

ORIGINAL

No. _____

18-9508

IN THE

SUPREME COURT OF THE UNITED STATES

Floyd Scott

(Your Name)

— PETITIONER

FILED

MAY 15 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

I. Jimenez

vs.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Ninth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Floyd Scott D-27081

(Your Name)

California State Prison-Los Angeles County
44750 60th Street West

(Address)

Lanster, Ca. 93536-7620

(City, State, Zip Code)

(661) 729-2000

(Phone Number)

RECEIVED

MAY 24 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

- 1) Reason number one is that the Petitioner did present a Medical Deliberate Indifference cause against the Respondent.
- 2) Is it contrary to clearly established laws of other Courts of Appeals to Grant the Respondent's Summary Judgment when on three different occasions she did nothing to assist the Petitioners complaints of Internal Bleeding.
- 3) Is it contrary to clearly established laws for the District Court to Grant Summary Judgment to the Respondent against the Ninth Circuit Court of Appeals prior rulings on Deliberate Indifference.
- 4) Is it contrary to clearly established laws for the Ninth Circuit Court of Appeals to allow the Grant of the Respondents Summary Judgment against their own prior rulings.
- 5) Is it contrary to clearly established laws for the District Court and the Ninth Circuit Court of Appeals to not Grant the Petitioners Motion for Summary Judgment when clearly the Respondent failed three times to summon for Medical Assistance for the Petitioner.
- 6) Is it contrary to clearly established laws when the District Court and the Ninth Circuit Court of Appeals Granted Summary Judgment for the Respondent when the Respondent allowed the Petitioner to have Internal Bleeding on June 7, 2015 and June 8, 2015 and did nothing to summon for Medical Help.
- 7) Is it contrary to clearly established laws when the District Court and the Ninth Circuit Court of Appeals failed to Grant Petitioners Summary Judgment when the Petitioner presented Triable Issues that a Jury could find in his favor.

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:

TABLE OF CONTENTS

| | |
|--|----|
| OPINIONS BELOW..... | 1 |
| JURISDICTION..... | 7 |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED | 8 |
| STATEMENT OF THE CASE..... | 9 |
| REASONS FOR GRANTING THE WRIT | 11 |
| CONCLUSION..... | 15 |

INDEX TO APPENDICES

APPENDIX A Memorandum from the Ninth Circuit Court of Appeals
dated January 17, 2019 PAGE 203

APPENDIX B Order Denying Petition for Rehearing dated
April 22, 2019 from the Ninth Circuit C.O.A. PAGE 4

APPENDIX C Mandate from the Ninth Circuit C.O.A. dated
April 30, 2019 PAGE 5

APPENDIX D Order accepting Findings and Recommendations of
U.S. Magistrate Judge dated April 18, 2018 PAGE 6

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

See Attached

PAGE NUMBER

STATUTES AND RULES

| | |
|----------------------------------|----|
| 42 U.S.C. Section 1983; | 13 |
| California Government Code 845.6 | 13 |

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.

The opinion of the United States district court appears at Appendix D 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

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was January 17, 2019.

[] 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: April 22, 2019, and a copy of the order denying rehearing appears at Appendix 3.

[] 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

The District Court violated the Petitioners Due Process Rights when it Granted the Respondents Motion for Summary Judgment for Eighth Amendment Rights violations of Petitioners serious Medical Condition. The Petitioner pointed out in his Motion and Opposition to the Respondents Motion for Summary Judgment that the Respondent states that she worked for three years for a Group of Doctors who Specialized in Gastrology "Dealing with Intestinal Issues" so the Respondent [1] Knew of, [2] Disregarded the Excessive Risk to the Petitioners Serious Medical Condition of Internal Bleeding. This in itself violates the Eighth Amendment of Cruel and Unusual Punishment, especially when after being informed on three different times that the Petitioner was Bleeding Internally with Blood coming out of his Rectum, this condition can lead to death. The first telling the Respondent of Petitioners Internal Bleeding was at 1415 hours on June 7, 2015; the second telling of the Petitioners Internal Bleeding to the Respondent was at 1700 hours on June 7, 2015 and the third telling of the Petitioners Internal Bleeding to the Respondent was at 1930 hours. Yet the Respondent did nothing to Summon for a higher degree of Medical Assistance for the Petitioner, as verified by the submitted Prisons own records of June 7, 2015, Involving the Petitioner and the Respondent dealings with the Petitioners Internal Bleeding.

The Petitioner on June 8, 2015 after going pass the Respondent was able to receive the Medical Treatment for his proven Internal Bleeding as witnessed by at least five Medical Doctors and several Registered Nurses on June 8th and 9th 2015. Yet the District Court ruled for Summary Judgment for the Respondent and the Ninth Circuit Court of Appeals Affirmed said Decision with Toguchi v. Chung, 391 F3d 1051, 1057-60 (9thcir.2004) at page of Appendix A

TABLE OF AUTHORITIES CITED

| CASES: | PAGE NUMBER |
|---|-------------|
| Alexander v. Weiner,841 F.Supp.2d 486 | 11 |
| Cox v. District of Columbia,832 F.Supp 439 | 11 |
| Dill v. Corr.Med.Serv.,2013 U.S.Dist.Lexis 46001 | 12 |
| Egberto v. Nev.Dept. of Corr.,2017 U.S.App. Lexis 2016 | 11 |
| Estelle v. Gamble,429 U.S.97,104,97Sct.285,50LED 251(1976) | 12,13 |
| Farmer v. Brennan,511 U.S.825,834,114Sct.1970,LED811(1994) | 12 |
| Ferola v. Moran, D.C. R.I. 1985,622 F.Supp.814 | 11 |
| Frohmader v. Wayne,766 F.Supp.909,958 F2d 1024 | 12 |
| Gaxiola v. Sayre,667 Fed.Appx. 598 | 12 |
| Jett v. Penner,439,1091,1096 (9th cir.2006) | 12,13 |
| Johnson v. Chapell,2014 U.S.Dist. Lexis 122836 | 12 |
| Johnson v. Dept.of Public Safety and Corr. Serv.,885 F.Supp 817 | 11 |
| Jones v. Johnson,781 F2d 769,771 (9th cir.1986) | 13 |
| Kelly v. Borg,60 F3d 664,667 (9th cir.1995) | 13 |
| Lawson v. Superior Court,180 Cal.App.4th 13,72,1384n11, 103 Cal.Rptr. 3d 834 (2010) | 13 |
| McGluckin v. Smith,974 F2d 1050,1059(9th cir.1992) | 12,13 |
| Medina -Cláudio v. Pereira,443 F.Supp.2d 208 | 11 |
| Moore v. Jackson,123 F3d 1082 | 12 |
| Morgan v. Maass,1995 U.S.App.Lexis 38206 | 13 |
| Vaughan v. California, 2012 U.S. Dist.Lexis 88380 | 13 |
| WMX Technologies Inc. v. Miller,104 F3d 1133,1136(9th cir.1997) | 12 |

STATEMENT OF THE CASE

On June 7, 2015 while at California State Prison-Los Angeles County (CSP-LAC) I, the Petitioner was experiencing abdominal pain and each time it felt that I had to have a bowel movement blood would come out of my rectum. At about 1415 hours the Respondent I. Jimenez a Licensed Vocational Nurse (LVN) came to the CSP-LAC Facility A yard building one(1) to pass out medication. At that time I had my cell mate to call the Respondent to cell A-1 137 which she did appear. The Petitioner informed the Respondent that he was having blood coming out of his rectum each time it felt as if he had to take a bowel movement. The Respondent told the Petitioner that it was Hemorhoids and left without ever examining the Petitioner. The Respondent continued to pass out Medication to other Inmates.

At evening meal time around 1700 hours the Petitioner once again informed the Respondent that he was still having bleeding coming from his rectum, at that time the Respondent told the Petitioner that she would call for a Registered Nurse (RN) but at no time did the Respondent call anyone instead the Respondent continued to pass out the evening Medications to other Inmates.

Agin for the third time at around 1930 hours the Petitioner again informed the Respondent that he was still Bleeding Internally and that blood was coming out of his rectum. The Respondent told the Petitioner that the R.N. never called back. Yet again the Respondent failed to pick up the phone to call for an R.N. but instead continued to pass the medication to other Inmates. The Respondent did give the Petitioner some Diarrhea pills without ever consulting with a Staff Doctor or R.N.. On June 7, 2015 the Respondent failed three times(3) to summon for a higher degree of Medical Assistance from the 3 complaints of the Petitioners Internal Bleeding with Blood coming out of his Rectum.

On June 8, 2015 when the Petitioner told Custody Staff Sergeant Hughes that he was having Bleeding Internally, Sergeant Hughes contacted CSP-LAC Facility A yards Medical Department and sent the Petitioner over to Medical where the Petitioner was seen by Dr. Chen-Do who checked out the Petitioner and had the Petitioner taken by ambulance to CSP-LAC's main Medical Center to await an ambulance to take the Petitioner to Palmdale Reginal Medical Center (PRMC). Once at PRMC's Emergency Room, the Petitioner was seen by and examined by a Doctor who ordered a CT-Scan and had the Petitioner admitted to PRMC where the Petitioner on June 8, 2015 was preped for a Endoscopy and a Colonoscopy on June 9, 2015 early morning. This was done within twentyfour (24) hours of seeing Dr. Chen-Do and being sent to PRMC where at least four Medical Doctors found a need to treat the Petitioners condition of Internal Bleeding with Blood coming out of his Rectum.

While at PRMC the Emergency Room Doctor examined the Petitioner and saw the blood, and once admitted the PRMC's staff who attended to the Petitioner also took notes "which was submitted into

STATEMENT OF THE CASE CONTINUED

evidence" of the Petitioners bleeding. So by all of the evidence that the Petitioner did have Internal Bleeding exiting his Rectum and it was stopped with the treatment. All records per the official Medical Recored keeper at CSP-LAC states under penalty of perjury that the Respondent I.Jimenez LVN made no phone calls to any Doctor or R.N nor did she record the events of the three times the Petitioner told her he was having Internal Bleeding.

The District Court was presented with Motions for Summary Judgments from the Petitioner and the Respondent. Both parties filed objections. The District Court ruled for the Respondents Motion for Summary Judgment on April 18, 2018. After Petitioners objections the District Court failed to follow clearly established laws since the Respondent did deny, delay and refuse the Petitioner Medical Assistance three times on June 7, 2015 and on June 8, 2015 at least five Medical Doctors found it worthy of treatment for his Internal Bleeding. Per the Ninth Circuit Court of Appeals and the United States Supreme Court Medical Deliberate Indifferent occurs when Prison Officials Deny, Delay Medical Treatment for a serious Medical Condition that even a Lay Person and Doctors would find worthy of treatment, for which the Petitioner received on June 8th and 9th, 2015.

The District Court erred in Granting the Respondents Motion for Summary Judgment and the Ninth Circuit Court of Appeals erred in Affirming the District Courts Opinion. It is clear that on June 7, 2015 the Petitioner on three different times informed the Respondent of his Internal Bleeding. Its clear that each Doctor and Nurse on June 8, 2015 and June 9, 2015 were told by the Petitioner that the Petitioner was in pain also, Its clear that the Petitioner also within twenty four hours of admittance into Palmdale Reginal Medical Center under went two Medical Procedures a Endoscopy and a Colonoscopy for which the bleeding was stopped during the treatment. Its clear the Respondent did Intentionally Deny and Delay the Petitioners Medical Treatment while Misdiagnosing the Petitioners Medical Condition when she told the Petitioner that it was Hemorrhoids.

REASONS FOR GRANTING THE PETITION

- 1] That for the forgoing reasons, The Petitioner did present a Medical Deliberate Indifference Cause against the Respondent when she on three different occasions refused, denied, and failed to summon for a higher degree of medical assistance for the Petitioner which proved to be needed on June 7, 2015 the date that the Respondent denied, delayed the Serious Medical Treatment for the Petitioner and on June 8, 2015 and June 9, 2015 when at least four(4) Medical Doctors found a Medical need to treat the Petitioners Internal Bleeding, with an emergency Endoscopy and Colonoscopy; and the District Court erred in Granting the Summary Judgment in the contrary to clearly established laws and when the U.S. Court of Appeals for the Ninth Circuit failed to Reverse and Remand, also acted contrary to clearly established laws. This Petition must be Granted and Reversed and Remanded for Trial or the Petitioners Motion for Summary Judgment should be Granted for the Interest of Justice.
- 2] The Petitioners reason number two for Granting this Petition is that it is contrary to clearly established laws from other Courts of Appeals on Deliberate Indifference to a Prisoners Medical Condition. See First Circuit Court of Appeals at 841 F.Supp 2d 486 Alexander v. Weiner, Jan. 18, 2012--Allegations that Prison Officials denied or Delayed recommended treatment by Medical Professionals may be sufficient to satisfy the Deliberate Indifference Standards. In this case the Petitioners prior Colonoscopy Doctor put in writing that if bleeding occurred to contact a Doctor immediately. This is still in the Petitioners Medical Records and the Petitioner made the Respondent aware of this on June 7, 2015; Also see at Prison Official is a Proper Defendant in an Eighth Amendment Suit if the Official was personally involved in the decision to Deny Treatment for a Prisoners Serious Medical need. Personal involvement may be established, by showing that the Official knew of the Prisoners need for Medical Care and yet failed to provide the same. Also in this case the Respondent claims to have worked at a Doctors Office that Specializes in Gastrology so with three years on the job the Respondent knew of the facts of what internal bleeding could have. Also see First Circuit Court of Appeals at 443 F.Supp. 2d 208 Medina-Claudio v. Perira, July 19, 2006-Prison Officials violate Eighth Amendment against Cruel and Unusual Punishment when they act Deliberately and Indifferent to Serious Medical need of Prisoner in their custody-A Medical need is sufficiently serious to satisfy if it is one that has been diagnosed by a Physician as mandating treatment or one that is so obvious that even a Lay Person would easily recognize the necessity for a Doctors attention Also see Cox v. District of Columbia, 832 F.Supp.439; Johnson v. Department of Public Safety and Correctional Services, 885 F.Supp. 817; and at Ferola v. Moran, D.C. R.I. 1985, 622 F.Supp.
- 3] The Petitioners reason number three for Granting this Petition is that the District Court was contrary to clearly established laws against the Ninth Circuit Court of Appeals-see 2017 U.S. App.Lexis 2106 Egberto v. Nev. Dept. of Corr., Jan.9, 2017---The Government has an obligation to provide Medical Care for those

REASONS FOR GRANTING THE PETITION

3] whom it is punishing by incarceration, and Deliberate Indifference to Serious Medical needs of Prisoners Constitutes the Unnecessary and Wanton Infliction of Pain Prescribed by the Eighth Amendment. This Indifference can be manifested by Prison Doctors in their response to the prisoners needs or by Prison Guards in intentionally denying, delaying access to Medical Care or intentionally interferering with treatment once prescribed. In this case the Respondent was informed about the Petitioners prior Colonoscopy and what the Doctor stated about if bleeding occurs to see a Doctor immediately. This statement is in the Petitioners Medical File accessible in the Computer in the Medical Office that the Respondent was in on June 7, 2015. see Moore v. Jackson, 123 F.3d 1082, Reh Den.-Inmates Medical need is serious, as element of Deliberate Indifference Claim if its obvious to lay person or supported by Medical Evidence, Like Physicians Diagnosis-In this case the Petitioner on June 7, 2015 told the Respondent three times that he had Internal Bleeding yet she did nothing but on June 8, 2015 four to five Medical Doctors found a need to treat the Petitioner from his Internal Bleeding which was wittnessed also by the Nurese at PRMC during the Petitioners admittance.

4] The Petitioners reason number four is for the Ninth Circuit Court of Appeals allowing the Grant of the Respondents Summary Judgment that is contrary to their own prior fulings-see Frohmader v. Wayne, 766 F.Supp.909 Aff. in Part. Reversed in Part 958 F2d 1024-Deliberate Indifference to serious Medical needs is shown when Prison Officials have prevented inmate from receiving recommended treatment or when inmate is denied access to Medical Personnel capable of evaluating need for treatment, also see 2013 U.S.Dist.Lexis 46001Dill v. Corr.Med.Serv., March 28, 2013---The existence of an injury that a reasonable Doctor or Patient would find important and worthy of comment or treatment ...Also see Johnson v. Chapell, 2104 U.S. Dist.Lexis 122836, Sept. 2, 2014; Estelle v. Gamble, 429 U.S.97, 104, 97Sct.285, 50LED 251(1976) McGlucklin v. Smith, 974F2d 1050, 1059(9th cir.1992) WMX Technologies Inc.v. Miller, 104F3d 1133, 1136(9th cir.1997) and Farmer v. Brennan, 511 U.S. 825, 834 , 114Sct.1970, 128 LED811(1994);

5]The Petitioners reason number five is for the District Court and the Ninth Circuit Court of Appeals to not Grant the Petitioners Motion for a Summary Judgment. On June 7, 2015 when the Petitioner informed the Respondent three times that he had internal bleeding and three times she failed to summon for a higher degree of Medical Assistance when on June 8, 2015 at least four to five Medical Doctors felt it worthy to treat the Petitioners Internal Bleeding see 667 Fed. Appx. 598 Gaxiola v. Sayre, May 12, 2016 WE conclude that the District Court Erred in Granting Summary Judgment against Gaxiola on his claim that the Defendants acted with Deliberate Indifference in failing to treat his condition ---Gaxiola has presented evidence that a Prison Nurse obsevered him having a grand mal seizure on this date. That he subsequently experienced several syncopal episodes that he did not receive follow-up. Also see Jett v. Penner, 439 F3d 1091, 1096(9th cir.2006) Stating that a delay in Medical Treatment can amount to Deliberate

REASONS FOR GRANTING THE PETITION

5] Indifference and that a prisoner need not show his harm was substantial.

6] The Petitioners reason number six is was it contrary to clearly established laws when the District Court and the Ninth Circuit Court of Appeals Granted Summary Judgment for the Respondent when the Respondent allowed the Petitioner to have Internal Bleeding on June 7, 2015 after the Petitioner informed her three times of his Internal Bleeding see 1995 U.S. App. Lexis 38206 MORGAN V. MAASS-to find that a Jailer can leave an inmate in his cell for over five hours after he allegedly told Tran that he needed to go to the Hospital is more than sufficient to constitute sufficiently serious harm; see Jones v. Johnson, 781 F2d 769, 771(9th cir.1986) Extreme Discomfort and Pain suffered by an inmate due to a delay in surgery stated a serious Medical need; at McGucklin v. Smith 974 F2d 1050,1060(9th cir.1992)(delay of treatment that caused a prisoner to suffer a significant amount of pain and anguish caused "Harm" upon which a section 1983 could be based and Kelly v. Borg, 60 F3d 664,667(th cir. 1995)-Unpleasant effects suffered by an inmate rendered unconscious due to exposure to fumes was enough to state a section 1983 claim even if the Prisoner only suffered minimal damage) Therefore the delay in Medical Treatment that allegedly resulted from Trans conduct resulted in substantial harm to Morgan; and at California Government Code Section 845.6-A public employee is liable if the employee knows or has reason to know that a prisoner is in need of Immediate Medical Care and he fails to take reasonable action to summon such Medical care section 845.6, Thus creates liability and obligation of help Lawson v. Superior Court, 180 Cal. App. 4th 1372,1384n11,103 Cal.Rptr.3d 834(2010). In this case the Respondent was told three different times of Petitioners Internal Bleeding yet she failed to call for a Higher Degree of Medical Help, This is Medical Deliberate Indifference when you fail to act upon a Prisoners Medical Needs and both the District Court and the Ninth Circuit Court of Appeals failed to Deny the Respondents Motion for Summary Judgment and to Grant the Petitioners Motion for Summary Judgment as the Respondent has no legal defense for her actions on June 7, 2015.

7] The Petitioners reason at number seven is was the District Court and the Ninth Circuit Court of Appeals actions ~~is~~ is contrary to clearly established laws when the Petitioner presented a Triable Issue that a reasonable Jury could find in his favor when the Respondent denied the Petitioner Medical help on June 7, 2015 three times. See 2012 U.S..Dist.Lexis 88380 Vaughan v. California, March 16, 2012- A Prison Officials Deliberate Indifference to a prisoners serious Medical needs constitutes the Unnecessary and Wanton Infliction of Pain Proscribed by the Eighth Amendment. See also Estelle v. Gamble, 429 U.S. 97 Sct. 285,50 Led 2d 251, Jett v. Penner, 439 F3d 1091,1096(9th cir.2006) To Prevail a Plaintiff must show (1) A Serious Medical need and (2) Defendants response to Plaintiffs serious Medical need and was Deliberately Indifference. In this case Petitioner could prevail with this action with a reasonable Jury as the evidence

from Staff at CSP-LAC, and PRMC each show that the Petitioner did have Internal Bleeding. At least four to five Medical Doctors found it worthy of treatment. The Nurses at PRMC took notes of said bleeding and the Petitioner did receive Medical Treatment which stopped the Bleeding on June 8th and 9th, 2015 for the stated reasons this Court should either Reverse and Remand or Grant the Petitioners Motion for Summary Judgment as both the District Court and the Ninth Circuit Court of Appeals acted in contress to clearly established law and their own prior Court Ruling.....

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Floyd Scott

Date: May 15 2019