

No. 17-6070

IN THE
SUPREME COURT OF THE UNITED STATES

GLENDAL RHOTON -- PETITIONER

VS.

RICHARD BROWN-- RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SEVENTH CIRCUIT COURT OF APPEALS

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION

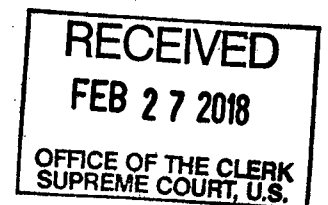
Glendal Rhoton, #110746

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QUESTION PRESENTED

The District Court mandated that all prisoner communications to and from the court be transmitted via the E-Filing system. The prison's legal librarian is the custodian of the E-Filing system and thus serves simultaneous functions as an agent of both the Court and the adverse party, i.e., the Warden. Does the legal librarian's 7-month delay in notifying Rhoton of the District Court's Order denying his Petition for a Writ of *Habeas Corpus* constitute an extraordinary circumstance to permit him to seek a certificate of appealability from the Seventh Circuit Court of Appeals?

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
TABLE OF AUTHORITIES.....	iv
STATEMENT OF THE CASE	1
RESPONSE TO RESPONDENT’S REASONS FOR DENYING THE WRIT.....	3
CONCLUSION	7

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<i>Breithaupt v. Abram</i> , 352 U.S. 432 (1956)	6-7
<i>Lassiter v. Department of Social Services</i> , 452 U.S. 18 (1981)	6-7
<i>Maples v. Thomas</i> , 132 S.Ct. 912 (2012)	7
<i>Matthews v. Eldridge</i> , 424 U.S. 319 (1976)	6-7
<i>Procunier v. Martinez</i> , 416 U.S. 396, 94 S.Ct. 1800 (1974)	3
<i>U.S. v. Mikhel</i> , 552 F.3d 961 (9 th Cir. 2009)	3

STATEMENT OF THE CASE

Glendal Rhoton is currently incarcerated at the Wabash Valley Correctional Facility in Carlisle, Indiana. Following proper exhaustion of his issues, Rhoton filed a Petition for a Writ of *Habeas Corpus*, which was denied in July 2016. (Ex. B). Pursuant to an order issued by the District Court, Rhoton was required to submit all communications to the District Court via the E-File system. The prison's legal librarians function as the gatekeepers to the E-File system. Thus, the prison's legal librarians are simultaneously an agent of the Court and an agent of the adverse party, i.e., the Warden. The prison will not mail any letters or parcels to a District Court. If submitted to the mailroom for mailing, the prison returns the letter/parcel with a note stating that the correspondence must be E-Filed. Thus, prisoners have no means of communicating with the Court except through the adverse party. The Respondent is still required to serve prisoners via the United States Mail; however, court orders are sent via the E-File system.

In this case, Rhoton's petition was denied in July 2016. (Ex. B). Despite diligence efforts to check the status of my case through the appropriate legal librarian, Rhoton did not receive the ORDER denying his Petition for a Writ of *Habeas Corpus*, and the legal librarian refused to even check the docket for him.¹ After persistent complaints, Rhoton was able to obtain indirect permission to request a certificate of appealability from the District Court, based on the fact that the legal librarian did not provide a copy of the order of denial and would not check on the status of his case. (Ex. F). Jennifer Theobald, Staff Attorney Case Administrator of the United States District Court, indicated that Rhoton could still file an appeal because the prison's legal librarian

¹ This is a common occurrence. Whenever offenders attempt to litigate anything in the District Court from this facility, the adverse party has control of all communications with the Court and actively frustrates prisoners attempts to meet deadlines, communicate with the court, or receive copies of orders and filings. The District Court has seriously erred in giving such absolute control to the adverse party.

failed to notify him of the order. (EX. F). Rhoton was told to E-File his Request for a Certificate of Appealability, and it would be permitted as a late filing. (Ex. F).

Because Rhoton was specifically notified to E-File, he did not request an extension of time. However, Rhoton subsequently made a request for an extension of time due to the complete lack of notification of the ruling in his case. Rhoton contemporaneously filed his Designation of Pleadings, Notice of Appeal, Docketing Statement and Transcript Information Sheet along with the extension. Upon docketing the appeal, the Seventh Circuit Court of Appeals ordered him to file a jurisdictional memorandum on or before April 13, 2017. On April 12, 2017, Rhoton submitted his jurisdictional memorandum to prison officials for placement in the United States Mail along with a Transaction Form to deduct the postage from Rhoton's Trust Fund Account.²

Instead of placing the material in the United States Mail, it was sent to the law library for E-Filing. The legal librarian returned the material to Rhoton along with a memorandum stating that the facility did not E-File to the Court of Appeals and that Rhoton only needed to send one (1) copy to the Court via United States Mail. Rhoton immediately submitted the materials to prison officials for placement in the United States Mail.

The prison's legal librarians made no attempt to facilitate timely filings. They refused to send passes to accommodate filing deadlines. The mailroom will not mail any parcel going to the District Court and often reroutes mail going to this Court. The District Court's MANDATE for E-Filing has given prison officials total control over prisoners' ability to communicate with courts, which is denying Rhoton and many others from being able to comply with deadlines.

Once Rhoton was able to get the required jurisdictional memorandum filed and show cause for the delay in seeking to appeal, his appeal was dismissed for a lack of jurisdiction.

² The Seventh Circuit Court of Appeals is not included in the District Court's mandate to use the E-File system.

Essentially, the Seventh Circuit Court of appeals indicated that his failure to file a timely Notice of Appeal prevented him from appealing.

REPLY TO RESPONDENT’S REASONS FOR DENYING THE PETITION

The Respondent maintains that “it is not readily apparent what the prison law library actually did, and at most he raises an underdeveloped issue.” (Opp. Br. p. 2).³ Rhoton believes that the initial petition presents a fact pattern that parallels practices, which have historically been condemned by this Court.

For instance, this Court has declared that “[r]egulations and practices that unjustifiably obstruct the availability of professional representation or other of the right of access to the courts are invalid.” *Procunier v. Martinez*, 416 U.S. 396, 419, 94 S.Ct. 1800 (1974);⁴ *See also, U.S. v. Mikhel*, 552 F.3d 961, 963-964 (9th Cir. 2009).⁵ This Court has also struck down a prison rule that allowed prisoners to file only those legal papers that prisoners and parole officials determined were “properly drawn”, *Ex parte Hull*, 312 U.S. 546, 549, 61 S.Ct. 640 (1941), and another rule forbidding prisoners to get help from other prisoners if there is no other way to get legal assistance. *Johnson v. Avery*, 373 U.S. 489, 490, 89 S.Ct. 747 (1969).

This case presents a modern-day version of *Ex parte Hull*, *supra*. I *Hull*, this Court found the practice of screening legal filings by prison officials to be inherently unconstitutional. The Seventh Circuit District Court’s issuing an order that gives the adverse party complete control over prisoners’ communications with the Court has created an unconstitutional practice similar to the one prohibited in *Hull*.

³ Rhoton will be using “Opp. Br.” as his citation to the Brief in Opposition filed by the Respondent.

⁴ Striking down a rule barring attorneys from using students and paraprofessionals to conduct prisoner interviews

⁵ Striking down “Special Administrative Measures” barring use of translator at interviews and barring public defender’s investigator from meeting with criminal defendant without an attorney or paralegal present.

Before proceeding further, Rhoton would like to note some of the critical facts that Respondent did not deny in the lower courts and has not denied in the Brief in Opposition:

1. That General Order 2013-1, 1:13-mc-0056 RLY, issued by Judge Richard Young, gives prison officials complete control over prisoners' communications with the Court.
2. The District Court's mandating the use of E-Filing gives prison authorities complete control over a prisoner's ability to communicate with the courts.
3. That, pursuant to this Order, the prison's legal librarian acts has a conflict of interest, acting simultaneously as an agent of the Court and an agent of the adverse party to the action.
4. That the prison legal librarians are not neutral parties because they serve at the discretion of the Warden and, therefore, their loyalties are to the Warden since their livelihoods depend upon it.
5. That the practice at the Wabash Valley Correctional Facility has been to actively obstruct the E-Filing process.
6. That Rhoton constantly sought updates on the status of his case. The prison's legal librarian would not check the docket or provide reasonable access to whether or not rulings have been made.
7. That whenever prisoners attempt to litigate anything in the District Court from this facility, the legal librarians abuse their control of all communications with the Court and actively frustrate prisoners' attempts to meet deadlines, communicate with the court, or receive copies of orders and filings.

8. That prison officials will not mail any correspondence to the District Court.
9. That Rhoton's correspondence to the District Court was returned to him without being processed by the prison's mailroom.
10. That in an email-conversation with Staff Attorney, Case Administrator, Jennifer Theobald, informed Hinton that Rhoton could still file an appeal.

Rather, the Respondent argues that there are no exceptions precluding the dismissal of Rhoton's appeal, for any reason. (Opp. Br. P. 3). The Respondent faults Rhoton for lacking diligence and not requesting a copy of the docket within 180 days of the judgment. (Opp. Br. P. 4). However, the Respondent fails to consider the most crucial fact about this case: Rhoton was unaware that a judgment had been made and the gatekeeper to that information precluded him from finding out.

The District Court made the prison's legal librarians the gatekeepers to all communications to the Court with the issuance of General Order 2013-1, 1:13-mc-0056 RLY. The Court has thus transformed an agent of the adverse party into a surrogate clerk of the court. However, the gatekeepers to the courts refuse to provide reasonable access to the information requested. Prisoners are thus powerless to adhere to deadlines.

The Respondent argues that this Court has no authority to correct tacitly admitted, unconstitutional practices because there must be strict adherence to a statute that does not contemplate a situation such as the presented here. (Opp. Br. p. 2). The Respondent asks this Court to fault Rhoton for not adhering to timeframes that he was precluded from meeting because he could not obtain the necessary information or get adequate access to the law library

and/or the courts. (Opp. Br. p. 3). The Respondent asks this Court to reduce due process of law to a mere privilege that can be capriciously discarded.

The right to due process is derived from the Fifth and fourteenth Amendments of the United States constitution. The Fifth Amendment reads, in pertinent part, that “[n]o person shall be deprived of life, liberty or property without due process of law....” The Fourteenth Amendment provides that “[n]o state shall... 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.”

This Court has written that ‘the fundamental fairness requirement of due process is the opportunity to be heard at a meaningful time and *in a meaningful manner*.’ *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976) (emphasis added). This definition should be considered in the context of earlier precedent. In *Breithaupt v. Abram*, 352 U.S. 432 (1956), for example, the honorable Justice Clark endeavored to explain the labyrinth of the due process test as follows:

[D]ue process is not measured by the yardstick of personal reaction... of the most sensitive person, but by the whole community sense of ‘decency and fairness’ that has been woven by common experience into the fabric of acceptable conduct. It is on this bedrock that this court has established the concept of due process.

This Court has also stated the following:

For all its consequence, “due process” has never been, and perhaps can never be, precisely defined. “[U]nlike some legal rules, this court has said due process “is not a technical conception with a fixed content unrelated to time, place and circumstances.” *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895, 6 L.Ed. 2d 1230, 81 S.Ct. 1745. Rather, the phrase expresses the requirement of “fundamental fairness,” a requirement whose meaning can be as opaque as its importance is lofty. Applying the Due process Clause is therefore an uncertain enterprise, which must discover what “fundamental fairness” consists of in a particular situation by first considering any

relevant precedents and then by assessing the several interests that are at stake.

Lassiter v. Department of Social Services, 452 U.S. 18 (1981).

Rhoton believes that he was not afforded that “sense of decency and fairness” that should be afforded to *all* litigants, not just those litigants who are represented by counsel. The District Court’s General Order 2013-1, 1:13-mc-0056 RLY transformed the adverse party into the gatekeeper to the courts. The conflict of interest is obvious and created a situation where Rhoton was denied fundamental fairness. He was denied “the opportunity to be heard at a meaningful time and in a meaningful manner.” *Matthews v. Eldridge*, 424 U.S. at 333 (1976).

Finally, the Respondent argues that *Maples v. Thomas*, 132 S.Ct. 912 (2012) is distinguishable from this case because it only addressed a missed notice of appeal deadline in the context of procedural bar. However, the principles of due process and fundamental fairness are the same. In *Maples*, this Court ruled that the claim could proceed based upon extraordinary circumstances. A similar ruling should be made here. The District Court created this situation by issuing General Order 2013-1, 1:13-mc-0056 RLY. The Staff Attorney, Case Administrator informed Rhoton that he could still file his appeal via E-File. Yet, Rhoton’s appeal was dismissed. Rhoton requested an extension of time to file the Notice of Appeal with the District Court; however, the District Court never ruled on that motion.

CONCLUSION

The Respondent asks this Court to ignore the type of inherent unconstitutionality of the practices at the Wabash Valley Correctional Facility specifically condemned by this Court in *Ex part Hull*. The Respondent asks this Court to ignore the reasons Rhoton was unable to timely file his Notice and blindly adhere to a statute that does not envision the extraordinary circumstances

before this Court. The Petitioner believes that proceeding in such a manner would lead to an absurd result that would encroach on the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. The Petitioner asks this Court to consider the circumstances in this case and to restore the due process and fundamental fairness that he was deprived by the inherently unconstitutional practices at the Wabash Valley Correctional Facility.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Glendal Rhoton
Glendal Rhoton

Date: FEBRUARY 19th, 2018