

SUPREME COURT OF THE UNITED STATES

RONALD MARSHALL

PETITIONER

-VS-

ANN ASH, M.D.

RESPONDENT

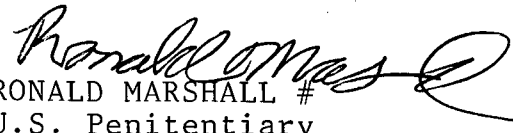
MOTION TO FILE PETITION FOR A WRIT OF CERTIORARI  
OUT-OF-TIME

Comes the Movant/Petitioner - Ronald Marshall, "pro se", and moves the Court for an order permitting him to file the attached "Petition for a Writ of Certiorari" on an "out-of-time" basis. Movant/Petitioner states that he is a federal prisoner serving a sentence of life imprisonment, and has been incarcerated since 1987. The Movant/Petitioner is uneducated and must rely on other prisoners to obtain legal advice, and to read legal documents, etc. Due to his lack of ability to grasp and understand legal pleadings and documents, the Movant/Petitioner was unable to file his petition within the time constraints established by Supreme Court Rules because of lack of access to legal aides in prison.

During the Movant/Petitioner's current incarceration in federal prison, medical personnel failed to properly provide treatment for an infected toe, which led to the amputation of his lower right leg from gangrene infection. Although a lawsuit was filed against the defendant medical doctor - Ann Ash, M.D., the action was dismissed because of her affidavit alleging she was not the treating physician. However, this Movant/Petitioner submitted a counter-affidavit stating that she was the treating physician. Based on that state of the record, the lawsuit was dismissed without a hearing to determine the issue. In dismissing the civil rights action, the lower courts refused to give a liberal construction to his pleadings, as required by Haines v. Kerner, 404 US 519 (1972). Thus, the petition is not based on a frivolous claim.

WHEREFORE, the Court is requested to grant Ronald Marshall permission to file his petition on an "out-of-time" basis.

Respectfully submitted,

  
RONALD MARSHALL #  
U.S. Penitentiary  
P O Box 33  
Terre Haute, Ind 47808

MOVANT/PETITIONER "pro se"

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 16 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

RONALD MARSHALL,

Plaintiff-Appellant,

v.

ANN ASH, MD; et al.,

Defendants-Appellees.

No. 17-16804

D.C. No. 4:15-cv-00141-JAS

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
James Alan Soto, District Judge, Presiding

Submitted April 11, 2018\*\*

Before: SILVERMAN, PAEZ, and OWENS, Circuit Judges.

Federal prisoner Ronald Marshall appeals pro se from the district court's summary judgment in his action brought under *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), alleging deliberate indifference to his serious medical needs. We have jurisdiction under 28

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

U.S.C. § 1291. We review de novo. *Moore v. Glickman*, 113 F.3d 988, 989 (9th Cir. 1997). We affirm.

The district court properly granted summary judgment because Marshall failed to raise a genuine dispute of material fact as to whether defendant Ash was deliberately indifferent in treating Marshall's toe and foot. *See Toguchi v. Chung*, 391 F.3d 1051, 1057-60 (deliberate indifference is a high legal standard; medical malpractice, negligence, or a difference in medical opinion concerning the course of treatment does not amount to deliberate indifference).

We reject Marshall's contention as unsupported by the record that the district court made an improper credibility determination.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

**AFFIRMED.**

**Additional material  
from this filing is  
available in the  
Clerk's Office.**