

In the Supreme Court of the United States

STEVEN ANTHONY WALCOTT, JR.,
Petitioner

v.

TERREBONNE PARISH JAIL MEDICAL DEPARTMENT, et al.
Respondents

On Petition for Writ of Certiorari to the
United States Court of Appeal for the Fifth Circuit

BRIEF IN OPPOSITION

Allen J. Krouse (U.S. Supreme Court Bar No: 183695)
Carl E. Hellmers, III (U.S. Supreme Court Bar No: 307371)
Jessica A. Roberts (U.S. Supreme Court Bar No: 307319)

FRILLOT LLC

1100 Poydras Street, Suite 3700
New Orleans, Louisiana 70163
Telephone: (504) 599-8035
Fax: (504) 599-8156
Email: akrouse@frilot.com
chellmers@frilot.com
jroberts@frilot.com

Attorneys for Respondents

COUNTERSTATEMENT OF THE QUESTION PRESENTED

Should a Petition for Writ of Certiorari be denied where it (a) fails to identify any aspect of the Fifth Circuit Court of Appeal's decision that conflicts with any decisions of this Court (or with another decision of another court of Appeal), and (b) where the Petition identifies no important questions of unsettled federal law, and (c) where the Petition merely disagrees with the lower courts' application of a properly stated rule of law, and (d) where the Petition is untimely?

PROPOSED ANSWER: Yes. The Petition for Writ of Certiorari should be denied.

PARTIES TO THE PROCEEDING

Petitioner is Steven A. Walcott, Jr., plaintiff in the District Court and appellant in the Fifth Circuit.

Respondents, Richard Neal and Pat Naquin, are medical professionals at Terrebonne Parish Jail. Respondents were defendants in the District Court and appellees in the Fifth Circuit.

Petitioner also sued the jail and government, but those entities are not respondents here. Those other defendants are Terrebonne Parish Jail Medical Department and Terrebonne Parish Consolidated Government. Both were defendants in the District Court and appellees in the Fifth Circuit but have not been named in Petitioner's Petition for Writ of Certiorari.

TABLE OF CONTENTS

COUNTERSTATEMENT OF THE QUESTION PRESENTED	ii
PARTIES TO THE PROCEEDING	iii
TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES	v
INTRODUCTION	1
COUNTERSTATEMENT OF THE CASE.....	1
ARGUMENT.....	5
I. THE PETITION RAISES NO ISSUES THAT FALL WITHIN U.S. SUPREME COURT RULE 10	5
II. THE PETITION IS UNTIMELY UNDER U.S. SUPREME COURT RULE 13	5
CONCLUSION	6

TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Page</u>
<i>Estelle v. Gamble</i> , 429 U.S. 97, 97 S.Ct. 285 (1976).....	1
<i>Farmer v. Brennan</i> , 511 U.S. 825, 114 S.Ct. 1970 (1994).....	viii
<i>Marquez v. Quarterman</i> , 652 F.Supp. 2d 785, 798 (E.D. Tex 2009)	4
<i>Marquez v. Woody</i> , 440 Fed.Appx. 318, (5th Cir. 2011)	4
<i>Martin v. Tyson</i> , 845 F.2d 1451 (7th Cir.), cert. denied, 488 U.S. 863, 109 S.Ct. 162 (1988).....	4
<i>Meril v. St. Bernard Parish Prison</i> , No. 13-CV-5834, 2014 WL 991688 (E.D. La. Mar. 10, 2014).....	4
<i>Smith v. Gusman</i> , No. 14-CV-1153, 2015 WL 2066517 (E.D. La. May 4, 2015)	4
 <u>Statutes:</u>	 <u>Page</u>
28 U.S.C. § 1331.....	vii
28 U.S.C. § 1915.....	viii
42 U.S.C. § 1983.....	vii, viii

INTRODUCTION

There is no “compelling reason” why the decision below requires any review by this Court. *See* Sup.Ct.R.10. First, there is no significant or meaningful conflict among the Courts of Appeal, which almost unanimously analyze an incarcerated person’s claim for delay in (or denial of) medical care under the *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285 (1976) deliberate indifference standard. Second, Petitioner has not identified any question of unsettled federal law. Third, Petitioner does not disagree that the *Estelle* deliberate indifference standard applies to his case; he merely disagrees with the District and Circuit Courts’ application of the properly stated deliberate indifference standard. Finally, Petitioner’s application is untimely pursuant to Sup.Ct.R.13, and should be denied for that reason alone. For these reasons, this Court should deny the Petition for Writ of Certiorari.

COUNTERSTATEMENT OF THE CASE

Petitioner, an incarcerated pre-trial detainee at the Terrebonne Parish Jail, asks this Court to grant his Petition for Writ of Certiorari in a suit against the prison medical department and personnel alleging a violation of the federal Civil Rights Act, 42 U.S.C. § 1983, for the deliberate indifference of serious medical needs. The action arose from what Petitioner contends was inadequate medical care while incarcerated at the Terrebonne Parish Jail. The District Court had

federal question jurisdiction under 28 U.S.C. § 1331. The U.S. District Court for the Eastern District of Louisiana dismissed Petitioner's 42 U.S.C. § 1983 as failing to state a claim for which relief may be granted and frivolous under 28 U.S.C. § 1915(e)(2)(B)(i) and (ii). The Fifth Circuit Court of Appeal affirmed the District Court's dismissal.

Petitioner's Statement of the Case fails to convey that each time he complained of a serious medical need or completed a "Request for Medical Attention Form," he was attended to within a reasonable amount of time. As pled by Petitioner, his only complaint against Respondent Neal was that he had not formally seen a physician, dentist, or Neal, the "Head Nurse/Doctor," as of the date he signed his initial pleading. Petitioner did not allege that he requested medical/dental care from Neal in connection with the initial dental care that he received after allegedly breaking a tooth on a foreign object that was contained within a prison-issued meal on July 22, 2016. As recognized by the District Court, "[w]ithout such personal involvement or at least awareness, it cannot be said that Neal was deliberately indifferent to Petitioner's serious medical/dental needs." Magistrate's Report and Recommendation, March 14, 2017, E.D.La. Case 2:16-cv-15587-SSV Rec. Doc. 36, citing *Farmer v. Brennan*, 511 U.S. 825, 837, 114 S.Ct. 1970, 1979 (1994). Respondent Naquin had limited involvement in the medical/dental care Petitioner received after the July 22, 2016 dental incident. As

pled by Petitioner, following the dental incident, he made an emergency medical request/sick call at 2:00 a.m. and was told that his dental situation was not emergent and that Naquin would see him at the next “pill call” that was scheduled two hours later. As had earlier been reported to Petitioner, Naquin saw Petitioner at the appointed time, and provided him with Naproxen for pain relief and explained that she could put Petitioner’s name on a list to see a dentist. Later that morning, Petitioner was told to fill out a medical request form if he wished to see the dentist, and that Naproxen, aspirin, and Orajel were available for pain relief until such appointment. That is the extent of Naquin’s personal involvement in Petitioner’s medical/dental care following the July 22, 2016 dental incident.

Following Naquin’s care, Petitioner completed additional medical attention requests and was seen by other medical personnel, including transport to an Emergency Room following an altercation with another inmate. After multiple rounds of pain alleviation medication, on October 27, 2016, Petitioner was transported to a local dentist who surgically removed residual tooth roots. As recognized by the District Court:

As for Naquin, as she is not an appropriately licensed medical doctor who is authorized to administer dental care, her function is a more limited one, that being to assist prisoners in their access to such care within the limitations inherent in the [Terrebonne Parish Jail] system. *See, e.g., Marquez v. Woody*, 440 Fed.Appx. 318, 322-23 (5th Cir. 2011). This she appears to have accomplished by directing Plaintiff to the appropriate

procedures for properly seeking dental care and providing him pain alleviating treatment in the interim. *Marquez v. Quarterman*, 652 F.Supp. 2d 785, 789 (E.D. Tex. 2009). And absent an allegation of substantial harm, a delay of four months, *Merrill v. St. Bernard Parish Prison*, No. 13-CV-5834, 2014 WL 991688 at *8 (E.D. La. Mar. 10, 2014), or even five months, *Smith v. Gusman*, No. 14-CV-1153, 2015 WL 2066517 at *9 (E.D. La. May 4, 2015), in the provision of dental care fails to rise to the level of a constitutional violation. See *Martin v. Tyson*, 845 F.2d 1451, 1457-58 (7th Cir.), cert. denied, 488 U.S. 863, 109 S.Ct. 162 (1988)(delay in treating broken tooth not sufficiently serious). The three-month delay experienced by Plaintiff, while perhaps less than optimal, does not establish deliberate indifference.

Magistrate's Report and Recommendation, March 14, 2017, E.D.La. Case 2:16-cv-15587-SSV Rec. Doc. 36.

Petitioner's complaint was dismissed against Respondents Richard Neal, Pat Naquin, and the Terrebonne Parish Consolidated Government by Judge Sarah Vance of the United States District Court for the Eastern District of Louisiana on August 21, 2017. Thereafter, Petitioner filed an appeal with the United States Court of Appeal for the Fifth Circuit. Following briefing, Petitioner's appeal was dismissed by the Fifth Circuit on June 21, 2018. Petitioner filed his Petition for Writ of Certiorari on October 11, 2018.

ARGUMENT

I. THE PETITION RAISES NO ISSUES THAT FALL WITHIN U.S. SUPREME COURT RULE 10

None of the reasons set forth in Rule 10 exists to justify this Court's exercise of discretionary review of the Fifth Circuit's decision. Specifically, Petitioner identifies no aspect of the Fifth Circuit's ruling that conflicts with pronouncements of this Court, points to no conflict between the Fifth Circuit's ruling and any decisions from other federal Courts of Appeal, and makes no suggestion that this case involved any unsettled areas of federal law.

Instead, Petitioner argues only that the Fifth Circuit misapplied the familiar standard of deliberate indifference. Per Rule 10, "rarely" does such result in the Court's discretionary acceptance of an appeal. This case has no implications beyond the litigants at bar. The Petition raises no issues of pressing importance or constitutional significance. This case is not a rare case of unique importance and does not merit this Court's discretionary acceptance. The Petition should be denied.

II. THE PETITION IS UNTIMELY UNDER U.S. SUPREME COURT RULE 13

Petitioner's Petition is untimely. Per Rule 13, a petition for writ of certiorari "is timely when it is filed with the Clerk of this Court within 90 days after entry of judgment." Sup.Ct.R.13. The Fifth Circuit's judgment was entered on June 21,

2018; therefore, the 90 day period to file a petition for writ of certiorari expired on September 19, 2018. Petitioner did not file his Petition for Writ of Certiorari until October 11, 2018, 22 days after the deadline. Although Petitioner would have been timely if the time to file ran from the issuance date of the mandate—here issued on July 13, 2018—Rule 13 explicitly states that “[t]he time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuances date of the mandate.” Sup.Ct.R.13. Furthermore, Petitioner acknowledged the entry of judgment when he filed a Notice of Appeal with the Fifth Circuit, specifically referencing the judgment “entered in this action on June 21, 2018.” Notice of Appeal and No Action Letter from Fifth Circuit, July 19, 2018, U.S. Fifth Circuit Case 17-30614, Doc. 00514563200 and Doc. 00514563225, respectively.

Although Rule 13 provides opportunity for good cause extensions of time to file a petition for writ of certiorari, none of the requirements to do so, including filing such request at least 10 days before the date the petition is due, were met in this case. The Petition is jurisdictionally out of time and should not be considered. The Petition should be denied.

CONCLUSION

This Petition should be denied. It presents no constitutional issues, no issues of significance beyond the litigants at bar, and it involves no appellate or state

court decisions that conflict with pronouncements of this Supreme Court. Furthermore, the Petition is untimely, filed more than 90 days after entry of the judgment, and should not be considered. The Petition for Writ of Certiorari is meritless, untimely, and should be denied.

Respectfully submitted:

/s/ Jessica A. Roberts

Allen J. Krouse (U.S. Supreme Court Bar No: 183695)
Carl E. Hellmers, III (U.S. Supreme Court Bar No: 307371)
Jessica A. Roberts (U.S. Supreme Court Bar No: 307319)

FRILOT LLC

1100 Poydras Street, Suite 3700
New Orleans, Louisiana 70163
Telephone: (504) 599-8035
Fax: (504) 599-8156
Email: akrouse@frilot.com
chellmers@frilot.com
jroberts@frilot.com

Attorneys for Respondents