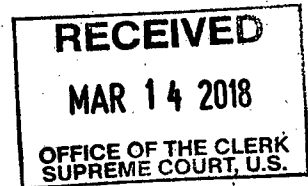


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SUPREME COURT OF THE UNITED STATES
U.S. SUPREME COURT BUILDING
1 FIRST ST. N.E.
WASHINGTON, DC 20543

March 1, 2018



RE: McMillian v. Onondaga
Appellate DKT. #15-1128
Rule 13(5) Extension Request

Your Honor:

The undersigned respectfully submits this letter pursuant to Rule 13(5), to request an extension of 30 days time to file a Petition for Certiorari, based upon good cause and extraordinary circumstances. The court's jurisdiction arises from 28 U.S.C 1254.

The judgment of which certiorari is sought for review was entered in the Court of Appeals for the second Circuit on Dec. 11, 2017 and is enclosed herewith.

This case involves questions of national importance on the issues of bodily privacy, attorney consultation and the medical & mental health treatment / information of pretrial detainees. There has been a considerable amount of other civil suits (some of which are still pending) based on these important issues. Yet, the lower court's have been conflicted on the appropriate standards to apply to these matters and should compell the court to grant certiorari.

Here, the issues arise in context of extreme conditions of a suicide watch imposed upon detainees at the Onondaga County jail

in Syracuse New York. Namely the manner / location of those watches which are conducted in common areas of the jail and in essence put detainees on display in a zoo like fashion to 50+ people (male and female), while they are nude, partially nude and performing bodily functions.

Equally disturbing is that detainees are held in cold and barren cells constructed of steel and concrete and forced to walk barefoot and sleep on bare metal slabs, with no blanket or bedding, toiletries, soap, deoderant, books, magazines of any kind or their legal papers. These conditions are further exacerbated by the fact that those detainees are not allowed any form of recreation or any contact with family or friends. Other blanket policies associated with these watches further require the detainees to openly consult with their attorneys and medical / mental health staff in the full audience of other detainees, civilians and deputies.

Do these type of condition(s) really reflect contemporary standards of decency recognized by a civilized society or offend the very fundamentals of our constitution? Similar conditions were found to be constitutionally offensive, as far back as 30 yrs ago and more recently by other courts. i.e.:

Wright v. McMann, 460 F.2d 126, 129 (2 cir. 1972), finding an Eighth Amend. violation, where inmate was confined for eleven days, naked, without soap, towels or toilet paper, without bedding of any kind forcing inmate to sleep on floor;

McCray v. Burrell, 516 F.2d 357, 367 - 69 (4 cir. 1975), finding violation, where inmate was confined two days and forced to sleep on concrete slab, with no blanket, mattress or clothing;

Kimbrough v. O'Neil, 523 F.2d 1057 (7 cir. 1975), finding a violation where inmate held for three days without mattress, bedding or blanket.

Wilson v. City of Kalamazoo, 127 F.supp2d 855 (WD Mich 2000), violation of bodily privacy found where detainees were subject to viewing by opposite sex, with limited exposure of 16 - 18 hrs;

Shroff v. Spellman, 604 F.3d 1179, 1191 (10 cir. 2010), finding violation of bodily privacy where arrestee was required to expose her breasts to a female cadet, while she performed the bodily - function of breast feeding her baby;

Kent v. Johnson, 821 F.2d 1220, 1222 (6 cir. 1987).

Rushing v. Wayne County, 436 Mich. 247 (1990), finding violation of pretrial detainees privacy rights when she was kept in a semi naked state for 4 days and exposed to unnecessary observation by members of the opposite sex;

Here, as the lower court's opinion reflects (pg. 6) not one of the issues was even fully addressed, but side stepped as follows:

"we have considered all of McMillian's remaining - arguments (including those relating to additional discovery and sanctions) and conclude that they are without merit."

Noteably, the only aspect of the watch actually addressed by the lower court had been whether or not it was retaliatively - imposed as contended by the Petitioner and the court found that it was not (pgs. 3 - 5). Yet, regardless of whether the watch had been retaliatively imposed or not, wouldn't the manner and location of the watch still be subject to constitutional scrutiny?

Moreover, the lower court seems to have ignored standards set by this court in seminal cases such as Bell v. Wolfish 441 U.S. 520 (1979)(analyzing the reasonableness of strip frisks to include the manner and location of the frisk); or Turner v. Safely, 482 U.S. 78, 89 (1999)(addressing the factors to consider in analyzing prison regulations that impinge upon or restrict a prisoner's - constitutional rights to include: the valid rational connection between the regulation and legitimate interest put forward to justify it, the alternative means of exercising the right that remain open to the prisoner and existence of ready alternatives.

In Fact, one New York District Court faced with similar issues by a pretrial detainee in association with a watch, utilized the more stricter standards of *Sandin v. Conner*, 515 U.S. 472 (1995) and found that those conditions posed an atypical and significant hardship under the Eighth Amendment. See *Houston v. Cotter*, 2016 WL 1253391 (EDNY). The foregoing examples of case authority are just a few that were randomly selected to illustrate the disparity on a few of the issues in point.

Ultimately, by extending the time to allow this petitioner the opportunity to present his petition for certiorari would give this court the platform to address the constitutional questions - of these issues faced by pretrial detainees in context of suicide watches (bodily privacy, attorney consultation, medical and mental treatment and information and deprivations).

To ignore these conditions however, that other courts have have found to be offensive 30 years ago and to allow them as being acceptable to the evolving standards of todays society would allow the regression of those fundamental rights which are most precious to our human dignity. It is therefore at the mercy of this court that in observing the already limited constitutional protections a pretrial detainee retains during his or her detention awaiting a trial, that these serious questions of public importance could be addressed to provide the lower courts with much needed guidance.

The petitioner is an incarcerated litigant who is indigent and has up to this point been proceeding pro se. He is currently confined at the Wende Correctional Facility in upstate New York and as a result of his incarceration is required to participate in job and program assignments that takes away from the limited amount of time he actually has to research and draft his petition. This case involves a large number of documents (over 600 pages), as well as varying issues and extensive case authority and the petitioner has never before petitioned for certiorari.

In the past 60 days the petitioner has been further engaged in litigation of three other matters yielding deadlines within the

90 day period of time he had to file his petition. The petitioner is therefore faced with a perplex dilemma because of his situation that in essence would force him to make a choice of pursuing one - legal matter over the other. Simply because of the time restraints and due to no fault of his own.

It is therefore based on these foregoing reasons and the serious importance of the issues sought for review that a brief extension of 30 days to April 10, 2018 in which to file a petition for certiorari be granted.

As required a copy of this letter is likewise being sent to Carol L. Rhinehart at the Onondaga County Dept. of Law, who was the attorney of record for the Respondent County of Onondaga.

The court's time and attention to this matter is as well greatly appreciated.

RESPECTFULLY,



FREDERICK MCMILLIAN, Pro Se

cc: Rhinehart
file