

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 07-13086

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT APRIL 19, 2010 JOHN LEY CLERK

D. C. Docket No. 01-01296-CV-WBH

MARCUS WELLONS,

Petitioner-Appellant,

versus

HILTON HALL, Warden,
Georgia Diagnostic and
Classification Prison,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

**ON REMAND FROM THE
SUPREME COURT OF THE UNITED STATES**

(April 19, 2010)

Before TJOFLAT, BLACK and WILSON, Circuit Judges.

WILSON, Circuit Judge:

In this case, one or more jurors gave the judge and the bailiff tasteless and disturbing gifts. No court that has reviewed this case has been comfortable with these gifts.¹ Yet, troubling facts do not automatically give rise to a legal claim. Articulating a rule that fairly addresses this scenario poses an uncommon challenge. The Supreme Court’s opinion in this case, *Wellons v. Hall*, 558 U.S. ____, 130 S. Ct. 727 (2010) (per curiam), demonstrates that point. In view of the extraordinary circumstances of this case, and for the purposes of this case alone, we reverse the district judge’s denial of discovery and an evidentiary hearing and remand this case for further proceedings that are consistent with the Supreme Court’s opinion, as well as its opinion in *Cone v. Bell*, 556 U.S. ____, 129 S. Ct. 1769 (2009). The district court should grant discovery and conduct an evidentiary hearing as it sees fit, in keeping with its analysis of *Tanner v. United States*, 483 U.S. 107, 107 S. Ct. 2739 (1987) and the related cases.

REVERSED AND REMANDED.

¹ The district court, for example, noted that the gifts demonstrated “an unusual display of poor taste in the context of a proceeding so grave as a capital trial.” Final Order 43. There is no basis to the Supreme Court’s intimations that this Court or the district court failed to appreciate the seriousness of these proceedings.