

NO. 20-15234 **21-6414** ORIGINAL

D.C. # 3:18-cv-08064-MTL-CDB

FILED

NOV 05 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

CHARLES WAYNE MARIETTA — PETITIONER
(Your Name)

VS.

LEANNE LOBUE, Nurse Practitioner, et al., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LASTED RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CHARLES WAYNE MARIETTA
(Your Name)

Arizona Department of Corrections Rehabilitation & Re-entry, 4374 Butte Ave
(Address)

Florence Arizona 85132
(City, State, Zip Code)

520 868 0201

(Phone Number)

QUESTION(S) PRESENTED

1. Did the District Court of Arizona err in granting Summary Judgment to Defendants without renewing all the elements of Appellant's Original Complaint? i.e renal stenosis, Carotid Stenosis and delays in doing any corrective treatment for these medical needs.
2. Did the District Court of Arizona err in re-opening Discovery for the Defendants to submit additional evidence and by not giving Appellant the opportunity to rebut the additional evidence?
3. Did the District Court of Arizona err in advising the Defendants of their lack of supporting evidence of treatment for Appellant's renal Stenosis and Carotid Stenosis and other medical needs?
4. Did the District Court of Arizona err in not recognizing the unaddressed Carotid and renal stenosis or that the continuing delay corrective treatment constitutes a violation of Appellant's Eight Amendment Rights?
5. Did the District Court of Arizona err in granting Summary Judgment to the Defendants, when the record showed and the Attached affidavits verified delays, not in just day or weeks, but years?

6. Did the trial Court Judge OF the United States District Court abuse its discretion by granting the Respondents in this case Summary Judgment, when facts was unavailable to Petitioner in order to defeat the Respondents motion for Summary Judgment against him?

LIST OF PARTIES

☒ All parties appear in the Caption of the Case on the Cover page.

☐ 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:

RELATED CASES

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TABLE OF AUTHORITIES CITED

CASES Poller V CBS, 368 U.S. 464 82 Ct. 486, 7 L Ed. 2d 458, 5 Fed. R. Serv.
Callaghan 2d 886 Callaghan 1962 U.S. Lexis 2315
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STATUTES AND RULES

Fed. R. Civ. P. 56

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully pray 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 appear 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 _____; 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,

☐ is unpublished.

JURISDICTION

☒ For cases from Federal Courts:

The date on which the United States Court of Appeals decided my case was June 25, 2021.

☐ 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: September 29, 2021, and a copy of the order denying rehearing appears at Appendix C.

☐ 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. § 1254(C).

☐ 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)

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Fed. R. Civ. P. 56

Seventh Amendment Rights

14th Amendment Rights

8th Amendment Rights

STATEMENT OF THE CASE

Petitioner Sues Respondents Correct Care Solutions Health Services Administrator Sumi Erno, and Nurse Practitioner LOBeu, alleging that he has been subjected to cruel and unusual punishment, in violation of the Eighth Amendment, regarding his medical care. Petitioner seeks declaratory and injunctive relief, monetary damages, and his costs and fees. Petitioner contends that Respondents Correct Care Solution has a policy and practice of being deliberately indifferent to inmates serious medical needs by intentionally and unnecessarily indifferent delaying his scheduling of necessary appointments within the prison and with outside specialists. Petitioner claims Respondents Correct Care solutions does not follow the diagnostic and treatment plans of Specialists and has a policy and practice of claiming that treatment will be provided, but then not providing it.

Petitioner claims that in June 2017, he had a Video Conference with Dr. Kokseng, who ordered a magnetic resonance imaging test, a computerized tomography (CT) scan, and an angiogram. Petitioner claims Respondent LOBeu ignored these orders. He claims the test were approved in September 2017, but have never been scheduled, even though Petitioner asked Respondents Erno about them in November 2017, Respondents Erno stated that she would review plaintiffs' medical files.

Petitioner claims that while waiting for treatment, he experienced severe chest pains, and underwent a stress test and an echocardiogram, and was seen by a cardiologist at the

Kingman Regional Medical Center who confirmed that Petitioner had suffered a heart attack. Petitioner claims that he was sent to another Cardiologist a few weeks later because Respondent's Correct Care Solutions was shopping for a more favorable diagnosis. A few days later Petitioner met with Respondent's LOBeu, who told Petitioner that the second cardiologist wanted to schedule another stress test and echocardiogram.

Petitioner claims that he has stenosis in his right renal artery and Respondent LOBeu was aware of it because Petitioner provided the medical unit with a copy of a doctor's diagnosis. Petitioner claims that nothing has been done to treat this condition and that his kidney has been further compromised. Petitioner claims that on December 30, 2017, he passed two kidney stones and was transported to the medical center, where a CT scan was done. Petitioner claims that on January 22, 2018, he was seen by a Urologist who told Petitioner he had a blockage in his ureter that would need to be removed with laser treatment. The Urologist stated that he would order the procedure. Petitioner claims that he submitted a health needs request form on January 31, 2018, but that nothing has been done to treat his condition and that this placed him at great risk of renal necrosis.

Petitioner claims that Respondent LOBeu has continually delayed scheduled appointments with specialists outside the prison and refused to follow orders and recommendations for treatment of Petitioner's degenerative medical issues. Petitioner claims Respondent's LOBeu's inaction constitutes

deliberate indifference to his serious medical needs and has compromised his health; caused petitioner to suffer a heart attack, several mini-strokes, and kidney stones; and placed him at risk of future injury, organ failure, unnecessary pain and death.

Plaintiff / Petitioner claims he has filed Health Needs request forms regarding his medical needs, has provided a copy of the stenosis diagnosis, and has expressed his concerns in conversations with medical staff at the prison, including Respondent's Erno. Petitioner claims that Respondent's Erno knew about petitioner's stenosis, heart attack and mini-strokes; the kidney stones petitioner has passed; and the kidney stone currently lodged in plaintiff's ureter, that per the urologists, requires laser treatment. Petitioner claims Respondent's Erno has ignored petitioner's Health Needs Request forms has rescheduled many of petitioner's appointments on the nurses line and with the nurse practitioner, has ignored and absolutely disregarded orders and instructions from specialists outside the prison, and has unnecessarily delayed scheduling appointments for treatment of petitioner's serious medical needs, including the laser treatment. Petitioner claims that the Respondent's inaction constitutes deliberate indifference to petitioner's serious medical needs.

Petitioner claims that on June 25, 2021, the Ninth Circuit Court ruled that the District Court of Arizona properly granted Summary Judgment for Respondents LOBue and Erno, because the Court cited that petitioner's failed to raise a genuine dispute of material fact as to whether these Respondents were deliberately indifferent in the treatment of Petitioner's renal stenosis or other serious health conditions. The Court stated that Summary Judgment for Respondents Correct Care Solutions (CCS) was proper because the Court believes that petitioner failed to raise a genuine dispute of material fact as to whether CCS caused petitioner to suffer Constitutional Injuries under any potentially applicable standard. Petitioner disagreed with the Court's decision and this appeal to the United States Supreme Court is filed.

REASONS FOR GRANTING THE PETITION

Petitioner claims that the Court committed legal error in this case, when the Court rejected petitioner's contention that the district court erred by ordering Respondents to produce additional documents to support their position after the scheduling for discovery had been closed for two months. Petitioner claims that he requested additional discovery time to present document and records into records to dispute the Respondents' filed Summary Judgment against him in this case, and that the district court denied petitioner's motion for additional discovery time, and that the district order allowed the Respondents to collect more documents in order to keep petitioner from defeating Respondents' Summary Judgment in this case against him, violated petitioner's 14th Amendment Rights to the Federal Constitution and a violation of petitioner's 8th Amendment Rights to the Federal Constitution in this case.

Petitioner claims that the district court erred by ordering the Respondents to produce documents concerning the medical care petitioner received after he filed the operative complaint in this case. Petitioner claims that the District Court ordered the Respondents for additional discovery after the January 24, 2019 deadline. (See exhibit one scheduling order)

Petitioner claims that the Respondents acknowledge the Courts request for additional discovery in order to prevent petitioner from defeating Respondents Summary Judgment in this case. (see exhibit two) Petitioner claims that the district Court was bias against him, when the Court allowed and even ordered Respondents to provide additional discovery so the Court could rule against petitioner in this case and to allow Respondents the advantage in securing their position to be successful in being granted Summary Judgment against petitioner in this case. (See exhibit three)

Petitioner claims that when he requested to the Court for additional time to produce his own documents, that the district Court render a bias decision against petitioner by denying petitioner's motion in this case. (See exhibit four)

* Claims that the Court instead choose^{NOT} to give petitioner additional time to file a responses to Respondents motion for Summary Judgment after allowing Respondents to gather additional documents in order to make sure petitioner cannot provide documents or records to defeat Respondents Summary Judgment in this case. (see exhibit five)

Petitioner claims that Respondents throughout the discovery stage refused to give petitioner any documents that would help him to defeat Respondents Summary Judgment in this case. (see exhibit six) Petitioner request was denied as to information about Respondents Erno and Lobue in this case citing that they object to petitioner's

request as vague and ambiguous, because petitioner is a convicted felony living on a sex offender prison yard, petitioner was told verbally after discussing this matter with Respondents lawyers and because of Petitioner prison status that the laws in place was to prevent inmates from getting sensitive documents or evidence in this case. Petitioner claims that Respondents never presented any case law or statutes that supported their denial of discovery information that he was requesting in this case. Petitioner was prejudiced by the district court abuse of discretion in this case. (See exhibit seven)

Petitioner asked the District Court in his Motion for reconsideration in denying his request to re-open discovery in order to offset Respondents arguments of additional information against him, but petitioner request was denied in this case and with the help of the Court Respondent was able to get Summary Judgment against him in this case. (See exhibit Eight)

Petitioner claims that he was prevented by the district court from making sufficient showing to establish showing the existence of an element essential to petitioner case to establish a genuine issue of material fact dispute in this case. Petitioner claims that Respondents did not meet the standard for the entry of summary judgment as set forth in Rule 56(c) Federal Rules of Civil procedure because before the district court rule

in Respondents favor for Summary Judgment, the district court requested additional discovery from Respondents in order for Respondent to meet the standard for the entry of Summary Judgment against petitioner was an abuse of discretion by the district court decision to allow Respondents only, extra time for discovery in order to win Summary Judgment against petitioner in this case.

Petitioner claims that Respondents Summary Judgment should be rendered "fatally defective" by the fact that Respondent made no effort to adduce any evidence in the form of supporting medical documents and the court saw this lacking of documents from the Respondents and issue an order on behalf of the Respondents to help them shore up their case for Summary Judgment against petitioner in this case.

Petitioner claims that when facts are unavailable to the nonmovant, that if a nonmovant shows by affidavit or declaration that specified reasons, it cannot present essential to justify its opposition, the court may; 1) defer considering the motion or deny it; 2) allow time to obtain affidavits or declaration or to take discovery or issue any other appropriate order. In this case petitioner was not given the opportunity that's afforded to people who are free, that engage in civil lawsuits and that Respondents withheld discovery from petitioner claiming that he's an inmate and that he should not have the type of information that he seeks in his possession.

Petitioner is denied due process in accordance with Rule 56 Fed. R. Civ. P. 56. Petitioner claims that the purpose of Rule 56 is not to cut litigants off their right of trial by jury if they have issues to try. Poller V CBS, 368 U.S. 464 82 Ct. 486, 71 Ed. 2d 458, 5 Fed. R. Serv. (Callaghan 2d 886. Callaghan 1962 U.S. Lexis 2315. In this case petitioner's Seventh Amendment rights to jury trial was abridged in this case.

Petitioner cites the Court decision in Adickes v. S. H. Kress & Co, 398 U.S. 144, 159, 90 S.Ct. 1598, 1609, 26 L. Ed. 2d 142 (1970), establish that the party opposing the motion for summary judgment bears the burden of responding only after the moving party has met its burden of coming forward with proof of the absence of any genuine issues of material fact in this case. Petitioner claims that it was only after the district court helped the respondents by allowing them extra discovery in order for them to win summary judgment against petitioner in this case. Celotex v. Catrett NO. 85-198 106 S.Ct. 2548, 477 U.S. 317. 91 L.Ed. 2d 265, 54 USLW 4775 4 Fed. R. Serv. 3d 1024, (U.S. Dist. Col 1986).

Petitioner claims that in Celotex v. Catrett is on point for his case in that the Court of Appeals for the District of Columbia Circuit 756 F.2d 181 reversed the United States District Court for the District of Columbia granted manufactures motion for summary judgment and administratrix appealed.

That this case is the same arguments in petitioners case and what petitioners been arguing and that Supreme Court Justice Rehnquist held that Rule 56(c) mandates the entry of Summary Judgment after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case as to which that party will bear the burden of proof at trial, and that there is no requirement that moving party support its motion with affidavits or other similar material negating the opponents claim and he ruled that non moving party need not produce evidence in a form that would be admissible at trial in order to avoid Summary Judgment. The Court reversed and remanded.

Petitioner claims that the additional evidence that the district court ordered Respondents to present, was the same evidence that the Court had previously reviewed and had not granted Respondents Summary Judgment base on that same evidence, which was clearly that Respondents had not met the burden to be granted Summary Judgment, until the district Court Judge gave Respondents the opportunity to present more evidence so that they could stop Petitioner from defeating their Summary Judgment against him. And at the same time the district Court prevented petitioner the same additional time for discovery in or to oppose or defeat Respondents Summary Judgment was bias, prejudicial and abuse of discretion that caused Petitioner to lose this case to Summary Judgment.

REQUEST FOR RELIEF

Petitioner is requesting these relief in this case.

1. Re-embursement of all fees and cost with interest,
2. Compensatory damages from each defendant in the amount of \$250,000⁰⁰ dollar each
3. Punitive damages from each Respondents in the amount of \$500,000⁰⁰ each
4. Declaratory judgment against each Respondents
5. Grant such other relief as it may appear that Petitioner is entitled.
6. Issue an injunction ordering Respondents to immediate arrange for treatment and testing and other medical equipment that is needed to stabilized petitioners condition in this matter.

CONCLUSION

The petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

Charles W. Marietta

Date: October 30, 2021