

IN THE UNITED STATES SUPREME COURT

Oscar Amos Stilley,

Petitioner,

vs.

Stark Ligon, Executive Director,
Arkansas Supreme Court
Committee on Professional Conduct,

Respondent

Arkansas Supreme Court

(Case No. 08-73)

Motion to Prohibit Interference

MOTION FOR ORDER PROHIBITING THE DEPARTMENT OF JUSTICE-FEDERAL
BUREAU OF PRISONS FROM INTERFERING WITH OSCAR STILLEY'S USE OF
HIS OWN LEGAL RESOURCES FOR PREPARATION OF A PETITION FOR
CERTIORARI; AND FOR EXTENSION OF TIME FOR FILING SAID PETITION

Oscar Amos Stilley, (“Stilley”), has been licensed to practice law in Arkansas since April 15, 1991. On November 4, 2010, after extensive litigation, the Arkansas Supreme Court entered an order disbaring Stilley. Stilley was accused of various charges in 32 separate counts from two consolidated complaints, chiefly alleging conduct amounting to criticism of the government. Stilley argued that his conduct was constitutionally protected, and that he had not committed any ethical violation whatsoever.

The cause was heard by a Special Master, who directed Stark Ligon, the Executive Director of the Arkansas Supreme Court Committee on Professional Conduct, (“Executive Director”), to cite to the evidence upon which he relied for his claim that

Stilley had violated ethical rules. The Executive Director was unable to cite to a single bit of admitted evidence, either testimony or documentary, in support of any of the claims in the 32 numbered counts. The Arkansas Supreme Court suggested that there was evidence to support the charges, and that it wasn't necessary for the Executive Director to cite to any evidence.

Stilley respectfully submits that this case involves several issues potentially having significance sufficient to merit certiorari, including the following:

- 1) Whether an attorney can be punished for truthful statements written by a third party in a complaint filed in a civil case;
- 2) Whether a judge is entitled to be an accuser of an attorney with respect to attorney discipline, and thereupon be deemed absolutely immune from having to give testimony concerning the events about which he complained; and,
- 3) Whether judges who function as accusers and deciders of their own charges may nevertheless constitute a constitutionally sufficient and competent tribunal.

Stilley is currently incarcerated at FCC Forrest City Low, a prison operated by the Department of Justice-Federal Bureau of Prisons, ("DOJ-BOP"). The appeal of his criminal conviction is currently pending in CA10 #10-5057. The Department of Justice, ("DOJ"), is representing the government in this appeal.

A disbarment complaint based upon the criminal conviction was filed and served but later placed in abeyance pending the criminal appeal. The case for which certiorari is sought does not arise out of the criminal case.

On November 18, 2010, Stilley timely filed a motion asking the Arkansas Supreme Court to prohibit the DOJ-BOP from interfering with Stilley's use of his Lexis-Nexis legal library, computer, internet access, and other items necessary to effectively file a petition for rehearing of the order of disbarment. The motion explained that if Stilley didn't get the relief sought, he would not file any petition for rehearing. Stilley has no access whatsoever to Arkansas caselaw, statutes, rules, etc. Furthermore, the policies of the DOJ-BOP will not allow Stilley to have his case files due to volume limitations and will not allow Stilley to have electronic copies for reasons that have not been explained.

Therefore, the right to file a petition for rehearing under Stilley's circumstances would have been illusory only.

The DOJ-BOP has computers that inmates are allowed to use. However, the use of those computers for legal or personal work by inmates is strictly prohibited. Stilley has offered to allow the DOJ-BOP to supply their own internet access, and to supply computers reasonably equipped with suitable software, solely as an accommodation to the DOJ-BOP. If the DOJ-BOP prefers to provide resources substantially equivalent to Stilley's for security reasons, Stilley is willing to co-operate. Stilley does not request their resources, and in fact, much prefers to use his own without interference.

The Arkansas Supreme Court denied the motion. Stilley, thus, did not file a petition for rehearing. Stilley takes the position that the 90 day period for filing a petition for certiorari to the US Supreme Court started November 4, 2010.

Stilley has been seeking relief from the DOJ-BOP's interference with his right to

access the court with respect to his criminal appeal since May 2010. Thus far, the Tenth Circuit has directed Stilley to exhaust his administrative remedies but has granted no judicial relief.

Stilley asked prison personnel with whom the administrative remedy should be lodged. He was advised that the prison warden, T. C. Outlaw, was the only person who could grant the relief sought. An administrative request filed with his office on July 27, 2010 was only recently decided on December 18, 2010. The decision merely stated that Stilley would not be allowed to have the materials that he sought. No reason of any kind was given for the decision. Stilley appealed this decision to the appropriate Regional office on January 4, 2011.

Stilley recognizes that the mathematical probability of this Court granting the petition for certiorari is slight. It is this chance, however small, that it actually might be granted, that Stilley hopes to preserve by this motion. The Court might well and reasonably order the DOJ-BOP to cease the interference with Stilley's right to use his own legal resources for the preparation of a writ of certiorari, and thereafter, deny the petition without comment, same being the most likely disposition of any given petition.

The case law of this Court uniformly supports the relief sought. *Ex Parte Hull*, 312 U.S. 346 (1941) stands for the proposition that “the state and its officers may not abridge or impair petitioner's right to apply to a federal court for a writ of habeas corpus.” *Johnson v. Avery*, 393 U.S. 483 (1969) struck down a regulation prohibiting prisoners from “assisting each other with habeas corpus applications and other legal matters.”

Procunier v. Martinez, 416 U.S. 396 (1974) struck down an affirmative act of interference with access to courts even though the state (California) had prison law libraries and permitted inmate legal assistance, and even though the prisoners involved were actually represented by lawyers.

This case does not rely upon the principle of *Bounds v. Smith*, 430 U.S. 817 (1977), a case in which the state of North Carolina was required to provide certain assistance at public expense to allow inmates to effectively access the courts. In that case, below the 23 footnotes, by way of asterisk, the court said, “The record reflects that prison officials in no way interfered with inmates' use of their own resources in filing collateral attacks. . . .” Stilley only seeks a prohibition of the DOJ-BOP's invidious interference with Stilley's use of his own resources.

Penological interests are enhanced and not degraded by allowing inmates a reasonable opportunity to be heard with respect to their grievances.

As this Court noted at footnote 18 of *Bounds*:

Nearly 95% of the state corrections commissioners, prison wardens, and treatment directors responding to a national survey supported creation and expansion of prison legal services. Cadarelli 7 Finkelstein, *Correctional Administrators Assess the Adequacy and Impact of Prison Legal Services Programs in the United States*, 65 J.Crim.L., C. & P.S. 91,99 (1974). Almost 85% believed that the programs would not adversely affect discipline or security or increase hostility toward the institution. Rather, over 80% felt legal services provide a safety valve for inmate grievances, reduce inmate power structures and tensions from unresolved legal problems, and contribute to rehabilitation by providing a positive experience with the legal system. *Id.* at 95-98. See also ACS Guidelines, *supra*, n.4; National Sheriffs' Assn., *Inmates' Legal Rights*, Standard 14, pp. 33-34 (1974); Bluth, *Legal Services for Inmates: Coopting the Jailhouse Lawyer*, 1 Capital U.L.Rev. 59, 61, 67 (1972); Sigler, *A New Partnership in Corrections*, 52 Neb.L.Rev. 35, 38 (1972).

Recent experience supports these conclusions.

According to Cory Booker in *Fortune* magazine, pg. 78, 83-84, pro bono legal services for inmates were a major driver of a reduction of recidivism rates from 65% down to 10%, and in some cases, down to 3%. The social and economic benefits flowing from same are huge, and desperately needed in the current economic distress.

If, in this case, the Court grants nothing more than this motion, Stilley, the population of this prison and the taxpayers will all benefit greatly. The *Bounds* Court at 824 referred to *Johnson*, saying that constitutional guarantees with respect to inmates “required at least allowing assistance from their literate fellows.” If certiorari is denied (and there is mathematically speaking a 99% chance that it will be), Stilley, being one of those “literate fellows,” will cheerfully occupy his time helping fellow inmates, and advancing the interests of his fellow citizens who pay the cost of corrections.

Stilley would need a reasonable time to prepare a petition for certiorari after the DOJ-BOP's interference is halted. Stilley requests 1) 90 days from the time that the interference is removed, or, 2) A stay pending the conclusion of the criminal appeal.

Stilley is also trying to obtain a halt to the DOJ's active interference with his right to access the courts in his direct criminal appeal. If he obtains the relief sought through any source, the defense of his liberty will be first priority. Stilley therefore requests a full 90 days, or a stay, but will certainly respect the Court if it orders that Stilley complete and file his petition for certiorari in less time.

If this motion is denied outright, Stilley will not file any petition for certiorari.

As the Court said in *Bounds* at 825:

It would verge on incompetence for a lawyer to file an initial pleading without researching such issues as jurisdiction, venue, standing, exhaustion of remedies, proper parties plaintiff and defendant and types of relief available, most importantly, a lawyer must know what the law is in order to determine whether a colorable claim exists, and if so, what facts are necessary to state a cause of action.

Stilley has on more than one occasion filed a petition for certiorari with this Court.

It is difficult enough, and the odds are low enough, with the best of resources. If the Court declines to prohibit the DOJ-BOP from interfering with Stilley's use of his own resources, it will be utterly impossible for Stilley to prepare a petition for certiorari to which he would affix his name. In that case no petition for certiorari will be filed herein.

Because relief is sought against the Department of Justice, this motion is being served on the Department of Justice, as well as Stark Ligon, Executive Director.

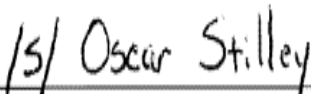
Inquiry has been made of Stark Ligon, Executive Director, who has stated that he takes no position one way or another with respect to any of the relief sought. The DOJ's position, expressed in a responsive pleading in the criminal case, is that Stilley is not entitled to legal resources because he declined appointed counsel at trial, choosing rather to proceed pro se.

Stilley relies upon the mailbox rule with respect to the timing of this motion. The printing of documents at this prison is utterly wretched, having only a single small font, and tiny margins that cannot be changed. Rather than subject the Court to such, this document has been delivered to a third party for sending by certified mail within the time permitted under the rules, and such other measures as may be prudent in order to respect

the rules of the Court.

WHEREFORE, Stilley respectfully requests that the Court order the DOJ to cease interference with Stilley's attempts to receive his computers, internet access, peripherals, common office supplies, hard copy files, and electronic files; that the Court extend the time to file a petition for certiorari up to and including the 90th day from the day that the interference of the DOJ ceases; alternatively, that the Court stay the proceedings in this case pending the outcome of the direct criminal appeal and any petition for rehearing in CA10 #10-5057; and for such other and further relief as may be appropriate whether or not specifically prayed.

Respectfully submitted this 21st day of January, 2011


Oscar Amos Stilley (#10579-062)
FCC Forrest City Low
PO Box 9000
Forrest City, AR 72336

CERTIFICATE OF SERVICE

By signature above, I certify I have caused a copy of this motion to be sent by certified mail on January 21, 2011, to the Clerk of the United States Supreme Court, and by means of e-mail to Stark.Ligon@Arkansas.gov, and by regular mail to Charles A. O'Reilly, Appellate Counsel, Criminal Tax Division, P.O. Box 502, Washington, DC, 20044.