

NO. 18-8606

SUPREME COURT OF THE UNITED STATES

LESTER J. SMITH, JR.,
Petitioner,

v.

GREG DOZIER, et al.,

Respondents.

CRIMINAL

ON PETITION FOR CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT

MAR 20 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

PETITION FOR WRIT OF CERTIORARI

LESTER J. SMITH, JR., #977285
HANCOCK STATE PRISON
PO BOX 339
SPARTA, GA 31087

QUESTIONS PRESENTED

- 1) IS HCV a serious medical ailment that requires treating petitioner with Cure Medicines, in accord to the Professional Community Standard of Medical care for HCV?
- 2) Does the "Continuing wrong" "Continuing harm" violation doctrine apply to this case?

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:

Augusta University, Appellee
Bryson, Homer, Appellee
Burke, Charles, Appellee
Carr, Christopher, Counsel for Appellee
Chalmers, Roger, Counsel for Appellee
Dozier, Greg, Appellee
Ekwunife, David, Appellee
Langstaff, Thomas, U.S. Magistrate Judge
Lewis, Sharon, Appellee
Pacious, Kathleen, Appellee's Counsel
Self, Tilman, U.S. District Judge
Smith, Lester, Appellant
Stay, Ronald, Counsel for Appellee
Warren, Sarah Hawkins, Counsel for Appellee

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Table of Authorities Cited

Abu Jamal V. Wetzel, et al No. 3:16-cv-2000 U.S.D. (M.D. Penn. 2017) — 5

Ancata V. Prison Health Services Inc. 769 F.2d 700 (11th cir. 1985) — 6

Erickson V. Pardus, 551 U.S. 89 (2007) — 6

Graham V. Parker, U.S.D.C. (M.D. Tenn) Case # 3:16-cv-01954 — 7

Harris V. Thigpen, 941 F.2d 1495 (11th cir. 1991) — 6

Heard V. Sheahan, 253 F.3d 316 (7th cir. 2001) — 4

Hensley V. City of Columbus, 557 F.3d 693 (6th cir. 2009) — 4

Mitchell V. Nobles, 873 F.3d 869 (11th cir. 2017) — 5

Shomo V. City of N.Y., 579 F.3d 176 (2d cir. 2009) — 4

Tiberi V. Cigna Corp. 89, F.3d 1423 (10th cir. 1996) — 4

U.S. v. Kubrick, 444 U.S. 111 (1979) — 5

Statutes and Rules

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Title 42 Section 1983 U.S.C. — 3

Eighth, Fourteenth Amendments of the United States
Constitution

Americans With Disabilities Act

Rehabilitations Act

Continuing Wrong Doctrine

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 A 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 Nov. 8, 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: Jan. 14, 2019, 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).

Decisions Below:

The decision of the United States Court of Appeals for the Eleventh Circuit is unreported. It is attached hereto as Appendix A to this petition.

Jurisdiction:

The judgment of the United States Court of Appeals for the 11th Circuit was entered on Nov. 8, 2018. See order of dismissal attached hereto in Appendix A. Appellant timely filed a motion for reconsideration, which was denied on Jan. 14, 2019, attached order is in Appendix A. Jurisdiction of this Court is Conferred by 28 U.S.C. §1254(1).

Constitutional and Statutory Provisions Involved:

This case involves the 8th Amendment of the U.S.C. The amendment is enforced by title 42, Section 1983 United States Code.

Statement of The Case:

The petitioner's complaint alleges he is denied treatment for a serious medical need Hepatitis-C (i.e. HCV). Not only is petitioner denied treatment for HCV, petitioner alleges that throughout a elongated time period of being denied treatment for HCV. That as a result of such a denial for non medical reasons, it is a continuing harm to petitioner, which lies under the continuing wrong doctrine.

The district court allowed petitioner to proceed under the imminent danger clause of I.F.P. but ultimately dismissed the case, in a erroneous adjudication. Appellant is still without HCV treatment to date and left suffering the affects of HCV destroying his liver, and other bodily organs.

Basis for Federal Jurisdiction

This case raises a question for HCV treatment, and the continuing wrong doctrine. The continuing wrong doctrine in the 11th circuit rulings is in sharp conflict with a plethora of other federal appellate court decisions, and has not been the subject of the Supreme Court.

Reasons for Granting The Writ

A. Conflicts with Decisions of other Courts

The holding of the courts below properly adjudicate and define the "continuing wrong" doctrine, for issues that involve the denial of medical care to prisoner's by operation of a prison policy. Such as the case of the petitioner. See Heard V. Sheahan, 253 F.3d 316, 320 (7th Cir. 2001); Shomo V. City of New York, 579 F.3d 176, 181 (2d Cir. 2009); Hensley V. City of Columbus, 557 F.3d 693, 697 (6th Cir. 2009); Tiberi V. Cigna Corp. 89, F.3d 1423, 1430-31 (10th Cir. 1996).

The decisions of the circuits herein warrant reversal of the 11th circuit.

B. Importance of the Questions Presented.

This case presents the importance of prisoner's getting HCV treatment in accordance to the Professional Standard of medical care for HCV, which is a epidemic in this Country's Prison Systems. This Court has already decided in U.S. V. Kubrick, 444 U.S. 111 (1979) that prisoner's are entitled to the same medical care as the Community Care Standard of Professional Medical Care.

The federal Courts in Georgia are remiss to treating prisoner's with HCV by denying civil actions, hence, resulting in deaths of prisoner's. Mitchell V. Nobles, 873, F.3d 869 (2017) (11th Cir. No. 16-12043 Oct. 17, 2017).

The questions presented is of great public importance because it affects the operations of the prison systems in all 50 States, the District of Columbia, and hundreds of city and County Jails. In view of the large amount of litigation by prisoner's infected with HCV, and not receiving treatment by prison and jail officials. It affects their ability to live. Mitchell V. Nobles, *supra*., see also, Abu Jamal V. Wetzel, et al, No. 3:16-CV-2000 U.S.D. (M.D. Penn. 2017). See article of HCV issue in the State of Missouri attached hereto in Appendix-A.

The issues in this case are of great importance as the lower courts have seriously misinterpreted the continuing wrong, harm, doctrine. But most importantly, the need for any person to receive treatment for a deadly ailment such as HCV.

The common sense understanding to provide one with the cure for HCV, which is the professional community standard of medical care, standard for treating all HCV infected persons. Is in fact a no brainer for even a lay person to understand. Defendants have a G.I.D.O.C. policy that prohibits such treatment to HCV inmates for non medical reasons, but for monetary reasons, which is illegal, and contrary to this courts decision in *Erickson V. Pardus*, 551 U.S. 89, 90, 127 S. Ct. 2197 (2007) holding delay, conscious denial of access, or conscious interference with HCV treatment, states a claim.

The 11th circuit has held costs cannot be a factor to deny a prisoner medical treatment. *Harris V. Thigpen*, 941 F.2d 1495, 1509 (11th Cir. 1991); *Ancata V. Prison Health Services, Inc.* 769 F.2d 700, 705 (11th Cir. 1985).

Hence, a blanket policy defendants have that prohibits G.I.D.O.C. inmates from receiving HCV treatment for non medical reasons, is of major importance to the continuing harm doctrine petitioner raises in this case, as to the reason this case should not have been dismissed.

The importance of this issue before this Court will give a mandate for HCV treatment throughout the Country. HCV treatment, the denial of is a wide spread issue throughout this country. Graham V. Parker, U.S.D.C. (M.D. Tenn.) case # 3:16-CV-01954, cases in Minnesota, Pennsylvania, Massachusetts, Florida, and California.

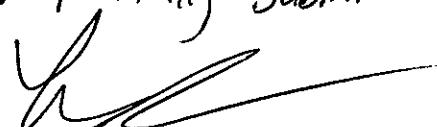
- CONCLUSION -

This Court should grant Certiorari to address the serious medical need for HCV treatment.

This 12th day of
Feb. 2019.

Pro-Se

Respectfully Submitted



Lester Smith #977285