

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Glen Springer — PETITIONER
(Your Name)

Corporal Benjamin Dale Cape et. al. — RESPONDENT(S)
vs.

ON PETITION FOR A WRIT OF CERTIORARI TO

Eighth Circuit Court of Appeals, St. Louis, Missouri
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Glen Springer
(Your Name)

P.O. Box 500 Bks #7-B
(Address)

Grady, Ar. 71644-0500
(City, State, Zip Code)

N/A
(Phone Number)

(G.)

QUESTION(S) PRESENTED

1. Did Plaintiff Suffer An Eighth Amendment Violation?
2. Was Corporal Caple Deliberately Indifferent To Plaintiff's Serious Medical Needs?
3. Under the circumstances should Plaintiff be required to exhaust his Administrative Remedies by using the grievance process when the only thing that would accomplish would be to subject Plaintiff to further retaliation from an already abusive guard whom had already caused Plaintiff substantial life threatening harm?

(H.)

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- [] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

(I.)

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A *United States Court Of Appeals (page 16)*
For The Eighth Circuit.

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

(J.)

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Estelle V Gamble	429 US 97, 97 S.Ct. 285 (1976)	6.
Erickson V Pardus	551 U.S. 89, 127 S.Ct. 2197 (2007)	6.
Dominquez V Correctional Medical Services	555 F3d 543 (2009)	
Farmer V Brennan	511 US 825, 114 S.Ct. 1970 (1994)	
Garretson V City of Madison Heights	407 F3d 789 (2005)	
Mater V Salz	427 F3d 745 (2005)	

STATUTES AND RULES

Prison Litigation Reform Act	42 USC 1997e(a)
42 USC	1983

OTHER

Deliberately Indifferent to Plaintiff's Serious Medical Needs	
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(K.)

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 9, 2018.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 9, 2018, and a copy of the order denying rehearing appears at Appendix A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Eighth Amendment

Page 6

Prison Litigation Reform Act 42 USC 1997e (a)
42 USC 1983

STATEMENT OF THE CASE

On or about February 2, 2015, Corporal Caple recruited a work crew to clean out a closet on the second tier of barracks #11 at the Ouachita River Unit. Corporal Caple ordered the inmates to carry boxes down a flight of stairs to the first floor. Plaintiff went to Corporal Caple and advised him that he is handicapped and raised the leg of his trousers to show Corporal Caple the orthotic brace Plaintiff is required to wear on his lower left leg, and further advised Corporal Caple that he had medical restrictions which would not allow for him to carry heavy articles or be on stairs. Corporal Caple said that he did not care about Plaintiff's leg brace or his medical restrictions and again ordered Plaintiff to carry the box of Sheets down the flight of stairs. When Plaintiff attempted to carry the box down the stairs he fell causing pain and injuries. Plaintiff does not believe the full extent of his injuries were made known at that time. Plaintiff walks with such an obvious limp that even a non-medical person would know that Plaintiff has medical restrictions and would not be able to carry the box of Sheets down a flight of stairs. Corporal Caple was deliberately indifferent to Plaintiff's serious medical needs and due to his ordering Plaintiff to carry the box down the stairs that he knew or should have known Plaintiff could not carry down the stairs without falling violated Plaintiff's Eighth Amendment. Under these circumstances Plaintiff must not be required to have to file a grievance or exhaust his administrative remedies.

REASONS FOR GRANTING THE PETITION

While assigned to the Cummins Unit of Arkansas Department of Corrections (A.D.C.) Plaintiff met the Parole Board on his five (5) year sentence. The Parole Board stipulated that Plaintiff must complete the R.S.V.P. Program located at the Ouachita River Unit, Malvern, Arkansas, before he would be considered for parole release. Several months thereafter Plaintiff was transferred from the Cummins Unit to the Malvern Unit to take the R.S.V.P. Program whereby he might obtain parole release.

While assigned to the Ouachita River Unit at Malvern, Ar. on or about February 2, 2015, Corporal Benjamin Dale Caple gathered several inmates together to conduct a sanitation cleaning of a chemical closet on the second tier of barracks #11, and announced for those inmates to assist to carry boxes of supplies down a flight of stairs.

Plaintiff went to Corporal Caple and advised him that Plaintiff is handicapped and raised his trouser's leg to reveal his orthotic brace he is required to wear on his lower left leg. Even with the orthotic brace Plaintiff has an obvious limp and difficulty walking. Plaintiff further explained to Corporal Caple that he has medical restrictions which do not allow for him to carry heavy objects and that he would not be medically able to carry the box of supplies down

(5.) (8)

the flight of stairs as he was being ordered to. (There is camera film which shows Plaintiff raise his trouser leg to show Corporal Caple his orthotic brace.) Corporal Caple told Plaintiff that he didn't care about his leg brace and he didn't care about his medical restrictions, and again ordered Plaintiff to carry the box of supplies down the flight of stairs. Corporal Caple was deliberately indifferent to Plaintiff's serious medical needs when he ordered Plaintiff to perform work tasks that is beyond his medical capabilities. *Estelle V Gamble* 429 U.S. 97, 97 S.Ct. 285 (1976), *Erickson V Pardus* 551 U.S. 89, 127 S.Ct. 2197 (2007), *Garretson V City of Madison Heights* 407 F.3d 789 (2005) applying Eighth Amendment actual knowledge deliberate indifference requirement. Further, the Supreme Court has held that deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment. A serious medical need is one that was diagnosed by a physician as mandating treatment, or one so obvious that even a lay person would easily recognize the necessity of a doctor's care and attention.

One must give due consideration to Plaintiff's circumstances. If he does not follow Corporal Caple's direct order to carry the box down the flight of stairs, and Corporal Caple gives Plaintiff a Major Disciplinary for disobeying his direct order, Plaintiff will be

(16)

transferred from the Ouachita River Unit and will not go to court on his disciplinary until he gets to his next unit of assignment. If he is then found guilty he must wait one (1) calendar year before being re-scheduled to enter the R.S.V.P. Program again, and Plaintiff is not only physically handicapped, but has mental problems as well whereby he would be more likely than not to be found guilty of his disciplinary simply because he is unable to understand how to defend himself against the charge. That being said, Plaintiff believed that he did not have any choice but to try to carry the box down the flight of stairs. When Plaintiff tried to carry the box down the stairs his left leg gave way and he fell down the flight of stairs causing him to become injured (See the attached Incident Report Employee Involved, 2 pages, both sides, and the Condensed Health Services Encounter, 1 page.) Plaintiff's Eighth Amendment was violated further when Corporal Caple caused him to fall down the flight of stairs injuring Plaintiff's left elbow and right ankle (See the attached pictures of Plaintiff's left elbow and right ankle.) Corporal Caple knew of and disregarded the excessive risk to Plaintiff's health and safety. Plaintiff has demonstrated that the deprivation alleged was objectively sufficiently serious, and Corporal Caple had a sufficiently culpable state of mind. *Farmer V Brennan* 511 U.S. 825

114 S.Ct. 1970 (1994). Corporal Caple had the requisite knowledge of the substantial risk to Plaintiff's serious medical needs for purposes of deliberate indifference to Plaintiff's serious medical needs. Sealock at 218 F3d 1209. Corporal Caple was put on notice of the seriousness of Plaintiff's medical handicap when Plaintiff did his part to make Corporal Caple aware of his orthotic brace on his leg. Dominguez V Correctional Medical Services 555 F3d 543 (2009), Mata V Saiz 427 F3d 745 (2005).

When Corporal Caple ordered Plaintiff to carry the heavy box down the flight of stairs it was "spur of the moment" and there was no opportunity available for Plaintiff to file a grievance. Plaintiff's only opportunity to file a grievance would have been after the fact, after he'd fell down the stairs and would have been pointless and served no purpose, and further would have subjected Plaintiff to the real and actual possibility of retaliation from a guard whom had already demonstrated that he would not hesitate to abuse his authority to abuse Plaintiff when he caused Plaintiff to fall down the flight of stairs which put him in danger of life and limb.

Plaintiff has become aware through these proceedings of the Prison Litigation Reform Act 42 USC 1997e(a) which states; "No action shall be brought with respect to prison (1)(8)

conditions under 42 USC 1983, or any other Federal law by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." However a remedy is "available" only if it has some authority to provide relief or to take any action whatsoever in response to the complaint. The key word here is "available", and due to the situation and the circumstances involved Plaintiff did not have the opportunity available to file a grievance therefore he was not able to exhaust his administrative remedies.

After filing his 42 USC 1983 complaint that other inmates urged Plaintiff to submit, and assisted him to prepare Plaintiff did receive an evidentiary hearing however the hearing was held by video conference whereby the Court was unable to witness Plaintiff's difficulty walking, or see Plaintiff's orthotic brace. It is unlikely that the District Court ever reviewed Plaintiff's medical records or was made aware of his physical or mental disabilities whereby the District Court was unable to make a knowing, intelligent, decision regarding Plaintiff's cause. Further, the District Court abused that Court's discretion when the Court allowed the Defendant's to coerce Plaintiff to say that the Defendant's were negligent after Plaintiff, a mentally confused person had already stated that Defendant's were deliberately indifferent to Plaintiff's serious medical needs. After that hearing the District Court

eventually ruled to dismiss Plaintiff's complaint with prejudice because he failed to exhaust his administrative remedies and Plaintiff appealed. On appeal the Eighth Circuit Court of Appeals also agreed to dismiss Plaintiff's complaint, however they changed the ruling of the District Court to be without prejudice and Plaintiff mailed a grievance from the Cummins Unit to the Duachita River Unit to exhaust his administrative remedies and did not receive any confirmation that his grievance was received. His attempt to exhaust his administrative remedies was ignored, and therefore thwarted.

Plaintiff will have completed his five (5) year sentence day for day entirely and completely on August 17, 2018, and will continue to communicate with this Court from his home, therefore Plaintiff will be submitting Motions after he is released from incarceration to make this Court aware of his home address.

One may question why Plaintiff is continuing this cause being that he is being released and the plain fact is that this is such a dire miscarriage of

justice that Plaintiff is unable to ignore it. When all is given consideration Corporal Caple did put my very life in jeopardy and did cause me to be injured totally unnecessarily.

Wherefore Plaintiff prays this Court to please issue a Writ Of Certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Alan Springer

Date: July 29, 2018

(11.) (10) (10)