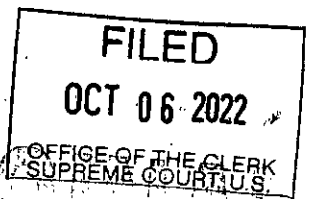


22-6033

IN THE  
SUPREME COURT OF THE UNITED STATES

No. 3:20-cv-00679-wmc



DANIEL A. SCHILLINGER  
Petition,

-against-

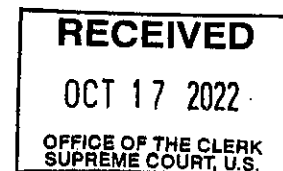
JOSH KILEY, et al,  
Respondents

PETITION FOR A WRIT OF CERTIORARI  
IN THE UNITED STATES COURT OF APPEALS  
FOR THE 7th CIRCUIT

DANIEL A. SCHILLINGER #135201  
RACINE CORRECTIONAL INSTITUTION  
P.O. Box 900  
STURTEVANT, WI 53177

Parties- Plaintiff, Daniel A. Schillinger

Defendants, Randy Starkey, Josh Kiley  
Sgt. Richard Matti.



### questions presented

- 1) The DOC prison had failed to give me a copy of the video tape of the assault taking place on Sept.17, 2015.
- 2) I did allege to the federal court at one time that I had head trauma and memory loss and needed help on my complaint. They told me it don't matter.
- 3) And the administrative authority never gave me an opportunity to amend my complaint if there was a mistake.
- 4) Josh Kiley and Randy Starkey had ignored my verbal statement to them on the threats, when they asked me if I was okay.
- 5) These two C/O'S Randy Starkey, Josh Kiley had failed to protect me, when giving verbal warnings. Why?
- 6) This witnesses are aware of everything that happened to me and also heard the verbal conversations.
- A) This case presents a fundamental question of the interpretation of this courts decision. The question presented is of great public importance because it affects the operations of the prison systems in all 50 states, District of Columbia, and of the hundreds of city and county jails. In view of the large amount of litigation over prison disciplinary proceedings, guidance on the question is also of great importance to prisoners, because it affects their ability to receive fair decisions in proceedings that may result in months or years of added incarceration.
- B) The common sense understanding of "calling" a witness into the proceeding to give testimony, and there are security and came to ensure institutional safety of inmates.
- C) The lower courts reasoning that witnesses never need actually appear at the hearing is unconvincing. The standard permits prison officials to exercise their Discretion to exclude them, witnesses when a particular case warrants it, prisoners have a right to call witnesses when there is no reason to exclude them. Court should make it clear that witnesses called by the prisoner should appear at the hearing. And the prisoner was never called to the hearing, at the time to dispute his facts.

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## STATEMENT OF JURISDICTION

Mr. Schillinger Daniel A. had filed suit in the Western District of Wisconsin under 42 U.S.C. § 1983. The District Court had dismissed this case without prejudice on July 27, 2021. And Schillinger did appeal his suit on failure to protect.

Schillinger did in fact exhaust his Administrative Remedies.

The exhaustion requirement applies to cases filed by prisoners about prison conditions. The Supreme Court has said that phrase applies to all inmates suits about prison life, whether they involve general circumstances or particular episodes and whether they allege excessive force or some other wrong, in other words if it happened to you in prison, it is probably covered by exhaustion requirement. And this suit was a Mis- Description of the incident in my grievance complaint, where I had Another inmate do my grievance, being that I was ~~illiterate~~ illiterate.

Langford v. Ifediora, 2007 WL 1427423 \*3-4 (E.D.ARK.May 11, 2007).

Mr. Schillinger was exposed to a substantial risk of serious harm and the defendant's were deliberately indifferent to that risk.

Farmer v. Brennan 511 U.S. 825, 834.

And the 7th circuit court of appeals also affirmed the lawsuit in deny the appeal; Sept. 6, 2022.

For the reason given, I pray and hope the Supreme Court would reverse this suit in part and remanded for further proceedings.

## STATEMENT OF CASE

Daniel A. Schillinger is brutally beaten by inmate James Terry. Schillinger was an inmate at Wisconsin Secure Program Facility on Sept. 17, 2015. Schillinger was at rec playing chess with Charlie Diaz, and James Terry came up to them and asked Schillinger to speak to him in private, they walked to another table. And James Terry was starting to threaten Schillinger to get him to buy items off canteen. Charlie Diaz came over to Schillinger and asked him if everything was okay. Officers Randy Starkey and Josh Kiley had asked Schillinger and Diaz what was going on, whether James Terry was going to fight with Schillinger. Diaz said everything was fine. C/O Randy Starkey asked Schillinger and Diaz what was going on, cause I know something is going on with you's. Diaz again said everything is fine. After rec ended at 10:15am, The inmates started to walk towards the gate opening. Josh Kiley, Randy Starkey had stopped Schilli8nger and asked him if he was going to be okay, Schillinger said I don't know cause James Terry had threaten me and I do not trust him. Schillinger was walking to his Range Charlie, where James Terry also lived. Well C/O Randy Starkey had told Sgt. Richard Matti was in the cage on Delta Range stationed that there was going to be a rumble, meaning fight. Jeremy N. Clark inmate was on Delta at the time and heard Randy Starkey tell this to Sgt. Richard Matti. Then when James Terry noticed there were no guards on Charlie Range in which there is supposed to be when there is movement per security reasons. Thats when James Terry started to beat Schillinger brutally for 8 to 10 minutes before the guards and staff came to my aide. And

apparently the Sgt. in the cage on Charlie Range wasn't paying attention to the cameras, if he would have, I would not of sustained the injuries that I did. The exhaustion requirement applies to cases filed by prisoners about prison life or conditions. And the Supreme Court has said that phase applies to all inmates suits whether they allege excessive force or any other wrong, in other words, if it happened to you in prison its probably covered by exhaustion requirement. And this case was a mis-description of the incident in my grievance complaint. Where I had another inmate do my grievance, being that I was illiterate and his name is Paul Adamski. Langford v. Ifediora, 2007 WL 1427423 \* 3-4 (E.D.ARK. May 11, 2007). And the trauma to my head and skull fracture made it difficult for Schillinger to remember things. Kinzey v. Beard 2006 WL 2829000, (M.D.Pa.Sept. 1, 2006). The two C/O'S Randy Starkey Josh Kiley had knowledge of the substantial risk of serious harm and yet they disregarded by failing to take reasonable measures to prevent the assault. Farmer v. Brennan, 511 U.S. 825, 834, 837 (1994). And the Correctional Officers did respond for at least 8 to 10 minutes, Well Schillinger was being battered. The alarm went off for medical response team to Charlie Range. As the defendants concede, were deliberately indifference to responding to the alarm in which only Josh Kiley came to my aide after 8 to 10 minutes. Valez 395 f.3d at 736 And when officers did arrive at the scene, they did not try to stop the beating for a couple of seconds when they told James Terry to stop. When I was knocked out is when they came and told him to get on the ground and took him to Seg. And then took me away to nurses station and then to Hospital.



## ARGUMENT

The grievance does not need to lay out facts, legal theories, or demand relief but only object to declare defect. This is what Schillinger was litigating in the federal courts: that the guards failed to protect him from James Terry II attacking him and also to make sure that there should of been guards on Charlie Range when there is movement. And the Wisconsin regulations only require an inmate to set forth his factual issue. Wis. Admin. Code D.O.C. §310.09 (1) (e). And Schillinger's inmate complaint did not need\* to link facts to particular legal factor to exhaust his Administrative remedies, only by putting the prison on notice of his claim. Schillinger's complaint did so, stating that there was no Correctional Officers on the Range Charlie at the time inmates are going to there cells. Which there should of been for security reasons. This was just another way of getting his grievance across that the guards should have prevented the assault. Mr. Schillinger had exhausted his Administrative remedies and should be resolved in his favor. The two prison officials had a state law duty to take reasonable precautions under the circumstances to preserve prisoner's life health and safety. Hudson v. Mcmilliam plaintiff must show that defendants had reason to know of facts creating a high risk of physical harm and acted in conscious or disregard or indifference to that risk. And I Schillinger being the plaintiff was entitled to a trial, where state habitually placed maxium security prisoner's o0ut of sight of any officer during periods of movement. Sanchez v. State 99 N.Y. 2d 247, 254-55, 784 N.F. 2d 675 (N.Y.2002).

I did state to the prison officers that if I could get a copy of the video from the assault occurring, cause I might need it for evidence, and they had told me no, it's confidential and it does not matter. I believe that these DOC officers were just trying to cover up for the two officers Randy Starkey and Josh Kiley. The Eighth Amendment forbids exposure of prisoner's to conditions that pose " an unreasonable risk of serious damage to their future health" And the officials whom names are Josh Kiley, Randy Starkey had failed to follow their own rules, and regulations or policies concerning protection of prisoner's may support a deliberate indifference claim. Case v. Ahitow 301 f.3d 605, 606-07 (7th Cir. 2002). And I did acknowledge deficiencies in the staffing and ~~supervisiomn~~ supervision on the Charlie Range at the time of the incident. Mcgill v. Duckworth 726 f. Supp. 1144, 1157 (N.D.Ind.1998). And at rec when it was over Randy Starkey and Josh Kiley had asked me if I was going to be okay. I had told them I don't know because I don't trust James Terry, he had threatened me, around 10:15pm. The United States Supreme Court has ruled in 1994 that these prison officials can be held liable without immunity protection under " Failure to Protect " within the Eighth Amendment or United States Constitution if they knew that the inmates face substantial risk of serious harm and disregarded that by failing to take reasonable measures to abate it. Thus this is supported by case reference Flint v. Kentucky of Corr. 270 f.3d 340 and the court has ruled Kentucky Dept. of Corr. 270 f.3d 340 and all officers involved were liable without any form of immunity due to reckless neglectful actions that allowed serious harm to occur without

taking reasonable measures to abate it and such is " Failure to Protect " under Eighth Amendment of United States Constitution. Elborough v. Evansville Cmty. Scholl District 636 f. Supp. 2d 812 (W.D.Wis.2009). In addition, Randy Starkey had asked Schillinger if he was going to be okay and he stated he was threatened by inmate James Terry. Well Josh Kiley stood by and was listening to verbal warning giving at the time we were going in from rec period. And when the merits of a prisoners claim have been fully examined and ruled upon by the ultimate administrative authority. Prison officials can no longer assert defense of failure to exhaust his remedies, if the inmate did not follow proper administrative procedure. Jones v. Stewart 457 f. SUPP. 2d 1131, 1134-37(D.Nev.2006) Kretchmar v. Beard 2006 WL 2038687 \* 5 (E.D.Pa. ~~800F.2d 800~~ July 18, 2006). The plaintiff Daniel A. Schillinger respectfully believes the defendants Deprived/Violated Schillinger's Eighth Amendment right of " Failure to Protect " under United States Constitution. Furthermore the plaintiff Daniel A. Schillinger believes the defendants Deprived/Violated Schillinger's Eighth Amendment right of cruel and unusual punishment clause under United States Constitution. Richard Matti. also violated Schillinger's Eighth Amendment under United States Constitution. When the merits of a prisoners claim have been fully examined and ruled upon by the ultimate Administrative Authority, prison officials can no longer assert the defense of failure to exhaust even if the inmate did not follow proper Administrative procedures. Washington v. Sokol 491 f. Supp. 2d 1012, 1019 (D.Colo.2007).

Randy Starkey had told Sgt. Richard Matti On Delta Range, when he was working in the cage, that there was going to be a rumble meaning a fight, on whether it was going to happen outside at rec or inside the prison. And Richard Matti, had failed to alert anyone higher up of chain of command. Lyons v. State by Hunphrey, by Pung, 336 N.W. 2d 621, 623-24 (Min.App.1985) Newton v. Black 133 f.3d 301, 306-07 (5th Cir.1998). And the courts should not of granted the summary judgment based on the serious ~~any~~ injuries to the prisoner. And instaed of taking precaution measures, they were on Delta Range visiting, when they shoould of been protecting me, when they knew a fight was going to occur. The defendants had violated the plaintiff's Eighth Amendment on assault from another inmate James Terry II in which was a serious risk. These officers disregarded that risk which was obvious. They should not of granted the summary judgment against the plaintiff, the defendants had actual knowledge of a substantial risk of serious harm,,Josh Kiley, Randy Starkey. Goka v. bobbitt, 862 f.2d 646, 651 (7th Cir.1985).- The Supreme Court has held that a persons official can be found reckless or deliberately indifferent if "the official knows of and disregards AN EXcessive risk to inmates health safety. Farmer v. Brennan 511 US at 842-43 id at837.

CONCLUSION

The District Court's Judgment should be vacated, its screening order reversed in part and remanded for further proceedings.

October 5 2022

Respectfully Submitted,

Daniel A. Schillinger  
Daniel A. Schillinger #135201

CERTIFICATE OF COMPLIANCE

Pursuant to Fed R. of App. Procedure 32 (a) (7) (B) and (c)

The undersigned Appellant certifies that this petition complies with the type volume and type face with the federal rules, and Supreme Court rules.

October 5 2022

Respectfully Submitted,

Daniel A. Schillinger  
Daniel A. Schillinger #135201

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing petition was served upon opposing Attorney General, Josh Kaul, by U.S. Mail on October

5 2022

Respectfully Submitted,

Daniel A. Schillinger  
Daniel A. Schillinger #135201