

No. 18-7280

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Supreme Court, U.S.
FILED
OCT 09 2018
OFFICE OF THE CLERK

MICHAEL JAMES WAPPLER — PETITIONER
(Your Name)

vs.

WAYNE IVEY, ET AL., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT, MIDDLE DIST., FLORIDA.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MICHAEL JAMES WAPPLER
(Your Name)

860 CAMP ROAD
(Address)

CD COA, FLORIDA 32927
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

WAS PETITIONER, AN INDIGENT PRETRIAL DETAINEE, PREVENTED FROM CHALLENGING PRETRIAL CONDITIONS OF CONFINEMENT BY THE IMPROPER ASSESSMENT OF A "STRIKE" (UNDER THE 3-STRIKES RULE, 28 U.S.C. § 1915(G)) CONTRARY TO THE CONSTITUTION OF THE UNITED STATES FIRST AMENDMENT PETITION CLAUSE AND/OR FOURTEENTH AMENDMENT DUE PROCESS CLAUSE?

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:

1. WAYNE IVEY
2. MAILROOM SUPERVISOR
3. LAW-LIBRARY SUPERVISOR
4. OFFICER HATTON
5. OFFICER BISBEE
6. BREVARD COUNTY FLORIDA, A POLITICAL ENTITY OF THE STATE OF FLORIDA
7. BREVARD COUNTY COMMISSIONERS.

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

NONE CITED

STATUTES AND RULES

TITLE 28 U.S.C. § 1915(a)

3, 15, 17, 18.

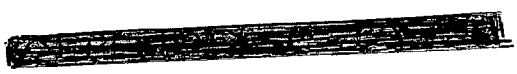
OTHER

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APPENDIX C	→ ORDER DENYING MOTION FOR RELIEF FROM JUDG- MENT AND ORDER - NOTE ONLY ONE (1) PAGE AVAIL- ABLE, DOCUMENTS DESTROYED-LOST BY JAIL OFFICIALS. * <u>ONLY PARTIAL DOCUMENT AVAIL. 6:18-CV-479-</u>
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APPENDIX F	



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 _____ to the petition and is

N/A NO OPINIONS

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 is unpublished.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 _____ 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 SEPTEMBER 21, 2018 *

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).

* CASE NO. 6:18-CV-492, AND SISTER CASE NO. 6:18-CV-1027, ASSIGNED APPEAL NUMBERS 18-13204, AND 18-13205, WERE DISMISSED BY OPERATION OF ELEVENTH CIRCUIT RULE 42-1 (b). PETITIONER NEVER RECEIVED A WRITTEN ORDER - FINAL ORDER FOR APPEAL NO. 18-13204. (SEE AFFIDAVIT REGARDING ATTEMPTS TO OBTAIN FINAL ORDER). NOTE: AFTER THIS HANDWRITTEN PETITION PREPARED, PETITIONER RECEIVED ORDER OF "ENTRY OF DISMISSAL OF APPEAL" No. 18-13205-J- EFFECTIVE SEPT. 21, 2018.

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

AMENDMENT I

CONGRESS SHALL MAKE NO LAW...
ABRIDGING THE FREEDOM... TO PETITION
THE GOVERNMENT FOR A REDRESS
OF GRIEVANCES.

AMENDMENT V

NO PERSON SHALL BE DEPRIVED OF...
LIBERTY OR PROPERTY, WITHOUT DUE
PROCESS OF LAW.

TITLE 28 U.S.C. § 1915(G)

IN NO EVENT SHALL A PRISONER BRING A
CIVIL ACTION OR APPEAL A JUDGMENT IN
A CIVIL ACTION... UNDER THIS SECTION IF THE
PRISONER HAS ON 3 OR MORE PRIOR OCCAS-
IONS WHILE... DETAINED IN ANY FACILITY,
BROUGHT AN ACTION OR APPEAL IN ANY COURT
OF THE UNITED STATES THAT WAS DISMISSED
ON THE GROUNDS THAT IT IS FRIVOLOUS,
MALICIOUS OR FAILS TO STATE A CLAIM UPON
WHICH RELIEF MAY BE GRANTED.

STATEMENT OF THE CASE

1. PETITIONER IS A CITIZEN OF THE UNITED STATES OF AMERICA BORN IN GROSSE POINT MICHIGAN IN 1960.
2. ON NOVEMBER 7, 2017, IT IS ALLEGED PETITIONER WHO WAS A DIRECTOR AND BLOCK WATCH CAPTAIN OF THE CATALINA ISLES HOMEOWNERS ASSOCIATION IN MERRITT ISLAND FLORIDA, USED A FIREARM TO EJECT THE NEXT DOOR RENTAL DWELLING "GUESTS" WHO WERE ON PETITIONERS PROPERTY THREATENING HIM FOR REPORTS OVER 3 YEARS CONCERNING THE METHAMPHETAMINE OPERATION. TO POLICE.
3. BECAUSE PETITIONER IS ADMITTEDLY A CONVICTED** HE WAS ARRESTED FOR ALLEGEDLY BEING IN POSSESSION OF A FIREARM AND ALLEGEDLY ASSAULTING BY POINTING THE FIREARM - CHARGES PETITIONER DISPUTES AS REPORTED.
4. PETITIONER WAS SUBSEQUENTLY LODGED AT THE THE BREVARD COUNTY JAIL AS A PRETRIAL DETAINEE PENDING TRIAL ON SIX CHARGES - BEING A FELON IN ALLEGED POSSESSION OF A FIREARM, AND ALLEGEDLY IN ONE INCIDENT, POINTING THE FIREARM AT FIVE PERSONS.
5. PETITIONER WAS IMMEDIATELY HOUSED AT THE JAIL WITH SENTENCED PRISONERS SERVING PUNITIVE SENTENCES AND THUS BEING PUNISHED ALONG WITH THEM,

* A DULY AUTHORIZED FLORIDA CORPORATE ENTITY.

** PETITIONER ADMITS TO BEING A CONVICTED FELON.

DESPITE THE FACT PLAINTIFF-PETITIONER IS A PRETRIAL DETAINEE AND CANNOT BE PUNISHED OR HELD UNDER INHUMANE CONDITIONS THAT CONSTITUTE PUNISHMENT.

6. PETITIONER KNOWS IT IS ILLEGAL, IN VIOLATION OF HIS FOURTEENTH AM. FEDERALLY SECURED CONSTITUTIONAL RIGHTS UNDER THE DUE PROCESS CLAUSE, FOR RESPONDENTS TO SUBJECT HIM LONG-TERM^{*} TO PUNITIVE CONDITIONS INCLUDING BY IGNORING NEED FOR MEDICAL REASONS^{**} NOT TO HOUSE HIM IN AN UNMONITORED CELL WITHOUT AN EMERGENCY CALL INTERCOM, AND BY HOUSE HIM IN TRIPLE BUNKED SMALL 8 1/2" x 11" CELLS ALONG WITH (2) TWO OTHER CONVICTED SENTENCED PRISONERS IN LOCKED-DOWN CELLS PUNITIVE STATUS FOR OVER (11) HOURS DAILY WITH DANGEROUS MENTALLY-ILL PRISONERS, AND DENIED DAILY OUT OF CELL TIME OUTDOORS FOR FRESH AIR AND DENIED TO EVEN LOOK^{***} OUTSIDE.

7. PETITIONER LIKELIKE KNOWS IT IS ILLEGAL FOR DEFENDANT-RESPONDENTS TO COMPLETELY DENY HIM ACCESS TO A LAW LIBRARY OR CRIMINAL LEGAL INFORMATION INCLUDING BY PREVENTING RECEIPT OF FIRST CLASS MAIL AND NOT PROVIDING A LAW-LIBRARY OR ANY

* PETITIONER CONFINED 330 DAYS TO DATE
** SUBJECTING PLAINTIFF TO THREAT OF IMMINENT HARM DUE TO LIFE THREATENING MEDICAL CONDITION.
*** ALL WINDOWS ARE COVERED VIEWS OBSCURED.

CRIMINAL LEGAL INFORMATION WHATSOEVER DUE TO A
"POST CARD ONLY" INCOMING MAIL POLICY AND POLICY RE-
QUIRING DETAINEES TO GET ALL LEGAL INFORMATION IF
INDIGENT FROM COUNTY APPOINTED ^{*}PUBLIC DEFENDERS.

8. ON FEBRUARY 27, 2018, IN A FUTILE ATTEMPT
TO SEEK REDRESS, SEEKING DECLARATORY AND INJUNC-
TIVE RELIEF, PETITIONER FILED A LABORIDOUSLY HAND-
PRINTED COMPLAINT ^{**}UNDER TITLE 42 U.S.C. § 1983
WITH THE U.S. DISTRICT COURT IN ORLANDO, FLORIDA,
THAT WAS DISMISSED ON MARCH 9, 2018, WITHOUT
PREJUDICE TO "GIVE PLAINTIFF THE OPPORTUNITY TO
PROPERLY FILE A CIVIL RIGHTS COMPLAINT" USING THE
PROPER FORM "ADDRESSING UNRELATED CLAIMS IN SEP-
ARATE COMPLAINTS. NO. 6-18-CV-00290-GKS.

9. ON APRIL 27, 2018, PETITIONER SEPARATED HIS
CLAIMS AND FILED THE FIRST OF TWO CIVIL RIGHTS COMPLA-
INTS (NO. 6-18-CV-661-ORL) AGAINST THE SHERIFF, MAIL-
ROOM AND LAW-LIBRARY SUPERVISORS CONCERNING THE
"POST-CARD ONLY" NO FIRST CLASS MAIL POLICY, AND POL-
ICIES PREVENTING ACCESS TO ANY CRIMINAL LEGAL IN-
FORMATION WHATSOEVER IF A PUBLIC DEFENDER IS

* MAKING THE TRIAL-PROCESS LITTLE DIFFERENT
THAN THE PROCESS PROVIDED BY STATES SUCH
AS CHINA AND NORTH KOREA.

** WHICH PETITIONER ASKS THE COURT TO DEEM INCLUDED
HEREWITH.

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65d42ca9ae4d037f34a683c865ef628524ac2a326b29384c0]]

ASSIGNED OR ANY CIVIL LEGAL INFORMATION WITHOUT A CURRENT VALID CIVIL CASE NO. ACTING IN TANDUM, RESPONDENTS POLICIES CONTINUE TO PREVENT ACCESS TO ANY CRIMINAL LEGAL INFORMATION UPON WHICH TO BASE HIS DECISION TO PLEAD GUILTY AS RECOMMENDED BY THE PUBLIC DEFENDER OR PROCEED TO TRIAL. THE LACK OF A ACTUAL LAW LIBRARY COMBINED WITH THE INABILITY TO RECEIVE FIRST CLASS MAIL-LEGAL INFORMATION MAILED TO PETITIONER LEAVES PETITIONER HELPLESS.*

10. BEGINNING IN NOVEMBER, 2017, PETITIONER REQUESTED FROM RESPONDENTS, THE PUBLIC DEFENDER, AND FRIENDS, THE TWO STATUTES HE IS CHARGED UNDER, FLA. STATS 784.021 (AGGRAVATED ASSAULT) AND 790.23 (FELLOW POSSESSING FIREARM), WHICH RESPONDENTS DENIED BECAUSE PETITIONER WAS REPRESENTED BY A PUBLIC DEFENDER; THE PUBLIC DEFENDER IGNORED PETITIONERS NUMEROUS REQUESTS (SEE: 6:18-CV-479) AND FAMILY-FRIENDS WERE UNABLE TO MAIL TO PETITIONER DUE TO RESPONDENTS MAIL POLICIES.

* PLAINTIFF SOUGHT TO DISCHARGE APPOINTED COUNSEL TWICE AND SUED COUNSEL FOR DOING NOTHING WHICH WAS DISMISSED, APPOINTED COUNSEL REMAINS ASSIGNED RECOMMENDING GUILTY PLEA FILING NO PRETRIAL MOTIONS SINCE APPOINTMENT, IN NOVEMBER, 2017. 6:18-CV-479.

Cocoa, FL 32927

The following document(s) are associated with this transaction:

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[STAMP dcecfStamp_ID=1069447731 [Date=3/13/2018] [FileNumber=16965568-0]
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b26f460d8907411b96899dfb2ce07eeb965df143c04191d93]]

11. IT WAS NOT UNTIL JUNE 5, 2018, SIX MONTHS AFTER REQUESTING COPIES OF THE CRIMINAL STATUTES (TWO PAGES AVAILABLE FOR FREE TO CITIZENS OVER THE INTERNET) THAT U.S. SENATOR BILL NELSON AFTER BE-MADE AWARE A U.S. CITIZEN COULD NOT READ THE LAWS THE GOVT. CHARGED PETITIONER VIOLATED - PROVIDED PETITIONER WITH THE TWO STATUTES.

12. ON MAY 24, 2018, PETITIONER'S CIVIL ACTION ATTEMPTING TO ADDRESS THE FIRST-CLASS MAIL DENIAL POLICY, AND LACK OF A LAW LIBRARY OR LEGAL INFORMATION WAS DISMISSED WITHOUT PREJUDICE AND ASSIGNED A "STRIKE" AS A PENALTY FOR ALLEGED FAILURE TO HONESTLY INFORM THE COURT ABOUT PRIOR LITIGATION HISTORY IN ERROR AS THE COMPLAINT WAS MERITORIOUS AND IN FACT STATED A CLAIM UPON WHICH RELIEF COULD BE GRANTED. PETITIONER DID DISCLOSE IN/ON THE 1983 FORM HIS PRIOR LITIGATION HISTORY TO THE BEST OF HIS ABILITY TO REMEMBER (INCLUDING IN RESPONSE TO A SHOW-CAUSE ORDER WHICH PROVIDED PETITIONER DID NOT HAVE, COULD NOT REMEMBER, (AND COULD NOT RESEARCH DUE TO NOT HAVING ACCESS TO ANY LEGAL INFORMATION). DISMISSING 6:18-CV-479-ORL - THE DISTRICT COURT CITED A 17 YEAR OLD

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Subject:Activity in Case 6:18-cv-00290-GKS-GJK Wappler v. Law Library Supervisor
et al Order dismissing case
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Middle District of Florida

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Case Name: Wappler v. Law Library Supervisor
et al
Case Number: 6:18-cv-00290-GKS-GJK
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Docket Text:

ORDER dismissing case without prejudice.
The Clerk of the Court is directed to enter judgment in favor of Defendants
and to close this case. Petitioner's Motion for Leave to Proceed In
Forma Pauperis [2] is denied as moot. Signed by Senior Judge G. Kendall
Sharp on 3/13/2018. (SC)

6:18-cv-00290-GKS-GJK Notice has been electronically mailed to:

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Michael J. Wappler
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860 Camp Road

CASE 5:01-CV-60010 (W.D. MICH 2001) THAT PETITIONER (WHO IN FACT HAS MEMORY IMPAIRMENT) HONESTLY COULD NOT REMEMBER BEING 17 YEARS OLD - AND WAS UNABLE TO LOOK-UP DUE TO RESPONDENTS POLICY REGARDING NO ACCESS TO LAW LIBRARY.

13. PETITIONER IN THE INTERIM, FILED A CIVIL ACTION AGAINST THE GOVERNMENT APPOINTED PUBLIC DEFENDER ON MARCH 29, 2018, REGARDING THE FAILURE TO PROVIDE THE TWO REQUESTED STATUTES. TO COMMUNICATE WITH PETITIONER AT ALL, OR ANSWER LETTERS OR PROVIDE ANY SERVICES "TANTAMOUNT TO NO ATTORNEY AT ALL" FAILING TO PROVIDE ANY PRETRIAL MOTIONS WHATSOEVER (TO DATE 11 MONTHS), NO. 6:18-CV-479-PGB-GJK, WHICH WAS DISMISSED ON APRIL 12, 2018. PETITIONER FILED A MOTION FOR RELIEF FROM JUDGMENT AND ORDER, REQUESTING SPECIFICALLY THAT NO "STRIKE" BE ASSESSED AS A PENALTY, AS PETITIONER WAS PREVENTED FROM RESEARCHING THE "COLOR OF LAW" STATUS OF A PUBLIC DEFENDER, AND A FIFTH CIRCUIT COURT OF APPEALS CASE GARDNER V. LUCKEY* DUE TO DEFENDANT-RESPONDENTS LACK OF LAW LIBRARY. THE COURT SPECIFICALLY DECLINED TO EXERCISE JURISDICTION UNDER THE "YOUNGER ABSTENTION DOCTRINE".

* NO CITATION PROVIDED BY COURT.

** MOTION TO PROCEED IN FORMA PAUPERIS DEEMED "MOOT."

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Message-Id:<17590994@flmd.uscourts.gov>
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Case Number: 6:18-cv-01314-RBD-TBS
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Docket Text:

**ORDER denying [6] Motion for relief
from judgment. Signed by Judge Roy B. Dalton, Jr. on 9/17/2018. (JLC)**

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Walter W. Johnson , Jr
Brevard County Jail
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14. ON APRIL 30, 2018, THE HON. PAUL G. BYRON ADDRESSED PETITIONERS MOTION FOR RELIEF FROM JUDGMENT AND ORDER SPECIFICALLY FINDING WITH REGARD TO HIS ORDER OF DISMISSAL THAT "BECAUSE THE COMPLAINT WAS DISMISSED WITHOUT PREJUDICE PRIOR TO THE ASSESSMENT OF A FILING FEE; ^{**}NO PENALTY [STRIKE] WAS ASSESSED," (ORDER APRIL 30, 2018, PP. 2-3, DOCUMENT 8, EMPHASIS ADDED).

15. ACTING IN RELIANCE UPON JUDGE BYRON'S APRIL 30, 2018, ORDER ASSURING PETITIONER THAT NO STRIKE WAS ASSESSED AGAINST HIM IN CASE 6:18-CV-479-ORL AND BELIEVING ONLY 2 STRIKES PETITIONER LABORIOUSLY HAND PRINTED AGAIN HIS CIVIL ACTION CHALLENGING AS UNCONSTITUTIONAL RESPONDENTS POLICIES AND PRACTICES PROHIBITING DETAINEES RECEIPT OF FIRST CLASS MAIL AND ACCESS TO CRIMINAL LEGAL INFORMATION, FILED ON JUNE 15, 2018, ASSIGNED CASE NO. 6:18-CV-942 CEM. (IT SHOULD BE NOTED EVEN CONVICTED STATE AND FEDERAL PRISONERS ARE AFFORDED THESE RIGHTS).

* PLAINTIFF-PETITIONER ONLY HAVE PAGE TWO OF THE ORDER APPENDED

** THE MOTION TO PROCEED IN FORMA PAUPERIS DEEMED "MOOT."

16. ON JULY 2, 2018, THE HON. CARLOS E. MENDOZA DISMISSED PETITIONERS COMPLAINT WITHOUT PREJUDICE ERRONIOUSLY COUNTING JUDGE BYRONS DISMISSAL OF 6:18-CV-479-ORL AS A "STRIKE IN ERROR DESPITE JUDGE BYRONS EXPLICIT DIRECTIVE "NO PENALTY WAS ASSESSED", JUDGE MENDOZA INCLUDED IT IN HIS 3-STRIKES CALCULATION AS FOLLOWS:

STRIKE ONE: 5:01-CV-60010 (2001);

STRIKE TWO: 6:18-CV-479-ORL (4-12-2018);

STRIKE THREE: 6:18-CV-661-ORL (5-23-2018).

17. ON JULY 12, 2018, PETITIONER FILED A "MOTION FOR RELIEF FROM JUDGMENT AND/OR ORDER DISMISSING PLAINTIFFS COMPLAINT WITHOUT PREJUDICE" * SEEKING THAT THE COURT CORRECT ITS ERROR COUNTING 6:18-CV-479-ORL AS A "STRIKE" FOR PURPOSES OF 28 U.S.C. § 1915(G) IN CONTRAVENTION OF JUDGE BYRONS EXPLICIT FINDING IT NOT BE SO INCLUDED IN THE CALCULATION "BECAUSE THE COMPLAINT WAS DISMISSED WITHOUT PREJUDICE PRIOR TO THE ASSESSMENT OF A FILING FEE NO PENALTY [STRIKE] WAS ASSESSED". JUDGE MENDOZA IGNORED THIS CLEAR STATEMENT BY JUDGE BYRON AND DENIED PETITIONERS MOTION FOR RELIEF FROM JUDGMENT

* ERRONIOUSLY DOCKETED AND TITLED AS A "MOTION FOR RECONSIDERATION" [DOCUMENT 5].

AND ORDER ON JULY 17, 2018.

18. ON JULY 27, 2018, PETITIONER FILED A NOTICE OF APPEAL, ORDER AND JUDGMENT DISMISSING THE COMPLAINT.

19. ON AUGUST 8, 2018, THE HON. CARLOS E. MENDOZA KNOWING PETITIONER WAS/IS INDIGENT AND UNABLE TO PAY THE FEE TO FILE THE CIVIL ACTION, ISSUED AN ORDER THAT EFFECTIVELY BLOCKED ELEVENTH CIRCUIT APPELLATE REVIEW OF THE ERROR MISCALCULATING THE 3-STRIKES BY ORDERING THAT PETITIONER "MUST PAY THE \$505.00 APPELLATE FILING AND DOCKETING FEES IMMEDIATELY AND IN FULL RATHER THAN ON AN INSTALLMENT PLAN."

20. ON AUGUST 23, 2018, PETITIONER FILED A NOTICE OF APPEAL FROM THE AUGUST 8, 2018, ORDER BLOCKING THE PETITIONERS APPEAL TO THE ELEVENTH CIRCUIT REQUIRING IMMEDIATE FULL PAYMENT OF \$505.00 FILING FEE THAT JUDGE MENDOZA KNEW PETITIONER COULD NOT PAY DUE TO INDIGENCY.

21. FOR PURPOSES OF JURISDICTION AS TO CERTIORARI OF 6:18-CV-942-CEM, THE APPEAL NO. 18-13204-H WAS DISMISSED BY OPERATION OF 11TH CIR. R. 42-1 (b) ON OR ABOUT AUGUST 16, 2018, THIS PETITION DUE BY NOVEMBER 15, 2018. BOTH PETITIONS COMBINED RELATED TO 6:18-CV-492-CEM AND SISTER ACTION 6:18-CV-1027-ORL APPEAL 18-13205-J, ALSO DISMISSED ON OR ABOUT AUGUST 16,

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Cocoa, FL 32927

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4b4a1c95b03027caacd080b46a2a4ead7063de5928079bf9f]]

2018; ARE TIMELY FILED WITHIN 90 DAYS FROM THE DATE OF A TIMELY FILED PETITION FOR REHEARING:

* AS TO CASE NO 6:18-CV-1027-RDB, THE ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT AND ORDER WAS ENTERED ON JULY 13, 2018;

* AS TO CASE NO. 6:18-CV-942-ORL, THE ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT AND ORDER WAS ENTERED ON JULY 17, 2018.

22. WITH REGARD TO THE SECOND SISTER CIVIL ACTION ON JUNE 28, 2018, IN A SECOND FUTILE ATTEMPT TO SEEK REDRESS BEGGING FOR INJUNCTIVE RELIEF PETITIONER FILED A SECOND LABRIDOUSLY HAND PRINTED COMPLAINT* UNDER TITLE 42 U.S.C. § 1983 ALLEGING RESPONDENT'S VIOLATE (AND CONTINUE TO THE DATE OF THIS PETITION) THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION BY PUNISHING HIM DESPITE THE FACT HE IS A NON-CONVICTED NON-SENTENCED PRETRIAL DETAINEE BEING DETAINED (FOR OVER 11 MONTHS NOW) ONLY FOR PURPOSES OF PRODUCING PETITIONER FOR TRIAL, BEING UNABLE TO POST BAIL, HAVING LOST HIS PARALEGAL BUSINESS (DUE TO THE LENGTH OF PRETRIAL DETENTION). CASE NO. 6:18-CV-1027 RBD

* WHICH PETITIONER ASK THE COURT TO DEEM INCORPORATED HEREWITH.

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Original filename: n/a

Electronic document Stamp:

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[24bddec9f05e4f5cec0f418247b6c58e5d7ae1f1397247c561b0a065edd3217f0214a9b48c4e1c2
0dcf2246421ac8d0cb56dc38bd8391145bd7892d6f3637e59]]

23. PETITIONER IN WAPPLER V. IVEY ET AL, 6:18-CV-1027 CHALLENGES RESPONDENTS POLICY PRACTICE OF "TRIPLE-BUNKING" LONG-TERM, PETITIONER A-NON-CONVIC-^{*}TED PRETRIAL DETAINEE, WITH SENTENCED PRISONERS BEING PUNISHED IN PUNITIVE LOCK-DOWN IN-CELL 11 PLUS HOURS PER DAY CONDITIONS AS PETITIONER IS BEING PUNISHED NECESSARILY ALONG WITH THE CONVICTED PRISONERS.

24. ON JULY 2, 2018, THE HON ROY B. DALTON, JR., DISMISSED PETITIONERS COMPLAINT (6:18-CV-1027) WITHOUT PREJUDICE ERRONEOUSLY COUNTING JUDGE BYRONS DISMISSAL OF 6:18-CV-479-ORL AS A "STRIKE" IN ERROR DESPITE JUDGE BYRONS EXPLICIT DIRECTIVE "NO PENALTY [STRIKE] WAS ASSESSED"; JUDGE DALTON INCLUDED IT IN HIS 3-STRIKES CALCULATIONS AS FOLLOWS:

STRIKE ONE: 5:01-CV-60010 (2001);

STRIKE TWO: 6:18-CV-479-ORL (4-12-2018);

STRIKE THREE: 6:18-CV-661-ORL (5-23-2018).

25. ON JULY 12, 2018, PETITIONER FILED A "MOTION FOR RELIEF FROM JUDGMENT AND ORDER DISMISSING PEAINTIFFS COMPLAINT WITHOUT PREJUDICE" SEEKING THAT THE COURT CORRECT ITS ERROR COUNTING 6:18-CV-479

* AMONG OTHER CONDITIONS AMOUNTING TO PUNISHMENT.

18-13205

1007

Michael J. Wappler
Brevard County Jail - Inmate Legal Mail
860 CAMP RD
COCOA, FL 32927

AS A STRIKE FOR PURPOSES OF 28 U.S.C. § 1915(b) IN CON-
TRAVENTION OF JUDGE BYRON'S EXPLICIT FINDING HIS
DISMISSAL NOT BE INCLUDED IN THE CALCULATION "BEC-
AUSE THE COMPLAINT WAS DISMISSED WITHOUT PREJUD-
ICE PRIOR TO THE ASSESSMENT OF A FILING FEE, NO
NO PENALTY [STRIKE] WAS ASSESSED."

26. AS A FURTHER REASON JUDGES DALTON AND
MENDOZA IMPROPERLY COUNTED JUDGE BYRON'S DISMIS-
SAL AS A "STRIKE" JUDGE BYRON REFUSED TO EXERCISE
JURISDICTION IN CASE NO. 6:18-CV-479 SO THE COURT'S
DISMISSAL IS VOID AND ANY "STRIKE" VOID ALSO? "EVEN
IF THE COURT WERE TO CONCLUDE THAT THE PUBLIC
DEFENDERS... ARE CONSTITUTIONALLY INFIRM AS A
RESULT OF THE DEFENDANTS' FAILURE TO PROPERLY
FUND THEM THIS COURT CANNOT EXERCISE JURISDI-
TION OVER THIS LAWSUIT" ORDER APRIL 12, 2018, PAGE
6, ¶ (b), DOCUMENT 4.

27. ON JULY 13, 2018, JUDGE DALTON DENIED PETIT-
IONERS MOTION FOR RELIEF FROM JUDGMENT AND ORDER
FALSLY STATING PETITIONER [DID] NOT INDICATE WHICH
FEDERAL RULE OF CIVIL PROCEDURE HE RELIES ON... "IGNOR-
ING THE FACT JUDGE BYRON'S DISMISSAL WAS NOT TO
BE COUNTED AS A "STRIKE" PENALTY AND FACT PETITIONER

PLAINLY LISTED ON THE FACE OF THE MOTION THAT RULE 60 IS THE RULE THE MOTION WAS BROUGHT PURSUANT TO.

28. ON JULY 25, 2018, PETITIONER FILED ANOTHER SECOND RULE 60 MOTION SEEKING RELIEF FROM THE JULY 13, 2018, DENIAL OF THE MOTION FOR RELIEF FROM JUDGMENT FROM JUDGMENT AND ORDER ON GROUNDS THE COURT IGNORED THE ISSUE RAISED ENTIRELY CONCERNING IMPROPERLY COUNTING -ASSESSING JUDGE BYRONS DISMISSAL OF 6:18-CV-479 AS A "STRIKE".

29. ON JULY 27, 2018, PETITIONER FILED HIS NOTICE OF APPEAL AS TO THE JUDGMENT AND DISMISSAL DATED JULY 2 2018 (ASSIGNED ELEVENTH CIRCUIT NO. 18-13205) DISMISSED SEPT. 21 2018 FOR "FAILURE TO PAY FILING AND DOCKETING FEES WHICH PETITIONER COULD NOT PAY IN FULL UNDER JUDGE MENDOZA'S AUGUST 8, 2018, THREE 3-STRIKES ORDER THAT "PETITIONER MUST PAY THE \$505... FEES IMMEDIATELY AND IN FULL RATHER THAN ON AN INSTALLMENT PLAN" DUE TO THE IMPROPERLY ASSESSED STRIKE. PETITIONER COULD NOT PAY THE APPELLATE FEES IN FULL AS IS INDIGENT.

30. PETITIONER REMAINS DETAINED IN THE BREVARD COUNTY JAIL OVER 11 MONTHS AS A PRETRIAL DETAINEE AND IS BEING PUNISHED, AND "TRIPLE BUNKED" WITH PRISONERS SERVING PUNITIVE SENTENCES UNDER PUNISHMENT CONDITIONS WITHOUT DUE PROCESS CONTRARY TO THE 14TH AMENDMENT, AND PRAYS FOR A WRIT OF CERTIORARI.

REASONS FOR GRANTING THE PETITION

THE HON. PAUL G. BYRON DECLINED TO EXERCISE JURISDICTION OVER WAPPLER V. LAPOUR, ET AL.,* AND DISMISSED THE ACTION WITHOUT PREJUDICE. PETITIONER SUBSEQUENTLY SOUGHT RELIEF FROM JUDGMENT AND ORDER TO SPECIFICALLY ADDRESS THE ISSUE OF THE DISMISSAL POSSIBLY BEING COUNTED IN THE FUTURE AS A "STRIKE" FOR PURPOSES OF 28 U.S.C. § 1915(G), TO WHICH JUDGE BYRON EXPRESSLY RULED THAT "NO PENALTY WAS ASSESSED," "BECAUSE THE COMPLAINT WAS DISMISSED WITHOUT PREJUDICE PRIOR TO THE ASSESSMENT OF A FILING FEE." **

BECAUSE THE COURT DECLINED TO EXERCISE JURISDICTION IN NO. 6:18-CV-479-ORL, AND STATED "NO PENALTY [STRIKE] WAS ASSESSED," "BECAUSE THE COMPLAINT WAS DISMISSED WITHOUT PREJUDICE PRIOR TO THE ASSESSMENT OF A FILING FEE," THE PETITIONER, WHO IS INDIGENT AND UNABLE TO GENERATE INCOME DUE TO HIS PRETRIAL DETAINÉE STATUS, WAS DENIED HIS FIRST AMENDMENT RIGHT TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES DUE TO THE IMPROPER COUNTING OF A "STRIKE" APPLIED IN THE DISMISSALS IN WAPPLER V.

* ORDER 4/12/2018, DOCUMENT 4, P. 6.

** ORDER 4/30/2018, DOCUMENT 8, P.P. 2-3.

*** TO PAY THE FEE.

IVEY, ET AL., NO'S: 6:18-CV-942-CEM, AND 6:18-CV-6:18-CV-1027-ORL.

PETITIONER, WHO TIMELY ATTEMPTED TO RAISE THE ISSUE HIS FEDERALLY SECURED RIGHT TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES DUE TO THE IMPROPER COUNTING-ASSESSMENT OF THE DISMISSAL AS A "STRIKE" IN 6:18-CV-479 WAS VIOLATED BY IMPROPER* AS A "STRIKE" TO SUPPORT DISMISSAL OF 6:18-CV-942-CEM, AND 6:18-CV-1027-ORL, WAS BLOCKED BY THE SAME THREE STRIKES RULE FROM BEING REVIEWED BY THE ELEVENTH CIRCUIT COURT OF APPEALS.

THE ELEVENTH CIRCUIT COURT OF APPEALS LIKEWISE APPLIED THE "STRIKE" FROM 6:18-CV-479: "THIS COURT HAS DETERMINED THAT THE 'THREE STRIKES' PROVISION OF THE PRISON LITIGATION REFORM ACT IS APPLICABLE TO YOU... THIS APPEAL CANNOT PROCEED UNTIL THE FULL FEES ARE PAID" OR THE APPEAL DISMISSED WITHIN 14 DAYS. BOTH APPEALS OF 6:18-CV-942-CEM AND 6:18-CV-1027-ORL BEING, NO'S: 18-13204 AND 18-13205 WERE DISMISSED.

PETITIONER PRAYS THIS COURT GRANT CERTIORARI.


* APPLICATION

NOTE AFTER PRINTING THIS PETITION AN ORDER DISMISSING APPEAL NO. 18-13205-J, EFFECTIVE SEPT. 21, 2018 WAS RECEIVED BY PETITIONER AND ORDER DATED SEPT. 27, 2018, DENYING MOTION FOR RELIEF FROM JUDGMENT AND ORDER IN CASE NO. 6:18-CV-290-ORL, RECEIVED.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 10/8/2018

THE EFFECTS OF
A SHORT-TERM
INTERVENTION

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1977, Vol. 62, No. 1, 1-10

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