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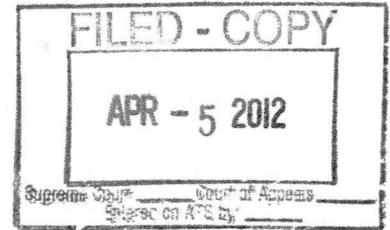
IN THE

SUPREME COURT

OF THE

STATE OF IDAHO



Supreme Court No. 39604

William Gray

Plantiff - Respondent

vs.

Sergeant Kristi Lynch,

warden Terema Carlin

Respondents - Respondents on APPEAL

Appealed from the District Court of the Second judicial district of Idaho, in and for the county of clearwater

Hon Michael Griffin, District Judge

William Gray
Appellant, pro se

William Loomis,
Attorney for respondent - appellee

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Appellant's Brief

Statement of Subject Matter Jurisdiction

The district court had subject matter jurisdiction under I.C. § 19-4201, et seq, as the petition for a Habeas corpus writ involved allegations of unconstitutional confinement. This court has appellate jurisdiction under I.A.R. 11(a)(1), inter alia. The district court entered summary judgement in this action and granted in forma pauperis status on appeal, which confirms such was a final, appealable judgement.

Summary judgement was enteredon 12/23/11, and the appellant filed a Notice of Appeal on or about 1/17/12.

Summary of Issues Presented for Review

1) Does an uncontroverted allegation that a prisoner was confined in a cell full of fecal matter for days, weeks create an "atypical and signifigant" hardship that can invoke a liberty interest and, therefore, due process protections? (Appellant's Brief, Pg 9)

2.) Does a lack of toilet paper to the extent that it causes intestinal problems requiring medical attention create an "atypical and signifigant" hardship? (Appellant's Brief, pg. 18)

3.) Does a condition / practice that is forced on only one group of restrictive housing inmates and no general population inmates within the entire I.D.O.C. create an "atypical and signifigant" hardship? (Appellant's Brief, pp 15-17)

4. Is the fact that the appellant's segregation exceeded that of Scnevers, under conditions much worse, create a genuine issue of material fact? (Appellant's Brief, pp 16-17)

5. Do Idaho state prisoners have a right to substantive due process? (Appellant's Brief, pg. 19)

6. Does a case involving an incarcerated persons property in conjunction with disciplinary proceedings require greater due process protections, since the case involves property and confinement? (Appellant's Brief, pp. 21-22)

Statement of the Case

A. Proceedings Below

This action involves a petition for Writ of Habeas corpus by the appellant, filed pursuant to IC §19-4201, et seq. The petition alleged violation on the part of the named respondents of Idaho Constitutional Article I, Section XIII and the Fourteenth Amendment of the U.S. Constitution, in that they deprived the petitioner-appellant of his due process rights during a disciplinary offense report (DOR) hearing.

The respondent-appellees had their Motion for Summary Judgement granted on 12/23/11 because the court held: That the petitioner failed to state a claim upon which relief could be granted. The appellees filed their motion for Summary Judgement pursuant to I.R.C.P 56.

B. Statement of the Facts

on July 26, 2011, the appellant was issued a D.O.R. for theft over $25 for items that hadn't been yet even introduced into the prison he resided in. (And, thereby, couldn't "steal".)

The D.O.R. alleged the appellant walked into the A-3 dayroom of the Idaho Correctional Institution-orofino (ICI-O) and grabbed a sack of commissary and took it to his cell. It alleged the commisary sack belonged to one inmate Martin.

The appellant was escorted to segregation to be placed on segregation-pending-investigation status on July 22, 2011 by Corporal T Wolff, the author of D.O.R. above described. When placed in segregation, the appellant was placed under the inmate allegedly stolen from. While in the cell placed in, the inmate allegedly stolen from pumped ordure into the appellant's cell for days. Eventually, after days of fecal matter exposure, the appellant was moved to a nearby cell. This though the appellant had specifically apprised numerous prison staff of the exposure previously depicted.

Corporal Wolff, and the A-block Sergeant, Benjamin Gunn, had previously been grieved by the appellant; Wolff was involved with the destruction and dismantling of the appellant's legalwork; Gunn had

ICIO - INDIGENT PAPER

been officially investigated by the office of Professional Services on or about 8/8/11 for misconduct pertaining to the appellant, including but not limited to endangering his physical person.

while in segregation, the appellant was forced to go without toilet paper, which ultimately caused him to require medical treatment in the form of a Magnesium Citrate drink, administered on 8/16/11 by A.R.N.P. (Advanced Registered Nurse Practitioner) Rory York, a Corizon staff member assigned to the ICI-O. In segregation in the ICI-O, and nowhere else in the entire I.D.O.C, (the appellant has resided in the Idaho Maximum Security Institution, Idaho Correctional Center, and Idaho State Correctional Institution, and in the segregation units therein. [redacted]) inmates are given only one roll of toilet paper per week, as opposed to the two given to protective custody inmates, who can physically walk up to officers at times like "chow time", or meal time, and request toilet paper from the place it is stored, when it is available which isn't often.

Also unlike any other I.D.O.C. facility in the I.C.I-O, inmates from P.C. are forced to be "double punished". Inmates housed in P.C. who receive D.O.R.s are placed in segregation first, then in a condition which is so eerily similar to segregation that officers and inmates in the I.C.I-O formally and informally recognize it as an extension of segregation. (Petition for Writ of Habeas Corpus, Pgs 10-12) This is known as Level 1 P.C. As this condition practice is not prevalent or even around elsewhere, it is not related to legitimate penological interests.

The appellant on or about August 18, 2011, when removed from "segregation" on the contested D.O.R, was placed in level-one P.C for approximately 38 days. This, added to the other "segregation" time, exceeds the duration of confinement Schevers, of Schevers v. State, 129 Idaho 573 (1996) endured.

Besides at least 65 days of sentenced "segregation" time, the appellant was ordered to pay restitution for the allegedly stolen items. The items, which hadn't ever been brought by Keefe commissary staff into the prison, the appellant

confined in, had not been verified to be the inmate's allegedly stolen from. Neither had they been signed for. Inmates in I.D.O.C. facilities must sign for commissary items received. No signature means no money is taken off the respective inmate's I.D.O.C. trust fund account. Under I.D.O.C. and Keefe policy, an inmate, to be credited for items purchased, again, must sign for those items; even if the appellant had "stolen" the items as alleged, which couldn't have happened, the inmate stolen from wouldn't have lost any money, and reimbursement would've been improper.

A policy allowing prisoners to have monetary fines imposed on them solely for disciplinary actions without tangible pecuniary value would foster rank corruption among I.D.O.C. staff, in that they'd create revenue from punishing inmates. Indeed, there'd be much incentive to create erroneous D.O.Rs. Such a policy is already condemned by existing I.D.O.C. procedures. (I.D.O.C. Policy 318; App Record 51)

On 12/2/11, the appellant attended a telephonic hearing on matters

pertaining to the above-described, the Honorable Judge Michael Griffin presiding.

It went uncontroverted, Freeman v Idaho Department of Corrections, 2003, 138 Idaho 872 that the appellant had been placed in a cell with fecal matter in it. In fact, the Judge acknowledged this in his official dismissal. (Appellate Record, pg. 204) The uncontroverted allegation was ignored in the preceding Motion for Summary Judgement filed by the appellees.

The appellant had been quite clear in his initial petition for writ of Habeas Corpus that this was one of his "atypical and significant hardship" contentions. The appellees specifically addressed the lesser toilet paper issue, so it's hard to say that they didn't have notice of the argument or of its importance (Appellate Record, p. 174)

The fact of medical treatment went uncontroverted. Freeman; Serrano v Francis, 345 F.3d 1071, 1079 (9th Cir. 2003) The only fact, only by implication, contested was the toilet paper lack. The appellees argued a lack of toilet paper for fourty-five minutes (which the appellant never argued.)

posed no threat (ignoring the medical treatment.) and that PC inmates get two calls per week. The issue never was about what PC inmates got, beyond theirs being the standard for comparison regarding what's proper. Jackson v. Carey, 353 F.3d 750, 755 (9th Cir. 2003)

The appellees argued that the appellant should've filed a petition on the cruel and unusual punishment issue separately, which would've been and is improper. Loomis v. Killeen, 2001, 135 Idaho 607, 22 P.3d 129, review filed, review denied; State v. Doe, 2001, 136 Idaho 427, 34 P.3d 1110. They also argued the appellant failed to exhaust administrative remedies pursuant to IC §19-4209(7). The Judge correctly established that the appellant had exhausted properly.

After examining the available facts, the Judge improperly granted Summary Judgement for the appellees without ordering a evidentiary hearing pursuant to IC §19-4209(7), something he explicitly considered at the "hearing" above-described.

Had such a hearing been conducted, the appellant could've further proved evidence from inmate testimony on, regarding the egregious nature and atypicality of ICI-O segregation, which was repeately indicated to Judge Griffin.

Because of this, the Judge effectively abused his discretion, and this case should be remanded back to the district court for the hearing, or the original Petition for Writ of Habeas Corpus should be granted, which this court has the authority to do. Idaho Constitution Art 5, sec. 9, clearing the appellant's record of the D.O.R

Summary of Argument

Point I

Conditions that could be separately viewed a violation of the Eighth Amendment of the U.S. Constitution and/or Article I, Section 6 of the Idaho Constitution are an "atypical and significant hardship" which can trigger due process protections for the incarcerated, completely separate from the length of disciplinary confinement.

In Sandin v. Conner, 515 U.S. 472, 115 S.Ct. 2293 (1995) a U.S. Supreme Court case reviewing a case derived from Hawaii, the court there held that conditions could be separately viewed when determining the atypicality and significance of a hardship endured by a segregated prisoner. Sandin@ This is a view reinforced by that court's later decision in Austin v. Wilkinson 545 U.S. 209, 125 S.Ct. 2384 (2005) in which it was held an Ohio inmate's incarceration in segregation was so bad it fell under the "atypical and significant" hardship umbrella. Also, this legal theory was upheld by the Ninth Circuit in Serrano v. Francis, 345 F.3d 1071, 1079 (9th Cir. 2003),

in which the court held that an offender's medical condition was so neglected, it was an atypical and significant hardship requiring due process protections

Though the issue isn't specifically addressed at length in Schevers v State, which adopts the principles of Sandin it is briefly alluded to. Schevers @ 576

That fact coupled with the common sense observation that an Eighth Amendment violation would have to be atypical and significant in relation to ordinary prison life should be enough to have created a genuine issue of material fact, giving the appellant a chance at a evidentiary hearing, as allowed by I.C. § 19-4209(7)

The appellant has held that he was housed in a cell with fecal matter in it for a period of days. Keenan v. Hall, 83 F.3d 1083 (9th Cir. 1996); Johnson v. Lewis, 217 F.3d 726, 726, 732-33 (9th Cir. 2000) That alone could pose an 8th Amendment violation. The fact that this condition was arguably imposed as a retaliatory measure only furthers the appellant's

Case Mitchell v. Horn, 318 F.3d 523, 527-28, 532 n.6 (3rd Cir. 2003)

As to possible contentions that the appellant had a separate issue for Habeas Corpus in the 8th Amendment claims, which the appellees brought up through their counsel of record at the telephonic hearing on 12/2/11, the Idaho Supreme Court has held the only viable Habeas Corpus claim is one for freedom from restraint.

As the appellant outlined the adverse conditions to indicate the atypicality and significance of his segregation, not as a petition for writ of Habeas Corpus issue, such should be considered.

Please see Loomis v. Killeen, State v. Doe.

Point 2

Conditions imposed on one set of inmates and no others even within the same facility, are an atypical and signifigant hardship

The Ninth Circuit Court of Appeals has held regarding prisoner due process claims pertaining to unlawful detention that the standard for comparison and there is a standard of comparison, implicity showing conditions are a prominent factor in such matters as those currently before the court, is what the conditions of the segregated were in relation to those of a similar custody level. General population, Protective custody, Administrative Segregation, etc.

Jackson v. Carey

In the instant appeal, the appellant has done much, much of it proven, to show that the segregation he endured in July-August, et seq was completely different, and much more adverse, that that imposed on inmates from other facilties in P.C. and even ICI-O P.C. and G.P. inmates

The cruel and inhumane aspects of his detention were described above, the conditions that wildly diverged from standard Idaho correctional practices are the imposition of separate clothing and hygenic, ie toilet paper and soap, standards, (issues also not addressed in Schevers) as well as the housing of offenders in segregation after their "segregation" had ended.

The appellant has been housed in the Idaho Correctional Center, the Idaho Maximum Security Institution, the Idaho State Correctional Institution and the ICI-O. He is familiar with prevailing classification policies, formal and informal, both from a policy standpoint and an eyewitness vantage point. The practice of prolonging punitive segregation is established only in the ICI-O.

Because this is a significantly different practice, and, given the time spent in Level-one P.C. described by then A-block Sergeant Gunn as segregation (Appellate Record, p.173) [redacted].

the appellant endured more segregation than

Jones Schevers of Schevers v. State, @ 577
and the imposition of segregation has
recognized adverse impacts on mental health
and parole potential (the appellant had a
parole hearing approximately six months after
receiving the contested D.O.R.), it should
be seen as an abuse of discretion
that the Judge of the District Court decided
to forego a evidentiary hearing.

Serrano v. Francis,

Giano v. Selsky, 238 F.3d 223, 226 (2d Cir. 2001);
Sims v. Artuz, 230 F.3d 14, 23-24 (2d Cir. 2001); Muhammad v.
P.Co, 2003 WL 21792158 64 (S.D.N.Y 2003)

Point 3

conditions that create or exacerbate medical conditions are an "atypical and signifigant" hardship

As earler stated, the appellant, due to restricted access to toilet paper for a period exceeding three weeks, the appellant had to be treated with Magnesium Citrate for intestinal problems on April 16, 2011 by facility ARNP Rory York. (Appellate Record, pg. 13, 57)

The Ninth Circuit held in Serrano v. Francis, 345 F.3d 1071, 1079 (9th Cir. 2003) that it was inappropriate for a court not to consider a medical problem being created/exacerbated a "atypical and signifigant hardship" under Sandin.

The appellant hasn't been treated for such before or after the period in question, clear and compelling evidence of the atypicality and signifigance of the segregation at bar.

Point 4

The district court erred and abused its discretion by granting summary judgement in favor of the respondent - appellees.

The appellant under Burnsworth vs. Gunderson, 179 F.3d 771, 775 (9th Cir. 1999); et seq, and common ideas of decency inherent both in the constitution and the "correctional" system, believes he is and was entitled to substantive due process protections under U.S. Constitutional Amendment 14 and Idaho Constitutional Article I Section XIII:

This case involves a D.O.R. issued with the only "formal evidence" a video, which wasn't ever described in full, of the appellant with a bag of commissary. The D.O.R. identifies an inmate Martin as the commissary's owner. However, attached to the D.O.R. is a receipt clearly showing the commissary allegedly stolen from Martin hadn't even got to the ICI-O

yet.

The D.H.O., Lynch, wouldn't allow evidence to that effect at the hearing. In addition, even if it had been delivered, if Martin hadn't signed for it, he wasn't responsible for paying for it, completely obviating the need for restitution, and even obviating any charachterization of the event as a "theft."

The operative I.D.O.C. policy, 318, defines theft in two categories (App. Record, 42). The appellant, though the commissary was allegedly later retrieved in part, without the entire sack being retrieved, had been charged with taking commissary over $25 in value. This was the harsher of the two categories, receiving a higher degree of punitive attention.

As it couldnot clearly be shown what was taken or who it was taken from, and obviously whatever it was wasn't taken from Martin, it was inappropriate for a conviction based

on the "evidence" adduced by the reporting officer at the hearing

(It must be restated that the appellant had virtually no chance to present his defense Pps 30-35 original Petition for Writ of Hab Corp.)

And this created an issue of material fact which should've pushed the case to an evidentary hearing, under I.C. § 19-4209(7)

Some favorable "some evidence" cases: Morgan v Dretke, 433 F.3d 455, 458 (5th Cir. 2005); Moore v. Plaster, 266 F.3d 928, 932 (8th Cir. 2001); Viens v. Daniels, 871 F.2d 1328, 1335 (7th Cir 1989); Meeks v. McBride, 81 F.3d 717, 720-21 (7th Cir. 1996) In addition, the appellant had a heightened due process right, as this case involved not just segregation, but also property, ie, the restitution demanded. The typical sandin requirements, again, because this case involved property, shouldn't even apply.

Logan v. Zimmerman Brush Co., 455 U.S. 422, 436 (1982);
Handberry v. Thompson, 446 F.3d 335, 353 n.6 (2d Cir 2006);
Piatt v. MacDougall, 773 F.2d 1032, 1035 (9th Cir. 1985) (en banc),
Jefferies v. Tennessee Dep't of Correction, 108 S.W.3d 862, 872-73 (Tenn. Ct. App 2002)

This restitution request, and the subsequent order, were made pursuant to clearly, long-established prison policy, 318, and therefore, were not random and unauthorized.

Logan; Piatt

In light of this, it was a complete abuse of discretion to eschew a evidentiary hearing and grant the appellees' Motion for Summary Judgement, especially given the multitude of evidence submitted (Appellate Record, pg. 204) to the court in support of the appellant's contentions. And the fact that many of the issues herein contained were not addressed in Schevers.

Conclusion

Based on the foregoing, this case should either a) be remanded back to the district court for an evidentiary hearing, or b) dissolved, with the appellant's original petition for Writ of Habeas Corpus granted. Idaho Constitution, Article 5, Section 9; In re Barlow, 1929, 48 Idaho 309, 282 P. 380

Certificate of Mailing

On ________________, the appellant caused to be sent via prison mail 2 copies of the enclosed appellant's brief, case number 39604-2012, pursuant to I.A.R. 34, to: Idaho Deputy Attorney General's office, Corrections Division, 1299 N Orchard, No 110, Boise, ID 83706

Appendix A

Appeal 39604-2012

William Gray
appellant - prose

vs.

Sergeant Kristi Lynch,
warden Terema Karlin

Idaho Deputy Attorney General,
Corrections Division,
William Loomis
representing the
appellees

Offender workers will be used to provide janitorial services in common areas of a facility on a regular schedule. Offenders will keep their living areas clean and free of unauthorized and excess property.

At least once a week, an administrative staff member will conduct a visual (walk-through) facility inspection to ensure these guidelines are being met.

Reporting Infestations

If a staff member observes evidence of an insect or vermin infestation, it must be reported immediately to the facility head or designee.

Reporting Maintenance Needs

Staff will report non-life threatening maintenance problems in accordance with facility protocols within 24 hours.

Reporting Life-threatening or Security Related Problems

Staff members will immediately report life-threatening or security-related problems to the shift commander or duty officer.

2. **Laundry**

The IDOC provides institutional laundry service, offender-accessed laundry service, or a combination of the two (2). State-issued clothing, bed linens, and blankets will be laundered before being placed back into inventory.

Laundry Schedule

At a minimum, blankets and clothing must be laundered or exchanged for laundered items as follows:

Blankets (blankets and bed linens): blankets at least once every two (2) weeks and bed linens at least once a week.

Clothing items: at least once a week.

Institutional Laundry Standards

Laundry services will use water temperature, detergent, and cycle settings in accordance with the manufacturer's recommended settings. To prevent sending soiled laundry back to the unit, laundry procedures will ensure that soiled laundry is kept separate from clean laundry.

Blood and Body Fluid Procedures

Facilities that frequently have laundry soiled with blood or body fluids will stock water-soluble laundry bags clearly marked or colored red to indicate bio waste. When bagging such soiled items, workers will wear protective gloves and have access to soap and water for washing their hands after the items are bagged.

The laundry supervisor will ensure that the water-soluble bags are designed to melt at the water temperature setting of the first wash cycle.

Appendix B

Appeal 39604 - 2012

William Gray

appellant - pro se

vs

Sergeant Kristi Lynch,

warden Terema Carlin

Idaho Deputy Attorney General,

Corrections Division,

William Loomis

representing the appellees

William Gray
Full Name/Prisoner Name
IDOC No. 80064
IMSI
P.O. Box 51
Boise ID 83707
Complete Mailing Address

IN THE SUPREME COURT OF
THE STATE OF IDAHO

William Gray, Appellant ~~Plaintiff/Petitioner,~~ vs. Sergeant Kristi Lynch, Warden Terema Carlin, Appellees ~~Defendant/Respondent.~~	)	Case No. 39604-2012 **AFFIDAVIT OF** William Gray

STATE OF IDAHO)
) ss
County of Ada)

William Gray, after first being duly sworn upon his/her oath, deposes and says as follows: I am over the age of 18 and a legal resident of Idaho. I am competent to testify on all matters herein presented.

on _______ I gave a copy of the enclosed appellant's brief to Dewayne Arvel Shedd, the Idaho Maximum Security Institution (IMSI) paralegal for filing with Idaho 2 State Supreme Court. At the time of submission, the appellant's brief complied with all Idaho Appellate Rules.

on March 27, 2012, moving on, I transferred to the IMSI from the Idaho Correctional Institution-Orofino (ICI-O) Because of multiple factors, to include but not limited to; longstanding IMSI property procedures regarding new inmate arrivals and Shedd's inaction, I was unable to file the enclosed appellant's brief before April 2, 2012. This poses an exceptional circumstance and good cause for filing so close to the original 4/2/12 deadline. 3

In addition because IAR 29 tolls the deadlines for appellant's brief and I filed documents pursuant to such, I thought the deadline may've been subject to change. 4

Further your affiant sayeth naught.

DATED This _____ day of ___________________, 20___.

____
Signature

SUBSCRIBED AND SWORN To before me this ___ day of _______________, 20___.

____
Notary Public for Idaho
Commission expires: _____________