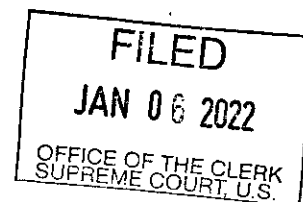


↑ Kicked by the Sgt At
Medina
6:15am on 1/4/21

21-6891

ORIGINAL



IN THE

SUPREME COURT OF THE UNITED STATES

Cabani U. Johnson

PETITIONER

(Your Name)

Gary Ward

vs

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Cabani U. Johnson

(Your Name)

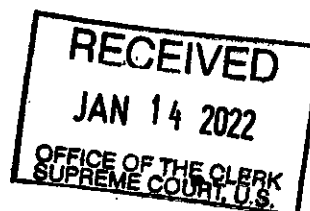
50 EVANS BLVD

(Address)

CANNON CITY, CO 81215

(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

1. Plaintiff ask the Supreme Court did the District Court Abuse their discretion regarding Issue A, B, C, D, E and F, or was the district court clearly erroneous. If so what other actions could have been taken regarding issue A-F did the District court incorrectly decide?
2. Plaintiff ask the Supreme Court was District Courts judgment incorrect and if so what other actions could have been taken regarding issue A-F?
3. Plaintiff ask the Supreme Court of Appeals why grounds did the district court fail to consider regarding issue A-F?
4. Plaintiff request the Supreme Court take action in Plaintiff's case by remanding the case back to district court?
5. Plaintiff also request an Oral Argument take place in the interest of Justice?

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at order and Judgment; 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☐ is unpublished.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 order; 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☐ is unpublished.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.

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

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 11/12/21.

☐ 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: _____, 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. § 1254(1).

☐ 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 PROVISIONS INVOLVED

11th Amendment Sovereign Immunity , . 10
11th Amendment Qualified Immunity . . 13

TABLE OF AUTHORITIES CITED

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OTHER

STATEMENT OF THE CASE

- From 10/2017 - 11/2019 Defendants, Gary Ward, Ryder May, Nicole Wilson and Michael Allen of the Sterling Correctional Facility along with Richard Nodge and Kathleen Boyd of the Colorado State Pen have deprived the Plaintiff of an orthopedic visit for surgery and medical boot for Plaintiff's right foot as Dr. Laura Allen of the Denver Diagnostic Center provided during intake screening, further indicating in September of 2017 that the Plaintiff needs surgery and medical boot, yet was deprived by defendants in retaliation, failing to provide medical care, physical therapy and adequate medication.
- On 3/20/19 and 4/10/19 Dr. Richard Nodge set Physical therapy appointments as CHP Megan Castillo cancelled them.
- From 4/6/2019 - 5/11/2019, Kathleen Boyd (Dr.) deprived Plaintiff of chronic Pain medication refusing to see the Plaintiff.
- On 5/11/2019 Plaintiff was prescribed elavil and dexycycline by Dr. Kathleen Boyd for pain and rashes to Plaintiff's back, arms, shoulders chest and stomach. Plaintiff notified the medical staff that the medication was not helping with pain. Medical wrote back indicating the Plaintiff is scheduled for a appointment in June 2019 for pain management. Instead Plaintiff was never seen by Dr. Kathleen Boyd, but was transferred to the Sterling Correctional Facility from the Colorado State Pen on 6/24/19, in which Michael Allen of the Sterling Correctional Facility discontinued the Plaintiff's medication in retaliation from 7/2019 - 11/2019.
- On 8/6/2019 Plaintiff Notified Nurse Book of the Colorado State Pen upon arrival, that the Dr. Michael Allen of the Sterling Correctional Facility discontinued his medication.
- On 8/22/2019 - Plaintiff suffered a heart attack, was treated at the hospital, then denied of treatment by Dr. Richard Nodge once Plaintiff arrived back to the Colorado State Pen.
- From 8/2019 - 11/2019 Plaintiff requested Pain medication, yet was not prescribed an order for his injuries in which Nurse Susan indicated Plaintiff is not being provided medical care or medication which was a result of Plaintiff's race and attempts to sue, indicating that Boyd and Nodge don't like niggers who sue and that is why Plaintiff is not receiving care or medication.

Issue A: 12(b)(1) Subject Matter Jurisdiction

In respect to the District Court the Plaintiff respectfully acknowledges Rule 12(b)(1) also interpreted the Rule adequately in ECF 112 and 127 regarding Motion to Dismiss, as the Judge Phillip Brimmer is incorrect per ECF 162 to state his dismissal pursuant to Rule 12(b)(1) is appropriate which is incorrect dated 9/13/20, were as under 12(b)(1) challenges are generally presented in one of two forms: The moving party may (1) facially attack the complaints allegations as to the existence of subject matter jurisdiction, or (2) go beyond allegations contained in the

complaint by presenting evidence to challenge the factual basis upon which subject matter jurisdiction rests.

see Merrill Lynch Bus. Fin. Servs. Inc. v. Nudell, 363 F.3d 1072, 1074 (10th Cir. 2004) quoting Maestas v. Lujan, 351 F.3d 1001, 1013 (10th Cir. 2003)

None the less when resolving a facial attack on the allegations of subject matter jurisdiction the court must accept the complaint as true.

see Wolt v. United States, 46 F.3d 1000, 1002 (10th Cir. 2005)

see ECF Document 149 (Motion of Plaintiff Responding to Motion 139 Attached 1-3 exhibits of witness Declarations),

in which the Plaintiff pointed out that the Colorado Assistant Attorney General Colewoodwards evidence he titled under exhibit B medical records Pt. 1. states:

- Exhibit B Medical Records Pt. 1. pg 92 state: Dr. Laura Allen state their is an obvious deformity to right second toe which is approximately 2cm higher than other toes addressed by Dr. Laura Allen on 8/30/2017.

- Exhibit B Medical Records Pt. 1. pg 93 state: Dr. Laura Allen states Plaintiff has an obvious deformity which Precludes Plaintiff from wearing state issued boots providing Plaintiff a medical boot

- Exhibit B Medical Records Pt. 1 pg 94 state: Dr. Laura Allen provided medical boot on 9/1/2017 stating Plaintiff needs orthopedic shoe if he doesnt have surgery, indicating and mandating the need.

- Exhibit B Medical Records Pt. 1 pg 95 state: Plaintiff is lower bunk lower tier restricted until Plaintiffs right foot is repaired.

Plaintiff also provided (3) witness declarations in ECF Document 149 and (2) witness Declarations in ECF 139.

Magistrate Judge Michael Hegarty restricted the medical documents B-XI that Cole Woodward presented in which Hegarty had full knowledge of the mandates exhibited and mentioned above.

Defendants May, Ward, Wilson, Allen, Hodge and Boyd intentionally interfered with treatment ultimately violating the 8th Amendment.

see Estelle v. Gamble, 429 U.S. 97, 105, 97 S. Ct. 285 (1976) (intentionally interfering with treatment once prescribed violate the 8th Amendment).

More so denial of medical care can result in further health and safety issues, as the defendants denial has caused further injury and pain to right foot.

see Helling v. McKinney, 509 U.S. 255 (1993) (denial of medical and safety may present an inmate at risk of further injury).

Therefore pursuant to Rule 12(b)(1) under the Federal Rules of Civil Procedure, Plaintiff met the (2) forms, in which case law also convey, proving unequivocally that the Plaintiff has jurisdiction, in which pursuant to ECF Document 162 Judge Phillip Brimmer was clearly erroneous.

Further the Plaintiff is suing the defendants in their individual and official capacity seen in ECF documents 112 and 127 indicating he is suing staff/defendants in their individual capacity for monetary relief, meaning Plaintiff established Jurisdiction.

Issue B: 12(b)(6) Plausibility Standard

In respects to District Court the Plaintiff respectfully acknowledges Rule 12(b)(6) interpreting the rule adequately in ECF Document 112 and 127 regarding motion to Dismiss as Judge Brimmer is incorrect per ECF document 162 stating the complaint is not plausible.

The Plaintiff also expressed facts adequately in ECF 112 and 127 expressing that the rules of Federal Rules of Civil Procedure under Rule 12(b)(6) states, a complaint must allege enough factual matter that taken as true makes the plaintiff's claim to relief plausible on its face. Exhibit B medical records Pt. 1, pages 92, 93, 94, and 95, proves so, in which Assistant Attorney General Cole Woodward provided to the Magistrate Judge Michael Hegarty and Judge Phillip Brimmer.

None the less the facts were proven which is detailed in the statement of case when Woodward provided Exhibit B medical records Pt. 1 in pages 92, 93, 94 and 95.

see Khalik v. United States Airlines, 671 F.3d 1188, 1190 (10th Cir. 2012)

The Plausible Standard requires that relief must plausibly follow from the facts all alleged not that the facts themselves be plausible.

see RE/MAX, LLC v. Quicken Loans Inc., 295 F.Supp. 3d 1163

(D. Colo 2018) citing Bryson v. Gonzales, 534 F.3d 1282
1286 (10th Cir. 2008)

Generally specific facts are not necessary the statement need only give the defendant fair notice of what the claim is and the grounds on which it rests).

see Frickson v. Pardus 115 89 93 (2007)

Medical documents proved that the defendants had knowledge of Plaintiff's injuries and a mandated medical boot and surgery along with adequate medication, however the defendants maliciously and sadistically interfered with treatment, the basic necessity of confinement.

Under Rule 12(b)(6) of The Federal Rules of Civil Procedure the Plaintiff proved that his complaint is factually plausible pursuant to law. Proving that Judge Phillip Brimmer abused his discretion.

Issue C Sovereign Immunity And Official Capacity

In respects to the District Court the Plaintiff respectfully acknowledges Sovereign Immunity and official capacity claims interpreting both adequately in his opening brief and reply to answer brief.

in which Judge Phillip Brimmer claimed Plaintiff Jabari Johnson is suing the defendants in their official capacity for monetary relief which is untrue.
see ECF Document 162 by Brimmer.

Notwithstanding the fact that the defendants are not entitled to pursuant to the Federal Rules of Civil Procedure, were as per Rule 12(b)(1). A state does not bar lawsuits against (A) the officials in their individual capacity for damages or (B) against state officials in their individual capacity for injunctive relief.

The Plaintiff has requested monetary relief in defendants individual capacity and injunctive relief in defendants official capacity.

Therefore the defendants are not entitled to sovereign immunity pursuant to the law.

Issue D. Cruel And Unusual Punishment's objective Component

In respects to the District Court the respectfully acknowledges the objective component, in which the Judge Phillip Brimmer made an incorrect ruling regarding the 8th Amendment's Cruel And Unusual Punishment Deliberate Indifference Standard of the objective component.

Under the law when questions are raised by the objective prong of deliberate indifference, the test is whether the alleged harm is sufficiently serious.

see Alata v. Saiz, 427 F.3d 745, 753 (10th Cir. 2005) (A medical need is sufficiently serious if it is one that has been diagnosed by a physician as mandating treatment or one so obvious that even a lay person would easily recognize the necessity for doctors attention. Id. at 751.

(quoting Seaback v. Colorado, 87 F.3d 1205, 1209 (10th Cir. 2009)) Dr. Laura Allen mandated medical boot, which have not been provided by the defendants. Dr. Richard Hodge prescribed physical therapy. Meghan Castillo cancelled it. Boyd mandated medication. Mahael Allen cancelled it, which unequivocally met the objective component.

Judge Brimmer states in ECF 162 Plaintiff's claims is time barred as the deprivation of medical boot occurred in 2017 stating that, there is a limit of only 2 years to file.

Yet Brimmer's claims are untrue pursuant to see Tiberi v. Cigna Corp., 83 F.3d 1423, 1430-31 (10th Cir. 1996) (The limitation period runs from the date of the injury or when the harm is over).

Currently the wrong is not corrected, the Plaintiff is still injured, therefore the objective component was met and the statute of limitations have not run as Plaintiff is deprived of medication, medical boot, wheelchair and physical therapy still occurs to date as mandated by Dr's were made.

Brimmer's actions are clearly erroneous, facts prove that the Plaintiff met the objective component.

Issue E. Cruel And Unusual Punishment's Subjective Component

In respect to District Court the Plaintiff respectfully acknowledges the subjective component, and what it consist of yet under the subjective component it was established within Plaintiff's medical documentation indicating Labari Johnson is mandated to have a medical boot by Dr. Laura Allen, yet none of the defendants provided it.

- Dr. Richard Nodge provided physical therapy, yet was cancelled on 3/20/19 and 4/10/19 by Castillo prescribed by Nodge on 3/5/19
- Dr. Allen discontinued medication on 7/10/19 depriving treatment of medication to maintain open sores by discontinuing his medication, as Boyd and Nodge deprived treatment due to not ^{liking Niggers} such accommodation and medication is mandated by a Dr. is considered as circumstantial evidence, a Dr. may be shown to know of a risk to health and safety and did not draw interference.

see Sealock v. Colorado, 87 F.3d 1205, 1209 (10th Cir. 2009)

states a serious medical need is when such is mandated by a Dr.

therefor due to the seriousness of the injury and through circumstantial evidence the defendant is deemed liable.

see Farmer v. Brennan, 511 U.S. 825, 842, 114 S.Ct. 1970 (1997) (Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways including inference for circumstantial evidence of documents reports and medical records.

see McCaffrey v. Weinberg, 753, 836, 839 (10th Cir. 1985) (Denial of physical therapy violate the 8th Amendment).

see Sealock v. Colorado, 87 F.3d 1205, 1209 (10th Cir. 2009) (A medical need is sufficiently serious if it is one that has been diagnosed by a physician as mandating treatment or are so obvious that even a lay person would easily recognize the necessity for doctor's attention).

see Tufano v. Salazar, 586 F.3d 912, 916 (10th Cir. 2008) (Prison officials must provide humane conditions of confinement including adequate medical treatment, food, clothing, shelter, sanitation and reasonable safety from bodily harm).

see Estelle v. Gamble, 429 U.S. 97, 104 S.Ct. 285 (1976) (Intentionally

interfering with once prescribed violates deliberate indifference) see Green v. Branson, 138 F.3d 1169, 1303 (10th Cir. 1997) (Prison Dr. was responsible for clear injuries and clear indication of injuries etc. observed during examination)

Defendants have failed to provide physical therapy, medical boot, medication which all violate the 8th Amendment as they all have full knowledge of the risk to Plaintiff's health and safety through circumstantial evidence.

Pursuant to the facts of law Judge Brimmer in ECF 162 was clearly erroneous as Plaintiff met the subjective component.

Issue F. Amended Complaint

In respect to the District Court the Plaintiff respectfully acknowledges the Law of Amending the complaint, as Phillip Brimmer indicate on page 17 in document 162 of case 20-cv-00447-PAB-MEX filed on 11/9/21 indicate that the magistrate Judge found that Mr. Johnson is a well educated experienced Plaintiff, further indicating he's dismissing the case for lack merit requesting that the complaint be amended, yet the merit within this case was detailed in the most intelligent form which needed no form of Amending, yet (Judge) did file a supplemental complaint which Plaintiff was deprived of as Judge Brimmer was clearly erroneous.

C7. Qualified Immunity

In respect to the District Court the Plaintiff respectfully acknowledges the rules of qualified immunity, in which the defendants are unequivocally not entitled to Qualified Immunity.

Qualified Immunity only applies to officials sued in their individual capacity for money damages. Qualified Immunity protects officials from damage liability in federal civil rights cases unless they violate clearly established statutory or constitutional rights.

The defendants deprived surgery, medical boot, adequate medication, deprivation of medication and physical therapy which violate the U.S. Constitution failing to provide the basic necessity of prison confinement which is medical care. The defendants also violated prison policy.

Plaintiff further produced evidence proving his complaint is non conclusory and plausible in which the law states that a defendant is not entitled to Qualified immunity if (1) a reasonable person could find facts supporting a violation of constitutional rights, which (2) was clearly established, by defendants conduct.

see Estate v. City of Wichita, 951 F.3d 1161, 1169 119th Cir 2020.

Therefore defendants are entitled to qualified immunity.

REASONS FOR GRANTING THE PETITION

The District Court made numerous errors in this case. The District Court erred in determining the Defendants actions violating the 8th Amendment, in which the Plaintiff met both objective/subjective component proving the deliberate Indifferent standard, as the statute of Limitations have not accrued due to continual wrongs by defendants.

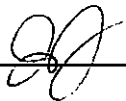
More so District Court were clearly erroneous, in which Plaintiff met Rule 6(b)(1) and Rule 12(b)(6) requirements, yet district court intentionally abused their discretion.

Therefore the reasons within this case and above this case should be remanded back to District Court.

CONCLUSION

The petition for a writ of certiorari should be granted. For the reasons stated previously Plaintiff request the U.S. Supreme Court to remand this case back to the District Court in the Interest of Justice.

Respectfully submitted,



Date: 1/4/22

Law Librarian Carolyn Hansen holds filings this will be provided to her on 1/4/22 then when its returned by her it will be sent to U.S. Supreme Court.