

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

ROBERT J. BELL,

Appellant,

v.

PAULA PHILLIPS, et al.,

Respondents.

DOCKET NUMBER WD77464

Date: July 28, 2015

Appeal from:
Cole County Circuit Court
The Honorable Daniel R. Green, Judge

Appellate Judges:
Division Four: Alok Ahuja, C.J., Presiding, Lisa White Hardwick and Mark D. Pfeiffer, JJ.

Attorneys:
Robert J. Bell, Jr., Appellant pro se
Andrew W. Blackwell and Emily A. Wales, Jefferson City, MO for respondents

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

ROBERT J. BELL

Appellant,

v.

PAULA PHILLIPS, et al.,

Respondents.

WD77464

Cole County

Robert Bell, an inmate in the custody of the Missouri Department of Corrections, filed a petition alleging that he had been denied his constitutional right of access to the courts by respondent Paula Phillips. Bell's petition identified Phillips as a "Functioning Unit Manager" at the Southeast Correctional Center in Charleston. Bell's petition alleged that he "had to go to Phillip's [sic] office because that was the only way that I could get a law library pass or get legal supplies." Bell alleged that Phillips "refused me any type of legal resources," instructed "her officers" to do likewise, and retaliated against Bell when he filed a grievance alleging that Phillips had refused to provide him "with legal materials like postage, pens and paper." Bell's petition also alleged that, as a result of the denial of necessary postage, he had been unable to timely file his federal *habeas corpus* petition, and that the federal court dismissed his petition as untimely.

Phillips filed a motion for judgment on the pleadings, in which she asserted that "Mr. Bell does not plead any facts to suggest he has suffered actual injury, such as missing a court imposed deadline." The circuit court granted Phillips' motion, and Bell appeals.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

Division Four holds:

The United States Constitution requires that inmates be provided the tools needed to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. To succeed on an 'access to the courts' claim, inmates must show (1) that they were denied a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts and (2) that they suffered actual injury.

Phillips' motion for judgment on the pleadings argued that Bell's petition did not adequately allege actual injury. Bell's petition specifically alleged, however, that his federal *habeas corpus* petition was dismissed as untimely because he did not have the postage necessary

to file it. This is precisely the sort of injury which both the Missouri and United States Supreme Courts have recognized to be actionable. The purported failure to allege actual injury could not justify dismissal of Bell's claim.

On appeal, Phillips argues that Bell's petition failed to adequately allege that she denied him access to the courts. Phillips reads Bell's petition to narrowly. The petition alleged that going to Phillips' office "was the only way that [Bell] could . . . get legal supplies." Bell alleged that Phillips "refused me any type of legal resources," and instructed "her officers" to do likewise, and to discipline Bell if he "asked for anything." Bell alleged that he filed a grievance against Phillips because she had violated his right "to be supplied with legal materials like postage, pens and paper" without charge, and that she retaliated against him for filing this grievance. Bell's petition specifically alleged that "due to the fact that I did not have the \$5.10 to mail my Federal Writ of Habeas Corpus[,] . . . the Court ruled that my petition was untimely."

Although the petition may not explicitly state that it was Phillips who denied him the postage he needed to file his federal *habeas* petition, the reasonable inference from the petition's allegations is that Phillips, or others acting pursuant to her instructions, refused Bell the postage he needed. Bell's petition sufficiently alleged that Phillips refused to provide him with access to the materials, including postage, which he required in order to prosecute his federal *habeas corpus* petition, and that as a result his *habeas* petition was dismissed as untimely. These allegations were sufficient to state a claim against Phillips for denial of access to the courts.

Before: Division Four: Alok Ahuja, C.J., Presiding, Lisa White Hardwick and Mark D. Pfeiffer, JJ.

Opinion by: Alok Ahuja, Judge

July 28, 2015

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