

No. 21-1724

21-6922

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
DEC 16 2021
OFFICE OF THE CLERK
SUPREME COURT U.S.

ORIGINAL

JEFFREY CHARLES RODD — PETITIONER
(Your Name)

VS.

LEAN LARIVA, ET AL. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT COURT
OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

JEFFREY CHARLES RODD
(Your Name)

2638 Grove Lane mound,
(Address)

Mound MN 55364-8128
(City, State, Zip Code)

763-301-4395
(Phone Number)

(g)

QUESTIONS PRESENTED

- (1) Did the District Court error in dismissing Mr. Rodd's complaint without the benefit of discovery to further support his deliberate indifference claim.
- (2) Was summary judgment also premature in the instant case due to disputed facts in the record.

(b)

21-1724

QUESTION(S) PRESENTED

(1.) Did the District Court and the Eighth Circuit Court of Appeals error in not ruling on Mr. Rodd's Physical incapacitation argument before the District Court and Appeal Court.

12/15/2021

Jeffrey Dale Rodd

(h)

21-1784

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:

- (1.) LEANN LARIVA Acting Warden,
- (2.) M. SMITH Assistant Warden,
- (3.) P.A. Norman Booth,
- (4.) Chief Doctor Shelia Hadaway,
- (5.) Dr. NANCY JORDAN,
- (6.) Dr. MARK KIDMAN,
- (7.) TONYA BIRK et, al.,

(i)

12/15/2021

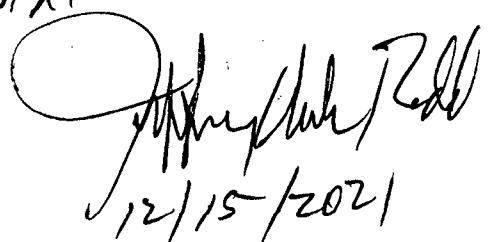

Notary Public
12/15/2021

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12/15/2020 Jeffrey Clark/2d

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STATUTES AND RULES

28 CFR 542.14(b)

OTHER

12/15/2021

Jeffrey Clark TCD
12/15/2021

21-1724

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 _____ Unknown _____; 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 A to the petition and is

[] reported at Unknown; 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.

(2) -

12/15/2021 Jeffrey A. Told

21-1924

JURISDICTION

or cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Sept. 20, 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: _____, 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).

(3)

12/15/2021
Jeffrey Chiles P.D.

21-1724

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- (1) Eighth Amendment to the United States Constitution
- (2) 28 CFR 542.14(b)

12/15/2021

Jeffrey Clark Radell

STATEMENT OF THE CASE

In his complaint before the District Court Rodd alleged that on ~~January 7, 2015~~ while housed at FPC Duluth MN his eyes froze because it was 52 to 56 degrees below zero. Mr. Rodd had to wait outside while trying to get to "pill line" for 30-40 minutes outside while the wheelchair ramp was being shoveled. When Rodd was finally able to enter the building his eyes were watery and very red. Rodd tried to be seen by medical staff, but was directed to submit a sick call request. Mr. Rodd after receiving little to no medical treatment for his eyes at Duluth was transferred to FMC Rochester MN a month after the freezing incident, where he reported to Dr. Mark Kidman what had occurred at Duluth and that he had "scar tissue" on the lenses of his eyes that caused fast growing cataracts. Dr. Kidman initially attempted to correct Mr. Rodd's vision with bifocal glasses. as of September 2016, Dr. Kidman advised Rodd he was 100% blind in his left eye and 90% blind in his right. Clinical Director Shelia Hadaway eventually approved Rodd to be seen at Mayo Clinic.

In November 2016, Rodd was evaluated at the Mayo Clinic and recommended for cataract removal surgery in both eyes. Surgery was scheduled for January 2017, but was canceled. Nurse Practitioner Tonya Burks then informed Rodd the surgery was no longer on the calender. Neither Dr. Hadaway nor Nancy Jordan returned Rodd's emails inquiring about the status of his surgery. Rodd was eventually told his surgery would be soon. Rodd ultimately had his left eye cataract surgery for removal on April 11, 2017.

Immediately following his left eye surgery, Mayo Clinic scheduled Rodd's right eye cataract removal surgery for May 2017, but the surgery was again cancelled. Mr. Rodd complained to Physical Assistant Norman Booth, who informed Mr. Rodd he thought the surgery had already occurred. Mr. Rodd was experiencing headaches and flashes while waiting for the right eye cataract to be removed. Mr. Rodd eventually had surgery on his right eye cataract on August 12, 2017.

Mr. Rodd's eyes were once hazel but are now blue as a result of blue dye used during the surgeries and he also looks beady eyed now as a result of the surgeries, and continues to suffer from headaches, flashers, eye pain, burning and itching. Rodd claimed the defendants "all should have been knowledgeable that postponing, cancelling such emergent important surgery on a primary sensory organ as the eyes that it complicates and blatantly shows they are hypocritical 'deliberately indifferent' to his health recovery, and medical wellbeing." Mr. Rodd also stated that noone had even tried to determine the full extent of damage to his eyes.

On August 5, 2019, Mr. Rodd filed his instant lawsuit against the above named defendants . In a memorandum filed the same day, Mr. Rodd outlined (2) claims. (1) A constitutional claim under Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotic, 403 U.S. 368 (1971), for "deliberate Indifference" to his serious medical needs, and (2) A Tort claim alleging medical malpractice and negligence in the treatment of his eye condition that was left to deteriorate into further more serious conditions.

(6) 12/15/2021 

REASONS FOR GRANTING THE PETITION

Mr. Rodd's complaint has never been addressed on the merits but has been denied by both the District and appeal Courts for his failure to exhaust his administrative remedies even though at the time such exhaustion was required by the time limits set by statute Mr. Rodd was physically incapacitated by total blindness and was unable at the time to exhaust his administrative remedies.

In McCoy V. Gilbert, 270 F.3d 503, 510-11 (7th Cir.2001) citing 28 CFR Sec. 542.14(b) which states: "an extended period of time during which the inmate was physically incapable of preparing a Request or Appeal is a valid reason for delay in filing a grievance." The Court stated: In any event, an administrative remedy that would be forfeited for failure to comply with a deadline that in the circumstances could not possibly be complied with would not be "available" within the meaning of 18 USC Sec. 1997(e), as held in Days V. Johnson, 322 F.3d 863, 867-68 (5th Cir. 2003) (per curium) (An unrelated ruling in Days, involving burden of proving exhaustion, was rejected in Jones v. Bock, 549 U.S. 199,216 (2007). See e.g. Dillon V. Rogers, 596 F.3d 260, 267 (5th cir. 2010). As Stated in the declaration of Shannon Boldt at 048, The Bureau of Prisons has a four-tiered administrative procedure for inmate grievances, which is codified at 28 CFR Sec. 542.10. The First step is informal resolution with prison staff. 28 CFR Sec. 542.13(a). Requests for informal resolutions forms (also known)as a BP-8) are not assigned a Remedy ID number and are not tracked. Failure to follow anyone of the four-tiered procedure is a "Graveman" for an inmate trying to exhaust his remedies. See Statement of the case at

*2 in the appellees brief before the Eighth Circuit Court of Appeals

basically conceding that Mr. Rodd could not get the initial step off the ground in his attempt to start the administrative process. Rodd stated that neither Dr. Hadaway nor Nancy Jordan would respond to or return Mr. Rodd's emails, thus further making his remedy unavailable.

A prisoner is required to exhaust only "available" administrative remedies, 42 USC Sec. 1997(e)(a); *Woodford V. Ngo*, 548 U.S. 81, 102 (2006) and a remedy is not available if essential elements of the procedure for obtaining it are concealed. *Dole V. Chandler*, 438 F.3d at 810; *Bryant V. Rich*, 530 F.3d 1368, 1373 n.6 (11th Cir. 2008). denying Mr. Rodd access to his procedure is the same as concealing it. See District Court's Judgment at 072. citing *Ross V. Blake*, 136 S. Ct. 1850, 1856-57 for the proposition that the PLRA contains no exceptions to its requirement that prisoners administratively exhaust their remedies. There are, however, certain circumstances where administration exhaustion procedures may not be "Available" for purposes of the PLRA. These circumstances include: (1) when the procedure would be a "dead end" because officers are unable or unwilling to provide relief; (2) when the procedure is so opaque as to become "incapable of use"; (3) when prison officials prevent a prisoner from utilizing the procedure through "machination, misrepresentation, or intimidation". *id* at *1859-60.

It should be noted that both Dr. Hadaway and Dr. Nancy Jordan impinged upon the rights of Mr. Rodd to exhaust his administrative Remedy by failing to respond to Rodd's emails which is the same as filing a BP-8 since trulinks was set up in the Bureau. See *Miller V. Norris*, 247 F.3d 736, 740 (8th Cir. 2001). (noting an inmate cannot be required to exhaust administrative remedies when prison

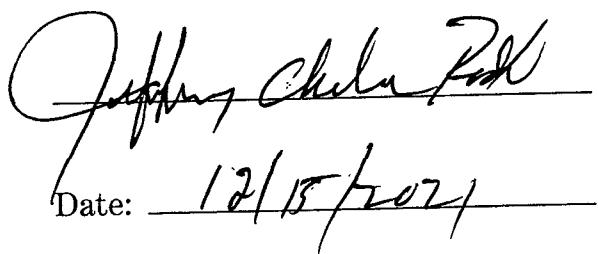
12/15/2021 *[Signature]*

officials have prevented him from exhausting). Contrary to the defendants Mr. Rodd constantly emailed both Dr. Hadaway and Dr. nancy Jordan to no avail. See original complaint filed with appellees brief as an appendix at *041 Therefore Mr. Rodd respectfully moves this Court to grant the petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



A handwritten signature in black ink, appearing to read "Jeffrey Chela Rodd".

Date: 12/15/2021