

No. 22-_____

**In the
Supreme Court of the United States**

**MICHELLE MCDONALD-WITHERSPOON
Administratrix Of The
ESTATE OF KENYADA JONES,
Petitioner**

v.

**AMBER BROWNE, JEANETTE PALMER,
PHILADELPHIA ADULT PAROLE & PROBATION
DEPARTMENT,
Respondents.**

**On Petition for a Writ Of Certiorari
To The United States Court of Appeals
for the Third Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether a probation officer with no medical or psychiatric training who is in charge of a mentally disabled (schizophrenic) person (who is out of jail on probation and who is waiting for his mother to arrive to take him for psychiatric treatment), and has that person arrested and returned to prison for the sole purpose of receiving psychiatric treatment in prison (thus preventing him from receiving treatment at a psychiatric hospital) based solely on the fact that he is mentally disabled (whereby he would not have been arrested and returned to jail if he were not mentally disabled), violates the disabled person's rights under the Equal Protection clause of the 14th Amendment to the US Constitution giving rise to a civil claim under 42 USC §1983 when the disabled person dies in prison a few days later from a medication overdose due to the failure to receive competent mental health treatment at the prison (where he was placed in general population and given a month's supply of medication to keep on his person in accordance with the prison's policy), where it was foreseeable that the disabled person would not receive the treatment he needed in prison thus placing him in serious risk of harm.

PARTIES TO THE PROCEEDINGS

Petitioner

- Michelle McDonald-Witherspoon as administrator for the Estate of Kenyada Jones

Respondents

- Parole Officer Amber Browne
- Parole Officer Jeanette Palmer
- Philadelphia Adult Parole & Probation Department

LIST OF PROCEEDINGS

U.S. District Court for the Eastern District of Pennsylvania

No. 17-1914

Michelle McDonald-Witherspoon, et al. v. City of Philadelphia, et al.

Final Judgment: 12/31/20

U.S Court of Appeals for the Third Circuit

No. 21-1019

Michelle McDonald-Witherspoon, et al. v. City of Philadelphia, et al.

Final Judgment: 1/26/22

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PETITION FOR WRIT OF CERTIORARI

Petitioner Michelle McDonald-Witherspoon, the mother of the decedent Kenyada Jones and the Administratrix of his Estate, respectfully petitions this court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The United States Court of Appeals for the Third Circuit in an unreported decision denied Petitioner Michelle McDonald-Witherspoon's petition for rehearing on January 26, 2022. That order, the Judgment of the Third Circuit and its Opinion are attached at the Appendix below.

JURISDICTION

Petitioner Michelle McDonald-Witherspoon's petition for rehearing to the Third Circuit Court of Appeals was denied on April 26, 2022. Michelle McDonald-Witherspoon invokes this Court's jurisdiction under 28 U.S.C. § 1254, having timely filed this petition for a writ of certiorari within ninety days of the Third Circuit's Order denying rehearing.

STATUTORY PROVISIONS AND JUDICIAL RULES INVOLVED

United States Constitution, Amendment XIV:

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 law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Briefly, Decedent Kenyada Jones (“Jones”) was a man in his forties suffering from a qualified disability, paranoid schizophrenia, with a history of being in and out of psychiatric institutions. On 6/28/16 Jones was on probation and at the probation office in Philadelphia. He was acting worried and somewhat delusional, though was perfectly obedient and following all instructions and was no threat to anyone. He was with his probation officers, Respondents Amber Browne (“Browne”) and Jeannette Palmer (“Palmer”) (collectively “POs”). The POs knew his mother, Petitioner Michelle McDonald-Witherspoon (“MMW”) was on her way over to take him to the psychiatric hospital for treatment, as she had done many times before. However, POs preferred to have Jones arrested on the spot and taken to prison to get his psychiatric treatment there. They admitted in their notes and at deposition that the reason for taking him back to prison was to get psychiatric treatment. They misled the judge to get a warrant, making untrue statements to the Judge that Jones had technically violated his conditions of probation. At prison Jones’ psychiatric condition went untreated

and he was given a month's worth packet of pills; he promptly swallowed the whole packet and died of overdose on the jail cell floor within a few days of arriving at the prison. Petitioner brought civil claims against Respondents/POs for violation of the Equal Protection clause of the 14th Amendment to the US Constitution, under 42 USC §1983, among other claims. Petitioner produced expert reports that the lack of psychiatric treatment was the cause of the overdose and that the actions of the POs were totally out of line and not acceptable in any way. The District Court dismissed the claims on summary judgment. Petitioner appealed. The US Court of Appeals for the Third Circuit upheld the dismissal of the claims against the POs on the grounds that, according to the Court, they had a right to put him in jail for psychiatric treatment because he was mentally disabled and in need of treatment, and that putting him in jail as opposed to letting him go to a psychiatric hospital was just an innocent mistake. The Third Circuit made a legal error by failing to apply Jones' Constitutional rights. He was treated differently because of his mental disability. Had he not had a mental disability, he would not have been arrested and brought to prison. The arrest and imprisonment was a proximate cause of his death. Browne and Palmer's actions were so extreme as to shock the conscience. The danger to Decedent Kenyada Jones ("Jones") was foreseeable. A reasonable person would know that placing such a person in general population prison is dangerous. Having Jones arrested and placed in prison prevented him from going to a psychiatric hospital or emergency room, which is where his mother was planning to take him when she got to the parole office, and where he checked himself in voluntarily in the past. Moreover,

what about fear: the average person fears going to prison very much; a person in a paranoid state fears prison more than we can imagine. There was certainly a lack of rational basis to arrest and imprison Jones on that occasion. Sending a paranoid schizophrenic having a psychotic episode to general population prison in Philadelphia for the purpose of getting psychiatric treatment is not rational. The discriminatory intent is inherent in Browne and Palmer's own statements. According to them, they arrested and imprisoned because he was a schizophrenic/manic depressive in need of treatment. They would not have arrested him if he had no mental disability. That is discrimination: whether they did it for "his own good" or otherwise. Browne and Palmer's reckless disregard for Jones' risk of serious harm meets the qualified immunity standard.

Had Jones not been a schizophrenic Palmer/Browne would not have had him arrested, and he would not have died in prison. This is a violation of Jones' right to Equal Protection under the Fourteenth Amendment to the US Constitution. That is sufficient to state a §1983 claim and, as against PAPPD a claim under Title II of the Americans with Disabilities Act. 42 USC § 12101 et seq. ("ADA") and §504 of the Rehabilitation Act of 1973 ("RA"). The Third Circuit's Opinion is in conflict with established precedent. "We therefore find that by relying on Block's race as one factor supporting the denial of his parole application, the Board violated Block's right to the equal protection of the laws. Absent a compelling governmental interest, the equal protection clause

forbids different treatment of similarly situated individuals on the basis of race.” Block v. Potter, 631 F.2d 233, 241 (3d Cir. 1980). The Equal Protection clause applies to parolees. The Panel Opinion fails to apply the Equal Protection clause to Kenyada Jones, a mentally disabled man suffering from schizophrenia. This appeal has vital importance to the citizens of Pennsylvania and the United States. The Philadelphia parole office is treating those with psychiatric disabilities differently than those without. State actors Palmer and Browne were carrying out a discriminatory scheme: parole officers are sending schizophrenics to prison because they are schizophrenic. This is not for the parolee’s own benefit, because the parole officers doing this have no medical degrees or training and do not consult with any medical professional when carrying out these decisions. In fact, as this case shows, they are doing the opposite. They are going against law and medicine by not calling in the police or letting him go on his own. If this were a non-disabled person who they thought was acting strangely, they would call in the police to do a 302 evaluation by law, to see if he needed emergency psychiatric care, or they would tell him to go home. But because he was mentally disabled and they thought themselves to be his psychiatric overseers, they made the medical decision themselves to send him to prison, a horrible thing to do to a person in a paranoid state. If Respondent Philadelphia Adult Parole and Probation Department (“PAPPD”) wants to have a Mental Health Unit and treat psychotic parolees differently than able-minded parolees, then they should have some minimal amount of accountability for the safety of the public they serve. Let them go before a jury and explain themselves. Maybe next time they

will have someone on call with psychiatric training with whom to confer before acting. An innocent man died because of this system, and more will follow unless the system is fixed. The civil law provides for that fix by simply forcing people to act reasonably. Cut corners if you must, take it easy on yourself, but not at the expense of the lives of the mentally disabled whom you took charge over against their will. Then, the Equal Protection Clause of the US Constitution, 14th Amendment, says No, treat the mentally disabled equally with their able-minded brothers lest the country become divided; and the Due Process clause concurs. The Third Circuit Opinion also conflicts with *Malley v. Briggs*: "The United States Court of Appeals for the First Circuit reversed, holding that an officer who seeks an arrest warrant by submitting a complaint and supporting affidavit to a judge is not entitled to immunity unless the officer has an objectively reasonable basis for believing that the facts alleged in his affidavit are sufficient to establish probable cause. 748 F.2d 715 (1984). We granted certiorari in order to review the First Circuit's application of the "objective reasonableness" standard in this context. 471 U.S. 1124 (1985). We affirm." *Malley v. Briggs*, 475 U.S. 335, 339 (1986). Browne and Palmer knew Kenyada was not going to New York – he was a schizophrenic having a manic delusion. They were holding him there to wait for his mother to pick him up and take him to the hospital. When she got delayed in her arrival they arrested him. They were not objectively reasonable when they called the judge to falsely accuse Kenyada of being in the process of traveling to NY. The Third Circuit Opinion also is in conflict with *Kneipp v. Tedder*, 95 F.3d 1199, 1208 (3d Cir. 1996), by not applying the State-Created Danger

doctrine. All four elements set forth therein fit the facts of this case, provided that the evidence be seen in the light most favorable to the non-moving party. Plaintiff produced a parole officer/police procedure expert report, a psychiatric expert report and a general medical expert report, cited rules and statutes of proper procedure. Browne and Palmer violated all the standards. You don't send a sick man to prison because he's sick. That is not medical care. Disney World has a medical care unit too. But this analogy is too kind. To a paranoid schizophrenic, prison is far scarier than space mountain. Browne and Palmer did the worst thing possible, making a so-called medical decision without any medical training, and doing it under circumstances that did not seem very medically-oriented. His mother took too long getting there, they had a busy schedule that day, so suddenly they become overly concerned and arrest him 'for his own good.' It was foreseeable that a psychotic going to general lockup is a bad combination.

REASONS FOR GRANTING THE WRIT

To avoid future deaths to mentally disabled persons on parole and probation who will be wantonly arrested and imprisoned by "mental unit probation officers" to get "psychiatric treatment" in prison due solely to the fact of their disability, thus violating their Equal Protection rights.

CONCLUSION

For the foregoing reasons, Petitioner Michelle McDonald-Witherspoon respectfully requests that

this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

Respectfully Submitted,

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