

18-7604

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Supreme Court, U.S.
FILED

JAN 11 2019

OFFICE OF THE CLERK

JACQUES PAUL VILLAFANA – PETITIONER

vs.

HAROLD W. CLARKE – RESPONDENT

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

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.

QUESTION PRESENTED

1. Military veterans' medical records are privileged and confidential under 38 U.S.C.A. §§ 5701, 5705, and 7332. Petitioner – a military veteran and a state inmate – applied for disability benefits with the Veterans Administration. To support his claims, Petitioner requested his medical records. Petitioner's military medical records were sent to him, but the prison mailroom opened and searched the medical records without authorization. Should privacy rights extend to a prisoner's military medical records?

LIST OF PARTIES

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

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IN THE
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PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

The Fourth Circuit Court of Appeals' opinion is attached hereto as Appendix "A." The Order from the Fourth Circuit Court of Appeals denying rehearing is also attached as Appendix "B."

JURISDICTION

Jurisdiction is conferred upon this Court by 28 U.S.C.A. § 1254 to review courts of appeals cases by the Supreme Court by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following provisions of the United States Constitution and Federal law are involved: U.S. Const. Amends. XIV; 38 U.S.C.A. §§ 5701, 5705, and 7332. The text of said provisions are attached hereto as Appendix "C."

STATEMENT OF THE CASE

The case before this Court highlights the necessity for keeping the scales of justice balanced. An unbalance may occur when variables are not considered, or simply overlooked. Petitioner's case reflects just that. The precedent from this Court that the Court of Appeals for the Fourth Circuit relies upon exemplify different fact situations as Petitioner's. These differences, however, have never been addressed before.

Petitioner filed a § 1983 claim alleging that (1) Defendant Harold W. Clarke, Director of the Department of Corrections (Director Clarke) violated his Fourth Amendment right to be secured in his papers against unreasonable searches, (2) Director Clarke violated his right to privacy which is also protected under 38 U.S.C. §§ 5701, 5705, and 7332, and (3) after he informed Director Clarke of the violation, Director Clarke refused to take corrective steps and acted with deliberate indifference.

The District court dismissed Petitioner's § 1983 complaint for failure to state a claim for relief and as frivolous. Petitioner appealed. In his informal brief, Petitioner stated that the District court erred because his military medical records were confidential and privileged, and that Director Clarke was informed and acted with deliberate indifference. The Court of Appeals for the Fourth Circuit, however, affirmed the District court's ruling and also denied rehearing.

In 2016, Petitioner filed a disability claim with the Department of Veterans Affairs (VA). After filing the claim, the VA sent Petitioner his medical records. Upon receiving the medical records, Lawrenceville Correctional Center's mail room opened and searched Petitioner's medical records without authorization.

So, on October 14, 2016, Petitioner wrote to Director Clarke informing him that the Virginia Department of Corrections Operating Procedure 803.1 (D), violated his privacy rights. In his letter, Petitioner also informed Director Clarke that Operating Procedure 803.1 (D), which governs offender

correspondences, classifies correspondences from the Department of Veterans Affairs – which is a federal legislative office – as “special purpose correspondence,” and is not given the privacy that legal mail gets.

Petitioner went on to inform Director Clarke that he had the sole authority under Virginia Code § 53.1-53 to prescribe reasonable rules regarding prisoner correspondences, and requested that an amendment to Operating Procedure 803.1 (D) be made. The amendment would alleviate Petitioner of the harm he suffered, as well as others from suffering potential harm in the future. On November 17, 2016, Ms. Sherida Davis-Brown (Correspondence Unit Manager) responded to Petitioner's letter informing him that he had to utilize the grievance procedure if the issue was still a concern. She also said that the issue had been shared with appropriate staff for review and consideration.

Petitioner, however, missed the filing deadline to initiate a grievance on the matter mentioned above. Then, on March 20, 2017, Petitioner received additional personnel, medical and dental records from the VA. The records were once again opened and searched without authorization. So, Petitioner initiated and exhausted the grievance process, but was denied because the Operating Procedure 803.1(D) denied privacy protections for correspondences from the VA.

REASON FOR GRANTING THE PETITION

1. A Prisoner's Military Medical Records Should Be Privileged And Confidential From All Unauthorized Disclosures.

The case before this Court is significant. Every time an incarcerated military veteran files for disability benefits – for a service-connected injury with the Veterans Administration (VA) – and requests medical records, the prison mailroom violates his or her privacy rights. The prison subjects the veteran's records to an unauthorized disclosure. These unauthorized disclosures are ongoing.

They recur not only in Petitioner's facility – where at least 300 veterans are housed – but also in every state and federal institution that houses military veterans. Since Operation Enduring Freedom and Operation Iraqi Freedom hundreds of thousands of veterans have been diagnosed with PTSD, not to mention the millions more with Traumatic Brain Injuries. These numbers do not factor in the incarcerated veteran population that have not been diagnosed.

The import here is that two interest need re-balancing: the interest of a prisoner's privacy rights in his medical papers and the interest of society in the security of its penal institutions. The incarcerated military veteran's medical records has a factual configuration different to those addressed in prior Supreme Court precedent. This difference requires clarification.

The United States' Constitution gives people the right “to be secure in their persons, houses, papers, and effects. . .” against unreasonable searches and seizures. Const. Amend. IV.

Regarding searches, one “occurs when an expectation of privacy that society is prepared to consider reasonable is infringed.” *U.S. v. Jacobsen*, 466 U.S. 109, 113, 104 S.Ct. 1652, 1656 (U.S. Minn. 1984).

Federal law (App., 4a – 7a), and society as well, have considered a veteran's medical records to be given an expectation of privacy. Therefore, Petitioner should have had an expectation of privacy

regarding his military medical records. The Court of Appeals for the Fourth Circuit, however, affirmed the District Court's reliance on prior precedent that does not extend privacy rights to prisoners. See *Hudson v. Palmer*, 468 U.S. 517, 104 S.Ct. 3194 (U.S.Va. 1984) (held that inmate had no reasonable expectation of privacy in his prison cell entitling him to protection of Fourth Amendment).

There are notable differences between the ruling in *Hudson v. Palmer*, and Petitioner's. One difference is in the key words: *in his prison cell*. The ruling distinguishes Petitioner's claim because the violation occurred in the prison mailroom. Another difference is that in Petitioner's case, his medical records were mailed to him; the mailroom, however, made an unauthorized disclosure. That is different from what went on in *Hudson v. Palmer*. There, the allegation arose from an unreasonable "shakedown" search of the inmate's prison locker and cell.

It's not like Petitioner's military medical records could have jeopardize the institutional security by containing knives and guns, illicit drugs, and other contraband. In fact, Petitioner's medical records had been sent to him from a military hospital. So, although a "prisoner's expectation of privacy always yield to what must be considered the paramount interest in institutional security[,"] the Court of Appeals made an error affirming Petitioner's case. *Hudson*, 468 U.S., at. 528, 104 S.Ct., at. 3201

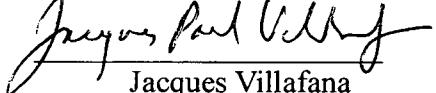
The Court of Appeals made another error when it upheld the District court's opinion that Petitioner's documents were non-privileged mail (District Court's Memorandum Opinion, pg. 9). That opinion contradicts federal law (App.,4a). That said, the precedent in *Hudson v. Palmer* needs clarification. To clarify, privacy rights should extend to prisoners, who are incarcerated veterans, that receive his or her military medical records through the prison's mailroom. And, since the mail is usually marked as originating from a military institution, it would certainly be permissible to open the mail in the presence of inmates. This too would guard against the possibility that contraband would be enclosed in the mail. That said, the Court of Appeals for the Fourth Circuit erred in its decision.

CONCLUSION

A prisoner's military medical records, sent from a federal institution and arriving at a prison mail room, is not the same as a random shakedown of a prisoner's cell. It is unfair to equate the two. Privacy rights should be extended, specifically, to a prisoner's military medical records. In addition, the records do not pose a threat – not even a minimal one – to an institution's security and the safety of other inmates. Therefore, the Court of Appeals for the Fourth Circuit made an incorrect ruling that Petitioner did not have privacy rights regarding his military medical records. So then, Petitioner prays that this Court reverse the Court of Appeals' ruling that privacy rights do not extend to a prisoner's military medical records and that Petitioner made a frivolous claim.

Date: 1/4/2019

Respectfully Submitted



Jacques Villafana