

No. **21-7689**

In the Supreme Court of the United States

Deverick Scott

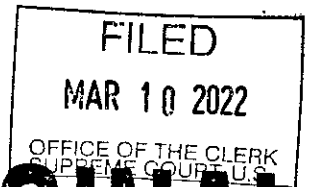
Petitioner

Vs.

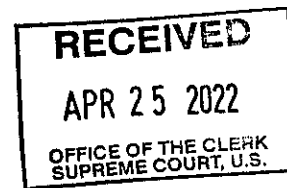
Wendy Kelley, Director et. al

Arkansas Division of Corrections

Respondent



ORIGINAL



On Petition For a writ of Certiorari to the United States Court for the Eastern
District of Arkansas, Pine Bluff Division 5; 19-cv-79 BSM/ PSH

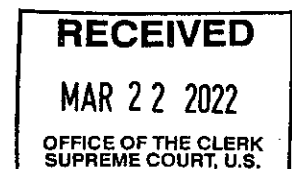
3/10/22 Deverick Scott # 131042

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QUESTIONS PRESENTED

1. On 4/24/18, 4/25/18 Did Defendants Malone, Sexton, Burchfield violate Scott's clearly establish right to be protected by assault from other inmate Savage who between 10:30 pm on 4/24/18 held Scott hostage in his cell by tying it up where end he'd in his cell while holding a bottle out his trap "feces / urine" telling Defendants Malone, Sexton they no gonna feed Scott and he gonna dash them and Scott if they don't get Lt. or Sgts. down here. And continue to have Scott hostage unto 5:00 am. On 4/25/18.

Defendant Malone/ Sexton who stated they not going to get involve it's between Scott and Savage didn't try to secure Savage trap, or go get supervisors unto breakfast call. Who once Lt. Burchfield come down had Savage untie Scott, but didn't secure Savage trap. And when Cpl. Sexton handed Scott his tray Inmate Savage reach out and dash Scott with urine, After having him held hostage in his cell from 10:30 am 4/24/18-4/25/18 5:00 am.

2. Did District Court abuse it discretion dismissing Scott failure to protect and intervene claim on Defendant Malone, Sexton, Burchfield in screening process stating: Scott instigated invents to file a § 1983 complaint.

When Scott admitted to throwing water on inmate Savage trap to get Lt. and Sgt. to they cell cause they been repeatedly having problems with each other. " This was done to prevent from each one doing something to each other at 10:30 pm".

3. Did District Court violate Fed.r.c.P.(56),(60) dismissing Scott claims of Defendant Plummer retaliating on him for his use of grievances and § 1983 complaint by (a) denying him medical attention; (b) putting him on behavior control confiscating all his personal property, bedding and linen and not do proper paperwork in computer to cover it up and wouldn't nobody no about, when Scott presented genuine issue of material facts in dispute to prove his claims.

4. Did District Court violate Fed.R.C.P (37) by allowing Defendant Plummer failure to participate in discovery, them file false/ misleading discovery, Discovery sought would prove Scott claim Plummer retaliated on him by putting him on behavior control and not inmate brooks. And Plummer didn't do proper paperwork to cover it up.

LIST OF PARTIES

Deverick Scott # 131042

Petitioner

Vs.

Wendy Kelley, Arkansas Division of Corrections

Respondents

Major S. Taylor of VSM

Cpt. Bivens (Bphens) of VSM

Lt. Lord of VSM

Cpt. Plummer of VSM

Sgt. Malone of VSM

Cpl. Sexton of VSM

Lt. Burchfield of VSM

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Haltiwager. Mobley, 230 F.3d 1363 (8th Cir. 2008)...

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner Respectfully pray's that A Writ of Certiorari issue to Review the Judgment below.

OPINION BELOW

The Decision for the United States Court of Appeals for the Eight Circuit is unpublished . A copy is attach as appendix A to this petition. The order for the United States District Court for the Eastern District of Arkansas is not reported. A copy is attach as appendix B this petition and appendix D

Jurisdiction

The date upon which the United States Court of appeals denied my case was Dec. 16,2021 (app. A.).

A.) Which allows for this court's Jurisdiction to conferred by 28 U.S.C. § 1254(1)

Constitutional And Statutory Provisions Involved U.S.C.A. Amendment VIII

“ The Eighth Amendment forbids “ Cruel and unusual punishment”.

U.S.C.A. Amendment XIV.

“ Section # 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States. And of the State wherein they Reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: Nor shall Any State deprive Any person of life, Liberty, or property without due process of the law. Nor deny any person within it's jurisdiction the equal protection of the law”.

U.S.C.A. Amendment I

“ The First Amendment protects Everybody's Rights to Freedom of speech, association, and the ability to Redress grievances; And other complaints”.

These Amendments are enforced by title 42, section 1983 United States

Code:

Every person under color of any statute, ordinance, regulation custom, or usage of any state or territory of District of Columbia subjects or causes to be

subjected, any citizens of the United States or other persons within the Jurisdiction thereof the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the Party injured in a action at law, suit in Equity, or Proper Proceeding for redress except that in any action brought against a Judicial officer for an act or omission token in such officer's Judicial Capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavoidable. For the purpose of this section, any act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Statement of the Case

Petitioner, Deverick Scott is a prisoner in the Varner Unit of the Arkansas Division of Corrections (A.D.C.). He has filed a pro se complaint pursuant to 42 U.S.C.A. § 1983 alleging respondents violated his rights of failure to protect and intervene him being assaulted by another prisoner who personally hid defendants he was gonna dash Scott. Scott was in imminent danger of serious injury or possible death on April 24-25, 2018. Id at 7

On May 17, 2019 this claim was dismissed without prejudice at screening process, by United States District Judge Brian S. Miller. D.E. #9. Scott proceeded with his claim of retaliation by Defendant J. Plummer. On 2/4/21 Magistrate Judge PSH dismissed Scott claim against Plummer with prejudice. D.E. #610. Scott produce physical genuine issue of material fact of dispute proving Plummer retaliated on him, and falsified discovery making case bias, and prejudice against him. D.E. #49 D.E. # 50-0.

Again after objecting (see D.E. # 63) It was furthered denied via District Court Judge Brian S. Miller judgment . (see App. and order (see App.

Petitioner sought permission to appeal said dismissal and was granted , by District Court, But after Defendants didn't file response in timely fashion to

motion of extension they ask for. Instead of ruling in plaintiff favor. 8th Circuit Court of Appeals Dismissed Scott claim stating they pull his IFP status. He has 3 strikes and must pay full \$ 505 filing fee on 11/1/21. (see App. A).

In conclusion to 8th Circuit saved Defendants from Justice and equality. Now leaving me out in the cold with hungry wolves licking they chops.

Note: Scott is IFP status with no money on his books. But more importantly the ADC has Scott \$ 1800.00 stimulus check on hold in a bank account supposedly to pay federal filing fees.

But the profound statement Magistrate Judge stated: She dismissed Scott claim cause he orchestrated events to file § 1983 complaint. The courts overlooked Scott instigated to get ADC officials to his cell to separate him and inmate Savage from one of them doing something to each other. This is to prevent a problem. But the courts making a law in the sense that for now if we say a person throw water on a person. He come back and kill the person who throw water on him he justified. I didn't think the mission to black ball me from courts was serious enough to create new laws let alone allow people to be assaulted.

Statement of Facts of 2 claims

- 1.(D.E. # 6-0 exhibit: 4) is grievance Scott wrote grievance to VSM supervisor's about one of his neighbors being able to pop his trap stealing inmate's laundry bags and cutting phone cord while inmates on phone. " Lack of security by Major Carroll, Cpt. Plummer, Lt. Plummer".
2. (D.E. #6-0 exhibit: 5) grievance Scott wrote on 2/20/18 about being off punitive and on step down program to be moved out cell block # 1 to intentionally retaliate, harass and mess him up mentally.
3. (D.E. #6-0 exhibit:6) is request Scott wrote to major about cell he in is driving him crazy and causing him health problems he need a chance to go to population.
4. On the morning of 4/24/18 Scott had officer take note to classification committee Warden Shipman, Ms. Washington notifying them the Lt.'s move inmate Bobby Savage right by him and wasn't suppose to. Where they cell facing each other in L shape of corner and Scott can't use the bathroom or take a shower without inmate Savage sexually harassing Scott. ADC officers intentionally moved inmate Savage beside Scott to drive him crazy. And refuse to move him (D.E. # 6-0 exhibit: 10-12)

Prior knowledge of Scott and Salbo

In 2017 inmate Scott and inmate Savage while in Isolation 4 had verbal altercations on tier cause inmate Savage was calling him niggers and snitching on him getting him shook down. Inmate Scott came out his cell and tried to go into inmate cell. Note: Inmate Savage wrote grievance on it. See his records. " He stated he was scared for his life". Scott couldn't get into inmate Savage cell but ended up in another inmate cell choking him at bars. Scott admitted all this to ADC officials in Internal Affairs. ADC defendants knew Inmate Savage was not suppose to be housed side by side putting both of them in harm's way to hurt each other. (See D.E. #63-0 pg. 50, D.E. # 6-0 exhibit: 13-15) Defendant Plummer, Bivens had knowledge of this incident.

5. Scott new the ADC officers put him and inmate Savage beside each other and wasn't gonna move not one of them to provoke on to do something. So Scott advise a plan to initiate inmate Savage to do something crazy to get him move. At approx. 10:30 pm on 4/28/18 got to talking stuff to inmate Savage and threw a cup of water on his trap and told him it was urine so he could go off. (This was strictly at prison level. Scott wasn't thinking about § 1983)

6. (D.E. # 6-0 exhibit: 7-9) so in retaliation inmate Savage unlock his trap and reach out and tied Scott cell up where it couldn't be open cause he had other end

tied to something in his cell at approx. 11:00 pm and reach out trap with a bottle of feces, or urine "Turned out to be urine" stopping all officers Defendant Malone to come by they side, or make round telling her call Lt. Burchfield and Sgt. to his cell cause Scott dash his cell with urine, This is at approx. 11:00 pm Defendants Malone called Lt. Burchfield on radio to come to cell block #1.

Now to District Court opinion everything after this moment inmate Savage threatened to harm Scott his self by telling Defendants doesn't matter. They do away with law. Cause they know these officers showed deliberate indifference which is a § 1983 claim. All Scott was doing was trying to get ADC supervisors to separate him and inmate Savage to prevent a problem which is what officers was suppose to do.

7. Due to understaffing at VSM unit no supervisor's responded saying they was all tied up. A white Sergeant came to pick up count sheets around 11:00 pm in cell block #1 and came to Scott cell # 22 cell seeing it tied up. He was just working from another unit and didn't no what to do. So for a couple of more hours Scott had laid down with his cell still tied up as inmate Savage continue to threaten officer Malone unto she changed shifts with officer Sexton. Now inmate Savage threaten officer Sexton he dash him and not gonna be allowed to feed Scott breakfast get Lt. Sgt. cell block #1.

8. Chow call came and officer Sexton was allowed to feed everybody but inmate Scott cause his cell was still tied up. Inmate Savage had untied it for a couple of minutes and tied it back up to put what he called a duky turd in Scott trap. But he later untied Scott trap got it out and tied Scott cell back up so he wouldn't be the one started the trouble.

9. At approx. 5:00 am morning of 4/25/18 Lt. Burchfield finally came to inmate Scott cell and had inmate Savage untie Scott cell so he could feed. Lt. Burchfield told them he couldn't move one or the other to he come back on he was short and go home at 6:00 am Scott clean out his trap and as officer Sexton was passing Scott his breakfast tray inmate Savage dash Scott with a cup of urine. Lt. Burchfield finally came to inmate Scott cell and had inmate Savage untie Scott cell so he could feed. Lt. Burchfield told held had to bring Scott new cleaning chemicals and new tray to eat (D.E. #6-0 exhibit: 7-9)

Emergency note of Facts: pattern Defendants allow Scott to be assaulted by inmates and staff and not investigate due to his use of prisoner grievance process and § 1983 complaint.

10. In case Scott vs. Gibson 5: 18 cv-00150-IM-BD the facts of that case happen one month earlier to this incident where ADC Defendants Major Carroll, Cpt. Taylor and etc allowed an inmate Mexican porter on 3/14/18 to attack Scott in

same cell hit him repeatedly on hand with squeegee and when it broke stab Scott in leg through trap. And ADC defendants supervisor in both of these incidents cover up assault on Scott refuse an actual Internal Affairs investigation 0-14 polygraph test and camera review and no inmate receive disciplinary action for assaulting Scott like in incident in this case. That case was in appeal in 8th Circuit Court of Appeals and dismissed stating officer didn't have prior knowledge of threats. (I'm a convict. I'm steadily being assaulted and nothing happening you'll setting example for me to start assaulting inmates.)

(Prior knowledge of threat of harm to Scott!)

11. That morning after shift change Defendant Bivens on 4/25/18 came to shake Scott cell down cause Inmate Savage wrote grievance inmate Scott showed him a shank. Scott told Defendant Bivens inmate Savage had just dash him and showed Defendant Bivens grievances he wrote on previously. (D.E. #2 pg. 11) Defendant Bivens responded he couldn't do nothing. And left. He could move inmates from side each other. (D.E. # 6-0 pg. 27)

12. A couple of morning later on 4/28/18 officer McConnell came to do legal mail call. Scott had his radio and earphones in trap listening to t.v. once McConnell grab his legal mail and go to table and sign it. Scott had walked out door for second. And inmate Savage hurry up open his and Scott trap and stole his radio and

earphones. Scott told McConnell who called Defendant Lord, Plummer who came to locked Scott, Savage traps but refuse to review camera to see if Savage stole Scott radio or earphones, or move Scott and Savage apart. (D.E. 6-0 pg. 37)

13. And next day at last chow on 4/29/18 inmate Savage dash Scott again with urine and Defendant Plummer didn't come to investigate, or no correction action taken. (D.E. # 6-0 pg. 37)

14. Scott wrote grievance for Defendants Bivens, Taylor to investigate who responded: Currently inmate is not on enemy alert list. (D.E. #6-0 pg. 30)

15. Defendant responded on other grievances: this issue has been resolve inmate Scott was moved to cell block 2-203 (D.E. #63-0 pg. 49)

(Note: I thank God inmate Savage didn't have a shank to cut, or stab me, I guess due to District Court opinion he could of killed me and been justified cause they say I instigated a incident for a § 1983 claim. All documents show plaintiff Scott was trying to be moved away from a inmate to avoid a physical problem. And D.E. # 70-0 pg. 21 show Scott grievance two months prior he wasn't even suppose to be in that cell. Note: In none of reports they put Defendant Malone, Sexton statement in response cause they admitted to Scott being dash and calling for assistance

Reasons for Granting Writ

- A. Conflicting Decisions among the Circuits. For Instance Between this case and Farmer v. Brennan 511 U.S. 825,
- B. Need for a broader interpretation on failure to protect inmates from hands on another inmate.
- C. Need for a Declaration that inmate tell officer they gonna harm another inmate "Scott" in this case and officer does nothing to stop it. Violation failure to protect and intervene and no other evidence is needed. We'll begin with questions #1, #2 will be presented in Argument

Argument I.

In this Case Officers conduct violated clearly established constitutional rights of Scott. At the time in this case, defendants Malone, Sexton, Burchfield know to or should have known that if an inmate tells them they gonna do any harm to Scott or other inmate they job is to protect that inmate from harm. Defendant Plummer, Burchfield, Bphens, Taylor, Lord knew Scott had been dash by Inmate Savage on 4/24/2018, 4/25/2018 and didn't separate them, no investigation, review camera footage, obtain no witness statements from Defendant Malone, Sexton to separate Scott from Savage once they already been assaulted. Knew, or should of know that with them still housed by side each other one would try to retaliate or harm another again. The law was clearly established once Scott was dash morning of 4/25/2018 and to be dash again on 4/29/2018 at lunch time cause they was not separated show Defendant Plummer, Burchfield, Taylor, Lord, Bp[hens deliberate indifference to protect Scott from harm by Savage. Shows a failure to take corrective action in they supervisor duties.

See e.g. American Law Institute, Model Penal Code § 2.02 (2)(C)(1985) (*A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct."); J.I Case Credit Corp v. First Nation bank of Madison City, 991 F2d 1272, 1278 (C. A. 7 1993) ("To consciously ignore or to deliberately close ones eye to a manifest danger is recklessness, a mental state that the law commonly substitutes for intent or actual knowledge."); United States v.

Giocannetti 919 f2d 1223, 1228 (C.A. 7 1990) (A “deliberate effort to avoid guilty knowledge is all the guilty knowledge the law requires.”) In this case from grievance instigator not putting or getting statement from Defendant Malone, Sexton to Defendant Burchfield falsifying statement there was no proof Scott was dash to all other supervisors once Scott told he was Dash in harm ways and nobody tried to review camera footage to see or separate them before Scott could be dashed again shows all officers was conscious and callously disregarded risk to Scott.

A. The District Court abuse its discretion violating Fed. R. Civ. P. rule (56)(C) and erred in dismissing Scott’s failure to protect and intervene claim against Defendant Malone Sexton, Burchfield failing to intervene, and protect “stop” Inmate Savage from dashing plaintiff Scott with a bottle of Urine once inmate Savage tied Scott cell up at 10:30pm – 5:00 am holding him hostage in a cell and held bottle out his trap threatening Defendant Malone, Sexton, “he gonna dash them and Scott, and not gonna be able to feed Scott” unto they get Sgts, Lt’s here.

The Court abuse its discretion at dismissing this claim of 8th Amendment deliberate indifference, 14th Amendment failure to protect at screening process and dismissing.

B. Defendant Plummer, Lord, Taylor, Bphens, Burchfield 8th, 14th Amendment violation at Summary judgment once Scott brought to they attention he had been dash, and him Savage not supposed to be by each other and Scott still be able to be dash again the Court violated Fed. R. Civ. P. 56 (C) by abusing its discretion

of Court and made a bias, prejudice statement making Scott whole case prejudice against him by stating: Scott instigated and provoke "This incident, to file a § 1983 claim." This verdict is against weight of evidence, and law, which should of pass screening process and summary judgment.

Now it is obvious Inmate Scott and Inmate Savage had several altercations before. Inmate Scott even broke out his cell and tried to get in Inmate Savage's cell for calling him a nigger and a snitch. There was a major prison investigation by ADC Internal Affairs and this is documented not to mention the several grievances inmate Scott wrote against Inmate Savage. Defendants had prior knowledge of harm. (D.E. #70-0 Exhibit: 1-2) evidence of internal affairs investigation would of been in discovery of claims would have been allowed to proceed past screening process. Not only that, true Scott dash inmate cell to get prison officials to his cell to prevent a even serious problem from happening which is prison official jobs to keep inmate from harm from hands of other inmates. (D.E. # 70-0 exhibit: 3) shows Scott complaining to all Lt's even Defendant Plummer about traps unsecure. (D.E. # 70-0 Exhibit: 4) Shows Scott wasn't even supposed to be housed in cellblock #1 cause he was on step down program. But say we overlook that. And we view facts in favor to Scott. At 10:30pm at night Scott is not thinking about no § 1983 complaint. He's thinking about getting Sgt's Lt.'s. To just separate him and inmate Savage.

39. And from Approx. 11:00pm on 4/24/2018 – Approx 5:15am on 4/25/2018 for inmate Savage to have Scott cell tied up holding him hostage in his cell (Note: what if a fire would of broke out!) and every 30 mins Defendant Malone, Sexton made security round seeing inmate Savage hold a blue bottle out trap and not only threaten to dash Scott with Feces/urine but dash officers too. Defendant Malone, Sexton did call for assistance which none came. After over 5 hours of more no assistance of leaving Scott held hostage in his cell. (D.E. #32-0 pg. 29)

The criminal conspiracy comes in to play to show culpable state of mind when Grievance investigator didn't get statement from Defendant Malone, Sexton, which shouldn't have to. Cause they was suppose to write 005 form, and disciplinary on inmate Savage. But they more criminal minded than the inmates saying they don't write disciplinaries. That's between me and Savage. (Camera review will show and prove all of Scott's allegations. So Grievance Officer to cover it up by putting Defendant Burchfield response where he covered it up.

40. So when Lt. Burchfield finally did come at approximately 5:00 am he tell inmate Scott and Savage once he untie Scott cell cause he couldn't be fed. Lt. Burchfield tell Scott and Savage he couldn't move them then he would when he came back to work. He leave Inmate Savage trap open. And leave barracks while Cpl. Sexton feeding chow. So as Inmate Scott reaching to get his tray Inmate Savage reach out and dash Inmate Scott with urine in front of Cpl. Sexton. (D.E. # 6-0 pg 33, 34)

When Scott was dash by Inmate savage. His rights was clearly established that Cpl. Malone, Cpl. Sexton, Lt. Burchfield had a duty... to protect prisoners from violence at the hands of other prisoners. Farmer v. Brennan 511 US 825,

833, 114 SCT 1970, 128 L.Ed.2d 811 (1994). That Scott himself couldn't put Separation order himself but when Scott broke out his cell in 2017 to get to inmate Savage, and wrote grievances (D.E. # 2-0 pg 12) Cpl Malone, Cpl. Sexton, Lt Burchfield job was secure inmate Savage trap and prevent threat of harm from Inmate Savage. I thank god inmate Savage didn't have a shank himself to reach out and shank me instead of a cup of urine. Just as easily as he dashed Scott like he told Cpl. Malone, Cpl. Sexton he would he could of easily cut inmate Scott up. Defendant Malone, Sexton, Burchfield knew, or should have known that their failure to secure inmate Savage trap while inmate Scott was being fed resulted in his physically and emotional injury. Defendants actions and omissions were acts of deliberate indifference conscious indifference negligence, willful, wanton, and reckless disregard to his safety; and they exposed Scott to, and fail to adequately protect him from a known dangerous situation. Keep in mind if an inmate dash an officer, that's an assault and battery charge that comes 3 years. Officers off work for at least 5 days to two week from mental and emotional injuries. Is there a different standard of law from officers and inmates? Makes me ask myself. Do inmates lives matter? Walton v. Dawson, 752 F3d 1109, 1117 (8th Cir. 2014); Farmer 511 us at 828, 114 S.Ct. (1970); Spruce vs. Sergeant, 149 F3d 783 (8th Cir. 1998). A. Thus Defendants Malone, Sexton, Burchfield fail to protect Scott from 4/25/2018 assault by Inmate Savage. And showed Deliberate indifference.

Now even if we overlook that. Why was Scott not separated from inmate Savage morning of 4/25/2018 when he was dashed. This the crazy part. Cpl. Sexton told Scott he didn't want to get involved between two inmates problems. So he didn't write inmate Savage a disciplinary just let him get dashed.

41. Plaintiff wrote grievance on 4/25/2018 to Defendants Taylor, Plummer and took to second step on 4/28/18 about 4/25/2018 incident (D.E. # 63.0 pg 50, 53) and shook down by Defendant Lt. Bphens. He notified him about he just got dash at breakfast by

his neighbor inmate Savage. (D.E. # 6.0 pg 27) Scott was not moved from around Inmate Savage. Can Scott put himself on Enemy Alert List? (D.E. # 6-0, pg 30) Then on 4/28/2018 inmate Savage then took Scott radio and speakers out his trap he notified Defendants Taylor, Plummer, Lord, and they didn't separate Inmate Scott from Inmate Savage knowing his trap was broken.

1. At last chow Inmate Savage dash Scott again but this time in mouth with urine. (D.E. # 43.5 pg 1) And Scott was finally move to cell block #2 next week and ADC Consider issue resolved. (D.E. # 43-3 pg 3) D.E. # 43-4 pg 59 D.E. # 63-0 pg 49) on 5/15/2018 Scott wrote grievances about Warden refusing to review camera footage and allow him to be repeatedly assaulted by inmates and it's not properly investigated and covered up (D.E. # 2 pg 29)

Thus, Defendants, Taylor, Burchfield, Plummer Lord, Bphens, fail to protect and take correction action on 4/28/2018 assault again by inmate Savage. They knew or should have known, that they failure to separate Scott and Savage would result in one inmate being assaulted again from 4/24/2018 incidents. Defendants actions, omissions, were acts of deliberate indifference, and willful, wanton and reckless disregard to Scott's safety. Walton v. Dawson, 752 F3d 1109, 1117 (8th Cir. 2014); Farmer 511 US at 828, 114 SCT 1970; Spruce v. Sergeant 149 F3d 783 (8th Cir 1989)

ARGUMENT II VIOLATION OF FED.R.CIV.P (60)(C) WE'LL DEAL WITH QUESTIONS #3, #4.

The Conduct of Defendant Plummer to Deny and delay of Scott's medical treatment in retaliation of his use of prisoner's grievance system, District Court abuse its discretion and rule against weight of evidence, error of law.

Deliberate indifference occurs when prison officials prevent an inmate from receiving treatment or denying him access to medical personnel capable of evaluating the need for treatment... if... the medical professional knows that this role in a particular medical personnel capable of treating the condition and if he delays or refuses to fulfill that gatekeeper role, due to deliberate indifference from denying access to medical care.

Sealock 218 f3d 1211; Howell v. Burden 12 F3d 190, 191 n. * (11th cir 1994).

43. In this case on 5/17/18 at approx (exhibit : 11) Defendants 9:00 am Plummer and some more officers shook Scott down, put him in shower and strip searched him for his cellmate taking the handcuff key. Scott cellmate told Defendant Plummer he had the handcuff key. (Exhibit: 17, 18) of D.E. # 48-0)

44. While Scott was in shower Sgt. Riaz, Sgt Wallace, came in Isolation # 1 and told Plaintiff Scott to get ready for Sick call. While Defendant Plummer and Major Carroll was trying to get Plaintiff Scott to snitch on his cellmate. Cause he refused and passed dislike of Scott. Defendant Plummer told Sgt Riaz, Sgt. Wallace, I'm on behavior control. I can't go to sick call. (Exhibit: 7) of D.E. # 48-0)

RETALIATORY MOTIVES

D.E. # 48-0 pg 58 on 5/7/2018

D.E. # 48-0 pg 55 on 5/11/2018

plus Scott trying to stab him

As Higgs implicitly recognized, as Scott just did. A Plaintiff alleging retaliation must reference at a minimum, the suit or grievance spanning the retaliation and the acts constituting retaliatory conduct. Higgs, 286 f3d 437 at 439. Absent these allegations a defendant would not know how to respond to complaint.

45. Record reflects (exhibit: at the tire of retaliation Defendant Plummer admits he denied Scott medical treatment "Sick call" cause Scott was on behavior control. But now in Discovery when the truth will finally come to light. Defendant Plummer admits Scott was NOT placed on behavior control on 5/17/2018. (Exhibit: 1.). To further prove Defendant lied and perjury of Discovery request, which to cover up his abuse of authority (See exhibit: 15) D.E. # 48-0) Defendants also refuse to give Scott on Discovery Request, Defendant Plummer sign on 5/17/18 Scott property form for behavior control Also grievance (exhibit. 19) D.E. # 48-0 the property Sgt. Butler who shook Scott down and placed him on behavior control with Defendant Plummer on 5/17/2018. This evidence proves the only reason Defendant Plummer denied Scott's "Sick Call" was for retaliatory motives. (1) This conduct and action of Plummer was done to intimidate Scott and chill his protected Speech. Denying Scott medical treatment he had already been in his cell for over a week requesting to get his pain medication renewed. (See exhibit: 12-14 D.E. 48-0) for his degenerative disc disease (exhibit 32, D.E. # 48-0) his chronic back, leg, arm/hand numbness autoimmune disease such as lupus, rheumatoid arthritis or scleroderma (exhibit 34, D.E. # 48-0)

The holding courts below held that the failure to provide diagnostic care and medical treatment known to be necessary was deliberate indifference sufficient to deliberate indifference claim. Ancata v. Fran health services Inc. 769 F2d 700 (11th cir. 1985). In addition, Estelle, Supra, 429 us at 104-05, 97 SCT at 291 "Deliberate indifference is manifested in intentionally denying or delaying access to medical care or intentionally interfering with treatment once prescribed." Haltiwager v. Mobley, 230 F3d 1363 (8th Cir. 2000)

46. Now D.E. # 43-7 pg 1-4 is proper documents and procedures Defendant Plummer was supposed to do and have signed by Warden to put inmate Scott on behavior control on 5/17/2018. He just did it on 5/14/2018 so he had proper and prior knowledge the steps he was supposed to take if Scott actually violated ADC Policy. Now in nowhere in prison investigation did Defendant Plummer ever admit that inmate Brooks gave him the handcuff key. See D.E. # 43-14 pg 4 as of 7/27/2018 Dexter Payne agreed with Warden my cell and persons was searched but key was not recovered. But look at D.E. #44 pg 5. Defendants admit Inmate Brooks gave the key to an officer who came on duty during the next shift. So f¶ 60. And we overlook Defendant Plummer word play. *see add. #3, 4.*

Defendant Plummer states he didn't know who had the key. Plaintiff Scott states Inmate Brooks showed Defendants he had the key. They both was in separate shower, both had been strip searched before put in separate showers. And Plummer denied Scott Sick Call to get medication renewed. That is a dispute.

See add. #3, 4.

INJURY

Scott had to suffer two extra weeks to see Dr. to get his pain medicine renewed for his back, leg pain and pinch nerve.

47. The Courts state Scott has failed to provide retaliatory motive. Cause provides several grievances on ongoing retaliation by Defendant Plummer but what courts is overlooking defendant main motive to retaliate, harass and abuse his authority to intimidate and cause Scott to suffer in a barbaric setting for D.E. # 43-6 pg 1. To cause Plummer to act out of evil motives.

But this was the Courts of undisputed facts. Scott was playing games with inmate Brooks when no evidence dispute defendants statements that key was never discovered. Facts show Brooks him in key. Meaning once Scott was strip search put in shower he didn't have key. Brooks did. Scott state Brooks told and showed Defendants key. So there was no reason to deny Scott medical attention but for retaliatory motive.

48. NEW EVIDENCE: proves failure declarations in discovery by Plummer." *see add. #3, 4*

49. Inmate T. Brooks Affidavit signed under perjury on 3/10/2021 after magistrate judge PSH prepare finding and recommendation on 2/4/2021 and 3/29/2021 order of dismissal by Judge BSM consistent with order. (See 5 and 6) that inmate Brooks states: he showed Defendant Plummer the handcuff key and he gave Defendant Plummer the handcuff key and wasn't put on behavior control or received a disciplinary. ~~XXXXXX~~

55. Applying principles in TURNER, MERIWETHER V. COUGHLIN, JOHNSON V.

GOURD you could find that Scott had a strong First Amendment interest in refusing the demands of Plummer, Major Carroll that he provide false information, and truthful information on an ongoing basis. On the most basic level. Scott claims derive from the guards attempt to force Scott to speak against his will. The Supreme Court has ruled that ruling in one court satisfied established law in another Court.

CONCLUSION

56. By Scott proving his claims of failure to protect, failure to take corrective action by Defendant Malone, Sexton, Burchfield, Plummer, Bphens, Taylor and them claims was dismissed at screening process they should be remanded back to District Court for trial, Motion for Appointed Counsel should be granted and Default Judgment should be granted against Plummer, and Scott claims against Plummer should be void and rule in Scott favor for retaliation and denial of medical attention. Summary Judgment should not of been granted with there are genuine issues of material facts present and Scott new evidence presented. Discovery sanctions should be granted for \$720.00 The foregoing reasons, Certiorari should be granted in this case.

Respectfully Submitted,
Mr. Deverick Scott #131042
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Grady, Ar. 71644

Pro, Se Paralegal of
Gorilla Law Paralegal Services

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 21-1852

Deverick Scott

Plaintiff - Appellant

v.

Dexter Payne, Director, ADC; Dale Reed, Assistant Director, ADC; Does, All Officers at Pine Bluff Office; James Gibson, Warden, Varner Unit; Carroll, Major, VSM Unit; Taylor, Captain, VSM Unit; Shipman, Warden, VSM Unit; Burchfield, Lieutenant, VSM Unit; Malone, Female Officer, VSM Unit; Sexton, Officer, VSM Unit; Bphens, Lieutenant, VSM Unit; Mary Gayden, Officer, VSM Unit; James Plummer, Lieutenant, Varner SuperMax, ADC; Lord, Sergeant, Varner SuperMax, ADC

Defendants - Appellees

Appeal from U.S. District Court for the Eastern District of Arkansas - Pine Bluff
(5:19-cv-00079-BSM)

CORRECTED JUDGMENT

Appellant has failed to pay the filing fee. This appeal is dismissed for want of prosecution. The full \$505 appellate and docketing fees are assessed against the appellant. The court remands the collection of those fees to the district court. Mandate shall issue forthwith.

December 30, 2021

Order Entered Under Rule 27A(a):
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans