Docket No. 006102

ORIGINAL

IN THE UNITED STATES SUPREME COURT

Supreme Court, U.S.
FILED
SEP 11 2000
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In re Leonardo Avalos

PETITION FOR WRIT OF HABEAS CORPUS

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SUPREME COURT, U.S.

Leonardo Avalos, Petitioner Pro Se
Registry No. 10313-006
Housing Unit 5702-1, Ft. Dix F.C.I.
P.O. Box 2000
Fort Dix, New Jersey 08640

QUESTION(S) PRESENTED

1. Whether the Habeas Court of lower jurisdiction has violated the Petitioner's constitutional right to Habeas Corpus by refusing to issue its decision after all the pleadings have been submitted to it for nearly six (6) months such that any longer delay will moot the cause of this Petitioner and result in twenty-seven (27) extra days of imprisonment in his case.
2. Whether the Disciplinary Hearing Petitioner was subjected to concerning his alleged disciplinary infraction comported with the Fifth Amendment's "Due Process" Clause.
3. Whether the punishment meted out to this Petitioner violated his Fourteenth Amendment constitutional rights to "Equall Treatment" under the law when two other alleged malefactors received punishment of only a few hours of extra-duty while Petitioner was given 30 days of Disciplinary Segregation with 15 days of that suspended, and the loss of twenty-seven (27) days of "Good Time Credit" making his imprisonemnt twenty-seven (27) days longer that it should otherwise have been.
4. Whether the punishment inflicted upon Petitioner for his alleged infraction of "stealing" a handful of chicken-nuggets while in the lunch serving line in federal prison cafeteria of 30 days of Disciplinary Segregation with 15 days of that suspended, and the loss of twenty-seven (27) days of "Good Time Credit" making his imprisonment twenty-seven (27) days longer than it should otherwise have been violates his Eighth Amendment constitutional rights to be free from "cruel and unusual punishments".

COMES NOW the Petitioner Leonardo Toledo Avalos, Pro Se, and Petitions this Honorable Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 based upon the following :

JURISDICTION OF THE COURT

The original jurisdiction of this Court under the United States Constitution Article III, Sections 1 and 2 and Article I, Section 9 is invoked herein. The reasons for not making application to the district court of the district in which this applicant is held as set forth in Supreme Court Rule 20.4 is set forth below.
The United States Constituion Amendments V and VIII are involved herein.

REASONS FOR INVOKING THE ORIGINAL JURISDICTION OF THE COURT

STATEMENT OF THE CASE

It is understood that only exceptional circumstances warrant the exercise of the Supreme Court's discretionary powers, and such should only be exercised when adequate relief cannot be obtained in any other form or from any other court. This is such a case.

The Petition filed a Writ of Habeas Corpus against his Custodian in the form of a Petition titled "PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241" and was directed against "A.F. Beeler, Warden, et. al." who was Petitioner's Custodian at that time it was filed on August 2, 1999. See Petition attached hereto as Exhibit I.

The Attorney for the United States filed an "ANSWER TO THE PETITION FOR A WRIT OF HABEAS CORPUS" on February 2, 2000.

See "ANSWER TO THE PETITION" attached hereto as Exhibit II.

Petitioner then responded thereto and filed his "PETITIONER'S TRAVERSE TO RESPONDENT'S ANSWER" on February 25, 2000. See Petitioner's "TRAVERSE" attached hereto as Exhibit III.

Since filing his Traverse to the Respondent's Answer on February 25, 2000, there have been no further filings in this case. See copy of letter to the Clerk of the Court dated June 10, 2000 and current Docket Sheet as of June 13, 2000 attached hereto as Exhibit IV.

The gravamen of Petitioner's Habeas Corpus Petition is that he has been punished with the loss of twenty-seven (27) days of "Good Time Credit" for having allegedly stolen a handfull of chicken-nuggets while standing in the lunch line on December 9, 1998. Petitioner was swept-up in a mini-dragnet with three other inmates who were present in the line when the Cook Supervisor discovered that a tray of the chicken nuggets had been nearly depleted without authorization.

The original Habeas Petition recounts the sequence of events; the refusal of Petiioner to submit to a few hours of "extra duty" to atone for his alleged misdeed as two of the other inmates submitted to; and finally,the DHO (Disciplinary Hearing Officer) Hearing wherein Petitioner was found guilty of the offense of "Stealing" and was sentenced to 30 days in Disciplinary Segregation (with fifteen of those days suspended) and the loss of twenty-seven (27) days of his "Good Time Credit".

Petitioner was originally scheduled for Release to be deported back to the country of his birth, Mexico, on September 25, 2000. See original Sentence Computation Sheet showing "Projected Satisfaction Date [of] 09-26-2000" attached hereto as Exhibit V.

APPENDIX A

EXHIBIT I

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

CAMDEN DIVISION

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SUPREME COURT, U.S.

LEONARDO TOLEDO AVALOS,

Petitioner Pro Se

v.

A.F. BEELER, WARDEN, et.al.

Respondents

Case No. 99-CV-3898

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

COMES NOWthe Petitioner Leonardo Toledo Avalos Pro Se and Petitions this Honorable Court to grant him a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and to remove the disallowance of twenty-seven days of "Good Time" given to his as a disciplinary punishment by the Federal Bureau of Prisons and for such other relief as requested herein and as the Court may deem appropriate based upon the following facts and points of law:

VANUE AND JURISDICTION:

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 2241 as to Constitutional violations of Constitutional Amendments V, VIII, and XIV. Venue is appropriate in that this Court has jurisdiction over both the custodian of this Petitioner and Petitioner. The Petitioner is a federal prisoner currently housed in the federal prison located

Ft. Dix F.C.I. , P.O. Box 2000, Fort Dix, New Jersey 20860 and the Respondent is the Warden of that federal Institution having custody of this Petitioner. Other Respondents named herein include: Michael Husritter (name not certain but signautre and copy is on incident report attached hereto as Exhibit No.1), Cook Supervisor and Correctional Officer; Steven Morton, Discipline Hearing Officer; David M. Rardin, Regional Director (who resonded to and denied BP-10); and Wendy J. Roal, Administrator National Inmate Appeals (who responded to and denied BP-11).

ADDITIONAL VENUE AND JURISDICTION

A second and independent basis of jurisdiction is asserted by this Petitioner as a proper plaintiff pursuant to the Administrative Procedures Act, 5 U.S.C. § 720, et. seq. This filing herein should also be construed as a complaint filed after the Petitioner had exhausted his Administrative Remedies pursuant to the Federal Bureau of Prisons Policy by submitting his Administrative Remedy BP-9 (to the Warden of the Institution he is currently incarcerated within), BP-10 (to the Regional Office of the Federal Bureau of Prisons), and his BP-11 (to the Central Office of the Federal Bureau of Prisons in Washington, D.C.) without satisfactorily resolving his complaint. Venue is appropriate pursuant to 28 U.S.C. § 1331 pursuant to the Act.