

REV'D
8/5/19

BH

P. 2 of 7

From- Joy Powell 07g0632
BHCf 13-C-1

(33) Forced to Dispose of Legal Work

DESCRIPTION OF PROBLEM: I grieved this serious issue months ago and still have not had a hearing. So, I am grieving it again, due to the seriousness of my issue. And, the fact that I did not waive my right to a timely hearing and disposition pursuant to Directive 4040.

In February 2019, my entire legal property was illegally confiscated. Wherein, C.O. Martinez-female came to my previous unit, "14 A & b," and informed me that per "First Dep Russell, and DSS Daye", I had to be four feed up bagged. I had no problem with that b/c I knew as far as my personal property. I was within the property limit's. I was also told that I had to move from B-1 to B-16, and that was not a problem either.

Shortly after I finished and C.O. Martinez and Sgt. Rodriguez left, C.O. Davis and C.O. Montan came and stopped me from putting all of my stuff in the cell, and advised me that Per Sgt. Tardibuno, I was to relinquish my legal property to them unless I could prove that it was active. This took from about 3:45 until it was count time, to start separating case's Intents to sue, copies of case's and Directives I paid for to aid me in my litigation's and the such likes. Nevertheless, I did not have an opportunity to complete the process because C.O. Davis and Montan said that they were tired and would finish the next day.

I wrote up most of this and the fact that the latter two C.O.'s were reading my legal document's and at the same time, interrogating me. After, I went up stairs, C.O. Montan came to my cell with a 2068 form and said that, per Sgt. M. Tardibuno I had to fill out the form, to either send my legal property out or destroy it.

I refused to do any and wrote on the property disposal form, which I gave Mr. C. Brown a copy of when he came to see regarding the matter on 14 A & B, I wrote, that against my will", I was being forced to do one of the above mention. Although, I advised both C.O.'s that my legal property was active, Statutory deadlines innocence packet's to solicit legal assistance, and or Article 78's and Lawsuits that I was finishing so that I could submit to the Courts, before the Statutory deadlines were up.
Instead, just before Ramadan re-filed a complaint and included issues with the Law Library and still, never had a hearing, nor was any of my Active Legal Property Given Back To Me

Therefore, from February to May, I wrote several complaints to DOCCS, as well Supt.

LaMAna and DSP Miller requesting to receive my legal property. Not realizing that my photo's and legal letter's had also been illegally confiscated.

BH 21,972-19
P. 3 of 7

Ironically, after, DOCCS had BHCF to move me out of the closet size cell that I was forced to live in for almost 3½ years, "in violation of DOCCS policy and procedure, after filing a DOCCS complaint, my legal property became a fire Hazard. This clearly demonstrates that I was retaliated against for exercising my first amendment right under the U.S. Const. of free speech. U.S.C.A. 1,5,6,14.

Not only that, C.O. Davis and Montan also confiscated a bag with picture's of me, my family, and friend's and my college school book's and work.

After month's of letter's to this administration were ignored, once again, I wrote DOCCS concerning the matter's. In around May, 2019, I saw DSP Miller in the RMU, just before Ramadan, and he advised me that he was disappointed that I went over his head and wrote DOCCS about my legal property.

Miller, also said, he had been on vacation; but promised that I would receive any active legal property back once I went through it and down size the volumous paper work. It never happened.

After Ramadan was over, I was picked up by C.O. Marcel, taken to the RMU, and met up with Sgt. D. Skinner, C.O. Davis, per 'Captain Thorpe, and DSP Miller'. So, a lot of people got involved with these illegal acts committed against me; to prohibit me meaningful access to the courts; in violation of my 5th, 6th, and 14th amendment's to the U.S. Const. 1,5,6,14..

I was taken to the RMU basement for about 3 weeks to down size and show proof of my active case's and I did. Wherein, I got my bag's from 15 bag's to 6½, and agreed to send a couple of bag's out. ONLY, AFTER GOING THROUGH A COUPLE MORE OF THE BAG'S, to see if I could get more stuff in one of the two bag's that I thought of sending out but was not sure.

This was in June of 2019, and I was never called back to the RMU. I saw Captain Thorpe since then on several occasions, as well Sergeant D. Skinner and C.O. Marcel who was in Charge and requested to know what was the hold up with releasing my legal property as well as my photo's and legal letter's from my lawyer's and legal entitie's. All of the aforementioned said that DSS Miller was doing something and he would get to me. To no avail.

I wrote DSS Miller on 6/19/19, and after he still refused to reply, I recently on 7/23/19

relinquish of my legal property and my photo's, and legal letter's, which I am allowed to have, and could not believe it, when I received a memo from DSS Miller dated 7/30/19, advising me that counsels office has been contacted and as of 6/27/19, I have no active legal cases pending.

DSP Miller, is well aware that when I was wrongly convicted, I did not shed all of my rights at the gate, and the concept of access to the courts is having the right to "access to instruments needed to vindicate legal rights. Therein, the right to access to the law through legal materials or alternative resources, is an important aspect of the right to access to the courts.

So, my question is, how would I be able to prepare finish and submit all of my legal case's if I am being illegally forced to get rid of my legal property?? (A)n inmate's right to access to the court involves collary right to obtain some assistance in preparing her communication with the court, which means that inmates must have a reasonable opportunity to seek and receive the assistance of attorneys.")

In *Younger v Gilmore*, the three-judge court took" notice that more than simple 'facts' are needed in order to file an adequate petition for relief by way of habeas corpus" and that legal knowledge or information is also essential.

Albeit, a few trained lawyer's with any degree of competence" would be able to operate without legal research materials. See, ABA project on minimum standards for Criminal Justice, Standards Relating to Post-Conviction Remedies.

"Prisoners need to know the law and the trends in law in order to know what facts to allege and what facts are irrelevant and should be omitted so that they do not obscure the material details.

Prisoners also need access to the law in order to understand and respond to filed by the Attorney General's office in opposition of their actions, which are usually replete with citations to legal materials, and it is necessary to understand what one's rights are before it is possible to set out in a petition the facts which support them. *Johnson v Avery.*

This is true in the area of criminal law and procedure in the area of prisoners rights. And, what is going on here constitutes ineffective denial access to the courts.

21,972-19
p. 4 of 7

Notwithstanding, in the month of June when I were down sizing my legal property, not only was C.O. Davis well aware that I had an open case in the Westchester County Supreme Court, because from June of 2018, until Jan 2019, he denied me meaningful access to the courts by deliberately keeping me off of the call-out

Which made me have to ask the court for four extensions, for an Article 78, that I was working on. Also, due to having a broken wrist, I had requested assistance in typing my Article 78, but was denied, in violation of DOCCS policy and procedure pursuant to the law library Directive 4043, which also caused my delay's up until November of 2018.

Then the rest of my motions to the court for an extension of time was due to C.O. Davis maliciously and deliberately infringing upon my Constitutional right to have meaningful access to the courts. With that said, I showed C.O. Marcel, Davis and Sergeant D. Skinner the court Docket number 213-18, and a letter from the attorney General and Court's decision, which I had the right to appeal.

Furthermore, each time I went to meet with the above mention C.O.'s and Sergeant D. Skinner the female, they recorded some of our conversation which can corroborate my claims that I was under the guise that we were not finished because I wanted to go through a bag or two to possibly fit more in one of my bag's that I was possibly sending out. And, then I would get my picture 's, and legal property.

I had no idea that I was actually being played. Thus, DOCCS is in violation of its CONSTITUTIONAL OBLIGATION TO PROTECT MY RIGHTS TO MEANINGFUL ACCESS TO THE COURTS!

Basically, For all of these DOCCS employees to expect me to destroy or send out all of my active legal material which were Article 78's, Lawsuit's, and my criminal appeals that I was working on as well as the appeal that I had planned to do on the 213-18 Article 78, which all had statutory deadlines, is totally arbitrary and capricious.

In addition, I paid thousand's of dollars for cases, Directive's, copie's of my innocence packet that I had put together to send to legal entity's, and the such like's, and DSP Miller claims that none of that is active is insane. The minute an inmate starts preparing a case to submit to the court's, with a statutory deadline after the inmate has exhausted their remedy the clock starts ticking on the deadline.

I do not know why they have these people working in the law library that could not even convey what a real deadline is and why I have been harassed and retaliated against to such a magnitude. The right to access to the courts was established in Bounds v Smith, Wolf v McDonnell, 418 U.S. 539, 579; Procunier v Martine 416, US 396, 419, (1974)), Younger v Gilmore, 404 U.S. 15, (1971) Johnson v Avery, 393 U.S. 483, and Cochran v Kansas, 316 U.S. 255 (1942).

21.972-19
p. 5 of 7

The right to meaningful access to the courts, is indeed, inmates most important constitutional protect right because it is necessary to the preservation of all others. Procunier v Martinez, supra at 419....

Thus, the right to access to the courts is based in the first and fourteenth amendment right to petition all branches of government for redress of grievances, in the fifth and fourteenth amendment gaurantees of due process and equal protection of the law, and in the sixth and fourteenth amendment right to ocounsel. Wolff v McDonnell, supra at 576, 579 (due process clause) Cruz v Beto, 405 U.S. 319, 321 (1972) First Amendment-Younger v Gilmore, supra 319, Supp. at 109, 111 (due process and equal protection clause)..

Toal, supra at 6 notes, (first and sixth amendments and due rocess clause). "No citizen, regardless of his transgressions, is ever to be legally consigned to the total and unreviewed power of any single branch of governmen. To make the system work, to maintain the proper checks and balance, no person subject to the power of government can be denied communication with or access to each of the three spheres of governmental authority. This principle serves the highest interest of government, as much as it serves the need of the individual." Andade v Hauck, supra at 1072.

More recently the courts held that the right of access to the federal courts for lawsuits under the civil rights act, 42 U.S.C. section 1983, is also included in Wolff v McDonnell, supra at 579. Undoubtedly, the right also encompasses access to the state courts to seek similar relief. See, Boddie v Connecticut, 401 U.S. 371, and Banner v Coughlin, 517 F. 2d 1311.

The concept of access to the courts subsumes the right to "access to the instruments needed to vindicate legal rights, and what DOCCS has injured me by making miss statutory court deadlines for five Article 78's and I am running out of time to submit five lawsuits against Police for the murder of my son and so on, as well as my appeal of my 440.10 and federal habeas corpus.

I also need my Blackstone College Book's, my legal letter's, picture's, cases' and legal copie's that I payed thousand s of dollar's for to aid me inlitigating my seven case's I was preparing, and my innocnce packet's.

ACTION REQUESTED:

1. That all of my legal property will be returned expeditiously.
2. That the rest of my things will be returned to me.
3. The retaliation will cease immediately.
4. Stop infringing upon my constitutional rights.
5. I will get proper law library access to make my court deadline

Joy Powell

21, 972-19
p-6 of 7