

20-7127

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

JAN 22 2021

OFFICE OF THE CLERK

CLYDE Pontefract — PETITIONER
(Your Name)

vs.

United States of America, et 3 — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
United States Court of Appeals
for the Sixth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Clyde Pontefract, 13955-035

(Your Name) FCI FT Dix

PO Box 2000

(Address)

Joint Base MOL, N.J. 08640

(City, State, Zip Code)

—
(Phone Number)

PONTEFRACT, CLYDE

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SUPREME COURT, U.S.

QUESTIONS

1. Does Ziglar V Abbasi, 582 US __, 137 S Ct __, 198 L Ed 2d 290 (2017) in deciding a private right of action under Bivens, apply to a Federal Prisoner held on a criminal conviction within the Federal Bureau of Prisons and files an Eighth Amendment complaint under the Cruel and Unusual Punishment clause?
2. Does Ziglar V Abbasi, 582 US __, 137 S Ct __, 198 L Ed 2d 290 (2017) in deciding a private right of action under Bivens, apply to 28 USC §2201 & §2202 for Injunctive Relief?
3. In regards to 42 USC §1983, does Municipal Liability apply to the Federal Bureau of prisons under Bivens?
(This question is only asking for a remand back to expand the record on this issue.)

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APPENDEX C - Appealate Brief (20-3064)

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TABLE OF AUTHORITIES

1. Bivens V Six Unknown Fed Narcotics Agents, 403 US 388, 29 L Ed 2d 619, 91 S Ct 1999(1971)-(vi)(viii)(ix)(1)(2)(3)(5)(6)
2. Callahan V Fed Bureau of Prisons, 965 F.3d 520(CA6,2020) - (2)
3. Correctional Services Corp., V Malesko, 534 US 61, 122 S Ct 515, 151 L Ed 2d 456(2001) - (5)
4. Farmer V Brennan, 511 US 825, 128 L Ed 2d 811, 114 S Ct 1970(1994) - (x)(1)(3)(4)
5. Monell V New York City Dept. of Soc. Ser., 436 US 658, 98 S Ct 2018, 56 L Ed 2d 611(1978) - (x)(5)
6. Rhodes V Chapman, 452 US 337, 101 S Ct 2392, 69 L Ed 2d 59(1981) - (4)
7. Richmond V Hug, 885 F.3d 928(CA6, 2018) - (5)
8. Ziglar V Abbasi, 582 US __, 137 S Ct __, 198 L Ed 2d 290(2017) - (i)(vi)(viii)(x)(xi)(1)(2)(3)(5)(6)
9. 2019 US Dist LEXIS 219682:Pontefract V United States of America,et al: Case No 4 19cv0528 - (v)
10. 2020 US App LEXIS 35268:Pontefract V United States of America, et al: Case No 20-3064 - (v)
11. 28 USC 1915 - (vi)
12. 28 USC 2201 & 2202 - (i)(vi)(x)
13. 42 USC 1983 - (i)(viii)(ix)
14. Eighth Amendment - (i)(ix)(x)(1)(3)(4)(5)

United States Constitution

CITATIONS OF LOWER COURT DECISIONS

The decision of the United States Court of Appeals for the Sixth Circuit was not officially reported but is available at:

2020 US App LEXIS 35268: Pontefract V United States of America, et al, (6th Cir), Case No. 20-3064 and Appendix A.

The decision of the Northern District of Ohio District Court was not reported but is set forth at:

2019 US Dist LEXIS 219682: Pontefract V United States: December 23, 2019: Case No. 4:19cv0528, and Appendix B.

JURISDICTIONAL STATEMENT

This Court has jurisdiction of this matter under 28 USC §1254(1) because:

1. On December 23 2019 the judgement for the Sixth Circuit Federal Court of the Northern District of Ohio was Dismissed for Failure To State A Cognizable Claim under 28 USC §1915(e)(2)(B) through Bivens and 28 USC §2201 & §2202 for Declaratory and Injunctive relief.
2. On November 6 2020 the United States Court of Appeals for the Sixth Circuit entered its final decision Affirming the District Courts Dismissal applying Ziglar V Abbasi, 582 US __, 137 S Ct 1843, 198 L Ed 2d 290 (2017).
3. On January 2021, Petitioner timely filed a writ of Certiorari in this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Eighth Amendment:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

42 USC 1983 - Civil Action for Deprivation of Rights.

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 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 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.

28 USC 1915A - Screening.

(a) Screening. The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) grounds for dismissal. On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint -

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or ...

STATEMENT OF THE CASE

Plaintiff is a federal prisoner and was housed at FCI Elkton and was being given three meals a day of improper portion amounts. These portion amounts would average between 1500-2000 calories per day generally, causing malnutrition through a three year period and Pontefract who is five feet and eleven inches tall would average 160 lbs or less in weight.

Pontefract's Bivens complaint was dismissed and the appeal court affirmed based on Ziglar and would not allow Pontefract a new applied right of action. Within Pontefract's complaint, he also asked for Declaratory and Injunctive relief but was also denied supported by Ziglar.

In Pontefract's appeal brief he argued that Ziglar is distinguished from Pontefract because Ziglar did not support actual incarcerated federal prisoners. In doing so, a Bivens complaint should support a Municipal Liability §1983 jurisprudence against the Federal Bureau of Prisons for allowing the food administer to deny Pontefract's Constitutional Right to not be treated under unconstitutional standards through the Administrative Remedy Process.

SUMMARY OF ARGUMENT

Pontefract brings to this Court a Federal Prisoner Condition of Confinement complaint through Bivens and the United States Constitution of the Eighth Amendment from the cruel and unusual punishment clause. This specific complaint is about Pontefract being Malnourished from the Federal Bureau of Prisons (FBOP) at FCI Elkton causing him to be thinly under-weight during that time.

Pontefract filed through the FBOP's Administrative Remedy Informal Resolution to the Food Administrator of FCI Elkton, Mr Ferguson. As a solution could not be worked out and the food serving portion sizes did not increase overall, Pontefract continued through the Administrative Remedy Process. He proceeded through Mr Ferguson's supervisors of the Federal Prisons Regional Director, and the Director of the FBOP, both supported the Wardens conclusions and Pontefracts Malnutrition continued through FCI Elktons COVID-19 pandemic. In doing so, Pontefract feels that as Bivens is against a specific federal employee when all of the FBOP supervisors supported the employees unconstitutional conduct without relief, the FBOP is now liable for this unconstitutional conduct as well as this specific federal employee through Bivens and 42 USC §1983 and their "custom" of allowing and supporting the Eighth Amendment violation.

This led Pontefract into filing a district court complaint against Mr Ferguson (Bivens) and the Warden, Mr Merlak, and the FBOP through

Declaratory and Injunctive relief (28 USC §2201 & §2202), and a damages claim which should of been supported by Monell, 436 US 658(1978) against the FBOP. These were not supported by the Sixth Circuit Court of Appeals because of one Supreme Court decision, Ziglar.

The district and appellant courts for the Sixth Circuit applies Ziglar to every citizen's scrutinized Private Right of Action against Pontefract who is a federal prisoner. Pontefract believes that Ziglar is distinguished from Pontefract because the Supreme Court never definitively applied Ziglar to a federal prisoner within their opinion, nor did they overrule Farmer, infra.

Because of this misinterpretation of Ziglar, Pontefract has been denied his Constitutional Right to the Eighth Amendment and Declaratory Relief. This is an important issue that needs clarification by the Supreme Court because at this time Ziglar is blocking almost every federal prisoners constitutional rights in every circuit of the United States. So what has been happening is that the FBOP has been unfettered in denying federal prisoners Constitutional Rights. As the Supreme Court examines the FBOP's grievance responses they will see a complete failure in trying to resolve Pontefract's issues. In other words, the FBOP has no fear in NOT resolving Pontefract's complaint. Ziglar's misapplication is not only causing a violation of Pontefract's Constitutional

rights but this misapplication is causing the FBOP's across the nation to not support the PLRA with Congress' intent. If you can understand what Pontefract is saying, Ziglar's clarification will also lighten the amount of federal suits from federal prisoners within the courts because the FBOP will have strong desires to effectively work out inmate grievances for fear of court actions of Prisoners Constitutional Rights.

ARGUMENT

Farmer V Brennan, 511 US 825, 128 L Ed 2d 811, 114 S Ct 1970 (1994) was a Bivens complaint that alleged a violation of the Eighth Amendment and was supported by Bivens V Six Unknown Fed Narcotics Agents, 403 US 388, 29 L Ed 2d 619, 91 S Ct 1999 (1971). (see Farmer, 511 US 831) The Supreme Court (S Ct) gave a lengthy explanation in Section II and supported a federal prisoners "cruel and unusual punishments" violation using a multitude of supporting S Ct precedents. (see Farmer, 511 US 833, 848-851). Here in Farmer, most of this Courts precedents originated from state actors.

*** So does the "cruel and unusual punishments" clause apply to just state prisoners and not federal prisoners?

Pontefract believes that its not the "cruel and unusual punishments" clause that is distinguished from federal prisoners like himself nor is Farmer as to a filing of a federal prisoners Bivens claim. Pontefract is claiming that Ziglar is actually Distinguished from Pontefract's federal prisoners Bivens claim. (see Appendix C for his appellate Brief) Pontefract's argument was not given any return argument by the appeals court, only silence.

In explaining the above pertinent facts, the Ohio district court had claimed that Pontefract did not claim that Merlak or Ferguson's conduct was personally undertaken to violate Pontefract's rights and would not account for a new applied right of action under Ziglar.

(see Appendix B , LEXIS 5-6). "On appeal, Pontefract argues that his complaint supported the food administrator and that he was personally responsible for the actions alleged in the complaint." The appeal court goes on and states that "Pontefract does maintain that the food administrator 'is solely responsible' for ordering the food and the small serving trays and for imposing a one-size-fits-all program for food portions. Those allegations satisfy the personal-involvement requirement." (see Appendix A, LEXIS 4) Then the appeals court dismissed Pontefract's Bivens claim through Ziglar. (see Apendex A, LEXIS 4-6)

While slamming the door they inturned tried to lock the door shut. You see, Pontefract also had a Declaratory and Injunctive relief within his complaint. The appeal court claimed the standard of deliberate indifference towards Pontefracts "serious medical needs" was insuffent. (see Exhibit A, LEXIS 6) While using this dream theory standard and supporting their theory, they use for their support Callahan V Fed Bureau of prisons, 965 F.3d 520(CA6, 2020).

Callahan denied the prisoners First Amendment claim because of Ziglar and he was also denied injunctive relief. Callahan and Pontefract has strong dissents contradicting their relief dismissals and adds confusion over Ziglar. Both dissents thow, thought that the plaintiffs should recieve the district courts injunctive relief process separated from Bivens. The writer of both opinions was Circuit Judge Sutton. As for Pontefract, the Circuit Court used the incorrect standard of a "serious medical need" while Affirming the district courts dismissal. Pontefract while performing pro-se

claimed the "minimal civilized measure of life's necessities."
(see Appendix D , MOL p2)

Pontefract feels that the standard to be used is "the minimal civilized measure of life's necessities" stated in Farmer at 511 US 835.

Under this standard "it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm" by denying Pontefract's long term malnutrition claim. Farmer at 511 US 842. The deliberate indifference's "subjective approach to deliberate indifference does not require a prisoner seeking a remedy for unsafe conditions to await a tragic event such as an actual assault before obtaining relief," Farmer 511 US 845, (IQMO), such as nine deaths from COVID-19 at FCI Elkton with Pontefract also suffering from COVID-19 with lack of proper nutrition during this pandemic.

"The question under the Eighth Amendment is whether prison officials, acting with deliberate indifference, expose a prisoner to a sufficiently substantial risk of serious damage to his future health". (see Farmer, 511 US 843) (IQMO). Would that also include long term malnutrition? This Bivens claim was not only denied by Ziglar but even Pontefract's Declaratory and Injunctive relief. What is sad is that the S Ct has already addressed this issue of injunctive relief. "It would, indeed, be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them." (see Farmer, 511 US 845)

In supporting this "[w]hen conditions of confinement amount to cruel and unusual punishment, federal courts will discharge their duty to protect constitutional rights." (see Rhodes V Chapman, 452 US 337, 352, 101 S Ct 2392, 69 L Ed 2d 59 (1981).

The district and appellate courts denied Pontefract his Eighth Amendment claim NOT ON THE FACTS, but through case law that does not actually apply. May I ask, how is case law deciding the facts of Pontefract's claims?

Even so, "[i]n a suit such as [Pontefract's], insofar as it seeks injunctive relief to prevent a substantial risk of serious injury from ripening into actual harm, the subjective factor, deliberate indifference, should be determined in light of the prison authorities current attitudes and conduct." (see Farmer 511 US 846) Pontefract went through the administrative remedy process and was denied the opportunity to weigh 10 items on the menu to prove his claim from all supervisors of Mr Ferguson. Why not grant Pontefract's request? Because they knew that they were wrong and had no fear from the court.

Even though Pontefract's actual complaint was before the COVID-19 pandemic he has been subsequently transferred to FCI Ft Dix in New Jersey. Pontefract has been given food portion sizes even less than before at FCI Elkton, at FCI Ft Dix. Pontefract is now and again going through another pandemic at Ft Dix. Two separate facilities, the same problem and on-going because of no relief. Regardless,

Pontefract's complaint supported an Eighth Amendment Malnutrition Bivens and Declaratory/Injunctive claim.

Pontefract made an argument supporting his position that Ziglar is Distinguished from him, yet the Sixth Circuit never addressed one iota of even one word against his position. Is this a frivolous argument? The Supreme Court will now decide if Ziglar is Distinguished from Pontefract, regarding Bivens and Declaratory and Injunctive Relief.

Pontefract's original complaint also brought a claim against the United States. The district court dismissed this complaint being supported by Correctional Services Corp. V Malesko, 534 US 61, 70, 122 S Ct 515, 151 L Ed 2d 456 (2001). (see Exhibit B, LEXIS 4) The appeals court affirmed the district courts dismissal. (see

A, LEXIS 6 Please allow me some grace here. The appeal court claimed that Pontefract claimed vicarious liability - this is not so. Pontefract claimed that under Bivens/§1983 claims, that under "person" and "customs" the United States should be liable. Monell, at 436 US 691. This has been supported in the Sixth circuit through Richmond V Hug, 885 F.3d 928, 984 (CA6, 2018). So far, applying Municipile Liability against the FBOP under the practice of the Custom of violating the Eighth Amendment has not been established. There exist within Pontefract's complaint Material Questions of Fact as to whether the actions of the FBOP's Practice and Custom of improperly Malnutritioning Pontefract by Mr Ferguson was supported by the FBOP regarding his Eighth

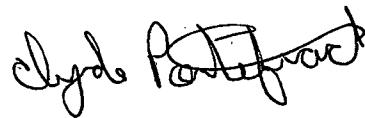
Amendment claim.

Pontefract ask the Supreme Court upon Remand to expand the record of Pontefract's claims in the district court that the Federal Bureau of prisons are libal under Municipal Liability through Bivens.

Pontefract also ask the Supreme Court to Distinguished Ziglar from Pontefract's claims and Remand back to the District Court with allowance for an Amendment of his original complaint that is consistant with this Court and include the Malnutrition claim through out all facilities operated by the Federal Bureau of Prisons that Pontefract could be transferred too.

I declare under penalty of perjury that the foregoing is true and correct and that this motion was placed within the Prison Mail Box at FCI Ft Dix with 1st Class postage on January 20 2021.

Date: Jan 20 2021



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