

03-6821 NELSON v. CAMPBELL

Ruling below: CA 11, 347 F.3d 910

QUESTIONS PRESENTED:

- ~~1. Whether an action brought by a death-sentenced prisoner pursuant to 42 U.S.C. § 1983, which does not attack a conviction or sentence, is simply because the person is under a sentence of death to be treated as a habeas corpus case subject to the restriction on successive petitions which categorically precludes review of any constitutional violation not related to innocence (as the Fourth, Fifth and Eleventh Circuits hold), or can be maintained as § 1983 action (as the Sixth, Eighth and Ninth Circuits and several lower courts hold)?~~
- ~~2. Whether a cut-down procedure which involves pain and mutilation, conducted prior to an execution by lethal injection, violates the Eighth Amendment to the United States Constitution?~~

CERT. GRANTED: 12/1/03

Limited to the following question:

Whether a complaint brought under 42 U.S.C. Sec. 1983 by a death-sentenced state prisoner, who seeks to stay his execution in order to pursue a challenge to the procedures for carrying out the execution, is properly recharacterized as a habeas corpus petition under 28 U.S.C. Sec. 2254?