

22-7427 ORIGINAL

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

TRAVIS BLANK — PETITIONER
(Your Name)

UNITED STATES OF AMERICA,
CHARLES ELLERT, D.O.;
AMANDA BARUTZ, M.D. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

TRAVIS BLANK
(Your Name)

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QUESTION(S) PRESENTED FOR REVIEW

- 1) DID THE FIFTH CIRCUIT ERR IN DENYING PLAINTIFF'S APPEAL FOR COMPELLING HIM TO PAY THE BILL OF COSTS

THE FIFTH CIRCUIT FOUND THAT PLAINTIFF WAS IN DEED RESPONSIBLE FOR THE BILL OF COSTS DUE TO HIS ALLEGED FAILURE TO DEMONSTRATE HIS LIMITED FINANCIAL RESOURCES AND THAT THIS CASE DID NOT PRESENT A SUBSTANTIAL BENEFIT TO THE PUBLIC. DOES ORDERING AND COMPELLING PLAINTIFF'S SUCH AS THIS ONE TO PAY FOR BILL OF COSTS, DETER FUTURE INMATES FROM SEEKING RELIEF FROM THE COURTS, WHEN THEIR CIVIL RIGHTS ARE BEING VIOLATED, RELATING TO THEIR MEDICAL HEALTH STATUS AND NEEDS.

- 2) DID THE FIFTH CIRCUIT ERR IN DENYING PLAINTIFF'S APPEAL FOR BEING DENIED MEDICAL CARE WHILE IN THE SPECIAL HOUSING UNIT.

THE FIFTH CIRCUIT FOUND THAT DUE TO PLAINTIFF FAILING TO PROVIDE A COMPLETE TRANSCRIPT THEY WERE UNABLE TO REVIEW WHETHER THE DISTRICT COURT COMMITTED CLEAR ERROR IN ITS FACTUAL FINDINGS.

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:

RELATED CASES

Blank v. United States of America, ET. AL., 4:20-CV-96 (N.D. Tex. Dec. 8, 2021)

Blank v. United States of America, ET. AL., 22-10120 (5TH Cir. Jan. 31, 2023)

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CASES

CASES	PAGE NUMBER
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<u>COLEMAN v. U.S.A.</u> , 912 F.3d 824, 829 (5th Cir. 2019)	p. 18

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OTHER

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 _____ 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 31 JANUARY 2023

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).

REPORTS AND OPINIONS

The decision of the Court of Appeals for the Fifth Circuit is reported as Blank v. United States of America, ET. AL., No. 22-10120 (5th Cir. Jan. 31, 2023). It is attached to this Petition in the Appendix.

JURISDICTION

The decision by the United States Court of Appeals for the Fifth Circuit denied Plaintiff's direct Appeal.

Consequently, Plaintiff files the instant Application for a Writ of Certiorari, under authority of Title 28 U.S.C. 1254(1).

BASIS OF FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE

Jurisdiction was proper in the United States Fifth Circuit Court of Appeals because Plaintiff filed suit and trial was tried in the United States Northern District of Texas.

STATEMENT OF THE CASE

1. PROCEDURAL HISTORY

On February 5, 2020, Plaintiff filed suit against the Defendant's for events that transpired between January 2017 – May 2019 pursuant to the Federal Tort Claims Act, for grossly inadequate medical care/negligence/ [REDACTED] The received and failed to receive in direct violation of the normal standard of care and the Bureau's failure to comply with 4042(A)(2).

On December 2, 2021, Plaintiff had a bench trial.

On December 8, 2021, the District Court made its findings in favor of the Defendant's.

On May 6, 2022, Plaintiff filed his direct appeal with the Fifth Circuit Court of Appeals.

On January 31, 2023, the Fifth Circuit Court of Appeals affirmed the District Court's rulings.

2. STATEMENT OF FACTS

Plaintiff was first incarcerated at F.M.C. Fort Worth [Hereafter; "FMC"] in February 2012. Defendant's treated Plaintiff shortly after and Plaintiff would be prescribed opioid pain medication to treat the pain in his neck due to a previous injury and surgery to his spinal cord. Defendant's were made aware of said injury and pain by the Plaintiff and received medical records from prior treating physicians of the condition and prior surgery. Defendant's then treated Plaintiff for over four years with opioid pain medication increasing both the type of pain medication and dosages until Plaintiff was receiving Morphine 60mg once a day. Defendant's renewed the opioid pain medication every month for nearly four years.

When Defendant's unjustifiably placed the Plaintiff into the Special Housing Unit, they inexplicably and vindictively denied him any and all medical devices which were ordered by medical professionals, and prescribed by FMC doctors to address and relieve his medical condition and symptoms. Defendant's also denied Plaintiff a medical trip and procedure for his neck, which was ordered by FMC doctors.

After Plaintiff lost at trial, Defendant's moved for Plaintiff to be billed for costs. Plaintiff argued that this case was brought in good faith, that he worked for 7-11 making \$15 per hour, and had no assets, and as such, would be unable to pay costs. Plaintiff also argued that this case was a benefit to the public due to bringing awareness to the inadequate medical practices at the prison.

REASONS WHY CERTIORARI SHOULD BE GRANTED

Question #1

The Fifth Circuit Court of Appeals erred in denying Plaintiff's motion to overturn bill of costs being assessed to him. The court erred in denying this motion citing that, "even assuming" that Plaintiff brought suit in good faith, he failed to demonstrate limited financial resources nor that this proceeding, "conferred a substantial benefit to the public." Plaintiff did argue his limited financial resources, that the case was brought in good faith, the opposing party's enormous financial resources and that this case was a benefit to the public. This represents four of the five factors on whether bill of costs should be awarded.

The overwhelming majority of those incarcerated have limited funds, and are already deterred from filing civil rights and FTCA violations due to many factors, such as; costs to file suit, complexity of the legal system and not knowing how to navigate it, vindictiveness and retribution by Defendant's for those who try to protect and advocate for themselves to name just a few reasons. Now if they are threatened and are actually being billed for costs such as the Plaintiff is, if their suit is unsuccessful, no one would ever file a suit, which is exactly what the Defendant's strive for. The Bureau of Prisons medical care is atrocious, short staffed and managed to limit costs, not to adequately address the needs of the patient. The inspector general of the B.O.P. has on multiple occasions and for well over fifteen years harshly criticized the medical care or lack thereof provided by the B.O.P. It is suits like the one brought by the Plaintiff that attempt to combat these gross deficiencies in medical care by the Defendant's. Given the small voice that those incarcerated have, the very limited resources they have while incarcerated and most often once released, and the gross deficiencies in the B.O.P. medical system and care, this Honorable Court should grant

Plaintiff's Petition for a Writ of Certiorari, reverse the decision of the Fifth Circuit, and remand for further proceedings.

Question #2

The Fifth Circuit Court of Appeals erred in denying Plaintiff's appeal for being denied medical treatment in the form of medical devices while in the Special Housing Unit. Plaintiff had a severe cervical neck condition which had required surgery in 2010 and it was known by the Plaintiff as well as the Defendant's that at some point in time Plaintiff would require another surgery. Plaintiff was recommended by outside of the prison medical specialists, such as neurologists, certain medical devices, which were then approved and ordered by the Defendant's. These devices which included a cervical pillow, medical mattress, and an egg crate, which is a special layer which goes on top of the mattress, to help support his spine while sleeping and in turn reduce the severity of the pain, as well as symptoms, which included numbing and tingling, radiating pain, inability to sleep throughout the night, severe nausea and severe headaches to name a few of the symptoms. Plaintiff also had a medical trip to pain management cancelled, albeit was not cancelled by the medical department, but rather by a lieutenant who had no authority to do so. This minor procedure on his neck was to help alleviate some of the symptoms, which the Defendant's had approved and deemed medically necessary. Plaintiff was denied these prescribed and approved medical devices, as well as a medical trip for a procedure, for the sole reason of being punitive for being placed into the Special Housing Unit. The District Court claimed that it, "is not persuaded that Plaintiff suffered any harm caused by the United States from being without his mattress and pillow, missing any medication, or having an appointment rescheduled while in isolation" [Appendix "β"; P.3;¶3]. The Fifth Circuit Court of Appeals found that due to the Plaintiff failing to provide a complete transcript it was unable to determine if the District Court had committed plain error.

ARGUMENTS AND AUTHORITIES

QUESTIONS FOR REVIEW #1

ARGUMENT

1. DID THE FIFTH CIRCUIT ERR IN DENYING PLAINTIFF'S APPEAL FOR COMPELLING HIM TO PAY THE BILL OF COSTS

The Fifth Circuit erred in denying this motion citing that, “even assuming” that Plaintiff brought suit in good faith, he failed to demonstrate limited financial resources nor that this proceeding, “conferred a substantial benefit to the public.” The District Court questioned whether this case was even filed in good faith, which is contrary to the evidence and all prior actions of the District Court. It is worth noting that in this case nearly all pre-trial matters were handled by the Honorable Judge McBryde and just days before trial the case was taken over by the Honorable Judge Pittman. This case went to trial, whereas nearly all cases of this nature never make it to that stage. At no point in prior proceedings was the Plaintiff’s motions or case in general ever questioned as being filed in bad faith or frivolous. In fact, the opposite was true. The court not only sent this case for trial but appointed counsel. Counsel who on their own accord decided to take this case based on the facts of the case, which they believed to be true and with merit, one which they felt should be fought for. No firm would accept a case in which they felt had been filed in bad faith or was meritless. The District Court went onto say that “although not prepared to rule that plaintiff’s claims were pursued in bad faith, the Court notes that at some point plaintiff’s motive crossed to a money grab [emphasis added] rather than a genuine belief that he had been wronged,” [See Appendix “P “, P.2].

Plaintiff filed this case in good faith and all subsequent motions filed throughout the proceedings were also filed in good faith as were those filed by his appointed counsel. Plaintiff

in his motion objecting to bill of costs stated that he had no assets, where he worked, 7-11, and was being paid \$15 an hour, showing that he had no means to pay the bill of costs, Plaintiff reiterated such in his appeal. Whereas the federal government has enormous and unlimited financial resources. This case also provided substantial benefit to the public and those incarcerated as it relates to how opioids are handled as well as men that are sent to the Special Housing Unit. That it was customary to send men to the Special Housing Units and in doing so denying them their medically required and approved devices as an act of further punishment is believed to have been stopped. Prior to it being stopped those incarcerated like the Plaintiff had to undergo unnecessary and often severe pain along with other symptoms, due to being denied these medically required and approved devices. It was routine for paraplegics to be denied their medical mattresses, who often would wind up getting bed sores, and then at times having to be hospitalized for days if not weeks due to creating bed sores on the patient. Therefore, Plaintiff has met four of the five criteria when it comes to determining whether bills of costs should be awarded.

With all that being said though, the most important issue at hand here is that if the Defendant is permitted to have bill of costs awarded to them, it will even further deter those who are incarcerated from filing suit in court, to address and protect their civil rights and rights under the Federal Tort Claims Act, to have their known medical needs met with adequate medical care. There are already systems in place to deter and limit meritless and frivolous claims filed by those incarcerated such as the three strikes law under the PLRA and the ability of judges to issue sanctions and fines for cases deemed to be meritless and or frivolous. Those incarcerated already have a very, very small and limited voice. They are some of the most vulnerable adults in America. To file a complaint in court one must go through a very difficult process, one that most

don't even understand. Then there is an extensive filing fee to file in court. Even if one does file in forma pauperis, they still will have their small and limited prison wages deducted from their inmate trust fund account until the court's receive all of the filing fees. Then if someone makes it through all of these hurdles, most cases almost never make it to trial as nearly all are dismissed due to either some technical reason that wasn't followed by a pro-se individual, or the individual could not find a medical expert to testify pro-bono, which nearly all cases will require, an expert. Most of those incarcerated will also undergo enormous obstacles from B.O.P. employees, who will hinder and obstruct those who want to advocate for themselves by use of the courts, just as the Plaintiff went through. Plaintiff and many others are met with vindictiveness, abuse, and retribution by B.O.P. staff for using the court's. Now if someone makes it to trial, which means that their claims must be valid, and in good faith, now you want to penalize them just because they lost, by awarding bill of costs against them and for the government. All this will do is further silence those who already have such a small voice. It will deter those who have serious and legitimate legal claims from proceeding in fear of losing, and being released from prison, now owing the federal government thousands of dollars. This behavior if allowed to persist will only embolden the Defendant's attitude and behaviors they take against those it incarcerates, relating to medical care.,

Plaintiff's claims were not some sort of anomaly. The B.O.P.'s medical care or lack thereof has been routinely documented and cited by the Inspector General reports, going back well over a decade. Defendant's prior treatment of the Plaintiff albeit in another case, led to him almost dying, and taking a settlement offer from the Defendant's. Defendant's in just a short span paid out judgments and settlements over medical care or the lack thereof to at least four other people that the Plaintiff is aware of at the same prison, often involving the same Defendant's. In fact, in

Wilkinson v. United States of America, 4:19-CV-00527, the Plaintiff while incarcerated helped Wilkinson with filing his claims, which involved the same prison, one of the same defendant's, Dr. Eilert, and under the same Federal Tort Claims Act. Mr. Wilkinson sued over being denied the same thing the Plaintiff was, opioid pain medication, over the same period of time, In the Plaintiff's case he had been prescribed opioids by the defendant's, and for over four years, where Defendant's, renewed them every month, and then they themselves refused such treatment, whereas in the Wilkinson case, the B.O.P. had never prescribed him opioids, detoxed him when he arrived and Wilkinson then requested to be treated with opioids, due to being prescribed them prior to being incarcerated. Yet the Defendant's paid Wilkinson over \$100,000 in a settlement offer.

Defendant's going after the Plaintiff for bill of costs, when he has less than \$2,000 in his bank account, makes \$18 an hour, and has no assets, is just further vindictive and retributive behavior.

If court's allow this behavior to continue, the government will further get what they want and demand of those they incarcerate, which is to simply be silent, shut up, and accept whatever is provided to you, regardless if you have a serious medical need, injury or require treatment, If you speak up, file administrative remedies, or briefs in federal court, they will make your life even more miserable, and will now come after you monetarily, even if you have limited to no funds, and your claims are filed in good faith and meritorious. Due to this grave and most important legal issue, I humbly pray that this Honorable Court intervene and grant the Plaintiff's Petition for a Writ of Certiorari, reverse the decision of the Fifth Circuit , and remand for further proceedings.

QUESTIONS FOR REVIEW #2

ARGUMENT

2. DID THE FIFTH CIRCUIT ERR IN DENYING PLAINTIFF'S APPEAL FOR BEING DENIED MEDICAL CARE WHILE IN THE SPECIAL HOUSING UNIT.

The Fifth Circuit erred when it ruled that due to the Plaintiff failing to provide a complete transcript they were unable to review whether the District Court committed clear error in its factual findings.

Plaintiff entered the B.O.P. in February 2010, and shortly thereafter Defendant's were made aware of Plaintiff's neck injury. Plaintiff informed Defendant's of a prior surgery and the future need of another. Over time Plaintiff's neck began to deteriorate causing severe pain and numerous symptoms. To help support Plaintiff's spine it was recommended from outside the prison specialist doctors, a neurologist, that the Plaintiff be issued a cervical pillow. A bit later it was recommended to help support the Plaintiff's spine and to alleviate symptoms that the Plaintiff be prescribed and provided a medical mattress, as well as an egg crate, which is a foam layer that goes on top of the mattress. B.O.P. doctors approved these medical devices and ordered them for the Plaintiff ^{then} deeming them medically necessary. These medical devices were placed onto the Plaintiff's medical duty status sheet, which lists any medical restrictions or devices which have been ordered. These devices were medically ordered to support Plaintiff's neck and spine, which in turn would help reduce the radiating, numbing, and tingling pain, assist with being able to sleep throughout the night, and help decrease his severe headaches and nausea. When Plaintiff was unreasonably, unnecessarily and with vindictiveness placed into the Special Housing Unit, all of these medical devices

which were medically prescribed by B.O.P. doctors, were intentionally denied to the Plaintiff for no sound medical reasons but rather punitive reasons. Furthermore, Plaintiff was also denied a scheduled medical trip, ordered by his doctor, to pain management, where he was to have a minor procedure done, in an attempt to help relieve some of his symptoms. This trip was not cancelled by medical staff but rather by a lieutenant, who had no such authority to do so, as this was also done for retaliatory reasons. It would be nearly 2 months before Plaintiff was rescheduled to have this procedure done. The District Court stated that, “is not persuaded that Plaintiff suffered any harm caused by the United States from being without his mattress and pillow, missing any medication, or having an appointment rescheduled while in isolation” [Appendix “β”; P.3;¶3]. The comments by the District Court are clearly plain error. As the District Court stated earlier in the case, albeit from a different judge, the Honorable Judge McBryde, “the court agrees that the Plaintiff does not require expert testimony to establish that he suffered harm when he was denied prescribed medications and his medical mattress and pillow and a medical appointment was canceled simply because he was placed in isolation. A lay person would know that medications are prescribed and appointments are made for a reason. See Coleman v. United States, 912 F.3d 824, 829 (5th Cir. 2019)” [Appendix “.€”; P.2;¶3]. For the District Court to say that the Plaintiff suffered no harm in missing medications, and being denied approved medical devices for two weeks, would mean that such devices have no medical value, and shouldn’t have been recommended from a neurologist and ordered and provided by the Plaintiff’s doctor, due to them not having any substance or value to treat the Plaintiff’s known medical condition and symptom’s. That cancelling a medical procedure ordered by two doctors, for a selected date, to relieve

symptoms, and thereby compelling the Plaintiff to wait several more weeks to have those symptoms treated and not suffering harm is absurd.

Due to this plain error, as evidenced earlier in the case and stated by the presiding judge, the Honorable Judge McBryde, I humbly pray that this Honorable Court intervene and grant the Plaintiff's Petition for a Writ of Certiorari, reverse the decision of the Fifth Circuit , and remand for further proceedings.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Miss Bla

Date: 26 April 2023