

No. 21-399

06/23/21

MD

IN THE

SUPREME COURT OF THE UNITED STATES

CHESTER LEE RENEAU - PETITIONER

vs.

MARY CARDINAS; DOCTOR LOUIS CABILING - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

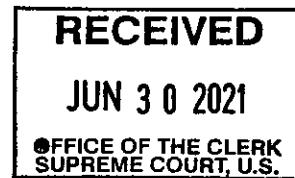
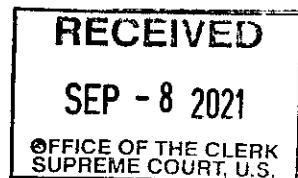
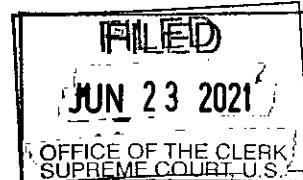
PETITION FOR WRIT OF CERTIORARI

Chester Lee Reneau

Crowley County Correctional Facility

P.O. Box 100

Olney Springs, CO 81062



QUESTIONS PRESENTED

Can prison doctors violate the Eighth Amendment by exposing prisoner's to the "unnecessary and wanton" infliction of pain? And, does the Constitution permit prison doctors to act with deliberate indifference to a prisoner's serious medical needs by providing treatment so cursory as to amount to no treatment at all? Also, did the lower courts abuse their discretion by denying Petitioner's Seventh Amendment right to trial by jury, by resolving disputed questions of material fact in order to award Dr. Cabiling summary judgment.

PARTIES AND RELATED CASES

The petitioner is Chester Lee Reneau, a prisoner at Crowley County Correctional Facility in Olney Springs, Colorado. As Reneau is not challenging the Court of Appeals decision against Nurse Mary Cardinas in this action, the respondent in the case at bar is Doctor Louis Cabiling, a medical provider at Crowley County Correctional Facility. This case is docketed as Case No. 1: 17-CV-02595-PAB-SKC in the United States District Court for the District of Colorado, and Case No. 20-1220 in the United States Court of Appeals for the Tenth Circuit.

Table Of Contents

Question

Presented.....	2
Parties and Related Cases.....	2
Table of Authorities.....	4
Decisions Below.....	5
Jurisdiction.....	5
Constitutional and Statutory Provisions Involved.....	5,6
Statement of the Case.....	6
Basis for Federal Jurisdiction.....	6-7
Reasons for Granting the Writ.....	7-20
A. Conflicts with Decisions of Other Courts.....	7-8
B. Importance of the Question Presented.....	8-18
C. Denial of Seventh Amendment Right to Trial by Jury.....	18-20
Conclusion.....	20

Appendix

Decision of the United States Court of Appeals.....	Appendix A (A1-A14)
Order of the United States District Court.....	Appendix B (B1-B14)
Order of the United States Court of Appeals Denying Rehearing.....	Appendix C (C1)
Appellant's Opening Brief.....	Appendix D (D1-D21)

Table of Authorities

	Page
Ancata v. Prison Health Services, Inc., 769 F.2d 700, 704 (11th Cir. 1985).....	8,13,17
Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).....	19
Benjamin v. Schwartz, 299 F. Supp. 2D 196, 201 (S.D.N.Y. 2004).....	11,12,13
Brown v. Briick, 1996 U.S. Dist. LEXIS 13695, *10.....	19
Brown v. Hughes, 894 F.2d 1533, 1537 (11th Cir. 1990).....	7
Collignon v. Milwaukee County, 163 F.3d 982, 989 (7th Cir. 1998).....	15
Estelle v. Gamble, 429 U.S. 97, 107 (1976).....	13
Frohmader v. Wayne, 958 F.2d 1024, 1028 (10th Cir. 1992).....	8,9,20
Greeno v. Daley, 414 F.3d 645, 653 (7th Cir. 2005).....	16
Greeno v. Daley, 414 F.3d at 654.....	16
Hayes v. Snyder, 546 F.3d 516, 526 (7th Cir. 2008).....	7
Hayes v. Snyder, 546 F.3d at 523.....	14,15
Hemmings v. Gorczyk, 134 F.3d 104, 109 (2d Cir. 1998).....	8,16
Kikumura v. Osagie, 461 F.3d 1269, 1295 (10th Cir. 2006).....	10,18,20
Ledoux v. Davies, 961 F.2d 1536, 1537 (10th Cir. 1992).....	13
Mata v. Saiz, 427 F.3d 745, 752 (10th Cir. 2005).....	12
Oxendine v. Kaplan, 241 F.3d 1272, 1276 (10th Cir. 2001).....	14,16
Oxendine v. Kaplan, 241 F.3d at 1279.....	11
Petriczko v. Kurtz, 117 F. Supp. 2D 467, 471 (E.D. Pa. 2000).....	7
Ramos v. Lamm, 639 F.2d 559, 575 (10th Cir. 1980).....	7,9,20
Ramos v. Lamm, 639 F.2d at 576.....	13
Self v. Crum, 439 F.3d 1227, 1232 (10th Cir. 2006).....	16,18
Smallwood v. Renfro, 708 F. Supp. 182, 187 (N.D. Ill. 1989).....	19
Sulton v. Wright, 265 F. Supp. 2D 292, 300 (S.D.N.Y. 2003).....	8,17
Whitley v. Albers, 475 U.S. 312, 319 (1986).....	12

DECISIONS BELOW

As the petitioner is a pro se inmate without outside resources and in a private prison without access to a real time law computer, Petitioner has no knowledge of whether or not the decisions of the lower courts have been published. The decision of the United States Court of Appeals for the Tenth Circuit is attached to this petition as Appendix A (A1-A14). The Order of the United States District Court for the District of Colorado is attached as Appendix B to this petition. (B1-B14).

JURISDICTION

The judgment for the United States Court of Appeals for the Tenth Circuit was entered on March 31, 2021. An order denying a petition for rehearing was entered on April 20, 2021 and a copy of that order is attached as Appendix C to this petition (C-1). Jurisdiction is conferred by 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment VIII to the United States Constitution, which provides:

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

The Amendment is enforced 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 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.

STATEMENT OF THE CASE

The petitioner's complaint alleged that respondent, Doctor Louis Cabiling, failed to respond reasonably to Petitioner's serious medical needs by denying Petitioner adequate medical care for his torn rotator cuff. Respondent gave the petitioner one pain shot for a torn rotator cuff injury which required three screws and sutures in Petitioner's shoulder muscles in order to repair the damage. Thereby, exposing the petitioner to four years of unnecessary pain and loss of function in Petitioner's left arm in violation of the petitioner's Eighth Amendment rights.

The district court granted summary judgment to Respondent on the misled belief that Petitioner's claim against Respondent was just a mere disagreement with the respondent's prescribed course of treatment, and the fact that the respondent gave the petitioner some form of treatment. The court of appeals affirmed the grant of summary judgment for the reasons stated by the district court.

BASIS FOR FEDERAL JURISDICTION

This case raises a question of an inmates right under the Eighth Amendment to the United States Constitution to receive adequate medical care for serious medical needs. The district court had jurisdiction under the general federal question jurisdiction conferred by 28 U.S.C. 1331.

REASONS FOR GRANTING THE WRIT

A. Conflicts with Decisions of Other Courts

The holding of the courts below that Respondent did not act with deliberate indifference to the petitioner's torn rotator cuff by denying Petitioner access to an orthopedic doctor capable of evaluating the need for surgery on the petitioner's torn rotator cuff is directly contrary to the holding of three federal circuits. See Hayes v. Snyder, 546 F.3d 516, 526 (7th Cir. 2008)(The fact that a general practitioner is unable to identify or document the cause of a patient's pain does not strike us as a reason to reject a request to see a specialist. But the very reason why a specialist would be called in is that a generalist is unable to identify the cause of a particular ailment); Petrichko v. Kurtz, 117 F. Supp. 2D 467, 471 (E.D. Pa. 2000) (Deliberate indifference may be inferred when a prison official delays necessary medical treatment for a non-medical reason; or prevents a prisoner from receiving medical treatment that was needed); Brown v. Hughes, 894 F.2d 1533, 1537 (11th Cir. 1990) (Deliberate indifference to a prisoner's serious medical needs violates the Eighth Amendment because denying or delaying medical treatment is tantamount to "unnecessary and wanton infliction of pain"). In addition, it even contradicts Tenth Circuit precedent which states that deliberate indifference to serious medical needs is shown when prison officials deny an inmate access to medical personnel capable of evaluating the need for treatment. Ramos v. Lamm, 639 F.2d 559, 575 (10th

Cir. 1980).

In addition, the holding of the courts below that respondent Cabiling did not act with deliberate indifference to the petitioner's injury merely because Respondent provided Petitioner with some form of treatment, despite the fact that it did not repair the damage to the petitioner's rotator cuff, is directly contrary to the holding of three federal circuits. See *Sulton v. Wright*, 265 F. Supp. 2D 292, 300 (S.D.N.Y. 2003) (Even if an inmate receives "extensive" medical care, a claim is stated if, as here, the gravamen of his problem is not addressed); *Hemmings v. Gorczyk*, 134 F.3d 104, 109 (2d Cir. 1998) (Receiving some medical attention even with two x-rays does not constitute adequate medical care or a lack of deliberate indifference); (*Ancata v. Prison Health Services, Inc.*, 769 F.2d 700, 704 (11th Cir. 1985) (Although the plaintiff has been provided with aspirin, this may not constitute adequate medical care);

Furthermore, by deciding that the act of Respondent Cabiling giving the petitioner nothing more than a pain shot for a medical condition which required arthroscopic surgery constitutes adequate medical care, instead of treatment so cursory as to amount to no treatment at all. The lower courts, contrary to the holding in *Frohmader v. Wayne*, resolved a disputed question of material fact in order to grant Respondent summary judgment thereby abusing their discretion. See *Frohmader v. Wayne*, 958 F.2d 1024, 1028 (10th Cir. 1992) (Courts may not resolve disputed questions of material fact in order to grant summary judgment).

B. Importance of the Questions Presented

This case presents the fundamental question, does the Constitution require that prison doctors provide inmates with reasonably adequate medical care for their serious

medical needs? Or does the Constitution permit prison doctors to violate the Eighth Amendment to the U.S. Constitution by intentionally exposing inmates to the “unnecessary and wanton” infliction of pain by denying them access to medical personnel capable of evaluating the need for specialized medical treatment? Does the Constitution require that prison doctors provide inmates with reasonably adequate medical care for their serious medical needs? Or does the Constitution permit prison doctors to be deliberately indifferent to an inmates serious medical needs by providing them with treatment so cursory as to amount to no treatment at all?

This case also presents the fundamental question, does the act of the lower courts resolving disputed questions of material fact in order to award respondent Cabiling summary judgment deprive Petitioner of his right to trial by jury in a civil case in violation of the Seventh Amendment to the Constitution of the United States?

The questions presented are of great public importance because it affects the medical care provided to inmates of the prison systems in all 50 states, the District of Columbia, and hundreds of city and county jails. It also affects an inmates Seventh Amendment right to trial by jury in a civil action under 42 U.S.C. § 1983. In view of the large amount of litigation over prison medical care claims, guidance on these questions are also of great importance to prisoners, because it affects their ability to receive reasonably adequate medical care for their serious medical needs, thereby alleviating years of unnecessary pain and suffering.

The importance of these issues are enhanced by the fact that the lower courts not only made a ruling that conflicts with the holdings in other federal circuits. But , they also made a decision that is contrary to the holdings in Ramos v. Lamm, 639 F.2d 559,

575; Kikumura v. Osagie, 461 F.3d 1269, 1295; and Frohmader v. Wayne, 958 F.2d 1024, 1028, which are controlling Tenth Circuit precedent on these very same issues.

The U.S. District Court for the District of Colorado erroneously held that “The evidence in this case, and plaintiff’s only allegation, is that Dr. Cabiling did not order an MRI when plaintiff requested one.” See Appendix B (B-12, ll. 13-15). This is not true. While Petitioner does allege that Respondent should have done an MRI in order to perform a proper examination of the petitioner’s rotator cuff tear because it did not show up on x-ray. This is not the basis of Petitioner’s claim against Respondent Cabiling. The basis of the petitioner’s claim against the respondent is that Respondent’s refusal to allow Petitioner to be evaluated by an orthopedic doctor capable of determining whether or not the petitioner needed surgery for his torn rotator cuff constitutes deliberate indifference to Petitioner’s serious medical needs. See Petitioner’s Appellate Brief attached as Appendix D (D12-14, ll. 3-19). Furthermore, Plaintiff’s Exhibits 38A and 38B; Appendix (D-19) and (D-20) are evidence which proves Petitioner’s claim that the respondent prevented the petitioner from receiving medically necessary surgery sooner by denying Petitioner access to an orthopedic doctor capable of evaluating the need for surgery on the Petitioner’s rotator cuff.

Petitioner also claims that Respondent acted with deliberate indifference to Petitioner’s injury by giving the petitioner a pain shot for a condition which required arthroscopic surgery thereby providing treatment so grossly inadequate and cursory as to amount to no treatment at all. See Appendix D (D12-14, ll. 3-19); see also Kikumura v. Osagie, 461 F.3d 1269, 1295 (10th Cir. 2006) (If the treatment provided is so cursory that it amounts to no treatment at all then it supports a claim of deliberate indifference).

Petitioner also claims that Respondent acted with deliberate indifference to the petitioner's serious medical needs by denying the petitioner adequate and timely medical care for his torn rotator cuff. See Appendix D (D12-D13, ll. 3-2). This amounts to more than a mere disagreement over a prescribed course of treatment. *Oxendine v. Kaplan*, 241 F.3d 1272, 1279 (10th Cir. 2001) (A prisoner's claim that he has been denied adequate and timely medical assistance does not reflect "mere disagreement with his medical treatment").

In the case at bar, on March 8, 2017 the petitioner fell from the ladder to his top bunk, fracturing his leg and tearing his bicep tendon and rotator cuff. See highlighted portion of Plaintiff's Exhibit 38A and 38B attached as Appendix D to this petition (D19-D20). Petitioner was examined by respondent Cabiling on March 20, 2017. During this examination Petitioner informed the respondent that the petitioner's rotator cuff was torn and that Petitioner would like to be evaluated by an orthopedic doctor to see if surgery was necessary to repair the damage to the petitioner's rotator cuff. Instead of taking Petitioner's statement that his rotator cuff was torn seriously and referring the petitioner to an orthopedic doctor to see if surgery was necessary.

Respondent Cabiling ignored the petitioner's request to be evaluated by an orthopedic doctor, told Petitioner that he would give the petitioner a cortisone shot for pain and nothing more; and then mocked Petitioner's statement that his rotator cuff was torn by stating "CLAIMS HE HAS ROTATOR CUFF TEAR" in his examination notes. See Plaintiff's Exhibit 25 attached as Appendix D to this petition (D18). As a physician Respondent would have known that Petitioner's torn shoulder tendons would most likely require surgery, and that extended delay in repairing the petitioner's tendons would

lessen Petitioner's chance for recovery. See *Benjamin v. Schwartz*, 299 F. Supp. 2D 196, 201 (S.D.N.Y. 2004)

Therefore, any reasonable fact finder can draw the inference that Respondent had subjective knowledge of the fact that there was a substantial risk of the petitioner suffering unnecessary pain caused by the delay in receiving surgery from the very fact that Respondent Cabiling even admits in his examination notes that Petitioner "CLAIMS HE HAS ROTATOR CUFF TEAR." And the respondent's intentional refusal to gain full knowledge of the severity of the petitioner's rotator cuff tear by refusing to have Petitioner examined by an orthopedic doctor capable of evaluating the severity of the petitioner's injury cannot relieve Respondent from liability. *Mata v. Saiz*, 427 F.3d 745, 752 (10th Cir. 2005) ("An official would not escape liability if the evidence showed that he refused to verify underlying facts that he strongly suspected to be true, or declined to confirm inferences of risk that he strongly suspected to exist."

Plaintiff's Exhibit 25 is inculpatory evidence in the record that clearly establishes that respondent Cabiling had subjective knowledge of the fact that there was a substantial likelihood that the petitioner would suffer substantial pain if Respondent did not refer Petitioner to an orthopedic doctor capable of evaluating the need for surgery on the petitioner's torn rotator cuff. Furthermore, an express intent to inflict unnecessary pain is not required to state a claim. *Whitley v. Albers*, 475 U.S. 312, 319 (1986). Also, the lower courts erroneously decided that Respondent Cabiling did not act with deliberate indifference to petitioner's injury by denying Petitioner access to an orthopedic doctor capable of evaluating the need for surgery on the petitioner's rotator cuff tear, thereby causing a four year delay in Petitioner receiving medically necessary surgery. This is

contrary to the holding in *Benjamin v. Schwartz* in which the Court ruled that a two year delay in arranging for the plaintiff to receive surgery on his torn rotator cuff constituted deliberate indifference. See *Benjamin v. Schwartz*, 299 F. Supp. 2D 196, 201 (S.D.N.Y. 2004).

In violation of an inmates Eighth Amendment right to be free from the “unnecessary and wanton” infliction of pain, courts have erroneously held that the decision to refer an inmate to a specialist, is a matter of medical judgment. *Estelle v. Gamble*, 429 U.S. 97, 107 (1976); *Ledoux v. Davies*, 961 F.2d 1536, 1537 (10th Cir. 1992). This Honorable Court should only apply that ruling in cases where surgery is not medically necessary. When surgery is medically necessary to properly and adequately treat a prisoner's serious medical need, and there is no medical reason to delay medically necessary surgery. Then this Honorable Court should apply the rule, that when necessary medical treatment has been delayed for non-medical reasons a case of deliberate indifference has been made out; otherwise this Honorable Court would be guilty of aiding prison doctors in exposing inmates to the “unnecessary and wanton” infliction of pain. See *Ancata v. Prison Health Services, Inc.*, 769 F.2d 700, 704 (11th Cir. 1985) (When necessary medical treatment....). Because there was no medical justification in Respondent's notes for denying the petitioner access to an orthopedic surgeon.

In order to meet minimally acceptable standards of health care, there must be at least 4 hours of on-site coverage every other week from an orthopedic surgeon. *Ramos v. Lamm*, 639 F.2d 559, 576 (10th Cir. 1980). Accordingly, for the petitioner to properly set forth an Eighth Amendment claim on which relief may be granted, he must set forth facts demonstrating that his alleged medical need, in this case the need for an outside medical

specialist, was 'sufficiently serious' to meet the objective element of the deliberate indifference test, and that the respondent's delay in meeting that need caused him "substantial harm." See *Oxendine v. Kaplan*, 241 F.3d 1272, 1276 (10th Cir. 2001).

In the case at bar Petitioner was physically handicapped due to the fact that he only had partial function of his left arm, and was in constant severe pain for nearly four years prior to surgery as a result of Respondent Cabiling denying him access to an orthopedic doctor capable of evaluating the need for surgery on the petitioner's torn rotator cuff. The only reason that the petitioner received surgery for his injury is because he purposely got enough COPD violations to get moved back to a State ran correctional facility where the doctor's performed a proper medical examination on Petitioner's rotator cuff; which revealed that the petitioner needed surgery to repair the damage to his shoulder. See Plaintiff's Exhibit 30 attached as Appendix D to this petition (D-21); see also (D19-20). If Petitioner did not receive surgery for his rotator cuff tear he would have been unable to obtain gainful employment upon his release from prison due to the loss of function in his left arm. Therefore, Petitioner meets the substantial harm requirement.

The lower court erroneously ruled that the record contains no evidence that Dr. Cabiling was unable to treat Mr. Reneau's shoulder or that the injury to his shoulder was so obvious that even a layman would recognize a rotator cuff tear. Appendix (A-13, ll. 9-11). This is not true. Plaintiff's Exhibits 38A and 38B (D19-D20) prove that Petitioner had to be sent to St. Thomas More Hospital in Canon City, CO to be operated on by, Dr. Keith Peter Minihane on February 4, 2021. If the respondent were able to treat the petitioner's shoulder then Petitioner would have been provided with Arthroscopic surgery by Respondent, instead of having to leave the facility to be treated. Furthermore, since the

respondent is a physician it is irrelevant whether or not a layman would recognize a rotator cuff tear. See *Hayes v. Snyder*, 546 F.3d 516, 523 (7th Cir. 2008) (For purposes of a prisoner's deliberate indifference claim regarding medical needs, the Eighth Amendments proscription against cruel and unusual punishment is not triggered only by conditions that a layperson would be able to diagnose and treat, especially when the defendant is not a layperson but is instead a physician).

Additionally, since the decision of whether or not to perform surgery on a torn rotator cuff falls within the scope of the duties of an orthopedic doctor and not those of a general practitioner. And since the respondent is a general practitioner and not an orthopedic doctor, Respondent's decision not to have surgery done on Petitioner's rotator cuff is not protected under the professional judgment standard as surgery is not the respondent's area of medical expertise. See *Collignon v. Milwaukee County*, 163 F.3d 982, 989 (7th Cir. 1998) (The professional judgment standard only applies to decisions made by professionals such as physicians, psychiatrists, and nurses acting within their area of professional expertise).

Therefore, since Plaintiff's Exhibits 38A and 38B , (D-19) and (D-20)prove that the petitioner needed to have his rotator cuff muscles sewn together and three screws placed in his shoulder to repair the damage to his shoulder. Any reasonable fact finder can draw the inference that Petitioner's need for an outside medical specialist was 'sufficiently serious'. And since there is no orthopedic surgeon that visits Crowley County Correctional Facility every other week as required in *Ramos*, *supra*. Nor is the respondent an orthopedic surgeon. Since Respondent knows he is not medically trained to perform rotator cuff surgery on the petitioner; the lower courts should have ruled that Respondent

acted with deliberate indifference to the petitioner's torn rotator cuff by unnecessarily refusing to refer Petitioner to an orthopedic surgeon. See *Self v. Crum*, 439 F.3d 1227, 1232 (10th Cir. 2006) (A claim is actionable where the need for additional treatment and referral to a medical specialist is obvious. One context is when a medical professional recognizes an inability to treat the patient due to the seriousness of the condition and his corresponding lack of expertise but nevertheless declines referral).

The lower courts erroneously ruled that Respondent Cabling did not act with deliberate indifference to the petitioner's rotator cuff injury merely because the respondent gave Petitioner some form of treatment, with two x-rays. Appendix (A13, ll. 11-12); (B-12, ll. 13-17). However, receiving some medical attention even with two x-rays does not constitute adequate medical care or a lack of deliberate indifference. *Hemmings v. Gorczyk*, 134 F.3d 104, 109 (2d Cir. 1998). Also, Petitioner is not required to show that the respondent literally ignored his request for medical care. *Greeno v. Daley*, 414 F.3d 645, 653 (7th Cir. 2005) (To prevail on an Eighth Amendment claim "a prisoner is not required to show that he was literally ignored").

The lower courts missed this critical distinction, concluding that the petitioner's claim failed because "his complaint was not ignored." Likewise, the lower courts erred by concluding that petitioner's claim fails because he received some treatment overlooks the possibility that the treatment Petitioner did receive was "so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate" his condition. *Greeno*, 414 F.3d at 654. Significantly, the deliberate indifference standard applies to the decisions of prison medical personnel as to what medical care a prisoner requires. *Collignon*, 163 F.3d at 989. Prisoner's have an Eighth Amendment right to adequate

medical treatment. Oxendine, 241 F.3d at 1276. Giving a prisoner pain medication alone for a condition that requires surgery does not by any means constitute adequate medical care. See *Ancata v. Prison Health Services, Inc.*, 769 F.2d 700, 704 (11th Cir. 1985) (Although the plaintiff has been provided with aspirin, this may not constitute adequate medical care).

Given knowledge of the fact that the cortisone shot Petitioner received from Respondent Cabiling only temporarily eased the petitioner's pain, but did nothing to repair the damage to Petitioner's rotator cuff or permanently ease the petitioner's pain. Any reasonable fact finder can also draw the inference that the respondent chose to provide Petitioner with an "easier and less efficacious treatment" than surgery. Therefore, the lower courts should have also held that Respondent acted with deliberate indifference to the petitioner's injury by providing him with an "easier and less efficacious treatment." Id. (If "deliberate indifference caused an easier and less efficacious treatment" to be provided, the defendants have violated the plaintiff's Eighth Amendment rights by failing to provide adequate medical care).

Additionally, since the gravamen of the petitioner's medical problem was a rotator cuff tear, and the cortisone shot given to Petitioner by the respondent did nothing to repair this tear the lower courts in this case should have held that Respondent acted with deliberate indifference to the petitioner's serious medical needs by failing to address the gravamen of Petitioner's medical problem. See *Sulton v. Wright*, 265 F. Supp. 2D 292, 300 (S.D.N.Y. 2003) (Even if an inmate receives "extensive" medical care, a claim is stated if, as here, the gravamen of his problem is not addressed).

And last, but not least, since Plaintiff's Exhibits 38A and 38B; (D-19) (D-20) and

prove that the petitioner required the comprehensive surgical procedure he received in order to repair the damage to his shoulder any reasonable fact finder can easily draw the inference that the treatment provided to Petitioner by Respondent Cabiling was so cursory as to amount to no treatment at all. Therefore, the lower courts should also have held that the respondent acted with deliberate indifference to the petitioner's injury by providing Petitioner with a form of treatment so cursory and inadequate as to amount to no treatment at all. *Kikumura v. Osagie*, 461 F.3d 1269, 1295 (10th Cir. 2006) (If the treatment provided is so cursory that it amounts to no treatment at all then it supports a claim of deliberate indifference).

Also the lower court cites *Self v. Crum* at 1235 stating "Summary judgment requires more than mere speculation. It requires some evidence, either direct or circumstantial, that the practitioner knew about and consciously disregarded the risk. Appendix (A-13, ll. 16-18). However, Respondent clearly acknowledges and admits in his examination notes on March 20, 2017 "CLAIMS HE HAS ROTATOR CUFF TEAR." Appendix (D-18). This is clearly direct evidence that the respondent knew about the petitioner's rotator cuff tear and acted with deliberate indifference to the severity of Petitioner's injury by refusing to have the petitioner examined by an orthopedic doctor capable of evaluating the need for surgery. Therefore, it was clearly an abuse of discretion for the lower court to rule that there was no evidence to prove Respondent knew about the petitioner's rotator cuff tear.

C. Denial of Seventh Amendment Right to Trial by Jury

The lower courts erroneously held that the act of Respondent denying the petitioner access to medical personnel capable of evaluating the need for medically

necessary surgery on Petitioner's did not constitute deliberate indifference. Appendix (B11-12, ll. 22-1). The lower courts also erroneously held that the act of Respondent Cabiling giving the respondent a pain shot for a condition that required arthroscopic surgery constitutes adequate medical care. Appendix (A-13, ll. 11-12); (B-12, ll. 13-17). However, the Seventh Amendment to the United States Constitution preserves the right to trial by jury in a civil action where the value in controversy exceeds twenty dollars. The petitioner even demanded a jury trial in the caption of his Complaint in this instant case.

As to the question of does the act of Respondent Cabiling giving the petitioner a shot for a condition which required arthroscopic surgery constitute adequate medical care for Petitioner's condition? Or does it constitute medical care so cursory as to amount to no treatment at all? This is an issue of material fact that should have been decided by a jury after hearing expert medical testimony at trial. This issue should not have been decided by either of the lower courts. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) (the weighing of evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge); see also *Smallwood v. Renfro*, 708 F. Supp. 182, 187 (N.D.Ill. 1989) (Because a factual dispute exists as to the seriousness of the injury, a jury should decide the issue).

Additionally, as to whether or not the respondent denying Petitioner medically necessary surgery through the act of denying him access to an orthopedic doctor capable of evaluating the need for surgery constitutes deliberate indifference is another issue of material fact that should have been decided by a jury and not the lower courts since the petitioner demanded a jury trial. *Brown v. Briick*, 1996 U.S. Dist. LEXIS 13695, *10

(Whether the acts of each individual defendant in fact constitute deliberate indifference is a question for the jury).

By ruling that the act of the respondent giving the petitioner a shot for a condition which required surgery did not constitute deliberate indifference. And by ruling that the act of Respondent denying Petitioner access to medical personnel capable of evaluating the need for medically necessary surgery does not constitute deliberate indifference. The lower courts resolved disputed questions of material fact in order to grant Respondent Cabiling summary judgment, thereby abusing their discretion, and depriving the petitioner of his Seventh Amendment right to trial by jury. See *Frohmader v. Wayne*, 958 F.2d 1024, 1028 (10th Cir. 1992) (Courts may not resolve disputed questions of material fact in order to grant summary judgment).

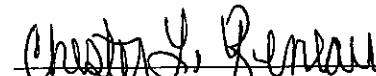
Therefore, this Honorable Court should correct the erroneous rulings of the lower courts and make it clear that denying an inmate access to medical personnel capable of evaluating the need for medically necessary surgical treatment constitutes deliberate indifference. *Ramos v. Lamm*, 639 F.2d 559, 575 (10th Cir. 1980) (Deliberate indifference to serious medical needs is shown when prison officials deny an inmate access to medical personnel capable of evaluating the need for treatment). This Honorable Court should also make it clear that providing an inmate with treatment so cursory as to amount to no treatment at all constitutes deliberate indifference to serious medical needs. *Kikumura v. Osagie*, 461 F.3d 1269, 1295 (10th Cir. 2006) (If the treatment provided is so cursory that it amounts to no treatment at all then it supports a claim of deliberate indifference). And, last but not least, this Honorable Court should also make it clear that courts may not resolve disputed questions of material fact in order to grant summary judgment.

Frohmader v. Wayne, 958 F.2d 1024, 1028 (10th Cir. 1992).

CONCLUSION

WHEREBY, for the above stated reasons, the Petition for a Writ of Certiorari should be granted in this case.

Respectfully submitted this


Chester Lee Reneau #156770
Crowley County Correctional Facility
P.O. Box 100
Olney Springs, CO 81062

CERTIFICATE OF SERVICE

I, the petitioner, Chester Lee Reneau, certify under penalty of perjury that on June 22, 2021 pursuant to Supreme Court Rule 29 I placed a true and correct copy of the foregoing MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI in the outgoing facility legal mail system at Crowley County Correctional Facility to be mailed via U.S. Mail System, postage prepaid to the following:

Supreme Court of the United States
1 1st St., NE
Washington, D.C. 20543

Edmund M. Kennedy
1001 Seventeenth Street, Suite 300
Denver, CO 80202

