No. 20-5572

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL WITKIN -- PETITIONER

vs.

MARIANA LOTERSZTAIN, et al. -- RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

the United States Court of Appeals for the Ninth Circuit

PETITION FOR REHEARING

MICHAEL WITKIN
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INTRODUCTION

The State of California has been running a fraud mill at the expense of the integrity of the United States Courts. And they have been caught. It is difficult to imagine a more compelling reson for the Court to intervene.

The record before the Court reveals that the California Department of Corrections and Rehabilitation (CDCR) has been evading its constitutional duty to provide minimally adeqate medical care to the world leading 120,000 souls in its custody. This abuse of the trust of the People of the State of California has been repeatedly achieved by using a former CDCR staff physician, Dr. Bruce Barnett, to provide false expert medical opinion testimony, concerning the quality of care provided by CDCR physicians, to the federal district courts. (See August 3, 2020 Petition for a Writ of Certiorari (Petition) at 2, 14-18, 23-27). That junk science opinion testimony was perjury as it "directly contradicts the 'specialized knowledge'" the Dr. actually has. (Petition at 24 (quoting Fed. R. Evid. 702(a)).

The defendants were granted summary judgment on Petitioner's Eighth Amendment claims, because the District Court held his failure to present an expert medical opinion conflicting with that of Dr. Barnett, fatal to his deliberate indifference claim. (ECF No. 83 at 6, 43-46, Pet. App. B). There is an open question of federal law, with a 4-2 circuit split, on the issue of whether expert medical testimony is necessary for an inadequate medical care deliberate indifference claim to survive a motion for summary judgment. (See Supreme Court Rule 10(c)).

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ARGUMENT

I. IF THE UNITED STATES SUPREME COURT CAN DO NOTHING ABOUT THE ONGOING PERVERSION OF JUSTICE PERPETRATED BY THE STATE OF CALIFORNIA IN THE NINTH CIRCUIT THEN WHILE IT IS TRUE THAT WE HAVE A LEGAL SYSTEM, IT IS EQUALLY TRUE THAT WE DO NOT HAVE A JUSTICE SYSTEM.

A. The Disposition Of Eighth Amendment Questions Based Upon Expert Medical Opinion Testimony That Meets None Of The Requirements Of Fed. R. Evid. 702 Has Nullified The Eighth Amendment And Made Federal Civil Rights Proceedings Meaningless.

When the Court denied the underlying petition on October 13, 2020 it was operating with 8 justices and was understandably in a hurry to dispose of some certiorari petitions. With that being said the Court cannot allow the miscarriage of justice and extreme departure from federal law shown by this record to stand. (Supreme Court Rule 10(a)). At the least, the Court should demand a brief in opposition from the State of California. (Sup. Ct. Rule 15.1).

Here the defendant CDCR physicians received a grant of summary judgment, (Pet. App. B-C) by presenting junk science falsified expert medical testimony from Dr. Bruce Barnett, that they met the community standard of medical care in their treatment of petitioner. (Pet. App. G-H). The deposition testimony of Dr. Barnett, (Pet. App. J), makes it abundantly clear that the defendants did not come close to meeting the standard of care. (See Petition at 23-26).

It is an undisputed fact plain on face of the record that the Courts below failed to subject the junk science presented by the State of California to federal evidentiary standards for such testimony despite petitioner's objections to admission of the testimony. (See ECF No. 83 at 6-7, Pet. App. B; Fed. R. Evid 702). Dr. Barnett's deposition testimony revealed that the State of California has an M.O. of presenting such false testimony for the financial reason of avoiding their Eighth Amendment responsibility of

providing minimally adequate medical care to their enormous prison population. (See Petition at 6 (citing Barnett Dep. at 54, 56, 59)), Petition at 26-27). In other words California prison officials have defrauded the taxpayers, and the federal courts, in order to retain Public funds. Why would this Court allow them to get away with such crimes against humanity when they have been caught in the act, plain on the face of this record?

The Court should order them to file a brief in opposition explaining their actions.

B. The Circuit Split On The Necessity Of Expert Medical Evidence In These Recurring Cases Invites Arbitrary And Unjust Results.

It is petitioner's position that the four Circuit Courts holding that expert medical evidence is not necessary for an inadequate medical indifference claim to survive a motion for summary judgment have the better side of the argument. (See Petition at 19-22). If the Second, Third, Fourth and Eleventh Circuits are correct, then the judgment below would have to be reversed for holding that petitoner's failure to offer expert medical evidence was fatal to his claim.

The problem with the holding below, and those of the Sixth and Eighth Circuits, is that an expert testimony requirement nullifies the Farmer standard of "'subjective mental intent.'" (Petition at 20 (quoting Campbell v. Sikes, 169 F.3d 1353, 1371 (11th Cir 1999)) (citing Farmer v. Brennan, 511 U.S. 825 (1994))).

In cases like this where there are obvious questions of fact with respect to the adequacy of care provided, (Petition at 23-26), and the subjective mental intent of the defendants, (id. at 12-13), the litigant is still denied his day in court.

The Court cannot allow this to be the ongoing state of federal law. The Court's review is warranted.

CONCLUSION

The petition for rehearing should be granted.

Respectfully submitted,

MICHAEL WITKIN

November 3, 2020

CERTIFICATE

I hereby certify that this petition for rehearing is presented in good faith and not for delay. It is limited to intervening circumstances of a substantial or controlling effect and to other substantial grounds not previously presented.

Dated: November 3, 2020

MICHAEL WITKIN

Petitioner

No. 20-5572

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SUPREME COURT OF THE UNITED STATES

MICHAEL WITKIN — PETITIONER
(Your Name)

VS.

MARIANA LOTERSZTAIN, et al. — RESPONDENT(S)

PROOF OF SERVICE

I, MICHAEL WITKIN, do swear or declare that on this date, November 5, 2020, as required by Supreme Court Rule 29 I have served the enclosed

PETITION FOR REHEARING on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Misha D. Igra, SDAG Office of the Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 5, 2020

(Signature)