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No. 20100139

Pierce Co. 10-c-0019

20100139

SUPREME COURT OF NORTH DAKOTA

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

EFREN CORTEZ RAYAS,
Plaintiff - Appellant
v.

JUN 15 2010

STATE OF NORTH DAKOTA

STATE OF NORTH DAKOTA, CHIEF AGENT CARLSON,
SPECIAL AGENT MARCHUS AND ATTORNEY GENERAL
WAYNE STENEHEM.

Defendants - Appelles

ON APPEAL FROM THE DISTRICT COURT NORTHEAST JUDICIAL DISTRICT
FOR THE STATE OF NORTH DAKOTA COUNTY OF PIERCE

Brief for the Plaintiff - Appellant

EFREN CORTEZ _ RAYAS

Efren Cortez - Rayas
Pro-Se
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STATEMENT OF THE SUBJECT MATTER
AND APPELLATE JURISDICTION

See Rule N.D.R. APP.P. 4(f) AND 3(d)

A statement of the matter and appellate jurisdiction.

- a) According to the rules of Appellate procedure, this Honorable Court has the Jurisdiction of Appeal to review the issues presented by the Appellant

- b) This Appellant's brief is submitted before this Honorable Court within 40 days after the Notice of Appeal was filed in the trial court. According to calculation by this Court, the 40th day expires on June 22, 2010.

- c) This Appellant brief is submitted, against the Judgment of Dismissal in the District Court Northeast Judicial District State of North Dakota, Pierce County.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

A statement of the issues presented for review

1.- Whether the District Court Judicial District failed for dismissed complaint to state a claim unless it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

2.- Whether, the District Court failed in not consider, that the allegations of Pro-se complaint are held to less stringent standards than formal pleadings drafted by lawyers.

3.- Whether, the District Court failed in not consider, that in this case, is not applicable the statute of limitations and Jurisdiction because the Plaintiff send various letters of notice requiring his property and money.

STATEMENT OF THE CASE

Plaintiff, Efren Cortez Royas, submit and state, that on February 13, 2001 law enforcement officials seized the property, \$8,512.00 U.S.D. at Pierce County, Rugby, North Dakota. During this procedure as long as three months, the Plaintiff was sentenced to eight (8) months of prison by the Hon. John C. McClintock Jr. which in his decision and hearing of sentence never ordered confiscate the money as should be in a correct legal criminal procedure in which he should state the reason specific for which he confiscated the property or money, in the case at bar, this never occurred. After the Plaintiff was transferred to a facility maximum of the state in North Dakota, in Bismark, after the Plaintiff be open a new case, where was charged of illegal reentry in violation of 8 S.C.U. section 1326; here in this facility none mentioned to the Plaintiff the return seized property and money.

On October 20, 2001 the Plaintiff, served his first sentence of eight (8) months, imposed by the Hon. John C. McClintock Jr. and after was transferred to the county of Bismark of the same place, where the Plaintiff was sentenced to 46 months of imprisonment for the federal crime of illegal reentry, is when after of the three (3) week or 21 days to stay here, The Plaintiff receive a letter of the agents, that the arrested, where inform and notify, that he should write if he like to recuperate his property and money, but three (3) days after of the Plaintiff receive the letter was transferred by the marshall to Oklahoma Detention Center, is

here, when the Plaintiff required to the Marshalls the devolution of his letters and other legal papers, but thoses never were returned. On November 2001, Plaintiff was transfered to the Tuna facility to serve federal of 46 months for illegal reentre.

Is here, when the Plaintiff sent two letters; the first on May 28, 2002 to Mr. Galen J. Mack, Pierce County States Attorney P.O. BOX 196 Rugby, ND 58368-0196, see a copy attached in the exhibit 1 and the second on March 18, 2002, see a copy of the certified mail receipt on March 18, 2002, see a copy of the certified mail receipt on March 18, 2002 No.:7099-3400-0016-8614-4668 which proof the first letter that the Plaintiff send to Mr. Galen J. Mack but the Petitioner do not have a copy.

Also see a copy of the third letter sent by the Plaintiff on January 24, 2002 writting by hand, see exhibit (2).

These letters were send by the Plaintiff after of he received notification of the agents on October 26, 2001; situation that is within 180 days after the alleged injury. Pursuant M.D.C.C. § 32-12-04.

However, the Plaintiff never received others notifications from Mr Mack, nor of none others law enforcement officers to return of property and money; this constitute on act deliberate, intentional and bad faid. Also others letters, were send by the Plaintiff requiring his property, but which's the Plaintiff did not conserve copy because during nine years of imprisonment these

paper was lost.

STATEMENT OF THE FACTS

1. Special Agent is liable, in his official and personal capacity, as he seized the property in the case at bar.

2. Chief Agent Carlson, in his official and personal capacity, is liable as he is in charge and responsible for the actions of police officers under his command.

3. Attorney General Wayne Stenehjem, in his official and personal capacity, is liable as he is in charge of the Pierce County Sheriff's Department, of Rugby, North Dakota.

4. Plaintiff is the owner of the property, monet, in the case at bar.

5. Plaintiff has made numerous attempts to have his property, money return to him, by means of U.S. first class mail letters U.S. certified letter and Freedom of Information Act request, to no avail, as plaintiff has been ignored.

6. Plaintiff respectfully request that the Honorable Court order the return of his property, money.

7. This action is presented with the purpose to have seized property returned to plaintiff.

This is a petition submitted with the intention to have seized property returned to plaintiff since plaintiff did not receive notice of forfeiture and made numerous written request to have

his money returned to him and has been ignored by defendants.

On February 13, 2001, at Pierce County, Rugby, North Dakota, law enforcement officials seized the property, \$8,512.00 U.S. currency, from plaintiff and have failed to return it.

A R G U M E N T

POINT 1

Whether the District Court Judicial District failed for dismissed complaint to state a claim unless it appears beyond doubt that the Plaintiff can prove no set facts in support of his claim which would entitle him to relief.

In Haine v. Kerner, 404 U.S. 519, 30 U.Ed 2d 652 (1972); The Supreme Court Stated that in State prison inmate brought an action against the governor of Illinois and other state officers and prison officials to recover damages. The United States District Court for the Eastern District of Illinois dismissed the complaint and the prisoner appealed. The United States Court of Appeals for the seven Circuit, 427 F.2d 71, affirmed and certiorari was granted. The Supreme Court held that allegations of pro se complaint of state prisoner, seeking to recover damages for claimed injuries and deprivation of rights while placed in solitary confinement as a disciplinary measure after he had struck another inmate on the head with a shovel following a verbal alter-

cation and asserting as physical suffering the aggravation of a preexisting foot injury and circulatory ailment caused by being required to sleep on floor of cell with only blankets, were such as to entitle him to an opportunity to offer proof, since it did not appear beyond doubt that prisoner could prove no set of facts in support of his claim which would entitle him to relief.

28 U.S.C. § 1343(3); 42 U.S.C.A. § 1983; Fed.Rules Civ.Proc. rule 12(b)(6), 28 U.S.C.A.

Allegations of pro se complaint are held to less stringent standards than formal pleadings drafted by lawyers.

Stanley A. Bass, New York City, for petitioner.

Warren K. Smoot, Chicago, Ill., for respondents, pro hac vice by special leave of Court.

PER CURIAM.

Petitioner, an inmate at the Illinois State Penitentiary, Menard, Illinois, commenced this action against the Governor of Illinois and other state officers and prison officials under the Civil Rights Act of 1871, 17 Stat. 13, 42 U.S.C. § 1983, and 28 U.S.C. § 1343(3), seeking to recover damages for claimed injuries and deprivation of rights while incarcerated under a judgment not challenged here.

Petitioner's pro se complaint was premised on alleged action of prison officials placing him in solitary confinement as a disciplinary measure after he had struck another inmate on the head with a shovel following a verbal altercation. The assault by petitioner on another inmate is not denied. Petitioner's Pro-se

complaint included general allegations of physical injuries suffered while in disciplinary confinement and denial of due process in the steps leading to that confinement.

The claimed physical suffering was aggravation of a preexisting foot injury and a circulatory ailment caused by forcing him to sleep- on the floor of his cell with only blankets.

The District Court granted respondent's motion under Rule 12 (b)(6) of the Federal Rules of Civil Procedure to dismiss the complaint for failure to state a claim upon which relief could be granted, suggesting that only under exceptional circumstances should courts inquire into the internal operations of state penitentiaries and concluding that petitioner had failed to show a deprivation of federally protected rights. The Court of Appeals affirmed, 427 F.2d 71, emphasizing that prison officials are vested with "wide discretion" in disciplinary matters. We granted certiorari and appointed counsel to represent petitioner. The only issue now before us is petitioner's contention that the District Court erred in dismissing his Pro-se complaint without allowing him to present evidence on his claims.

Whatever may be the limits on the scope of inquiry of courts into the internal administration of prison, allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence.

We cannot say with assurance that under allegations of the Pro-se complaint, which we hold to less stringent standards than

formal pleadings drafted by lawyers, it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief" Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 U.Ed.2d 80 (1957). See Dioguardi v. Durning, 139 F.2d 774 (CA2 1944).

Accordingly, although we intimate no view whatever on the merits of petitioner's allegations, we conclude that he is entitled to an opportunity to offer proof.

The judgment is reversed and the case is remanded for further proceedings consistent herewith.

Cruz v. Beto, 405 U.S. 319 (1972) Stated:

Class action under civil rights statute by prison inmate, who alleged deprivation of constitutional rights. The U. S. District Court for the Southern District of Texas 329 F.Supp. 443, granted a motion to dismiss, and plaintiff appealed. The Court of Appeals 445 F.2d 801, Affirmed, and certiorari was granted. The Supreme Court held that complaint of Buddhist state prisoner, who alleged inter alia, that defendants had refused to allow Buddhists the right to hold religious services.

Prison officials must be accorded latitude in the administration of prison affairs, and prisoners necessarily are subject to appropriate rules and regulations, but prisoners, like other indi-

viduals, have the right to petition the government for a redress of grievances, which includes access of presenting their complaints.

Federal courts sit not to supervise prisons but to enforce the constitutional rights of all "persons" including prisoners.

We are not unmindful that prison officials must be accorded latitude in the administration of prison affairs, and that prisoners necessarily are subject to appropriate rules and regulations.

But Persons in prison, like other individuals, have the right to petition the Government for redress of grievances which, of course, includes "access of prisoners to the courts for the purpose of presenting their complaints." Johnson v. Avery, 393 U.S. 483 485, 89 S.Ct. 747, 749, 21 U.Ed.2d 718; Ex parte Hull, 312 U.S. 546 549, 61 S.Ct. 640, 641, 85 U.Ed. 1034. See also Youbger v. Gilmore, 404 U.S. 15, 92 S.Ct. 250, 30 U.Ed.2d 142, aff'g Gilmore v. Lynch, 319 F. Supp. 105 (ND Cal). Moreover, racial segregation, which is unconstitutional outside prison, is unconstitutional within prisons, save for "The necessities of prison security and discipline." Lee v. Washington, 390 U.S. 333, 334, 88 S.Ct. 994, 19 U.Ed.2d 1212. Even more closely in point is Cooper v. Pate, 378 U.S. 546, 84 S.Ct. 1733, 12 U.Ed.2d 1030, where we reversed a dismissal of a complaint brought under 42 U.S.C. § 1983. We said: "Taking as true the allegations of the complaint, as they must be on a motion to dismiss, the complaint stated a cause of action." Ibid. The allegation made by that petitioner was that solely because of his religious beliefs he was denied permission to purcha-

se certain religious publications and denied other privileges enjoyed by other prisoners.

We said in Conley v. Gibson, 355 U.S. 41. 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80, that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

In the case at bar the District failed for dismissed complaint of the state, where the Plaintiff can prove beyond doubt that the factors that support his claim deserve a relief with a jury trial.

Point II

Whether, the District Court failed in not consider, that the allegations of Pro-se complaint are held to less stringent standards than formal pleadings drafted by lawyers.

First, although the letters to the Pierce County State's attorney does not support to be a Notice Of Claim, could be converse in a Notice Of Claim, because the Plaintiff is not an attorney and does not have legal or professional background pertaining to drafting or filing a complaint.

The Plaintiff prays that this Honorable Court would literately

construe his letters and complaints in light of the Supreme Court ruling in Haine v. Kerne, 404 U.S. 519, 30 L. Ed.2d. 652 (1972); Cruz v. Beto; 405 U.S. 319 (1972); as squarely stated by the court in Soto v. Walter, 441 F. 3d. 169 (2d. Cir. 1995). "Pro-Se motions must be literally construed and interpreted to raise the strongest argument that they suggest"

At case at bar, the Plaintiff send various letters to Pierce County State's Attorney Golen J. Mack, that is should be converse in a Notice of Claim as require in N.D.C.C. § 32-12-2-04(1).

Second, the office of the Attorney, was who had that response with the Plaintiff and inform him about the procedure to follow to continue with the due process, but the Plaintiff never received any letter of response, situation that constitute an act of bad faith, deliberate, intentional, malicious and knowingly for part of the Defendants. Because the Defendants do not make the same think of the clerk of this honorable court make.

Immediately the Plaintiff filed his complaint, inform to the Plaintiff of those the due procedure to follow and send to Plaintiff form and informations to continue with the process.

Third, in your brief or notice of motion to dismiss of March 31, 2010. The Office of Attorney General in the person of Mr. Douglas A. Bahr General Solicitor in the page 6 paragraph affirm and state. That the Plaintiff did not commence his action until almost nine years later; however in your reply brief of April 27,

2010, admit that the Plaintiff sent a letter on January 24, 2002 to Pierce County State's Attorney Galen J. Mack, joint to various others, which never were responded in oct of bad fait, intentional and deliberate. Situation that also constitute a contradiction by the office of General Attorney.

Point III

Whether, the District Court failed in not consider, that in this case, is not applicable the statute of limitations and jurisdiction because the Plaintiff send various letters of notice requiring his property and money.

Is here, when the Plaintiff sent two letters; the first on May 28, 2002 to Mr. Galen J. Mack, Pierce County States Attorney P.O.Box 196 Rugby, ND 58368-0196, see a copy attached in the appendix and the second letter on March 18, 2002, see a copy of the certified mail receipt on March 18, 2002 No.: 7099-3400-0016-8614-4668 which proof the second letter that the Plaintiff send to Mr. Galen J. Mack but the Petitioner do not have a copy. Also see a copy of the third letter sent by the petitioner on January 24, 2002 writting by hand, see copy attache in the appendix

These letters were send by the Plaintiff after of he received notification of the agents on October 26, 2001; situation that is within 180 days after the alleged injury. Pursuant N.D. C.C. § 32-12-04.

However, the Plaintiff never received others notifications from Mr. Mack, nor of none others law enforcement officers to return of property and money; this constitute an act deliberate, intentional and bad faid. Also others letters were send by the Plaintiff requiring his property, but the Plaiontiff did not conserve copies because during nine years of imprisonment these papers was losed.

The Stae is the only defendant when be cumplied with the due process. Here in the case at bar, after that the Plaintiff was notified to that claim for the return of his property and money, three days after was transfered to other facility and never more was notified; further of that this notification was desapareed by the Marshalls. In this case, the several laws and decisions cited by the Attorney General to support his argument and issue with respect the matter of the failure of the Petitioner to state claim, do not applic in this case, because the Plaintiff did not received due notification of the state to claim his property; because the received was inmediatelly transfered and this notification was desapareed by the Marshall. Also this Honorable Court hove that consider in this cose and in this instant, that the Plaintiff is limited to his access to the court and law library; Plaintiff is for more of eight (8) years under custody of a prison federal, where in his law library do not exist laws of the States for the which the Plaintiff is limited to respond the argument of the Attorney General of the State, in this case, situation that constitute a violation of due process; in case of the

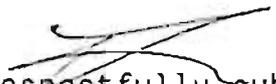
decide granted the notice of motion to dismiss, submitted by the Defendants.

Whit respect to that, this court lacks subject matter jurisdiction, the Plaintiff submit that he submitted on "claim" against the state for an "injury" within 180 days after the alleged injury. See a copy certified receipt No.: 7099-3400-0016-8614-4668 of March 18, 2002. Which was send to Mr. Galen J. Mack by the Plaintiff, within of the 180 days that he was notified on October 21, 2001, but he was transferred three days after and the Marshal disappeared this notification.

IN this case did not applicant the laws and decisions submitted by the Attorney General in his motion on March 31, 2010. Which Plaintiff received on April 7, 2010. Additionally in this facility, that is a federal correctional institution, Plaintiff did not have access to the State Law in the Library for the which could not respond adequate and appropriately to the office of Attorney General.

C O N C L U S I O N

Wherefore, Plaintiff / Appellant respectfully request and prays that based on the above mentioned reasons, issues, that the complaint be and it is hereby granted.


Respectfully submitted,

Dated this 14 day of June, 2010
at Big Spring, Texas 79720

CERTIFICATE OF SERVICE

I have send a true and correct copy of the brief
and appendix for defendant/appellant, postage prepaid, first
class mail, to the Office of the clerk of the Supreme Court of
North Dakota and Attorney General Wayne Stenehjem at:

Supreme Court of North Dakota
Office of the clerk
600 E Boulevard Ave Dept 180
Bismarck, ND 58505 - 0530

Attorney General
Wayne Stenehjem
500 N 9th Street
Bismock, ND 58501 - 4509

Under penalty of perjury, I swear that the oforegoing,
brief and Appendix for Defendant/Appellant, is true and
correct to the best of my ability and knowledge.


Efren Cortez Rayas