

No. 20-6534

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IN THE SUPREME COURT OF THE UNITED STATES

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Deverick Scott # 131042

Vs.

Wendy Kelley, et al

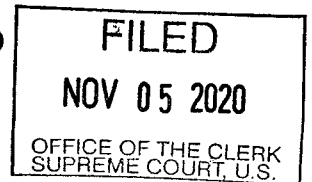
PETITIONER  
**ORIGINAL**

RESPONDENT(S)

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ON PETITION FOR A WRIT OF CERTIORARI TO  
8<sup>TH</sup> CIRCUIT COURT OF APPEALS

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PETITION FOR WRIT OF CERTIORARI

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Presented by

Deverick Scott

Pro Se

P.O. Box 400

Grady, AR. 71644

## QUESTION(S) PRESENTED

1. Is “A.D.C.”, Correct Care Solutions Medical policy unconstitutional to Scott, and all other inmates in A.D.C. when Dr. Dove refuse to refill and restore Scott’s Tooth #18 that Dr. Dove previously stated: “Tooth # 18 became un-restorable due to deep decay.” [D.E. # 45-1 PG. 108]. Cause Scott wouldn’t let him extract tooth # 17? McDOWELL V. JONES 990 F.2D 433 (8TH CIR. 1993); LIVES V. SCHERICK, 700 F.3D 340, 356 (8TH CIR. 2012).
2. Did District Court, 8<sup>th</sup> Circuit Court of Appeals, abuse its discretion by failing to liberally construe review on Scott’s complaint as Dr. Dove, Dr. Stringfellow, complete failure to treat tooth # 18? “Denying and delaying medical treatment?” ATKINSON V. BOHN, 91 F3D 1127, 1128-29 (8TH CIR. 1999); HARTSFIELD V. COLBURN, 371 F.3D 454, 457 (8TH CIR. 2004)
3. Is it an unconstitutional medical malpractice practice and procedure to deny Scott, and other inmates in A.D.C. medical attention requested and prescribed for over 6 months and Scott writing grievances every month, to get medical attention and still not rectifying and Scott still denied teeth filling for four more months due to A.D.C., Correct Care Solutions policy medical policy forcing inmate Scott to continue suffering. MOORE V. JACKSON 123 F3D 1082. 1084-87 (8TH CIR. 1997); BOYD V. KNOX 47 F3D 966, 969 (8TH CIR. 1995); HALTIWANGER V. MOBLEY 230 F3D 1363 (8TH CIR 2000); HARRIS V. HEGMANN, 198 F3D 153, 159-60 (5TH CIR 1999)
4. If a dentist refuse to fill or restore a tooth once prescribed by dentist, cause an inmate refuse to have another tooth extracted. Is that “Intentionally denying or delaying access to

medical care or intentionally interfering with treatment once prescribed”? ESTELLE, SUPRA, 429 US AT 104-05, 97 S.CT AT 291; RHODES V. CHAPMAN 452 US 337, 347, 101 S.CT 2392, 2399, 69 L.ED.2D 59 (1981).

## 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:

The Petitioner:

1. Deverick Scott, is a prisoner of the Varner Supermax of the Arkansas Department of Correction

The Respondents:

2. Correct Care Solutions, Medical
3. Rory Griffin, A.D.C. Medical Assistant Director
4. Jason Kelly, A.D.C. Medical DHN
5. Dr. Dove, A.D.C. Dentist
6. Dr. Stringfellow, A.D.C. Dentist

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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 C to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished. From October 9<sup>th</sup>, 2020

The opinion of the United States District Court appears at Appendix B to the petition and is

☐ reported at \_\_\_\_\_; or,

☒ has been designated for publication but is not yet reported (2/21/20); 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 LINCOLN COUNTY CIRCUIT COURT OF ARKANSAS appears at Appendix \_\_\_\_\_ to the petition and is MISSING OUT MY CELL. CASE # SCOTT V. GIBSON, ET AL 40CV-20-66-5

☐ 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 **OCTOBER 5, 2020** .

☒ ] 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: , 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. § 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. \_\_\_\_\_.

The jurisdiction of this Court is invoked under **28 U. S. C. § 1257(a)**.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

This case involves:

1. **8th Amendment** Violations
2. **14th Amendment** Violations
3. Arkansas State Negligence Medical Malpractice Violations

These Amendments guarantee the right to adequate medical treatment, and be free from deliberate indifference, negligence to medical malpractice.

These amendments are enforced by the Title **42 U.S.C.A. § 1983** of the United States Code

## **STATEMENT OF THE CASE**

The Petitioner initiated this case pursuant to his constitutional right to adequate medical treatment, due process, and to be free from cruel and unusual punishment; including his Arkansas State Tort Claim of Medical Malpractice

In 2018, The Petitioner sought **42 U.S.C.A. § 1983** relief in the United States District Court for the Eastern District of Arkansas. See **DEVERICK SCOTT V. GRIFFIN 5:18-CV-00190-KGB**. Defendants denied the Plaintiff claims, and asserted among other things. Qualified immunity along with many other affirmative defenses. The District Court agreed, and dismissed with prejudice said complaint. *[SEE D.E. # 68-0 PG. 1.]* Petitioner appealed.

However, Petitioner appealed to the United States Court of Appeals for the Eighth Circuit. See **DEVERICK SCOTT VS. KELLEY, 20-1638**. Consequently, the Eighth Circuit Court of Appeals declared that they found no reason/basis for reversal and affirmed the District Courts decision; And Petitioner's reasoning of petitioning the Supreme Court of the United States.

### **Basis for Federal Jurisdiction**

This case truthfully needs the Higher Court to force lower courts to adhere, abide by, and rule by case law no matter who the inmate is, cause the cases that's exactly identical to this case was rule in the inmates favor Eighth Amendment, Fourteenth Amendment application of delayed, or denial of serious medical attention, and deliberate indifference to medical needs, and negligence of medical malpractice and standard of due process liberty interest. The District Court has jurisdiction under the General Federal question jurisdiction conferred by 28 U.S.C.A. 1331.

## **REASONS FOR GRANTING THE PETITION**

### **A. Conflicting decisions among Circuit Courts**

Eighth Amendment violation “deliberate indifference to medical needs”. The holding courts previously ruled in 8<sup>th</sup> Cir. that for medical to refuse to treat inmate tooth that needed filling and prescribed was sufficient to state claim that Defendant deliberately denied inmates serious dental needs. **ATKINSON V. BOHN, 91 F3D 1127, 1128-29 (8TH CIR. 1999)**, **HARRISON V. BARKLEY, 219 F3D 132, 134, 136-38 (2ND CIR. 2000)** reversing grant of summary judgment based on qualified immunity and finding Eight Amendment violation where prison dentist refused to fill tooth caused inmate refuse extraction of another tooth; if left untreated, tooth with cavity will degenerate, likely cause severe pain, and eventually require extraction and perhaps further invasion treatment.

But see this case **SCOTT VS. KELLEY 20-1638** stated inmate must show more than negligence; disregarding a known risk to inmate health.

In addition, **ESTELLE V. GAMBLE, 429 US 97, 104, 97 S.Ct 285, 50 L.Ed.2D 251 (1976)** Eighth Amendment violation where prison officials are deliberately indifferent to prisoner’s serious medical needs; **BOYD V. KNOX, 47**

**F.3D 966, 969 (8TH CIR 1995)** (delay in dental care coupled with knowledge of patients pain can support Eighth Amendment Claim)

Here, in the first 2 rulings the Court made it clear that in a situation where an inmate is denied a teeth filing cause he refuse to have another teeth extraction was a deliberate disregard to inmate dental needs. (This unconstitutional)

However, in this case they rule in opposite standard. There standard conflicts and should be sorted so that the true test to standardize the right to adequate medical care is known. This is a task only for this High Court.

**B. Need for broader interpretation of constitution standards of cruel and unusual punishment in denial, delay, and interfering with medical treatment context.**

This care presents fundamental questions of how we will interpret the right to adequate medical treatment for serious conditions (for the purpose of granting summary judgment.)

We'll begin with the 1<sup>st</sup> question. Is A.D.C., Correct Care Solutions medical policy unconstitutionally to deny to treat and fill Scott tooth #18, cause he refuse to have another tooth #17 extracted? In this case at bar. Scott grieve on an inmate sick call he was in pain and needed his teeth refill in Nov. 29, 2016. [D.E. #45-1 PG. 1], Scott was referred and prescribed Tooth # 18 filling on Nov. 2016. Scott seen Dr. Stringfellow on 2/2/2017 and didn't receive filling [D.E. #49-4 PG. 2] On 2/10/2017 Scott wrote another request he think he got infection and need cavity fill. [D.E. # 45-1 PG.23]

On 8/1/2017 Scott seen Dr. Dove and tell him he suppose to have tooth # 18 filled [D.E. # 45-1 PG.86]. Dr Dove told Scott to return to clinic for Tooth #1 8 filled. [D.E. # 45-1 PG.86]. On 8/15/2017 Jason Kelly Stated Scott Grievance was with merit but resolve due to having to tooth # 18 fill on 8/1/2017 and Scott never



did. [D.E. # 49-4 PG.3]. On Rory Griffin Improvement Plan for Scott to have tooth # 18 filled by 9/15/2017, re-eval date 9/30/2017.

But when Scott seen Dr. Dove on 10/5/2017 refuse to fill to tooth # 18 cause Scott refuse to have tooth # 17 extracted. Dr. Dove stated: ADC/ Correct Care Solutions you can't have tooth fill once refuse extraction of another tooth. [D.E.# 45-1 PG. 86]

As of a result of this interference, Petitioner suffered a couple of more moths of pain in tooth before it was finally filled. [D.E. # 49-4 PG.1, 5-0 PG. 18]

ATKINSON V. BOHN, 91 F.3D 1127, 1128-29 (8TH CIR. 1999); HARRISON V. BARKLEY, 219 F.3D 132, 134, 136-38 (2D CIR. 2000); MOORE V. JACKSON, 123 F.3D 1082, 1084-87 (8TH CIR. 1997); BOYD V. KNOX, 47 F.3D 966, 969 (8TH CIR. 1995)

The Petitioner here contends this ADC/Correct Care policy violated his 8th Amendment Right to be free from cruel and unusual punishment and adequate medical treatment and violation of Arkansas State Tort Negligence of Medical Malpractice. And should've precluded summary judgment.

Deliberate indifference is manifested in "intentionally denying or delaying access to medical care or intentionally interfering with treatment once prescribed.

ESTELLE, SUPRA 429 US AT 104-05, 97 S.CT. AT 29; HALTIWAGGER V.

**MOBLEY 230 F3D 1363 (8TH CIR. 2000); HARRIS V. HEGMANN, 198 F3D 153, 159-60 (5TH CIR 1999)** concluding that ignoring an inmate repeated requests for medical treatment and complaints of excruciating pain satisfied the deliberate indifference standard.

Which leads to next question No. 2: Did District Court, 8<sup>th</sup> Circuit Court of Appeals abuse its discretion by failing to liberally construe on review Scott's complaint as Dr. Dove, Dr. Stringfellow complete failure to treat tooth # 18 "denying and delaying medical treatment?"

In this case, Scott seen dentist for pain in his tooth and needed filling in tooth # 18 in November 29, 2016 and was referred to get tooth filled. [D.E.# 5-0 PG. 12] Scott seen Dr. Stringfellow on 2/2/2017 for teeth filling and was denied and delayed tooth # 18 filing for no medical reasons [D.E.#49-4 PG 2] But referred to have Scott tooth # 18 Filled.

The Holding Courts below held that the failure to provide diagnostic care and medical treatment known to be necessary was deliberate indifference, and further noted that delay of necessary treatment for non-medical reasons also established deliberate indifference sufficient to established deliberate indifference claim. **ANCATA V. PRISON HEALTH SERVICES INC., 769 F.2D 700, 704 (11 CIR. 1985.)**

Then 6 months later after Scott seen Dr. Dove on 8/1/2017 to get tooth # 18 filled. He told Scott to return to get it filled. [D.E.# 45-1 PG.86] See [D.E. #45-1 PG. 108] Dr. Stated Tooth # 18 became un-restorable due to deep decay. **JOHNSON V. KNUDSEN, 205 F.3D 1094, 1096 (8TH CIR. 2000)** ( to prevail o deliberate indifference claim, prisoner must have suffered from objectively serious medical need which Defendants knew of but deliberately disregarded.)

But when Scott seen Dr. Dove on 10/5/2017, he refuse to fill Scott tooth # 18 cause Scott refuse to have tooth # 17 extracted. [D.E.#45-1 PG.86]. Scott went over a 1 year to he finally got tooth # 18 cavity filled. **HARRISON V. BARKLEY 219 F.3D 132, 134 136-38 (2D CIR. 2000)** (reversing grant of summary judgment based on qualified immunity, and finding 8th amendment violation, where prison dentist refused to treat inmate's tooth cavity only because inmate refused extraction of another diseased tooth; if left untreated, tooth with cavity will degenerate, likely cause severe pain, and eventually require extraction and perhaps further invasive treatment; **ATKINSON V. BOHN 91 F3D 1127, 1128-29 (8TH CIR. 1999)**; **HARFIELD V. COLBURN, 371 F3D 454, 457 (8TH CIR 2004)**; **MOORE V. JACKSON, 123 F3D 1082, 1084-87 (8TH CIR 1997)**; **BOYD V. KNOX, 47 F3D 966, 969 (8TH CIR 1995)**).

The answer to question #2, will answer question # 4. Now we turn to question #3. Is it an unconstitutional medical malpractice practice and procedure

for over 6 months after Scott was prescribed medical grievance (tooth # 18 cavity filled) and didn't receive it He wrote medical grievance every month to get medical attention and still not rectified matter.

On 8/15/2017 Jason Kelley stated Scott Grievance was with merit but resolved due to having tooth \$18 filled on 8/1/2017 and Scott never did [D.E.# 49-4 PG.3] Then [D.E.# 49-3 PG. 1] Rory Griffin improvement plan for Scott to have Tooth #18 filled by 9/15/2017 re-eval date 9/30/2017. And on 9/30/2017 Scott re-eval date Rory Griffin found Scott appeal with merit because he still hadn't had tooth # 18 filled. [D.E.# 49-4 PG.2] **HALTIWANGER V. MOBLEY 230 F3D 1363 (8TH CIR. 2000)** inmates alleging regarding failure of nurses to provide him with medication for his high blood pressure, and failure of grievances to rectify matter , were sufficient to state a deliberate indifference claim. Whereas, in questions # 1-#4 Defendants: Correct Care Solutions, Dr. Dove, Dr. Stringfellow, Jason Kelly, Rory Griffin were deliberate indifferent to Scott serious medical need, this establishes a violation to 8th and 14th Amendment violation to the U.S.C. as well as Ark. State tort claim negligence. **COOPER V. SCHRIRO U.S.C.A. (8TH CIRCUIT 1999)**; See **ESTELLE V. GAMBLE, 429 US 97, 104, 97 S.Ct 285, 50 L.Ed.2SD 251 (1976).** Eight Amendment violated where prison officials are deliberately indifferent to prisoners serious medical needs.

A medical need is serious if it has been evaluated by medical staff mandating treatment or is so obvious that lay person would easily recognize the need for medical attention. **JOHNSON V. BUSBEE 953 F2D 349 (8TH CIR 1991).** Which happen in this case with Scott [D.E. # 5-0 PG. 12]

The Eight Amendment explicitly prohibits the unnecessary and wanton infliction of pain. See, **BLACK MOORE V. KALAMAZOO COUNTY 390 F3D 890 (6TH CIR. 2004).** It was held, “8th Amendment right to avoid the pain from delay in access to treatment.”

There is no dispute that Scott medical treatment was interfered with and that the Defendants were responsible personally and by policy, and procedures.

There is evidence in the record that it was determined Scott tooth had become un-restorable due to deep decay [D.E. # 45-1 PG. 108].

In view of the large amount of litigation over inadequate medical care, denial or delayed, interfering with prescribed medical treatment which leaves inmates to sit and suffer unwanton infliction of pain. Inmates don't have the luxury to get up and go to hospital to get medical treatment. That why this unconstitutionally medical policy need to be address. Courts never the less must not shrink from the obligation to “enforce the constitutional rights of all persons”;

including prisoners HUTTO V. FINNEY, 437 US 678, 687 998 S.Ct 2565, 57 L.Ed2d 522 (1978).

Here the Petitioner satisfied both objective and subjective test to establish that not only was Scott referred in Nov. 16 2016 to get cavity filled, thus need for treatment, was obvious. In JOHNSON-EL VS. SCHOEMEHL 828 FED 1043 (8TH CIR. 1989) it was held “conditions that is medically serious painful in nature creates a claim.”

The question then turns to granting of summary judgment. The standard of review for summary judgment mandates that, it is only appropriate when the moving party show there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law CELOTEX V. CATRETT 477 US 317 (1987).

When reviewing a motion for summary judgment the Court must view the evidence in light most favorable to the non-moving party. NONCKE V. CITY OF PORT HILLS 284 F3d 923 (8TH CIR. 2000).

A dispute is genuine if the evidence is such that it cause a reasonable jury to return verdict for either party, a fact is material if its resolution affects the outcome of the case OTHOMAN V. CITY OF COUNTY CLUB HILLS 677 F2d 622 (8TH CIR 2012)

Whereby, as to the 8th, 14th Amendment claim and Ark. State Tort claim negligence of medical malpractice claim that Petitioner was denied medical treatment was a genuine dispute of material facts and summary judgment for Defendants should have been precluded.

Scott is entitled to compensatory, punitive, injunction relief for Defendants Dr. Dove, Dr. Stringfellow, Correct Care Solutions, Jason Kelly, Rory Griffin, violation of his 8th and 14<sup>th</sup> Amendment.

## CONCLUSION

Here the lower Courts have spoken and Petitioner humbly requests the Higher Court to grant Certiorari and re-order these questions. Reverse, remand to District Court for trial, and appointment of counsel.

The petition for a writ of certiorari should be granted.

I swear under penalty of perjury, the foregoing is true and correct and best of my knowledge, understanding and belief.

This 5 day of November, 2020

Respectfully submitted,  
*Devenish Scott #131042*  
*P.O. box 600*  
*Grady, AR 71644*  
*Devenish Scott*

Date: 11/5/20