Original

No. 17-1317

Ct. Appl's No. 12-3030

IN THE

SUPREME COURT OF THE UNITED STATES

James Arthur Biggins — PETITIONER
(Your Name)

vs.

Carl C Danberg et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Third Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

James Arthur Biggins
(Your Name)
James T. Vaughn Correctional Center
1181 Paddock Road
(Address)

Smyrna, De 19977
(City, State, Zip Code)

none
(Phone Number)

QUESTION(S) PRESENTED

(1) Can the Medical Treatment And Delays In Receiving Medical Care Enhanced Practicing Nurse Practitioners Deliberate Indifference to Appellant's Serious Medical Needs Involving Shoulder Injury And Possible Nerve Damage?

(2) Does The Lower Courts Abuse their Discretion In Maintaining Summary Judgment In Favor Of Defendants, Based On Non-Treating Physician Affidavit And Summary Of Medical Treatment Provided To the Appellant By Nurse Practitioner?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] 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:

Carl C Danberg, Comm of Department of Corrections for Delaware
Former Deputy Warden and Deputy Assistant Principle to the Comm Christopher Klein
Michael Deloy, Bureau of Prisons- Bureau Chief of Prison Health Care
Perry Phelps former Warden and current Department of Corrections Comm.
James Scarborough, Deputy Warden and Inmate Healthcare Prison Manager
David Pierce, Warden of James T Vaughn Correctional Center
Michael Lynch, Site Medical Director for Connection Solutions, Inc
Christina Francis, Site Medical Administrator for Connection Solutions, Inc
Louise Derosiers-Paddock, Doctor for Connection Solutions, Inc
Bernard Deboogh, Nurse Practitioner for Connection Solutions, Inc
Jeffrey Carothers, Security Chief II and Inmate Medical Services Supervisor
John Brennan, Security Chief I and Inmate Medical Grievance Supervisor

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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 CA to the petition and is

[ ] reported at N/A; 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 A,B to the petition and is

[ ] reported at N/A; 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 February 9th, 2018.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: March 6th, 2018, and a copy of the order denying rehearing appears at Appendix C.

[ ] 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,
Fourteenth Amendment

STATEMENT OF THE CASE

In October of 2012, Appellant injured his left shoulder while exercising, because he thought initially it was no more than a possible pulled muscle. He did not seek immediate medical treatment, until the next day placing a sick-call for an appointment with the doctor. Appellant stated his cause to be seen and explained that he hadden been able to sleep for extreme pain and on and off numbness in his entire left arm. Following a month long denial of being seen by the prison's medical department, a medical grievance was filed on November 25, 2012. Detailing the extent of his left shoulder injury and the prison's medical department not being able to see. This court may take judicial notice that, Delaware's Department of Corrections since 2000, has been a party to two consent decrees by the U.S. Department of Justice and A.C.L.U. In additional to having settled multiple suits, regarding its medical, dental, and mental health treatment services to the prisoners under the States care. Noting in furtherance, that because of their medical contractor's years of understaffing in medical doctors, dentists, and psychiatrists. The prison's inmate population goes under-served, and especial those such as the Appellant housed at the States largest prison

On January 10, 2013, the medical grievance committee denied Appellant's medical grievance after looking in his medical file and seeing that he had been seen on or about December 23, 2012. However, NP. Addogah refused to give anything for the pain, telling Appellant even after informing that the pain medication nucotin, that prescribed for his spinal disease and two herniate back discs wasn't working on the left shoulder pain. He refused to prescribe him anything, nor did he order x-rays or m.r.i scan. In fact Appellant was never given an conclusive diagnosis of his shoulder injury to date, and has had to live with not having full range of motion in shoulder and periodic tingling in arm and hand sensations. In 2015, the Delaware District Court sided with the Appellees in the instant case on Summary Judgment with their claim, that since Appellant was receiving medical care. He could not state a claim for relief for "inadequate medical treatment for his serious medical need, under deliberate indifference to a serious medical need. citing Starnes v. DeLawrence III Donald et al., 2014 U.S. Dist. Lexis 187, at *22-24 (D. Del. Jan. 2, 2014); see also Wood v. DeLinda Cobet-Sweda, et al., 2014 U.S. Dist. Lexis 96287, at *16 (D. Del. July 16, 2014). Since then, Appellant has petitioned the lower courts to correct their errors based upon the facts of the case and the governing rules of law, with no success. Thus, comes the instant appeal.

REASONS FOR GRANTING THE PETITION

The United States Supreme Court has long defined deliberate indifference by prison personnel to an inmate's serious medical needs violates the inmate's eighth amendment right to be free from cruel and unusual punishment. Estelle v Gamble, 429 U.S. 97, 104-05 (1976). This principle extends to grossly incompetent or inadequate care as well. Cotton v. Hutto, 542 F.2d 412, 414 (8th Cir. 1976). And also for unnecessary and wanton infliction of pain. Estelle v Gamble, 429 U.S. at 104 (quoting Gregg v Georgia, 428 U.S. at 173 (1976)

The Petitioner contends that (1) the Court of Appeals erroed in refusing to grant in forma pauperis status to Petitioner under the circuit's own precedents (Monmouth City Corr. Inst'l Inmates v. Lanzaro, 834 F.2d at 346 (3d Cir. 1987) (deliberate indifference shown, where prison authorities deny reasonable requested medical treatment and it exposes the inmate to undue suffering); Gibbs v. Roman, 116 F.3d 83 (3d Cir. 1997) (A complaint alleging imminent danger—even if brought after the prior dismissal of three frivolous complaints, must be credited as having satisfied the threshold criterion of § 1915(g) unless imminent danger is challenged. If the defendant after service, challenges the allegations of imminent danger (as Roman has done here on appeal) the district court must then determine whether plaintiff's allegation of imminent danger is credible, as of the time the alleged incident occurred, in order for plaintiff to proceed on the merits i.f.p). While this review holds to the district court's preliminary review status, the principle can be carried over to the appeal's court, when as here, where Petitioner has previously been granted i.f.p status. Where Petitioner's imminent danger status wasn't changed on appeal. cf: Gibbs v Cross, 160 F.3d at 963 (3d Cir. 1998) (allegation withholding of medical assistance to inmate who became ill after breathing particulates emitted from the vent in cell fulfills imminent danger requirements); Farmer v Brennan, 114 S.Ct. 1970 (1994) (Prison authorities must guard against sufficient imminent dangers that are likely to cause harm in next week, month, or year); Helling v Mc Kinney, 113 S.Ct. 2475 (1993) (same)

The district court abused its discretion, by granting the defendant's summary judgment. Under Rule 56(c) summary judgment should be granted only when "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. When applying the standard, review of the disputed facts must be in favor of the party opposing the summary judgment motion---- in this case, the Petitioner. Weir v Anaconda, 773 F.2d at 1079 (10th Cir. 1985); Adams v. Metiva, 31 F.3d at 378 (6th Cir. 1994) (same); Skop v City of Atlanta, Ga., 485 F.3d at 1143 (11th Cir. 2007) (same); Davis v Williams, 451 F.3d at 763 (11th Cir. 2006) (same). The courts must construe the facts and draw all inferences in light most

favorable to the nonmoving party and when conflicts arise between the facts evidenced by the parties, they must credit the nonmoving party's version. Even if the district court believes that the evidence presented by one side is of doubtful veracity, it is not proper to grant summary judgment on the basis of credibility choices. Miller v. Horgest, 185 F.3d at 1256 (11th Cir. 2006); Hall v. Warren, 443 F. Appx. at 106 (6th Cir. 2011) (same) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. at 251-52 (1986). Factual dispute is genuine if a reasonable jury could find for the nonmoving party, and is material if it will affect the outcome of the under governing substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. at 248. At summary judgment stage, the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial. Anderson 477 U.S. at 249. This is because credibility determinations and the weighing of the evidence are jury functions, not those of a judge. Anderson, 477 U.S. at 255. see also Marino v. Indus. Crating Co., 358 F.3d at 247 (3d Cir. 2004) (same); and Andreoli v. Gates, 482 F.3d at 647 (3d Cir. 2007) (same)

This case was based simply on what is deemed "adequate medical" care under the Eighth Amendment of the United States Constitution, and not a disagreement with proper medical care. Spruill v. Gillis, 372 F. 3d at 235 (3d Cir. 2004); Inmates of Allegheny County Jail v. Pierce, 612 F.2d at 762 (3d Cir. 1979) (same); and Estelle v. Gamble, 429 U.S. at 105-07 (1976) (same). While it is true that courts hesitate to find an eighth amendment violation when a person received medical care. Hamm v. DeKalb County, 774 F.2d at 1575 (11th Cir. 1985), cert. denied, 475 U.S. 1096, 89 L.Ed.2d 894, 106 S.Ct. 1499 (1986). However, the hesitation does not mean that the course of a physician's treatment of a prison inmate's medical or psychiatric problems can never manifest the the physician's deliberate indifference to inmate's medical needs. Waldrop v. Evans, 871 F.2d at 1035 (11th Cir. 1989); see also Mucell v. Bennett, 615 F.2d at 310 n. 4 (5th Cir. 1980) (treatment may violate eighth amendment if it involves "something more than a medical judgment call, an accident, or an inadvertent failure")

The district court erred as a matter of law in ruling that mere proof of medical care, consisting of medical treatment services only to disprove deliberate indifference. Petitioner, was entitled to his case by establishing that NP. Oddoson course of treatment, or the lack thereof, so deviated from professional standards that it amounted to deliberate indifference in violation of the eighth amendment right to be free from cruel and unusual punishment. It should be very troublesome that the district court did not review Petitioner's medical records, but instead, figments thereof which showed that his medical treatment was continuous for his shoulder injury. Petitioner contends that he showed the district court deliberate indifference to his serious medical needs, by showing a five week delay, before being seen for sick-call. Where all was done was a nurse taking

vitals, documenting reported injury and submitting name to have a doctor's appointment scheduled in the near future. While Petitioner continued to suffer agonizing and excruciating shoulder pain, lost around the clock, lost of continuous night sleep, lost of range of shoulder movement and complete arm and hand feeling. see Rodriguez v. Plymouth Ambulance Serv., 577 F. 3d at 839 (7th Cir. 2009) (state employees could be liable for four-day delay where prisoner complained his intravenous therapy was causing him pain). It must be emphasized that Mr. Bernard Addogoh was his primary care treatment provider throughout, who is not a doctor (nurse practioner) and worked daily without a physician oversight. In Wright v. Colvin, the district court for the Southern District held that "a physician assistant is not considered a "acceptable source" and therefore cannot establish the existence of an impairment) Crawford v. Comm'r of Social Service., 363 F. 3d at 1160 (11th Cir. 2004). Because Mr. Addogoh was not a doctor, the district was required to credit his sworn affidavit any weight. And Dr. Decosier-Paddock only seen the Petitioner a couple of times and swore and affidavit appealing Mr. Addogoh's treatment is also unexceptable.[1]

CONCLUSION

The Petitioner established uncontravertable proof that the medical treatment he recieved incompetent and inadequate medical treatment. Smith v. Jenkins, 919 F. 2d 90 (8th Cir. 1990)

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James Walter Bingham

Date: December 30, 2018

1. Hatchel v. Astrue, No. 1-08-cv-168-MP/AK, 2010 U.S. Dist. Lexis 25679, 2010 WL 1030552, at *11 (N.D. Fla. Jan. 25, 2010), report and recommendation adopted, No. 1-08-cv-00168-MP/AK, 2010 U.S. Dist. Lexis 25670; 2010 WL 1029042 (N.D. Fla. Mar. 18, 2010) (finding medical opinion did not require assigning great weight because doctor's role was limited to signing medical source statement); Keppell-Libsansky v. Comm'r of Social Service., 170 F. Appx at 618 (11th Cir. 2006) (same)