

19-5966
No. _____

Supreme Court, U.S.
FILED

AUG 30 2019

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

DELBERT HEARD — PETITIONER
(Your Name)

vs.

DR. ANDREW TILDEN, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals F/ the Seventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Delbert Heard, ID# B76789
(Your Name)

Pontiac Correctional Center
PO BOX 99

(Address)

Pontiac, IL 61764
(City, State, Zip Code)

DNA
(Phone Number)

RECEIVED

SEP -9 2019

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SUPREME COURT, U.S.

ORIGINAL

QUESTION(S) PRESENTED

1. Whether prison doctor can evade culpability for 8th Amendment violation for delay of prisoner's hernia surgery, by invoking ostrich defense and claiming mere negligent misdiagnosis; when there is evidence that DOCTOR REFUSED WHEN ASKED TO PHYSICALLY EXAMINE PRISONER, evidence of doctor's prior knowledge of prisoner's hernia, and evidence from treating surgeon that delay of surgery for painful hernia was a risk of further life-threatening injury?

2. Whether Medical Director of Department of Corrections is sufficiently culpable for 8th Amendment violation for CONSENTING TO SUBORDINATE DOCTOR'S DELAY OF PRISONER'S HERNIA SURGERY and failing to intervene to stop delay; when there is evidence from treating surgeon that delay of surgery for painful hernia was a risk of life-threatening further injury?

3. Whether a District Court must consider the modern technology of electronic litigation, i.e. Video Depositions, Video Writs, and Email, when considering an order to transfer suit to another district under 28 USC § 1404(a), for the convenience of parties and witnesses?

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:

The petitioner, Delbert Heard, a prisoner currently confined in Illinois Dept. of Corrections at Pontiac Correctional Center, in Pontiac, Illinois,

The respondents, are, Doctor Andrew Tilden, the Medical Director of Pontiac Correctional Center, in Pontiac Illinois and Doctor Louis Shicker, the Medical Director of the Illinois Department of Corrections.

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Phillips v Roane County, Tenn,
534 F.3d 531 (6th Cir. 2008)

7

Perry v Row, 782 F.3d 73
(1st Cir. 2015)

7

Snow v McDaniel, 681 F.3d 978 (9th Cir. 2012) —

7

STATUTES AND RULES

28 USC § 1404 (a) — 8

28 USC § 1391 (b) — 4

Fed. R. App. P. 35, (1998 Advisory Committee Note) — 8

OTHER

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APPENDIX E Deposition of Petitioner's Treating Surgeon, Dr. Gangemi

APPENDIX F

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. (7th Circuit)

The opinion of the United States district court appears at Appendix B&C to the petition and is

☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☒ is unpublished. (C.D. Ill. SS order) & (Northern Dist. Ill. Transfer Order)

☐ 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 June 4, 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the 8th Amendment of the U.S. Constitution, which provides: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

This case also involves 28 USC § 1404(a) which provides: For a district court to transfer suit to a more convenient district "[f]or convenience of parties and witnesses, in the interest of justice".

STATEMENT OF THE CASE

See Below

REASONS FOR GRANTING THE PETITION

See Below

STATEMENT OF THE CASE

1. Petitioner, Delbert Heard, an Illinois prisoner, confined at Pontiac Correctional Center (Pontiac C.C.) sued medical providers under 18 USC § 1983 for deliberate indifference to his recurrent inguinal hernia.

2. Although petitioner is confined in Pontiac C.C., in Pontiac Illinois, he filed suit in the U.S. District Court in the Northern District, in Chicago, pursuant to 28 USC § 1391(b), because one of the defendants worked and/or resided in Chicago.

3. Petitioner filed motion in the Northern district for venue to remain there because the Northern district has a practice of transferring prisoners' suits to the district where they're imprisoned; irrespective of the provisions of 28 USC § 1391(b). The Northern District Court denied petitioner's motion and transferred his suit to the Central district, stating, "that district is plainly the most convenient forum for this action". However the Northern District court did not consider whether the modern technology of electronic

litigation, i.e. video depositions, video writ's, and email, has eliminated inconveniences in modern day lawsuits (See Appx. C)

4. In the Central district petitioner argued that Dr. Tilden violated his 8th Amendment rights by recklessly failing to test for the hernia during two examinations, which unnecessarily prolonged his pain and put his condition at risk of life-threatening further injury by delaying his corrective surgery for over an year. Dr. Shicker he argued unlawfully enabled this by consenting to the delay.

5. Although petitioner presented evidence that Dr. Tilden refused when asked to physically examine him, i.e. touch him (See APPX. D at pg. 71-72) and evidence from his treating surgeon that delay of surgery was a risk of life-threatening further injury (See Appx. E), the district court entered summary judgment for Dr. Tilden and Dr. Shicker.

6. The 7th Circuit affirmed the district court's holding that Dr. Tilden was merely negligent rather than deliberately indifferent to petitioners' serious medical needs and Dr. Shieker was not culpable because he merely deferred to his subordinates. The 7th circuit also affirmed the Northern District ~~REASON~~ court's transfer of venue to the central district.

REASONS FOR GRANTING WRIT

A. Conflicts With Decisions of Three Other Circuits

1. Conflicts With Decisions of The 6th, 1st, and 9th Circuits

a. Dr. Tilden

The 7th Circuit's decision in Petitioners' suit in favor of Dr. Tilden is in conflict with the decision of at least the 6th, and 1st circuits. In those circuits the court held that where

there was evidence that prison medical personnel who as Dr. Tilden did, failed to diagnose prisoners' ailments due to them performing a mere cursory examination, precluded summary judgment. See Phillips v Roane County, Tenn, 534 F.3d 531, 594 @ n [26] (6th Cir. 2008) and Perry v Roy, 782 F.3d 73, 80-81 @ n. [16] (1st Cir. 2015)

b. Dr. Shicker

The 7th Circuit's decision in Petitioners suit in favor of Dr. Shicker is in conflict with decision of the 9th Circuit. The 9th Circuit held that where there was evidence that a Dept. of Corrections Medical Director who as Dr. Shicker did, consented to decision to deny prisoner's surgery, precluded summary judgment. See Snow v McDaniel, 681 F.3d 978, 989-990 @ n [18] (9th Cir. 2012).

B. Need For American Jurisprudence To Evolve With Modern Technology

To keep American Jurisprudence in step with modern technology this writ should be granted to answer the question whether modern technology should be considered by district courts when considering transfers for convenience of parties and witnesses under 28 USC § 1404(a).

C. Importance of Question

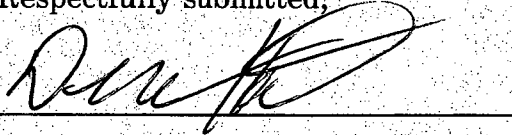
Guidance is needed particularly in this case because of the conflicts among the circuits. "When the circuits construe the same federal law differently parties' rights and duties depend upon where a case is litigated..." See Fed. R. App. P. 35, (1998 Advisory Committee Note)

Also, the Court should grant this writ to answer the question regarding venue inconvenience that clearly modern technology has eliminated. The transfer of venue statute that was enacted in 1948 and based on actual inconveniences that no longer exist, the statute is long over due for contemporary judicial guidance,

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "D. M. H.", written over a horizontal line.

Date: 8-28-19