

21-7243

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

FEB 06 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Carrie Chapman
— PETITIONER

(Your Name)

Stephanie Patton
— RESPONDENT(S)

vs.

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Carrie Chapman
(Your Name)

(Your Name)

21 EVANG BLVD
(Address)

(Address)

CANN CITY, CA 91215
(City, State, Zip Code)

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Plaintiff ask the supreme Court did the District Court and Court of Appeals Abuse their descretion regarding Issue 1 - 6 ? or was the District Court Clearly erroneous?
2. Plaintiff ask the supreme Court was the District Court / Court of Appeals judgment incorrect and if so what other actions could have been taken regarding Issue 1-6?
3. Plaintiff ask the supreme Court was the District Court / Court of Appeals judgment incorrect in which what grounds did the district Court fail to Consider?
4. Plaintiff ask the Supreme Court to take action in Plaintiffs case remanding the case back to District Court.
5. The Plaintiff also request an Oral Argument take Place in the intrest 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☐ is unpublished.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 Amended 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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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 11/10/21.

☐ 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

8th Amendment . . . 11-16

11th Amendment . . . 8, 9, 17

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STATUTES AND RULES

12 (b) (1)
12 (b) (6)

OTHER

STATEMENT OF THE CASE

From August 21, 2018 to December 2018 non Party XUSA Ryder May refused Jabari Johnson a wheelchair after officers Quilin and Neece assaulted Jabari Johnson while at the Sterling Correctional Facility.

From Dec 21, 2018 to June 24, 19 Plaintiff was Provided a wheelchair to use in his cell etc at the Colorado state Pen.

On 6/24/19 Plaintiff was transferred to the Sterling Correctional Facility and Provided his wheelchair.

On 7/16/19 Vannos, Khaler, Booth and Cathi Herrea took Plaintiff's wheelchair due to directives by XUSA Ryder May which was taken up until 8/6/19.

On 8/6/19 Plaintiff's wheelchair was provided when Plaintiff returned to the Colorado State Pen up until 10/18/19.

On 10/18/19 Plaintiff was attacked by C.O.s Quilin, Jackson, Krumer and Martin indicating that the Plaintiff does not get his wheelchair.

On 11/5/19 Plaintiff was transported back to the Colorado State Pen where Plaintiff was forced to scoot and crawl on the floor up until 11/8/2019.

On 11/8/19 Plaintiff held his tray in order to speak to LT Pruitt Providing Pruitt a medical slip which states item wheelchair expiration date none, Provided XUSA Stephanie Dalton, LT Pruitt then Provided Plaintiff his wheelchair.

On 11/19/19 Daniel Barberro and Stephanie Dalton confiscated Plaintiff's wheelchair indicating he don't get it.

On 11/22/19 Plaintiff was provided his wheelchair by Prieto to attend court as Grentzler Confiscated it when Plaintiff arrived back from court.

On 12/4/19 Plaintiff was removed from his ADA shower cell Placed in C-1-11 a non ADA cell knowingly and intentionally in which Plaintiff have not been able to shower from 12/4/19- current date as Painful open sores form on Plaintiff's chest, back, stomach, arms, and shoulders denying Plaintiff's shower cell to current date.

A. On 12/13/18 CSP medical records state item wheelchair Provided by Stephanie Dalton XUSA stating item wheelchair expiration date none.

B. On 12/13/18 Dr. Richard Nodge states on 12/13/18 Per medical records that the Plaintiff need physical therapy in order to walk.

C. On 12/13/18 Nurse Ashley Albord of CSP states that the Plaintiff is in a cripple state Per medical records.

D. On 2/5/19 Nurse III Ashley Albord of CSP states that the Plaintiff as February have a wheelchair for cell / Personal use.

E. On 2/23/19 Per Richard Nodge medical slip, Nodge states Plaintiff have an order of physical therapy in order to walk.

F. On 3/20/19 Dr. Richard Nodge Per medical records state appointment cancelled for physical therapy, wheelchair approved for cell use.

Issue 1: Sovereign Immunity Regarding Official Capacity

Claims Of Requesting Monetary Relief When Plaintiff
Never Requested Monetary Relief In The Defendants
Official Capacity But Plaintiff Did Request Monetary
Relief In The Defendants The Individual Capacity
Further Requested Inductive Relief From The
Defendant In Xler Official Capacity In Which Defendant
Is Not Entitled To The 11th Amendment Sovereign

Immunity

In respect to the Court of Appeals Plaintiff has full extensive knowledge of the rules and applicable laws surrounding the (11th Amendment Sovereign Immunity), in which Plaintiff detailed in case 20-cv-00435-PAB-MEN under ECF document 104 and 108 then further in Plaintiff's opening brief and reply brief, yet the Colorado Court of Appeals would **NOT** accept the fact that the Plaintiff has unequivocally conveyed that he is **NOT** suing the Defendant Dalton in her official capacity for monetary relief, but is requesting such injunctive relief in the Defendant Dalton's official capacity, and that Plaintiff Labari Johnson **IS** suing the defendant Stephanie Dalton within her individual capacity for monetary relief.

Pursuant to the 11th Amendment Sovereign Immunity bars suits in Federal Court for damages against states, state agencies, and state officials in their official capacity, and that unless the state unequivocally waives its immunity or congress expressly abrogates the states immunity in creating a statutory cause of action.

Furthermore, under Rule 12(b)(1) of The Federal Rules of Civil Procedure the law does not bar lawsuits against (A) state officials in their official capacity for damages, or (B) against state officials in their official capacity for injunctive relief.

The Plaintiff also indicated such facts to the Court of Appeals within the Reply Brief were as the Plaintiff stated: see page 3 of assistant attorney General Cole Woodward's Answer Brief Woodward state verbatim under procedural history.

Mr. Johnson filed his complaint on 2/18/2020. Mr. Johnson brought suit against Ms. Dalton in both her official and individual capacity. He sought \$500,000 punitive damages and \$750,000 in compensatory damages, also that the defendant is being sued in her official capacity for injunctive relief in the form of access of wheelchair for daily living, physical therapy appointments, and daily living of a medical facility, in which accommodates the Plaintiff's needs for a shower.

Nonetheless even if the Plaintiff had not distinguished how he was suing the courts are to assume Plaintiff is suing the defendant for \$500,000 in punitive damages and \$750,000 compensatory damages in the defendant's individual capacity for monetary relief.

see Baker v. Chisom 1285 ct 2932 (2008) (officials are necessarily sued in their personal capacity where those officials are named in a complaint even if the complaint does not explicitly mentioned the capacity where they are sued.)

Furthermore under the law of Rule 12(b)(1) the defendant is not entitled to Sovereign Immunity under the 11th Amendment Pursuant to the law and citing of the Supreme Court.

Issue 2 Lack of Lack of Subject Matter Jurisdiction Under Rule 12(b)(1)

In respect of the Court of Appeals the Plaintiff respectfully acknowledges Rule 12(b)(1), also interpreted the Rule adequately in ECF document 104 and 108 exposing that the Rule The Federal Rules of Civil Procedure 12(b)(1) challenges are generally presented in (2) forms

the moving Party may (1) facially attack the complaint's 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. Nadel, 363 F.3d 1072, 1074 (10th Cir. 2004) quoting Mestas v. Julian, 351 F.3d 1001, 1003 (10th Cir. 2003)

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

see Xliff v. United States, 46 F.3d 1000, 1002 (10th Cir. 1995)

see ECF Document 64 Plaintiff sent all relevant Dr's mandated orders indicating Plaintiff is required to have such accommodations. The Plaintiff further requested from the judges that the documents of the mandated records be sent to the Plaintiff, in which Plaintiff intended to add to his Motion as exhibits to prove Doc's lies indicating that the Plaintiff do not have ADA accommodations.

Moreover Plaintiff produced witness declarations in ECF document 83 and 92 indicating Plaintiff is required to have a wheelchair. Therefore Per Rule 12(b)(1) Plaintiff met the (2) forms in which case law also convey unequivocally the Plaintiff has jurisdiction.

Furthermore in ECF Document 134 Plaintiff Proved the Judges actions were clearly erroneous.

Issue 3: Claim-Failure To State A Claim Under Rule 12(b)(6)

In respect to the Court of Appeals, the Plaintiff respectfully acknowledges Rule 12(b)(6), also interpreted the Rule adequately in document 104 and 108 expressing that the Federal Rule of Civil Procedure states:

A complaint must allege enough factual matter that taken as true makes the Plaintiff's claim of relief Plausible on its face.

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

(The Plausibility standard requires that relief must Plausibly follow from the facts alleged not the facts themselves be Plausible).

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

(D. Colo. 2018) citing Brison 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 claims and grounds upon which it rests.

see Erickson v. Pardus 115 89, 93 (10th Cir. 2007)

None the less Plaintiff provided such facts are Plausible and are not conclusory due to the defendant prescribing the Plaintiff his wheelchair on 12/13/18, providing Plaintiff with CSP medical Slip stating item wheelchair expiration date stating none. Dalton

then takes Plaintiff's wheelchair and doesn't return it from 11/19/19-current date, forcing Plaintiff to scoot and crawl on the floor, also removing Plaintiff from his ADA showercell on 12/14/19, causing painful open sores to form on Plaintiff's body due to taking wheelchair and showercell from 12/14/19-current date.

Therefore Plaintiff alleged enough factual matter required to be taken as true, which makes the claim for the relief plausible on its face indicate in ECF Document 104, 108, opening brief, reply brief and Petition of Certiorari.

Legal Definition of Plausible seemingly worthy of belief in which The Federal Court, Judge Brimmer in document 134 was clearly erroneous, were as Plaintiff unequivocally proved his claims are plausible.

Issue 4 Defendants Unlawful Conduct Violated The 8th Amendment Cruel And Unusual Punishment's Deliberate Indifference Further Violating The Administrative Regulation Of Prison Policy Under AR 700-01 Responsibility And Organization Of Clinical Services AR 700-02

Medical scope of Services § 750-04 Americans With Disability Act AS Plaintiff Met The Subjective And Objective Component

In respect to the Court of Appeals Plaintiff has full extensive knowledge regarding the Rules and applicable laws surrounding the 8th Amendment Cruel And Unusual Punishment Along with Deliberate Indifference, were as the Court of Appeals on page 485 of the 11/10/21 order stating that a 3 day deprivation did not rise to a level of unnecessarily wanton infliction of pain, further stating harm did not implicate the Cruel And Unusual Punishment clause of the 8th Amendment, also stating the Plaintiff did not plausibly plead the objective component.

Defendant Datton violated the 8th Amendment when she caused wanton infliction of pain violating the 8th Amendment ~~Cruel And Unusual~~ Punishment Clause denying the Plaintiff of his wheelchair for 2 years ~~NOT 3 days~~ forcing the Plaintiff to scoot and crawl on the floor deprived of showercell which was mandated by Dr. Richard Nodge on 12/14/19, yet forced to be unable to clean himself for 2 years causing painful open sores to form on Plaintiff's body Pled an 8th Amendment violation under Deliberate Indifference.

Pursuant to the law alleging an 8th Amendment violation of Deliberate Indifference to serious medical needs has two components, objective and subjective.

The objective component of the test is met if the harm suffered is sufficiently serious to implicate Cruel And Unusual Punishment clause.

However, due to the inhumane conditions of denial of lack of shower caused the Plaintiff pain and injury which was sufficiently serious due to Dr. Richard Nodge mandating the Plaintiff a wheelchair and showercell on 3/5/19 violated the 8th Amendment Cruel And Unusual Punishment Also Deliberate Indifference.

see Sealock v. Colorado, 218 F.3d 1205, 1210 (10th Cir 2000) (a medical need is serious if it is mandated by a Dr.'s diagnosis one that even a lay person can see the necessity of treatment).

see DAVIS v. GEO. Grp. Corr. Inc., 696 F. Appx 851, 855 (10th Cir 2017)

(Allegations that Defendants have displayed a Deliberate Indifference toward a Prisoner's serious medical needs and denied him adequate medical treatment are sufficient to finally establish imminent and serious danger requirement).

see Tafaya v. Salazar 516 F.3d 912, 916 (10th Cir. 2008) (Inhumane conditions of confinement including deprivation of adequate food, deprivation of clothing, shelter, recreation, medical care, sanitation, and reasonable safety from bodily harm is an 8th Amendment violation).

see Estelle v. Gamble, 429 U.S. at 1045. Ct 285 (1976) (Chief purpose of Cruel And Unusual Punishment Clause is to prevent unnecessary wanton infliction of Pain).

Defendant, Dalton denied a serious medical need mandated by Dr. Richard Hodge, ADA coordinator, Janet Smith and Stephanie Dalton, were a lay person could see the need for treatment causing unnecessary wanton infliction of Pain denying showercell causing painful open sores to form on Plaintiff's body denying medical needs of adequate medical treatment sufficiently pled serious danger requirement denying sanitation, safety and medical care violated the 8th Amendment Cruel And Unusual Punishment along with The Deliberate Indifference Clause of The United States Constitution.

The Defendants actions not only violated the United States Constitution, but also violated the Policy of the Prison Under Administrative Regulation 700-01 Responsibility and Organization of Clinical Services.

Policy states verbatim: It is the Policy of the Colorado Department of Corrections (DOC) to ensure that offenders will be provided with health care services that maintains basic health and prevents other physical and emotional deterioration.

Procedures states verbatim: Regarding AR 700-01 Responsibility and Organization of Clinical Services: A DOC health authority is responsible for ensuring system wide medical nursing, psychiatry, optometry, pharmacy, dental, mental health and sex offender treatment as well as drug alcohol diagnostic and treatment services to offenders incarcerated in DOC operated facilities.

Section F. Medical Orders And Mental Health Directives of AR 700-01

1. Clinical Services DOC employees and contract workers will issue concise and specific orders and mental health directives relative to health care needs of offenders under their care and ensure that orders are properly communicated to appropriate facility DOC employee or contract workers when appropriate clinical decision will remain the sole province of the responsible physician, dentist, or behavior health DOC employee or contract worker and are not counter mandated by non-clinician.

2. Medical orders written by consulting specialists are considered recommendations until a DOC or contract worker health care provider reviews and approves the order.
4. Facility Unit Administrative heads will ensure that medical orders are augmented by the necessary job, housing meals/diets and ~~are~~ security arrangement.
5. When conflict arises, as a result of a medical order, or mental health directives, no delay or implementation will occur. The facility/Unit/Administrative head or designee and the facility health services administrator will meet following any such conflict to resolve any issues. Medical orders and Mental Health directives will be limited to those actions, prescriptions, and therapeutic procedures that clearly deal with the defined health need of the offender.

Under AR 700-01 indicate that the policy of DOC is to provide health care services and to prevent normal physical and emotional deterioration. Defendant Dalton failed to do so, forcing Plaintiff to scoot and crawl on floor deprived of his XDA showercell as painful open sores formed on his body due to lack of showers. Prior to 11/19/19 of removing the Plaintiff's wheelchair in retaliation, as the Defendant Dalton had full knowledge of Plaintiff's medical history detailed within A-F under statement of case within this writ.

Pursuant to AR 700-01 Defendant Dalton is a medical service provider were as under section F2 above indicate that a medical order is considered as a recommendation until a DOC or contract health care provider reviews and approves the order until a DOC or contract health care provider reviews and approves the order. Defendant Dalton approved wheelchair with no expiration date. Pursuant to AR 700-01 Defendant Dalton is required and obligated to know the procedures, were as under section F5 above, when a conflict arrives regarding medical, the Defendant Dalton is required to meet with the head designee. Defendant Dalton met with Daniel Barberro (the head designee), as the defendant removed Plaintiff's wheelchair and did not resolve the problem, yet was deliberately indifferent to serious medical needs.

Pursuant to AR 700-01 Defendant Dalton under section F1 state the defendant Dalton will issue directives relative to health care needs under the Defendant's care and ensure that orders are properly communicated to appropriate facilities.

Pursuant to AR 700-01 Defendant Dalton under section F1 the Defendant had full knowledge of the risk to Plaintiff's health and safety were as under 700-01 F1 it is the Defendant Dalton's job under policy 700-01 is to properly communicate such serious medical needs relative to health care to appropriate medical facilities.

Defendant Dalton knew of the risk to Plaintiff's health and safety due to circumstantial evidence of grievances, medical notes, and lawsuits filed on Defendant Dalton regarding misconduct when Defendant Dalton discriminated against the Plaintiff in retaliation removing the Plaintiff from his mandated medical ordered wheelchair and showercell ultimately forcing the Plaintiff to scoot and crawl on the floor causing Plaintiff to suffer wanton pain and injury, humiliating Plaintiff denying the Plaintiff of the basic necessities of prison confinement such as sanitation, subjecting the Plaintiff to cruel conditions as painful open sores form on Plaintiff's body due to lack of shower line unequivocally torturing the Plaintiff continuing to deprive Plaintiff of his constitutional rights without doubt manifest irreparable harm, when intentionally interfering with treatment once prescribed.

see Farmer v. Brennan, 511 U.S. 825, 114 S.Ct. 1920 (1994) (Whether a prison official had requisite knowledge of substantial risk is a question of fact subject to demonstration in the usual ways including inference of circumstantial evidence of documents reporting by officers and everything that has occurred).

see Estelle v. Gamble, 429 U.S. 87, 105, 97 S.Ct. 285 (1976) (Intentionally interfering with treatment once prescribed violate the 8th Amendment).

see Estelle v. Gamble, 429 U.S. 97, 105, 97 S.Ct. 285 (1976) (Prisoners retain the essence of human dignity inherent in all persons, respect for that dignity animates 8th Amendment prohibition against cruel and unusual punishment. A prison that deprives prisoners' basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society).

see Ashcroft v. Iqbal, ___ U.S. ___, 129 S.Ct. 1937, 1949 (2009) (showing that a defendant knows of a serious risk and fails to take reasonable action to correct it does show deliberate indifference).

see Kemmerer, 136 U.S. 436, 447 (1890) (Punishments are cruel when they involve torture or a lingering death).

see Gregg v. Georgia, 428 U.S. 153, 169-173 (1976) (Deliberate indifference to serious medical needs of prisoners constitutes the unnecessary wanton infliction of pain proscribed by the 8th Amendment).

see Vasquez v. Davis, 887 F.3d 1270, 1275 (10th Cir. 2018) quoting

Altarki v. Robinson, 767 F.3d 1188, 1193 (10th Cir. 2019) (allegations of delay in treatment Plaintiff must show that the delay resulted in substantial harm, a requirement that may be satisfied by showing a life long handicap permanent loss and/or considerable pain).

Pursuant to the facts above Dalton's actions proved Defendant Dalton's knowledge of risk to Plaintiff's health and safety undeniably constitutes deliberate indifference to serious medical needs depriving human dignity.

Defendant Dalton is also obligated by the Administrative Regulation 700-02 Medical Scope of Services Policy which states verbatim: It is the policy of the Colorado Dept of Corrections due to ensure that offenders have unimpeded access to a continuum of health care services so that health care needs including prevention and health education care not in a timely and offensive matter.

Pursuant to the Administrative Regulation of 700-02 Medical Scope of Services Policy of the Colorado Department of Corrections, is the defendant's obligation pursuant to Policy 700-02 to know of treatment plans and to provide continuity of services.

Defendant Dalton has not provided continuity of medical care depriving wheelchair and showercell for 2 years denying Plaintiff of showers for 2 years causing painful open sores to form on Plaintiff's body for 2 years, were as the Defendant Dalton encouraged wanton infliction of pain violating the 8th Amendment Cruel And Unusual Punishment, Deliberate Indifference along with the Department of Corrections Administrative regulation 700-02 Medical Scope of Services.

see Meade v. Grubbs, 861 F.2d 1512, 1531 (10th Cir. 1988) (The failure of the state health commissioner to carry out statutory duties could be deliberately indifferent).

see Kikumura v. Isagie, 461 F.2d 1269, 1291, 1296 (10th Cir. 2006) (Holding delay must be shown to have caused substantial harm including pain suffered while awaiting treatment two to three and a half hours delay in treating painful condition stated a claim).

Defendant Dalton did not carry out her statutory duties causing wanton infliction of pain denying Plaintiff Jabari Johnson of ADA accommodations of wheelchair and showercell, in which are the basic necessities of Prison confinement and if violated violates the 8th Amendment Cruel And Unusual Punishment.

Defendant Dalton knowingly and intentionally removed Plaintiff's ADA showercell causing the Plaintiff to be unable to shower for 2 years causing painful open sores to form on Plaintiff's body, in which the denial of showers and showercell were not days or months, yet the Plaintiff was and is deprived of showers for 2 years therefore Dalton is Deliberately Indifferent.

Pursuant to the Administrative Regulation of 750-04 Americans with Disability Act Request for accommodation states under the Policy of the Colorado Department of Corrections, that:

It is the policy of the Colorado Department of Corrections (DOC) to prohibit discrimination on the basis of disability and to provide offenders with disabilities with or without reasonable accommodation, legal access to programs services and activities consistent with penological interest.

Instead of providing Plaintiff with his wheelchair and ADA accommodations he had since 12/12/18, in which Stephanie Dalton instead she took the wheelchair on 11/19/19 and have ~~NOT~~ provided the wheelchair back forcing the Plaintiff to scoot and crawl on the floor for 2 years as Stephanie Dalton, the defendant is obligated to provide medical care under the 8th Amendment under Cruel And Unusual Punishment. She also has a duty to refrain from discriminating against the Plaintiff due to disability pursuant to policy 750-04, yet Dalton have not abided by any of the policies.

See Tafelqv. Salazar, 586 F.3d 912, 916 (10th Cir. 2008) (The 8th Amendment protects against Cruel And Unusual Punishment as Prison officials are to provide humane conditions of confinement including adequate food, clothing, shelter, sanitation, medical care and reasonable safety from bodily harm).

Defendant Dalton failed to provide medical care, sanitation and safety as Plaintiff was forced to scoot and crawl on the floor and deprived of his showercell causing painful open sores to form on Plaintiff's body placing Plaintiff's life in imminent danger as Plaintiff suffered considerable pain.

see Davis v. FED. Corr. Inc., 696 F. Appx 851, 855 (10th Cir 2017)

(Allegations that Defendants have displayed a Deliberate Indifference toward a Prisoners serious medical needs and denied him adequate medical treatment are sufficient to finally establish imminent and serious danger requirement).

see Vasquez v. Davis, 1882 F.3d 1220, 1275 (10th Cir 2018) (quoting Al-Tarkhi v. Robinson, 762 F.3d 1188, 1193 (10th Cir 2019))

(Allegations of delay in treatment Plaintiff must show that the delay resulted in a substantial harm, a requirement that may be satisfied by showing a life long handicap, permanent loss or considerable pain).

Plaintiffs injuries are serious in nature as Dalton mandated the use of the wheelchair with no expiration date which means she knew of the seriousness of the Plaintiffs cripple condition.

see Sealeck v. Colorado, 218 F.3d 1205, 1210 (10th Cir 2000) (a medical need is serious if it is mandated by a Dr. Diagnosis or one that even a lay person can see the necessity of treatment).

Dalton knew of the risk to Plaintiffs health and safety per policy, per medical records and per evidence, yet failed to act failing to correct the situation, therefore she was deliberately indifferent under the 8th Amendment.

see Merritt v. Hawk, 193 F. Supp. 2d 1216, 1227-28 (D. Colo. 2001)

Plaintiffs allegations that he had informed various supervisory officials about his problems sufficiently pled their personal involvement).

see Ashcroft v. Iqbal — U.S. — 129 S.Ct 1937, 1949 (2009)

(showing that a defendant knows of serious risk and fails to take reasonable action to correct it does show deliberate indifference),

meaning a mere District Court Judge does not over rule the law of the subjective and objective component the Plaintiff met in ECF 104, 108, opening brief and Reply brief, were as Dalton knew the risk and failed to take action which constitutes deliberate indifference, furthermore a serious medical need is one which is diagnosed, ~~by doctor~~ ^{by KISA} Dalton diagnosed the wheelchair then took the wheelchair from 11/19/19-current date 2 years, which ultimately proves the defendant violated the subjective component.

None the less the incompetence of such judges regarding this appeal attempted to state that the Plaintiff had only been without his wheelchair for 3 days committing the legal terminology of constructive fraud meaning that the judges intended to deceive when the Plaintiff has expressed within the opening brief and reply brief that he is missing his wheelchair to current date forced to scoot and crawl on floor denied of showers in which he is mandated to have a wheelchair and showercell, yet due to the denial of showercell painful open sores form on Plaintiffs body.

The Plaintiff is deprived of his wheelchair and showercell for 2 years causing wanton infliction of pain, yet judges within the court fraud on the court which means under the legal definition - fraud involving conduct that undermines the integrity of the judicial process.

see Estelle v. Gamble, 429 U.S. at 104, S.Ct (1976) (Chief Purpose of cruel and unusual punishment clause is to prevent unnecessary wanton infliction of pain).

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

ISSUE 5 Qualified Immunity

In respect to the Court of Appeals Plaintiff has extensive knowledge regarding Qualified Immunity in which the Defendant did not meet.

To overcome qualified immunity a plaintiff must show that (1) a reasonable jury could find facts supporting a violation of a constitutional right, which (2) was clearly established at the time of Defendants conduct, in which Plaintiff expressed in ECF Document 104, 108, opening brief, reply brief and Writ of Certiorari.

see Estate of Smart v. City Wichita, 951 F.3d 1161, 1169 (10th Cir 2020)

Plaintiff proved (1) Stephanie Datton provided wheelchair on 12/13/18 (2) took it on 11/19/19 knowingly and intentionally deprived care as mandated Dr's orders Prescribed by Dr. Richard Lodge stating Plaintiff has wheelchair for cell use and shower cell. Also the defendant NEVER gave the Plaintiff his wheelchair back from which Datton took it on 11/19/2019, were as Plaintiff have never indicated on any document in which Woodward and Brimmer intentionally lied. Plaintiff have been scooting and crawling on the floor since 11/19/19 to current date.

Plaintiff have been deprived of shower cell/showers since 12/14/19 as painful open sores form all over Plaintiffs body which have occurred for 2 years. Datton was notified of the problems then and now, yet still fail to abate it, in which the confiscation of wheelchair caused unnecessary and wanton infliction of pain. Quoting

Van Riper, 67 F. Appx at 503 see Anderson v. Crieghton, 183

U.S. 635, 641, 1078 S. Ct 3034 (1987) (qualified immunity is assessed in light of the information the defendants possessed). see Anderson v. Crieghton 183 U.S. 635, 641, 1078 S. Ct 3034 (1987)

officials can be on notice that their conduct violates established law even in novel circumstances (court need not have held that fundamentally similar conduct was unlawful to defeat qualified immunity).

Therefore the defendant is not entitled to Qualified Immunity under the 14th Amendment.

Issue 6 Amended / Supplemental Complaint

On 12/27/20 Plaintiff filed An Amended / Supplemental Complaint adding new defendants new claims by the Defendants such as the defendants knew that the Plaintiff is scooting and crawling on the floor causing Plaintiffs right foot to swell as he is suffering from injury forced to scoot and crawl on floor while in pain, and does not have his shower cell as Plaintiff suffers from painful open sores due to lack of showers, proving to current date that the defendant has full knowledge of her illicit actions from 11/19/19-12/27/20 and is still failing to act as Plaintiff added that ADA Coordinator Janet Smith provided Jabari Johnson a wheelchair for walking impairment for daily living / housing with no end date on 6/17/19.

Therefore USA Stephanie Dalton the supervisor provided the wheelchair due to plaintiff's disability as Dalton took plaintiff's wheelchair on 11/19/19. Plaintiff intended to add those factors which are all valid claims under Rule 15 in which states In all other cases a party may Amend its Pleading only with opposing Party's written consent of court's leave.

Section(c) Relation Back of Amendments

(1) When amendment to a Pleading relate to date or original Pleading when:

(A) The law that provides the applicable statute of limitations allows relation back.

(B) The Amendment asserts a claim or defense that arose out of conduct, transaction, or occurrence once set out in original Pleading.

The Plaintiff is qualified under section A and B under Rule 15 Amended / Supplemental Complaint, due to the fact Plaintiff has the right to liberally file were as the Plaintiff is further being tortured by the defendant and has actual knowledge due to Plaintiff telling her in which she intentionally ignores the plaintiff as plaintiff's condition deteriorate inflicting further pain and injury.

see Walker v. United States Parcel Service Inc. 240 F.3d 1268 1278 (10th Cir. 2001) (such authorization of amending complaint should be liberally granted unless good reason exist for denying leave such as bad faith or delay).

see Greene v. Georgia, 428 U.S. 153, 169-173 (1976) (Deliberate indifference to serious medical needs of prisoner constitutes the unnecessary wanton infliction of pain).

see Kemmler 136 U.S. 436, 447 (1890) Punishments are cruel when they involve torture or lingering death

REASONS FOR GRANTING THE PETITION

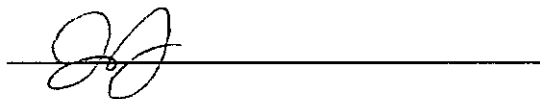
The District Court made numerous errors in this case. (1) District Court erred in determining the defendants actions of violating the 8th Amendment in which the Plaintiff met both the objective and Subjective Component, Proving the Deliberate Indifference Standard Proving that District Court was clearly erroneous in which Plaintiff met Rule 12(b)(11) and 12(b)(6) requirements, also has the right to freely Amend or Supplement complaint but was denied. Yet the District Court intentionally abused their discretion in which the defendant is not entitled to neither qualified or sovereign immunity of the 11th Amendment Pursuant to the law, as the Plaintiff to this current date is tortured, denied medical care, showers, ADA accommodations for disability as Plaintiffs incurs worsen and deteriorate forcing Plaintiff to scoot and crawl on the floor for 2 years causing Plaintiffs right injured foot to swell and open sores form on Plaintiffs body due to lack of adequate ADA accommodation to shower is inhumane and violate the 8th Amendment Cruel And Unusual Punishment / Deliberate Indifference. Therefore Plaintiff request that the U.S. Supreme Court remand the case back to district court.

After the collective research and accurate citings the defendant has and still is violating Plaintiff's 8th Amendment rights subjecting Plaintiff to cruel and unusual punishment and is Deliberate Indifferent to all factors failing to act to known risk to Plaintiff's health and safety further violating the Policy of DOC therefore Plaintiff request that the United States Supreme Court reverse the District Court and Court of Appeals findings remanding the case back to district Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 12/6/22
law librarian Carolyn Hansen holds filings this will be provided to her on 12/6/22 then when its returned by her it'll be set at the supreme court