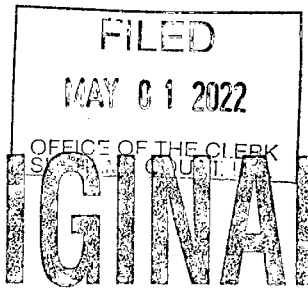


21-7839

No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

Sloan Patrick Stanley — PETITIONER
(Your Name)

vs.

Jeffery Uttecht, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Sloan Patrick Stanley
(Your Name)

Mason County Jail, P.O. BOX 519
(Address)

Shelton, WA, 98584
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1.A.) Did the Ninth Circuit U.S. Court of Appeals commit error when they ruled my complaint/appeal was frivolous when the facts and law presented formed an arguable basis upon which relief could be granted?

1.B.) Does a court have a right to deny a litigant the ability to file a motion for reconsideration of an unfavorable ruling that terminates their case?

2.) Did the Defendant (prison dentist) exhibit deliberate indifference in violation of the Eighth Amendment when he knew a substantial risk existed if my cavity was not promptly fixed and failed to do so, which led to the loss of my tooth?

3.) Did the Defendant (prison super-intendent) exhibit deliberate indifference in violation of the Eighth Amendment when he knowingly failed to provide adequate staffing of his dental department and this failure contributed to my resulting injury?

LIST OF PARTIES

- [] All parties appear in the caption of the case on the cover page.
- [X] 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.) Jeffery Uttecht (prison superintendent)
- 2.) Cassidy Blount (prison dentist)

RELATED CASES

- Stanley v. Uttecht, et al, No. 4:20-cv-05752-SMJ, U.S. District Court for the Eastern District of Washington. Judgment entered March 2, 2021
- Stanley v. Uttecht, et al, No. 21-35170, U.S. Court of Appeals for the Ninth Circuit. Judgment entered December 16, 2021,

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- *Parsons v. Ryan*, 759 F.3d 657 (9th Cir. 2014). 22
- *Quintero by Quintero v. Bedi*, 110 F.3d 69 (9th Cir. 1997). 20
- *Starr v. Baca*, 652 F.2d 1202 (9th Cir. 2010). 23, 24
- *Thomas v. Ponder*, 611 F.3d 1144 (9th Cir. 2010). 21
- *Watkins v. City of Oakland*, 145 F.3d 1087 (9th Cir. 1998). 24
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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 _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Dec. 16, 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: NOT ENTERTAINED, and a copy of the order denying rehearing appears at Appendix C.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including May 15, 2022 (date) on March 8, 2022 (date) in Application No. 21A 481.

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 - cruel and unusual punishment - deliberate indifference to serious dental needs
- 14th Amendment - due process clause

STATEMENT OF THE CASE

For 15 months I was in jail fighting the current charges for which I am currently incarcerated on. Because I would not take a misdemeanor and fought for my innocence I was convicted of six felonies and sentenced to 33.5 years, nearly four times the high end for the standard range of the charges. Because I was not allowed to present a defense in the trial for this case, the Court of Appeals for Washington State reversed the conviction and remanded it for retrial. I am now back in jail fighting the charges again, and based on the facts and the law, should end in a dismissal very soon, hopefully.

It was while I was in jail for the 15 months fighting these frivolous charges, that I developed a cavity due to insufficient dental care products. In the jail I was at, inmates were only allowed four inch toothbrushes and no dental floss. I did the best I could to take care of my teeth, however, without tooth floss, I could not adequately take care of my teeth. While I tried various makeshift substitutes for floss, none of them seemed to work for my rear molars.

Between my last two molars on the bottom

left side, food would always lodge itself. No amount of brushing would dislodge the food. This led to a cavity developing. These facts are merely preliminary facts and are not necessarily relevant to the instant matter. Nevertheless, I felt it to be relevant enough to explain and include as a preliminary matter.

Upon introduction into prison for these charges, during intake and classification, two weeks after arrival, I was given a dental screening. It was at this screening that the dentist informed me that there was a dark spot on one of my lower molars indicating the formation of a cavity. I was then given a form to initial, that informed me, I was to notify the dental department at my main institution, that I needed to be seen, when I arrived there. It also showed I would be given a "D2" designation. The "D2" designation was to alert the prison dental staff that I had an issue needing attention. I presume this designation would be seen internally to all prisons.

Twelve weeks later I arrived at my main institution. Within two weeks I alerted the prison dental department that I needed to be seen through a Medical Kite (inmate message). While I did not mention the cavity I did explain that I needed a teeth cleaning badly as I had not had

one for many years. I assumed they would see the "02" designation and realize I had a pressing issue such as a cavity. Either way I should have been seen within a reasonable amount of time and not the six months it did take to be seen after notifying them.

Six months after I had sent the dental department the message that I needed to be seen I was finally put on a callout to be seen. My teeth were x-rayed and the dentist confirmed the cavity that the "02" designation had already alerted him to. He explained it was a fairly large cavity and that if I ~~experienced~~ experienced any pain to let him know. He told me to watch the callouts as I would be on them to have my cavity filled. He gave me the impression that the cavity was not a pressing matter and that there would be some delay before it would get fixed. I was told by other inmates that the dental department was slow to do anything as I had come to find out.

However, forty days after the dental examination I was on the callout to go to dental again. At this appointment my teeth were cleaned. I was told by the hygienist to watch the callouts for the cavity filling. She did not indicate how long

it would take nor did I ask. I had assumed that they knew what they were doing and were probably somewhat busy but would get me in to have the cavity fixed in a sufficient measure of time.

So, I patiently waited for the time when I would be put on the callouts to have my tooth fixed. Only it never came. I don't think the dentist ever intended on filling my cavity. As far as I know the dentist just decided to wait until the cavity got so bad that the tooth was no longer restorable, which is in fact what did occur. At this point the only option would be to have the tooth removed, saving time and money to properly fix the tooth.

It was eight months after the dental examination and I had not experienced any pain in the tooth yet. I had also continued with good dental hygiene. Finally, one day I was eating hard granola and the pre-existing older filling directly above the cavity area on the same tooth caved in and impacted, as the cavity had become large enough to allow this to happen. To this I did experience pain. This prompted me to send a message to dental alerting them to the pain I was experiencing. This was one month into the covid lockdowns.

Dental sent me back a response that they were limited as to what they could do at the time due to covid and that essentially I would have to wait to have my cavity fixed. A few days later the pre-existing impacted filling fell out with some of my tooth. I then called a dental emergency and was seen by the dentist. The dentist x-rayed the tooth and explained that it was no longer restorable and that my only option was to have it extracted. He was ready if not eager to pull my tooth right then and there. Apparently pulling teeth was his speciality as I had been told by other inmates and so it would seem.

I was upset that this seemed to be my only option. I asked the dentist why he did not fix my cavity at anytime since he had diagnosed the cavity. He could give no reasonable answer. Needless to say, I declined to have my tooth extracted. Not understanding the exact state of the tooth, and only knowing that up until the pre-existing cavity impacted I did not experience any pain in the tooth, I felt it could be restored through more extensive procedures that the prison dentist did not do, like a root canal. It was at this point that I started the grievance process in an effort to get my tooth fixed.

When three months later and after failing to meet their own deadline to respond by nearly a month; not receiving a response to my grievance I decided to file a lawsuit, which would be the current action. While I had filed a lawsuit I still pursued the grievance process, which took a year for anything to be done. Which, the prison finally agreed to send me to an outside dentist to have a root canal done. Of course my lawsuit was going nowhere with the U.S. District Court as the district court judge was going out of his way to purposefully misconstrue the facts.

Twenty months after the dental examination at the prison, confirming the existence of the cavity that the "D2" designation also alerted to, I was taken to and seen by an outside dentist. It was this dentist that finally explained to me that the cavity had progressed below the gumline to the boneline. He explained that the situation was less than ideal and that it would be hard to keep the filling dry because of where it was at and that there existed a high likelihood of infection setting in afterwards. A root canal procedure was not needed and therefore not an option. With all this information and seeing the x-ray showing the cavity to be at the

boneline, I allowed for the only safe option, which was to have the tooth extracted.

However, this whole scenario should have never had to play out. I should have been seen within a reasonable time after notifying the prison dental department that I needed to be seen, no longer than three months time, not the six months it did take. Then at the point I was seen and the cavity was confirmed it should have been fixed in a sufficient amount of time measured from professional experience.

In other words the dentist knew I had a cavity in need of urgent treatment and did nothing. He never intended on fixing the tooth. His true intentions were to let the cavity progress until it caused me pain. Which, at that point, the tooth would be unrestorable and he would just pull it saving the prison dental department time and money. This is truly unacceptable.

When I alerted the prison superintendent to what had happened his response was that for the last year there was only one dentist for the entire prison. This response was included as evidence in my complaint. However, their understaffing problem should not have been my problem. The superintendent

obviously knew that he was understaffed as the response implied. He had to know that this understaffing would lead to the problems that I experienced. To this there is no excuse.

It is quite clear from the facts and the law that both defendants acted with deliberate indifference to my serious dental needs. That their actions led to the loss of my tooth. I am rather dismayed that neither the district judge nor the appellate judges could see this. It would seem that the district judge went out of his way to misconstrue the facts to which I do not know why he would do this. Then the appellate judges followed course denying my appeal as frivolous, which it most certainly was not.

I most certainly presented an arguable basis in fact and law that should have allowed for the case to proceed to responsive pleadings, in the least. However, the appellate judges denied my appeal as frivolous and then declared that they would entertain no further filings. This precluded me from filing a motion for reconsideration, which I submitted anyway, but the court would not accept. The motion for reconsideration further proved to the judges in ~~and~~ fact and in law, that they were

wrong. This begs the question as to why the judges would not allow the motion for reconsideration.

The bottom line in this case is that I was diagnosed with a cavity and because the dentist did not fix it in a sufficient amount of time, it was allowed to progress to the point it was unrestorable. At which point I had to have the tooth extracted. That is to say the dentist failed to act when he knew I had a cavity in need of prompt care, against better judgment and common dental standards and practices.

To pass this off as mere malpractice is a tacit acknowledgment by the judges that the lives of prison inmates, such as myself, are second rate. That is to say that we do not matter, we deserve to be treated as less. This is wrong beyond comprehension, yet this is the exact posture the district and appellate judges in this case have taken. I will continue to fight this until I get the justice I deserve and it is acknowledged that what happened here is wrong.

REASONS FOR GRANTING THE PETITION

Is it adequate dental care to knowingly allow a cavity to progress to the point that the tooth is no longer restorable and must be extracted? Does a prisoner have a right to have a simple cavity in a tooth of theirs fixed before the cavity worsens rendering the tooth unrestorable?

According to this Court and all of the federal circuits it would not be adequate to knowingly allow a cavity in a prisoners tooth to progress to the point that the tooth is no longer restorable and required extraction. Contrastively, the district and appellate judges in this case have taken a posture that it does not matter if a prisoner receives adequate dental care or not. Apparently, prisoners losing teeth is of no concern to them. Perhaps if it was allowed to happen to their own teeth they would feel otherwise. However, their current stance is a tacit acknowledgement that prison inmates don't matter. This is without a doubt very troubling and simply unacceptable.

Apparently, these same appellate judges do not seem to feel prisoners or maybe just myself do not deserve due process and that I should not

be allowed to file a motion for reconsideration. Maybe they realize any motion for reconsideration would prove them additionally wrong and they should deny any opportunity for this event to occur.

In what follows I will demonstrate that the district and appellate court's decisions in this action are contrary to this Court's precedents, as well as their own and other circuits' precedents. And, that they have both departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

1.A.) Appeal Not Frivolous

A complaint is "frivolous" within the meaning of section 1915 only if it lacks an arguable basis in law or fact. Jackson v. State of Arizona, 885 F.2d 639, 640 (9th Cir. 1989) (citing Neitzke v. Williams, 490 U.S. 319, 325 (1989)). Apparently, the courts thus far feel that all I have presented is a case of mere medical malpractice. However, the facts and the law I have presented prove otherwise. And, arguably the courts thus far are denying me equal protection of the law.

In Neitzke v. Williams the U.S. Supreme

Court espoused the Seventh Circuit's ruling regarding the frivolousness standard in the case for which they had granted certiorari for, Williams v. Faulkner, 837 F.2d 304 (7th Cir. 1988). In Neitzke, this Court reiterated that ruling, explaining that "[t]he frivolousness standard, authorizing sua sponte dismissal of an *informa pauperis* complaint 'only if the petitioner cannot make any rational argument in law or fact which would entitle him or her to relief,' is a 'more lenient' standard than that of Rule 12(b)(6), the court stated. 837 F.2d at 307. Unless there is 'indisputably absent any factual or legal basis' for the wrong asserted in the complaint, the trial court, 'in a close case,' should permit the claim to proceed at least to the point where responsive pleadings are required. Ibid (citations omitted)." 490 U.S. at 322-23. See also Alvarez v. Hill, 518 F.3d 1152 (9th Cir. 2008) (recognizing that "[r]esponsive pleadings... may be necessary for a pro se plaintiff to clarify his legal theories." (quoting Neitzke, 490 U.S. at 329-30 & n. 9)); Karim-Panahi v. L.A. Police Dep't., 839 F.2d 621, 623 (9th Cir. 1988) (In civil rights cases where the plaintiff appears pro se, the court must construe the pleadings liberally and must afford the plaintiff the

benefit of the doubt.)

Based on the facts and law I have presented to the courts in my complaints there should be no doubt that the appeal nor complaint ~~are~~ not frivolous. I do not see how any of the judges could have reached the conclusion it was frivolous. The appellate judges never did explain why the appeal was frivolous, they simply denied it without any explanation. They agreed with the district judge whom it is quite apparent went out of his way to misconstrue the facts, so as to essentially protect these bad actors and deny me the justice that as an american citizen I deserve.

The facts speak for themselves that an arguable basis does exist. Now I will detail the law that demonstrates that a rational argument of law also exists. However, first I wanted to address the fact that the appellate judges would not allow for me to file a motion for reconsideration.

1. B.) Right to File a Motion for Reconsideration

When the judges denied my appeal as frivolous they also declared that "[n]o further filings will be entertained in this closed case."

See Appendix A, December 16, 2021 Order. However, I did not think this pertained to a motion for reconsideration, as there are Court Rules that authorize for litigants to ask for reconsideration of the Court's rulings. Therefore, I proceeded to submit and have filed a motion for reconsideration. Upon which the Clerk of the Ninth Circuit U.S. Court of Appeals informed me through a copy of the docket entry, that a deficiency existed, namely, the fact the case was closed and no further filings would be entertained.

In other words they would not entertain my motion for reconsideration, regardless if it was timely submitted. I then proceeded to write the clerk to inquire whether this was a mistake. Surely due process in conjunction with Court Rules afforded me the right to submit a motion for reconsideration regardless if the court frowns upon them. Surely this was a mistake I thought. I did not receive any reply back from the clerk so I wrote another letter, and again I got no reply, so I wrote a third letter. Finally, I received an Order from the Court directing the Clerk to strike various filings submitted which included my motion for reconsideration. See Appendix C, April 18, 2022 Order.

This was the answer I had been awaiting. No further filings included my motion for reconsideration. And, arguably this was a denial of due process. After all, Federal Rules of Appellate procedure - FRAP 27(b) - states that a "party adversely affected by the court's or clerk's action may file a motion to reconsider..." See also Circuit Advisory Committee Note to Rule 27-1(4) for Ninth Circuit Rules, that covers motions for reconsideration. While I could not find anything that claimed a motion to reconsider is a formal right, it should be considered as a part of due process since there exists court rules specifically providing for such an action. Also, these rules do not list any limitations beyond time limits to preclude anyone from bringing such a motion.

For these reasons and the fact that such motions are often used to show the court or clerk where they have gone wrong, motions for reconsideration should be considered as part of and afforded by due process. Therefore, I contend that the Court of Appeals for the Ninth Circuit violated due process when they denied to hear my motion for reconsideration and struck it from the record.

2.) Prison Dentist Deliberate Indifference

For deliberate indifference to be established certain requirements must be met. First, there must be a purposeful act or failure to act on the part of the defendant. Second, when the claim alleges a delay of treatment, the plaintiff must establish the delay was harmful. However, a finding that the defendant's actions or inactions resulted in "substantial" harm to the prisoner is not necessary. McGuckin v. Smith, 974 F.2d 1050, 1060 (9th Cir. 1992) (citations omitted). See also Farmer v. Brennan, 511 U.S. 825 (1994).

Here, the dentist confirmed the cavity that the "02" designation from the initial dental screening had already alerted him to. He knew it was a large cavity that required prompt treatment and failed to act. During the exam he never mentions that it needed prompt care. Rather, he was very nonchalant about it and only told me to let him know if I experience any pain. In other words it did not appear I was going to get ~~any~~ cavity filled in any prompt manner, and that it was not any big deal. This was actually the impression I got at the time, which, led me to believe the same.

However, by the time I experienced any real pain it would be too late to save the tooth as is what actually occurred. Had it not been for the pre-existing older filling caving in and impacting, causing me pain, it would have gone on longer until the cavity progressed below the boneline and infection set in causing me a very significant amount of pain and even the possibility of death. Luckily, this did not happen. Although, having the tooth pulled was painful, and now I am without one of my molars.

The dentist's professional training should give him the knowledge to make the correct decisions related to dental care. In this case he definitely did not. Against standard practice he allowed the cavity to progress to the point the tooth was no longer restorable. "[T]he decision, if made by a professional, is presumptively valid; liability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment."

Youngberg v. Romero, 457 U.S. 307, 323 (1982); see also Quintero by Quintero v. Bedi, 110 F.3d 69 (9th Cir. 1997).

In the current case the dentist's decision to not promptly take care of my cavity was most assuredly a substantial departure from accepted professional judgment, and practice. The cavity if left to progress any further, would go below the gumline and then to the boneline, rendering the tooth unrestorable. As this is what happened. I am lucky that nothing worse did happen as a possibility of further injury did exist.

The risk involved in this scenario had to have been obvious to any professionally trained dentist, "[A] factfinder may conclude that a prison official knew of a substantial risk [to a prisoner's health] from the very fact the risk was obvious." Farmer, 511 U.S. at 842.; see also Thomas v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010).

Also, attributing this to a scheduling error is a cop out and a cheap excuse. It should be acknowledged that 40 days after the dental examination I was seen to have my teeth cleaned. There obviously did not exist any scheduling error then, not to mention this is actually the time frame in which the cavity should have been filled. Further to this point, "access to medical staff is meaningless unless that staff is competent and can render competent care." Cabralles v. County of L.A., 864 F.2d 1454, 1461 (9th Cir.