

DEC 20 2017

OFFICE OF THE CLERK

No. 19-5057IN THE  
SUPREME COURT OF THE UNITED STATESWilliam J Fletcher — PETITIONER  
(Your Name)vs.  
CORIZON, LLC Health Services  
and Employees, et al, — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Courts of Appeal for the Ninth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

William J Fletcher  
(Your Name)1794 S. DUNLETT APT 104  
(Address)Boise Id 83705  
(City, State, Zip Code)208 509 8674  
(Phone Number)**ORIGINAL**

(4)

### **QUESTION(S) PRESENTED**

1. Did the Plaintiff Exhaust All Administrative Remedies of Idaho Department of Corrections Prison Policy of Grievance and Informal Resolution?
2. Did the court Err by ignoring Federal Rules of Civil Procedures (**Rule 72 Failure to file timely objection to courts order waives any objections by the defendant's**) **Emphasis added**

(5)

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:

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## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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## STATUTES AND RULES

GRIEVANCE AND INFORMAL RESOLUTION PROCESS  
Idaho Department of Correction Prison Policy

(11-18)

## Federal Rule of Civil Procedure

Rule (72) Failure to file written objection would be deemed waiver of objection and is IUDN-APPLICABLE

(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 \_\_\_\_\_ 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 is unpublished.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 \_\_\_\_\_ 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 is unpublished.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.

(6)

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

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: \_\_\_\_\_, 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. § 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:**

1. Federal Rules of Civil Procedures Rule 72(b), 72(2)(b)

(“Failure to Object to Magistrate Judge Memorandum and Decision Order with Recommendations and or Findings Waives Review and is Non- appealable”)

2. Idaho Department of Corrections (IDOC) **Grievance and Informal Resolution Process Overview** (Proving that the Plaintiff Exhausted Administrative Remedies in according to Prison Policy before filing Lawsuit in Court)

(D)

## STATEMENT OF THE CASE

### (A) Summary of the case and procedures:

Mr. William J. Fletcher -Petitioner- Plaintiff, in the above case hereby bring this case before THE UNITED STATES SUPREME COURT, ON THIS PETITION FOR WRIT OF CERTIORARI from the UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT where an egregious error was made, and the ~~application~~ <sup>Rules</sup> was overlooked in according to Federal Rules of Civil Procedure.

CONT.....

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## STATEMENT OF THE CASE

PLAINTIFF'S CLAIMS ARISE FROM DENTAL TREATMENT HE RECEIVED AT THE IDAHO STATE CORRECTIONAL CENTER (ISCC), WHERE PLAINTIFF <sup>WAS</sup> ~~IS~~ CONFINED. THE IDAHO DEPARTMENT OF CORRECTION (IDOC) CONTRACTS WITH CORIZON APPLIED MEDICAL, FOR THE MEDICAL TREATMENT AT THE PRISON, ~~but also~~

ON AUGUST 1, 2014, PLAINTIFF SOUGHT EMERGENCY DENTAL TREATMENT AT THE PRISON, BUT WAS TURNED AWAY BY DEFENDANT MICHAEL BLURTON, A R.N. WHO TOLD PLAINTIFF THAT THE PAIN IN HIS MOUTH WAS NOT AN EMERGENCY. (COMPL., Dkt. 3, at 3)

PLAINTIFF LATER ATTEMPTED TO SEEK TREATMENT FROM DEFENDANT B. WHITING, DENTIST ASSISTANT, AT THE PRISON, BUT WHITING "REFUSED TO MAKE THE NECESSARY APPOINTMENT" FOR THE PLAINTIFF TO BE EVALUATED BY A DENTIST AND SAID PLAINTIFF WOULD JUST HAVE TO WAIT TO SEE THE DENTIST. [Id. at 4, 6] WHITING <sup>then</sup> STATED THAT THERE WAS ONLY ONE - PART-TIME DENTIST AVAILABLE TO TREAT ALL INMATES AT IDAHO STATE CORRECTIONAL CENTER, WHICH HOUSES OVER 6200 INMATES; IN NEED OF DENTAL CARE. [Id. at 76] EMPHASIS ADDED.

AFTER MR. FLETCHER FILED AN OFFENDER CONCERN FORM TO THE WARDEN ON 08-17-14, FOR CONTINUING TO BE DENIED EMERGENCY DENTAL TREATMENT, ON 08-26-14 THE GUARDEN RESPONDED TO MR. FLETCHER OFFENDER CONCERN FORM, NOT TELLING HIM THAT HE WOULD BE CALLED DOWN TO MEDICAL TO SEE WHY MR. FLETCHER HAS NOT BEEN SEEN FOR EMERGENCY DENTAL TREATMENT, AND TO PLACE ANOTHER HSR, HEALTH SERVICE REQUEST FORM INTO MEDICAL, WHICH LED TO 6000.

ON SEPTEMBER 02, 2014, MR. FLETCHER WAS CALLED DOWN TO MEDICAL TO SEE THE DENTIST, JUST OVER A MONTH AFTER FIRST COMPLAINING OF THE PAIN IN HIS MOUTH. DR. THURNIGER INFORMED PLAINTIFF THAT HE HAD TWO DISSESSED TEETH, AND TWO CAVITIES, AND THAT PLAINTIFF WOULD BE IN NEED OF TWO EMERGENCY ROOT CANALS, CROWNS AND FILINGS. [Id. at 7.] HOWEVER DR. THURNIGER STATED THAT THIS TREATMENT WAS TOO EXPENSIVE AND WOULD TAKE UP TOO MUCH OF HIS TIME, ONLY OPTION FOR PLAINTIFF IS THAT THE TEETH BE EXTRACTED OR NOTHING AT ALL. [ID. at 7-8]

  
**QUESTION #1) Did the Plaintiff Exhaust Administrative Remedies in according to Idaho Department of Correction of Grievance and Informal Resolution Policy?**

**Exhaustion of Administrative Remedies:**

In according to Idaho Department of Correction (IDOC) Grievance Policy which is hereby attached, and according to IDOC Staff member **M. KEVAR**, Mr. Fletcher exhausted administrative remedies before filing lawsuit in federal court.

**“YOU ONLY NEED TO FILE A GRIEVANCE IF YOU ARE UNBLE TO RESOLVE ISSUE THROUGH CONCERN FORM”** *Statement by Megan Kevan IDOC Grievance Coordinator in response to Inmate Fletcher offender concern form.*

**STEPS TAKEN BY PLAINTIFF IN ACCORDING TO IDOC POLICY:**

August 1, 2014- Fletcher Notified IDOC Staff Member Verbally of a problem or issue

(Sever Jaw pain and tooth ache)

IDOC Staff Member sent inmate Fletcher to Medical to have him to get medical treatment as his jaw was swallowing. After going to medical Mr. Fletcher was denied medical treatment from Michael Blurton, RN, Director of nursing at time, notifying Mr. Fletcher that Dental is not an emergency and he needs to return to his unit.

After waiting to be seen by medical for several weeks after placing a Health Service request form in Following action Happen in sequence in ordering to exhaust administrating remedies:

- August 17, 2014- Fletcher then submitted an offender concern form to the warden of the prison Mr. Randy Blades, stating the Medical has been denying him emergency dental treatment for the server pain he has been suffering since August 1, 2014
- August 25, 2014- The warden of the prison Mr. Randy Blades answered Mr. Fletcher offender concern form stating he will call down to medical to get him seen and to submit another health service request form.
- September 02, 2014- Mr. Fletcher was called down to medical to be seen by the dentist.

**After taken x-rays The Dentist, Dr. Thuernagle found that Mr. Fletcher had two abscess teeth and was in needed of Two Emergency Root canals with crowns and feelings; Dr. Thuernagle then stated to Mr. Fletcher “that this treatment would be too expensive, and the state will not pay for it and it would take up too much of his time when he has other inmates to see. The only option you have Mr. Fletcher is to have the teeth extracted or no treatment at all”.**

By submitting an Offender Concern Form to the appropriate Idaho Department of Corrections Staff member, The Warden, Randy Blades, which lead to Mr. Fletcher being seen after being denied emergency dental treatment for almost a month; Wherefore, Mr. Fletcher Exhausted Idaho Department of Corrections administrative remedies by properly using Grievance and Informal Resolution process in according to Idaho Department of Corrections Prison Policy and PLRA before filing Lawsuit in court. Mr. Fletcher relied on Staff, Mr. Randy Blades Statement “that he will call down to medical and see what was going on and have Mr. Fletcher seen and to place another Health Service Request form to medical again,” Therefore, Mr. Fletcher exhausted administrative remedies in according to Idaho Department of Corrections Grievance and Informal Resolutions Policy before filing lawsuit in court.

(13)

**Question #2)** Did the court Err by ignoring Federal Rules of Civil Procedures (Rule 72 Failure to file timely objection to courts order waives any objections by the defendant's) Emphasis added which is a key issue that would be none appealable in higher courts

### **LAW OF THE COURT (*Federal Rules of Civil Procedure*)**

Federal Rule of Civil Procedure RULE 72(b); Specifically provides that a party may respond to objection raised to Magistrate Judge proposed findings and recommendation within **14** Calendar Days after being served with a copy of those objections, Failure to observe this deadline May Result in exclusion of any response.

*Thompson V. Town of Front Royal, 117 F. Supp. 2d 522, 533 [W.D., VA. 2000]*

“Late Response Struck and Disregard even though court was required to make DE Novo review of disposition matter”

The defendants never filed their specific written objection to the Magistrate Judge Memorandum and Decision order issued on November 23, 2015 in according to Federal Rule of Civil Procedure Rule 72(b), wherefore The Magistrate Judge Memorandum and Decision order issued on November 23, 2015 would be the final Judgment in according to Rule 72(2)(b)

### **FAILURE TO OBJECT WAIVES REVIEW.**

*Wells V. Shriners Hosp; 109 F. 3d ,198, 200 (4<sup>th</sup> circuit 1997)* (“Failure to raise timely objections waives any objections to Magistrate Recommended Disposition even if report did not warn parties of deadline and consequences of failure to object)

*Willis V. Caterpillar INC. 199 F. 3d 902, 904-905 (7<sup>th</sup> circuit 1997)* (Review waived as to any portions of the Magistrate’s report to which no objection is made)



## REASONS FOR GRANTING THE PETITION

The Plaintiff believes that the United States Supreme Court Should grant this petition on the grounds as followed:

1. The Plaintiff sufficiently has shown that he **FIRST**, Exhausted all Administrative Remedies in according to Idaho Department of Correction Prison Policy of Grievance and Informal Resolution process
2. The Defendants Failed to comply with Federal Rules of Civil Procedures (Rule 72) failing to file specific written objection to the United States District Court for the District of Idaho Magistrate, Honorable Judge Candy Dale Memorandum Decision and Order within 14 calendar day of November 23, 2015.

Whereas the Magistrate Judge (Honorable Judge Candy Dale), found that Mr. Fletcher sufficiently Stated Colorable Eighth Amendment claims against Defendant's Blurton, Whiting, and Thuernagle Based on Fletchers Dental Treatment and against Corizon, LLC Health Services Based on Being Understaff in respect to Dental Services. Further, The Magistrate Judge found that Mr. Fletcher sufficiently stated Various State Law Claims of Negligence and Medical Malpractice against all defendant's in according to Idaho Code Statute 6-1012

(A) Because the Plaintiff exhausted his administrative remedies in according to Prison Policy prior to filing federal lawsuit in court,

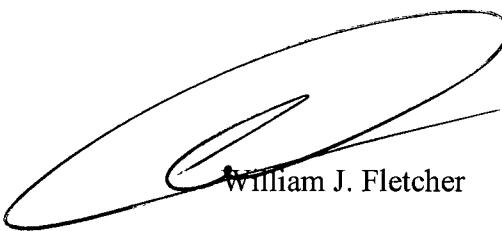
(B) Because the defendants failed to file their written objection to the findings of the United States District Court for the District of Idaho Memorandum Decision and Order Issued November 23, 2015 within the 14 calendar day period allowed according to Fed. R.CIV.P Rule 72(2)(b) (**THE LAW OF THE COURT**),

The Magistrate Judge Memorandum Decision and Order with Recommendation and or Findings would be deemed final and would be Non- appealable in the District Court and the United States Courts of Appeal for the Ninth Circuit and the United States Supreme Court.

Wherefore, Mr. Fletcher should be Entitled to Money Damages Sought of \$1,400,000.00 (one million, four hundred thousand dollars) for the Violation of Colorable Eighth Amendment Constitutional Rights Violations followed by Various State Law Claims of Negligence and Medical Mal- Practice Against all the Defendants issued by The United States District Court for the District of Idaho Magistrate Judge on November 23, 2015 Which suppose to be a final order as no objection was filed by the defendants in this case.

### **CONCLUSION**

The Petitioner- Plaintiff hopes and prays that The United States Supreme Court grants this Petition for a Writ of Certiorari and reversing the lower court's decision as The United States Court of Appeals for the ninth circuit and The United States District Court for the District of Idaho did not adherent to the rules Federal Rules of Civil Procedures in according to Constitution and Fed. R. Civ. P. Rule 72 Waiver Objection. Respectfully submitted, this 19<sup>th</sup> day of March 2019



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