IN THE UNITED STATES

SUPREME COURT

Ryan Charles Diemond,

Petitioner,

v.

MICHIGAN DEPARTMENT OF CORRECTIONS et al.,

Defendants.

_____/

Case No.:

Honorable Justice

APPLICATION FOR EXTENSION OF TIME

COMES NOW, the Petitioner, a Fourteenth Amendment citizen of Our Great Nation, i.e., "We the People of... the United States of America" (U.S.A.), see generally U.S. Const. Preamble, in pro se, and would show unto this Honorable "supreme Court", see generally U.S. Const. Art. III, several Good Cause Reasons For **GRANTING** Petitioner's **REQUEST** for a sixty day (60) Extension Of Time, **PURSUANT TO** U.S. ~~Court~~ S. Ct. Rule 13(5), for the legitimate, "good faith", see generally Ellis v. United States, 356 U.S. 674, 78 S.Ct. 974 (1958) (observing the proper application of the "good faith" rule), purpose of filing a Petition for a Writ of Certiorari appropos of a denial of "access to courts". See generally 3 Margins 333 (Fall 2003).

In support, Petitioner states:

(1) The Judgements sought to be reviewed, by this Honorable supreme Court, are that

of the United States court of appeals for the Sixth Circuit (the Sixth Circuit), Case No. 18-1344, RYAN CHARLES DIEMOND v. MICHIGAN DEPARTMENT OF CORRECTIONS, 2018 U.S. App. LEXIS 31001, and that of the United States district court for the western district of Michigan southern division (the lower court), Case No. 1:17-cv-928, RYAN CHARLES DIEMOND v. MICHIGAN DEPARTMENT OF CORRECTIONS et al., 2018 U.S. Dist. LEXIS 35169.

(2) The Reasons Why such an extension of time is necessary and justified are because of the foregoing:

(a) Petitioner is a real, living, breathing, flesh-and-blood, human being, who, as a French-Canadian Hebrew-American Indian man, in fact, actually, possesses and/or retains inalienable, fundamentally vital, "International Human Rights", see, e.g., the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel, Inhumane, or Degrading Treatment or Punishment. See also Statute of the International Criminal Court, art. 3 (37 ILM 999)

(b) Next, PURSUANT TO COMMANDS being spoken with the voice of "the supreme Law of the Land", see generally U.S. Const. Art. VI. through the contractual obligations established by the material terms and provisions under the Citizenship Clause of the Fourteenth Amendment to the Constitution, being U.S. Const. Amend. XIV, §1, cl. 1, and ~~the~~ "... legislative Powers...", see generally U.S. Const. Art. I, such as 8 U.S.C. § 1101(a)(22), 10 U.S.C. § 253(1), and 18 U.S.C. § 241, Petitioner is a Fourteenth Amendment citizen, i.e., an American-Michigander, who, owes permanent allegiance to and is permanently under the protection of the U.S.A., by virtue of being born on December 9, 1981, around about 07:30 hrs., at the Alpena General Hospital, in the City of Alpena, County of Alpena, within the Territory of the State of Michigan (Michigan), which is "in the United States, and subject to the jurisdiction thereof", and is "the State wherein" Petitioner currently "resides". See generally U.S. Const. Amend. XIV, §1, cl. 1.

(c) Further, among others, Petitioner substantially suffers from the adverse effects of a mental impairment known as Attention Deficit Hyperactivity Disorder (A.D.H.D.). A.D.H.D. is a

neurological ~~disorder~~ condition caused by a chemical imbalance in the ~~executive~~ management systems, i.e., the executive functions, of the brain — the prefrontal cortex and the amygdala. Without going into the rather lengthy list of adverse effects from Petitioner's A.D.H.D. symptom, which will be included in the Petition for a Writ of Certiorari, it is worthy of noting that, while A.D.H.D. is not an intelligence defiency, this chemical imbalance, in fact, substantially limits certain normal functions of Petitioner's brain, especially, as in this case, when Petitioner is not being given proper medications. It is, too, worthy of noting that this chemical imbalance is the controlling influence, or driving force, behind how and why Petitioner's A.D.H.D., often substantially limits Petitioner's abilities ~~to~~ apropos of, but may not be limited to, concentrating, thinking, interacting with others, learning, organizing, and communicating, in an effective and meaningful manner.

(d) Furthermore, compounding matters even worse, because of all the writing that Petitioner has done in his pursuit of gaining access to courts, Petitioner now suffers from substantial painful effects of a palpable physical injury, and other physical impairments, ~~which~~ in Petitioner's right arm. These conditions have been identified as being tenosynovitus, carpel tunnel, tendon damage w/scarring in Petitioner's right hand, and Complex Regional Pain Syndrome (C.R.P.S.), also known as Reflex Sympathetic Dystrophy (R.S.D.), with causalgia. It should be duly noted that, in combination with ~~one~~ one another, these conditions cause Petitioner to suffer chronic pain, which often becomes severely acute when Petitioner is compelled to perform manual tasks that are strenuous and/or repetitive ~~motion~~. Please take judicial notice that Petitioner in fact currently has a "Michigan Department of Corrections (M.D.O.C.) - Bureau of Health Care Services (B.H.C.S.) MEDICAL ORDER DETAIL" for "Work Assignment: No repetitive motion tasks", however, due to difficulties with obtaining copies of these documents, such documents are not being annexed herein, which includes mental health records as well.

(e) In sum, when compared to the average person, it takes Petitioner more time, effort, and consistency as well as, unfortunately, repetition, to complete simple, daily, mundane

tasks and learn new practices, especially complex and intricate fields such as, but is not limited to, civil and criminal law and procedure.

(f) This Honorable "Supreme Court" shall have "appellate Jurisdiction" over the subject matters being presented in Petitioner's Petition for a Writ of Certiorari, as such points, "both as to Law and Fact", arise under the "Constitution, the Laws of the United States, and Treaties made, . . ., under their Authority". See generally U.S. Const. Art. III. See also 28 U.S.C. § 1254(1).

Wherefore, premises considered, Petitioner hopes and prays that this Honorable Court will GRANT Petitioner's REQUEST for a Sixty ~~Days~~ (60) Day Extension of Time, ~~to~~ for the Reasons set forth herein, ~~in accordance~~ so that Petitioner can hopefully finish and file his Petition for a Writ of Certiorari.

~~Pursuant~~ Pursuant to 28 U.S.C. § 1746, I, Ryan C. Diemond, swears (or declares) that all of the aforementioned is true and correct, to the best of my information, knowledge, and belief.

Petitioner's Signature: ~~Ryan C. Diemond~~ 1-18-19

RONALD L. NICHOLS
NOTARY PUBLIC, STATE OF MI
COUNTY OF LENAWEE
MY COMMISSION EXPIRES Apr 24, 2025
ACTING IN COUNTY OF Lenawee

1/18/19

Ryan C. Diemond (#703441)
Gus Harrison Correctional Facility
2727 E. Beecher Rd.
Adrian, MI 49221
U.S.A.

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 18-1344

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RYAN CHARLES DIEMOND, Plaintiff-Appellant, v. MICHIGAN DEPARTMENT OF CORRECTIONS, Defendant-Appellee.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

ORDER

Before: SUTTON, DONALD, and THAPAR, Circuit Judges.

Ryan Charles Diemond, a pro se Michigan prisoner, appeals from the district court's judgment dismissing his action filed under 42 U.S.C. § 1983. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Seeking monetary, declaratory, and injunctive relief, Diemond sued the Michigan Department of Corrections and numerous state correctional officials, alleging violations of his constitutional rights that occurred over several years and in several prisons during his incarceration. The district court determined that Diemond was improperly attempting to join a number of unrelated claims and, accordingly, dismissed most of his claims without prejudice. The court concluded that his remaining claims failed to state a claim and dismissed those claims with prejudice. Diemond has filed a timely appeal from this decision.

Initially, we note that the district court concluded that Diemond improperly attempted to join a number of unrelated claims. In his complaint, Diemond alleged violations of his constitutional rights arising from several incidents, including: (1) misdiagnosis and mistreatment of his Attention Deficit Disorder (ADD) and Attention Deficit Hyperactivity Disorder (ADHD) in 2013; (2) inadequate medical treatment for an injury to his hand in 2014; (3) inadequate medical treatment for his anxiety and depression; (4) failure to modify the requirements for participation in the "legal writer program" in order to accommodate his disabilities; and (5) retaliation against Diemond for the exercise of his constitutional rights and interference with his access to the courts. The district court dismissed all of these claims except those arising from the first incident against the defendants at the Charles Egeler Reception & Guidance Center on the basis of misjoinder. On appeal, Diemond does not challenge the district court's dismissal of the claims due to misjoinder. Rather, he devotes his brief to arguing that the defendants should have made reasonable accommodations for his ADD and ADHD. He also argues that the district court violated his constitutional rights by denying his request for counsel. Since Diemond does not challenge the dismissal of most of his claims due to misjoinder, he has waived that argument on appeal. *See Radvansky v. City of Olmsted Falls*, 395 F.3d 291, 311 (6th Cir. 2005); *Marks v. Newcourt Credit Grp., Inc.*, 342 F.3d 444, 462 (6th Cir. 2003).

The district court properly dismissed Diemond's remaining claims for failure to state a claim. We review de novo a district court's dismissal of a complaint for failure to state a claim under 28 U.S.C. §§ 1915(e)(2) and 1915A(b). *Thomas v. Eby*, 481 F.3d 434, 437 (6th Cir. 2007). To avoid dismissal for failure to state a claim, the plaintiff must allege sufficient facts which, if accepted as true, state a claim for relief "that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (internal quotation marks omitted)).

Diemond's chief contention is that the defendants inaccurately diagnosed and treated his ADD and ADHD and did not reasonably accommodate his disability. Under the Eighth Amendment, prison officials may not unnecessarily and wantonly inflict pain on a prisoner by

acting with "deliberate indifference" to the prisoner's serious medical needs. *Rhinehart v. Scutt*, 894 F.3d 721, 736 (6th Cir. 2018) (quoting *Wilson v. Seiter*, 501 U.S. 294, 297 (1991) (internal quotation marks omitted)). The mere failure by prison officials to provide adequate medical care to a prisoner does not violate the Eighth Amendment, *id.* at 737, and the prisoner must allege more than negligence in order to state a claim of deliberate indifference. *Johnson v. Karnes*, 398 F.3d 868, 875 (6th Cir. 2005). A claim for denial of adequate medical care has an objective and a subjective component. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). To satisfy the objective component, the plaintiff must allege a sufficiently serious medical need. *Johnson*, 398 F.3d at 874. When an inmate has received on-going treatment for his condition yet claims that this treatment was inadequate, the objective component requires him to show medical care that was "so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness." *Rhinehart*, 894 F.3d at 737 (quoting *Miller v. Calhoun County*, 408 F.3d 803, 819 (6th Cir. 2005) (internal quotation marks omitted)). For the subjective component, the prisoner must show that the defendant acted with a mental state equivalent to criminal recklessness. *Id.* at 738; *Santiago v. Ringle*, 734 F.3d 585, 591 (6th Cir. 2013). This showing requires proof that the defendant subjectively perceived facts from which he inferred a substantial risk to the prisoner but, nonetheless, disregarded that risk. *Rhinehart*, 894 F.3d at 738; *Comstock v. McCrary*, 273 F.3d 693, 703 (6th Cir. 2001).

Diemond has not set forth sufficient facts showing deliberate indifference to his ADD and ADHD. While Diemond contends that the defendants did not adequately diagnose and treat these medical conditions, the medical records attached to his complaint reveal that prison officials regularly provided Diemond with mental health treatment after he was incarcerated. Prison medical personnel also regularly provided Diemond with treatment for an injury to his right hand. At most, Diemond is alleging his disagreement with the course of medical treatment provided by correctional personnel, which is insufficient to establish a violation of his Eighth Amendment rights. *Rhinehart*, 894 F.3d at 744; *Darrah v. Krisher*, 865 F.3d 361, 372 (6th Cir. 2017).

Nor has Diemond alleged sufficient facts showing that the defendants violated the Americans with Disabilities Act (ADA) or the Rehabilitation Act (RA). The ADA and RA do apply to state prisons. *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 209-10 (1998); *Mingus v. Butler*, 591 F.3d 474, 481–82 (6th Cir. 2010). To establish a claim under Title II of the ADA, the plaintiff must show that: (1) he is an otherwise qualified individual with a disability; (2) he was excluded from participation in a public entity's services, programs, or activities; and (3) such exclusion was due to his disability. *Anderson v. City of Blue Ash*, 798 F.3d 338, 357 (6th Cir. 2015). Diemond specifically alleges that prison officials did not reasonably accommodate his disability, which is one type of claim under the ADA. *See Roell v. Hamilton Cty, Ohio/Hamilton Cty. Bd. of Cty. Comm'rs*, 870 F.3d 471, 488 (6th Cir. 2017). Likewise, the RA protects an otherwise qualified individual with a disability from discrimination in specified programs and activities solely because of his disability. 29 U.S.C. § 794(a). The ADA and the RA cover largely the same ground, *R.K. ex rel. J.K. v. Bd. of Educ. of Scott Cty.*, 637 F. App'x 922, 924 (6th Cir. 2016), and the analysis under the RA parallels that of the ADA because they contain similar language, purpose, and scope. *Babcock v. Michigan*, 812 F.3d 531, 540 (6th Cir. 2016).

Diemond maintains that the defendants should have accommodated his ADD and ADHD by providing him with legal writer assistance. To establish a prima facie case under the ADA for failure to accommodate a disability, the plaintiff must show that: (1) he is disabled within the meaning of the ADA; (2) he is otherwise qualified for the service, with or without reasonable accommodation; (3) the defendants knew or had reason to know of his disability; (4) he requested an accommodation; and (5) the defendants failed to provide the necessary accommodation. *Mosby-Meachem v. Memphis Light, Gas & Water Div.*, 883 F.3d 595, 603 (6th Cir. 2018).

Diemond has not set forth a prima facie case of discrimination under the ADA and RA. Diemond has not alleged specific facts against the defendants from the Charles Egeler Reception & Guidance Center still at issue in this case which would make his claim that those defendants

discriminated against him by excluding him from the legal writing assistance program plausible rather than just possible. Additionally, beyond his conclusory allegations, Diemond has not set forth how participation in the program was a necessary accommodation for his ADD and ADHD. *See Nance v. Goodyear Tire & Rubber Co.*, 527 F.3d 539, 557 (6th Cir. 2008).

Lastly, Diemond argues that the district court improperly denied his request for the appointment of counsel. However, Diemond does not have a constitutional right to the appointment of counsel in a civil case, and such appointment is a privilege justified only by exceptional circumstances. *See Lavado v. Keohane*, 992 F.2d 601, 605-06 (6th Cir. 1993). We review a district court's denial of a motion to appoint counsel for an abuse of discretion. *Id.* at 604-05. Because Diemond's claims clearly did not warrant relief, the district court did not abuse its discretion in denying his request for the appointment of counsel. To the extent that Diemond renews his request for counsel with this court, we **DENY** his request.

Accordingly, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk