

No. 20-7997

20-7997
20-0999

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

JOHN SLOAN — PETITIONER, pro se
(Your Name)

vs.

PA. DEPT OF CORRECTIONS ^{et al.} — RESPONDENT(S)

FILED
APR 19 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

John Sloan KH0937, pro se
(Your Name)

801 Butler Pike
(Address)

Mercer, PA 16137
(City, State, Zip Code)

724 662 6324
(Phone Number)

ISSUES ON APPEAL

1. Defs have demonstrated a pattern of behavior in denying the Plt of Constitutionally and Administrative remedies that leans forward harassment and cruel and unusual punishment.

^A 2. Plt was denied his right to a safe work environment, which incl. proper training, tooling, and personal protective equipment (PPE).

^B Plt was denied access to medical spec., at spec's request for follow-up treatment options

^C Plt was retaliated upon for exercising his Constitutionally protected rights

^D Plt is denied a jury trial

^E Plt is denied his right to counsel, which caused him injury

^F Plt is denied administrative remedies regarding the issues of:

— safe work environment

— Medical treatment - most recently AC ADM 820, 1, B, 15 & 16 ^{4 & 5,}

which state: B) Medical Svcs Resulting in Non-Charge

15.) medical svc provided as a result of an injury or illness arising from an inmate's facility work assignment.

16.) medication prescription subsequent to the initial medication prescription provided to an inmate for the same (sic) condition that requires regular continuous medication as specified by the medical provider.

~~the~~ The Dept. of Corrections has thus far abandoned Plt's attempts to correct the wrongful deductions of funds from his acct. ~~for~~ for the last 5 1/2 yrs. This resulted in loss of faith in the Dept., and in the Medical Dept's ability to faithfully execute their duties, discouraging

QUESTION(S) PRESENTED

- 1) Was Petitioner's rights violated when:
- a) he was not afforded a safe work environment while incarcerated?
 - b) he was a victim of retaliation upon seeking redress for a workplace injury?
 - c) he was denied follow-up visit at specialist's request; and specialist's recommendations?
 - d) Orthopaedic specialist was hindered from sharing prognosis of patient/Petitioner with his family with patient authorization?
 - e) he was continually charged for treatment regarding his work-place injury, and other treatment against established Dept. administrative policy?
- 2) Did the Court err in not adopting State issues when Petitioner's first communicated that he was denied due process and equal access to the Courts when:
- a) he was denied default judgment in his favor upon defendant's unexcused failure to appear?
 - b) Oral Arguments were held in the Petitioner's absence, and judgment was made in favor of defendant in the absence of the Petitioner?

Recommended Answers:

- 1) a) yes b) yes c) yes d) yes e) yes
- 2) a) yes b) yes

him from seeking treatment for his permanently fractured big toe which causes him pain daily, constituting a ^{after cruel & unusual punishment} continuing violation - institutional job assignment - policy states that when an inmate is removed from a job assignment for any reason other than disciplinary, it must be attended by a Unit Management Team Action, where the Unit Mgmt Team and the inmate meet to resolve any issues. This was never afforded the inmate/Plt., and has denied him a viable avenue of rehabilitation of which he is highly ^{competent} ~~competent~~ in.

3 The U.S. Dist. Court failed to consider the local dist. court failing the inmate in denying him default judgment after the defense's failure to appear 30 Mar 2016, and holding ^{4 Apr 2016} and upholding the defense's oral argument in his absence ^{and} by not upholding the Plt's state issues.

- The Courts are supposed to "level the playing field" for the "little guy"; namely, the Plt/Appellant -

4 Plt has alleged a chronology of events from which retaliation may be plausibly inferred; including continued rejection of grievances in the face of institutional policy violations.

- The practice of failing to act in the face of known violations of its written policies is relevant circumstantial evidence showing the providers knowledge and state of mind.

5. The U.S. Court of Appeals upheld the opinion, decision, and order of the U.S. Dist. Court in denying the Plt Constitutional and administrative rights and remedies.

★ *Estelle v. Gamble* 429 U.S. 97; 97 S. Ct 285; 58 L. 2d 251 (1976)

granted Certiorari, 424 U.S. 907 (1976)

"A pro se complaint, however inartfully pleaded, must be held to 'less stringent standards' than formal pleadings drawn by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt' that the plaintiff can prove no set of facts in support of his claims which would entitle him to relief."

Id @ 520-521

quoting

Conley v. Gibson

355 U.S. 41, 45-46

(1957)

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[x] 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:

Pennsylvania Department of Corrections
State Correctional Institution at Mercer
Superintendent Thompson
Capt. Sullenberger
Deputy Superintendent Mr. Woods
Maintenance Manager, Mr. Boggs
Facility Safety Manager, Mr. Bromley
Maintenance #24 Supervisor, Mr. Dellorso
Inmate Employment Coordinator, Ms. Engstrom
Medical Administrator, Ms. Boal
Correct Care Solutions
Regional Vice President, Mr. Ellers
Site Administrator, Ms. Feather
Dr. Scott Morgan

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 17 DEC 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: 18 NOV 2020, and a copy of the order denying rehearing appears at Appendix A.

☒ ☐ 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.

NO RESPONSE FROM U.S. SUPR. CT TO REQUEST FOR EXTENSION OF TIME TO

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1). FILE WRIT OF CERTIORARI.

- PETITIONER WAS DENIED APPOINTMENT OF COUNSEL

- PETITIONER WAS DENIED TRIAL BY JURY

☐ 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. A.

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

- FEDERAL COURTS ACCEPTED CASE IN AUG. OF 2016, AS PETITIONER WAS DENIED DUE PROCESS, AND ACCESS TO THE COURT AT STATE LEVEL.

- FEDERAL COURTS FAILED TO UPHOLD PETITIONER'S STATE ISSUES, AND IN HIS RIGHT TO A JURY TRIAL

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Jones v Bock, 549 U.S. 199 (2007) eliminates the burden of proof on a prisoner to plead and prove exhaustion of administrative remedies under the Prisoner Litigation Reform Act.
- Haywood v Drown (2009) The attempt to shield C.O.s from personal liability violated the Supremacy Clause.
- Administrative Law is turned to by the states as a source of prison law (referred to as the "headless fourth Branch" of government)
- any laws, rules, statutes, regulations, or government policies in conflict with the U.S. Constitution are unenforceable
- The 14th Amendment made the Bill of Rights applicable to the states (due process).
- The precise effect of precedent, or the Doctrine of Stare Decisis, depends upon the factual similarity between a prior case and a subsequent controversy. The principle of stare decisis rests upon the presumption that a previous court determined the law applicable to a factual situation after reasonable consideration and that it provides authority for later decisions made in similar cases.
- In the federal system, the parties to a civil lawsuit are entitled to a jury trial under the 7th Amendment, which applies to all civil rights actions for damages.
- Prison officials must be prevented from hiding behind security and safety rationales to check the control of discretionary power.
- § 8.12 - There is no immunity defense for Retaliation for exercising constitutional rights; understanding that "a prisoner must allege a chronology of events from which retaliation may plausibly inferred."
- § 10.3 - Under prisoner's right to medical aid, there is a right to due process under the 5th and 14th Amendments; which includes the right to be free from an abuse of discretion on the part of prison administrators, protection from unconstitutional action, protection of a prisoner's life and health from administrative action.
- A prisoner has the right to be free from cruel and unusual punishments as guaranteed by the 8th Amendment. Violations have been found when there is an intentional denial of needed medical care, or when prison officials' conduct indicates deliberate indifference to the medical needs of prisoners.
- Chronic pain is a "continuing violation"
- § 11.8 - Under Retaliation Claims - Continued rejection of grievances, with other actions, constitutes retaliation.
- 10.3.1 - The practice of failing to act in the face of known violations of its written policies is relevant circumstantial evidence showing providers' knowledge and state of mind.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
1. Estelle v Gamble, 429 U.S. 97, 104-05, 97 S.Ct. 285, 291, 50 L.Ed.2d 251, 260 (1976)	
2. Estelle v Gamble, 429 U.S. 97, 104, 97 S.Ct. 285, 291, 50 L.Ed.2d 251, 260 (1976) (citing Gregg v. Georgia, 429 U.S. 153, 173, 96 S.Ct. 2909, 2925 49 L.Ed.2d 859, 874 (1976)).	
3. Estelle v Gamble, 429 U.S. 97, 102, 97 S.Ct. 285, 290, 50 L.Ed.2d 251, 259 (1976) (citing Trop v Dulles, 356 U.S. 86, 101, 78 S.Ct. 590, 598, 2 L.Ed. 630, 642 (1958))	
4. Brown v Johnson, 387 F.3d 1344, 1350-52 (11 th Cir 2004) also Cornell v Grimm, 872 F. Supp. 746, 755 (D. Haw. 1994) (quoting #2 Estelle v Gamble)	
5. Brock v. Wright, 315 F.3d 158, 162 (2d Cir. 2003) Hathaway v Coughlin, 37 F.3d 63, 66 (2d Cir. 1994) (quoting Nance v Kelly 912 F.2d 609 607 (2d Cir 1990))	

[Continued]

STATUTES AND RULES

United States Constitution 8th Amendment, 14th Amendment,
7th Amendment, 5th Amendment; § 8.12, § 13, 10.3, 11.6.4,
11.8, 10.3.1.
the Doctrine of Stare Decisis

DC-ADM 006, Sect 1, A, 3; Sect. C, 1 & 2
DC-ADM 816, Sect 1, M, 7
DC-ADM 820, Sect 1, B, 4, 5, 15, 16

OTHER

PA Dept. of Corrections Administrative Manual
820(1)(3)(4), (5), (15), (16).
PA. C. S. 8501

Citations (Cont.)

6. *Martin v. DeBruyn*, 880 *F. Supp.* 610, 616 (N.D. Ind. 1995)
7. *Farmer v Brennan*, 511 U.S. 825, 837, 114 S. Ct. 1970, 1979, 128 L. Ed. 2d 811, 825 (1994)
8. *Brice v. VA Beach Corr Ctr.*, 58 *F. 3d.* 101, 103-05 (4th Cir. 1995)
9. *Tillery v. Owens*, 719 *F. Supp.* 1256, 1308 (W.D. Pa. 1989) aff'd 907 *F. 2d.* 418 (3d. Cir. 1990)
10. *McElligott v. Foley*, 182 *F. 3d.* 1248, 1252, 1256-57 (11th Cir. 1999)
11. *See Greeno v. Daley*, 414 *F. 3d.* 645, 655 (7th Cir. 2005)
12. *Johnson v. Karnes*, 398 *F. 3d.* 868, 875-76 (6th Cir. 2005);
See #10
13. *Kikumura v. Osagie*, 461 *F. 3d.* 1269, 1292 (10th Cir. 2006).
14. *See Mata v. Saiz*, 427 *F. 3d.* 745, 756-759 (10th Cir. 2005)
15. *Estelle v. Gamble*, 429 U.S. 97, 104-05, 97 S. Ct. 285, 291, 50 L. Ed. 2d. 251, 260-61 (1976); *See Lawson v Dallas County*, 286 *F. 3d.* 257, 263 (5th Cir. 2002); *Erickson v. Holloway*, 97 *F. 3d.* 1078, 1080-81 (8th Cir. 1996); *McCorkle v. Walker*, 871 *F. Supp.* 555, 558 (N.D.-N.Y. 1995)
16. *Brown v. Coleman*, decision reported at 60 *F. 3d.* 837, 837 (10th Cir. 1995), opinion reported in full at No. 94-7103, 1995 U.S. App. LEXIS 16928, at 4-5 (10th Cir July 12, 1995) (unpublished)

17. *Williams v. Vincent*, 508 F.2d 541, 544 (2d Cir 1974);
See also at # 10.
18. *Mata v. Saiz*, 427 F.3d 745, 757-58 (10th Cir. 2005).
19. See *Black's Law Dictionary* 1061 (8th Ed. 2004).
20. *Rosado v. Almeida*, 349 F. Supp. 2d 1340, 1344-45 (S.D. Cal. 2004). Also suggested in *Estelle v. Gamble*, 429 U.S. 97, 105-06, 97 S.Ct. 285, 290-91, 50 L. Ed. 2d 251, 260-61 (1976). *Hathaway v. Coughlin*, 99 F.3d 550, 553 (2d Cir. 1996).
21. *Sellers v. Henman*, 41 F.3d 1100, 1102-03 (7th Cir. 1994);
See also *Brooks v. Celeste*, 39 F.3d 125, 128 (6th Cir 1994).
22. The State, its institutions, agents, and employees, have a duty to protect a prisoner and his property in actionable torts regarding negligence and negligence-based torts.
23. *Kagan v. State*, 221 A.D. 2d 7, 10, 646 N.Y.S. 2d 336, 338 (2d Dept. 1996)
24. N.Y. Correct. Law § 70(2)(c) (McKinney 2003 & Supp. 2009); N.Y. Correct. Law § 23(2) (McKinney 2003 & Supp. 2009); See Also *Rivers v. State*, 159 A.D. 2d 788, 789, 552 N.Y.S. 2d 189, 189 (3d Dept. 1990); *La Rocca v. Dalsheim*, 120 Misc. 2d 697, 708, 467 N.Y.S. 2d 302, 310 (Sup. Ct. Dutchess County 1983)

PAGE #

25. *Montalvo v. Koehler*, No. 90 Civ. 5218, 1993 U.S. Dist. LEXIS 11785, at 4 (S.D.N.Y. Aug. 24, 1993) (unpublished).
26. *Hathaway v. Coughlin*, 37 F.3d 63, 67 (2d Cir. 1994).
27. See *Johnson v. Bowers*, 884 F.2d 1053, 1056 (8th Cir. 1989); *West v. Keve*, 541 F.Supp. 534, 539-40 (D. Del. 1982).
28. *Hoptowit v. Spellman*, 753 F.2d 779, 784 (9th Cir. 1985).

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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 A 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 United States district court appears at Appendix B to the petition and is

☐ reported at ECF 109 filed Oct 25, 2018; or,
☐ has been designated for publication but is not yet reported; 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 _____ court appears at Appendix _____ to the petition and is

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

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The date on which the United States Court of Appeals decided my case was 17 DEC 2020

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☒ 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.

NO RESPONSE FROM U.S. SUPR. CT TO REQUEST FOR EXTENSION OF TIME TO
The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1). FILE WRIT OF CERTIORARI.

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- PETITIONER WAS DENIED TRIAL BY JURY

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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. A.

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

- FEDERAL COURTS ACCEPTED CASE IN AUG. OF 2016, AS PETITIONER WAS DENIED DUE PROCESS, AND ACCESS TO THE COURT AT STATE LEVEL.
- FEDERAL COURTS FAILED TO UPHOLD PETITIONER'S STATE ISSUES, AND IN HIS RIGHT TO A JURY TRIAL

Statement Of The Case

The Petitioner is an inmate of the Pennsylvania Dept. of Corrections, and has been since 5 Dec 2011; and has been housed at SCI-Mercer since about 30 May 2012. He began working on SCI-Mercer's Electrical Maintenance Crew #5 around March of 2014. The Petitioner had prospered in his position with several of his Inmate Progress Reports stating, "Mr. Sloan is an asset to the Maintenance Department."

See
EXHIBIT
A1

On 8 Aug 2014, the Petitioner, John Sloan, was assigned to help an instructor of another maintenance crew, Mr. Dellorso, as terms of his inmate employment states that failure to accept any job assignment is grounds for termination. Sloan was to assist in the task of removal of a large manhole cover to remove standing rainwater using a sub-pump. The Maintenance Dept. offered no preparative training or proper tooling for the task.

See
EXHIBIT
A2

While in the process of removing the manhole cover, using only a (2) foot crow-bar and wearing cotton-blend gardening-type gloves, the manhole cover slips and falls on Sloan's left great toe, causing multiple fractures and nerve damage that have not, as yet, been physically addressed.

Mr. Sloan was seen by Orthopaedic Specialist, Dr. Matthew Stonestreet, who said, "This (toe) will never heal properly", and, "expect arthritis". He went on to say, "I want to see you in (1) month, to discuss some things that may help you; perhaps orthopaedic shoes, a custom orthotic, and not to exclude fusion." Sloan learned that "fusion" is a type of surgery that "fuses" bones together.

When Petitioner's family wanted to know the prognosis, permission was given by the Petitioner/patient to the doctor to convey the information to his family. The specialist, Dr. Stonestreet, was forbidden by the Institution's administrators from conveying the information to the patient's family, as well as denying the patient the benefit of the follow-up visit with the specialist. Sloan was left to the care of the Institution's contract doctor, Scott Morgan, who is not a specialist.

Subsequent X-Rays taken around 20 Oct 2014, still demonstrated a displaced fracture among the multiple fractures still withstanding. Dr. Morgan, in agreement with the specialist that Sloan could benefit from an orthopaedic shoe, orders the shoes at size (9) for Mr. Sloan; informing him to expect to wait about (4) weeks for delivery.

The next entry in Sloan's medical record, after the order for the orthopaedic shoes, is an order to "discontinue" the order for the orthopaedic shoes, stating that Mr. Sloan "does not fit the criteria for diabetic shoes"; which might be fine, but Mr. Sloan is not diabetic. So, using a diabetic criteria here is not medically sound. All this is part of the record.

Upon learning of the cancellation of the order for orthopaedic shoes, Sloan was told by Dr. Morgan that it was "(his) bosses in administration" that "made" him cancel the shoes. Sloan was never again offered any elective surgery, going forward.

All of the Petitioners grievances requesting dialogue were denied at all levels, forcing him to file a Complaint in the Court of Common Pleas of Mercer County, on or about 23 June 2015. Upon Sheriff service of the Complaint about (2) weeks later, Sloan was immediately "fired" from his position in the Electrical Maintenance Dept. (their word not mine). Mr. Sloan was not "transferred" to another job, as the Defendants have suggested. He was "fired", and had to apply for another job assignment like any other inmate. Because Sloan's "firing" was not because of disciplin-

any reasons, he was provided, or rather entitled to a "Unit Management Team" staffing, to be attended by his Unit Manager, Employment Supervisor, Psychology Staff, and Counselor "to resolve any issues" and to protect the integrity of the inmates; which Unit Management Team action he was not afforded.

Mr. Sloan had his pain medication suspended and was told to buy pain medication from commissary. Sloan, after being denied the ordered orthopaedic shoes, was told he would only be afforded off-the-shelf gel insoles. Then, was told to order those off of commissary, as well. After much debate, and striving with the Medical Dept, administration, institution, and Department, Sloan's pain meds and gel insoles were re-instated; but only after repetitively leaning on the Dept's own administrative policy concerning inmates injuries resulting from his institutional job assignment. Sloan still has not received prescribed treatments, experiences delays in treatment, interference with access to treatment. Even currently, Sloan is incurring medical charges that are deemed non-chargeable by the Department's policy. His many grievances are denied up the chain.

As a result of the injuries sustained by Mr. Sloan, on 8 Aug 2014, and his subsequent treatment by the Institution, the Department and its agents and employees, he has ongoing pain and discomfort, nerve damage, limited mobility; all of which has affected his ability to earn and quality of life. Most convicted felons are only afforded laborious jobs (push, pull, carry), which proves to be difficult or unable to perform. Mr. Sloan can no longer perform certain exercises (jogging, basketball, handball, etc); and he can no longer have the pleasure of many physical activities with his grand children.

The "firing" of Mr. Sloan from his institutional job assignment with ICI-Moveco's Electrical Maintenance Crew, where he was thriving, has excluded him from acquiring additional credit-hours in the field of Electrical Maintenance that he could have applied toward an apprenticeship program upon his release. The knowledge and experience was valuable to Sloan in his, then, chosen path of rehabilitation.

Reasons For Granting The Petition

A) The Constitution of The United States upholds a persons right to adequate medical care, and the United States Supreme Court settles all claims of breach of contract regarding the failure to provide care to prisoners.

1.) Constitutional Law

The Eighth Amendment of the Constitution protects prisoners from "cruel and unusual punishment." The U.S. Supreme Court has decided that failing to provide medical care to prisoners violates this amendment. The Institution has failed to provide the verbally prescribed medical care of the orthopaedic specialist, as well as the written order of the prison's contracted staff doctor. In 1976, the Court explained in *Estelle v Gamble* that "deliberate indifference"-purposefully ignoring the "serious medical needs" of prisoners - amounts to "cruel and unusual punishment" forbidden by the Eighth Amendment.²

Not following the recommendations of medical specialists, the continued rejection of grievances, and failing to act in the face of known violations of written policies, with demonstrated acts of retaliation hardly meet acceptable standards of treatment and care in terms of modern medicine and technology, with not providing a safe work environment, and/or current beliefs about human decency.³

a) The Petitioner meets the Objective Component as:

"Sufficiently Serious".

Courts define a "serious medical need" as "one that has been diagnosed by a physician as mandating treatment, or one that is so obvious that even a lay person would easily recognize the necessity of a doctor's attention".⁴ Several factors to consider include, but are not limited to, the following:

- (1) reasonable doctors AND patient perceives the medical need in question as "important and worthy of comment or treatment";
- (2) the medical condition significantly affects daily activities; and
- (3) "chronic and substantial pain" exists⁵

Recent medical care decisions have emphasized pain and disability when evaluating medical need. Prisons are not allowed to have a rigid list of serious medical needs without allowing some flexibility in individual prisoner evaluations;⁶ yet SCJ-Mercer has a rigid list of "chronic" conditions it uses to deny both treatment, and policy benefits.

- b) The Petitioner meets the Subjective Component of:
("Knew of and Disregarded a Risk")

In *Farmer v. Brennan*, the Court held that an official can be held liable upon two things.

First, the official has to know the facts that could have shown or proven that a prisoner's health was in danger. Second, after the official is aware of the threat to a prisoner's health, the official must actually believe that a prisoner's health is 'in danger'. The prison officials at SCI-Mercer had and have full knowledge of the prognosis of multiple fractures, including a displaced fracture of the inmate's left great toe, requiring custom orthopaedics/orthotics, and/or fusion (surgery).

2) Courts Defer to Prison Health Officials Medical Judgment.

The Court will defer to the doctors professional specialized medical judgment that X was best for the prisoner; as the prison's medical administrator has no medical degree.

3) Common Types of Deliberate Indifference

List of relative situations where courts have found prison medical staff to be deliberately indifferent, and not just exercising differences of professional opinion; including:

- (1) Ignoring obvious conditions;
- (2) Failing to provide treatment for diagnosed conditions;
- (3) Failing to investigate enough to make an informed decision;

Prison used a diabetic criteria to deny inmates orthopaedic need;

(4) Delaying treatment. Prison waited 3 months 3 weeks to provide gel insoles that were readily available at prisons commissary.

(5) Interfering with access to treatment, when specialist requested follow-up appointment to discuss specialized options.

(6) Making medical decisions based on non-medical factors, when medical administrators with no medical training override the suggestions and orders of trained medical professionals; and

(7) Making a "medical" judgment so bad it's not medical.

(a) Ignoring Obvious Conditions - Having knowledge that a large manhole cover crushed inmate's toe causing multiple untreated fractures; denying treatment, making inmate wait exorbitant time to provide prescribed treatment; prison official should have been aware, in light of his many grievances, of the serious and substantial risk because the problem was so obvious.⁸

(b) Failure to Provide Treatment for Diagnosed Conditions.

The record shows that even the prison's contract

doctor diagnosed Mr. Sloan with a serious medical condition, prescribing treatment that he never received; first, the denial of the follow-up visit to the orthopaedic specialist, then in denying the prescribed orthopaedic shoes; meeting the subjective standard.

(c) *Failing to Investigate Enough to Make an Informed Judgment*, when using a diabetic criteria to deny Mr. Sloan his orthopaedic need would allow for an Eighth Amendment claim. Judgment was not informed, as: in response to prisoner Sloan's complaint of a medical problem, prison officials did not properly treat him;¹⁰ send prisoner to follow-up with specialist¹¹, or consult the prisoner's medical record or the administrative manual before ceasing medication. An "uninformed" decision could be found to be "deliberately indifferent."

(d) *Delay in Treatment*

Prison officials knew of, but made Mr. Sloan wait a very long time, (15+) weeks, before getting prescribed gel insoles for his permanent fracture of his left great toe; Complete denial of the follow-up visit at the request of the specialist to provide further treatment.¹² Two factors to consider, being:

- 1) A permanent fracture of the great toe, with pain, being a serious injury¹³; and
- 2) The delay and denial being objectively serious enough to present an Eighth Amendment question.

(C) Interference with Access to Treatment

The record shows that prison officials interfered with Mr. Sloan's ability to obtain treatment, meeting the objective standard of deliberate indifference; by:

- 1) Denying access to the medical specialist who is qualified to address Sloan's specific condition.
- 2) Prison medical staff allowed Sloan to see a specialist, but then refused to carry out the specialist's recommendations.
- 3) Refusing to carry out and simply ignoring medical orders.

In *Brown v. Coleman*, the court found deliberate indifference because, despite the recommendations of the medical staff, officials with no medical training ignored the recommendations¹⁶; like in Sloan's case

(F) Making Medical Decisions Based on Non-Medical Factors

When prison health staff are making medical decisions based on non-medical factors could constitute deliberate indifference. Prisons should not make medical

decisions of treatment based on: lack of staff, budgetary restrictions (as was suggested by staff), eminent release of inmate, or to punish. In particular, "systemic deficiencies in staffing, facilities, or procedures [which] make unnecessary suffering inevitable" may support a finding of deliberate indifference.

(g) "Medical" Judgment So Bad It's Not Medical

In denying the prescribed orthopaedic shoes based on diabetic criteria, the Petitioner believes the decision to be so incompetent or inadequate that no trained health professional would ever make such a decision. "Medically unacceptable" treatment may be "an easier and less efficacious treatment",¹⁷ as in prescribing Sloan gel-insoles instead of orthopaedic shoes or custom orthotics, or simply no treatment at all. The prison health staff have failed to follow professional medical standards and the Department's own administrative manual regarding health care, knowing the risk to Mr. Sloan's ongoing pain and suffering from his particular condition, and deliberately ignored that risk.¹⁸

4) Medical Negligence and Ministerial Negligence

(a) Although Medical Negligence Is Not Unconstitutional:
The Defendants were Negligent in failing to exercise care to protect the Plaintiff/Petitioner in the at-risk task of removing man hole covers on prison property where a reasonable person would exercise care.¹⁹ Though the Eighth Amendment does not protect prisoners from medical malpractice,²⁰ the repeated acts of negligence of ^{not} "affording the Petitioner, Mr. Sloan any dialogue regarding his course of rehabilitation and medical treatment are evidence that prison officials are ignoring substantial risks. These, with the other claims can count for, or as, deliberate indifference."²¹

(b) Regarding State Law Negligence Claims.

The PA Dept. of Corrections and SCJ-Mercer claim that their duty is Care, Custody, and Control of prisoners of the state. They have failed, breaching their duty to care for Mr. Sloan. Mr. Sloan was owed, as a prisoner, the right to a safe work environment, where safety protocols were in place to mitigate the potential for injury; there were none. Sloan had a right to benefit from the follow-up visit with the orthopaedic specialist, medical treatments to be fulfilled, to be free from retaliation for exer-

cising a protected right of seeking redress for grievances, and to enjoy protections afforded him in the Department's administrative manual. The institution was responsible for Mr. Sloan's wellbeing, and did not honor its responsibility.²² Questions must be asked: Did the prison exercise the level of care that a reasonable professional would performing the same task?, and, Did the medical practitioners do what reasonable health professionals would do in the same circumstances? Testimony and documentation proves the departure from accepted practices, and these departure(s) are the proximate cause of Mr. Sloan's injuries; as his ongoing suffering would not have occurred without the departure from accepted practices. The States agents' and employees' failure to comply with industry standards and the Department's own administrative procedures makes it liable for "ministerial neglect" regarding providing medical care to inmates.²³ Prisons have a duty to "provide reasonable and adequate medical care to the prisoners."²⁴

(C) Regarding Specific Health Care Rights

The prison acknowledged Mr. Sloan's dis-

ability, but failed to give consideration to it, constituting a claim of negligence.

1) Treatment for Diagnosed Conditions and Elective Procedures

The prison failed to provide the accommodation of the custom orthopaedic shoes ordered by the doctor, nor the opportunity to discuss the benefits of the elective procedure of "fusion", as suggested by the orthopaedic specialist, Dr. Stonestreet.

The court found that a failure to provide accommodation to a prisoner for a medical condition met the standard because it posed the risk of serious bodily injury to the prisoner;²⁵ also, failure to treat a serious condition requiring surgery has been found to meet the criteria for the sufficiently serious standard.²⁶

If a prisoner's condition gives him continual pain and discomfort, as is the case with Mr. Sloan, for a long period of time, he may be able to bring a claim that his condition is sufficiently serious to warrant an "elective" procedure even though the condition may not require immediate attention. Lengthy delays

in providing prisoners with elective surgery for certain medical procedures can be unacceptable.²⁷

2) Other Environmental Health and Safety Cases
Safety conditions have been found to violate the Eighth Amendment. The absence of safety protocols being utilized during Mr. Sloan's institutional job assignment caused the instant injury that motivated his initial Complaint. Lack of safety has been found to be a violation of the Eighth Amendment.²⁸

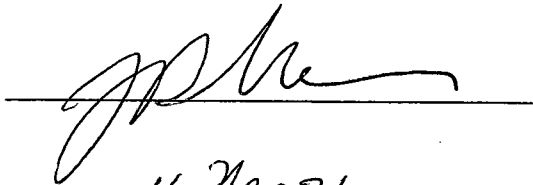
Although the Institution claims the right to "fire" Mr. Sloan, because they "own" the work done on its property, the education and experience acquired by Mr. Sloan are his own, and would benefit him well outside of the time of his commitment. The state case of *Shick v Shirey* found that it violates a persons rights to be terminated for exercising the protected right to file a claim with the courts seeking redress for grievances.

WHEREFORE, Mr. Sloan should be given the opportunity to have his case heard before a jury to determine the nature and amount of compensation he should receive for the injury(ies) and ongoing violations to his health and his rights that he is suffering. Mr. Sloan has suffered a loss to his quality of life and his ability to earn due to the deliberate indifference of the Defendant(s), and should be compensated.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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