

18-9144

No. 17-3255

Supreme Court, U.S.
FILED

NOV 19 2018

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Delbert Heard — PETITIONER
(Your Name)

vs.

John R. Baldwin, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals F/ The Seventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Delbert Heard, ID#B76789
(Your Name)

Pontiac Correctional Center
PO Box 99

(Address)

Pontiac, IL 61764

(City, State, Zip Code)

ORIGINAL
(Phone Number)

RECEIVED

DEC - 6 2018

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

▷ At what point [does] a risk of inmate assault become sufficiently substantial for 8th Amendment purposes? "

This question has been left unresolved since 1994 in Farmer v Brennan, 511 U.S. 825, 834 at FN3 (1994).

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:

The petitioner, Delbert Heard, a prisoner currently confined in Illinois Dept. of Corrections at Pontiac Correctional Center, in Pontiac Illinois. The respondents are, John R. Baldwin, the acting Director of Illinois Dept. of Corrections, and Michael Melvin, the Warden at Pontiac Correctional Center.

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TABLE OF AUTHORITIES CITED

CASES

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STATUTES AND RULES

OTHER

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☒ is unpublished. (*7th Circuit*)

The opinion of the United States district court appears at Appendix B 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☒ is unpublished.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 July 26, 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: August 21, 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

This case involves the 8th Amendment of the United States Constitution, which provides: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

STATEMENT OF THE CASE

See Below

REASONS FOR GRANTING THE PETITION

See Below

STATEMENT OF THE CASE

1) Petitioner confined in Illinois Dept. of Corrections (IDOC) at the Maximum Security Pontiac Correctional Center (PCC) in the Protective Custody Unit (PC). Inmates in PC are double-celled together. Fighting among cellmates is a common and frequent occurrence that results in many serious injuries. Cellmate fighting has even resulted in many serious injuries including death. In particular the 2015 murder of Pontiac inmate Fabian Carillo. Carillo was strangled to death by his cellmate. Cellmate murders are common place throughout IDOC.

2) Several months after Carillo's murder petitioner along with a co-plaintiff, Tony Dameron filed suit under §1983 against respondents. (Dameron later withdrew his claims). In the suit petitioner explicitly averred that double-celling maximum security inmates engendered violence, "cellmate fights occur frequently..."; petitioner has experienced many attacks by his varying cellmates, double-celling has resulted in many inmates serious injuries and deaths, and that the respondents have knowledge of the SUBSTANTIAL RISK TO INMATES' SAFETY and that respondents are deliberately indifferent to petitioners' safety for facilitating, condoning and/or consenting to the double-celling of PC inmates.

3) Petitioner attached to his complaint a press

release from the Governor of Illinois office, that stated, "double-celling two maximum security inmates significantly increases the risk of inmate attacks."

(See Appx. A, U.S. Dist. Courts Decision, pg. 2, 2nd ¶), and a prison employee Union's report to the legislators that stated, "inmate deaths were linked to double-celling."

(See Appx. A, Id) Petitioner also included 28 affidavits from Pontiac PC inmates about tension, assault, sexual assault, fights, and the general dangers of double-celling (See Appx. A, Id), as well as multiple media articles about IDOC cellmate assault, sexual assault, and murders (See Appx. A, Id); including an article on Carillos murder at Pontiac. Also attached was a "Chronological Order of some of the violence engendered by Double-celling in PC at Pontiac." (See Appx. B, U.S. Dist. Court's Decision, pg. 2 of 5, 1st ¶ and Appx. E) On threshold review the district Court dismissed the suit.

4) In the petitioner's initial appeal the U.S. Court of Appeals (7th Circuit) summarily remanded to the district court to allow petitioner to amend his complaint. After two amended complaints the district court still dismissed the suit for the second time. In dismissing the district court stated that petitioner failed to state a claim because

= none of [his] allegations supported a plausible inference that Pontiac officials were aware of a specific threat of harm... and that petitioners amended complaints = present no additional information regarding how Pontiac officials would have known that [he] faced a specific threat from one of [his] respective cellmates... (See Appx. B, U.S. Dist. Court's Decision, pg. 3 of 5, 2nd & 3rd ¶)

5) In petitioners second appeal to the 7th Circuit he argued that the District Court erroneously dismissed his complaint purportedly because petitioners' allegations did not support an inference of the respondents knowledge of a risk of harm. The 7th Circuit unlike the District Court, found that petitioner had alleged facts sufficient to support an inference of the respondents knowledge of a risk of harm. (See Appx. A, U.S. Court of Appeals Decision, pg. 3, 3rd ¶) Nonetheless the 7th circuit affirmed the District Court's dismissal stating: "Nevertheless Heard has not adequately alleged that the risk of harm is SUBSTANTIAL. A SUBSTANTIAL RISK is 'SO GREAT' that it is almost certain to materialize if nothing is done." (See Appx. A, U.S. Court of Appeals Decision, Id)

REASON FOR GRANTING WRIT

A. Conflicts With Decisions of The Supreme Court and Two Other Circuits

1. Conflict With Supreme Court Decisions

The holding of the U.S. Court of Appeals for the 7th Circuit (7th Circuit) defines "a substantial risk of serious harm as, "a substantial risk is 'so great' that it is 'almost certain to materialize if nothing is done';" is in conflict with this court's decision in Helling v McKinney, 504 U.S. 25, 33-35 (1993). The decision in Helling this court relied in enunciating the substantial risk of harm standard for 8th Amendment purposes.

See Farmer v Brennan, 511 U.S. 825, 834 n.[5] (1995) ("For a claim (like the one here) based on a failure to prevent harm, the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm. See Helling...")

In Helling, this court held that prison officials can be deliberately indifferent to inmates health by forcing them to share a cell with a cellmate who smoked 5 packs of cigarettes

a day because it posed an unreasonable risk to serious damage of [inmate's] future health". A non-smoker contracting cancer from second hand smoke is relatively rare, and therefore obviously the risk of an inmate contracting cancer from his cellmate's second hand smoke is not "so great" that "it's almost certain to materialize". The risk may not even be that high for the cellmate who is actually smoking the 5 packs of cigarettes a day.

Thus, under the 7th Circuit's definition of a substantial risk, Helling is clearly conflicting with the decision in petitioner's suit; and Farmer as well.

2. Conflicts With Decisions of Other Circuits

The 7th Circuit's decision in Petitioner's suit is also in conflict with the decisions of at least two other circuits after Farmer, supra, where the plaintiffs in those other circuits made similar showings of a substantial risk of harm as petitioner made regarding cellmate violence stemming from double-celling / group-celling.

In Jensen v Clark, 94 F.3d 1191, 1198 n.[6],

4th & 5th ¶ (8th Cir. 1996) the 8th Circuit upheld District Court finding AT TRIAL that double-celling at Nebraska State Penitentiary was unconstitutional. There the 8th Circuit stated: "The District Court also found that the violence institution wide carried over into the double cells. In order to do so, the District Court relied on anecdotal evidence of violence in the form of testimony from prisoners. It also found that inside the double-cells tensions are increased by the cell size, lack of privacy, the ineffective surveillance system, deterrents to reporting, the contraband rule, and the excessive amount of time spent on lockdown status. This evidence is ample support for the District Court's conclusion that INMATES IN THE DOUBLE CELLS FACE A SUBSTANTIAL RISK OF ASSAULT at the hands of their cellmates."

Also see Hale v Tallapoosa County, 50 F. 3d 1579, 11th Cir. 1995 (Genuine issue of material fact existed, precluding summary judgment for Sheriff and County, on whether conditions of group-cell subjected detainee to serious harm for purposes of pre-trial detainees § 1983 claim arising from injuries suffered in beating by another inmate; inmate violence occurred

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regularly during overcrowding and resulted in serious injury to inmates =)

B Importance of Question Presented

This case presents a fundamental question of the interpretation of this Court's decision in Farmer v Brennan, 511 U.S. 825, 853 (1994).

Guidance on the question is of importance because it effects the protection of prisoners' safety from serious and FATAL ASSAULT AND SEXUAL ASSAULT in all 50 states and the District of Columbia and hundreds of jails and prisons throughout the nation.

In light of the fact that Congress has concern for prisoner safety and its enactment of the Prison Rape Elimination Act displays that prison safety is a matter of national importance. Therefore guidance on the question presented is of great importance because it reflects this nations standards of humanity through its concerns for protecting all Americans, even American prisoners. Guidance on the question presented is also important for the mere fact that the 7th Circuit has misinterpreted caselaw

enunciated by the highest court in our nation.

Finally guidance is needed particularly in this case as the petitioner strenuously pleads with this court to intervene to eliminate the potential for petitioner to kill in self-defense one of the sociopathic cellmates who are routinely double-celled with him. Over the years the many fights that petitioner has had with cellmates has reached that point if his cellmates had not surrendered. Petitioner's persistence in this suit has been a cry for help that prison officials and the lower courts have ignored.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Delbert Heard - Petitioner, pro se

Date: 11-19-18