

No: _____

IN THE
SUPREME COURT OF THE UNITED STATES

STEVEN PINDER

PETITIONER

v

ALVA GREEN McDOWELL, et al.,

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Respectfully submitted
STEVEN PINDER, Petitioner
#123397
P.O. Box 180
Brickley AR 72320-0180

QUESTIONS PRESENTED

I

IS THE APPELLATE COURT ORDER AFFIRMING THE LOWER COURT'S DISMISSAL OF PETITIONER'S COMPLAINT CONTRARY TO AND AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED LAW, IN THAT THE LOWER COURT ORDERED PETITIONER TO SIGN A "PROPAGATED AUTHORIZATION" FOR RELEASE OF ALL OF PETITIONER'S MEDICAL RECORDS ~~FOR~~ FROM BIRTH TO DATE, PUT FORTH BY THE DEFENDANTS, WHICH WAS A WAIVER OF PROTECTION OF PETITIONER'S PSYCHOTHERAPIST - PATIENT PRIVILEGED MEDICAL RECORDS AND INCLUDES A WAIVER TO RECORDS PROTECTION WHICH ARE NOT RELEVANT TO OR PERTINENT TO THE COMPLAINT BEFORE THE LOWER COURT, A WAIVER OF NON-DISCOVERABLE MEDICAL RECORDS. THE APPELLATE COURT AND LOWER COURT DISMISSED AND AFFIRMED STATING THE REFUSAL TO SIGN DENIED THE DEFENDANTS DISCOVERY?

II

WHETHER THE "PROPAGATED AUTHORIZATION" FOR RELEASE OF MEDICAL RECORDS PUT FORTH BY THE DEFENDANTS IS IN FACT CONSTITUTIONAL?

(Q1)

LIST OF PARTIES

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

STEVEN PINDER,

PETITIONER

Alva Green McDowell, Health Services Administrator;

Keitha Dodson, Director of Nursing;

Dr. Sonya Peppers-Davis, Doctor;

Jacqueline Carswell, Arkansas Practice Nurse;

Leuvenra Boston, Nurse;

Kenyatta Horner, Nurse;

James Hamilton, Nurse;

Jorge Dominicus, Chief Executive Officer, CCS, LLC;

Correct Care Solutions, LLC;

Dr. Robert Floss, Regional Director;

William Straughn, Warden;

Rory Griffin, Asst. Director Health Services, ADC; and
Maxor Correctional Pharmacy Services, et.al.;

TABLE OF CONTENTS

Question Presented	Q-1
Parties	P-1
Table of Contents	T-1
Table of Authorities	TA-1
Decisions Below	D-1
Jurisdiction	D-1
Constitutional and Statutory Provisions Involved	BP-1
Statement of the Case	SC-1
Basis For Federal Jurisdiction	SC-6
Reasons For Granting the Writ	R-1
A. Conflicts with Decisions of Other Courts	R-1
B. Importance of Question Presented	R-1
Conclusion	R-45

APPENDIX A

1. Decision of the United States Court of Appeals A-1, 4
2. Order of the United States Court of Appeals Denying Rehearing A-5

APPENDIX B

1. Order of the United States District Court B-1

APPENDIX C

1. "PROPAGATED AUTHORIZATION" For release of medical records. C-1

TABLE OF AUTHORITIES

Jaffee v Redmond 518 U.S. 15, 116 S.Ct. 1923 (1996) R-1, R-2, R-3

U.S. v Ghane, 673 F.3d 771 (2012) R-1

STATUTES:

Federal Rules of Evidence Rule 501 R-2

DECISIONS BELOW

The decision of the United States Court of Appeals for the Eighth Circuit is unreported. A copy is attached as Appendix A to this petition (A.).

The Order of the United States District Court for the Western District of Arkansas, Pine Bluff Division is not reported. A copy is attached as Appendix B to this petition (B.)

JURISDICTION

The judgment of the United States court of appeals for the Eighth Circuit was entered March 18, 2018. An order denying a petition for rehearing was entered April 17, 2018, and a copy of that order is attached at Appendix A. (A.5) Jurisdiction is conferred by 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- This case involves Amendment V to the United States Constitution which provides:

"No person shall... be deprived of life liberty or property without due process of law..."

It also involves Amendment I of the United States Constitution, which provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting... and to petition the Government for a redress of grievances..."

This includes Amendment XIV to the United States Constitution, which provides:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, ... nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

"Section 5: The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

These Amendments are enforced by Title 42, Section 1983, of United States Code:

"Every person who, under color any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof, to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress ..."

See Also: Federal Rules of Evidence Rule 501 of Title 28 of the United States Code;

"The common Law -- as interpreted by United States Courts in light of reason and experience -- governs a claim of privilege unless any of the

following provides otherwise:

- the United States Constitution
- a federal statute; or
- rules prescribed by the Supreme Court.

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STATEMENT OF THE CASE

Petitioner, Steven Pinder, here in after referred to as petitioner, is a prison inmate who began serving a life sentence in August 2002 in the State prison of Arkansas. In March 2010 after learning he had Type II diabetes asked the provider of medical services why he had spots in his vision. Could he please be sent to the medical doctor Dr. Chivas for evaluation and examination and for new glasses. Petitioner was taken to Dr. Chivas, the optometrist for the prison in March 2010 and Dr. Chivas noted that petitioner had elevated intraocular pressures of 23 pts. in the right eye and 19 points (pts) in the left eye. Dr. Chivas also noted that petitioner suffered from some field of vision loss, i.e. a diagnosis of glaucoma was rendered. Dr. Chivas, lacking the specialized skills to evaluate, examine and treat a prisoner with glaucoma, and as was the standard operating procedure of the prison, referred petitioner to be taken to University of Arkansas Medical Science Center's (UAMS) Jones Eye Institute (JEI) to be treated by skilled ophthalmologist. This referral of March 2010 was not carried out (emphasis added throughout) by the medical provider or prison officials for some three (3) years. It was not until March 2013

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until petitioner was taken to JEI for treatment.

After thorough examination by Dr. Pembroke at JEI in March 2013 it was determined that petitioner did in fact suffer from glaucoma and further evaluation revealed intraocular pressures of Right (R) eye 23 and Left (L) eye of 19. A visual field test revealed petitioner had in fact lost 35% of his field of vision in his (R) eye and 15% in his (L) eye. The first step in treatment was to get the intraocular pressures down and Dr. Pembroke chose three (3) eye drop medications to begin treatment. Dr. Pembroke explained the dosages he wanted petitioner to apply and a return to clinic for further examination. Petitioner was returned to the prison unit with all of the Doctor's orders.

Over the next five (5) months, petitioner was denied the prescribed medications by the medical defendants including the pharmacy provider. Petitioner was without one (1), two (2) or even all three (3) medications prescribed from as little as five (5) days to as many as twenty (20) days.

In August 2013 petitioner was returned to JEI where Dr. G. Morshedi took over petitioner's care. Checks were done
SC-(2)

on petitioner's intraocular pressures and these checks revealed a 23 pt (R) eye pressure and a 19 pt (L) eye pressure. There was no change. Petitioner explained to Dr. Morshedi that petitioner had been without the prescribed medications and the reason why. Dr. Morshedi changed the prescribed medications and wrote instructions to the Medical provider to ensure petitioner was given the prescribed medications.

This denial and delay in receiving the prescribed glaucoma medications continued over the next twelve (12) months. Petitioner went from five (5) days to as many as thirty (30) days without one (1) or more of the glaucoma prescribed medications.

In September 2014 petitioner was returned to JEI for check and evaluation. Petitioner explained to Dr. Morshedi that at that time he had been without some of his medications for around twenty-two (22) days. A check of petitioner's intraocular pressure revealed a 35 pt (R) eye pressure and a 24 pt (L) eye pressure. In an emergency effort Dr. Morshedi suggested petitioner undergo immediate Laser surgery. Petitioner agreed and after preparation petitioner was administered three hundred and sixty (360) shot of laser treatment to his right eye. After the procedure petitioner's pressures

fell to 19pts R and 15 pts L. Dr. Morshedi stated this was usually a temporary surgical procedure but would help since I was having problems getting my prescribed medications. Petitioner was returned to the unit with instructions.

Petitioner has had to undergo 2 additional surgical procedures because of denial of or delay in medications, one on the right eye in January 2015 and an implant was put in the eye and one in April 2016 on the left where stents were implanted in the left eye.

In September 2014 petitioner filed this lawsuit claiming among other things 1) the medical defendants failed to get petitioner to a doctor trained in the treatment of his glaucoma condition in a timely manner; 2) the medical provider had failed to provide petitioner the prescribed medications in a timely manner; 3) The medical defendants had refused to or interfered with his treatment for migraine headaches.

The defendants filed interrogatories and included was the "propagated authorization" for release of medical records
scr(4)

of the defendants (Appendix).

In his response to the defendants' interrogatories, petitioner objected to the request for signature in that the "propagated authorization" was outside the scope of discovery, sought information not pertinent to this civil action, and sought patient-privileged information. Petitioner maintained that since the diagnosis for glaucoma was the medical issue before this court in this civil action, and that diagnosis was in fact made in March 2010, no records prior to that were pertinent. Also, the migraines were determined to be caused by petitioner's eye condition, therefore records prior to 2010 were irrelevant to this civil suit.

Petitioner further objected to the "propagated authorization" for release of medical records pursuant to the Health Insurance Portability and Accountability Act (HIPAA) 42 USC §§ 1320d. et. seq. that the release did not protect petitioner's psychotherapist-patient privileged communication records from release. The defendants did release All of petitioner's medical records from 2002 until that date to ~~there~~ the attorney for the defendants without a signed authorization by petitioner. This release was a violation of federal law, a violation

of petitioner's constitutional rights and contrary to the precedents of this U.S. Supreme Court.

The defendants sought dismissal because petitioner would not waive his constitutional rights and sign the "propagated authorization".

The district court sided with the defendants stating the refusal to sign the "propagated authorization" for release of medical records after being ordered to do so by the district court was a refusal to comply with a court's order.

The Eight Circuit Appellate Court affirmed the lower court stating the failure to sign the "propagated authorization" denied the defendants discovery.

BASES FOR FEDERAL JURISDICTION

This case raises questions of due process of law, equal protection of law, access to the courts which must be answered under the U.S. Constitution. The district court had jurisdiction under the general federal question jurisdiction conferred by 28 USC 1331.

REASON FOR GRANTING THE WRIT

A.

The holding of the courts below that the petitioner's must sign the defendants "propagated authorization" for release of petitioner's entire medical history from birth until any date the defendants wanted to review to include petitioner's psychotherapist-patient privileged medical records, which "propagated authorization" amounted to a waiver of all privileges and would release all medical records even ones not relevant to or pertinent to the current civil litigation is directly contrary to the holdings of this Court. See Jaffee v Redmond, 518 US 1, 15, 116 S.Ct. 1923 (1996).

In addition the lower court holding that petitioner's refusal to waive his rights to protect psychotherapist-patient privileged medical records and non relevant and non pertinent medical records somehow denied the defendants discovery is contrary to it very own holdings in U.S. v Ghane, 673 F.3d 771 (2012); See also Federal Rules of Evidence Rule 501.

B.

IMPORTANCE OF Questions Presented

This case presents the fundamental interpretation of this Court's decision in Jaffee v Redmond, 518 U.S. 1, 15, 116 S.Ct 1923 (1996). The questions further present great public importance because it affects every litigant who seeks civil litigation in the federal court where medical records and medical issues are involved throughout all 50 states of the United States, whether the litigant is incarcerated or not. It appears the lower courts need further guidance over the issue of what medical records are discoverable, what medical records are pertinent and what a court should do when a litigant does not wish to waive his protected rights to his medical records considered by decision of this Court as protected from discovery. A court cannot dismiss a case when a litigant refuses to waive his protections, if the court does dismiss the case based on a refusal to waive a protected privilege, then due process is violated.

In Jaffee, the Supreme Court recognized the important role that confidentiality plays in the psychotherapist-patient relationship. If patients believed that the confidentiality of counseling sessions may be breached, then they may decline to seek treatment or withhold information

that needs to be disclosed for their treatment to be effective. The Supreme Court recognized that maintaining the confidentiality of this relationship serves both private and public interests. Jaffee, 518 US at 11, 116 S.Ct. 1923.

In Jaffee, the Supreme Court weighed these private and public interests in confidentiality against the need for probative evidence. Jaffee, 518 US at 11-12, 116 S.Ct. 1923. As the evidentiary benefit was modest, the Supreme Court determined that federal courts should recognize the psychotherapist-patient privilege. Id. at 12, 116 S.Ct. 1923.

The Supreme Court held that confidential communications between a licensed psychotherapist and her patients in the course of diagnosis or treatment are protected from compelled disclosure under Rule 501 of the Federal Rules of Evidence. Jaffee, 518 US 1 at 1930.

The lower district Court dismissed the civil action of petitioner because, without hearing petitioner's objection, Petition refused to waive (emphasis added throughout) his due process rights to protect his psychotherapist-patient privileged records and records not pertinent or relevant

to this litigation.

Petitioner was diagnosed with glaucoma medical condition in 2010 March. The health provider also declared petitioner was suffering migraines due to the glaucoma condition. This diagnosis was also made in March 2010 by the provider as demonstrated in medical records presented by the defendants even though no release was ever signed, Petitioner asserts that no records prior to March 2010 and his diagnosis of migraine headaches and glaucoma were pertinent or relevant to the civil action before the lower court therefore any records prior to March 2010 were not relevant or pertinent to this civil action.

The defendants wanted petitioner's medical records from birth to the date of their choosing. The "propagated authorization" for release of medical records (Appendix C.1) was is and amount to a waiver of petitioner's due process rights.

CONCLUSION

The lower courts refusal to hear petitioner's objections,

over the "propagated authorization" for release of medical records and its unconstitutionality and that I refused discovery was the lower courts abuse of discretion and failure to interpret due process of law and slammed the door of the lower court in petitioners face.

The appellate courts affirmation is contrary to the Courts and this Supreme Courts own holdings.

BELIEF

Petitioner contends he has been denied meaningful access to the courts for refusing to waive his due process rights. This case should be reversed and remanded to the trial court for jury trial as requested by petitioner.

EXECUTED THIS
12th day of July 2018

Respectfully submitted
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