

United States Supreme Court
Christopher Young, Plaintiff
v.
Jose Boggio, et al, Defendants

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

Case No. 19-1277

Dear Clerk,

Please submit My "Afflication to Extend the Time to file a Petition for a Writ of Certiorari." I did not know the individual Justice's name whom is allotted to the Third Circuit. I am currently on lock down (the entire prison is) & this has been happening quite frequently. Havent had enough Law library access, never got the geo se packet, don't have a typewriter & it's a struggle for access to word processors in law library. I couldn't make necessary copies of this so I handwritten every copy I understand I needed. I hope I've met my requirements. Will you please time stamp this cover page & send back as receipt of reception. And will you send me the prose prisoner packet for filing Petition for Writ of Certiorari.

Thank You.

Date: 1.29.20

Christopher Young

United States Supreme Court

Christopher Young, Plaintiff

v.

Jose Boggio, et al., Defendants

Case No. 19-1277

To the Individual Justice allotted to the Third Circuit.

Application to Extend the Time to file a Petition for a Writ of Certiorari

On or about 11.18.19 Plaintiff requested the full packet of information instructions & prescribed forms for a prose prisoner to file a Petition for a Writ of Certiorari via letter to the Clerk. Plaintiff received no response for reasons unknown to him. Plaintiff again requested the same via letter to the Clerk on or about 1.19.20 & he is awaiting response thus far. Plaintiff tried to obtain the above mentioned in the Prison Law library here to no avail. There's no way plaintiff can properly petition for a Writ of Certiorari with out it. The plaintiff couldn't even obtain the prescribed informed gaugeris forms. The Third Circuit Court of Appeals denied plaintiff's petition for Rehearing with Suggestion for Rehearing En Banc on 11.13.19. Plaintiff then requested extra access to law library on 11.21.19 because he only receives 1 weekly 2 hours session that's often enough delayed, interrupted & cancelled due to institutional & or Unit Lockdowns implemented by the administration's "Violence Reduction Strategy" where they lock down the entire Prison, Unit(s) due to a fight involving 2 or more people anywhere in the prison. And the Unit each individual is housed on will be locked down for at least 36 hours (the entire Unit or Prison that wasn't involved at all), amongst other

reasons law library is interferred with. In fact, the Unit I'm housed on just got off of a 36 hour lock down (from about 1:00 P.M. 1.26.20-1.28.20) I'm hearing due to a fight inside or outside the chapel, one of those involved belongs/housed on this unit so that's why this unit was placed on lock down even though all those involved was sent to the hole for the chapel area. This was time plaintiff could've been accessing the law library. I explained to the librarian Ms. Nyberg that I have 90 days from 11.13.19 to file a petition for Writ of Certiorari, plaintiff also showed her the 11.13.19 denial/order & the 90 day rule. She told plaintiff to wait till he's within 30 days of the deadline to file the petition, to request extra law library access. Throughout plaintiff's litigation he's handwritten in pencil pretty much all documents, briefs etc. It's hard a lot of times to get access or even enough access to the limited amount of word processors in the law library. It frustrates the ability & process of getting legal work done, so I find it effective & easier for me to get legal work done by handwriting. However, plaintiff did attempt to purchase his very own typewriter when he managed to save enough money. Plaintiff ordered a typewriter on or about 8.23.19. The money was deducted from plaintiff's account but then it was refunded because the prison was out of stock due to its approved vendor not having any in inventory because the Swintec Manufacturer over seas in China had experienced a major fire. So plaintiff doesn't own a typewriter. The approved vendor's website (JL Marcus) says they won't have the typewriters until July 2020 but then there's no telling when the prison will have them in stock. Plaintiff is unsure if he is allowed to even handwrite a petition for Writ of Certiorari because he has yet to be successful in obtaining the packet of information, instructions & the prescribed forms in order for a pro se prisoner to file petition for a writ of

Certiorari. All of the above herein has impeded, hindered & delayed plaintiff's ability, with enough information essential, to file a sufficient petition for a Writ of Certiorari. Because the plaintiff doesn't have the packet of information, instructions & prescribed forms, has not & is not receiving enough access to law library & does not have his own typewriter, & it being a struggle for word processor access in the law library he is at risk of being barred from appealing C.O.A denials. And that will have devastating implications to his medical situation. Wherefore, the plaintiff respectfully & sincerely applies to this honorable court to grant him an Extension of Time for 60 days to file a petition for a Writ of Certiorari & providing that plaintiff receives the packet necessary.

Also please note that the prison & or unit has went right back on lock down, this morning (1.29.20) after breakfast, due to what prison guards are saying was another "Staff Assault", but I don't know for sure. Plaintiff just knows that these are the sort of issues that's interfering with his access to law library & it's often enough & always unpredictable & becoming increasingly more frequent.

Respectfully Submitted

Christopher Young

Christopher Young

Date: 1.29.20

United States Supreme Court

Christopher Young, Plaintiff

v.

Case No. 19-1277

Jose Boggio, et al, Defendants

CERTIFICATE OF SERVICE

I, Christopher Young, Pro se Prisoner plaintiff, do hereby certify that on this 29th day of January 2020, I Served a true and correct copy of the foregoing "Application to Extend to Time to file a Petition for a Writ of Certiorari"

VIA U.S. First Class Mail to:

Alan S. Gold (Attorney for Medical Defendants)
716 North Bethlehem Pike
Suite 208
Lower Gwynedd, Pa 19002
Phone # 215.885.1118

Date: 1.29.20

Christopher Young
Christopher Young

United States Supreme Court

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v.

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DECLARATION of Christopher Young.

On January 29th 2020 I placed my "Application to Extend the Time to File a Petition for a Writ of Certiorari" in an addressed envelope & sealed it.

I then had C.O. I Reese stamp, sign & date 2 cash slips & staple attach them to the addressed envelope.

He then placed the envelope in the Unit mail box on EA unit SCI Albion.

I hereby declare that the above statements are true & correct to the best of my knowledge, information & belief. I also understand that the statements contained herein are subject to the penalties of perjury pursuant to 28 U.S.C. § 1746 relating to unsworn falsification to authorities.

Date: 1.29.20

Christopher Young
Christopher Young

ALD-280

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-1277

CHRISTOPHER YOUNG,
Appellant

v.

JOSE BOGGIO; ROBERT MAXA; JERI SMOCK; ALEXIS SECARA;
DANIEL STROUP; JOSEPH SILVA; MICHAEL CLARK; ANDREA NORRIS;
CORRECT CARE SOLUTIONS; JOHN WETZEL

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. No. 1:17-cv-00125)
Magistrate Judge: Honorable Richard A. Lanzillo

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit L.A.R. 27.4 and I.O.P. 10.6
September 12, 2019
Before: McKEE, SHWARTZ, and BIBAS, Circuit Judges

(Opinion filed: September 30, 2019)

OPINION*

PER CURIAM

Christopher Young appeals the dismissal of his civil rights action for failure to state

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

a claim. Because this case does not present a substantial question, we will summarily affirm. See 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6.

Young brought suit pursuant to 42 U.S.C. § 1983, alleging a violation of his Eighth Amendment rights while he was incarcerated at the State Correctional Institution at Albion (“SCI Albion”). Young named multiple defendants, who fell into two categories: the medical personnel that treated Young (the “Medical Defendants”)¹ and the various administrative staff of the Department of Corrections (“DoC Defendants”).² Young generally alleged that the Medical Defendants deprived him of necessary medical care, while the DoC Defendants did nothing to intervene despite their alleged awareness of Young’s serious medical needs. Both sets of defendants filed motions to dismiss for failure to state a claim. See Fed. R. Civ. P. 12(b)(6). In response, Young filed a motion for summary judgment.

The Magistrate Judge ultimately granted both motions to dismiss.³ With regard to the Medical Defendants, the Magistrate Judge thoroughly detailed the various medical treatments and medications administered during the one-year period described in Young’s amended complaint. Young underwent a colonoscopy, endoscopy, ultrasound, and a CAT scan in an attempt to diagnose the source of his symptoms, which revealed that he had a

¹ These defendants included prison physicians Jose Boggio and Robert Maxa, physician assistants Alexis Secara and Daniel Stroup, and Correct Care Solutions (“CCS”).

² These defendants consisted of Superintendent Michael Clark, Correctional Health Care Administrator Jeri Smock, Bureau of Healthcare Services Directors Andrea Norris and Joseph Silva, and Secretary of the Department of Corrections John Wetzel.

³ The parties consented to the jurisdiction of the Magistrate Judge pursuant to 28 U.S.C. § 636(c)(1).

mild form of erosive reflux and related disorders. The Medical Defendants treated Young's symptoms with various medications, and even gave Young the option to select his own medications when he felt his previous medications were ineffective. The Magistrate Judge held that Young could not maintain an Eighth Amendment claim because there was no question that Young had received medical care to address his symptoms, and the mere dissatisfaction with that care was not actionable under the Eighth Amendment. To the extent Young alleged that Dr. Boggio may have been motivated by non-medical reasons in delaying treatment of Young with Carafate, a drug Young insisted on, the Magistrate Judge held that Dr. Boggio's treatment of Young was not clearly inadequate. Indeed, the Magistrate Judge determined that Dr. Boggio treated Young with a host of medications (including Carafate), and the decision to attempt other medications (and delay the use of Carafate) was medically based on the fact that Young did not have ulcers of the stomach.⁴

As to the DoC Defendants, the Magistrate Judge held that non-physician prison officials allegedly failing to directly respond to a prisoner's medical complaints are not deliberately indifferent to that prisoner's medical needs when that prisoner is already in the care of the prison's physicians. Additionally, the Magistrate Judge noted that supervisory officials must play an affirmative part in the complained-of misconduct and further determined that Young's allegations were based on the DoC Defendants' roles in the grievance process, which is insufficient to demonstrate actual knowledge. Accordingly, the

⁴ Similarly, the District Court determined that Dr. Maxa's refusal to immediately prescribe Carafate to Young amounted to nothing more than a disagreement between an inmate and his treating physician over alternative treatment plans, which was not actionable under the Eighth Amendment.

Magistrate Judge granted both motions to dismiss and denied Young's motion for summary judgment. Young timely appealed.

We have jurisdiction over the appeal of the Magistrate Judge's judgment. See 28 U.S.C. §§ 636(c)(3), 1291. We review the grant of a motion to dismiss pursuant to Rule 12(b)(6) de novo. Newark Cab Ass'n v. City of Newark, 901 F.3d 146, 151 (3d Cir. 2018). “[A] complaint must contain sufficient factual allegations, taken as true, to ‘state a claim to relief that is plausible on its face.’” Fleisher v. Standard Ins. Co., 679 F.3d 116, 120 (3d Cir. 2012) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). We accept all factual allegations in the complaint as true and construe those facts in the light most favorable to the plaintiff. Id.

We agree with the Magistrate Judge that Young failed to allege an Eighth Amendment claim against either group of defendants. As to the Medical Defendants, Young failed to allege that they were deliberately indifferent to his medical needs. See Estelle v. Gamble, 429 U.S. 97, 106 (1976). Young did not allege—nor could he—that he was refused medical care or treatment. See Pearson v. Prison Health Serv., 850 F.3d 526, 535 (3d Cir. 2017) (“[T]here is a critical distinction ‘between cases where the complaint alleges a complete denial of medical care and those alleging inadequate medical treatment.’” (quoting United States ex rel. Walker v. Fayette County, 599 F.2d 573, 575 n.2 (3d Cir. 1979) (per curiam))). To the contrary, as mentioned above and more thoroughly detailed in the Magistrate Judge's opinion, Young was seen numerous times by the Medical Defendants, given various medical tests, and prescribed medication to address his medical problems. Not only is there nothing to suggest that the treatment methods employed by the Medical Defendants

violated professional standards of care, Young's allegations of dissatisfaction with that treatment will not support an Eighth Amendment claim. See id. ("Because 'mere disagreement as to the proper medical treatment' does not 'support a claim of an [E]ighth [A]mendment violation,' when medical care is provided, we presume that the treatment of a prisoner is proper absent evidence that it violates professional standards of care." (citation omitted) (quoting Monmouth Cty. Corr. Institutional Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987))). Furthermore, with regard to Dr. Boggio's alleged budgetary motivations in delaying the prescription of Carafate, we agree with the Magistrate Judge that Young's own amended complaint undercuts this allegation, as it describes the medical reasoning behind the delay. See id.; Am. Compl. ¶ 19. Consequently, the Magistrate Judge properly dismissed the claims against the Medical Defendants.⁵

The Magistrate Judge also correctly dismissed the claims against the DoC Defendants, as it is undisputed that Young was receiving medical care from medical professionals at SCI Albion. See Spruill v. Gillis, 372 F.3d 218, 236 (3d Cir. 2004) (noting that if an inmate is under the care of medical experts, "non-medical prison official[s] [like DoC Defendants] will generally be justified in believing that the prisoner is in capable hands"). Young failed to adequately allege the DoC Defendants had the requisite knowledge needed to maintain a deliberate indifference claim. See id. ("[A]bsent a reason to believe (or actual knowledge) that prison doctors or their assistants are mistreating (or not treating) a

⁵ For the reasons thoroughly detailed in the Magistrate Judge's opinion, we also agree that Young failed to allege that CCS, the entity under contract to provide health care services at SCI Albion, had a policy or custom that directly caused him constitutional harm. See Natale v. Camden Cty. Corr. Facility, 318 F.3d 575, 583–84 (3d Cir. 2003).

prisoner, . . . non-medical prison official[s] like [DoC Defendants] will not be chargeable with the Eighth Amendment scienter requirement of deliberate indifference.”). Moreover, the Magistrate Judge correctly determined that Young failed to allege the requisite personal involvement needed to maintain a § 1983 claim against the DoC Defendants. See Evancho v. Fisher, 423 F.3d 347, 353 (3d Cir. 2005) (noting that supervisory liability cannot be predicated solely on respondeat superior and finding an amended complaint failed to allege facts that, if proven, would show personal involvement in alleged wrongdoing).

Finally, the Magistrate Judge did not err in dismissing the complaint without providing Young an opportunity to further amend, because, as his amended complaint demonstrates, amendment would have been futile. See Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002). Accordingly, for the foregoing reasons, we will summarily affirm the Magistrate Judge’s judgment. In light of our disposition, Young’s pending motion for appointment of counsel is denied as moot.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-1277

CHRISTOPHER YOUNG,
Appellant

v.

JOSE BOGGIO; ROBERT MAXA; JERI SMOCK; ALEXIS SECARA;
DANIEL STROUP; JOSEPH SILVA; MICHAEL CLARK; ANDREA NORRIS;
CORRECT CARE SOLUTIONS; JOHN A. WETZEL

(W.D. Pa. No. 1:17-cv-00125)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, and McKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO,
BIBAS, PORTER, MATEY, and PHIPPS, Circuit Judges

The petition for rehearing filed by Appellant in the above-captioned case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc is **DENIED**.

By the Court,

/s/ Stephanos Bibas
Circuit Judge

Dated: November 13, 2019
JK/cc: Christopher Young
All Counsel of Record