

ORIGINAL

IN THE SUPREME COURT OF NORTH DAKOTA

20060074

CASE No. _____

LeRoy K. Wheeler

Petitioner,

vs.

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

MAR 16 2006

STATE OF NORTH DAKOTA

Tim Schuetzle, Warden of North
Dakota State Penetentiary,
Leann K. Bertsch, Director of
Department of Correction &
Rehabilitation and Wayne K.
Stenehjem, Attorney General,

Respondents.

PETITION FOR WRIT OF PROHIBITION

FOR PETITIONER

LeRoy K. Wheeler
Petitioner Pro-se
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58506

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JURISDICTION

Original jurisdiction is given to the Supreme Court through NDCC 28-31-06 and Art. VI Sec. 6 of the North Dakota Constitution. See Schneider v. Seaworth 376 N.W.2d 49 (ND 1985).

ISSUES PRESENTED FOR REVIEW

1). Is the statute NDCC 12-54.1-01 unconstitutional when it compels Petitioner to incriminate himself by way of punishing him through lose of good time if he refuses treatment programs that compel him to plea guilty to criminal charges that he is judicially contesting and maintaining his innocence?

2). Is the Petitioners rights being violated by NDSP regulations compelling indigent pro-se litigants to pay for legal copies and legal postage prior to filing of motions in the courts?

3). Is Petitioners rights being violated by NDSP regulations compelling him to turn over all his legal materials to prison officials for copying for one week and then have them returned to him through the evening mail, unsealed and outside the presence of the Petitioner?

STATEMENT OF THE CASE

The Petitioner was convicted by jury in District Court, Grandforks County, N.D. of gross sexual imposition and sentenced to life in prison. The Petitioner is presently challenging this conviction and at no time did he ever waive his fifth Amendment rights. He gave no pre or post arrest statements, nor did he testify at trial and never took the stand at sentencing. Petitioner did

act pro-se from arraignment to the present. At sentencing the Petitioner argued about his 5th Amendment right against being ordered to participate in any treatment and was not court ordered to take treatment. Upon arrival to NDSP, the staff recommended treatment even after Petitioner invoked his 5th Amendment privilege and when Petitioner refused to participate in staff recommended treatment, a class A infraction was issued and all good time credits were seased until the Petitioner was in compliance with the treatment program.

Upon arrival to NDSP the Petitioner received a inmate handbook, and in this handbook, the Petitioner seen that prison policies were beginning to prevent him from appealing his conviction. He first noticed the problems by the staff refusing to mail his change of address notifications to the courts, because he had \$11.60 in his inmate account. The inmate handbook showed further violations of the Federal Constitution so the Petitioner began the grievance procedure to further his ability to file his direct appeal, which is guaranteed by the 14th Amendment USCA. The grievance procedure was fruitless and this petition follows.

STATEMENT OF THE FACTS

The fifth Amendment privilege against self incrimination was invoked by the Petitioner when, upon

arrival at NDSP, the staff recommended him to three kinds of treatment, which are anger management, batterers group and sex offender. (See App. A p.9, 20 & 27). The Respondents answered that they were relying on NDCC 12-54.1-01. Upon inspection, Petitioner realized that the statute was unconstitutional and is now challenging the constitutionality of the statute.

Upon the Petitioners arrival to NDSP the indigent Petitioner attempted to mail out notices of address changes to the courts once he learned of his new address and when the Respondents refused to mail them because Petitioner had money, \$11.60, in his inmate account. He went to the inmate handbook to find procedure to file grievances to access the courts and learned that the NDSP was denying inmates access to the courts by charging for legal copies and legal postage plus violating confidentiality of legal documents and filed grievances to get relief. (See App. A p.3,13,15,25,28 & 29). This procedure was fruitless and this petition follows.

ARGUMENT

Comes now the petitioner, LeRoy Wheeler pro-se, moves this Honorable Court to Prohibit enforcement of NDCC 12-54.1-01 and two other ordinances that NDSP is currently enforcing on inmates and is harmfully affecting the Petitioner at the present time and also violating his

constitutional rights, such as, his 5th Amendment right against self incrimination, 14th Amendment and 1st Amend. rights to access the courts with the Due Process and Equal Protection and the 1st Amendment rights against arbitrary governmental invasion.

(i) The statute NDCC 12-54.1-01 is unconstitutional because it gives NDSP the authority to punish prisoners when they invoke their constitutional rights against self incrimination when they refuse staff recommended treatment and are given the choice to choose between their constitutional rights or their good time credits.

Standard of Review - Substantial evidence standard where there must be substantial evidence to prove guilt in disciplinary proceedings. Morris v. Travisono 310 F.Supp. 857, 873 (R.I. 1970), Baxter v. Palmigiano 425 U.S. 308, 96 S.Ct. 1551, 1557 (1976), Sanitation Men v. Sanitation Commissioner 392 U.S. 280, 284, 88 S.Ct. 1917, 1919, 20 L.Ed.2d 1089, 1092 (1968).

The Petitioner challenges the constitutionality of NDCC 12-54.1-01 because this statute is violating his 5th Amendment right against self incrimination and punishing him for invoking his privilege, by disallowing good time credits for prisoners who refuse to participate in staff recommended treatment programs. This statute is created

for NDSP to receive federal funding for prisoners who participate in treatment programs, not only for prisoners court ordered to treatment but was extended to staff recommended treatment to prisoners not court ordered to participate. This gives a monetary interest to NDSP to recommend all prisoners to participate in treatment and the authority to punish prisoners for non-compliance of staff recommended treatment. This statute provides;

NDCC 12-54.1-01 PERFORMANCE BASED SENTENCE REDUCTION.

Except as provided under section 12.1-32-09.1 offenders committed to the legal and physical custody of the Department of Corrections and Rehabilitation are eligible to earn sentence reductions based upon performance criteria established through department and Penetentiary rules. Performance criteria includes participation in court ordered or staff recommended treatment and education programs and good work performance. The Department may credit an offender committed to the legal and physical custody of the Department who is eligible for sentence reduction five days good time per month for each month of the sentence imposed. The department may not credit an offender with any sentence reduction for time spent in custody prior to sentence and commitment, for time under supervised probation or for any sentence where the incarceration time is 6 months or less.

The staff recommended treatment portion of the statute is the unconstitutional portion of the statute. State v. Fischer 349 N.W.2d 16 (ND 1984), Tooz v. State 38 N.W.2d 285 (ND 1949), Arneson v. Olson 270 N.W.2d 125 (ND 1978). This allows NDSP to recommend all inmates to treatment whether they need it or not. (See App. A p. 26). In Morissette v. U.S. 342 U.S. 246, 72 S.Ct. 240, 256 (1952), the court said; FN 5)

Reformation and Rehabilitation of offenders have become important goals of criminal jurisprudence, we also there, referred to a prevailant modern phylisiphy of penology that the punishment should fit the offender and not merely the crime.

NDSP is recommending treatment by the crime not the offender. (See Wardens responce on step 2 App. A p. 20 and 26). If the inmate refuses treatment then he is punished by seasing his good time and is encouraged to sign a refusal form. (See App. A p. 30). This refusal form that NDSP uses is also unconstitutional because it is also used as a waiver of an inmates rights and ability to challege the disciplinary action and it also releases NDSP from any responceability of the forced treatment.

Petitioner explained to the staff that he was filing an appeal of his conviction and was claiming his 5th Amendment privilege and could not participate in treatment for a crime that he did not commit, and that if he did participate it could be held against him in any subsequent trial. In Baxter v. Palmigiano 425 U.S.

308, 96 S.Ct. 1551, 1557 (1976), the court said;

as the court has often held, the 5th Amendment not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, where the answers might incriminate him in future criminal proceedings.

The staff refused to listen and continued forward with the disciplinary hearing and recommended that all good time cease until the Petitioner became compliant with treatment. (See App. A p. 8). In Sanitation Men v. Sanitation Commissioner 392 U.S. 280, 284, 88 S.Ct. 1917, 1919, 20 L.Ed.2d 1089, 1092 (1968), the Court said;

to put the employees to a choice between their constitutional rights and their jobs, was compulsion that violated the privilege... the state could not constitutionally seek to compel testimony that had not been immunized by threats of serious economic reprisal, we invalidated the challenged statutes.

Here the NDSP is putting to the Petitioner the choice between his constitutional rights and his good time credits and that would be a compulsion violating the Petitioners privilege, making the statute unconstitutional because it gives NDSP the unfettered ability to do so. Petitioner filed a grievance on Aug. 25, 2005, and said that it was a violation of his 5th Amendment privilege of the Federal Constitution to

force a inmate into treatment is compelling a confession. (See App. A p.9). The reply was to a non existant statute of 12-43.1-01. Petitioner then filed a step 2 grievance on Sep. 1, 2005, (see App. A p. 20) giving the same grounds and the Wardens responce was that," you have been determined to be guilty by a jury, and you have been assessed by our staff as needing sex offender treatment," and he denied the grievance refering to the statute. An appeal was filed to the Director of the Department of Corrections and she responded on Oct. 12, 2005, (see App. A p. 27), denying the appeal refering to paragraph 2 (a) of the inmate handbook under Grievance Procedure, which provides in part;

2. Issues that are not grievable, but are not limited to:

- (a) Any process with an established formalized appeal or review process,
Disciplinary Proceedings
Classification Proceedings
Administrative Segregation Placement
Medical Payment Committee or co-pay decisions

This subsection is contrary to subsection 1 (a) of the same grievance procedure which provides in part;

1. A grievance is a written, individual complaint

filed by an inmate concerning subject matters as outlined bellow that affect the inmate personally.

- (a) Policies, rules, and procedures enforced within the institution.

The Directors reply was, " I will not act on this grievance," no discretion is an abuse of discretion.

The Petitioner invokes his 5th Amendment privilege because for NDSP's financial gain they want him to confess to a crime that he did not commit and incriminate him to destroy his ability to appeal his conviction and use their authority to punish him for failure to comply with their wishes. In the Application of Gault 87 S.Ct. 1428, 1454 (1967), the court said;

the 5th Amendment privilege can be invoked in any proceeding, be it criminal or civil, administrative or judicial, investigatory or adjudicatory... it protects any disclosures which the witness may reasonably apprehend could be used in any criminal prosecution or which could lead to other evidence that might be so used.

No one can successfully complete a treatment program without pleading guilty to the charge that put him in prison. To complete a treatment program an offender must admit to the crime as his first step to recovery from any type of problem. In fact, just the mere presence in a treatment program gives an inference that the offender is desiring treatment. In Morstad v.

State 518 N.W.2d 191 (ND 1994, a statement from the District Court Judge said; " when you start with treatment it is premised on the fact that you are here because you need treatment."

In the Petitioners trial, there was no physical evidence of any kind that would indicate guilt, only the testimony of the alleged victim and a witness, which both had a motive to testify falsely to get themselves out of trouble. The Petitioner still claims his innocence and will continue to do so. When there is no evidence of guilt and the accused is claiming his innocence and is also challenging his conviction on appeal, there is no justification to compel the Petitioner to participate in treatment where he would be compelled to incriminate himself.

The treatments that NDSP and the Parole Board are recommending under this unconstitutional statute are sex offender, batterers group and anger management. There is nothing in the Petitioners record that would indicate a need for these treatments except the sex offender treatment because of the conviction but as stated above, it is under review and he continues his claim of innocence. There is , however, a strong indication that the NDSP is only using this statute for pecuniary interests. The Petitioner contests these treatments due to constitutional violations

against an accused being compelled to incriminate himself. In Emspak v. U.S. 349 U.S. 190, 75 S.Ct. 687 (1955), the court said;

the privilege against self incrimination is not limited to admissions that would subject witness to criminal prosecution but also extends to admissions that might only tend to incriminate.

The batterers group and anger management treatments would definitely tend to incriminate because there is nothing in the Petitioners history that says he needs these treatments, so if he takes them it would say that he has a problem that they did not know about and in turn incriminate him. In the Petitioners appeal, if he successfully obtains a new trial or evidentiary hearing, these treatments would be used as admissions to guilt and used as evidence against him. In State v. Taillon 470 N.W.2d 266 (ND 1991), the court said;

A confession is not voluntary when obtained under circumstances that overbear the defendants will at the time it is given.

To force the Petitioner into treatment is compelling a confession which is not voluntary and the threat of ceased good time credits together is overbearing the Petitioners will.

(ii) The Petitioners rights to access the courts are being violated when NDSP policies only allow legal copies and legal postage to prisoners who can pay for

them prior to filing appeals.

Standard of Review. Intermediate standard, usually applies when " an important substantive right" is involved. Hanson v. Williams County 389 N.W.2d 319 (ND 1986), requires a close corospondence between the statutory classification and the legislative goals. Lee v. Job Service North Dakota 440 N.W.2d 518 (ND 1989), Johnson v. Hassett 217 N.W.2d 771 (1974), Montana-Dakota Utilities Co. v. Johanneson 153 N.W.2d 141, 423 (ND 1967), Arneson v. Olson 270 N.W.2d 125, 133 (ND 1978).

The Petitioner shows the court that NDSP's policies are violating inmates 1st and 14th Amendment rights to access the courts by hindering their ability to file appeals both direct and collaterally because of their poverty and the fact that they choose to invoke their 6th Amendment right to act pro-se. NDSP's policies are enforced on all inmates incarcerated in NDSP's custody to pay for all legal copies and legal postage. (See App. A p. 32-34 and App. B p.32). In Johnson v. Avery 393 U.S. 483, 89 S.Ct. 747 (1969), the court said;

Access to the courts may not be denied or obstructed, reasonable access to the courts is to be available to the indigents among us, and cannot be denied simply because of indigence or

illiterate... it is a right secured by the constitution and the laws of the United States, being guaranteed as against state action by the Due Process Clause of the 14th Amendment, USCA. The right of access of state prisoners to Fed. courts was recognized in Exparte Hull 312 U.S. 546 (1941), and the right of access of state prisoners to state courts was recognized in Write v. Regan 324 U.S. 760, 762, n1, 65 S.Ct. F.2d 632, 636 (Cal. Cir. 1961).

NDSP's policies , regulations, ordinances or rules as they choose to call them are obstructing the Petitioners abilities to access the courts because of poverty on the basis that they will not provide legal copies and legal postage at state expense. (See App. A p.33 & App. B p. 32 Photocopying Services).

Where NDSP will only allow indigent prisoners a \$4.00 limit on credit if the inmate is qualified for indigent status. (See App. B p. 50). It is clear that on page 34 of App. A on the bottom that the \$4.00 credit has to be paid back in full before an inmate can receive more credit for legal copies and legal postage. It also mentions that if an inmate can verify exceptional circumstances, then they may request to have more legal copies and postage by asking permission from the Warden. (See App. A p. 19 & 24). The Warden is only trying to arrange a way for the Petitioner to pay for those copies and postage. This is obviously an obstruction of access to the courts because of poverty. In

Bounds v. Smith 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d

72 (1977), the court said;

To prevent " effectively foreclosed access " indigent prisoners must be allowed to file appeals and Habeas Corpus Petitions without payment of docket fee's, and counsel must be appointed to give indigent inmates " a meaningful appeal" from their convictions.... indigent inmates must be provided at state expense with paper and pen to draft legal documents, with notary services to authenticate them and with stamps to mail them... cost of protecting constitutional rights cannot justify it's total denial. 42 USC s 1983, 14th Amendment USCA.

At the present, the Petitioner is attempting to file his direct appeal from his conviction but the NDSP is denying him his constitutional right to his direct appeal, guaranteed by the equal protection clause of the 14th Amendment by placing a \$4.00 limit on credit for indigent prisoners who choose to act pro-se. This rule or ordinance, enforced by NDSP does not affect any one else that appeals to the courts but only those that act pro-se and that are incarcerated in the custody of NDSP. By NDSP charging inmates for legal copies and legal postage is violating the Petitioners constitutional rights of equal protection because the only ones affected are pro-selitigants in the custody of NDSP. In Rinaldi v. Yeager 384 U.S. 305, 86 S.Ct. 1497 (1966), the New Jersey prison was deducting funds from inmates accounts for transcripts. This law was invalidated because it was only imposing the repayment on those

unsuccessful appellants who were incarcerated in institutions. Exactly what NDSP is doing.

NDSP's inmate handbook concerning, Legal Rights of Inmates, (see App. A p. 32 & App. B p. 28), provided in part:

2. This institution shall:

c. provide all inmates access to the courts allowing presentation of issues, including the following:

(1). Where the inmate is not represented by a licensed attorney, for challenging the legality of their conviction or confinement or for the inmates defense in any pending criminal prosecution.

This section of the inmate handbook, on the face, appears to follow all constitutional standards, however, it does not show who is going to have to pay for the legal copies and legal postage in order to pursue this access to the courts. NDSP policies are only allowing a \$4.00 limit for legal copies and legal postage. This court knows that \$4.00 will not even cover the postage on direct appeal to this court when N.D.R.App. P. 31 calls for an original and 7 copies of any filing in this court. NDSP charges 15¢ per copy and \$4.00 will only cover 26 copies. In Exparte Hull 312 U.S. 546 (1941) also had a \$4.00 charge on filing Habeas Corpus petitions for accessing the courts which the United

States Supreme Court invalidated the institutional rule and NDSP's rule is also hindering Petitioners ability to access the courts because of poverty, to do his direct appeal. In Lewis v. Casey 518 U.S. 343, 116 S. Ct. 2174 (1996), the court said;

for a Bounds violation, the tools it requires to be provided are those that inmates need in order to attack their sentences, directly or collaterally and in order to challenge conditions of confinement. 14th Amendment USCA....and that prisoners must show that the short comings of the prison law library or legal assistance program have hindered or are presently hindering his efforts to pursue a non-frivolous legal claim. It also suggests that prison must enable prisoners to discover grievances and to litigate effectively once in court.

Above, the Petitioner, has shown how NDSP is hindering his efforts to file his direct appeal, an appeal that is guaranteed by the Fed. Constitution, and the grievance procedure was fruitless, so Petitioner brings this petition to this court because with the present NDSP policies in place the Petitioner will not be able to effectively litigate any legal claim. In Smith v. Robbin 528 U.S. 259, 120 S.Ct. 746 (2000), the court said;

in a line of cases beginning with Griffin, this court examined appellate procedure schemes under the principle that justice may not be conditioned on ability to pay, see generally Ross v. Moffitt 417 U.S. 600, 606, 94 S.Ct. 2437, 41 L.Ed.2d 341 (1974).

If 2 indigent inmates appeal their convictions, inmate 1 chooses the court appointed council and inmate 2 chooses to act pro-se, they both should receive the

same ability to access the courts. If inmate 1 does not have to pay for legal copies and legal postage because it is all covered by the Public Defender, then the equal protection clause should protect inmate 2 from these costs, who chooses to do his own appeal. NDSP is obstructing indigent pro-se litigants access to the courts because they do not want to pay for the inmates legal expenses. This would constitute a total denial of access to the courts because indigent inmates cannot pay for all the copies and postage to file their appeals. If in Douglas v. California 372 U.S. 353, 83 S.Ct.814 (1963), council must be appointed at state expense, then if the inmate chooses to act pro-se, a 6th Amendment right under Faretta v. California 422 U.S. 806 (1974), then the indigent pro-se litigant should still be able to file his appeal at state expense, Bounds supra, by virtue of the authority of the U.S. Supreme Court's controlling cases presented in this petition and the constitution.

(iii) The Petitioners constitutional rights of confidentiality of legal documents, legal and privileged mail when NDSP compels prisoners to turn over all documents to prison officials, that he wants copied, for one week and then the copies will be returned to him in the evening institutional mail.

Standard of Review. The strict scrutiny standard applies in cases involving " inherently suspect " or " fundamental interest " classifications, 1st Amendment claims. Nixon v. Administrator of General Services 433 U.S. 425, 97 S.Ct. 2777 (1977), citing Buckley v. Valeo 424 U.S. at 64, 96 S.Ct. at 656, McConnell v. Federal Election Comm. 540 U.S. 93, 124 S.Ct. 619 (2003), Cousins v. Wigoda 419 U.S. 477, 488, 95 S.Ct. 541, 42 L.Ed.2d 595 (1975), NAACP v. Button 371 U.S. 415, 438, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963).

The Petitioner argues that NDSP's policy on Photocopying Services is violating the Petitioners 1st & 14th Amendment rights due to arbitrary governmental invasion into the confidentiality of inmates privileged or legal correspondence with the courts. (See App. B p. 40). NDSP's inmate handbook subsection 5 confirms that an inmates legal or privileged mail will not be opened outside the presence of the inmate. In Wolff v. McDonnell 418 U.S. 539, 94 S.Ct. 2963 (1974), the court said;

as to the ability to open the legal mail in the presence of inmates, this could in no way constitute censorship, since the mail would not be read, neither could it chill such communications, since the inmates presence insures that the prison officials will not read the mail.

NDSP's current policy concerning Photocopying Services is a 1st & 14th Amendment violation of Petitioners rights because when an inmate receives legal

corrospodence from court or from state attorney, this is confidential privileged corrospodence, and these same documents that are received in the mail become part of a pro-se litigants appendices back to the courts on appeal, counterclaims, etc., and remain privileged information. NDSP's policy concerning photocopying of these legal documents, demand that if inmates need copies, that they must turn them over to prison officials by friday morning of each week with a request slip stating the number of copies of each page. The copies will normally be returned to you within a week, in the evening mail. (See App. A p. 33 & App. B p. 32). Petitioner wrote a grievance on this, (see App. A p. 13, 25 & 29), and was fruitless. Legal mail cannot be censored, see Jones v. Diamond 594 F.2d 997 (1978). Petitioner explained that these same legal documents that come through the mail are the same ones that have to be copied and sent back to the courts in appendices. It is still confidential material, they refused to listen. In Procunier v. Martinez 416 U.S. 396, 94 S. Ct. 1800 (1974), the court said;

both the addressee, as well as the sender of direct personal corrospodence derives from the 1st & 14th Amendment, a protection against unjustified governmental interference with the intended communication.

Censorship of prisoner mail is justified if the regulation or practice in question furthers an important or substantial governmental interest unrelated to the suppression of expression and

limitation of 1st Amendment freedoms, is no greater than is necessary or essential to the protection of the particular governmental interest involved. Prison officials may not censor inmate correspondence simply to eliminate unflattering or unwelcome opinions or factual inaccurate statements. In order to be valid, a regulation authorizing prisoner mail censorship, must further one or more of the substantial governmental interests of security, order or rehabilitation. The 1st Amendment is a liberty interest within the meaning of the 14th Amendment, as such it is protected from arbitrary governmental invasion.

Procunier was speaking of personal mail and legal or privileged mail protections are far greater. The Petitioner explained to NDSP that turning these legal documents over to prison officials for a week outside the presence of the petitioner is violating confidentiality. In the Petitioners criminal case, there are minor girls involved with names, addresses, and incriminating statements along with sexual medical examinations of the minors and because of the Petitioners indigency he has no ability to redact information out of these documents, besides most of this information is necessary for the Petitioners defense. This information does not need to travel around the prison through officers hands through the institutional mail for a week prior to returning it. These officers gossip as much as inmates. After a long period of time, these officers being around inmates, become as inmates, because thats who they talk to all day every day, and they will pass informatio to inmates that they like.

Under the present policies, if an officer doesn't like a inmate, he can take these legal documents read them, lose them, destroy or even alter them, and the only copy that the prisoner has is no longer authentic, and in some cases these documents can never be replaced.

There are statutes that protect juvenile records such as NDCC 12.1-35-04 limiting discovery available, meaning exposure of these records to NDSP's policies, you might as well publish them in the news paper. It is enough that these records be used in a court of law, but to allow NDSP to trample through these records could only stir up more law suits and not from prisoners, but from family members of the juveniles.

Due to the pressing nature of the confidentiality of these legal documents, I do believe enough has been said above and that NDSP's policy on Photocopying Services should be invalidated and an order for the ability for inmates to make confidential copies be issued.

REASONS WHY WRIT SHOULD ISSUE

The 5th Amendment provides that no one shall be compelled to be a witness against himself, and NDSP's abilities to punish prisoners if they refuse staff recommended treatment is a compulsion and violating constitutional prohibitions. See Maranda v. Arizona 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

Many inmates who claim their innocence are forced to waive their constitutional rights because of NDSP's threat to sease all good time credits. This statute NDCC !2-54.1-01 is unconstitutional because it gives NDSP the authority to compel involuntary testimony against constitutional prohibitions.

Next the NDSP's regulations denying indigent pro-se litigants access to the courts until they are able to pay for legal copies and postage is obstructing prisoner constitutional rights of 1st & 14th Amendment and abusing their authority because they have full control over inmates accounts and mail. Also that NDSP's invasion of prisoners 1st & 14th Amendment rights by censoring their legal mail by compelling them to turn over all legal documents that they want copied, denying confidentiality of privileged or legal mail.

The pro-se Petitioner in this case is not a proffessional attorney, so if there are some things here that are not exactly right or in appropriate form then he would like to rely on the ruling in Hains v. Kerner 404 U.S. 519 (1972), where the court said;

pro-se pleadings must be viewed with less stringent standards than those of lawyers however inartfully pleaded.

because the Petitioner believes that the court can see

that this statute and NDSP's ordinances are unconstitutional and should be invalidated pursuant to Schneider v. Seaworth 376 N.W.2d 49 (ND 1985), where this court said;

Denial of Writ restraining enforcement of statute or ordinance is unreasonable where there is no adequate alternative and statute or ordinance is flagrantly and patently violative of express constitutional prohibitions.

The Petitioner in the case at bar has no plain, speedy or adequate alternative to remedy the above said constitutional violations, and that he needs a ruling on this matter before he would be able to file his direct appeal which is currently pending.

CONCLUSION

Petitioner humbly requests of this Honorable Court to rule that NDCC 12-54.1-01, NDSP's Inmate Termination Form, NDSP's regulation charging for legal copies and legal postage and also NDSP's regulation on Photocopying Services be unconstitutional and to be invalidated and to restrain any enforcement of these regulations.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PETITION FOR WRIT OF PROHIBITION has been furnished by mail on the following parties:

- 1). Tim Schuetzle - Warden for NDSP, P.O.Box 5521
Bismarck, N.D. 58506.
- 2). Leann K. Bertsch - Director for DOC&R, P.O.Box 1898
Bismarck, N.D. 58502.
- 3). Wayne K. Stenehjem - Attorney General, 600 E.
Boulevard ave. Bismarck, N.D. 58506-0040.

on this ____, day of November, 2005.

to S.Ct. only on November 7, 2005



LeRoy K. Wheeler
Petitioner Pro-se
#25949 P.O.Box 5521
Bismarck, N.D.
58506