

19-5991

No. 18-16899

ORIGINAL

Supreme Court, U.S.
FILED

SEP 09 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Howard Lee White — PETITIONER
(Your Name)

vs.

Romeo Aranas, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court Of Appeals For The Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Howard Lee White
(Your Name)

P.O. Box 7000
(Address)

Carson City, Nevada 89002
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- (1) Did the lower Courts err in granting Summary judgment to the Defendants

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[x] 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:

- (1) Jayson ~~Brumfield~~ Brumfield, Defendant
- (2) Romeo Aranas, M.D., Defendant
- (3) Mary Agnas Boni, Defendant
- (4) Richard Geer, Defendant
- (5) Jacob Council, Defendant
- (6) Thomas Wyatt, Defendant

* * * * *

- (7) Howard Lee White, Petitioner

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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 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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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 June 11, 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 petition involves Title 42 United States Code
§ 1983 in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any state, territory, or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, suit in equity, or other proper proceeding for redress.

— — — — —
The Eighth Amendment to the United States Constitution provides in pertinent part:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

STATEMENT OF THE CASE

Defendants were deliberately indifferent to Plaintiff's serious medical needs because he never received a 2000 calorie medical diet for treatment of his diabetes.¹ Plaintiff states in his "B. Nature Of The Case" that "Plaintiff brings this action against the defendants' seeking redress by declaration and injunctive relief and money damages for violation of rights secured under the Eighth Amendment to the United States Constitution, 42 U.S.C. § 1983 and state law as the defendants are intentionally interfering with treatment once prescribed by prison physician."¹ Plaintiff disputed that he received "Physician's ordered 2000 Calorie medical diet for treating his diabetes, by the name defendants,"² See ECF No. 49 at 4 B. Defendants have alleged that "If White is suffering harm and his health is at risk as a result of his diet, it is not attributable to Defendants on the meals that he is provided at Northern Nevada Correctional Center, but rather as a direct result of his own purchase and consumption of food not permitted on his prescribed 2000 Calorie medical diet. See ECF No. 83 at 10-12. This assertion is totally false. See Fed. R. Civ. P. 11, The court's role

¹ See ECF No. 49 at 3

² "The intentional denial of Physician's ordered 2000 Calorie medical diet was caused by defendants' policy and practice of interfering with plaintiff's recovery from his serious medical needs." ECF No. 49 at 4 B.

is to verify that reasonable minds could differ when interpreting the record; the court does not weigh the evidence or determine its truth. Defendants

Defendant Brumfiela stated in Response to Interrogatory No. 10: The above quoted statement is false and is not my statement. See ECF No. 83 (Exhibit C-2 at 7). Defendant Aranas stated in Response To Request For Admission No. 9: Deny. I did not hear Brumfiel say "Too much hassle." ECF No. 83 (Exhibit C-3 at 4). Plaintiff's allegation of defendants practice and policy.

Declarations submitted by prison inmates were ~~the~~ made under penalty of perjury, were admissible, conformed to Rule 56(e) in that they were based on personal knowledge, which supported his claim of causation, and created a material fact.

REASONS FOR GRANTING THE PETITION

Summary judgment allows courts to avoid unnecessary trials where no material factual dispute exists. *Northwest Motorcycle Ass'n v. U.S. Department of Agriculture*, 18 F.3d 1468, 1471 (9th Cir. 1994). Only evidence which might be admissible at trial may be considered by the trial court in ruling on a motion for summary judgment. See FRCP 56(c); and see *Beyene v. Coleman Security Services, Inc.*, 854 F.2d 1179, 1181 (9th Cir. 1988).

Summary judgment is proper "if the pleadings, deposition, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue to any material fact and that the ~~moving~~ moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

To prevail on a motion for summary judgment the moving party must establish "there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law." *Id.* Fed. R. Civ. P. 56(c). All evidence submitted must be viewed in a light most favorable to the party opposing the motion. *Bagdadi v. Nazari*, 84 F.3d 1194, 1197 (9th Cir. 1996).

To defeat summary judgment, the non-moving party must respond with facts of record that contradict the facts identified by the movant and may not rest on mere denials. *Celotex Corp. v. Catrett*, 477 U.S. at 321 n. 3 (1986), quoting Fed. R. Civ. P. 56(e). See ECF No. 49 (Ex. C-2, ECF No. 83, Brumfield - Response To Interrogatory No. 10: "The above quoted statement is false and is not my statement." at 7. . . Dated April 26, 2017. Further, ECF No. 83 (Ex. C-3, Aranas - Response To Request Admission No. 9: "Deny. I did not hear Brumfield say 'Too much hassle.' The party moving for summary judgment has the initial burden of showing the absence of a genuine issue of material fact. *Metro Indus, Inc. v. Sammi Corp.*, 82 F.3d 839, 847 (9th Cir. 1996). That burden is met by showing an absence of evidence to support the non-moving party's case. *Celotex Corp.*, 477 U.S. at 325. The burden then shifts

to the respondent to set forth specific facts demonstrating that there is a genuine issue for trial. *Liberty Lobby, Inc.*, 427 U.S. at 250. In meeting this burden, parties seeking to defeat summary judgment cannot rest upon allegations or denials of pleadings, but must demonstrate a genuine issue for trial. *Brinson v Linda Rose Joint Venture*, 53 F.3d 1044, 1049 (9th Cir. 1995). Here, the Plaintiff presented sworn declarations who supported his version of the important facts, the defendants' motion for summary judgment should have been denied. See *Jones v. Blanas*, 393 F.3d 918 (9th Cir. 2004), declarations of inmates remains uncontroverted, who asked for their diet and advised by Defendant Geer (Jayson) "grab a tray they are all the same." See ECF No. 49 at 44. The declarations conformed to Rule 56(e) in that they were based on personal knowledge, set forth facts which would be admissible into evidence,³ and demonstrated that the affiants were competent to testify to these matters. *Barthelmy v. Air Line Pilots Ass'n*, 897 F.2d 999, 1018 (9th Cir. 1990) (nothing that conformity with Rule 56 "maybe inferred from the affidavits themselves").

Defendants contend that the facts alleged by Plaintiff do not set forth a violation of Plaintiff's Eighth Amendment. However, defendants were personally responsible under § 1983. In a complaint brought pursuant to § 1983, the plaintiff should specifically identify each defendant to the best of his or her ability, clarify what constitutional right he or she believes each defendant has violated and support each claim with factual allegations about each defendant's actions. *Plata-*

³ See ECF Nos. 76-6, Declaration of Romeo Aranas, 71-9, Declaration of Jayson Brumfield, and 71-12, Declaration of Mary Agnes Boni

tiff has had no relief. He had only the denials for his request for doctor's ordered 2000 calorie medical diet.

"A showing that a supervisor acted, or failed to act, in a manner that was deliberately indifferent to an inmate's Eighth Amendment rights is sufficient to demonstrate the involvement - and the liability - of that supervisor." *Starr v Baca*, 652 F.3d 1202, 1206-07 (9th Cir. 2011). The lower courts failed to take particular care when reviewing the pleadings of a pro se party, for a more forgiving standard applies to litigants not represented by counsel. *Hebbe v Pitters*, 627 F.3d 338, 341-42 (9th Cir. 2010). Plaintiff's allegations of being denied medically necessary treatment and prescription, states a cognizable claim for deliberate indifference to serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Farmer v Brennan*, 511 U.S. 825, 834-837 (1994). See *Jett v Penner*, 439 F.3d 1094, 1096 (9th Cir. 2006). The Ninth Circuit have held that a prison official acts with deliberate indifference when he ignores the instructions of the prisoner's treating physician or surgeon. In the Ninth Circuit, as well as in other circuits of appeal, it has been held, even before *Estelle* was decided that prison officials who know, yet ignore instructions of a prisoner's treating physician violate the Constitution. See e.g., *Tolbert v Eyman*, 434 F.2d at 626 (9th Cir. 1970); *Hamilton v Endell*, 981 F.2d 1062 (9th Cir. 1992); see also *Helling v. McKinney*, 509 U.S. 25, 33 (1993).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Howard Lee White

Date: September 9, 2019