

22-5544

No. 22-1502

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
AUG 30 2022
OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
ORIGINAL

Jason Sanders — PETITIONER
(Your Name)

vs.

Matt Macauley et al RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jason Sanders
(Your Name)

Ernest C. Brooks, C.A.T. Faculty
(Address)

Muskegon, MI 49444
(City, State, Zip Code)

—
(Phone Number)

QUESTION(S) PRESENTED

1. Did the Court of Appeals err in their Judgment Affirming that the Defendants did not act in accordance with the subjective prong of Deliberate Indifference when prison staff "Knew" of and Disregarded an excessive risk to inmates health and Safety?
Petitioner "Yes"
2. Did the Court of Appeals err in their Judgment Affirming that the Defendants did not know when the positive Covid-19 prisoners tested positive before being moved in the cells with close proximity with prisoners who where tested negative of Covid-19?
Petitioner "Yes"
3. Did the Court of Appeals err in their Judgment Affirming that Defendants were not deliberately indifferent when they failed to treat or evaluate prisoners being Quarantined for being positive and close contact of Covid-19?
Petitioner "Yes"

4. Did the Court of Appeals err in their Judgment affirming that defendants were not deliberately indifferent when they failed to test prison staff for Covid-19 before entering the prison? ~~and~~
Petitioner "Yes"

5. Did the Court of Appeals err in their Judgment affirming that defendants were not deliberately indifferent when they refused to where P.P.E. different when they refused to where P.P.E. when coming in contact with Covid positive prisoners and then making contact and coming (within 6-feet) of Petitioner and other prisoners who tested negative of Covid-19? Petitioner "Yes"

6. Did the Court of Appeals err in their Judgment affirming that defendants were not deliberately indifferent when they refused to provide cleaning supplies to prisoners on a Covid-19 "Quarantine" wing where petitioner and multiple other prisoners who tested negative for covid-19 were mixed with prisoners who tested positive of Covid-19?

Petitioner "Yes"

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

JASON SANDERS #305405,

Plaintiff,

NO. 1:21-cv-746

v

MAG. PHILLIP J. GREEN

MATTHEW MACAULEY, *et al.*,

Defendants.

Jason Sanders #305405
In Pro Per
Bellamy Creek Correctional Facility
1727 West Bluewater Highway
Ionia, MI 48846

Alicia Lane (P62872)
Attorney for MDOC Defendants
Assistant Attorney General
Michigan Department of Attorney General
MDOC Division
P.O. Box 30217
Lansing, MI 48909
(517) 335-3055

LIMITED APPEARANCE OF COUNSEL

Please enter my appearance as attorney on behalf of **MDOC Defendants**
RN Michelle Strong, RN Corning, C/O Cameron Smith, C/O Allen and C/O
Darnell, for the limited purpose of participating in the Early Mediation process in
the above-entitled action.

Respectfully submitted,

s/ Alicia Lane
Alicia Lane (P62872)
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P62872

Date: January __, 2022

Lane\Mediation Prog\Sanders - Ltd Appearance (AL)

7. Did the Court of Appeals err in their Judgment affirming that the defendants did not violate the deliberate indifference (1st & 2nd) Prong when they refused to separate prisoners in units who tested positive of Covid-19 from prisoners who tested negative of Covid-19 (including petitioners)?

petitioner "Yes"

8. Did the Court of Appeals err in their Judgment affirming that the defendants did not violate the 14th Amendment (equal protection clause) when they placed positive Covid patients on the wing and in cells with prisoners (including petitioners) who tested negative of Covid-19 (on B-later) just as the prisoners on the other 3 wings in Unit-5?

petitioner "Yes"

9. Did the Court of Appeals err in their Judgment affirming that the defendants did not violate petitioners 14th Amendment and 1st Amendment right of access to the Courts when they failed/ refused to process "legal mail" disbursements of prisoners on B-later responses to Courts?

"petitioner" "Yes"

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s/ Alicia Lane
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Assistant Attorney General
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Date: January __, 2022

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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:

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Farmer vs Brennan	511 U.S. at 834-89			
Estelle vs Gamble				
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Rhodes vs Chapman	452	U.S. At 348		
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STATUTES AND RULES

DOM 2022-21 R11
 DOM 2022-21 R12
 P.D. 03,03, 130

OTHER

USC 1983

U. S. Constitution Amend 1, 8, 14
 Michigan Constitution ¹⁹⁶³ Art 1 sec. 17

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 August 10 2022

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

Amendment VIII (ratified in 1791)

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

In order for a prisoner to prevail on an Eighth Amendment claim he must show that he faced a significant serious risk to his health and or safety and the defendant official acted with deliberate indifference to [his] health or safety

Amendment I (ratified in 1791)

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances"

Amendment XIV (ratified in 1868)

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.

TO establish a Fourteenth Amendment equal protection claim, a prisoner "must plausibly allege" that the government treated the plaintiff disparately as compared to similarly situated persons and that such disparate treatment either burdens a fundamental right, targets a suspect class or has no rational basis"

- Prisoners enjoy a constitutional right to access to the courts under the First and 14 Amendments, see Bounds v. Smith.

STATEMENT OF THE CASE

ON January 7, 2022, plaintiff and multiple other prisoners at the Bellamy Creek Correctional ~~Facility~~ Facility filed a Civil complaint under 28. U.S.C 1983 alleging violations of their 1st, 8th and 14th Amendment rights to the United States' Constitution when an officer positive of covid-19, knowing worked in the Level-4 Unit-5 housing Unit at Ionia Bellamy Creek. This caused 4 prisoners who came into contact with the officer to contract the virus. After being moved to a designated Quarantine wing in segregation, the Warden of the Facility had the positive inmates moved back into unit-5 the very same day while the petitioner (Sanders) and the other prisoners on the B-lower (segregation step down wing) were out on small yard. When the plaintiffs returned from yard there were (covid-19) signs all over the lower wing ordering officers and health care staff mandatory orders to wear P.P.E. and mask before coming onto the 5-block B-lower wing. Petitioner and the other prisoners were forced to eat in small spaces with the positive prisoners and use the showers, phones and other items and surfaces in the unit without them being properly cleaned or sanitized before hand. As a result the virus

spread throughout the unit, jumping from 4 positive cases to 12. 12 positive cases to over 20. Each time prisoners in unit 5 tested positive, they were moved in cells on B-lower around petitioners and other plaintiffs who tested negative of covid-19. Medical staff were denied the authority to evaluate prisoners in this unofficial designated Covid Area including Plaintiff Sanders who is a known high risk prisoner to the medical and security staff at the prison. Medical staff stated that their refusal to treat the Covid prisoners, prisoners under investigation of covid and prisoners on the wing who tested negative of covid-19 due to the order of the Warden of the facility. Both defendant P.C.'s denied plaintiffs access to court by refusing them grievances, processing legal mail disbursements, or pens + papers to respond to court orders which caused Plaintiff Sanders to miss a court ordered response.

Plaintiff Sanders to miss a court ordered response. Plaintiff Sanders to miss a court ordered response. The United States District Court erroneously dismissed Plaintiff's Complaint on all issues alleging that Sanders was malicious because he filed several recent complaints raising similar claims against some of the same defendants. Plaintiff Sanders appealed. The United States Court of Appeals AFFIRMED the dismissal of 12 claims, reversed on one 8th Amendment claim and remanded the case back to the lower court.

Plaintiff Sanders contends that the Court of Appeals erred in their assumption that the subjective prong of deliberate indifference was not satisfied where he and the other plaintiffs stated in their verified complaint that IBC prison staff failed to wear or provide adequate P.P.E. or enforce P.P.E. requirements to protect plaintiffs from contracting covid-19 after staff came into direct contact with those on the wing who did have covid-19. That IBC prison staff failed to provide adequate cleaning supplies (other than a broom, mop and sanitizer for prisoners to clean their cells, or to have prisoner sanitation workers (florers) out to clean surfaces on the B-lower wing or throughout the unit, ~~despite~~ 6 prior out breaks and several amended ~~supplements~~ MDOC Director office memorandums pertaining to the way Michigan prisoners shall respond to covid out breaks at the prison. Multiple prisoner grievances, civil complaints and CDC and Michigan Department of Health shown worldwide in response to the pandemic, further establishing that ~~plaintiff~~ the Defendants [knew] of a substantial dangerous risk to plaintiff Sanders and the health and safety of the prisoner population yet they exhibited a dramatic relaxation of social distancing and in their all around response ~~to~~ the risk posed to Sanders and the prisoners in unit-5 at the IBC Correctional Facility in violation of the 8th Amendment (Deliberate Indifference; wanton infliction of pain & suffering) to the United States Constitution.

Plaintiff Sanders also contends that the Court of Appeals erred in their assumption that prison staff did not know who tested positive for Covid-19 before being moved on the B-lower wing because these prisoners were not moved in close proximity to Sanders and the other plaintiffs until they tested positive or reported flu like symptoms.

In their assumption that the defendants did not violate the Eighth Amendment by failing/refusing to separate prisoners who tested positive of covid-19 from prisoners who tested negative of covid-19, when in contrast the defendants did the exact opposite by moving prisoners positive of covid-19 into cells with prisoners who tested negative of covid-19. The risk was magnified by placing the positive prisoners in Unit 5 and on B-lower where several high risk prisoners (including Sanders) and the rest of the unit tested positive for covid-19. And for failing to test EVERY staff member before coming into the prison, not before coming into contact with each prisoner. Which is the reason the Director ordered mandatory (screening) of staff which is not adequate enough to detect all cases, which is why testing was required before entering the prison, yet the Warden allowed sick staff to enter the prison, placing patients and other prisoners at risk.

also establishing plaintiffs Deliberate Indifference claims against the defendants in violation of the 8th Amendment to the United States Constitution

Plaintiff Sonder contends that the Court of Appeals erred in their affirming that IBC Staff did not violate the 8th Amendment, yet plaintiffs never stated that health care staff "haulted" their medical care, the complaint stated that Sonder and other prisoners were denied medical kits, or any medical evaluations for prisoners on B-lower in Unit-5 which is one of the "minimum ^{civilized measure of life} necessities ~~minimum~~ ~~for~~ ~~resembles~~ ~~any~~ ~~other~~ for every citizen of the United States.

defendants forgotten a suspect class and infringed burdens a fundamental right. The disparate treatment was placing covid positive prisoners not only in Unit-5 but on B-lower ~~which~~ prisoners considered to be unmanageable, who have to stay misconduct free for 6 months to be moved off of B-lower and even longer to get their security status decreased.

Lastly, Plaintiff contends that the Court of Appeals erred in their Affirming that defendants did not violate the plaintiff's 1st Amendment right to petition the government where plaintiff were denied grievances by Unit-5's P.C.'s or where the (P.C.'s) defendants refused to make legal rounds or process legal disturbances with responses to the Court orders which did cause Sanders to miss a deadline in violation of their access to Court Rights of the 1st Amendment of the United States.

The lower District Court clearly abused its discretion by assuming certain facts and placing certain information on the record that was not in the complaint, when they

Are required to screen prisoners' complaints in the
"light most favorable to the plaintiffs"! (emphasis mine)

REASONS FOR GRANTING THE PETITION

IN Gamble vs. Estelle, the Supreme Court held that if a prison inmate is the victim of "Deliberate Indifference to serious medical needs" in any manifestation, it states an Eighth Amendment cause of action under Federal civil rights statute proscribing a deprivation of rights. 42. U.S.C. 1983

The Eighth Amendment imposes a constitutional limitation on the power of the States to punish those convicted of crimes. Punishment may not be "barbarous" nor may it contravene society's "evolving standards of decency". upheld by the Supreme Court in Rhodes v. Chapman

The Eighth Amendment therefore prohibits conduct by prison officials that involves the "unnecessary and wanton infliction of pain. Ivey vs. Wilson, yet the Supreme Court also upheld the ruling that "Incarceration may extinguish or curtail many rights, but Eighth Amendment's protection against cruel and unusual punishment retain its "full" force behind prison doors. U.S.C.A. Constitution Amendment 8 At 1213 . 10(1)

"emphasis mine"

Government officials must ensure that prisons, while perhaps restrictive and even harsh, do not degenerate into places that violate basic standards of decency and humanity; while the Eighth Amendment does not mandate comfortable prisons, neither does it permit inhumane ones. U.S.C.A. Constitution Amendment 8. Lastly, but most importantly the Supreme Court upheld the ruling that "In order for a prisoner to prevail on an Eighth Amendment claim, he must show that he faced a sufficiently serious "risk" to his health and safety and that the defendant acted with deliberate indifference to [his] health and safety." (Emphasis mine).

In the instant petition, petitioner ^(Ganders) states that when MDOC officials go out into the public and return to the prison population without being tested for covid-19, where none of the prisoners ~~at the~~ prison have covid-19, which according to the 6th Circuit in Wilson vs Williams ^{states}, "in evaluating the subjective component, the Wilson court concluded that, because of the "seriousness" of the "risk" of covid-19 was obvious, a court could reasonably conclude that defendants were aware of the risk", prison staff pose ~~the~~ one of if not the most risk of prisoners health and safety when they come from society into the prison

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JASON L. SANDERS #305405,

Petitioner,

Hon. Phillip J. Green

v.

Case No. 1:22-cv-344

MATT MACAULEY,

Respondent.

ORDER TO PROCEED IN FORMA PAUPERIS

IT IS ORDERED that Petitioner may commence this action without prepayment of fees or costs or security therefor. Any pleadings herein served by the United States Marshal shall be at the expense of the United States government. All costs shall be reimbursed to the United States government.

IT IS FURTHER ORDERED that Petitioner shall serve upon Respondent or, if appearance has been entered by an attorney, upon the attorney, a copy of every further pleading or other document submitted for consideration by the Court. The Petitioner shall include with the original paper to be filed with the Clerk of the Court a certificate stating the date a true and correct copy of any document was mailed to Respondent or the attorney(s). Any paper received by a District Judge or Magistrate Judge which has not been filed with the Clerk or which fails to include a certificate of service will be disregarded by the Court.

Date: May 13, 2022

/s/ Phillip J. Green
PHILLIP J. GREEN
U.S. Magistrate Judge

environment without being tested for this dangerous highly contagious virus, which has been the cause of all 7 outbreaks prior to ~~the~~ one involved in this complaint. The Court of Appeals erroneously "assume" that the complaint did not adequately allege the subjective component of deliberate indifference because IBC prison staff and supervisors as well as the Warden can be seen putting up (mandatory) signs ordering prison staff to wear full P.P.E. "before" going on the B-lader wing, which means they new and disregarded the risk to inmates and the other prisoners on the same wing as the positive prisoners, who were mixed with negative prisoners after being tested, "easily/closely" shows a state of mind more blame worthy than negligence", ~~and~~ and was the exact opposite "response" from prison officials or any other professional that mixing prisoners who tested negative for covid, with those who tested positive is an unconstitutional condition that caused the prison to "degenerate" into a place that violated the basic standards of decency and humanity. The defendants actions were inhumane,

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U.S. Magistrate Judge

When they failed to wear P.P.E, failed to test prison Staff before entering the prison and allowed Stuntman, and many others enter the prison positive of covid-19, when they denied plaintiff access to medical care to treat his symptoms or the symptoms of the other prisoners positive of covid-19, when they denied plaintiff Sanders and the other prisoners in B-labor cleaning supplies to clean surfaces which Sanders and the other plaintiffs clearly alledge in their complaint, by placing positive prisoners in the first 7 or 8 cells this and the sections and failure to set by IBC prison staff caused the outbreak! "emphasis mines throughout," how the court concluded that placing sick prisoners on the same wing as health prisoners and making them use the same supplies, phones, utensils and unclean surfaces, these are not precautions, but are ~~criminal~~ in nature as well as deliberate, lastly concerning the 8th Amendment, on page 6 the court of appeals were clearly erroneous when they concluded "the lack of alleged injury to Sanders

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/s/ Phillip J. Green

PHILLIP J. GREEN
U.S. Magistrate Judge

is fatal to his claim." As stated above, the 8th Amendment forbids actions that pose a substantial "risk" to Sanders Health and Safety. In case Sanders vs. Mcawley et al case No. 1:20-cv-871 the U.S. District court stated clearly on the record against At least Mcawley and other IBC Staff that plaintiff Sanders is a "high risk" prisoner to covid-19 due to being diagnosed with V.D.A, asthma, sleep apnea, Any time staff or inmates who test positive with Covid use the same unclean surfaces as the plaintiffs were forced to in this case, or breath the same air as those placed on their wings not only satisfies the subjective and objective component of deliberate indifference it threatens the life of Sanders and other prisoners on the wings who did not have covid-19, as well as those who praved in affliction and in their verified complaint that their health and safety were put at risk of "irreparable harm" (lasting illness or death) in violation of the 8th Amendment constituting cruel and unusual punishment at the prison.

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PHILLIP J. GREEN
U.S. Magistrate Judge

In response to the 18th and 14th Amendments claims
any time designated prison staff (P.C.'s) deny
prisoners grievances their right to receive the state government
sets which is protected conduct, they violate the 1st Amendment
of the U.S. Constitution. Likewise, when they refuse their
duty, which is also to process legal papers and responses
to the court within a deadline or from a court order
they violate the 1st and 14th Amendments to the United
States Constitution, as did the defendants in Sanders
Complaints.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jay L. Sanders

Date: 8-39-2022

K. Treptow
NOTARY

DATE 8/30/22

Kyle Treptow
Notary Public-State of Michigan
Muskegon County
My Commission Expires January 13, 2023