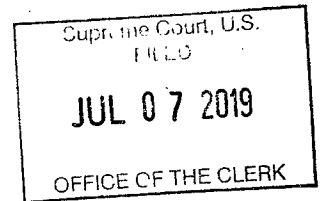


19-5508 ORIGINAL
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



Carlin U. Powell — PETITIONER
(Your Name)

vs.
MEDICAL DEPARTMENT CUYAHOGA COUNTY
CORRECTIONAL CENTER, et. al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

Carlin U. Powell
(Your Name)

R.C.I. P.O. Box 7010
(Address)

Chillicothe, OH 45601
(City, State, Zip Code)

(Phone Number)

QUESTON(S) PRESENTED

- (I) Did the Medical Department of Cuyahoga County Correctional Center et al., violate Plaintiff-Appellant Carlin U. Powell's VIII, XIV Amendments to the United States Constitution in depriving of Powell of his rights and privileges by acting with deliberate indifference, causing cruel unusual punishment, medical neglect and Ambleism?**

- (II) Did the Medical department of Cuyahoga County Correctional Center, et al., violate Article V (h) of the Interstate Agreement on Detainers (IAD), and also in violating terms of the (IAD) agreement on inmates' medical care and treatment while in the custody and jurisdiction of the receiving state in which indictments or trial is being held.**

LIST OF PARTIES

Medical Department Cuyahoga County Corrections Center' Metro Health Systems;
Dr. John A. Yourself; Dr. Alan Gatz; Dr. Rekha Ujla; Dr. Albert Coreno; Dr. Leslie
Koblentz; Dr. Thomas Tallman; Marcus Harris Director of Inmate Health Service;
Cuyahoga County Medical Director; and the State of Ohio Department of
Rehabilitation and Correction Medical Director.

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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.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix J 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☒ is unpublished.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☐ is unpublished.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.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 4/08/2019.

☒ 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).

TABLE OF AUTHORITIES CITED

Page

6. Farmer v. Brennan, 511 U.S. 825, 834, 114 S. Ct. 128, L. Ed. 2d. 811 (1994)
- 7,8 Terrance v. Northville Reg'l Psychiatric Hosp., 286 F.3d 834, 843 (6th Cir. (2002)
- 8 Lamarbe v. Wisneski, 266 F.3d 429, 439 (6th Cir 2001)
- 8, 11 Blackmore v. Kalamazoo Cnty., 390 F.3d 890, 897 (6th Cir 2004)
- 9, 10 Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990)
- 10 Hutchinson v. United States, 838 F.2d 390, 394 (9th Cir 1988)
- 10 Comstock v. McCray, 273 F.3d 693, 703 (6th Cir. 2001)
- 10 Caiozzo v. Koreman, 581 F.3d 63, 69
- 11 Hill v. Curcione, 657 F.3d 116, 122 (2nd Cir. 2011)
- 11 Talal v. White, 403 F.2d 423, 426 (6th Cir. 2005)
- 11 Strong v. David, 297 F.3d 646, 650 (7th Cir. 2002)
- 12 Ashcroft v. LQbal, 556 U.S. 662, 678 (2009)
- 12 Erickson v. Pardus, 551 U.S. 89, 93, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007)
- 12 Phillips v. Roane Cnty., 534 F.3d 531, 536, 544 (6th Cir. 2008)
- 12 Gibson v. Moskowitz, 523 F. 3d 657, 662-663 (6th Cir. 2008)

STATUTES AND RULES

- 42 U.S.C. § 1983
- 12 Fed. R. Civ. P. 8(a)

OTHER

- 8, 10 U.S. CONST. VIII Amendment
- 10 U.S. CONST. XIV Amendment
- 6, 7 (IAD) and Article V (h)

STATEMENT OF THE CASE

Plaintiff- Appellant, Carlin U. Powell filed complaint pursuant 42 U.S.C. 1983

Against the Medical Department Cuyahoga County Correctional Center et. Al.,
on 6/12/2017.

Mr. Powell is physically impaired and is disabled. He has a history of deep vein thrombosis/pulmonary embolisms in his lungs, arms, and legs. Mr. Powell also has (Angina) in which also if not treated properly and, timely or neglected if and when symptoms are identified or when embolisms accrue it may and can lead to death. Mr. Powell were transferred from incarceration from North Carolina to Cleveland Ohio pursuant Article III (A) of the Interstate Agreement on Detainers.(IAD). Due to Mr. Powell's medical condition medications and treatment. He could not be driven via the correctional institutions vehicle transportation and therefore were flown via airplane to the Cuyahoga County Correctional Center. (CCCC). Upon admittance of the (CCCC), Mr. Powell were then seen by medical provider Dr. Alan Gatz, whom at that time refused to provide Mr. Powell with any of his Dr. prescribed medication for his nerve and Chronic pain care, and informed Mr. Powell that the medications prescribed to him could not and would not be given to him while being incarcerated at the (CCCC) and that he would just be out of luck being medications could not be substituted due to Mr. Powell's allergies and other medication being taken at that time. Mr. Powell were then assigned to a unit in which he were made to

sleep on a thin mattress and concrete floor for over five months weighing over 260 lbs., ignoring his bottom bunk restriction as were assigned. This was done even knowing his medical history of deep vein thrombosis/pulmonary embolisms (DVT), and (Angina). Mr. Powell's pleas for medical help and treatment were continually ignored. Even after Mr. Powell's medical condition accrued dangerously worsening so that it led to him being transferred to the medical department and being placed on a medical unit due to extreme extremity swelling of his left leg, ankle, and feet on 7/5/17, as well as back and breathing difficulties, yet still Mr. Powell's medical needs were ignored being he were still not seen by a Dr. for over one week. And again Mr. Powell still was not given any pain or nerve medication for his chronic pain care from May 26, 2016 throughout February 23, 2018, for over twenty two months while being in incarceration of the (CCCC).

x Carlton Powell

REASONS FOR GRANTING THE PETITION

On 5/26/ 2016, Plaintiff-Appellant Carlin U. Powell arrived at the Cuyahoga County Correctional Center (CCCC). The constitutional violations of Mr. Powell's constitutional rights continually accrued, from the disregarding, and ignoring of his medical needs and conditions as well as the denial of his Dr. prescribed medications in his chronic pain care. These were acts knowingly and willingly committed, placing Mr. Powell's life in danger.

Mr. Powell's medical issues are sufficiently serious. "Farmer v. Brennan, 511 U.S. 825, 834,114, S. Ct. 1970. 128 L. ED 2d. 811 (1994). Pursuant Agreement of the Interstate Agreement on Detainers (IAD). "An inmate should remain in temporary custody in a suitable jail while awaiting prosecution in your jurisdiction. See (Appendix A). Meaning that if the Dr. prescribed medication being prescribed to Mr. Powell, could not continue to be prescribed to him while being incarcerated in the facility of the (CCCC), nor substituted due to the other medications needed in the treatment and care of Mr. Powell's care. The (CCCC) were not a suitable facility to house Mr. Powell while awaiting prosecution in the jurisdiction of the Cuyahoga County. Dr.'s and personnel of the (CCCC) , were aware of Mr. Powell's medical issues prior to his arrival , being pre-arranged from

vehicle transportation to being flown via airplane due to his medication, and medical condition. Mr. Powell could have been held in another facility suitable for his medical care while being held in the jurisdiction of the Cuyahoga County.

Pursuant: (IAD) Article V (h); "From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, information's or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. see (Appendix B).

This is an Article of the U.S. Treaty that has seemed to have been misunderstood.

The Supreme Court has stated that deliberate indifference to a risk is equivalent to "recklessly disregarding that risk" or failing to take reasonable measures to abate it. *Id.* At 836,847. The Sixth Circuit has also noted that in cases involving medical care less flagrant conduct may constitute "deliberate indifference", than in cases against other types of government officials. (*Terrence v. Northville* {845, F, sup. 2d. 839} *Reg'l Psychiatric hosp.*, 286 F. 3d 834, 843 (6th Cir.2002). ***A prisoner is not required to show that hew was literally ignored by

the staff to prove an VIII Amendment violation, only that his serious medical needs were consciously disregarded. “*Iamarbe v. Wisneski*, 266 F. 3d 429,439(6th cir.2001). Care that is “grossly inadequate” can also constitute deliberate indifference. (*Terrence*, 286 f. 2d. at 843.

A serious medical need is one that is diagnosed by a physician as mandating treatment or that is obvious that even a lay person would easily recognize the necessity for a Dr.’s attention. “ *Harrison v. Ash*, 539, F. 3d. 510, 518 (6th Cir.2008). (citing *Blackmore v. Kalamazoo Cnty.*, 390 f,3d. 890. 897. (6th Cir. 2004). Dr.’s personally witnessed serious risks through Mr. Powell’s continuous complaints, as well as his documented medical history, among other indications and pain risks and incidents in which Mr. Powell were suffering. See(Appendix AA).

In appellees affidavit filed; Doc # 51-1 filed: 06/29/18 Page ID# 430,431, and 433. The current Medical Director and defendant Dr. Thomas Tallman admitted in his own statements; p.1 Page ID#430- It was noted that all Dr.’s were aware of Mr. Powell having a history of pulmonary embolism (PE) and deep vein thrombosis (DVT). As well as hypertension (high blood pressure. On p.2 Page ID# 431. Dr. then admitted to Dr.’s knowing that Mr. Powell had a history of chronic

back pain following spinal surgery. On p.4 Page ID# 433. Dr. then willingly admitted that from May 26, 2016 through February 23, 2018. Mr. Powell did not receive any medication for his nerves and chronic pain care despite his several pleas for medical treatment and medical condition accruing, worsening from the neglect being suffered from the abliesm performed at this facility. See (Appendix C,D, and E).

On 7/5/17, Mr. Powell were referred to the medical department by nurse (Alfernik), being that his left leg, ankle, and feet were in extreme extremity swelling, as well as his continual complaints of chest pain and breathing difficulties. See (Appendix F 1-3). Mr. Powell were then seen by Rekha Ujla M.D. at which time Dr. denied the request of emergency care, but felt medical condition were critical enough that Mr. Powell was moved from regular population to a medical unit 6F. Yet Mr. Powell's medical care and conditions were still being ignored being that he were still not seen by a Dr. or medical provider about is medical care for over one week. "Deliberate Indifference" is established by showing; (a) a purposeful act or failure to respond to a prisoner's pain or possible medical need, and. (b) harm caused by the indifferent to a prisoner's serious medical needs if they "deny, delay, or intentionally interfere with medical treatment". "Wood v. Housewroight, 900 F. 2d. 1332, 1334 (9th

cir.1990. (QUOTING Hutchinson v. United States, 838 F. 2d. 390, 394 (9th Cir. 1988). Both these prongs has been continually met. Rekha Ujla witnessed extreme extremity swelling, witnessed the complaints of serious pain, knew of Mr. Powell's medical history of pulmonary embolism (PE) and deep vein thrombosis (DVT) as well as his Angina, yet Emergency request was denied and Mr. Powell were placed in a secluded cell were he were not seen by any Dr. for over one week. Defendant's subjectively perceived a risk of harm to Mr. Powell and disregarded and ignored it continually. " Comstock v. Mc cray, 273, F. 3d. 693, 703, (6th Cir.2001). An inference , if actually made and then disregarded, can constitute " deliberate indifference". Id. At 837. Similarly a prison official may " not escape liability" if the evidence show that he/she merely refused to verify underlying facts that he/she strongly suspected to exist. Id. At 843. See Appendix G1, G2, and G3. One who is detained " prior to conviction "receives protection against mistreatment...(uñder) the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution, if held in state custody. "Caiozzo, 581 F. 3d. at 69", just as with a claim under the Eighth Amendment. To establish an objectively "serious medical condition", the alleged deprivation must be sufficiently serious, in the sense that condition of urgency one that may produce

death, degeneration, or extreme pain exit's. Hill v. Curcione, 657 f. 3d. 116, 122 (2nd Cir.2011) (internal quotations marks and citation omitted)

Mr. Powell's history of pulmonary embolisms and (DVT) in his arms, legs and lungs can lead to death. His spinal surgery having to get up and down and sleeping on a concrete floor for over five months weighing over 260 Lbs. can cause bone degeneration. And Mr. Powell continually complained of extreme pain. The VIII amendment forbids prison officials from unnecessarily and wantonly inflicting pain on a prisoner by acting with "deliberate indifference" to the prisoner's serious medical needs. (Talal v. White, 403. F. 3d. 423, 426 (6th Cir2005). (Quoting Blackmore v. Kalamazoo Cnty, 390 F. 3d. 890,895 (6th Cir.2004).

As Mr. Powell's medical neglecting accrued he continually made known unto the courts as well as Dr.'s these systemic constitutional violations worsening. A grievance suffices if it alerts the prison to the nature of the wrong for which redress is sought "quoting Strong v. David, 297 F. 3d 646, 650 (7th Cir.2002). Denial and refusal of Mr. Powell's medication for his chronic pain and nerve care for over twenty two months after causing him physical duress by the medical treatment and neglect of the (CCCC) is cruel and unusual punishment, medical neglect,deliberate indifference with ableism combined. Claim has facial

plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendants are liable for the misconduct alleged. "Ashcroft v. Iqbal, 556 U.S. 662, 678. (2009). The plaintiff Appellant has given fair notice to the defendants of what the ... claims is and the grounds upon which it rests. "Erickson v. Pardus 551 U.S. 89, 93, 127 S. Ct. 2197, 167 L. Ed. 2d, 1081 (2007) (citations omitted). When the defendants failed to consider more effective alternatives or where the alleged shortcomings involve violations of protocol or failures of process that is when there was no "medical judgment" to speak of the courts gives less deference to the medical treatment provider. See., eg., "Phillips v. Roane Cnty., 534 F. 3d. 531, 536, 544 (6th Cir. 2008). (allowing claim to proceed against Dr. who knew of patient's prior collapse's, violated protocol in not taking her to the hospital, and failed to follow up for test he had ordered, and whose medical records were unacceptable and examination was cursory. 'Gibson v. Moskowitz, 523 F. 3d. 657, 662-63 (6th cir.2008).

Fed. R. Civ. P.8 (a). requires that a pleading which sets forth a claim for relief... contain 1) a short and plain statement of the grounds upon which the court's jurisdiction depends....2) a short and plain statement of the claim showing that the pleader is entitled to relief, and 3) a demand for judgment for the relief the pleader seeks.

CONCLUSION

This requirement the Supreme Courts has strictly enforced has been strongly met and shall be proper. Therefore based on the forgoing fcts, and reasons previously set forth in the plaintiff-appellant's complaints and amendments, documentation in argument in law raised and established. Plaintiff - Appellant Carlin U. Powell request the court for judgment in his favor granting him the sum courts feel are adequate for the pain and suffering in which has ben clearly stated as claimed. The petition for a writ of certiorari should be granted.

Respectfully submitted this 3 day of July 2019

X Carlin U. Powell

PLAINTIFF – APPELLANT