

DEC 07 2017

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18-9140

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL RAY INGRAM, Petitioner,

v.

FRANK CLEMENTS;

R. WERHOLZ;

R. RAEMISCH;

J. FALK, Sterling Correctional Facility (SCF) Warden;

J. CHAPDELAINE, SCF Associate Warden;

JOHN and JANE DOES, SCF Job Board;

K. McKay, SCF Physician's Assistant;

PHYSICIANS HEALTH PARTNERS, INC., a Colorado Corporation,
dba Correctional Health Partners, a Colorado corporation; andJOHN and JANE DOES, PHYSICIANS HEALTH PARTNERS, INC.
dba Correctional Health Parnters, a Colorado corporation, Respondents.

ON PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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ORIGINAL

QUESTIONS PRESENTED

1. Whether dismissal of claims for injunctive relief requiring state officials to obey the Eighth Amendment pursuant to 42 U.S.C. §1983 was error?
2. Whether dismissal of claims against Defendants, Clements (prison system director) and Falk,(prison warden), was error because letters to them established deliberate indifference pursuant to 42 U.S.C. § 1983?
3. Whether dismissal of claims against Defendant Chapdelaine (associate warden), based on supervisory liability for deliberate indifference, where he deemed grievances frivolous was error?
4. Whether the failure to make a determination of Qualified Immunity pursuant to Wilson v. Layne, 526 U.S. at 617 (1999) was error?

LIST OF PARTIES

All parties are listed in the caption.

OPINIONS BELOW

The unpublished opinions of the court of appeals and the district court are in Appendices.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Constitutional and Statutory Provisions are contained in the Appendices.

STATEMENT OF THE CASE

Petitioner, a Colorado state prisoner, Oct. 10, 2014 filed an Amended Complaint, alleging he suffers from medical conditions/disabilities; that significantly limit daily activities, singularly and aggregate: a) migraines; b) photophobia; c) nausea; d) neck arthritis; e) dysphagia; f) left shoulder arthritis; g) right elbow arthritis/tendinitis; h) lower left back pain/spasms; i) left hip arthritis; j) arthritic knees; k) ankle pain; l) deformed heels; m) neuropathic foot pain; and n) Plantar Fasciitis. In his first claim he alleges Defendants violated his Eighth Amendment right to be free from cruel and unusual punishment by requiring him to perform Kitchen duties in the dishroom from April 6, 2012 to May 7, 2012, in the Diet Kitchen from June 14, 2012 to July 21, 2012, and as flatware/condiment roller from Sept. 12, 2012 to present [Nov. 2017]. He asserted these work assignments have aggravated his medical conditions by requiring him to work duties beyond his physical capabilities and contrary to his work restrictions. He also contends that his requests for "ADA/RA Accommodations" and requests to clinical services, including issuance of appropriate foot wear, a bottom tier restriction, issuance of

an orthopedic pillow, no prolonged sitting restriction, and various work restrictions have been denied. He further alleged denial of adequate medical care in violation of the Eighth Amendment.

Jan. 25, 2015 Defendant Werholz, Raemisch, Falk, and Chapdelaine and then on July 17 Defendant McKay filed motions to dismiss. Petitioner filed no responses because he was incapacitated by work beyond his capabilities and on Apr. 5, by torn muscle tissue (Rt Upper Arm) and then on Aug. 10 by torn muscle tissue (Lt Upper Arm/Pectoral)(due to a fall when dismounting the top Bunk when the Lt Leg collapsed because of the 1975 back injury).

Aug. 27 the Magistrate dismissed the claims. Sept. 24 the district court adopted the Magistrate's recommendation to dismiss the claims. Sept. 14, 2016 the district court denied the Motion to Alter Or Amend Judgment. August 11, 2017 the court of appeals reversed and remanded the dismissal of one of the ADA/RA claims and the claim that Defendant McKay acted with deliberate indifference in approving petitioner for Kitchen work, and affirmed the remaining challenged order and judgment.

The court of appeals upheld the dismissal of claims:

1. for injunctive relief and damages relying on the Eleventh Amendment;
2. based on supervisory liability for deliberate indifference against Defendants Clements and Falk holding that letters to them did not establish supervisory liability.
3. based on supervisory liability against Defendant Chapdelaine holding that finding grievances frivolous did not establish supervisory liability.
4. for cruel and unusual punishment, based on a finding of Qualified Immunity.

Petitioner cited case; in the Motion to Alter Or Amend Judgment that the rights

were clearly established at the time.

The date of the judgment sought to be reviewed is Aug. 11, 2017. The date rehearing was denied was Sept. 11, 2017.

The statutory provisions conferring jurisdiction on the district court were 28 U.S.C. §§ 1331 and 1343 and 42 U.S.C. § 1983.

REASONS FOR GRANTING THE PETITION

Ex Parte Young, 209 U.S. 1213 (1908) established that injunctive relief is available even when money damages are prohibited on § 1983 claims. The ability to seek injunctive relief when damages are prohibited or permissible is a matter of exceptional importance. The court of appeals has ignored a seminal precedent and its progeny.

Letters to Defendants Clements and Falk explained the pain caused by each medical condition and how accommodations and work restrictions would ameliorate the pains. The dismissal held the letters, without more, did not establish liability. See Davis v. Ark Valley Corr. Facility, 99 App'x 838, 840 (10th Cir. 2004). Farmer v. Brennan, 511 U.S. 825 (1994). explained officials could be liable based on knowledge from various sources. Jeff v. Penner, 493 F.3d 1091, 1098 (7th Cir. 2006) recognizes that letters can establish knowledge of a substantial risk. If upheld every official in the 10th Circuit will escape liability when notified, by letters, of unconstitutional behavior of subordinates.

Defendant Chapdelaine reviewed 21 grievances, at various stages of a 3-step process, about the each of the painful medical conditions and how ADA/RA Accommodations and Work Restrictions would ameliorate the pains. Instead of investigating and taking corrective action, he sent petitioner a letter warning

that the grievances were frivolous. Farmer, Id. and Penner, Id. recognize that grievances can create the requisite knowledge to establish supervisory liability. If upheld, officials in the 10th Circuit will not be held liable when made aware of unconstitutional behavior by subordinates.

The court of appeals upheld the district court's failure to consider Supreme Court, 10th Circuit, sister circuits and respective district court cases supporting a finding that petitioner's § 1983 claims were clearly established at the time. See Wilson v. Layne, 526 U.S. at 617 (1999). If upheld, 10th Circuit officials will be able to claim, without proof, Qualified Immunity and escape liability.

CONCLUSION

The petition should be granted and counsel appointed to cure deficiencies because petitioner is physically- and cognitively-impaired because of significant sources of pain causing a significant daily sleep deficit making it difficult to "think things through" and write or type. Scar tissue in both arms from injuries, as well as arthritic shoulders, limit range of motion. June 2017 X-Rays revealed Degenerated Crvical Vertebrae and Osteophytes, possibly a partial, if not complete cause of electric-like jolts in the Thumbs/Index Fingers/wrists, intermittent pains elsewhere in the Hands/Forearms, Lt. Chest/Sternum area, Lt. Mid-Back Trigger Point pain, Mid-Back Torso pain, etc.

Respectfully submitted,

Michael R. Lengyel

I declare under penalty of perjury that the foregoing is true and correct. 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed On December 4, 2017.

Michael R. Lengyel