

ORIGINAL

CASE NO.

19-5245

FILED

Nov 09 2018

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

MICHELLE RENEE LAMB, PETITIONER PRO SE

VS.

JOHNNIE GODDARD, SECRETARY OF CORRECTIONS,
KANSAS DEPARTMENT OF CORRECTIONS,
CORIZON HEALTH SERVICES,
PAUL CORBIER, MD, CORIZON HEALTH SERVICES,
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

TENTH CIRCUIT COURT OF APPEAL

CASE NO. 17-3171

UNITED STATES DISTRICT COURT

CASE NO. 16-cv-3077-EFM DJW

PETITION FOR WRIT OF CERTIORARI

MICHELLE RENEE LAMB, PETITIONER PRO SE

EDCF U-94

BOX 311

EL DORADO, KANSAS 67042

LIST OF PARTIES

All Parties appear in the Caption of the case on
this cover page.

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SUPREME COURT, U.S.

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QUESTIONS PRESENTED

1. This case represents a public issue to thousands of transgenders confined to state and federal institutions whom are being denied treatment despite the fact the WPATH "Standards of Care" is the only accepted treatment for transgenders by every Medical and Mental Health Association in the U.S.. These standards are not being applied equally for State-to-State/Facility-to-Facility even when they are all under the same authority. With a suicide attempt rate of over 41% this Honorable Court needs to STANDARDIZE the protocol for transgender therapy.

2. The opinion by the Tenth Circuit Court of Appeal could be interpreted as a permanent, categorical bar on Eighth Amendment claims based on the denial of hormones, transitional therapy, and surgery to treat gender dysphoria, and directly conflicts with decisions from the First, Fourth, Seventh, Ninth Circuit, and The United States Tax Court.

3. By upholding *Supre V. Ricketts*, 792 F.2d 958 (10th Cir. 1986) the Court interpreted *Supre* to create a brightline rule that the provision of some treatment categorically precludes a finding of deliberate indifference, the panel's decision created a split with at least the Fourth, Sixth, Seventh, Eighth, and Ninth Circuit, and the United States Tax Court.

4. The Courts decision is so prejudicial towards transgender therapy that it is deliberately indifferent to their medical needs, creating a treatment atmosphere so bad that it in itself is Cruel and Unusual Punishment, and constitutes manifest injustice, injury and harm to all transgenders in state and federal custody.

STATEMENT OF THE CASE

I'm female transgender. God made me this way in the womb: my condition is innate. My brain, soul & essence is female. I can not change my brain soul or essence so I must

bring my body into congruence with my brain to stop the pain. That is what the WPATH "Standards of Care" does, it brings the mind and body into harmony, and ends the pain and suffering felt by all untreated transgenders.

1. This case is about the confounded and unfair treatment (or lack of) by state facilities towards transgender inmates.

I have a diagnosis of female transgender suffering from gender dysphoria from the Kansas Department of Corrections, and my full certification for my gender-affirming surgery from non-prison Doctors.

However, my hormone therapy has been so medically unprofessional that it has stunted my secondary sex characteristics; my transitional therapy does not even come close to meeting the WPATH "Standards of Care"; I have not received any hair removal or voice therapy; I have been refused housing in the female facility, and I have not received a single consultation for my gender-affirming surgery.

If I was in Federal Prison (Adams v. BOP) or U.S. Military Disciplinary Barracks (Chelsea Manning) or state of California (Shiloh Quine) or Virginia, De'louta V. Johnson), or Missouri, Jessica Hicklin, 2018) I would be receiving all of the transgender therapy prescribed by the "Standards of Care".

However, if I was in Texas all I would be getting is hormone therapy, and there are many states where I would be getting nothing.

This is the state of transgender therapy in the US today despite every medical and mental health association stating that the WPATH Standards of care is the only protocol for the treatment of transgenders and it is medically necessary and highly effective.

2. To the extent that Supre could be interpreted as a permanent, categorical bar on Eithth Amendment claims based on the denial of hormone or surgery to treat gender dysphoria, that interpretation would directly conflict with decisions from the First, Fourth, Seventh, Ninth Circuit, and the U.S. Tax Court.

And this is not the first time the 10th Circuit Court of Appeal has conflicted with other Court of Appeals regarding transgender rights: The 10th Circuits rulings are always anti-transgender.

For example, the 10th Circuit ruled that (Federal laws prohibiting sex discrimination do not protect transgender people.).

And in my case the 10th Circuit affirmed Summary Judgment to the prison officials despite the fact that the only argument made by the defendants was that they were providing me with "Adequate Care", and was not required by the court to give any further explanation as to what "Adequate Care" entailed.

So, according to the Tenth Circuit ruling the defendants can give me snake oil, call it adequate care, and because of this anti-transgender ruling I will have no recourse.

The Court also denied my request for a rehearing en banc.

3. The words "Adequate Care" used by the defendants precludes a reasonable fact finder from inferring deliberate indifference to a serious medical need. And by upholding Supre the Court is ignoring 30 years of medical progress in the treatment of transgenders, and creating a life-or-death emergency for transgender inmates.

MERCK MANUAL OF DIAGNOSIS AND THERAPY, 1732 (18th ed. 2006) states, "When not properly treated, GID can result in clinically significant psychological distress, dysfunction, debilitating depression and, for some people, self-mutilation, thought and attempts of suicide and depression." and see,

DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 576-578 (4th ed. 2000); George M. Brown, Autocastration and Autopenectomy as Surgical self-Treatment in Incarcerated Persons with Gender Identity Disorder. And,

12 INTERNATIONAL JOURNAL OF TRANSGENDERISM 31-39 (2010) and DN.200,41:5-14 (:[t]he risk are both psysiological and psychological...[surch as] depression, autocastration, and suicide").

The literature in the field is replent with accounts of individuals who have taken their own lives or attempted do so because their GID was not properly assessed and treated, with some studies finding as many as one in four males and one in five females attempted suicide before treatment see,

George M. Brown, At (Page 3) and Bram Buiper & Peggy Cohen-Kettenis, Sex Reassignment Surgery: A Study of 141 Dutch Transsexuals, 17 ARCHIVES OF SEXUAL BEHAVIOR 439, 451 (1988).

"Correctional officials inflict cruel & unusual treatment on a prisoner, in violation of the Eighth Amendment, when they are deliberately indifferent to a prisoner's serious medical needs." Estelle V. Gamble, 429 U.S. 97 (1976). To establish an Eighth Amendment violation a prisoner must prove (1) that her medical need was objectively sufficiently serious, and (2) that subjectively officials acted with a sufficiently culpable state of mind in failing to treat that need. ID.

Plaintiff suffers from an objectively serious medical condition that Defendants, acting with deliberate indifference, have failed to treat in violation of the Eighth Amendment.

"To meet the objective requirement of the deliberate indifference standard, a prisoner must demonstrate the existence of a serious medical need." Estelle, 429 U.S. at 104, or demonstrate a substantial risk of further harm resulting from the action or inaction of prison officials, Helling V. McKinney, 509 U.S. 25, 35 (1993).

Plaintiff has established both a serious medical need - serious distress, anxiety and depression from her untreated gender dysphoria - and a substantial risk of future serious harm - continued anguish, auto-castration and suicide - if her medically necessary treatment continues to be withheld.

In O'Donnabhain V. Comm'r, 134 T.C. 34 (2010) the court stated that:

"The evidence amply supports the conclusions that petitioner suffered from severe GID, that GID is a well-recognized and serious mental disorder, and that hormone therapy and sex reassignment surgery are considered appropriate and effective treatment for GID by psychiatrist and other mental health professionals who are knowledgeable concerning the condition." Id at Page 37. And,

"The expert testimony also establishes that given (1) the risk, pain, and extensive rehabilitation associated with sex reassignment surgery, (2) the stigma encountered by persons [*77] who change their gender role and appearance in society, and (3) the expert-backed

but commonsense point that the desire of a genetic male to have his genitals removed requires an explanation beyond mere dissatisfaction with appearance (such as GID or psychosis), petitioner would not have undergone hormone therapy and sex reassignment surgery except in an [**94] effort to alleviate the distress and suffering attendant to GID. Respondent's contention that petitioner undertook the surgery and hormone treatment to improve appearance is at best superficial characterization of the circumstances that is thoroughly rebutted by the medical evidence." Id at Page 47, And,

"Petitioner has shown that her hormone therapy and sex reassignment surgery treated disease within the meaning of section 213 and were therefore not cosmetic surgery." Id at Page 37, And

In fact, one of the Internal Revenue's own defense witnesses stated that,

"Dr. Schmidt agreed that GID requires treatment. He has observed that 'you can't walk around day after day being ambiguous about your gender. It will tear you apart psychologically'. Dr. Schmidt likewise agreed that untreated GID in males can sometimes leads to autopenectomy, autocastration, and suicide. id at page 14.

Every premise in Supre has been debunked by the medical conclusions in O'Donnabhain, and every conclusion in O'donnabhain is supported by every medical and mental health association in the United States.

Supre V. Ricketts in itself constitutes Cruel & Unusual Punishment towards transgenders, and makes it impossible for any fact finder to determine deliberate indifference to a transgenders serious medical needs.

According to Supre there is no serious medical need, and thus no Cruel and Unusual punishment for failing to treat that medical need.

Using this ingenuity the Court (10th Cir) has completely circumvented the U.S. Supreme Court in Estelle V. Gamble. A transgender can not show harm when Supre states that the treatment is cosmetic and thus can not be any harm.

4. I have told the court, and my medical records support this, as well as the actions of the defendants, that failure to treat my condition WILL result in future significant injury or the wanton infliction of pain. See, Jett V. Penner, 439 F.3d 1091 (9th cir 2006) (Citing, Estelle, 429 U.S. at 104).

X For all the reasons stated in Issues 1-3 of this brief, and by incorporating the following indisputable facts, it is a clear and reasonable certainty that sometime in the near future without my sex reassignment surgery I will be dead or I will have fully castrated myself.

I may die from suicide because I know exactly what Dr. Schmidt (Id at Page 5) is talking about: Walking around in this male body day-after-day is tearing me apart psychologically.

I may die from complications from attempting full autocastration because if I can't get it done in a hospital I'm damn sure going to do it myself.

As a transgender child I once tried suicide. In 1985 I tried to castrate myself: I had one of my testicles cutout of my scrotum but the pain was so bad my body was shaking and sweat was puring out of my body, and while I was waiting on all this to stop so I could finish the job, the prison staff stopped me.

I have also tried to destroy my testicles more then 200 times by strangling them by chocking off the blood supply: this is really painful and I have a Repture on one of my testicles to prove this.

In fact, everything I have said here including the fact that I think about suicide and autocastration every day is part of my prison medical and mental health records. It is also why I have mandatory mental health counseling every week.

The decision of the Court of Appeal has given the defendants Cart Blanch to act outside of the Constitution, the Medical Community, and outside of the patients needs only to serve their own corporate needs and greed.

ARGUMENT AND AUTHORITY

1. There is only one protocol for the treatment of transgenders and it is clearly applicable to patients in prison, as well as, other state and federal care and treatment facilities.

"The World Professional Association for Transgender Health's Standards of Care for the Health of Transsexual, transgender, and Gender-Nonconforming People (the 'Standards of Care') are 'the internationally recognized guidelines for the treatment of persons with gender dysphoria.' Numerous professional medical organizations, including the American Medical Association, the American Psychological Association, the American Psychiatric Association, and the National Commission on Correctional Health Care, endorse the Standards of Care. The Standards of Care explicitly state that they are equally applicable to patients in prison. Under the Standards of Care, persons with gender dysphoria should be individually assessed by qualified health care providers and referred for treatment, which can include: (1) living in another gender role that is consistent with one's gender identity; (2) hormone therapy to feminize or masculinize the body; and/or (3) surgery to change primary and/or secondary sex characteristics. Changes in gender expression, including clothing and grooming that affirm one's gender identity and permanent body hair removal, can alleviate gender dysphoria. Hormone therapy is an accepted treatment of gender dysphoria, and the denial of hormone therapy for patients for whom such therapy is medically necessary may lead to significant deterioration and impairment in patients, including a high likelihood of depression, suicidal ideation, and surgical self-treatment by auto-castration (removal of the testicles) or autopenectomy (removal of the penis)." Quoting from: HICKLIN V. PRECYNTHIE, ET AL, UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION, Case no. 4:16-CV-01357-NCC (May 22nd, 2018)

The Standards of Care are the accepted treatment for transgenders, but until this Honorable Court makes it apply to every state, and every facility in the state only a few lucky transgenders are going to receive the care required under the Standards of Care. It should not matter that I'm in Kansas (where no transgender patient in a state facility can get gender-affirming surgery) or in California where (all transgender inmates get the gender-affirming). The Law should not depend on the luck of the draw when this treatment is so clearly necessary.

2. The opinion by the Tenth Circuit is a clear categorical bar on Eighth Amendment claims on the denial of transgender treatment, and conflicts with *Kosilek V. Spencer*, 774 F.3d 63, 91 (1st Cir 2014)(en banc) (noting that any blanket ban on surgical treatment for gender dysphoria 'would conflict with the requirement that medical care be individualized based on a particular prisoner's serious medical needs'); *De'lonta V. Angelone*, 330 F.3d 630, 634-35 (4th Cir. 2003)(Prisoner stated a claim for deliberate indifference based on blanket restriction on initiation of hormone therapy); *Fields V. Smith*, 653 F.3d 550, 559 (7th Cir. 2011) (state law that barred hormone therapy and gender confirming surgery as possible treatments for prisoners with gender dysphoria facially violated the Eighth Amendment); *Moore V. Duffy*, 255 F.3d 543, 545 (8th Cir 2001)(it is 'clearly established' that a significant deviation from applicable standards of care evinces deliberate indifference.); *Rosati V. Igbino*, 791 F.3d 1037, 1040 (9th Cir 2015)(prisoner who alleged blanket ban on surgical treatment for gender dysphoria stated valid Eighth Amendment claim); *Norsworth V. Beard*, 2014 U.S. Dist. Court for the Northern District of California (out of court settlement resulting in gender affirming surgery for all California transgender inmates); Also see *Konitzer V. Frank*, 711 F.Supp. 2d 847, 908 (E.D. Wis. 2010), and *Hicklin V. Precynthe*, Id at Page 7 this brief. And, see *O'Donnabhain V. Commissioner of Internal Revenue*, 134 T.C. 34 (2010)(finding that hormone therapy and gender affirming surgery are well recognized and medically accepted treatment for gender dysphoria).

All of these opinions, and dozens more, conflict with the opinion of the Tenth Circuit Court of Appeal. This Honorable Court must bring congruity to all of the state and federal courts or there will be no harmony and no justice for thousands of transgender inmates in serious need of medical treatment.

3. *Supre V. Ricketts* precludes a finding of deliberate indifference violating the Eighth Amendment and also creating a split with at least 4 circuit courts, the United States Tax Court, and dozens of U.S. District Courts.

"32. Decades of scientific research have validated the many benefits of hormonal therapy for gender dysphoria patients. As early as 1980, researchers demonstrated that gender dysphoria patients living without hormonal treatment showed greater psychopathology than patients who received hormonal treatment; and greater adjustment was associated with longer periods of treatment (Leavitt et al.). Untreated patients exhibit much higher levels of depression, anxiety, and social distress. (Rametti, et al., 2011; see also Colizzi, et al. 2014; Gorin -Lazard et al., 2011). Hormonal treatment improves overall health in gender dysphoric patients and is associated with a better quality of life (Gomez-Gil et al. 2011; Colizzi et al 2013; Gorin-Lazar et al 2012), Quoting from Hicklin V. Precynthe, Doc. #64-1, Page 9.

"34....Such surgical interventions modify primary/ and or secondary sex characteristics, and more than three decades of scientific research have documented the safety and efficacy of surgical therapy. (See, eg. Plaffin & Junge, 1998; Smith et al., 2005; Jarolim et al., 2009) For those individuals who require surgical intervention, the Standards of Care set forth the eligibility and readiness criteria that precede referral. (Section XI)." Quoting Hicklin, Doc #64-1, Page 10.

Besids all the professional association's that support the "Standards of Care" listed on Page 7 of this brief the following additional associations recognize the protocols of the Stnadards of Care; The Endocrind Society; the World Health Association, The American Academy of Family Physicians, The National Commission of Correctional Health Care; The American Public Health Association; The National Association of Social Workers; The American College of Obstetrics and Gynecology, and The American Society of Plastic Surgery." Quoting from Hicklin, (Declaration of Dr. Randi Ettner, Page 5, Item # 19)

Clearly the ongoing deprivation of my Constitutional Rights [unquestionably] constitutes irreparable injury. See, Elrod V. Burns, U.S. 347, 373 (1976).

Not only does Supre cause a split from other circuit courts: it causes a split from 10 of the most prestigious medical and mental health associations. all of these professionals supporting the WPATH Standards of Care solidly rejecting supres claim that the treatment of transgenders is "Cosmetic" or "ineffective" or reflects a controversial nature to the treatment.

"Defendants have been deliberately indifferent to Ms. Hicklin's serious medical needs by taking a "gross departure" from the evidence-based WPATH Standards of Care. See Declaration of Randi C. Ettner ("Ettner Decl"), D.E. 64-1, at ¶73; see also id at ¶¶35-37; Moore v. Duffy, 255 F.3d 543, 545 (8th Cir. 2001)(it is "clearly established" that a significant deviation from the applicable standards of care evinces deliberate indifference): Konitzer v. Frank, 711 Supp.2d 847, 908 (E.D. Wis. 2010)" Quoting from Hicklin, Doc #70, Page 6.

4. By allowing the defendants to act outside of the Constitution, the medical community, and my needs as a transgender patient there can be no other outcome for me but suicide and/or castration.

"15. Without treatment, individuals with gender dysphoria experience anxiety, depression, suicidality and other attendant mental health issues (See, e.g. Graser, 2009; Schaefer & Wheeler, 2004; Ettner, 1999; Brown 2000; DSM-V, 2013; Haas et al., 2014). Without treatment many gender dysphoric people are unable to adequately function in occupational, social or other areas of life. A recent survey found a 41% rate of suicide attempts among this population, which is far above the baseline rates for North America of 4.6% (Hass et al, 2014). Quoting from Hicklin, Doc #64-1, Page 4-5.

The Tenth Circuit allowed the defendants to claim without any supporting evidence, that I was receiving "adequate care", and granted them summary judgment.

The Court had no idea what "adequate care" means, and neither do I. Under this ruling I could be getting snake oil or a voodoo hex and it would still constitute "adequate care", and I would never be able to prove deliberate indifference to my medical needs.

See, Phillips, 731 F.Supp. at 801 (holding in case involving only one transgender plaintiff [such as this case] that 'the public interest will be served by safeguarding Eighth Amendment rights' of prisoners); see also Phelp-Ropper V. Nixon, 545 F.3d 685, 690 (8th Cir 2008)('[I]t is always in the public interest to protect constitutional rights").

CONCLUSION

Supra is an antiquated law so far out-of-date with modern medicine that it is obsolete and discredited by reasons of Age and modern medical research.

That it precludes a reasonable fact-finder from inferring deliberate indifference. So much so that Supre should be completely overruled, and three decades of intervening medical science - none of which the court considered - proves that overruling Supre is the proper decision.

The Court allowed the defendants to use the words "adequate care" to describe the treatment I'm receiving without requiring the defendants to even explain what "adequate care" entails. And without an explanation it means nothing and the Court allowed it. From this decision no one - and that includes this court - can tell me what transgender treatment is acceptable to the Courts, and what treatment is not. Is snake oil an accepted treatment? How can you tell from this decision.

RELIEF

Petitioner Pro se, Michelle Renee Lamb hereby Pray's this Honorable Court will grant the following relief.

1. Reverse Supre v. Ricketts in its totality,
2. Require all cases that were decided on the basis of Supre be reviewed,
3. Rule that the WPATH "Standards of Care" is the only accepted treatment protocol for transgenders regardless of their housing.
4. Order the Defendants to provide Ms. Lamb with proper hormone therapy, voice therapy, necessary (preoperative) hair removal, access to female clothing & makeup, gender-affirming surgery, and transfer to the Womens Facility at the same security level she is now on.
5. Grant all other relief that this Court Deems just and proper.

Respectfully submitted,



Michelle Renee Lamb
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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.

IN THE UNITED STATES COURT OF APPEAL FOR THE TENTH
CIRCUIT,
APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF KANSAS (D.C. No. 5:16-CV-0377-
EFM-DJW [Published] August 15, 2018) before
BACHARACH, MCKAY, AND BALDOCK, CIRCUIT JUDGES.
Petition denied.
APPENDIX A

IN THE UNITED STATES COURT OF APPEAL FOR THE TENTH
CIRCUIT,
PETITION FOR REHEARING EN BANC, No-17-3171
[Published] ORDER BY BACHARACH, MCKAY, AND BALDOCK,
CIRCUIT JUDGE. REQUEST FOR HEARING DENIED.
APPENDIX B

JURISDICTION

FEDERAL COURT:

The date on which the United States Court of Appeal for the Tenth Circuit Court was August 15, 2018.

A timely petition for rehearing was denied by the United States Court of Appeal for the Tenth Circuit, Petition for rehearing en banc, and a copy of the order denying rehearing appears at Appendix B

No extension of time to file the petition for a writ of certiorari was requested.

The Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).