

19-8084

ORIGINAL

No. _____

Supreme Court, U.S.
FILED

FEB 25 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Christopher Young PETITIONER
(Your Name)

vs.

Rekha Halligan — 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

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 continuous persistence in a course of treatment known to be ineffective through a petitioner's complaints, while knowing or should've known there exists other treatments/surgery & procedures to explore that improves a petitioner's condition violate the Eighth Amendment?
2. Whether a petitioner's Eighth Amendment claim fails simply because he/she received some treatment/some level of medical care regardless of the fact that it was ineffective?
3. Whether seeking effective treatment/care by informing medical professionals, as is required, that current and prior treatment/care was ineffective, necessarily or absolutely constitute a disagreement and/or preference for a particular course of treatment?

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:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	10

INDEX TO APPENDICES

APPENDIX A Opinion, Entry & Judgment of the United States Court of Appeals for the Third Circuit.

APPENDIX B Opinion & Order of the United States District Court for the Western District of Pennsylvania.

APPENDIX C Denial of Rehearing in the United States C.O.A. for the Third Circuit.

APPENDIX D Order denying Motion for Reconsideration.

APPENDIX E Pages 525-526 of the American Medical Association Complete Complete Medical Encyclopedia, First Edition 2003

APPENDIX F

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 2019 U.S. App. LEXIS 30781; 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 223643; 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 10.16.19.

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: 11.27.19, 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**:

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 punishments inflicted."

TABLE OF AUTHORITIES CITED

Greeno v. Daley 414 F.3d 645, 2005 U.S. App. LEXIS 13125	5,6,7,8
Kelly v. McGinnis, 899 F.2d 612,616-17 (7th Cir. 1990)	5
Brown v. LaMonna, 304 Fed. Appx. 206 (4th Cir. 2008)	5
Arnett v. Webster, 658 F.3d 742, 754 (7th Cir 2011)	6
Cosner v. Dodt, 526 Fed. Appx. 252 (4th Cir. 2013)	6,7
Rouster v. County of Siginaw, 749 F.3d 437 (2018)	6
Lemarbe v. Wisneski, 266 F.3d 429, 439 (6th Cir. 2000)	6
Sherrod v. Lingle, 223 F.3d 605, 611 (7th Cir. 2000)	7
Terrance v. Northville Reg'l Psychiatric Hosp, 286 F.3d 834, 843 (6th Cir. 2002)	6
Westlake v. Lucas, 537 F.2d 857, 860 n5 (6th Cir. 1976)	6
Estelle v. Gamble 429 U.S. 106	7,9
Estate of Cole by Pardue v. Fromm, 94 F.3d 254, 261 (7th Cir. 1996)	7
Snipes v. DeTella, 95 F.3d 586, 592 (7th Cir. 1996)	7
De'lonta v. Johnson, 708 F.3d 520, 526 (4th Cir. 2013)	7
Leonardson v. Peek, 2007 U.S. Dist. LEXIS 98107 (6th Cir. 2007)	8
Shoals v. CHP (Clinical Health Partners), 2018 U.S. Dist. LEXIS 11473 (10th Cir. 2018)	8
Sulton v. Wright, 265 F.Supp. 2d 292, 300 (S.D.N.Y. 2003)	8
Allen v. Montgomery Cnty. 2009 U.S. Dist. LEXIS 107937, 2009 WL 4042761 at 78	78
Norris v. Frame, 585 F.2d 1183, 1186 (3rd Cir. 1978)	8
Pearson v. Prison Health Serv, 850 F.3d 526, 535 (3rd Cir. 2017)	8
Rouse v. Plantier, 182 F.3d 192, 197 (3rd Cir. 1999)	9

STATEMENT OF THE CASE

The Petitioner's amended complaint alleged that he was suffering on going worsening symptoms related to his diagnosed condition of Erosive Reflux Esophagitis LA Class A, cecum inflammation, Dyspepsia, mildly active chronic gastritis, chronic inflammation of Lamina Propria, Duodenum inflammation, focal acute inflammatory infiltrates involving the Glandular epithelial cells & lamina Propria, Patchy chronic inflammatory infiltrates. Pursuant to the usual procedures, Petitioner consistently submitted sick-call slips, requests to respondent, Rekha Halligan, and even verbally informing her that symptoms/condition is constant, on going & worsening, and that prior & current treatment was ineffective. Petitioner constantly explained this to respondent Halligan and sought effective and adequate treatment to resolve/relieve & improve his condition. Despite petitioner's consistent complaints, & respondent Halligan's knowledge of his condition, respondent Halligan did not provide Petitioner with effective/adequate treatment or send Petitioner to the specialist for re-evaluation. Instead, respondent Halligan continued the same cycle of treatment previous doctors did, persisting in a course of treatment that she knew was ineffective.

Respondent Halligan either continued the same medication, prescribed no treatment at all, prescribed a previous ineffective treatment, or totally ignored petitioner's complaints all together. Petitioner explained to respondent Halligan that her conduct places Petitioner at risk of continued suffering & further harm. Respondent Halligan continued to persist this course of ineffective treatment. At some point before she left, a re-evaluation was scheduled with an outside specialist but this never took place under her care. All institutional grievances were denied. The district court granted Motion to Dismiss to respondent for failure to state a claim on the "some treatment" contention & "a mere disagreement" contention. The court of appeals affirmed the grant of Motion to Dismiss for the reasons stated by the district court.

REASONS FOR GRANTING THE PETITION

1.) The petition should be granted to reconcile & resolve a conflict between circuits regarding whether continuous persistence in a course of treatment known to be ineffective through a Petitioner's complaints, while knowing or should've known there exists other treatments/surgery and/or procedures to explore that improves a Petitioner's condition violate the Eighth Amendment?

The Seventh Circuit's Greeno v. Daley, 414 F.3d 645; 2005 U.S. App. LEXIS 13125 opined that "For the next year and a half the defendants doggedly persisted in a course of treatment known to be ineffective, behavior that we have 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 414 F.3d 655. On the side of the Seventh Circuit is the Forth Circuit's Brown v. LaManna, 304 Fed. Appx. 206 Nov. 21, 2008 citing Greeno v. Daley, 414 F.3d 645, 655 (7th Cir. 2005) finding that doggedly persistence in a course of treatment known to be ineffective can violate the Eighth Amendment. The Petitioner in the instant case didn't have enough Law Library access to research additional case laws on this issue.

Opposite & conflicting with the Seventh Circuit's conclusion is the instant Third Circuit decision Appendix-A. The Third Circuit's decision is conflicting because it's misinterpreting & misconstruing the respondent's continuous persistence in a course of treatment & care she knew was ineffective, to somehow be abiding of the Eighth Amendment.

As noted by the Third Circuit, Petitioner was seen by respondent & others numerous times, given various medical tests & prescribed numerous medications to address Petitioner's condition. However, none of that resolved or relieved Petitioner's condition or the symptoms. It was all ineffective and yet, respondents continued to persist this course leaving Petitioner in pain,

suffering & at risk of further harm. See Arnett v. Webster, 658 F.3d 742, 754 (7th Cir. 2011)(Plaintiff's allegations that the medical defendants knowingly ignored his complaints of pain by continuing with a course of treatment that was ineffective and less efficacious without exercising professional judgment are sufficient to state a claim). See Cosner v. Dodt, 526 Fed. Appx 252 4th Cir. 2013, it is at least plausible that an examination & X-rays car constitutionally inadequate treatments for the suspected swallowing of a plastic knife. Just as in the instant case, it is at least plausible that the diagnostic testing didn't resolve/relieve Petitioner's condition nor did the known ineffective treatments, thus continued persistence is unreasonable in the face of further existing treatment/care. See Appendix E. Of all the Third Circuit cases Petitioner researched on this issue, none of them cited Greeno v. Daley in support or agreeing with it. But the Third Circuit does cite Greeno in support & agreeing with the issue of "a non medical prison officials will generally be justified in believing that the prisoner is in capable hands".

The Third Circuit is clearly not settled on this issue. Thus depending on whether Petitioner is incarcerated in the Seventh, Forth & possibly other circuits minus the Third Circuit, he will experience a different result. This issue is of particular importance to a certain class of citizens (Prisoners) who can't obtain their own medical care & must depend on the prison system/prison medical professionals. Continuous ineffective treatment/care and/or no treatment at all can prove devastating for prisoners. See Rouster v. County of Siginaw, 749 F.3d 437 (2018)(A prisoner is not required to show that he was literally ignored by the staff to prove an 8th Amendment violation, only that his serious medical needs were consciously disregarded), Lemarbe v. Wisneski, 266 F.3d 429, 439 (6th Cir. 2001)(quoting Sherrod v. Lingle, 223 F.3d 605, 611 (7th Cir. 2000)). See also; Terrance v. Northville Regl Psychiatric Hosp, 286 F.3d 834, 843 (6th Cir. 2002)(When the need for treatment is obvious, medical care which is so cursory as to amount to no treatment at all may amount to deliberate indifference". Westlake v. Lucas, 537 F.2d 857, 860 n.5 (6th Cir. 1976)(noting that "of course, in some cases the medical attention rendered may be so woefully inadequate as to amount to no treatment at all". The exercise of this Court's discretionary jurisdiction

and the grant of certiorari is warranted.

2.) The petition should be granted to reconcile and resolve a conflict between circuits regarding whether a Petitioner's Eighth Amendment claim fails simply because he/she received some treatment/some level of medical care regardless of the fact it was ineffective?

The Seventh Circuit's Greeno v. Daley, 414 F.3d 645; 2005 U.S. App. LEXIS 13125 opined/decided 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, 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 prisoner 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, 223 F.3d 605, 611 (7th Cir. 2000). The district court missed this critical distinction, concluding that Greeno's claim failed because "his complaints were not ignored". Likewise, the defendant's 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). We think a factfinder could infer as much from the medical defendant's obdurate refusal to alter Greeno's course of treatment despite his repeated reports that the medications was not working and his condition was getting worse".

On the side of the Seventh Circuit is the Forth Circuit Cosner v. Dodt, 526 Fed. Appx 252 2013, citing, De'lonta v. Johnson, 708 F.3d 520, 526 (4th Cir. 2013) holding that, even if defendants provided "some treatment", it does not necessarily follow that defendants provided constitutionally adequate treatment". citing Greeno v. Daley, 414 F.3d 645, 655 (7th Cir. 2005) noting that continued treatment that is known to be ineffective can constitute an

8th Amendment violation. The Sixth Circuit Leonardson v. Peek, 2007 U.S. Dist. LEXIS 98107 Aug. 27th, 2007. Even though Leonardson obviously received some treatment, Plaintiff's evidence, if credited by the jury, is sufficient to show that the "treatment" Leonardson did receive was so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate his condition, citing Greeno.

The Tenth Circuit Shoals v. CHP (Clinical Health Partners), 2018 U.S. Dist. LEXIS 11473 Jan. 24th, 2018. Similarly, Plaintiff cites to various cases in which the courts found that although the plaintiff had been provided some medical care while incarcerated, the care did not actually treat the complained of condition and/or amounted to little more than documenting the plaintiff's worsening condition, citing Greeno, reversing district court granting summary judgment on deliberate indifference claim where medical officials persisted in same course of treatment for several years that was ineffective, citing 2nd Circuit, Sulton v. Wright, 265 F. Supp. 2d 292, 300 (S.D.N.Y. 2003)(recognizing that even if an inmate receives extensive medical care a deliberate indifference claim may still be stated if the care ignores "the graveman of his problem". Allen v. Montgomery Cnty, 2009 U.S. Dist LEXIS 107937, 2009 WL 4042761 at 7 (E.D.Pa. Nov. 19, 2009)(deliberate indifference found where medical staff instituted or continued a course of treatment that they knew, or should have known, would be ineffective).

Opposite and in conflict with the Seventh Circuit & those agreeing, is the instant Third Circuit case, see Appendix-A-D. The Third Circuit agreed with the district court that "Plaintiff's claims in the instant action focus on Dr. Halligan's inability to find a medication that effectively relieves his acid reflux symptoms & high blood pressure". "In the instant case, there is no question that Plaintiff received "some level of medical care" from Dr. Halligan & the medical staff at SCI Albion", citing Norris v. Frame, 585 F.2d 1183, 1186 (3rd Cir. 1978) "Where the plaintiff has received some care, inadequacy or impropriety of the care that was given will not support an Eighth Amendment claim". "Thus, Young's claims rested on his disagreement with the method by which Dr. Halligan provided his medical care". citing Pearson v. Prison Health Serv, 850 F.3d 526, 535 (3rd Cir. 2017) ("Because 'mere disagreement as to the proper medical treatment' does not 'support a

claim of an Eighth Amendment 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". (internal citation omitted).

In this decision the Third Circuit is not applying the Eighth Amendment as set out in Estelle v. Gamble, 429 U.S. 97,101,103,97 S.Ct. 285, 50 L.Ed. 2d 251 (1976). Under the Eighth Amendment made applicable to the States by the fourteenth Amendment, a state must "provide medical care for those whom it is punishing by incarceration". To make out a claim under the Eighth Amendment for failure to provide adequate medical care, a "plaintiff must demonstrate (1) that the defendants were deliberately indifferent to his or her medical needs and (2) that those needs were serious". Rouse v. Plantier, 182 F.3d 192,197 (3rd Cir. 1999).

Estelle provides for constitutionally adequate medical treatment/care, not inadequate, ineffective treatment/care and/or "some treatment or some level of medical care". The Petitioner's condition to this day Id ongoing & worsening while the same course of treatment is being persisted upon him. There's no resolve or relief. There is further treatment/care for Petitioner's condition, see Appx-E. Petitioner and those similarly situated as he cannot obtain their own medical treatment/services, so this issue is of particular importance to a certain class of citizen. Rulings like this has a devastating effect on prisoners whom are particularly vulnerable & depend on prison medical professionals for their care. It is vital to bring the Circuits into uniformity. This court's discretionary jurisdiction & certiorari is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Christopher Young

February 27th, 2020

Date: _____