

No.

19-7807

ORIGINAL

Supreme Court, U.S.
FILED

FEB 13 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Christopher Young — PETITIONER
(Your Name)

vs.

Jose Boggio, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court Of Appeals for the Third Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Christopher Young
(Your Name)

10745, Route 18
(Address)

Albion, Pa. 16475-0002
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- 1.) Whether the contention that an Eighth Amendment deliberate indifference to serious medical need claim fails simply because the Plaintiff received some level of medical care/some treatment?

- 2.) If so, whether that contention overlooks the possibility that the treatment the Plaintiff did receive was ineffective, & so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate his condition?

- 3.) Whether the contention that a Plaintiff's complaints that the treatments provided don't work amounts to aa disagreement or dissatisfaction overlooks the possibility that the treatments are ineffective & actually don't work?

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:

Respondents

Jose Boggio
Robert Maxa
Daniel Stroup
Alexis Secara
Correct Care Solutions

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STATUTES AND RULES

OTHER

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 is unpublished.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 2018 U.S. Dist. LEXIS 217703; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**: N/A

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 9.30.19.

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: 11-13-19, and a copy of the order denying rehearing appears at Appendix C.

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**: N/A

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

The Eighth Amendment to the U.S. Constitution states:

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

STATEMENT OF THE CASE

On or about June 22nd and 30th, 2016, Petitioner underwent a colonoscopy & endoscopy & was subsequently diagnosed with Erosive Reflux Esophagitis LA class A on medication, Cecum inflammation, Dyspepsia, mildly active chronic gastritis, chronic inflammation of the Lamina propria, focal acute inflammatory infiltrates involving the glandular epithelial cells & lamina propria, identified patchy chronic inflammatory infiltrates amongst other things. At that time, the outside specialists' ordered treatment with Carafate and something else. Before these procedures & diagnoses Petitioner was under respondent Maxa's prescription of 20 - 40 mg Prilosec that never brought resolve/relief, it never worked. Once returned from these procedures Petitioner was continued on prilosec.

For months on end Petitioner continued complaining and informing the respondents that the treatments were not resolving/relieving his non-stop, ongoing, worsening symptoms of stomach and chest pains, drilling and gnawing sensations in cardiac area esophagus area, burning, soreness, tightening, pressure, vibrations in chest area, tightness in back and sides, bubbling & grumbling in stomach and cardiac areas, dripping wet cold sensations in cardiac area & left underarm, sensitivity tenderness & sensation of something eating away in chest area, vomiting, clicking in head, chest & stomach bothering the breathing etc.. Throughout Petitioner's complaints that the treatments were not working and symptoms were worsening, the respondents either continued the same treatment or prescribed other medications like protonix, pepsid, carafate, nexium, peptobismal, zantac to no avail.

Despite Petitioner complaining that these treatments didn't resolve or relieve his symptoms, respondents placed Petitioner back on treatments they knew wouldn't work because they didn't work previously. Petitioner complained and informed respondents that if condition is not effectively treated it may result in continued & further harm and complications. Respondents persisted

this cycle. Ultimately Petitioner sought redress on or about May 9, 2017 via 42 U.S.C. §1983. Magistrate Judge Richard Lanzillo granted respondents' Motion to Dismiss Petitioner's Amended complaint for failure to state a claim, opining that "In the instant case, there is no question that Plaintiff received "some level of medical care" from the medical defendants," & "Where the Plaintiff has received some care, inadequacy or impropriety of the care that was given will not support an Eighth Amendment claim," and "the care provided by Dr. Boggio was not clearly inadequate," because "Dr. Boggio provided Plaintiff with a host of medications including Carafate in an attempt to alleviate his symptoms," & that "an inmate's dissatisfaction with a course of medical treatment, standing alone, does not give rise to a viable Eighth Amendment claim."

Petitioner timely appealed to the United States Court of Appeal for the Third Circuit whom affirmed the Magistrate Judge's Judgment, agreeing that "Young failed to allege an Eighth Amendment claim," "failed to allege that they were deliberately indifferent to his medical needs," "did not allege --- nor could he -- that he was refused medical care or treatment," because "Young was seen numerous times by the Medical defendants, given various medical tests, and prescribed medication to address his medical problems," "Nothing suggest that the treatment methods employed by the medical defendants violated professional standards of care," and "Young's allegations of dissatisfaction with that treatment will not support an Eighth Amendment claim."

Petitioner timely filed petition for rehearing in which the United States Court of Appeals for the Third Circuit denied.

REASONS FOR GRANTING THE PETITION

The petition should be granted to reconcile and resolve the conflict of conflicting decisions between the Third & Seventh Circuits regarding whether a plaintiff's Eighth Amendment deliberate indifference to serious medical need claim fails because he received some level of medical care/some treatment.

The first question presented is whether an Eighth Amendment medical claim fails because the plaintiff received some level of medical care/some treatment. The Third Circuit in its' opinion of the matter agreed with the Magistrate Judge that Young failed to allege Eighth Amendment deliberate indifference to his medical needs. , citing Estelle v. Gamble, 429 U.S. 97, 106 (1976). "Young did not allege --- nor could he -- that he was refused medical care or treatment." Citing Pearson v. Prison Health Serv, 850 F.3d 526, 535 (3rd cir. 2017) ("There is a critical distinction 'between cases where the complaint alleges a completed 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 (3rd cir. 1979) (per curiam)). The Court further opined that "Young was seen numerous times by the Medical Defendants, given various medical tests, and prescribed medications to address his medical problems." The court agreed & opined that in the instant case "there is no question that Plaintiff received some level of medical care from the Medical Defendants. Citing Hensley v. Collins, 2018 WL 4233021, at *3 (W.D. Pa. Aug. 15, 2018) (Thus, "courts have consistently rejected Eighth Amendment claims where an inmate has received some level of medical care." The court noted that "Plaintiff underwent colonoscopy, endoscopy, ultrasound, CAT scan in an attempt to diagnose the source of symptoms" and "defendants treated his symptoms with a host of medications" & even gave Plaintiff the option to select his own medications from a list of drugs." "Where the Plaintiff has received some care, inadequacy or impropriety of the care that was given will not support an Eighth Amendment claim." Citing Norris v. Frame, 585 F.2d 1183, 1186 (3rd Cir. 1978). See: Appx - A & B.

The Seventh Circuit in its' opinion of the matter in Greene v. Dalry, 414

F.3d 645 is quite to the contrary. In Greeno, he claimed defendants failed to adequately respond to his vomiting & severe heartburn, symptoms that appeared in late 1994 and became progressively worse until he was treated in 1997 for an esophageal ulcer. The District Court first dismissed Greeno's complaint for failure to state a claim. But the Seventh Circuit Court of Appeals reversed & remanded in part, holding that Greeno's complaint does state a claim for deliberate indifference to an objectively severe medical condition. On remand the district court granted summary judgment to a number of defendants & again dismissed Greeno's claims against the remaining defendants.

Greeno appealed, again, and the Seventh Circuit Court of Appeals, again, affirmed in part & vacated & remanded in part. Id. 648. Seventh Circuit C.O.A. opined that "Although it is true that neither medical malpractice nor a mere disagreement with a doctor's medical judgment amounts to deliberate indifference, see Estelle v. Gamble, 429 U.S. at 106 ("Medical malpractice does not become a constitutional violation merely because the victim is a prisoner."); Estate of Cole by Pardue v. Fromm, 94 F.3d 254, 261 (7th Cir. 1996) (Medical Providers' differing opinions as to best treatment for prisoners do not amount to deliberate indifference), to prevail on an Eighth Amendment claim, "a prisoner is not required to show that he was literally ignored." Sherrod v. Lingle, 223F.3d 605 611 (7th Cir. 2000). Id. 653. The Seventh Circuit Court of Appeals opined that "The district court missed this critical distinction, concluding that Greeno's claim failed because "his complaints were not ignored." Likewise, the defendants' contention that Greeno's claim fails because he received some treatment overlooks the possibility that the treatment Greeno did receive was "so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate" his condition. Snipes v. DeTella, 95 F.3d 586, 592 (7th Cir. 1996) (internal quotations omitted). Seventh Circuit Court of Appeals opined "We think a fact finder could infer as much from the medical defendants' obdurate refusal to alter Greeno's course of treatment despite his repeated reports that the medication was not working and his condition was getting worse. Id 654.

It appears that Petitioner would've faired well under the Eighth Amendment

protections had he been imprisoned in the Seventh Circuit. Petitioner's case is very similar to Greeno's case. Despite his constant complaints, respondents doggedly persisted in a course of treatment known to be ineffective, behavior recognized as a violation of the Eighth Amendment. See Kelly v. McGinnis, 899 F.2d 612, 616-17 (7th Cir. 1990)(per curiam)(prisoner could prevail on Eighth Amendment claim with evidence that defendants "gave him a certain kind of treatment knowing that it was ineffective"). Id 655. Treatment that is ineffective, inadequate & just don't work amounts to no treatment at all. Persistent reflux without effective treatment leads to continued worsening symptoms, the development of further complications & irreparable harm such as ulcers, scar tissue, esophageal stricture, ~~barrett's~~ amongst other things leading to esophageal cancer.

The issues presented are of National Importance & are of importance to a certain class of citizens.

Nationally it is in the public's interest for the courts to maintain uniformity and keep the public's confidence. Prisoners are a certain class of citizen among the most vulnerable. A prisoner cannot visit a doctor, medical clinic, or hospital on his own. Can't go to a drugstore & buy medicine he may need. Because prisoners lose their ability to obtain medical care when they're imprisoned, officials have a duty to provide medical care. See DeShaney v. Winnebago County Dep't of Social Services, 489 U.S. 189, 199-200, 109 S.Ct. 998 (1989); Estelle v. Gamble, 429 U.S. 97, 104, 97 S.Ct. 285 (1976); ("It is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself." (citations omitted)). So the prisoner, such as Petitioner, is fully dependent on the officials, to provide much needed care to abate further harm. This is why it's very important for this Honorable Court to exercise it's discretion in this matter. This Courts' intervention is required to reconcile & resolve the conflict.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Christopher Young

Date: February 13, 2020