

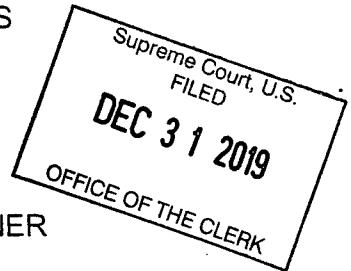
No. 10-7214

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Gregory Brown — PETITIONER
(Your Name)



VS.

Clinical Dir. Ellen Mace-Liebson, et. al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Third Circuit

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

PETITION FOR WRIT OF CERTIORARI

Gregory Brown Reg. No. 07163-041

(Your Name)

FCI Talladega PMB 1000

(Address)

Talladega, Alabama 35160

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

1. WHETHER THE SITTING PANEL FOR THE THIRD CIRCUIT COURT OF APPEALS, PER CURIAM OPINION, AFFIRMING THE DISTRICT COURT'S ENTRY OF SUMMARY JUDGMENT ON PETITIONER'S PRO SE DELIBERATE INDIFFERENCE CLAIM UNDER BIVENS, BRINGS ABOUT INTRA-CIRCUIT CONFLICT, WHERE, THE PANEL FAILED TO PROPERLY ANALYZE PETITIONER'S DELAY OR DENIAL OF ADEQUATE TREATMENT CLAIM ACCORDING TO BINDING THIRD CIRCUIT PRECEDENTS, AFTER THE ORIGINAL COURT FOUND PETITIONER'S COMPLAINT, SUFFICIENTLY ALLEGED AN EIGHTH AMENDMENT CLAIM AGAINST RESPONDENT?
2. WHETHER THE BOP'S PRACTICE OF REQUIRING FEDERAL PRISONER'S TO PURCHASE MEDICATION AT THE COMMISSARY, IS INCOMPATIBLE WITH THE CONCEPT OF ADQUATE MEDICAL CARE, THEREBY, RUNNING AFOUL OF THIS COURT'S HOLDING IN ESTELLE V. GAMBLE, 429 US 97 (1976)?
3. WHETHER THE COURT OF APPEALS DECISION IMPROPERLY OVERLOOKED PETITIONER'S SWORN TESTIMONY, THUS, APPLYING THE WRONG LAW TO PETITIONER'S FACTS?
4. WHETHER A BIVENS COMPLAINT FILED IN FORMA PAUPERIS, WHICH WAS ORIGINALLY FOUND TO ALLEGE SUFFICIENT FACTS UNDER THE EIGHTH AMENDMENT, PURSUANT TO FED.R.CVI.P. 12(b)(6), LATER BE DEEMED FRIVOLOUS BY A SUCCESSOR JUDGE, AFTER DISCOVERY HAD CONCLUDED?

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:

Associate Warden Cynthia Entzel

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Bivens v. Six Unknown Agents of Fed. Bur. of Nar't, 403 US 388 (1971)	4
Brown v. Plata, 563 US 493 ()	6
Estell v. Gamble, 429 US 97 (1976)	6
Farmer v. Brennan, 511 US 825 (1994)	
Durmer v. O'Carroll, 991 F.2d 64, 68 (3d Cir. 1993)	6
Max's Seafood Cafe ex rel. Lou-Ann, Inc., v Quintoros, 176 F. 3d 669 (3d Cir. 1999)	
Pearson v. Prison Health Serv., 850 F. 3d 526, 534 (3d Cir. 2017)	6
Rouse v. Plantier, 182 F.3d 192, 197 (3d Cir. 1999)	
White v. Nappleon, 897 F.2d 103, 109 (3d Cir. 1990)	
STATUTES AND RULES	
28 U.S.C. § 1333	
Fed.R.Civ. P. 56	

OTHER

<u>Brown v. Mace-Liebson I</u> , 2016 U.S. Dist. LEXIS 33331 (E.D. Pa Mar. 15, 2016)	4
<u>Brown v. Mace-Liebson</u> , II, 2017 U.S. Dist. LEXIS 163595 (Sep. 29, 2017)	5
<u>Brown v. Mace-Liebson</u> , III, 2018 U.S. Dist. LEXIS 82554 (May 16, 2018)	5
Brown v. Mace-Liebson, 2019 U.S. App. LEXIS 20295 (July 9, 2019)	5

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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 B to the petition and is

[X] reported at Brown v. Mace-Liebson, 2019 US. App. LEXIS 20295; 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 C, D, E to the petition and is

Brown v. Mace-Liebson, 2016 U.S. Dist. LEXIS 33331 (App. B); 2017 U.S. Dist. [X] reported at LEXIS 163595; 2018 U.S. LEXIS 82554; 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 July 9, 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: 8-14-19, refiled: 9-6-19, and a copy of the order denying rehearing appears at Appendix F.

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

Eighth Amendment

STATEMENT OF THE CASE

This case arises from an amended Bivens complaint filed pursuant to 28 U.S.C. § 1331, on August 18, 2014, against two (2) Federal Bureau of Prisons ("BOP") employees, for being deliberately indifferent to Petitioner's serious medical needs, because for fourteen (14) months, Respondent's Ellen Mace-Liebson, Clinical Director and Cynthia Entzel, Associate Warden, BOP employees at his former place of confinement, the Federal Correction Institution, Schuylkill ("FCI-Schuylkill"), located in Minersville, Pennsylvania, subjected Petitioner to cruel and unusual punishment, by delay[ing] or deny[ing] providing him adequate medical treatment for his L4-L5 and L5-S1 disk herniation and concomitant nerve impingements, and delay[ing] or refus[ing] to provide Petitioner a MRI in order to prescribe a adequate course of treatment.

Pro se petitioner Gregory Brown, is a 47 year old federal prisoner, serving aggregate terms of life imprisonment, plus 60 months. Petitioner, has been incarcerated for the last 24 years. All the pertinent facts, underpinning this Eighth Amendment claim are thoroughly set forth in the original district court's Memorandum and Order denying Respondents' Rule 12(b)(6) motion. See Brown v. Mace-Liebson et al., No. 14-623, 2016 U.S. Dist. LEXIS 33331. (M.D. Pa, Mar. 15, 2016)(Kosik, J.). Appendix C.

The gravamen of Petitioner's claim (inartfully plead) is that for 14 months, Respondents' allowed Petitioner's disk problems and resultant nerve damage to go untreated, which needlessly force Brown to suffer in pain for years, before finally undergoing left L4-L5 far lateral transfacet discectomy surgery on March 1, 2018, after being bound around three BOP Institutions, for his pre-existing back condition. See Appendix G.

Respondents' filed a combined motion to dismiss and for summary judgment, which the district court construed solely as a motion to dismiss, granted in part and denied in part. See Brown, *supra*. The deliberate indifference claim against Mace-Liebson was able to proceed and discovery was set. Id. While discovery was ongoing, the civil suit was reassigned from Judge Kosik, to Judge Malachy E. Mannion. Discovery concluded on October 18, 2018, following Petitioner's deposition.

Respondent then filed a new motion for summary judgment. On September 29, 2017, the district court determined, Petitioner's claim at most, amounted to a disagreement over the type of treatment rendered, and "...[t]he allegations do not sufficiently allege deliberate indifference...." See Brown v. Mace-Liebson, et al. II, No. 14-623, 2017 U.S. Dist. LEXIS 163595 (Sept. 29, 2017). Appendix D. Petitioner, filed a timely motion for reconsideration under M.D. Pa local rules. On May 16, 2018, the district court denied Petitioner's motion for reconsideration without considering Petitioner's new evidence of surgery. Appendix E. A timely appeal followed to the Third Circuit Court of Appeals.

After construing the complaint in light most favorable to Mace-Liebson, the Third Circuit issued a per curiam opinion of July 8, 2019, affirming the district courts entry of summary judgment in favor of Mace-Liebson. See Brown v. Mace-Liebson et al., No. 18-2205, 2019 U.S. app. LEXIS 20295 (non-precedential)(3rd Cir. 2019). Appendix B. In rendering its per curiam opinion, the panel disregard Petitioner's story, and instead, treated Mace-Liebson's version of the facts as true, ignoring Brown's probative evidence. Furthermore, the panel failed to discern whether a material dispute existed. Petitioner filed a timely motion for rehearing/en banc, which was denied on October 2, 2019. See Appendix F. Petitioner now files this timely pro se application for certiorari.

REASONS FOR GRANTING THE PETITION

Certiorari, should be granted in this case, because the Third Circuit Court of Appeals per curiam opinion, runs afoul of this Court's longstanding Eighth Amendment jurisprudence, regarding prison officials denying or delaying a prisoner necessary medical care. See *Estelle v. Gamble*, 429 US 97 (1976); *Farmer v. Brennan*, 511 US 825 (1993); also see *Brown v. Plata*, 563 US 493 (2010). Correspondingly, the Court's opinion contravenes binding Third Circuit precedents announced in, *Pearson v. Prison Health Serv.*, 850 F.3d 826, 840-41 (3d cir. 2017). see also, *Drumer v. O'Carroll*, 991 F.2d 64 (1993).

Conversely, this petition should be granted to bring uniformity within the Third Circuit concerning , what constitutes deliberate indifference, under delay or denial of adequate medical treatment.

This case asks the Court to intercede to clear up the conflicting intra-Circuit conflict in the Third Circuit, and decided whether telling a prisoner to purchase over-the-counter ("OTC") medication from commissary meets the government's obligation and responsibilities it owes an incarcerated under the Eighth Amendment.

Additionally, exculpatory evidence shows Respondent Mace-Liebson admitting that necessary medical treatment (e.g. MRI or referral to an outside specialist) was not being provided to Petitioner based in part, on "inmate's criminal history and behavior [had] to be weighed when ordering testing." Thus, Petitioner also believes this petition should be granted so this Court address whether Respondent violated Petitioner's Eighth Amendment right by factoring in that he was serving a life sentence, and purportedly committed murder in the past, so, it wasn't worth the risk to permit Petitioner to undrgo needed imaging. See Appendix A.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffrey Bunn", is written over a horizontal line.

Date: December 30, 2019