

No. 20-6723

IN THE
SUPREME COURT OF THE UNITED STATES

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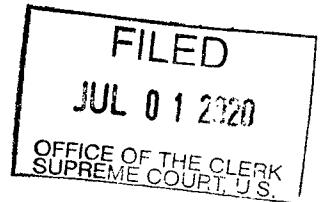
AKANDO, DUCKSWORTH, PETITIONER

Vs.

HAL MACMURDO, ET AL., RESPONDENT (S)

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT



AKANDO DUCKSWORTH # 714207
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P.O Box 788
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QUESTION(S) PRESENTED

Whether this Petitioner's case should have proceeded past the dismissal phase based on the merits of his claim.

PARTIES

The Petitioner is Akando Duckworth, a prisoner at Dixon Correctional Institute in Jackson, Louisiana. The Respondents are Hal Macmurdo, former head doctor at Dixon Correctional Institute, Jason Kent, head warden at Dixon Correctional Institute, and Cheryl Washington, A.R.P. Screening Office at Dixon Correctional Institute.

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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 B to 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[✓] is unpublished.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 A to the petitioner and is

[] reported at _____; or,

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

[✓] is unpublished.

[] For cases from the **state courts**:

The opinion on 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[] is unpublished.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[] is unpublished.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 6-12-20.

No petition for rehearing was timely filed in my case.

A timely petition of 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 ____.

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:

_____, a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for 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).

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 or 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 enforce by Title 42, section 1983, United States Code:

Every person who, under 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 immunity 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 brought against a judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the 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.

STATEMENT OF THE CASE

The Petitioner's complaint alleged that respondent Macmurdo, former head doctor at Dixon Correctional Institute, denied the Petitioner access to adequate medical care on the grounds of cost. It further alleges that respondent Macmurdo ignored the Petitioner's numerous sick call

request for treatment after his outside medical visits were canceled. The complaint also noted how respondent Macmurdo took away the Petition's medically appropriate duty-status and removed him from the medical unit he was initially assigned upon arrival at the facility. The complaint highlighted how respondents Mr. Jason Kent and Cherryl Washington were made aware of respondent Macmurdo's conduct via the *Administrative Remedy's* process but ignored the complaint of the petitioner.

The District Court dismissed the petition's claim by finding that respondent Macmurdo had a mere disagreement with the petitioner's outside specialist and that he was protected by qualified immunity. The District Court found no liability on respondents Mr. Kent and Ms. Washington. The petitioner filed an appellant brief with the United States Court of Appeals for the Fifth Circuit along with Motions for *In Forma Pauperis* and Counsel. The Court of Appeals dismissed the petitioner's case as frivolous.

BASIS FOR FEDERAL JURISDICTION

This case raises a question of interpretation of the Due Process and Equal Protection clauses of the Fourteenth Amendment to the United States Constitution. The District Court had jurisdiction under the general federal question jurisdiction conferred by **28 U.S.C. § 1331**.

REASON FOR GRANTING THE WRIT

A. The Petitioner presented a meritorious case

The petitioner submitted a 1983 complaint to the United States District court for the Middle District of Louisiana, which was accepted and filed on November 6, 2018. The District Court ordered for the complaint to be served to the respondents and the respondents were ordered to file an answer because the district court stated that the petitioner had a reasonable opportunity to prevail based on the merits of the case. The petitioner sent his only copy of this order to the court

of appeal along with his brief. The district court also appointed a lawyer to represent the petitioner and contends that these facts lent credence to the petitioner's belief that his claims was merit based as he does not believe that the district court would have stated that he had a reasonable opportunity to prevail on the merits nor would they have provided the petitioner with a lawyer if his case was not merit based.

The petitioner's claim was one hundred percent merit based. He detailed in his complaint how respondent Macmurdo canceled his outside medical visits solely for financial reasons. This court established that *deliberate indifference* to the serous medical needs of a convicted prisoner violates the Eighth Amendment's prohibition against *Cruel and Unusual Punishment* and gives rise to a cause of Action under § 1983. See *Estelle v. Gamble*, 429 U.S. 97, 105, 97 S.Ct. 285 (1976). This court established prisoner violated the intentionally interfering with the treatment once prescribed, as respondent Macmurdo did by cancelling the petitioner's medical visits, states a claim and cause of action under § 1983. In his initial complaint to the district court, the petitioner listed his rare medical conditions, recurrent respiratory papillomatosis and muscle tension dysphonia, respectively. Recurrent respiratory papillomatosis causes wart like growths to grow on the vocal cords for which only course of treatment is laser surgery to remove the growths. Muscle tension dysphonic causes the vocal cords to move abnormally for which the main course of treatment is speech therapy. Respondent Macmurdo initially recognized these medical conditions to be so serious that he authorized the petitioner to receive speech therapy at University Medical Center in New Orleans, Louisiana, after he received recommendations from University Medical Center prescribing such treatment.

The petitioner went to speech therapy twice a week for eight months until the petitioner's voice specialist wrote to respondent Macmurdo that the petitioner had a minimal chance of voice

recovery but that University Medical Center would be happy to continue to provide therapy to the petitioner as to alleviate the daily pain in his neck. The petitioner stresses to this court that speech therapy was the only effective treatment for the pain in his neck as the specialist would perform specialized massages.

The petitioner highlighted in his complaint how neither respondent Macmurdo, or any of the prison's medical staff, could perform the specialized voice and neck treatments since they did not possess the required medical equipment or knowledge. Upon reading the medical notes of the petitioner's specialist, respondent Macmurdo decided to cancel the remainder of the petitioner's hospital visits because he saw no financial benefit of continuing the treatment. The petitioner has direct evidence of this violation stored in his medical records. At the same time he was cancelling the petitioner's hospital visits, respondent Macmurdo also canceled the petitioner's medically appropriate duty-status and transferred him out of the medically housing assignment he was given upon arrival at the prison.

These acts clearly showed the bad motives and attitude of respondent Macmurdo. The petitioner also submitted numerous sick-call request detailing the pain he was in as a result of the cancelled visits, but respondent Macmurdo ignored the request, as the petitioner listed in his complaint to the district court. This court held that a prison official is *reckless* or *deliberately indifferent* if the official knows of and disregards an excessive risk to inmate health and safety. See ***Farmer v. Brennan***, 511 U.S. 825, 834, 114 S.Ct. 1970 (1994). Some courts have held that prison official's shall not deny necessary outside consultation or treatment on grounds of cost. See ***Monmouth County Corr. Inst. Inmates v. Lanzaro***, 834 F.2d 326, 336-37, 347 (3rd Cir. 1987); ***Ancata v. Prison Health Services, Inc.***, 769 F.2d 700, 704 (11th Cir. 1985).

Both lower courts found only a mere disagreement between respondent Macmurdo and the petitioner's specialist. Many courts have disagreed with this finding. See *Johnson v. Wright*, 412 F.3d 398, 406 (2nd Cir. 2005), that court holding that when a prisoner's treating physicians recommend a course of action and official's ignore the recommendation, the result is not a mere disagreement over medical treatment but can be *deliberate indifference*. Another circuit found that refusal to follow a specialist's recommendation supported *deliberated indifference* claims, See *Jones v. Simek*, 193 F.3d 485, 492 (7th Cir. 1999).

In his complaint to the district court, the petitioner explained that respondent Macmurdo never examined the petitioner's vocal cords despite repeated complaints of pain. Respondent Macmurdo is not a voice specialist and as a result he was not supposed to decline the recommendations of the petitioner's voice specialist. One court held that similar claim could not be dismissed as mere difference of medical opinion, See *Verser v. Elyea*, 113 F.supp. 2d 1211, 1215 (N.D.Ill. 2000). When there is no claim of medical disagreement with specialists' recommendations, failure to follow them should certainly be viewed as *deliberate indifference*, See *Washington v. Dugger*, 860 F.2d 1018, 1020-21(11th Cir. 1988). Some court courts have held that prison officials who fail to explain their decision to refuse a prisoner's treatment could not claim a mere difference in medical judgment, See *Starbeck v. Linn County Jail*, 871 F.supp. 1129, 1146-47 (N.D. Iowa 1994).

In their dismissal, the appellate court stated that respondent Macmurdo treated the petitioner with Ibuprofen, throat Lozenges, Muscle relaxers, and throat exercises. The petitioner also stated that these methods were not effective and did nothing to relieve the daily neck pain of the petitioner. This is a fact that the appellate court ignored. See *Williams v. Vincent*, 508 F.2d

541, 544 (2nd Cir. 1974), that court holding that the constitution is violated if a doctor chooses an easier, cheaper, and less effective course of treatment.

Both lower courts found no liability of respondents Mr. Kent and Ms. Washington. In his initial complaint to the district court, the petitioner stated how respondents Mr. Kent and Ms. Washington were made aware of the conduct of respondent Macmurdo due to the “*Administrative Remedy Procedure (A.R.P.)*” the petitioner filed. Neither respondent replied to the petitioner’s complaint for over a year. They only sent a reply because it became necessary due to this litigation. The petitioner stated in his complaint that respondent Macmurdo had prior conduct violations at prisons he worked at before arriving a Dixon Correctional Institute. He was far below the adequate doctor and as the custodian of the petitioner, respondent Mr. Kent had an obligation to provide adequate staff and one court found that a prison warden could be *deliberately indifferent* for failure to provide adequate staff, See ***Greason v. Kemp***, 891 F.2d 541, 544 (11th Cir. 1990). The petitioner states again that his financial liability to the prison is the reason why his medical visits were cancelled and respondents Mr. Kent and Ms. Washington are liable as they are supervisory officials over respondent Macmurdo. See ***Jones v. Johnson***, 781 F.2d 769, 771-72 (9th Cir. 1986), that court holding that supervisory officials could be liable for budgetary restrictions on medical care.

Both lower court applied qualified immunity to respondent Macmurdo. This court found that qualified immunity doesn’t apply when a prison official violates clearly establish statutory or constitutional rights of which a reasonable person would have known, See ***Harlow v. Fitzgerald***, 457 U.S. 800, 817-18, 102 S.Ct. 2727 (1982). The right to adequate medical care is clearly established in the Eighth Amendment’s prohibition against *Cruel and Unusual Punishment*. Due to the actions of the respondents, the petitioner went eighteen months without adequate medical

care, making his medical conditions worse. See *Landman v. Royster*, 354 F.supp.1292, 1318 (E.D. Va. 1973), that court holding that qualified immunity was denied when the violations were of such a shocking nature that no reasonable person could have believed that they were constitutional. Another circuit denied immunity to a pharmacist who allegedly refused to fill a prisoner's prescription, which in essence, is the same violation of respondent Macmurdo. That circuit court further cited in *Estelle* by finding in general, it is clearly established that intentional interference with treatment prescribed by a doctor is unlawful, See *Johnson v. Hay*, 931 F.2d 456, 460-61 (8th Cir. 1991).

B. Importance of the Question Presented

This case presents a fundamental question about the Fourteenth Amendment and its application to prisoners' medical civil rights. The question presented is of great importance since it involves a United States District Court and Appellate Court and their willingness to overlook each and every element of a prisoner's claim in an effort to wrongfully dismiss his case. This petitioner had his prescribed medical treatment intentionally interfered with. Under *Estelle*, this court describe medical that violation as *deliberate indifference*. This petitioner detailed how his medically appropriate duty-status and housing assignment were taken away from him and also detailed in his complaint how respondent Macmurdo ignored his numerous sick call requests, displaying bad motives and attitude towards the petitioner. Under *Farmer*, this court held conduct as *deliberate indifference*. The petitioner is mystified that both lower courts dismissed his claim even though the claim listed sufficient facts and very specific details about the misconduct of all respondents.

The petitioner states again that at the onset of this case, the district court stated the petitioner had a reasonable opportunity to prevail on the merits and provided him with a lawyer.

This court held that a complaint must contain sufficient factual matter, to state a claim to relief that is plausible on its face, which is accomplished when the plaintiff pleads factual content that allows the court to draw the reasonable inferences that the defendant is liable for the misconduct alleged, See *Ashcroft v. Iqbal*, ___ U.S. ___, 129 S.Ct. 1937, 1949 (2009). This court also found that to survive a “Motion to Dismiss,” a complaint must include enough fact to raise a reasonable expectation that discovery will reveal evidence of the necessary element, See *Bell Atlantic. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1995 (2007).

The petitioner listed enough facts in his complaint to proceed past the dismissal phase. His medical records support his allegations of misconduct along with numerous prior case laws he has cited in this petition. The petitioner was instructed by the appellate court to provide a legal brief along with his motion challenging the district court’s denial of his *In Forma Pauperis* Motion. The petitioner submitted that brief along with the same facts and prior similar cases he is submitting with this petition. However the Appellate Court ignored the facts and similar case laws when they issued their ruling dismissing the petitioner’s *In Forma Pauperis* motion and overall case as frivolous.

The petitioner alleges that his case is not frivolous. He would have proven his claims at the discovery phase of this litigation. But, both lower courts have left the petitioner feeling helpless with their rulings. The petitioner further believes that-due to his current incarceration status it has prevented him from being able to proceed with his merit based claims. The petitioner has been left with two rare medical conditions that substantially limit the major life activity of speech. Nevertheless, the petitioner should have protection and accommodation under the “*Americans’ With Disabilities Act.*”

The petitioner currently has neither and both lower court rulings leave him vulnerable to not receiving the adequate medical care he is guaranteed by the Eighth Amendment to the Constitution of the United States of America.

The petitioner prays this highest court will reverse the lower courts decisions and allow his merit based claims to receive their due diligence and proceed to the discovery phase, this decision would provide prisoners across this great country with the confidence to hold their custodians accountable and instruct all district and circuit courts to afford prisoners a reasonable chance to have their merit based claims fully heard before a court of law.

CONCLUSION

For the forgoing reason, certiorari should be granted in this case.

Respectfully submitted,

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