

Case No: 19-7565
(Eleventh Circuit Appeal Case No: 18-15121-C)

IN THE UNITED STATES SUPREME COURT

TYREE WRIGHT,

Petitioner,

v.

S. ALVAREZ, et al.

Respondents.

On Petition for Writ of Certiorari to the Eleventh Circuit Court of Appeals

RESPONDENTS' BRIEF IN OPPOSITION

Gregg A. Toomey
Supreme Court Bar No. 245332
Florida Bar No. 159689
THE TOOMEY LAW FIRM LLC
Attorneys for Respondents
The Old Robb & Stucky Building
1625 Hendry Street, Suite 203
Fort Myers, FL 33901
Phone: 239.337.1630
Fax: 239-337.0307
Email: gat@thetoomeylawfirm.com
alr@thetoomeylawfirm.com
hms@thetoomeylawfirm.com

OBJECTION TO THE QUESTIONS PRESENTED FOR REVIEW

Wright proposes eight questions, all of which are factual questions not suitable for certiorari review (Pet., pp. i-ii). The Respondents frame the question as whether certiorari should issue to review the decision of the 11th Circuit Court of Appeals.

LIST OF THE PARTIES

Respondents, pursuant to Federal Rule of Appellate Procedure 26.1, certifies the following is a complete list of the trial judge(s), all attorneys, persons, associates of persons, firms, partnerships, or corporations that have an interest in the outcome of this case, including subsidiaries, conglomerates, affiliates and parent corporations, and other identifiable legal entities related to a party:

- Alvarez, S., Respondent (“Alvarez”)
- Corizon Health, Inc. a/k/a Corizon, LLC (privately held)
- Davis, Brian J., United States District Court District Judge
- Enoch, P., Respondent (“Enoch”)
- Klindt, James, United States District Court Magistrate Judge
- The Toomey Law Firm, LLC, Counsel for Respondent
- Toomey, Gregg A., Counsel for Respondent
- Valitas Holdings, Inc. (privately held)
- Vivas, R., MD, Respondent (“Vivas”)
- Wright, Tyree, Petitioner (“Wright”)

TABLE OF CONTENTS

OBJECTIONS TO THE QUESTIONS PRESENTED FOR REVIEW	2
LIST OF THE PARTIES	3
TABLE OF CONTENTS.....	4
TABLE OF CITED AUTHORITIES	5
BASIS OF JURISDICTION	6
CONSTITUTION PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS.....	7
STATEMENT OF THE CASE.....	8
ARGUMENT	11
CONCLUSION.....	13
CERTIFICATE OF COMPLIANCE.....	14
CERTIFICATE OF SERVICE.....	15

TABLE OF CITED AUTHORITIES

	Page
48 U.S.C. §1983.....	7
U.S. Const. Amend VIII.....	7
S. Shaprio, K. Geller, T. Bishop, E. Hartnett & D. Himmelfarb, Supreme Court Practice § 5.12(c)(3), p. 352 (10 th ed. 2013).....	12
<i>Estelle v. Gamble</i> , 429 U.S. 97 (1976)	12
<i>Caperton v. A.T. Massey Coal Co.</i> , 556 U.S. 868, 902, 129 S.Ct. 2552, 173 L.Ed.2d 1208 (2009) (Scalia, J., dissenting)	12

BASIS OF JURISDICTION

The United States District Court for the Middle District of Florida had federal question jurisdiction according to 28 U.S.C. §1331, and issued its Order on November 16, 2018. The decision was not reported. The 11th Circuit Court of Appeals had jurisdiction according to 28 U.S.C. §1291, and issued its decision on December 17, 2019. The decision was not reported. The Court has jurisdiction to review final decisions of the courts of appeals through 28 U.C.C. §1254(1).

**CONSTITUTION PROVISIONS, TREATIES, STATUTES,
ORDINANCES AND REGULATIONS**

42 U.S.C. §1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or 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, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

U.S. Const. amend VIII

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

STATEMENT OF THE CASE

Wright, a prisoner of the Florida prison system, brought Section 1983 prisoner civil rights claims in district court, claiming his Eighth Amendment rights were violated by the Respondents' refusal to provide medical care. Wright claimed he was in a motorcycle accident in 2008, resulting in a craniotomy and diagnosis of perceptive aphasia. While incarcerated in 2013, he claimed to have worsening headaches and dizziness. He complained to unnamed medical professionals and was instructed to use the sick call process. He did so, and was provided Ibuprofen [App., 9-10].

In March 2014, Wright claimed his condition affected his equilibrium and his ability to work as a prison barber, and he asked that his records of treatment prior to incarceration be obtained. Alvarez and Enochs responded to his medical requests by directing him to the sick call procedure [App., 10].

On May 5, 2014, Wright was examined by Vivas, a physician, who told Wright to "stop malingering" [App., 10-11].

Wright claimed he suffered pain from November 2013 until January 2015 "because Dr. Vivas refused to order a brain scan." A March 2015 scan revealed a brain tumor [App., 11].

The summary judgment evidence included the prison medical records and affidavits from each of the Respondents. Dr. Vivas saw Wright on six occasions. The first was May 5, 2014 on complaints of hearing loss caused by ear wax. The second was July 11, 2014 on complaints of equilibrium loss. On examination, Vivas

recognized no specific problems, and notably absent was a “gross motor sensitivity deficit,” the presence of which would indicate a brain injury. Wright was provided medications. The third interaction was November 17, 2014 on complaints of headaches. Again, the examination produced no concerns. Wright was provided medications and a follow-up appointment. The fourth was that follow-up, on December 12, 2014. Wright had an elevated blood pressure, which can be the source of headache and dizziness, but further testing revealed nothing of concern. Again, medications and a follow-up appointment were ordered. The follow-up occurred on January 5, 2015, and Wright reported the medications alleviated his problems. Blood pressure was still high, so blood pressure medications and laboratory tests were ordered, and Wright was entered in the cardiovascular clinic [App., 13-15].

Things changed with the sixth interaction on March 2, 2016. Wright now had dizziness without headache and medications were no longer working. Dr. Vivas ordered a brain CT, which revealed a mass. With that information, he ordered an MRI and consultation with a neurosurgeon. Wright was sent to the hospital [App., 15-16].

Alvarez held an administrative, not medical position as Health Services Administrator, and she had no medical license. Her only interaction with Wright was to respond to some grievances by instructing him to access the sick call procedure if he thought he needed medical care, and to write a note on March 16,

2015 regarding Dr. Vivas' order for an emergent MRI and consultation with the neurosurgeon, which was done the next day [App., 16].

Enochs is a licensed practical nurse, who cannot diagnose or treat any malady without an order. Her only interaction with Wright was to respond to his medical requests by directing him to the sick call procedure, and entering two incidental notes regarding a normal EKG and noting his return to the prison from an appointment [App., 17].

The case was decided at summary judgment. On reviewing all the summary judgment evidence, the district court concluded the record did not support two necessary elements of a Section 1983 medical claim: subjective knowledge of a serious medical need and causation [App., 25-36].

The Eleventh Circuit issued its decision on December 17, 2019. In affirming the district court, the appellate court detailed the record, concluding Wright failed to show any of the Respondents knew he had a serious medical need or that they failed to address his medical needs. Finally, the court found lacking any evidence of a delay in medical care worsening his condition [App., 1-7].

ARGUMENT

The Petition should not be granted.

Like any petitioner, Wright's initial burden is to provide a reason for the Court to review the appellate court's decision. Rule 10 provides the type of case results the Court considers:

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

- (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
- (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
- (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Wright has not met his burden. His "Argument" is nothing more than two, one-sentence conclusions without any discussion why the result should be reviewed. It seems he wants the Court to review the case for factual errors, but that is not the

Court's function. S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D. Himmelfarb, Supreme Court Practice § 5.12(c)(3), p. 352 (10th ed. 2013) ("[E]rror correction ... is outside the mainstream of the Court's functions and ... not among the 'compelling reasons' ... that govern the grant of certiorari").

Of the considerations listed in Rule 10, only one merits any consideration: whether the appellate court's decision created a conflict with other courts of appeals. It obviously did not. The decision of the district court was unusually detailed for cases of this type, applying the Court's decision in *Estelle v. Gamble*, 429 U.S. 97 (1976) and more than 40-years of 11th Circuit precedent following that decision. The appellate court undertook its own review according to the correct standards and precedent in coming to its decision. Nothing in this case implicates the Court's primary function: to bring clarity to the law where needed. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 902, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009) (Scalia, J., dissenting). ("The principal purpose of this Court's exercise of its certiorari jurisdiction is to clarify the law.").

CONCLUSION

The Petition should be denied.

THE TOOMEY LAW FIRM LLC
Attorneys for Respondents
The Old Robb & Stucky Building
1625 Hendry Street, Suite 203
Fort Myers, FL 33901
Phone: 239.337.1630
Fax: 239-337.0307
Email: gat@thetoomeylawfirm.com
alr@thetoomeylawfirm.com, and
hms@thetoomeylawfirm.com

By: /s/ Gregg A. Toomey
Gregg A. Toomey
Supreme Court Bar No. 245332

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Supreme Court Rule 33(h), as it contains 1,720 words.

This brief complies with the typeface requirements and type style requirements of Supreme Court Rule 33(b) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook 12 in Microsoft Office Word 2010.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of March, 2020, a true and correct copy of the foregoing was furnished via U.S. Mail to the persons on the Service List below.

THE TOOMEY LAW FIRM LLC
Attorneys for Respondents
The Old Robb & Stucky Building
1625 Hendry Street, Suite 203
Fort Myers, FL 33901
Phone: 239.337.1630
Fax: 239-337.0307
Email: gat@thetoomeylawfirm.com,
alr@thetoomeylawfirm.com, and
hms@thetoomeylawfirm.com

By: /s/ Gregg A. Toomey
Gregg A. Toomey
Supreme Court Bar No. 245332

SERVICE LIST

Tyree Wright, #J23621
Tomoka Correctional Institution
3950 Tiger Bay Road
Daytona Beach, FL 32124-1098
Pro Se Appellant