaja instead choose to use his body weight to slam Mr. Terry to the concrete ground face first then as Mr. Terry lay non-resisting Mr. Ugbaja added force to Mr. Terry's spine for no reason other than to ~~punish~~ and harm and punish by cruel and unusual means, as Mr. Ugbaja balled his fist. DN.145

To uphold the decision of the lower Eighth Circuit Courts would be contrary to Hudson the Eighth Amendment standard see Hudson v. McMillian 503 U.S. at 9-10, 112 S.Ct 995 (By June of 1994, the law was well established that a malicious and sadistic use of force by a prison official against a prisoner, done with

¹ The fact that Mr. Ugbaja went as far as to falsify official documents and fabricate evidence is overlooked by lower courts when considering Eighth Amendment violations.

to intent to injure and actual causing injure, is enough to establish a violation of the Eighth Amendment's cruel and unusual punishments clause, and therefore would be a miscarriage of justice. Officers would be inflicting "cruel and unusual punishment" even in an emergency, if they acted "maliciously and sadistically for the very purpose of causing harm." Unnecessary, sadistic injuries are violations of law in any conditions, however "when prison officials ~~stands~~ ^{acts} maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated. This is true whether or not significant injury is caused." Id. at 1000. Intent and decency must be considered as written by Sandra Day O'Connor - U.S. Supreme Court Justice.

Mr. Ugbaja filed disciplinary violations against Mr. Terry attempting to depict Mr. Terry as belligerent, combative, and noncompliant. Although Mr. Terry was charged with: 12-3 Failure to obey verbal and/or written order(s) of staff; 11-1 Insolence to a staff member; 04-4 Battery -- Use of physical force upon staff; 04-17 Throwing or attempting to throw substances, known or unknown, toward or upon another person. Rule violation may result in loss of all good time; 02-21 Running, avoiding, or otherwise resisting apprehension; 05-5 Provoking or agitating a fight. Mr. Terry was found NOT guilty of 12-3, wherefore Mr. Terry had been compliant with order(s) given. Mr. Terry had been found NOT guilty of 04-4, wherefore Mr. Terry had not used any type of physical force against Mr. Ugbaja. Mr. Terry had been found NOT guilty of 02-21, wherefore Mr. Terry had not used physical force to be equal to ^{force} by Mr. Ugbaja. Mr. Terry had been found NOT guilty of 05-5, wherefore Mr. Terry had not provoked the excessive force used by Mr. Ugbaja. Lastly as determined by the

District Court for the Eighth Circuit, Mr. Terry had not spit on or lunge at Mr. Ugbaja, and the only reason Mr. Ugbaja had taken ^{down} Mr. Terry was because Mr. Terry had been pacing back and forth awaiting cell placement, after being insolent see DN 145 pg 19-22, DN 163 pg 12, and under sealed video footage at DN 145.

~~Not~~^{1^{only}} does the record demonstrate Not only does the record that Mr. Ugbaja and Ms. Coney's version of facts depicting Mr. Terry a combative, headbutting, spitter evading and lunging throughout the hallway, however due to the calm demeanor of Mr. Terry the District Court observed the handcuffed Mr. Terry "walking slowly and steadily" and as Mr. Ugbaja and Mr. Terry faced each other it is "impossible to tell if the two are even exchanging words" DN 145 163 pg 8. As Mr. Ugbaja ~~attempts~~ trumps up the disciplinary with false allegations and fabricated evidence does this not only ~~balantly~~ contradict Mr. Ugbaja's version of facts, see Scott v. Harris 550 U.S. 372, 380 (2007) (the Court may disregard facts provided by a party which are "so utterly discredited by the record that no reasonable jury could ~~it~~ believe ~~it~~ them [] him") as opposed to Mr. Terry incorrect description of the force used by Mr. Ugbaja, but it also reflects evil motive and plain incompetance at disciplining verbal insolence? Does the prior incidents along with the words that were exchanged, and the false disciplinary along with fabricated evidence not reflect a culpable state of mind and abuse of authority by Mr. Ugbaja? See Felix v. McCarthy 939 F.2d 699 (9th Cir. 1991) a case in which an officer abused his authority to degrade dignity. Convict Mr. Felix was handcuffed when ~~official~~ officer threatened and pushed Mr. Felix against wall after Mr. Felix refused to clean the ~~officers~~

spit of officer whom deliberately spat on the floor while Mr. mopped. The Court ruled that "it is not the degree of injury which makes out a violation of the Eighth Amendment. Rather, it is the use of official force OR authority that is intentional, unjustified, brutal, and offensive to human dignity." Id. at 702 The abuse of power took away the officer entitlement to qualified immunity. See also Crawford-El v. Britton 523 U.S. 574 (Plaintiff bringing constitutional action against government official for damages, for which official's improper motive is necessary element, need not adduce clear and convincing evidence of improper motive in order to defeat official's motion for summary judgement). Mr. Ugbaja had not only harassed and ~~taut~~ taunted Mr. Terry before and during the May 11, 2020 incident but Mr. Ugbaja continued afterwards see DNs. 12, 13, 81, and 99.

Lastly upholding the decision of the lower would be contrary to Johnson v. Bi-State Justice Center / Arkansas Dept. of Correction 12 F.3d 133 (8th Cir. 1993) (excessive excessive force found against defendant whom hit Plaintiff, Mr. Johnson, with soft cast after slamming Mr. Johnson against the wall. Mr. Johnson had been a disturbance by beating on glass windows and yelling). Force was above amount needed as there had been no resistance nor physical force used by Mr. Terry. Mr. Terry was taken not given fair trial proceedings by the District Court. Mr. Terry had been a verbal smart alec not a physical threat.

The District Court did NOT remain impartial, fair, and unbiased to Mr. Terry.

As a pro se litigant pleading must be liberally construed and held to less strict standards than that of a lawyers. Fed. R. Civ. P. 8(e)(2) as I also have the right
¹ See Pearson v. Callahan 555 U.S. 223 (2009)

to fair 42 U.S.C. § 1983 proceedings. First and Fourteenth Amendment.

E.A.R.M. is a Unit that not only mistreats its prisoners but the Unit harasses and mistreats the guards whom attempt to support legal action favorable to prisoners. i.e. See Terry v. Payne 2:22cv170-LPR-JTK DN 53

Several guards involved were forced to "forget detail", re-signed, or terminated and due to me unable to afford counsel to adequately obtain counsel, no outside support or contact and merely a GED I was denied adequate counsel to gather witness statements from Ms. Kyra Jones the control booth officers, prisons whom had heard and possibly seen the incident ~~however~~, due to restricted lockdown I could not obtain witness statements that depicted an untainted truth. Mr. Terry, DN 67, 68, and 85, 88.

Mr. Terry had been granted an opportunity to view the surveillance footage of the May 11, 2020 incident however the agency failed to allow full disclosure and Mr. M. Kelly falsified my refusal to sign declaration of video viewing causing the confusion of the type of takedown used by fellow officer Mr. Ugbaja, in which the District Court had determined as a balant contradiction see DN 84, 92, 163 pg 10. The denied disclosure is a clear violation of Fed.R.Civ.P. 26(a)(1)(A)(i)(A)(ii)

One may assume that due to Mr. Terry extensive history in filing suits² pursuant 42 U.S.C. § 1983, Mr. Terry had been experienced in the law. However during litigation I had been denied adequate access to the legal material needed and ¹ A former A.D.C. Captain ² Terry v. Dylus 2:20cv30 DN 100-4

a prisoner~~s~~ with no legal education this was a great need in understanding the Fed.R.Civ.P. and Fed.R.Evid. as well as the Eighth Circuit Local Rules. I did not know even simple legal dictions of words, which may differ greatly in legal matters, as I was denied access to Legal Dictionary. See also Terry v. Kelly et.al 2:20-cv-42-DPM. Several cases I even had to close, learn, balance time, and refile. The pursuing was no painless cake walk and nothing close to a "holiday in court" for me and was not expected to be.

Documentation reflects that an urine analysis had been given to Mr. Ughaja, DN.103 pg 25 and surveillance footage was not originally sent with investigation. ~~DN 103 pg 29~~ report package DN.103 pg 29. Mr. Terry could not investigate these fact as I did not understand how to bypass obtaining this legal evidence and files being a breach of security (Human Resource Files and Unit Personnel Files). Mr. Terry personally knowing Mr. Ughaja as a ill-tempered drunkard I know that accessing these files and investigating all surveillance footage with adequate counsel more than enough material would be available for the record to create a genuine dispute, and/or convince a jury of Eighth Amendment violation. Wherefore I believe my First and Fourteenth Amendments were violated by The District Court and the Court of Appeals for the Eighth Circuit have NOT cared for this miscarriage of justice, or it was overlooked.

United States Magistrate Judge J. Thomas Ray should have recused as Mr. Ray failed to remain and unbias and fair to Mr. Terry being a prisoner.

A bias has already been created through the assumption that prisoners file suits to enjoy a "holiday in court" see Crawford-El v. Britton. U.S. Magistrate J. Thomas Ray has allowed the

Respondents to deny Mr. Terry full disclosure of surveillance footage and agreed that partial viewing was alright DNs 84 and 92. being unfair to Mr. Terry. When deciding on the motion of summary judgement The District Court had been one-sided and bias against Mr. Terry when U.S. Magistrate J. Thomas Ray balantly overlooks and failed to consider the comments made by Mr. Ugbaja during the May 11, 2020 incident, the fact Mr. Terry had been handcuffed and not a physical threat, and Mr. Ugbaja had went as far as fabricate evidence and falsify documentation to justify his actions of excessive force and cruel punishment. See DN 163 pg 12 ¹. As opposed to the ~~balant~~ determination that Mr. Terry had balantly contradicted the record, Mr. Ugbaja had definitely contradicted the ~~balantly~~, if not repulsively. Mr. Ugbaja had been plainly incompetent and not entitled to qualified immunity.

For said reasons Mr. Ray should have recused himself as he failed to remain impartial and had a bias against Mr. Terry, being a prisoner whom suffered a great deal of demise while incarcerated at E.A.R.U. Max. I can't help that official take advantage of my weakness, meekness, and lack of support. Mr. J. Thomas Ray should have recused himself pursuant to 28 U.S.C.A § 455(a) and (b)(1)² as a matter of law and the Court of Appeals should decided this to be an injustice towards Mr. Terry, however the Court of Appeals denied jurisdiction. Writ of certiorari must be granted pursuant Supreme Court Rule, Part III (10)(a).

¹ False documentation demonstrates deliberate action see Green v. Branson 108 F.3d 1296 (10th Cir. 1997)

² See Code of Judicial Conduct of Arkansas Rules 1.1, 1.2, 1.3, 2.2 and 2.3. I greatly Mr. Ray had been unfair and bias due to ~~past~~ judicial complaint during relevant 42 U.S.C.A § 1983 see JCP-08-21-90066

CONCLUSION

The petition for a writ of certiorari ~~mandamus~~ should be granted.

Respectfully submitted,

Jakell Jerry

Date: August 16, 2024