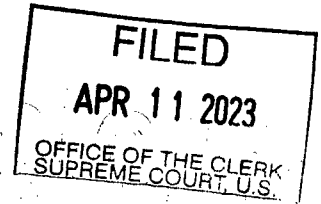


22-7366

IN THE
SUPREME COURT OF THE UNITED STATES
APRIL 19, 2023

No. _____



DONALD JOSHUA SMITH,
Petitioner,

v.

OMONIYI AKINTOLA et al.,
Respondent(s)

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE 9th CIRCUIT

ADDRESS

DONALD JOSHUA SMITH, #D41316
CALIFORNIA HEALTH CARE FACILITY, E2A-107 L
P.O. BOX 213040
STOCKTON, CALIFORNIA 95213

QUESTION(S) PRESENTED

1. Being the primary care provier, why was not Akintola held medical responsible for examining, diagnose, and treating plaintiff's Smith for the sickness & disease that stem from Chest-Pain and Shortness of Breath.
2. How could you justify the U.S. District Court ruling to dismiss plaintiff's Civil Rights Complaint.
3. How could you overlook the fact that plaintiff was and still is being expose to Toxic, Contaminated Water after 4-Years.
4. After a number of CDCR-7362 Medical Request serve and reply to by defendant's Akintola How could he not be liable for his action, that amounted to a prudent standard of Inadequate Care and delay.
5. Why would plaintiff's Primary Care Provider, not be guilty of a constitutional violation, under the Cruel & Unusual Punishment.
6. Why does plaintiff now have Five (5) Life-Threatening disease after over Three-years of medical appointment, Exam, Treatment, if it's not from the Contaminated water here at California Health Care Facility-Stockton CA.
7. Why have you not provided any document and evidence in support of your claim.
8. Why did you not accept plaintiff's explanation as to his sickness, due to the contaminated water.
9. Why does the Court not see that the spread of disease in plaintiff's smith body, Lungs Liver, Heart, Abdomen disease and Hepatitis C, is due to a disregard and Medical Deliberate Indifference on the part of Akintola, the primary care provider.
10. The following citations also support petitioner Writ, and being that I am not very good at Litigation, See Anderson v. Liberty Lobby Inc. 477 U.S. 242 (1986) and Colotex Corp v. Catrett, 477 U.S. 317 (1986).

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:

WARDEN - At the time of filed Civil Rights Complaint;

MS Laura Eldridge, Acting Warden. Filed Nov 30, 2020; Address CHCF-Stockton
7707 Austin Rd
Stockton, CA 95213

pro se
Donald Joshua Smith
California Health Care Facility
P.O. Box 213040
Stockton, CA 95213

DEPUTY ATTORNEY GENERAL- FOR DEFENDANT
STEPHEND D. SVETICH
300 South Spring Street Suite 1702
LOS ANGELES, CA 90013-1230
Defendant Omoniyi Akintola


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STATUTES AND RULE

Civil Rights Complaint Pursuant; 28 U.S.C § 1343(a); 42 U.S.C. § 1983

Medical Deliberate Indifference Violation

Rule 28 U.S.C. § 1915 (e) Appointment of Counsel

Federal Rule. Civil Procedure 8(a) (2) . Fed.R Civ. P.56 (c)

OTHER - Exhibit's evidence include; Health Care Request Form, C-Committee Chrono

Exhibit's A-B-C Document's , Posted Memo Of Confirmed Legionnaires

Disease dated March 26, 2019 / Notification Of Water Contaminated Order, Assessment Form Progress Notes, Final Report, Memo and Medical Records and daily Bottle of water past out due to "LEGIONNAIRES DISEASE "

Dated 4/18/2023

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 U.S. Court Of Appeals, Ninth Circuit; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished. Appellant's Informal Opening Brief. Dated 9/19/2022

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

☒ reported at U.S. Court Of Appeals For the 9th Circuit; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished. " Optional " Informal Reply Brief - Dated 12/12/2022

☒ For cases from state courts:

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

☒ reported at U.S. District Court Eastern District CA.; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished. Forma Paupereris 8th Amend deliberate indifference

The opinion of the ORDER- Findings and Recommendation court appears at Appendix B to the petition and is

☒ reported at Summary Judgment; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished. Motion granted May 5, 2022

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was FEB 24, 2023, Reply to DEC 12, 2022
F

☐ 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).

DATED-AFFIRM The Summary Judgment Feb 24, 2023

The U.S. Court Of Appeal For The Ninth Circuit. Case # 22-16225

FROM the U.S. District Court, Eastern District Of California.

☒ For cases from state courts: 'Unsupported By Court Records'

The date on which the highest state court decided my case was 7/26/2022.
A copy of that decision appears at Appendix B. "Exhibit's" _____

☐ A timely petition for rehearing was thereafter denied on the following date: 6/2, 2022, and a copy of the order denying rehearing appears at Appendix C. - Exhibit's _____

☐ 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

1. Citing, Barrett v. Coplan, 292 F. Supp.2d 281-85 (DNH 2003) Adequate medical care req-
2. ures treatment by qualifiel medical personnel who provide services that are of a quality
3. accepable when measured by prudent professional standards. In McGuckin v. Smith, 974 F.
4. 2d 1050-59 (9th Cir 1992) The existence of an injury that a reasonable doctor or patient
5. would find important and worthy of comment or treatment, support a finding of seriousness
6. defendant acted under the color of state law (2) defendant deprived plaintiff's of rights
7. secured by the constitution or federal law, Long v. County of Los Angeles, 442 F.3d 1178
8. -85 (9th Cir 2006) A person deprives another of a constitutional rights, where that per-
9. son does an affirmative act, participate in another affirmative acts or omits to perform
10. a act which that person is legally required to do that cause the deprivation of which com-
11. plaint is made, Hydrick v. Hunter, 500 F.3d 978 (2007) Jett v. Penner, Estelle v. Gamble,
12. McGuckin v. Smith, delay treatment, Shapley v. Nevada Bd of State Prison Comm're 766 f.2d
13. 404 (1985) The course of treatment that defendant Akintola chose was Medically unaccept-
14. able under the circumstances, Jackson v. McIntosh, 90 F.3d 330,-32 (9th Cir 1996) violat-
15. ion of right to medical care & treatment, giving 1-test after another when learning of
16. abnormal test it's a disregard and inadequate care, because when you know of a health
17. problems, & do nothings it's a Medical Deliberate Indifference, of delays an inadequate
18. care to a growing medical issue, in this case disease due to contaminated water. In this
19. case; Legionnaire Disease, Stennis v. Stewart, 2022, U.S. Dist. Lexis 143704 (August 2022
20.) Discussion - Complaint under 42 U.S.C. § 1983, Eighth Amendment standard for conditions
21. of confinement claim; Perri v. Warden, 2023 U.S. Dist. Lexis 9266, Plintiff's is house
22. in unsafe conditions due to said health problems and the Bacteric & Toxic that spread
23. through-out the prison causing Cancer and other disease , which Plaintiff Smith already
24. has. The list of plaintiff's health problems did not happen over-night, it took a disre-
25. gard, delay, and inadequate care for Month's & Years to develop the spread of disease
26. that has claim plaintiff body, a Bacterial Virus has no control once allow to spread.

STATEMENT OF THE CASE

1. YOUR-HONOR; In March and April of 2019, my primary care provider, Defendant Omoniyi
2. Akintola PA, answer Plaintiff's Smith medical request 7362 Form due to a Shortness of
3. Breath, Chest-Pain and other health concern, plaintiff try to discuss with defendant
4. Akintola that his sickness could be due to the exposure of the Legionnaires disease
5. due to contaminated water, because I read the Memo posted, and had a few of the system
6. but the defendant refuse to act upon my point of view, and did not treat, examine, nor
7. diagnose my serious medical problems, are make the Schedule plaintiff awaited for his
8. Abdomen disease surgery that was past due, plaintiff has learn that the abdomen disease
9. could have develop due to Contaminated Water, it could very well stem from it, notice
10. in the Merck Manual Of Medical Information, Home Edition; Chapter 122: page 719 & 721
11. Plaintiff has learn from this Medical Book how wrongful defendant Akintola is in said
12. Inadequate Care, and delay action, I was rush out of his office, and had to make
13. another Medical Request to be examine and treated for my sickness. This Medical Form
14. CDCR 7362 was reply to my Doctor Kathy Christopher on 5/3/2019; after her Exam, and
15. Diagnose, she activated her Medical Emergency alarm button (911) and plaintiff Smith
15. was then transfer by ambulance to San Joaquin Hospital, where he was treated and eval-
16. uated for 3-days; Laboratory test come back abnormal, note this action took place
17. within days after being deny medical care by defendant Akintola my Primary Care Prov-
18. ider, proven Inadequate Care, and deliberate indifference to a serious medical needs.
19. Exhibit's will show that these medical need has not been meet. SEE Exhibit's A-B-C
20. and test result continue to be abnormal, because the disease has spreaded throughout
21. plaintiff's body, Abdomen disease, Heart disease, Liver disease, Lungs disease, and
22. now Cancer disease in the liver, plaintiff also have Hepatitis C, therefore his knew
23. Doctor's Chaudhry, Uzma and Doctor Gill, has endorse a Medical Compassionate Release
24. Defendant AP Akintola, order MIR, EGD, Cat-scane, X-ray, Appointment to out-side Hosp
25. ital, as well as EKG, and test came back abnormal.

STATEMENT OF THE CASE

1 Please note, that this was reckless disregard to a serious medical needs by the
2 Defendant Akintola, he did not success in controlling nor restoring plaintiff's
3 health, as primary care provider, the risk to plaintiff health and safty is not
4 secure, I plaintiff Smith, did succumb to Cancer 3-time in the Liver within 2-
5 years, now I am overcome with 5-Life-Threatening disease due to inadequate care
6 To add too the Medication for pain in suffering is Morphine 30mg, and Lenvima
7 (Lenvationib) Cancer Capule 4mg, Plaintiff's suffer daily from side-affect of
8 all the medication he must take, and because this prison water supply still con-
9 tain Contaminant Level of water (MCL) the Memo stated it's not enough to restore
10 Bottle Water to drink, and Mobile shower, SEE Exhibit's B For 8-9 Months
11 in 2019, plaintiff's endure critical water crisis, and my Primary Care Provider
12 still deny my exposur to the Contaminate water virus, nor would defendant's -
13 Order a Blood-test for plaintiff to determine if indeed he had the disease, it
14 took Doctor's over 3-years to give plaintiff a Urine test upon his request, so
15 that he could get the correct diagnosis for the medication needed to stop the
16 spreading of sickness and disease in his body, before hand; plaintiff was inject-
17 ed with Pneumococca Vaccine that cure bacterial, my health continue to decline,
18 and I still believe that Antibiotic could have solve most of my health problem
19 and cure the cancer. Defendant's Akintola gave no explanction as to how and why
20 plaintiff body has succumb to so many serious disease, this due to inadequate
21 care and delay surgery and actions, defendant's stated that Environment Allergies
22 Secondary to the Waste Dump near prison suspected, that statement in itself shou
23 ld have been enough for defendant to endorse a Transfer for plaintiff under In-
24 junction relief, this is a case of Cure And Unusual Punishment, Doctor's Chaudhry
25 Uzma and Doctor Gill, endorse a Compassionate Release Order, stateing plaintiff
26 have a Life-Span of 6-Months too 1-year to live, due to the 5-disease in his body,
27 The Court stated plaintiff failed to raise genuine dispute, citing; Toguchi v. Chu-
28 ng 391 F.3d 1051-60 (9th Cir 2004) Affirm judgment, Plaintiff's highly disagree.

REASONS FOR GRANTING THE PETITION

1. Defendant's Akintola was wrong for not performing said Medical duty, obligation,
2. and disregarded care and service as plaintiff's Smith primary care provider, denying
3. the rights of his patient at a very critical time, before and after being Hospitalize
4. See Document, and Exhibit's A-B-C, Honorable Judge, For The U.S. Supreme Court,
5. Petitioner's & Plaintiff Smith, do hereby submit reasons to justify a granting of
6. this Writ Of Certiorari, plaintiff review the case law affirm judgment, and note that
7. it is clearly in error, Citing Gordon v. County Of Orange, 888 F.3d 1118 (9th Cir -
8. 2018) A Fourteenth Amendment claim; 28 USC § 1291, Plaintiff Smith filed a Eighth -
9. Amendment claim, therefore defendant has made a error, and in case law Toguchi v. -
10. Chung, 391 F.3d 1051-60 (9th Cir. 2004) this Law support plaintiff's Smith. Defend-
11. ant Akintola made an intentional decision to a substantial risk of suffering serious
12. harm by knowing of the Exposure of Contaminated Water, and knowing of plaintiff health
13. condition, disease and disability, and disregarding it. In Toguchi v. Chung, how
14. could defendant's not know of plaintiff disease, when he made the medical order and
15. Hospital appointment for over 1½ Years. This is a medical deliberate indifference case
16. because Akintola took a very serious risk, now plaintiff have 5-Life-Threatening dis-
17. ease, one being Liver-Cancer, Abdomen Disease, Heart & Lungs disease , Hepatitis C.
18. Plaintiff's did raise a few genuine dispute of material fact's and submit tangible
19. evidence, See Exhibit's A-B-C, These fact's was overlooked for the benefit of Akintola
20. Plaintiff Eighth Amendment Rights was violated when a prison officials are deliberate
21. indifference to a prisoner's serious medical need, after a number of abnormal test
22. and treatment, there was no success at cure nor diagnosis of 4 of the disease, there-
23. fore plaintiff continue to suffer tremendously, the Liver Cancer was cure twice with-
24. in a 1-year period, and return, therefore two Doctor has endorse a Medical Compassion-
25. ate Release, Doctor Chaudhry, Uzma and Dr. Gill, Amandeep due to serious and advanced
26. illness with an end-of-life trajectory; Life-Span of 1-year. The legal standard issue
27. whether a serious medical need exist. See Chambers v. TRM Copl Center 43 F.3d 29 (2d C1994)

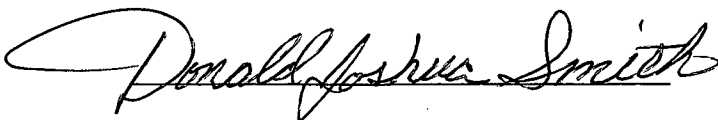
REASONS FOR GRANTING THE PETITION

1. (1) Injury that a reasonable doctor or patient would find important and worthy
2. of comment or treatment (2) A medical condition that significantly affect an
3. individual's daily activities (3) Chronic and substantial pain (4) a failure
4. to treat illness or disease that could result in further significant injury or
5. the unnecessary and wanton infliction of pain, the side-effect's from the Medicat-
6. ion and treatment is a daily pain that plaintiff's endure.
7. The Court may consider facts established by exhibit's attached in the writ.
8. Durning v. First Boston Corp, 815 F.2d 1265 (9th Cir 1987).
9. The Court may also disregard allegations in the complaint, if they are
10. contradicted by fact's established by exhibit's.
11. The Court is not required to accept as true conclusory, Unreasonable inference
12. or unwarranted deduction of fact's. See Farmer v. Brennan, 511 U.S.825 (1994)
13. Plaintiff is entitled to receive notice of the deficiencies in the complaint and
14. an opportunity to amend, unless the complaint's deficiencies can not be cured by
15. a amendment, Noll v. Carlson, 809 F.2d 1446-48 (9th Cir 1987). Because of the
16. unsanitary condition of this environment, "Bacteria, Toxic, Contaminated Water"
17. has destroy petitioner body, the disease in the Liver became cancer, and the
18. disease in the Lungs is now Emphysema, the diseas in Abdomen, Heart, also Hep-
19. atitis C. is not being treated, other then Medications to try an control it,
20. Defendant the primary care provider, must accept the responsibility for the
21. medical obligation of his job & duty of this growing health problems. Out-side
22. Hospital's inform defendant of the abnormal test result. Plaintiff'(s) Smith
23. has accepted the fact that plaintiff is dying, the pain & suffering is unwanton
24. due to inadequate care and delay's, his live is getting harder to bear, therefore
25. Plaintiff's ask the Court to please let justice previal, allow the constitutional
26. rights that govern the law be justify. Drinking & being expose to Legionnaires
27. Disease Water for over 4-Years, obtaining 5-Life Threaten disease is my reasons.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Handwritten signature of Donald Joshua Smith in cursive script.

Date: April 10 2023