A P P E N D I X A

Decision of the
United States Court of Appeals for the Seventh Circuit

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted June 29, 2021*
Decided June 30, 2021

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 20-1439

KEVIN HALL,
Plaintiff-Appellant

v.

KUL SOOD, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court for the Central District of Illinois.

No. 17-4248-CSB

Colin S. Bruce,
Judge.

ORDER

Kevin Hall sued medical professionals at the Henry Hill Correctional Center in Galesburg, Illinois, and the prison's healthcare contractor, Wexford Health Sources Inc., under 42 U.S.C. § 1983. He claimed a violation of his Eighth Amendment rights based on their allegedly inadequate treatment of his left bicep tear and arm pain while he was

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

a prisoner there. The district court ultimately granted the defendants' motion for summary judgment, and we affirm.

We recount the facts in the light most favorable to Hall. *See Murphy v. Wexford Health Sources Inc.*, 962 F.3d 911, 913 (7th Cir. 2020). Hall first complained of tingling and numbness in his upper extremities in mid-2011. Dr. Kul Sood examined him and prescribed a 30-day course of gabapentin and acetaminophen. That December, Hall injured himself doing bicep curls, and Dr. Sood diagnosed a possible tear to Hall's left bicep, which an x-ray confirmed. Hall's arm improved for a while, but the pain came back. In March 2013, Hall complained of tingling and numbness in his right arm, and again reported left-arm pain in February 2014. Both times, Dr. Sood noted a normal grip and range of motion. He prescribed gabapentin for the tingling and ibuprofen and carbamazepine for the pain.

Hall's arm pain flared again in 2015. After examining Hall in October, Dr. Sood again noted a normal range of motion and prescribed a vitamin supplement and acetaminophen in addition to Hall's existing pain medication. When Hall continued to report pain, Dr. Sood increased his ibuprofen dosage and discontinued a cholesterol medication known to cause muscle pain. Then, in June 2016, Dr. Sood reinstated ibuprofen after Hall said that meloxicam, which another provider had substituted for the ibuprofen, did not alleviate his pain.

Dr. Catalino Bautista first saw Hall in August 2016, when Hall reported two years of left-arm pain and one year of right-arm pain. Dr. Bautista observed a mostly normal range of motion but limited abductive ability in Hall's left shoulder. He ordered physical therapy and independent exercises with therapy putty, which Wexford administrators approved five days later. Soon, however, a nurse, Leola Parrish, advised him that prison officials had banned the putty due to security concerns, but that Dr. Bautista said he could use a balled-up piece of clothing the same way.

After observing limited mobility in Hall's right shoulder at an October 2016 appointment, Dr. Bautista recommended an orthopedic evaluation, which Wexford administrators approved on November 2. A week later, Dr. Bautista suspended Hall's physical therapy because two nurses, Sara Faetanini and Paula Young, reported that Hall was reading a magazine during a session.

On November 18, the orthopedic surgeon who examined Hall recommended an MRI, a muscle test, and a nerve test, which Dr. Stephen Ritz, a Wexford administrator, approved. After testing, the surgeon diagnosed Hall with a chronic torn right rotator

cuff and carpal tunnel syndrome in both hands. Hall had right-arm surgery for these conditions in December 2016. When he returned to the prison, he stayed in the infirmary, where Parrish, who lacked prescribing authority, administered Hall's post-surgery medications. Hall complained that they did not alleviate his pain, so Dr. Bautista changed them.

When Hall was discharged the next month, Dr. Bautista continued the pain medications, ordered a medical cuff, and recommended follow-up physical therapy and orthopedic evaluation, which administrators again approved. Hall was evaluated and scheduled for surgery to address the carpal tunnel syndrome in his left hand.

Hall appeared to recover steadily from the surgeries until April 2017, when he saw Dr. Bautista for left bicep pain, which Hall said dated back to his 2011 weight-lifting injury. Dr. Bautista diagnosed a prior bicep rupture and referred him to the regional medical director, who ordered x-rays. The pain continued, and Dr. Bautista prescribed more medication and ordered another follow-up visit. By November 2017, however, Hall reported that nothing Dr. Bautista had prescribed alleviated his pain.

Hall then brought this deliberate-indifference suit against numerous defendants. After screening, the district court allowed Hall to proceed against doctors Sood and Bautista; nurses Parrish, Faetanini, and Young; administrator Ritz; and Wexford. Hall alleged that since September 2015,[1] the defendants provided insufficient treatment for his pain after their prescriptions proved ineffective and unduly delayed more aggressive treatment, including surgery, causing him permanent injury.

The defendants moved for summary judgment, and the district court granted their motion. We review that decision de novo, drawing all reasonable inferences in Hall's favor. *Gill v. Scholz*, 962 F.3d 360, 363 (7th Cir. 2020). To avoid summary judgment, Hall needed to present evidence that the defendants knew of and disregarded a serious risk to his health. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994);

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[1] On appeal, Hall contends that his claims date back to 2011 and have been artificially limited by the defendants and the district court. But in his complaint and his deposition testimony, he asserted malfeasance from 2015 on, and that is how the record was developed at summary judgment. Further, the statute of limitations (which we borrow from state law in § 1983 cases, *see Wilson v. Garcia*, 471 U.S. 261, 276 (1985)) is two years, 735 ILCS 5/13-202, and Hall makes no legal argument why claims about conduct before 2015 are not barred in this 2017 lawsuit, so we do not discuss them.

Petties v. Carter, 836 F.3d 722, 728 (7th Cir. 2016) (en banc). He also needed evidence that the actions he challenges caused harm. *Lord v. Beahm*, 952 F.3d 902, 905 (7th Cir. 2020).

With respect to the judgment for doctors Sood and Bautista, Hall first argues that they each continued ineffective treatment despite knowing that it did nothing to help him. A prison doctor's persistence in a course of treatment known to be ineffective is a departure from minimally competent medical judgment, and therefore evidence of deliberate indifference. *See Petties*, 836 F.3d at 729–30. Although Hall sees his continuing pain as evidence that the doctors' treatment was constitutionally inadequate, the record contains no evidence that they used anything but their professional judgment when treating him. *See id* at 728. The doctors adjusted Hall's prescriptions—altering dosages or choosing new medications—when he complained that they did nothing, or when, as in the case of acetaminophen, it caused constipation. They did not, therefore, "continue" the same ineffective treatment. Further, the record shows that the doctors' prescriptions and therapeutic orders were consistent with generally accepted medical practices. *See Pyles v. Fahim*, 771 F.3d 403, 409 (7th Cir. 2014). Hall provided no evidence that his course of treatment was a departure from medical judgment, let alone an extreme one.

Relatedly, Hall contends that the doctors unduly delayed medically necessary treatment for his arm pain and numbness; he believes they should have immediately ordered MRIs and surgery. But Hall presents no evidence that either doctor unduly prolonged his pain, or that any delay resulted from ill intent, as he must to prevail on a deliberate indifference claim based on delayed treatment. *Burton v. Downey*, 805 F.3d 776, 771 (7th Cir. 2015); *see also Williams v. Liefer*, 491 F.3d 710, 714–15 (7th Cir. 2007). The record shows that the doctors timely responded to Hall's complaints and escalated treatment over time. At his 2015 visits, Dr. Sood addressed Hall's arm pain by testing his range of motion and adjusting his pain medication based on Hall's complaints. Dr. Bautista also treated Hall promptly: He ordered physical therapy and home exercise, recommended the orthopedic visits that led to surgery, and remained responsive to Hall's condition during his surgery recovery. None of this is consistent with impermissible delay. *See Harper v. Santos*, 847 F.3d 923, 927 (7th Cir. 2017).

Hall also protests the entry of summary judgment for Parrish, who informed him of the ban on exercise putty and who administered the ineffective post-surgery pain medication. But neither of these actions show that Parrish recklessly disregarded Hall's medical needs. *See Petties*, 836 F.3d at 728. On both occasions, she was following doctors' instructions: She relayed Dr. Bautista's suggestion of using balled-up clothing instead of the banned putty, and she administered pain medication as prescribed, informing Hall

that she had no authority to prescribe anything different. With respect to these actions, therefore, she was not personally responsible for Hall's treatment. *See Williams v. Shah*, 927 F.3d 476, 482 (7th Cir. 2019).

Hall next contends that nurses Faetanini and Young deliberately interfered with his treatment by getting his physical therapy suspended. But all they did was report that he was reading at his therapy appointment. Even if we assigned them personal responsibility for Dr. Bautista's decision to suspend the therapy, *see id.*, Hall has not shown that stopping the sessions nine days before his orthopedic evaluation—which led to different treatment—caused him any harm. *See Gabb v. Wexford Health Sources, Inc.*, 945 F.3d 1027, 1032 (7th Cir. 2019).

Hall also argues that Ritz, the Wexford administrator, knew of Hall's serious medical condition and impermissibly delayed his treatment. But because the doctors' recommendations were approved shortly after they were submitted, Hall has no evidence that there was any injurious delay from the approval process, much less that Ritz had the required culpability for deliberate indifference. *See Burton*, 805 F.3d at 785.

Hall cannot prevail on his claim against Wexford, either. Wexford cannot be vicariously liable for the constitutional violations of its employees. *Shields v. Illinois Dept. of Corr.*, 746 F.3d 782, 789 (7th Cir. 2014). Instead, Hall must show that a Wexford policy or practice enabled a constitutional deprivation. *Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978). But Hall lacks evidence that any underlying constitutional violation occurred, *see Pyles*, 771 F.3d at 412, or that Wexford's approval process for specialist referrals and procedures—which proceeded quite swiftly in this case—slowed down his treatment and resulted in any injury. *See Gabb*, 945 F.3d at 1032.

Finally, Hall mentioned in his opening brief the denials of his motions for attorney representation, but he did not develop any argument that the district court applied the wrong standard or otherwise erred. Therefore, we have no basis for reviewing the decisions. *See Milligan v. Bd. of Tr. of S. Ill. Univ.*, 686 F.3d 378, 386 (7th Cir. 2012); *Wragg v. Vill. of Thornton*, 604 F.3d 464, 467–68 (7th Cir. 2010).

AFFIRMED

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

FINAL JUDGMENT

June 30, 2021

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 20-1439	KEVIN HALL, Plaintiff - Appellant v. KUL SOOD, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 4:17-cv-04248-CSB Central District of Illinois District Judge Colin S. Bruce	

The judgment of the District Court is **AFFIRMED**, with costs, in accordance with the decision of this court entered on this date.

form name: **c7_FinalJudgment** (form ID: **132**)

A P P E N D I X B

Decision of the
U.S. District Court, Central Dist., Springfield Div.

E-FILED
Friday, 06 March, 2020 00:45:35 PM
Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT

for the
Central District of Illinois

Kevin Hall	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case Number: 17-4248**
	)	
Stephanie Dorethy, Dr. Kul B. Sood, Catalino Bautista, Ritz, Ruth Brown, Lois Lindorff, Paula Young, Sara Faetavini, Wexford Health Sources Inc, Dan Dean, Lola Parrish.	)	
	)	
Defendant.	)	

JUDGMENT IN A CIVIL CASE

☐ **JURY VERDICT**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **DECISION BY THE COURT**. This action came before the Court, and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that Plaintiff Kevin Hall's action against Defendants Stephanie Dorethy, Dr. Kul B. Sood, Catalino Bautista, Ritz, Ruth Brown, Lois Lindorff, Paula Young, Sara Faetavini, Wexford Health Sources Inc, Dan Dean and Lola Parrish is dismissed with each part to bear their own costs.

Dated: 3/6/2020

s/ Shig Yasunaga
Shig Yasunaga
Clerk, U.S. District Court

E-FILED
Monday, 30 March, 2020 00:43:50 PM
Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

KEVIN HALL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No.: 17-4248-CSB**
	)	
	)	
STEPHANIE DORETHY, *et al.*,	)	
	)	
Defendants.	)	

ORDER

COLIN S. BRUCE, U.S. District Judge:

This cause is before the Court on Defendants' motion for summary judgment. As explained more fully below, Defendants are entitled to the summary judgment because Plaintiff Kevin Hall has failed to identify a genuine issue of material fact that would preclude summary judgment in Defendants' favor and because Defendants have demonstrated that they are entitled to judgment as a matter of law.

I.
MATERIAL FACTS

Plaintiff Kevin Hall is an inmate with the Illinois Department of Corrections ("IDOC") who is currently being housed in the IDOC's Dixon Correctional Center. However, the factual allegations that form the basis for this suit occurred when Hall was incarcerated at the IDOC's Henry Hill Correctional Center ("Hill").

The individually named Defendants were each employed by Defendant Wexford Health Sources, Inc. Each individual worked at Hill during the relevant time, *i.e.*, between September 3, 2015 and August 25, 2017, and are medical professionals.

Wexford is a private corporation that maintains a contract with the IDOC to provide medical care and medical services to IDOC inmates.

On June 13, 2011, Defendant Dr. Sood examined Hall for complaints of numbness and tingling in his extremities. Hall also complained to Dr. Sood about ankle pain related to an old ankle injury. Accordingly, Dr. Sood ordered an X-ray of Hall's ankle, prescribed Tylenol #3, and prescribed Neurontin to treat his complaints of numbness and tingling in his upper extremities.

On December 5, 2011, Dr. Sood examined Hall for a recent weight-lifting injury where Hall reported that he felt something pull in his left arm while he was doing bicep curls. Dr. Sood believed that Hall had possibly torn his bicep. Accordingly, Dr. Sood ordered that Hall receive a sling, ordered an X-ray of his arm, and advised Hall not to perform any more bicep curls. On December 21, 2011, Dr. Sood advised Hall that he had, in fact, torn his bicep. Dr. Sood, then, issued an order that Hall be allowed to wear his sling for six weeks and wrote an order that allowed Hall to be front cuffed for six weeks in order to prevent further injury.

On March 19, 2013, Dr. Sood examined Hall based upon his recent complaints of numbness and tingling in his upper extremities.[1] Upon examination, Dr. Sood found that Hall's right arm had normal range of motion, that his grip was normal, that the range of motion in his elbow was normal, and that his shoulder range of motion was

[1] Although Hall had seen medical professionals, including Dr. Sood, during the interim for other medical complaints and issues, March 19, 2013, was the first time since June 13, 2011, that Hall had complained of numbness and tingling in his upper extremities.

normal. Dr. Sood prescribed Motrin and Neurontin at the conclusion of his examination.

Dr. Sood examined Hall left elbow on February 6, 2014. During the examination, Dr. Sood determined that Hall's hand grip was good and that his elbow and hand's range of motion were within normal limits. Dr. Sood prescribed Tegretol to treat Hall's nerve pain.

On September 3, 2015, Hall was examined by a nurse for complaints of arm pain. On October 8, 2015, Dr. Sood examined Hall and found that Hall displayed normal hand grasp and normal range of motion in his shoulder and elbow. Dr. Sood determined that Hall had upper extremity pain, and therefore, Dr. Sood directed Hall to continue taking Motrin and Tegretol. Dr. Sood also prescribed a B6 vitamin supplement to maintain a healthy nervous and immune system. Dr. Sood last examined Hall on June 22, 2016.

On August 19, 2016, Defendant Dr. Bautista examined Hall based upon his complaints of numbness and tingling in his left hand and based upon his complaints of right upper arm pain that began with numbness in his right hand. Upon examination, Dr. Bautista observed that Hall had passive full range of motion in his shoulders, but Hall had limited active abduction in his left shoulder because of pain in his bicep and tricep areas. Dr. Bautista diagnosed Hall has having right upper arm pain, left hand numbness, and right arm numbness. Accordingly, Dr. Bautista ordered physical therapy and a home exercise plan for Hall, which were approved on August 24, 2016.

On October 12, 2016, Dr. Bautista had a follow-up visit with Hall. At this visit, Hall reported that he had been performing the exercises and stretches given to him, but he also reported left shoulder issues with flexion and abduction and left-hand numbness that began in February 2016. On November 2, 2016, Hall was approved, at Dr. Bautista's request, for an orthopedic evaluation by a doctor outside of the IDOC.

On November 18, 2016, Hall was examined by an orthopedic surgeon. The orthopedic surgeon recommended that Hall receive an MRI of his right shoulder and an EMG and NCV test of his upper extremities. The orthopedic surgeon also recommended that Hall take Naproxen twice daily. After Hall received these medical tests, the orthopedic surgeon assessed Hall with a chronic torn rotator cuff and bilateral carpal tunnel syndrome.

On December 29, 2016, Hall underwent rotator cuff repair surgery and carpal tunnel release surgery. On January 6, 2017, the surgical staples were removed from Hall's shoulder, and Hall was instructed to begin strengthening and range of motion exercised for his shoulder. On January 13, 2017, the sutures on Hall's right wrist were removed.

On February 3, 2017, Hall wax examined, again, by the orthopedic surgeon—this time for complaints regarding Hall's left wrist. The orthopedic surgeon recommended that Hall undergo carpal tunnel release surgery because the surgery on his right wrist and left shoulder had healed properly. On February 16, 2017, Hall received this surgery. On March 3, 2017, the sutures from his left wrist were removed. On March 7,

2017, Dr. Bautista examined Hall, and Hall reported that he no longer was experiencing tingling in his left hand after the recent surgery.

On April 6, 2017, Dr. Bautista saw Hall for complaints regarding his left bicep. Hall reported that he had "ripped" his left bicep in 2011 while lifting weights. Hall explained that his pain was at the medial anterior elbow area and was worse at night. Dr. Bautista noted that Hall did have left elbow tenderness at the anterior medial area. Dr. Bautista also noted that, when Hall flexed his left arm, Hall had a distal bulge of his bicep followed by depressed area. Accordingly, Dr. Bautista prescribed an ace wrap and Ibuprofen for Hall. Dr. Bautista informed Hall that he would discuss Hall's condition with the regional medical director for further treatment options.

On May 2, 2017, Hall was examined by the regional medical director who assessed Hall with left elbow epicondylitis (*i.e.*, tennis elbow) and with an old bicep tendon or muscle tear. The regional medical director ordered that Hall receive an X-ray of his arm. Thereafter, Dr. Bautista treated Hall's pain with prescription medication and ordered that Hall receive physical therapy.

On August 28, 2017, Hall filed this suit under 42 U.S.C. § 1983, alleging that the named Defendants violated his Constitutional rights. Thereafter, the Court conducted a merit review of Hall's Complaint, that is required by 28 U.S.C. § 1915A, and determined that Hall's Complaint stated a claim for deliberate indifference to his serious medical needs in violation of his Eighth Amendment rights. Defendants have now moved for summary judgment on Hall's claim against them. Additional facts will be included as necessary.

II.
STANDARDS GOVERNING SUMMARY JUDGMENT

Federal Rule of Civil Procedure 56(a) provides that summary judgment shall be granted if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a); *Ruiz-Rivera v. Moyer*, 70 F.3d 498, 500-01 (7th Cir. 1995). The moving party has the burden of providing proper documentary evidence to show the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). Once the moving party has met its burden, the opposing party must come forward with specific evidence, not mere allegations or denials of the pleadings, which demonstrates that there is a genuine issue for trial. *Gracia v. Volvo Europa Truck, N.V.*, 112 F.3d 291, 294 (7th Cir. 1997). "[A] party moving for summary judgment can prevail just by showing that the other party has no evidence on an issue on which that party has the burden of proof." *Brazinski v. Amoco Petroleum Additives Co.*, 6 F.3d 1176, 1183 (7th Cir. 1993).

Accordingly, the non-movant cannot rest on the pleadings alone, but must designate specific facts in affidavits, depositions, answers to interrogatories or admissions that establish that there is a genuine triable issue; he must do more than simply show that there is some metaphysical doubt as to the material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 261 (Brennan, J., dissenting) (1986)(quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)); *Hot Wax, Inc. v. Turtle Wax, Inc.*, 191 F.3d 813, 818 (7th Cir. 1999). Finally, a scintilla of evidence in support of the non-movant's position is not sufficient to oppose successfully a summary judgment

motion; "there must be evidence on which the jury could reasonably find for the [non-movant]." *Anderson*, 477 U.S. at 252.

III.
DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT

Before turning to Defendants' motion for summary judgment, the Court notes that Hall has filed an affidavit in support of his response to their motion for summary judgment in which he attempts to demonstrate the existence of a material question of fact that would preclude summary judgment in Defendants' favor. However, Hall's affidavit attempts to create questions of fact by offering testimony that contradicts his testimony offered during his deposition. As such, the Court will not consider Hall's testimony contained within his affidavit to the extent that it contradicts his deposition testimony. *Cesario v. Jewel Food Stores, Inc.*, 2020 WL 996498, * 2 (N.D. Ill. Mar. 2, 2020) (quoting *Bank of Illinois v. Allied Signal Safety Restraint Systems*, 75 F.3d 1162, 1168 (7th Cir. 1996)("parties cannot circumvent the purpose of summary judgment 'by creating 'sham' issues of fact with affidavits that contradict their prior depositions.'"). "A court may disregard new sworn testimony when it 1) contradicts that same witness's earlier sworn testimony and 2) fails to explain the contradiction or resolve any disparities. *Id.*

Likewise, the Court will not consider Hall's testimony to the extent that his testimony constitutes expert medical testimony or constitutes a legal conclusion. Hall has no medical training (he testified that his highest level of education was the eleventh grade), and therefore, Hall cannot offer a medical opinion because he is unqualified to do so. Fed. R. Evid. 702; *Walker v. Zunker*, 30 Fed. Appx. 625, 628 (7th Cir. 2002)

("[w]ithout any medical evidence of inadequate treatment, a prisoner's self-serving opinion of the quality of treatment is insufficient to raise a genuine issue of material fact"); *Goffman v. Gross*, 59 F.3d 668, 672 (7th Cir. 1995)(" Goffman asserts that surely the testimony of these inmates is entitled to at least as much weight and reliability as Dr. Khan's. But the medical effects of secondhand smoke are not within the ken of the ordinary person, so these inmates' lay testimony by itself cannot establish the showing of medical causation necessary to sustain Goffman's claim."). With that said, the Court will turn to Defendants' motion for summary judgment.

Persons acting under the color of law violate the Constitution if they are deliberately indifferent to a prisoner's serious medical needs, serious mental health needs, or serious dental needs. *Arnett v. Webster*, 658 F.3d 742, 750 (7th Cir. 2011)(citing *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)); *Rodriguez v. Plymouth Ambulance Serv.*, 577 F.3d 816, 828 (7th Cir. 2009)("Deliberate indifference to serious medical needs of a prisoner constitutes the unnecessary and wanton infliction of pain forbidden by the Constitution."). The deliberate indifference standard requires a plaintiff to clear a high threshold in order to maintain a Constitutional claim. *Dunigan ex rel. Nyman v. Winnebago County*, 165 F.3d 587, 590 (7th Cir. 1999).

"In order to prevail on a deliberate indifference claim, a plaintiff must show (1) that his condition was 'objectively, sufficiently serious' and (2) that the . . . officials acted with a sufficiently culpable state of mind." *Lee v. Young*, 533 F.3d 505, 509 (7th Cir. 2008) (quoting *Greeno v. Daley*, 414 F.3d 645, 652 (7th Cir. 2005)); *Duckworth v. Ahmad*, 532 F.3d 675, 679 (7th Cir. 2008)(same).

"A medical condition is serious if it 'has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would perceive the need for a doctor's attention.'" *Lee*, 533 F.3d at 509 (quoting *Greeno*, 414 F.3d at 653). "With respect to the culpable state of mind, negligence or even gross negligence is not enough; the conduct must be reckless in the criminal sense." *Id.*; *Farmer v. Brennan*, 511 U.S. 825, 836-37 (1994)("We hold . . . that a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of harm exists, and he must also draw the inference.").

"Deliberate indifference is not medical malpractice; the [Constitution] does not codify common law torts. And although deliberate means more than negligent, it is something less than purposeful. The point between these two poles lies where the official knows of and disregards an excessive risk to inmate health or safety or where the official is both aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he . . . draws the inference." *Duckworth*, 532 F.3d at 679 (internal quotations and citations omitted). The Seventh Circuit has cautioned, however, that a plaintiff "need not prove that the . . . officials intended, hoped for, or desired the harm that transpired. Nor does a [plaintiff] need to show that he was literally ignored. That the [plaintiff] received some treatment does not foreclose his deliberate indifference claim if the treatment received was so blatantly inappropriate

as to evidence intentional mistreatment likely to seriously aggravate his condition." *Arnett*, 658 F.3d at 751 (internal citations and quotations omitted).

In the instant case, Defendants do not deny that Hall suffered from a serious medical condition or a serious medical need that would engender the protections of the Eighth Amendment. As the undisputed evidence demonstrates, Defendants and other medical specialists examined Hall and provided medical care, treatment, and surgeries to him over a two-year period. Therefore, it is clear to the Court that Hall suffered from a serious medical condition, and therefore, he has satisfied the first inquiry necessary for his Eighth Amendment claim.

However, the undisputed evidence also shows that Hall has not raised a question of fact that would preclude summary judgment with regard to the second element of his Eighth Amendment claim. Contrary to the allegations of his Complaint, the undisputed facts establish that none of the named Defendants acted with deliberate indifference towards Hall's medical needs. Instead, the facts show that Hall received medical attention each time that he sought it, and the mere fact that Hall's pain related to his injuries was not immediately and forever resolved does not *ipso facto* mean that any Defendant acted with deliberate indifference. As the Seventh Circuit has noted: "It would be nice if after appropriate medical attention pain would immediately cease, its purpose fulfilled; but life is not so accommodating. Those recovering from even the best treatment can experience pain. To say the Eighth Amendment requires prison doctors to keep an inmate pain-free in the aftermath of proper medical treatment would

be absurd." *Snipes v. DeTella*, 95 F.3d 586, 592 (7th Cir. 1996). Accordingly, Defendants are entitled to summary judgment.

A. Dr. Ritz

Hall's claim against Dr. Ritz is easily resolved. Dr. Ritz was on the utilization management team that provided collegial discussions of and approval for Hall's medical treatment. Dr. Ritz had no personal, direct involvement in Hall's medical care, and Dr. Ritz had no personal interactions with Hall.

"[I]ndividual liability under § 1983 requires 'personal involvement in the alleged constitutional deprivation.'" *Minix v. Canarecci*, 597 F.3d 824, 833 (7th Cir. 2010)(quoting *Palmer v. Marion County*, 327 F.3d 588, 594 (7th Cir. 2003)). The Seventh Circuit has explained that the doctrine of *respondeat superior* (a doctrine whereby a supervisor may be held liable for an employee's actions) has no application to § 1983 actions. *Gayton v. McCoy*, 593 F.3d 610, 622 (7th Cir. 2010).

Instead, in order for a supervisor to be held liable under § 1983 for the actions of his subordinates, the supervisor must "approve[] of the conduct and the basis for it." *Chavez v. Illinois State Police*, 251 F.3d 612, 651 (7th Cir. 2001); *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995)("An official satisfies the personal responsibility requirement of section 1983 . . . if the conduct causing the constitutional deprivation occurs at [his] direction or with [his] knowledge and consent.")(internal quotation omitted). "[S]upervisors must know about the conduct and facilitate it, approve it, condone it, or turn a blind eye for fear of what they might see. They must in other words act either knowingly or with deliberate, reckless indifference." *Backes v. Village of Peoria Heights,*

Illinois, 662 F.3d 866, 870 (7th Cir. 2011)(quoting *Chavez*, 251 F.3d at 651)). "In short, some causal connection or affirmative link between the action complained about and the official sued is necessary for § 1983 recovery." *Gentry*, 65 F.3d at 561.

The undisputed evidence demonstrates that Dr. Ritz lacked the personal involvement necessary to be held liable to Hall under § 1983. Although Dr. Ritz was part of the collegial review process that determined Hall's medical care, Dr. Ritz agreed with Dr. Bautista's care plans that approved Hall for additional medical services and testing. Accordingly, Dr. Ritz is entitled to summary judgment because he lacked the personal involvement necessary to be held liable and, to the extent that he was involved, Hall received the medical services that he needed at Dr. Ritz's approval.

B. Nurse Faetanini and Nurse Young.

Similarly, Nurse Faetanini and Nurse Young are entitled to summary judgment because they too lacked the personal involvement necessary to be held liable under § 1983. Hall testified that he sued Nurse Faetanini and Nurse Young because they interfered with his ability to participate in physical therapy in November 2016.

However, Nurse Faetanini and Nurse Young only "interfered" with Hall's ability to receive physical therapy to the extent that they enforced the rules and regulations regarding physical therapy. Specifically, Nurse Faetanini and Nurse Young advised Hall that he could not read during his physical therapy session and that he should, instead, focus on his physical therapy session.

When Hall entered the physical therapy room on November 9, 2016, and when he began to read rather than engage in the prescribed physical therapy, Nurse Faetanini and Nurse Young ended the session pursuant to the institution's rules regarding physical therapy and reported Hall's conduct to Dr. Bautista. As such, it was not Nurse Faetanini or Nurse Young who interfered with Hall's ability to engage in physical therapy; it was Hall's refusal to follow the rules and to actually perform the physical therapy that resulted in the discontinuation of his physical therapy on November 9, 2016.

Regardless, the undisputed evidence shows that neither Nurse Faetanini nor Nurse Young possessed the authority to discontinue (permanently) Hall's physical therapy. Rather, the undisputed evidence shows that Dr. Bautista discontinued Hall's physical therapy after hearing of Hall's refusal to follow the rules and because Hall had a pending orthopedic surgeon evaluation in the near future. Accordingly, Nurse Faetanini and Nurse Young did not violate Hall's Eighth Amendment rights are entitled to summary judgment.

C. Nurse Parish.

Nurse Parish is also entitled to summary judgment because she did not violate Hall's Eighth Amendment rights or act with deliberate indifference towards Hall's serious medical needs. Instead, Nurse Parish simply informed Hall that he could no longer use therapy putty as part of his physical therapy. Nurse Parish did not make this decision; rather, she simply conveyed the message to him that security staff would no longer permit it's use. Nurse Parish also simply informed Hall that Dr. Bautista

advised that he could use a balled-up sock or a piece of clothing instead. Because Nurse Parish had no involvement in the decision regarding or the modification of his physical therapy but was just the messenger, she cannot be held liable for violating Hall's Constitutional rights.

Nor can Nurse Parish be held liable for failing to provide additional or adequate pain medication for Hall post-surgery. Notably, Nurse Parish lacked the authority to prescribe medication or to modify a doctor's prescription(s). Nurse Parish followed the post-operative orders given by the orthopedic surgeon and Dr. Bautista regarding Hall's pain medication. Therefore, Nurse Parish did not act with deliberate indifference towards Hall's serious medical needs.

D. Dr. Sood.

As for Dr. Sood, he too is entitled to summary judgment because Hall has offered no evidence to show that Dr. Sood acted with deliberate indifference toward any of his serious medical needs. Instead, the undisputed evidence demonstrates that Dr. Sood provided medical care to Hall each time that Hall requested it (even for medical issues other than the issues related to his neuropathy and tingling in his upper extremities and arms), and there is no evidence presented that would show that Dr. Sood used anything other than his professional judgment in providing treatment to Hall.

In general, an inmate may establish deliberate indifference one of in two ways. *First*, an inmate can establish deliberate indifference by showing that medical personnel persisted with a course of treatment that they knew to be ineffective. *Goodloe v. Sood*, 947 F.3d 1026, 1031 (7th Cir. 2020). For example, the medical defendants in *Greeno* failed to

conduct necessary tests, ignored specific treatment requests from the inmate, and persisted in offering weak medication—all in the face of repeated protests that the medication was not working. *Id.*; *Greeno*, 414 F.3d at 654–55.

Second, an inmate can show deliberate indifference by demonstrating an "inexplicable delay" in responding to an inmate's serious medical condition. *Petties v. Carter*, 836 F.3d 722, 731 (7th Cir. 2016), *as amended* (Aug. 25, 2016)(internal quotation omitted). A delay claim is especially persuasive if that delay exacerbates an inmate's medical condition or unnecessarily prolongs suffering. *Williams v. Liefer*, 491 F.3d 710, 715–16 (7th Cir. 2007).

Here, Hall's complaints to Dr. Sood regarding tingling and numbness were sporadic and occurred over a four-year period. When Hall complained directly to Dr. Sood in October 2015, Dr. Sood prescribed medications to ease the pain, instructed Hall to engage in stretching exercises, and prescribed vitamins to support Hall's immune and nervous system.

Hall has offered no admissible evidence to show that this conservative approach to treat Hall's medical needs was improper, reckless, or outside the bounds of accepted practice, especially given Hall's sporadic complaints of pain. The Eighth Amendment guarantees a prisoner treatment of his serious medical needs, not a doctor of his own choosing. *Estelle*, 429 U.S. at 104-106 (1976); *United States v. Rovetuso*, 768 F.2d 809, 825 (7th Cir. 1985). It does not guarantee access to the latest technology or to a specific medical test. *Glenn v. Barua*, 2007 WL 3194051, * 3 (3d Cir. 2007)(noting that "a decision not to use an x-ray or other diagnostic technique is "a classic example of a matter for

medical judgment, and does not by itself amount to constitutionally deficient treatment.")(internal quotation omitted).

"A prisoner has the right to medical care; however, he does not have the right to determine the type and scope of the medical care he personally desires." *Carter v. Ameji*, 2011 WL 3924159, * 8 (C.D. Ill. Sept. 7, 2011)(citing *Coppinger v. Townsend*, 398 F.3d 392, 394 (10th Cir. 1968)). "The Eighth Amendment does not require that prisoners receive unqualified access to healthcare. Rather, inmates are entitled only to adequate medical care." *Leyva v. Acevedo*, 2011 WL 1231349, * 10 (C.D. Ill. Mar. 28, 2011) (internal quotations omitted).

The undisputed evidence reveals that Dr. Sood exercised his professional, medical opinion in treating Hall's sporadic complaints of pain, numbness, and tingling. In order to constitute deliberate indifference, "a medical professional's treatment decision must be such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible did not base the decision on such a judgment." *Petties*, 836 F.3d at 729 (internal quotation omitted); *Collignon v. Milwaukee County*, 163 F.3d 982, 989 (7th Cir. 1998)("A plaintiff can show that the professional disregarded the need only if the professional's subjective response was so inadequate that it demonstrated an absence of professional judgment, that is, no minimally competent professional would have so responded under those circumstances."). Hall has offered no such admissible evidence. Therefore, Dr. Sood is entitled to summary judgment.

E. Dr. Bautista.

Hall's deliberate indifference claim against Dr. Bautista is even more tenuous. Under Dr. Bautista's care, Hall received several surgeries to correct his medical issues at Dr. Bautista's behest. Hall received proper medication. And, Hall received physical therapy to assist him. There simply is no evidence that Dr. Bautista acted with deliberate indifference towards Hall's medical needs.

Nor did Dr. Bautista delay in providing any medical treatment to Hall. In fact, there was no unreasonable delay whatsoever. Dr. Bautista first examined Hall in August 2016, and Hall received his first surgery at Dr. Bautista's urging in December 29, 2016, a mere three months later. The Court doubts that a three-month delay, at least under these circumstances, constitutes deliberate indifference.

Regardless, the Seventh Circuit has held:

> In cases where prison officials delayed rather than denied medical assistance to an inmate, courts have required the plaintiff to offer "verifying medical evidence" that the delay (rather than the inmate's underlying condition) caused some degree of harm. That is, a plaintiff must offer medical evidence that tends to confirm or corroborate a claim that the delay was detrimental.

Williams, 491 F.3d at 714-15 (internal citations omitted); *Berry v. Peterman*, 604 F.3d 435, 441 (7th Cir. 2010)("A significant delay in effective medical treatment also may support a claim of deliberate indifference, especially where the result is prolonged and unnecessary pain.").

In the instant case, there is no evidence in the record to show that the three-month delay before undergoing surgery caused Hall to suffer any degree of harm. Accordingly, Hall cannot rely upon any delay in receiving surgery to hold Dr. Bautista liable for violating his Eighth Amendment rights.

F. Wexford.

Finally, Wexford is entitled to summary judgment. Because none of its employees can be said to have acted with deliberate indifference towards Hall, Wexford cannot be held liable for any policy or procedure that allegedly violated his Constitutional rights. *Ray v. Wexford Health Sources, Inc.*, 706 F.3d 864, 866 (7th Cir. 2013). Regardless, Hall has offered no evidence of any policy, practice, or procedure maintained by Wexford that deprived him of his Constitutional rights as is required in order for him to maintain his claim against Wexford. *Monell v. New York City Dept. of Soc. Servs.*, 436 U.S. 658, 691-92 (1978). Therefore, Wexford is also entitled to summary judgment.

IT IS, THEREFORE, ORDERED:

1. Plaintiff's sur-reply [73] is STRICKEN. Local Rule 7.1 does not permit the filing of a sur-reply, and Plaintiff neither sought nor obtained leave of the Court to file a sur-reply. Therefore, Plaintiff's pleading is stricken and was not considered by the Court in ruling on Defendants' motion for summary judgment.

2. Defendants' motion for summary judgment [63] is GRANTED. The Clerk of the Court is directed to enter judgment in all Defendants' favor and against Plaintiff. All other pending motions are denied as moot, and this case is terminated with the Parties to bear their own costs. All deadlines and settings on the Court's calendar are vacated.

3. If Plaintiff wishes to appeal this judgment, he must file a notice of appeal with this Court within thirty (30) days of the entry of judgment. Fed. R. App. P. 4(a)(4).

4. If Plaintiff wishes to proceed *in forma pauperis* on appeal, his motion for leave to appeal *in forma pauperis* must identify the issues that he will present on appeal to assist the Court in determining whether the appeal is taken in good faith. Fed. R. App. P. 24(a)(1)(c); *Celske v. Edwards*, 164 F.3d 396, 398 (7th Cir. 1999)(an appellant should be given an opportunity to submit a statement of his grounds for appealing so that the district judge "can make a responsible assessment of the issue of good faith."); *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000)(providing that a good faith appeal is an appeal that "a reasonable person could suppose . . . has some merit" from a legal perspective). If Plaintiff chooses to appeal, he will be liable for the $505.00 appellate filing fee regardless of the outcome of the appeal.

ENTERED this 6th day of March, 2020

s/ Colin S. Bruce
COLIN S. BRUCE
UNITED STATES DISTRICT JUDGE

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

August 17, 2021

Kevin Hall
B-55872
2600 N. Brinton Avenue
Dixon, IL 61021

RE: Hall v. Sood, et al.
USAP7 No. 20-1439

Dear Mr. Hall:

The above-entitled petition for writ of certiorari was postmarked August 4, 2021 and received August 11, 2021. The papers are returned for the following reason(s):

The appendix to the petition does not contain the following documents required by Rule 14.1(i):

The opinion of the United States district court must be appended.

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

A copy of the corrected petition must be served on opposing counsel.

When making the required corrections to a petition, no change to the substance of the petition may be made.

Sincerely,
Scott S. Harris, Clerk
By:

Clayton R. Higgins, Jr.
(202) 479-3019

Enclosures

Additional material from this filing is available in the Clerk's Office.