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IN THE
SUPREME COURT OF THE UNITED STATES

Vincent A. Argentino, — Petitioner,

VS.

Ruanne stamps, M.D., et al., Respondents.

ON PETITION FOR WRIT OF CERTIORARI THE UNITED
STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Vincent A. Argentino, #1122002
South Central Correctional Center
255 west Highway 32
Licking, mo 65542

QUESTIONS' PRESENTED

1. Whether the Precedent of Placing Verifying medical evidence in the Summary Record, Showing a "detrimental effect," places an unrealistic expectation on Prisoners; and does said Precedent deviate from Estelle V. Gamble and Farmer V. Brennan ?
2. Whether the Lower Courts' erred by not considering Petitioner's evidence, in the summary record, as it showed a genuine issue of material fact?
3. Whether as of now, in the "evolving standards of decency," has the Petitioner stated a valid claim under Estelle and Farmer ?

4. Whether the EIGHTH CIRCUIT erred in affirming and denying the Petitioner's following motions: Appointments for Counsel, Court Appointed Medical Expert, Written Depositions, and Petitioner's second motion Compelling Discovery?

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DEFINITIONS

Clonus - An abnormal pattern of neuromuscular activity, characterized by rapidly alternating involuntary contraction and relaxation of skeletal muscle.

Chronic Pain - pain that continues or recurs over a prolonged period (usually lasting longer than 12 weeks), caused by various diseases or abnormal conditions. Chronic Pain

may be less intense than acute pain. The person with chronic pain does not usually display increased pulse and rapid respiration because of these autonomic reactions to pain cannot be sustained for long periods. Some factors that can complicate the treatment of persons with chronic pain are scarring, continuing psychological stress, and medication.

* Definitions are from Mosby's medical Dictionary Tenth Edition.

Citations To The Record

DOC.31-1 Petitioner's Third Amended Complaint	6,14,15,17,21,22,24
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PARTIES

All parties do not appear in the caption of 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:

Narendra Khengar, M.D., Rex Hardman, M.D.,
Glen Babich, M.D., Pamela Swartz, N.P.,
Matthew Pittman, R.N., Hanna Wingate, R.N.,
Samantha Lucas, R.N., and Amanda Verdote, L.P.N.¹

Above Respondants' can be contacted
through their attorneys, Eckenrode-Maupin,
11477 Olde Cabin Rd, Ste. 110, St. Louis, MO
63141, Phone: 314-726-6670, Fax: 314-726-2106.

¹ The above Parties are employed by Corizon, LLC. "Corizon, is a corporate entity that is contracted with the state of Missouri to provide medical care and treatment to offenders incarcerated within the Missouri Dept. of Corr." Doc. 131, P. 1, (Defendants' "SOF," App. B.P.1), (citation 1. omitted).

DECISION. BELOW

The Judgment of the UNITED STATES COURT OF APPEALS was entered on March 27, 2020, by The Honorable Judges: Gruender, Beam, and Shepherd.

It is unreported and is cited at the table at Argentino v. Corizon, med. Serv., 2020 U.S. App. Lexis 9535, and is attached at Appendix A.

The Judgment of the UNITED STATES DISTRICT COURT was entered on March 5, 2019, by the Honorable Judge Nanette K. Laughery, and is not yet reported. It is attached at Appendix B. Petitioner's motion for Reconsideration as to Summary Judgment was entered on March 13, 2019, and is attached at Appendix C.

Petitioner's motion for Reconsideration as to his Second motion Compelling Discovery was entered on October 12, 2018, and is attached at Appendix D.

The judgment of the UNITED STATES DISTRICT COURT was entered on July 17, 2019, by the Honorable Judge Laughery. Final order dismissing all parties, it is attached at Appendix E.

JURISDICTIONAL STATEMENT

The judgment of the UNITED STATES COURT OF APPEALS for the 8th circuit was entered on March 27, 2020, and is attached at Appendix A to this Petition. Jurisdiction is conferred by 28 U.S.C. 1254 (1) and 28 U.S.C. 2072.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment XIV to the UNITED STATES Constitution, which provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

NO State shall make or enforce any law which shall abridge the privileges of immunities of citizens of the UNITED STATES; nor shall any State deprive any person of life liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article. The Amendment is enforced by Title 42, Section 1983, UNITED STATES Code:

Every person who, under the 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 relief was unavailable for 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.²

2. THE EIGHTH AMENDMENT to the U.S. Constitution states: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment.

STATEMENT OF CASE

Petitioner's Third Amended Complaint, (Doc. 31-1), involves claims that arose at another Prison; Jefferson City Correctional Center, (J.C.C.C.). Petitioner asserts preceeding Respondants' were deliberately indifferent to the Petitioner's medical needs by providing inadequate medical care in violation of his Constitutional rights under the Eighth Amendment. (Doc. 31-1 at P. 2, 8, 9, 10-20). Petitioner's THIRD AMENDED COMPLAINT. id

Petitioner's Claims against Respondant nurses; Hanna Wingate, Matthew Pittman, Samantha Lucas, and Amanda Verdot: on the weekend of April 27-30th, Respondant Dr. Hardman placed the Petitioner in the Transitional care unit, (T.C.U.), for his inability to walk and chronic pain. He also informed the Petitioner that he would be placing him on pain medication, but he needed to ask Respondant nurses' for the pain medication, (Doc. 31-1 at P. 10 Pp. 9-11), Petitioner's

OPPOSITION TO SUMMARY JUDGMENT, (DOC. 155-1, at P. 2), Request for Admissions To Dr. Hardman at (Ex. C Pp 8, 26), Petitioner's Reconsideration To Summary Judgment, (DOC. 177 at P. 4, and Petitioner's Appellant Brief at 14-19).

Everytime, the nurse Respondants', did their rounds the weekend of April 27-30, the Petitioner would request the pain medication Dr. Hardman, ordered for him as his pain level never dropped below a 6 out of 10 that weekend. Respondant nurses', refused to provide the Petitioner with the pain medication ordered by Dr. Hardman, to alleviate Petitioner's chronic pain. (Id).

Petitioner showed through evidence, a genuine issue of material fact: Respondants' SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT, (DOC. 130), States as follows: Allegations that Defendant nurses' failed to provide medication on-request during his stay in

T.C.U. It is important to note that inmates do not commonly receive medications upon request in T.C.U., and most medications must be ordered by a physician. Corizon, nurses' are not permitted to provide inmates with medications that are not ordered by a physician, (DOC.130 at P.9).

Petitioner controverts this argument with their own omitted facts. Respondants Informal Request Response, (I.R.R.), states as follows: In your I.R.R. you state that the nurses' did not provide you with Percocet. I cannot corroborate this information as to if these conversations occurred between yourself and the nursing staff. Percocet

Percocet is ordered as an as needed medication (DOC.155-1, Ex.E). Respondants, Grievance Response states the following: Because you both stated and demonstrated through actions that you

were not in significant pain, the nurses' acted appropriately in not giving you Percocet. (Id at Ex.F).

Respondants' next claim is that Petitioner did not have an objectively serious medical need. (Id).⁺ The Petitioner also shows this argument is flawed, by placing evidence in the record controverting their argument. On April 27, 2012, the Petitioner requests a "Pain shot", which Respondant Wingate charts along with his pain level being a 7 out of 10. (Doc. 155-1 at P. 15, Ex. A at Em 614-15).

On April 29, 2012, the Petitioner's Pain Level is 6 out of 10, as charted by Respondant Pittman, inmate states it's too painful to move gait unsteady, (Id at Em 622-23).

Petitioner's Request for Admissions to Dr. Hardman he omitts ordering Percocet for the Petitioner on April 27, 2012. Dr. Hardman also omitts he

placed the Petitioner in T.C.U. on April 27, 2012, for his inability to walk and pain. (Id at Ex. C pp. 8-9).

moreover, Respondant Verdor initials the medications ordered by Dr. Hardman on April 27, 2012, which reads: Baclofen, Neurontin, and Percocet, (Id at EX. H).

Petitioner also goes on to show the pain medication Percocet was filled from stock on the same day April 27, 2012, (Id at EX. I).

Petitioner also goes on to show Policy and Procedure as to medications in T.C.U. and Policy on Refusal of medications while in T.C.U., (Id at EX. J, M, N, O, P). The mass records show Percocet was in T.C.U. the weekend of April 27-30, 2012, (Id at EX. K).

Furthermore, Petitioner also goes on to show through his Depositions that his Pain level never fell below a 6 out of 10 on the weekend of April 27-30, 2012,

(Id at EX.B P.33, Lines 4-5). Petitioner also goes on to state under oath that Respondant nurses' were very condescending to him all weekend long. (Id at P.26 PP 1-22).

Respondant, Lucas also goes on to omit these facts in the record, as she charts on April 27, 2012, "I am not going to do all that you are telling me, you all have not treated me like I should be", (Id EX.A Em. 616). Lucas also claims the Petitioner's Pain level is 0 out of 10, but on or about 6 hours earlier her colleague charts Petitioner's Pain level is 7 out of 10, and his B/P is 142/90 due to Pain. (Id).

Petitioner also goes on to show how the Respondants' charted falsehoods in the medical records, (Doc. 155-1, PITE RESP TO DEPT'S OF at PP.41).

Petitioner also goes on to show in the record while being discharged from T.C.U. on April 30,

2012, Inmate complains of not receiving pain medication while in T.C.U. (DOC. 155-1 at EX. A Em. 624). (Medical records of Petitioner).

The preceding facts were also brought to the Appeals court attention, (Appellant Brief at 14-19), also see Petitioner's motion for Reconsideration to Summary Judgment, (DOC. 177 at P. 6-9).

In Appellees' Reply Brief, Respondants' decide to change the narrative and claim Petitioner never asked for Percocet by name, (Appellees' Reply Brief at P. 25). Petitioner was honest from the beginning and stated Dr. Hardman never told him the name of the pain medication he was ordering on April 27, 2012, (Appellant Reply Brief in support of his Appellant Brief at P. 2-3).

Petitioner also places in the Summary record that the medications the Petitioner received the

weekend of April 27-30, 2012, Baclofen upset his Stomach and Alpha Lipoic Acid did not work for Petitioner's Pain, (Doc. 155-1, EX.A Em. 619, 624). The Petitioner was receiving Alpha Lipoic Acid for on or about 30 days before the weekend of April 27-30, 2012, (Id at Em 601).

Petitioner's claims against Respondant Dr. Hardman and evidence Showing a genuine issue of material Fact.

on April 30, 2012, while being discharged from T.C.U. the petitioner showed Dr. Hardman that using a walker was making his pain level 10 times worst and can he please have a wheelchair.

Respondant's main argument in Defendants' Suggestions in Support of their motion for Summary Judgment, (Doc. 130 at P. 10), states in chief that he observed the Petitioner ambulate without a walker and place his full weight on his right foot.³

3. After seeing a neurologist, Dr. Rodgers on July 21, 2012, and receiving a conservative course of treatment for a year, (ESIS). The Petitioner received Decompression Surgery on February 14, 2013, (Doc. 155-1 at Em. 634-35, 718). 13.

Petitioner Shows this is simply not true in, (Doc. 155-1 at 18, and PITE RESP TO DEFT'S OF at P. 56, 60), also see (Doc. 31-1 at P. 11 P. 15). For on or about 22 days from April 30, 2012 till May 21, 2012 the Petitioner was forced to use a walker, which made his pain 10 times worst. Having to use this walker to go to chow hall four times a day, and med call four times a day it was taking the Petitioner a long time to get from Point A to Point B.

on or about May 2-3, 2012 Lt. Debra Reid stops the Petitioner and tells him it is taking you too long to get around, and I called medical to try and get you a wheelchair, but they refused.

on or about May 4-5, 2012, Lt. Reid had the Petitioner moved from Three House to Two House, which was much closer to every thing in turn not taking the Petitioner as long to get around,

(Doc. 155-1, EX.B at P.33-34 Lines 20-25, 1-18).

Dr. Hardman admits at times Petitioner had medical issues which affected the Petitioner's abilitys to perform his activities of daily living (Id at EX.C PP.26, Doc.177 at 12), also see (Doc.155-1 at 12, Doc.31-1 at PP.18, and Appellant Brief at 19+21).

Dr. Hardman also admits on April 27, 2012 he placed the Petitioner in T.C.U. for his inability to ambulate, (Doc.155-1 EX.C at PP.8).

Dr. Hardman also admits he placed the Petitioner in T.C.U. for falling while using a walker yet he continues to make him use it, (Id at EX.A Em.624). Dr. Hardman also contradicts himself in medical records. on April 30, 2012, while being discharged from T.C.U. Dr. Hardman charts claims his inability to bend his right knee, but places full weight on his right foot, (Id at Em.625).

Yet on May 21, 2012 he charts keeps his right leg straight due to any pressure change exacerbating the pain, (Id at Em. 628).

Petitioner's claims against Dr. Khengar, Dr. Stamps, and Pamela Swartz, and evidence showing a genuine issue of material fact.

From December 15, 2015, to March 15, 2016, the Petitioner was in chronic pain and could not perform his activities of daily living: Eating, walking, bathing, sleeping, and using the bathroom. Dr. Khengar and N.P. Swartz were aware of these facts, yet they kept the Petitioner in General Population to fend for himself; instead of placing him in T.C.U. to receive the help he needed.

Respondants' Swartz and Dr. Khengar were aware his cell-mate Timothy Straeton had to help him on and off the toilet, in and out of the cell.

of bed, in and out of his wheel chair, and cook for him.

on December 28, 2015 the petitioner made ms, Swartz aware that his cell-mate had to take care of him, and she charts the following on December 28, 2015.

Patient's B/P is 204/102 Pulse 114 elevated B/P due to pain, Sig right leg Limp with pain, muscles thigh when standing, no further exam due to pain, Presents with two week severe pain but more in the right hip which he c/o is very sensitive to the touch or movement right hip knee and shin beginning to swell, (Doc. 31-1 at P. 16-17, Pp. 43-50, Doc. 155-1, EX. B P. 63, 64 Lines 15-25, Lines 1-23, EX. CCC Pp. 32-34, EX. TT Affidavit of Timothy Straton, EX. UU Affidavit of Harold meadows, EX. LLL P. 2, Em. 894 medical records of petitioner.

In Ms. Swartz's affidavit she claims the Petitioner never told her about a broke wheelchair, the fact that he could not perform his activities of daily living, the fact that his right foot was swollen and he could not put on his right shoe, or sock, (Id at Defendants EX. I at Pl. 12-15).

Petitioner controverts these claims with evidence placed in the summary record on January 5, 2016 the petitioner goes to sick call and complains about his foot being swollen and it is cold outside, may I please have a pair of hospital socks to keep my foot warm.

The Petitioner then goes to sick call two days later on January 7, 2016, Petitioner again complains about his foot being swollen, and

being forced to be in a wheelchair with one foot peg and no arms. Why would I not tell ms, Swartz on December 28, 2015, about the broke wheel chair?

The Petitioner had a follow-up visit with her on January 11, 2016 just 4 days prior to going to sick call. ms, Swartz would have seen the sick call complaint in her computer. Furthermore, she could see the Petitioner was in a broken wheelchair and was not wearing a right shoe or sock, (Id at EX.RR and EX.QQ). (Petitioners sick call complaints).

ms, Swartz also charts the fact that the Petitioner could not perform his activities of daily living.

On January 11, 2016 Swartz charts the following:
B/P 150/92 elevated BP normal vitals white male who is unable to sit still due to pain, sits on left hip due to severe pain, right hip pain, extremely sensitive to the touch.

unable to sit on right buttock, muscle spasms unrelieved with Robaxin, unable for him to relax due to pain, unable to walk on right leg, unable to walk on toes, heel, Squat, touch toes, with movement of right leg clonus noted, unable to place any pressure on right leg, (Doc. 155-1, EX LLL P.1, medical records).

Of course the Petitioner requested ms, Swartz place him in T.C.U. on December 28, 2015, and January 11, 2016.

on January 11, 2016 ms, Swartz orders the Petitioner two more tramadol for pain, this request had to be cleared by acting Regional medical Director Ruanne Stamps, M.D.

Dr. Stamps denies ms, Swartz's request and recommends a trail of medications the Petitioner had already taken in the past.

it was clear the Petitioner was in extreme pain and had exhausted all RX options, (Doc. 155-1, at P. 24-25, PITF RESP TO DEFT "SOF" at PP. 193), see also (Doc. 31-1 at P. 17 PP. 49).

Dr. Stamps admits to never being the Petitioner's Primary care Physician, (Id). Dr. Stamps also admits medication is prescribed on a case-by-case basis. Dr. Stamps also claims she read the Petitioner's medical files that it is essential before accepting or denying medications, (Request for Admissions to Dr. Stamps, (Doc. 155-1, EX. 55 PP. 4-6, 9, 20).

It is unclear that Dr. Stamps read the Petitioner's files as Ms. Swartz charts on December 28, 2015, and January 11, 2016 that Petitioner is in extreme pain and cannot perform his activities of daily living.

on February 10, 2016 after a 90 day wait for extreme pain the Petitioner finally sees his Primary care Physician for chronic pain.

Dr. Khengar charts the following: obvious moderate severe pain, wheel chair bound, attempt to get up and walk a few steps lead to right hip, leg pain, spasms, and shooting pain Known L5-S1 decompression, failed surgery with continued pain. Radiculopathy exhausted all RX options as per protocol.

Petitioner's BP again was 150/90 due to pain, of course i requested Dr. Khengar Place me in T.C.U., as my cell-mate had to do everything for me, and also to receive pain releif,

(Doc. 31-1 at P. 17 Pp. 52, Doc. 155-1 at P. 28-30, PTF RESP TO DEFT "Sof" Pp. 200, 213).

Furthermore, Dr. Khengar's affidavit states: From December 15, 2015 to March 18, 2018 Plaintiff, made no complaints to me about swollen hands or his inability to use his right hand. Yet Dr. Khengar admits Ms. Swartz regularly reported Petitioner's medical condition, (Defendants EX. E pp. 15, 8)

Dr. Khengar goes on further to say, Based on my treatment of Plaintiff, it is my opinion that he suffers from no condition which significantly impairs his activities of daily living, (Id at 23). Yet he charts the opposite above.

In Petitioner's Request for Admissions to Dr. Khengar, he admits that the petitioner told him on February 10, 2016, that he could not perform his activities of daily living.

Also admitting the Petitioner told him he was in extreme pain, (Doc. 155-1, EX. HH PP. 15, EX. LLLP. 3).

Also see Petitioners, (Appellant Brief at P. 26-29, Doc. 177 at P. 15-16).

Petitioner's claims against Respondant Dr. Glen Babich, and evidence showing a genuine issue of material fact.

Petitioner's claims against Dr. Babich. on July 30, 2014, Dr. Babich came to J.C.C.C. per Corizon, LLC, as to discontinue the medications Tramadol and Gabapentin, from the inmates who did not need said medications.

Petitioner was on above medications, per his Primary care Physicians' and having already exhausted all other medication options per Corizon, LLC, Policy and Procedure, (Doc. 31-1 at P. 14-15 PP. 35-40, Doc. 155-1, PITF RESP TO DEFT "SOF" at PP. 142). This exhibit

also shows the Prior year 2013, Petitioner's Consistent Pain and having to see outside specialists' because of on going Pain, (Id.).

In the affidavit of Dr. Babich he claims he always reviewed the Plaintiffs medical records, before making a decision about his treatment, (Defendants EX.B at PP.6). Dr. Babich also claims that Corizon did not tell him to take the Plaintiff of his medications, (Id at PP.2).

Case law shows this is not true. Maybin v. Corizon, Healthcare, 2017 U.S. Dist. Lexis 12316 ("In August 2014 m.o.o.c. Permantly terminated Plaintiffs perscription for Gabapentin, due to State wide removal of the drug." ⁴).

⁴. In march, 2020, after consistently complaining of waking with back pain and shooting pain, Dr. Chada tryed to Place Petitioner on a medication he already had taken to no avail. After the Petitioner explained this to his nurse chole, he placed the Petitioner back on Gapa-25. pentin to receive better sleep after on or about six years of having diffitculity sleeping.

Dr. Babich also claims he filled in for a shortage of physicians at J.C.C.C., (Id at 10). The Petitioner also shows that his treating physicians were all at J.C.C.C., at the time of Dr. Babich's visit, (Doc. 155-1, PP. 139-40). Dr. Babich next claims he observed the Petitioner bend at his hip and knees 90 degrees to pick something up from the floor, (Defendants' EX.E). The Petitioner shows this is a falsehood, (Doc. 155-1, at P. 23, PITF RESP TO DEFT "SOF" at PP. 140).

Dr. Babich admits to not reading the Petitioner's medical records when first meeting with him on July 30, 2014, (Doc. 131 at PP. 151-52).

which reads as follows: Dr. Babich assessed Plaintiff on September 19, 2014, assessed Plaintiff's M.R.I. scans and EMG/NLS studies to diagnose Plaintiff with impingement in the right SI nerve root. why did Dr. Babich not review these records

On July 30, 2014, before taking him off his pain medications. The Petitioner was given the M.R.I. five months prior to meeting with Dr. Babich for the first time on July 30, 2014, (DOC. 155-1, at P. 24, PTF RESP TO DEFT "SOF" at PP. 152), also see in general, (Id at PP. 139, 141-42, 145, 148).

Petitioner's (Appellant Brief at P. 29-32).⁵

B. BASIS FOR FEDERAL JURISDICTION

This case raises a question of interpretation of due process clause of the Fourteenth Amendment to the UNITED STATES CONSTITUTION. The District Court had jurisdiction under general federal question jurisdiction conferred by 28 U.S.C. 1331, see attached at Appendix E, judgment ordered on July 17, 2019 dismissing all parties.

5. on November 15, 2013, upper management at Corizon, LLC, also reduced Petitioner's medication for no legitimate medical reasoning. (DOC. 155-1, EX. A EM 698).

REASONS' FOR GRANTING THE WRIT

A.) It has been 26 years since the court announced the Subjective Standard for deliberate indifference in Farmer v. Brennan, 511 U.S. 825 114 S. Ct. 1970 128 L.Ed 2d 811 (1994), and the lower courts' are in need of this court's additional guidance. Although the lower courts are aware that "something more than mere negligence" is required, the nature of that "something more" remains unclear. Farmer, 511 U.S. at 835.

I respectfully request this court to answer question three of this petition, has the Petitioner stated a valid claim under Estelle and Farmer?

Has the lower courts mistaken Petitioner's claims of only being equivalent to negligence or malpractice? (APP.B at P.6). The Precedent of having to place "Verifying medical evidence" in the record is unrealistic for inmates, and denies them of legitimate Constitutional Claims...

The consequence of this uncertainty has been a varied application of legal standard in claims for deliberate indifference to medical needs. This application of the standard not only jeopardizes prisoners' ability to vindicate their constitutional right to adequate medical care, but it also undermines humane dignity. see Brown v. Plata, 131 S.Ct. 1910, 1928 (2011).

(overtime, increasing prison populations and overcrowding will only exacerbate the pervasive problem of medical care in prisons). With respect to this court and this court being the only law as to prisoners' medical needs. I respectfully ask this court clarify the standard of deliberate indifference, and prevent future injustices for prisoners' who are denied adequate medical

care while in custody. "The public has a strong interest in ensuring that Plaintiffs' constitutional rights are protected." Hoffer v. Jones, 290 F. Supp. 3d 1292 (N.D. Fla. 2017) at 1304. (citing Laube v. Haley, 234 F. Supp. 2d 1227 (M.D. Ala. 2002)).

"[C]here is a strong public interest in requiring that the Plaintiffs' constitutional rights no longer be violated...."). Also see Costello v. Wainwright, 397 F. Supp. 20, 37 (M.D. Fla. 1975) "[C]laimant seems clear to this Court that, in the long run, providing decent medical care to inmates would serve to promote the rehabilitative goals of criminal justice system so as to prevent their re-entry into the criminal justice system") vacated in part on other grounds, 539 F.2d 547 (5th Cir. 1976) rev'd, 430 U.S. 325 (1977).

B) Questions one and two of Petitioners writ of Certiorari:

Whether the precedent of placing verifying medical evidence in the record showing a "detrimental effect" places an unrealistic expectation on prisoners; and does this precedent deviate from Farmer v. Brennan and Estelle v. Gamble, 429 U.S. 97, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976). No where in Estelle does it state prisoners' must place verifying medical evidence in the summary record. Rather, this court held that "in order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs," Estelle, 429 U.S. at 106.

The Petitioner showed a cognizable claim, in this Petition; against all Respondants' at Petitioner's STATEMENT OF FACTS. The District court would not consider Petitioner's Interrogatories or Request for Admissions to Respondants, nor Petitioner's medical records, Depositions of Petitioner,

affidavits of Prisoners, and Petitioner, nor any of the Policies and Procedures Petitioner placed in the record.

The 8th circuit affirmed. Yet the Honorable Judge Laughrey stated as follows in ORDEB, (Doc. 134). Plaintiff is advised that, in his suggestions in opposition to Defendants' motion for Summary Judgment, he must cite to evidence in the record (depositions, documents, Affidavits or declarations made under oath, etc.) which shows that there is a genuine issue for trial, see APP.F attached to this petition. Petitioner followed Judge Laughrey's order.

The Lower courts would only consider the affidavit of Dr. Bazzel, as verified medical evidence. Which in general claimed legal Concussions such as; "my expert opinion is that there is no element of deliberate indifference in the Defendants care of Plaintiff." (APP.B at P.6).

With respect to Dr. Bazzel he is not a neurologist, and he just makes general asserations, (Defendants' EX.L in general). It was also brought to the lower courts'

that Dr. Bazzel works for Correctional care Solutions, which has merged with wellpath, and Corizon, LLC, is a for-profit, as is Correctional care Solutions, (Appellant Brief in Response to Appellees' Supplemental Response, at P. 8-9). Therefore, Dr. Bazzel's Probative value of his Affidavit should not have been considered because of its high potential for prejudice, (Id at 9).

C. Petitioner's motion For an medical Expert, (Doc. 55).

Petitioner tried to receive a medical expert, which in turn he would have received-Verifying medical evidence. Judgment denying (Doc. 55) was ordered by the Honorable Judge, Laughrey, on April 20, 2018, see attached at APP. 6 to this Petition.

Petitioner argues in (Doc. 55 at P. 11) the following: Rule 706 (b) Fed. R. Evid "in other civil proceedings the compensation [of an expert] shall be paid by the parties in such proportion and at such times as the court directs and thereafter charged in like manner as other costs.

Petitioner's Reply motion, (Doc. 67) also argues without an expert "who could either verify, confirm or refute, what reasonable treatment options; would be under the circumstances of plaintiff's case". Plaintiff would be at an unfair disadvantage and could in no way prove his claims, (Id at P.3).

Moreover, the lower courts would not consider the petitioner's specialists' in the record. Dr. Rodgers states a certain percentage of people do not improve after surgery, and will need further surgery. (APP. H2) attached to this petition. Dr. Rodgers also states pain relief was not guaranteed and that no guarantee could be given for any improvement, (Id at H2). On April 18, 2014 Dr. Rodgers charts, while his leg pain is better his back has become increasingly worse, interfering with

his activities of daily living, (Id at H3).

on a consult with Dr. Zike he recommends 4 additional visits, which were denied, (Id at H4).

on September 22, 2014, Dr. Mesfin charts restart Gabapentin if not helping start Tramadol, (Id at H. 5-6). on May 19, 2015, Dr. Norregard charts Pain remains consistent with severe flares which disable him, (Id at 7-9). on

April 7, 2017 Pain specialist Dr. Lucio recommends 3rd ESI, Tramadol was working well continue Prescribed medication as ordered⁶, (Id at H. 10-11).

D. Whether appointment of counsel should have been granted:

The Eighth circuit criteria for determining whether counsel should be appointed. "The relevant criteria for determining whether Counsel should be appointed include the factual complexity of the issues, the ability of the indigent person to investigate the facts, the existence

⁶ These are only some of Petitioner's outside specialists' recommendations.

of conflicting testimony, the ability of the indigent person to present the claims, and the complexity of the legal arguments." Phillips V. Jasper County Jail, 437 F.3d 791 U.S. APP. 2006 Lexis 3442 Eighth Cir, at 794.

Is it not conflicting testimony that Dr. Khengar claims in his affidavit as follows: Based upon my treatment of Plaintiff, it is my opinion that he suffers from no condition which significantly impairs his activities of daily living, (Defendants EX.E at 23).

Yet on February 10, 2016 he charts as follows: Unable to walk, DO ADL, using wheelchair due to moderate severe pain B/P 150/90 failed surgery w/ continuing pain, see attached at (APP.I).

Doctor Hardman admits as follows: at times Plaintiff had a serious medical issue which affected his abilitys to perform his daily Activities, (Doc.155-1 at EX.C PP. 26).

The affidavit of Pamela Swartz claims as follows: Plaintiff did not complain to me about a broken wheelchair on December 28, 2015, as I would have recorded any such conversation in Plaintiff's medical records.

Plaintiff never informed me that he could not do his activities of daily living on January 11, 2016, as I would have recorded any such conversation, (Defendants EX.I at PP. 12-13). Yet on January 5, 2016 and January 7, 2016, Petitioner goes to sick call to complain about pain ect. and his wheelchair, than is referred to see N.P. Swartz on January 11, 2016 for above issues, and she charts with movement of right leg clonus noted, unable to walk on toes / heels / squat, See attached at (APP. J1-5).

Is this not conflicting testimony and does this not show a genuine issue of material fact? more importantly, ms. Swartz could see on Petitioner's visits on December 28, 2015, and January 11, 2016, that he was in a wheel chair with no arms, and one foot peg.

Judgment was entered on October 2, 2017, and February 15, 2018, by the Honorable Judge Laughrey denying Petitioners' appointments for Counsel, (Doc. 8, 32), and is attached at (APP. K-L).

Should the Eighth circuit appointed counsel, when appointing a briefing schedule? By granting appointment of counsel in the district court, the Plaintiff would have had an expert.

Petitioner's motions for written depositions were also denied again leaving the petitioners claims as a whole in jeopardy to be dismissed, for lack of verifying evidence, (Doc. 83, 85, 87, 89). The Petitioner apologizes to the this court, he misplaced the Judgment handed down by the Honorable Judge Laughrey - it was stated by Judge Laughrey in a docket text: for the reasons' stated in Defendants' opposing suggestions. Written Depositions' were in regards to certain inmates, Correctional officers, and Petitioner's outside doctors / specialists'.

The main reasons Respondants opposed 'Depositions' is because they claimed it would be duplicative evidence.

How could any evidence be duplicative, when the lower courts' would not consider any of the evidence; because it was not verifying medical evidence?

The Petitioner's second motion compelling the answers to interrogatorys' and the production of the E-mails produced by Corizon, LLC, (Doc. 93-94) were denied. Judgment was handed down by the Honorable Judge Laughrey, for the same reasons stated in Defendants' opposing suggestions, (Doc. 101). This again was handed down in a docket text only, and again i apologize to this court, as the Petitioner also misplaced this docket. Petitioner's motion for Reconsideration as to, (Doc. 93-94) is, (Doc. 136) and is attached at (APP. D) to this Petition.

In Petitioner's, (Doc. 93-94) he requested the e-mails and memorandums regarding Plaintiff. As in an e-mail to employees - ms. Swartz stated not to allow the Petitioner to receive hospital socks, when he could not put on his right shoe and sock; due to his foot being swollen.

Petitioner requested a loose fitting hospital sock so his foot could be somewhat warm when he was forced to be outside from December - February, 2015-16.

On February 21, 2018 the Petitioner filed his first motion compelling Discovery, (Doc. 42). See attached the Judgment handed down by the Honorable U.S. Magistrate Judge Willie J. Epps, Jr. in a telephone hearing on April 19, 2018, said order states: Plaintiff's motion to compel, (Doc. 42) is granted without objection, and Defendants' shall mail Plaintiff the requested documents in paper form, at no cost to Plaintiff, by May 4, 2018, attached at, (APP.M) to this petition.

Doc. 41 at p. 1 PP. 2 states as follows: all the original medical files created by + Dr. Blake Rodgers, Dr. John Lucio, Dr. Jeffrey Lhemann, and Dr. Thor Kild Vad Norregaard. Not what Corizon created of said files, what said Doctors created in their own files to Corizon, all electronically stored information, e-mails, memorandums, any and all tangible things...

Doc. 41 at PP. 1 states the following: Produce a transcribed copy of all e-mails and memorandums all electronically stored information.

The Petitioner had to pay for, APP. H1-3 attached hereto, and no were in the records provided by Corizon are these records available. Dr. Rodgers states Continue Tramadol and Gabapentin, and that there is no guarantees - is no were in the record provided by Corizon, (APP H1-2).

Parham V. Johnson, 126 F.3d 454, 459 (3rd cir 1997),
(holding counsel should have been appointed because "Prisoners"
lack of legal experience and the complex discovery rules
clearly put him at a disadvantage in countering the
defendants discovery tactics... These [discovery] rules
prevented the [Plaintiff] from presenting an effective
case.)

E. ARGUMENT IN REGARDS TO VERIFYING MEDICAL
EVIDENCE:

The National Center for State Courts concluded that
one of the "three main financial barriers to effective
access to the trial court" is "third-party expenses,"
such as "depositions costs and expert witness fees."
"Nat'l ctr. for state courts, U.S. Dep't of Justice, Trial
Court Performance Standards with Commentary 9 (1997),
available at <http://ncirs.org/pdf/files1/161570.pdf>.

§ 1915 (d). The 1892 Statute reads: "That the officers of the Court shall issue, serve all process, and perform all duties in such cases, and witnesses shall attend as in other cases, and the Plaintiff shall have the same remedies as are provided by law in other cases." Act of July 20, 1892, ch. 209 § 3, 27 Stat. 252 (current version at 28 U.S.C. § 1915 (2006)).

U.S. Marshall Serv. V. Means, 741 F.2d 1053, 1057 (8th cir 1984). "Sought to rely upon the plain language of § 1915 (d) as a basis for finding no waiver of witness fees and expenses. But when that inquiry provided inconclusive, the means court examined the legislative history, which it found did not address the issue and held that absent a "clear statement," the court could not "infer congressional intent to have section 1915 cover witness fee and expenses." Article: A Sunny Deposition: 46 Harv. C.R.-CL L. Rev

L. Rev. 195 at 202. The means court further found that the Statutory Structure supported its construction.

The court noted that § 1915 was enacted as a whole in 1948, and thus, it had to be interpreted "as a whole". Since § 1915 (b) included specific language providing for government payment of certain expenses, and § 1919 (d) did not, the court concluded that under the canon of *expressio unius est exclusio alterius*, the specific government funding provisions contained in § 1915 precluded the court from inferring an additional and significant provision for witness fees and expenses, (Id at 202-03).

Other circuits relied on both means and Johnson V. Hubbard, 698 F.2d 286, 289-90 (6th cir 1983), but never included an in-depth analysis.

Should the Petitioner have received costs for depositions and an expert under the above Statute?

F. ARGUMENT IN REGARDS TO PETITIONERS' CLAIMS:

With respect to the 8th circuit, they mistakenly used the wrong Precedent and case to affirm. Cullor V. Baldwin, 830 F.3d 830 U.S. APP. 2016 Lexis 13867 8th cir. IS in regards to a Prisoner not receiving treatment for his dentures, because there were no dentists at the prison for on or about 8 months.

No where in my Verified complaint did I claim a delay in treatment. I claimed inadequate care, and the unnecessary and wanton infliction of pain, (Doc. 31-1 at P. 8-9).

G. DECISIONS OF OTHER CIRCUITS:

Recently, the U.S. Court of Appeals for the Seventh Circuit in Lewis V. McLean, 864 F.3d 556, 563 (7th cir 2017) decided a one and half hour delay caused Lewis unnecessary suffering, Lewis at 563-64.

In Williams V. Liefer, 491 F.3d 710, 714-15 (7th Cir 2007). The delay in treatment was six hours, and a six day stay in the infirmary essentially placed verifying medical evidence in the record, Williams, 491 F.3d at 713.

The ninth circuit in Lavender V. Lampert, 242 F.supp.2d 821 2002 Lexis 24244. Found the Defendants' deliberately indifferent to Lavender's medical needs.

"Nevertheless, the record also reveals that Plaintiff consistently complained of pain, and frequently complained that such pain was debilitating, and although he was examined regularly by medical staff, there is an ongoing pattern of ignoring, and failing to timely respond to effectively manage, Plaintiff's chronic pain, Lavender, 242 F.2d 821 at 843.

Officials were also deliberately indifferent for not supplying Lavender with properly fitting orthopedic footwear, (Id).

"Holding that the delay constitutes deliberate indifference where the Plaintiff can show the delay caused substantial harm; this harm can include unnecessarily prolonged pain and suffering." Sealock V. Colorado, 218 F.3d 1205 (10th Cir 2000). Prewitt V. Roos, 160 Fed APPX. 609 (9th Cir 2005),

(Prison officials were not entitled to summary judgment on inmates claim that they violated his constitutional rights by failing to provide prescribed pain medication and provide prescribed pillows to elevate his injured hand because as a result of the prison officials interference, inmates pain was exacerbated).

Williams V. Certain Individuals Employees of the Texas Dept of crim. justice, 480 Fed APPX. 251 U.S. APP Lexis 16556 (5th Cir 2010). (A prison duty nurse was not entitled to summary judgment in an deliberate indifference suit because there was a 16 hour delay in providing the Plaintiff with pain medication after surgery, and the nurse failed to follow the prescribed

course of treatment to provide the inmate with pain medication and infirmary care).

Also see Coleman V. Sweetin, 745 F.3d 756 U.S.C. OF APPEALS FOR (5th cir 2014), Cordero V. Abu Ahran, 452 Fed APPX. 150 U.S. APP. Lexis 23259 (3rd cir 2011).

Tenen V. Dreibeldis, 606 APPX. 681 U.S. APP. Lexis 5177 (3rd cir 2015), Cordona-Santiago V. Corr Health Servs. Corp., U.S. Dist Lexis 39717 (1st cir 2015).

Todaro V. Ward, 565 F.2d 48, 51 (2nd cir 1977)

("The Eighth Amendment forbids not only deprivations of medical care that produce physical torture and lingering death, but also less serious denials, which cause or perpetuate pain. To assert otherwise would be inconsistent with contemporary standards of human decency").

H. CASE LAW IN REGARDS TO MEDICAL EXPERT:

finally, in closing the 8th circuit established "verifying medical evidence in Beyerbach V. Sears, 49 F.3d 1324

1995 U.S. App. Lexis 4498. Other circuits have adopted said Precedent, but were inmates have drafted a motion for a medical expert; circuits have stated the following:

Gladu V. Correct care Sols, 2018 U.S. Dist Lexis 23934, 8th cir. (Gladu quotes the 8th circuit court of appeals in Spann V. Roper for the observation that it found "incongruous" that the trial court denied a motion for an expert witness and then granted Summary Judgment on the ground that the inmate had failed to prove causation. (quoting Spann V. Roper, 453 F.3d 1007, 1008-09 (8th cir 2006) at 1009)...

Bey V. Hanes, 2020 U.S. App Lexis 2413, 7th cir.

Other circuits have held that when a party requests the appointment of a neutral expert under Federal Rules Evidence 706, a court must provide a "reasoned explanation" for its ultimate decision.

Gauiria V. Reynolds, 476 F.3d 940, 945, 375 U.S.

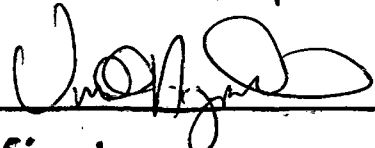
APP D.C. 7 (D.C. Cir 2007). Quiet technology DC-8 V.
Hurel-Dubesis UK LTD., 326 F.3d 1333 (11th Cir 2003);
Steele V. Shah, 87 F.3d 1266, 1270-71 (11th Cir 1996).

The Petitioner was never given an opinion why his motion for an expert was denied, and he was denied for not having an expert...

CONCLUSION

The Petitioner Respectfully requests, and Prays his Petition for writ of certiorari is granted.

Respectfully Submitted,


Signature _____ Date June 1, 2020

South Central Correctional Center
255 West Highway 32
Licking, mo 65542