

No. 19-5560

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

JUL 29 2019

CECIL MCDONALD DAVIS — PETITIONER
(Your Name)

OFFICE OF THE CLERK

vs.

DR. JOEL ALEXANDRE — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CECIL MCDONALD DAVIS, REG. #40552-083

(Your Name)

FEDERAL CORRECTIONAL INST. II

POST OFFICE BOX 1500, BUTNER, NC 27509

(Address)

BUTNER, NC 27509

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1.) Whether the District Court in denying the Petitioner medical claim under Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics , 403 U.S. 388 (1971) violated his Eight Amendment as the result of deliberate indifference. Estelle v. Gamble, 429 U.S. 97, 104, 97 S. Ct. 285, 50 L. Ed. 2d 257 (1976)?
- 2.) Whether the Court of Appeals for the Fifth Circuit erred in denying the Petitioner request that a certificate of appealability be issued?

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:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	v
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	4, 5, 6, 7
CONCLUSION.....	8

INDEX TO APPENDICES

APPENDIX A The United States Court of Appeals for Fifth Circuit

APPENDIX B United States District Court Western District of
Louisiana

APPENDIX C The United States Court of Appeals for the Fifth
Circuit

APPENDIX D Plaintiff's Motion Request Amending Original
Pleading Request Fed. R. Civ. P. Rule(a), Rule 15(c)(2)

APPENDIX E

APPENDIX F

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The government has an "obligation to provide medical care for those whom it is punishing by incarceration. Deliberate Indifference to a serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' proscribed by the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 103-04, 97 s. Ct. 285, 50 L. Ed. 2d 251 (1976).

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Estelle v. Gamble</u> , 429 U.S. 97, 104, 97 S. Ct. 285, 50 L. Ed. 2d 257 (1976).....	ii
<u>Farmer v. Brennan</u> , 511 U.S. 825, 834, 114 S. Ct. (1970, 128 L. Ed. 2d 811 (1994).....	4

STATUTES AND RULES

28 U.S.C. § 1311 and Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971),

OTHER

(vii)

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 A 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 B 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 4-4-19.

[] 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: 5-7-19, 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).

STATEMENT OF THE CASE

Petitioner injured his right quadriceps muscle in 2013, while incarcerated at USP-Pollock. Because of the specific tear and tendon damage emergency surgery was delayed, which should have been performed within three to five days of the injury. However, Petitioner was not cleared for emergency surgery by Dr. Alexandre until five weeks later. Petitioner contends that by the time he was cleared for surgery, it was in fact too late to perform the reattachment tendon repair. As the result Petitioner suffered permanent damage in the delay of care, leaving Petitioner with a permanent limp as the failure of Dr. Alaxandre Misdiagnosis of a serious medical need Petitioner was in need of.

REASONS FOR GRANTING THE PETITION

Plaintiff contends that the record is clear and highlights the facts of Dr. Alexandre's 'grossly inadequate' care of a doctor treating an emergency situation. The doctor's decision to take an easier and less effective course of treatment can establish a case of deliberate indifference. The lower court as well as the Court of Appeals for the Fifth Circuit vehemently denied Petitioner's request for relief/ damages in this matter. The district court's denial to allow this matter to proceed initially proceed under §§ 1915(e)(2) and 1915A is misplaced in assuming the Petitioner's claim not having merit to proceed when in fact the claim has merit to move forward. The district court's as well as the Fifth Circuit Court of Appeals dismissal of Petitioner Davis case was premature. However, liberally construed, Davis allegations are sufficient to have warranted the court to order defendant(s) to file an answer Petitioner's claim against Dr. Alexandre regarding the apparent deliberate delay in the adequate medical treatment of tendon tear repair were sufficient to state a claim for relief. See Farmer v. Brennan, 511 U.S. 825, 834, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994). The Court in reviewing the initial complaint, should have accepted the factual allegations as true, liberally construing them in the Plaintiff's favor. Never has this complaint been frivolous because the factual allegations presented

initially clearly warranted the court to grant 'Merit Review and Case Management Order' in this matter.

Plaintiff points out that the district court and appeal's court dismissal of Petitioner's claim was incorrect and should have been allowed to proceed with the court ordering the defendant(s) to respond. Dr. Alexandre was in charge at the time of the injury and throughout the care process of Plaintiff. Dr. Alexandre negligently, recklessly failed to realize the extent of Plaintiff's injury until it was too late to be repaired. Dr. Alexandre is said to be a licensed, trained physician and knew or should have known the severity of Plaintiff's injury especially the function of tendons and muscles and the sensitive timing of repair when tendons are torn 3-5 days after an injury of this type as explained in Plaintiff's initial filing. This appears to be a 'classic' case where the recommendation of the treating physician Dr. Alexandre fails to properly treat it is very likely that a jury would find from the record that Dr. Joel Alexandre acted with deliberate indifference in handling of Plaintiff's case. It is surgeons recommendations when dealing with tendon or severed tendon tears; "Tendon repair should be performed as soon as possible for best results. Tendons are highly elastic and held taut by tension; when they tear, the two cut ends pull away from each other quickly and

may be difficult to retrieve and reattach after the expired time of 3-5 days. The distance between the two torn ends of tendon determine the length of the surgical incision required to locate and connect them." See American Medical Association Medical Encyclopedia. The Court should realize that the limp that was caused by Dr. Alexandre is the direct result of the treating physician not representing the urgency of the medical procedure needed in Plaintiff's situation and with a time window of only 3-5 days reattachment period Dr. Alexandre should have known immediate surgery was needed to repair the injury. The record reflects that after his misdiagnosis of the initial injury Dr. Alexandre tried to correct the mistake by then completing his paperwork to send Plaintiff to the Federal Medical Center, Springfield, MO. However, their findings and conclusions was had the Plaintiff gotten there 3-5 days of the injury the tendon could have been reattached and Plaintiff's leg would have been back to normal. Instead, it was sever weeks later when he arrived at FMC Springfield and was clearly out of time to have his tendon repaired. Therefore, such delay in treatment was the cause of deliberate indifference on Dr. Alexandre's behalf of his negligence and handling of Plaintiff's case. A serious medical need is determined by whether a delay in treating the need worsens the condition. An unexplained delay in

hours in treating a serious injury states a *prima facie* case of deliberate indifference.

As here, a serious medical need is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention. Including, providing grossly inadequate care, deciding to take an easier but less efficacious course of treatment, or providing treatment so cursory as to amount to no treatment at all.

CONCLUSION

This Court, should accept the factual allegations as true, liberally construing them in the Plaintiff's favor
The petition for a writ of certiorari should be granted.

Respectfully submitted,

Cecil Davis

Date: 7-27-19