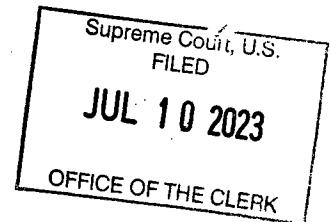


23-5548 No. _____ ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



CHRISTIAN R. AGUIRRE-HODGE -- PETITIONER

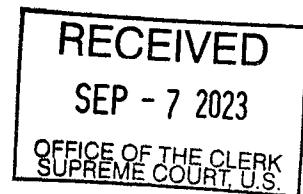
VS.

CHARLES E. LARSON, M.D.,--RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

CHRISTIAN R. AGUIRRE-HODGE #558038
NEW LISBON CORRECTIONAL INSTITUTION
P.O. BOX 2000
NEW LISBON, WISCONSIN 53950-2000



QUESTION(S) PRESENTED

If an indigent plaintiff has made a reasonable attempt to obtain counsel and then files a motion for recruitment of counsel pursuant to the in forma pauperis statute, the district court should ask whether the difficulty of the case, factually and legally, exceeds the particular plaintiff's capacity as a layperson to coherently present it to the judge or jury himself. 28 U.S.C.A. § 1915(e)(1);

- 1. Does a visual impairment/blindness exceed the plaintiff's capacity as a layperson to coherently present his/her case to the judge or jury himself?**
- 2. If so, is the Court required to recruit counsel for the visually impaired/blind plaintiff?**

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

James V. PENNEWELL, Plaintiff-Appellant, v. James PARISH, et al., Defendants-Appellees. No. 18-3029. (923 F.3d 486 United States Court of Appeals, Seventh Circuit). Decided May 3, 2019.

Dewitt v. Corizon, Inc. 760 F.3d 654, 7th Cir.(Ind.), 2014.

Greeno v. Daley. 414 F.3d 645, 7th Cir.(Wis.), 2005.

Henderson v. Ghosh. 755 F.3d 559, 7th Cir.(Ill.), 2014.

James v. Eli, United States Court of Appeals, Seventh Circuit. May 2, 2018. 889 F.3d 320.

Doe v. Abington Friends. United States Court of Appeals, Third Circuit. March 15, 2007480 F.3d 252217 Ed. Law Rep. 8919 A.D. Cases 18234 NDLR P 124.

Navejar v. Iyiola. United States Court of Appeals, Seventh Circuit. May 29, 2013718 F.3d 692.

Olson v. Morgan. United States Court of Appeals, Seventh Circuit. April 30, 2014750 F.3d 708.

Pruitt v. Mote. United States Court of Appeals, Seventh Circuit.October 3, 2007503 F.3d 647.

Hendricks v. Coughlin. United States Court of Appeals, Second Circuit.June 9, 1997114 F.3d 390.

Johnson v. Doughty. United States Court of Appeals, Seventh Circuit.January 17, 2006433 F.3d 100169 Fed. R. Evid. Serv. 296.

Maclin v. Freake. United States Court of Appeals, Seventh Circuit.June 3, 1981650 F.2d 885.

Dorsey v. Varga. United States Court of Appeals, Seventh Circuit.December 15, 2022. 55 F.4th 1094. 114 Fed.R.Serv.3d 590.

Watts v. Kidman. United States Court of Appeals, Seventh Circuit.August 2, 2022. 42 F.4th 755.

Branch v. Cole. United States Court of Appeals, Fifth Circuit. September 20, 1982. 686 F.2d 264.

Merritt v Faulkner (1983, CA7 Ind) 697 F2d 761, 35 FR Serv 2d 967, 69 ALR Fed 650.

Transamerica Premier Life Insurance Company v. Guy. United States District Court, E.D. Louisiana. June 28, 2021. 545 F.Supp.3d 426.

Walker v. Price. United States Court of Appeals, Seventh Circuit. August 20, 2018. 900 F.3d 933.

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	_____
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	_____
STATEMENT OF THE CASE.....	_____
REASONS FOR GRANTING THE WRIT.....	_____
CONCLUSION	_____

INDEX TO APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Dewitt v. Corizon, Inc., 760 F.3d 654 (7th Cir. 2014).	
Eagan v. Dempsy., 987 F.3d 667 (7th Cir. 2021).	
Pennewell v. Parish., 923 F.3d 486 (7th Cir. 2019).	

STATUTES AND RULES

28 U.S.C.A. § 1915(e)(1)

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 unpublished.

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided Petitioners case was ~~_____~~
~~_____~~ June 23, 2023

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix ____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

Petitioner CHRISTIAN R. AGUIRRE-HODGE (hereafter known as Petitioner) was diagnosed with a chronic and progressive eye disease (Keratoconus) and has been treated by various providers, low vision specialists, etc. Petitioner has "failed" all conservative measures including various types of contact lenses (Rigid Gas Permeable, Scleral, and Hybrid) and in 20__, Dr. Nehls (Board Certified Surgeon, University of Wisconsin) stated as a result of Petitioner's "age," he is no longer a candidate for corneal transplant. Petitioner has also been referred to The State of Wisconsin Office of The Blind and Visually Impaired, after, Dr. Sabrina Mondal (Board Certified Low Vision Specialist, University of Wisconsin), placed Petitioner in Category (4) Four Blindness according to The World Health Organization (Note: There are (5) Five Categories of Blindness, with the fifth category being "totally" blind). Dr. Sara Pastryk, who is Petitioner's "primary" optical caregiver and in conjunction with Dr. Barry T. Daughtry, MD (Professional License Number 56171-20), completed Petitioner's disability paperwork to discharge Petitioner's student loans with The United States Department of Education and determined Petitioner's limitations include: standing, walking, difficult secondary to legal blindness. Petitioner's limitations on activities of daily living include: legal blindness affects all activities of daily living. Dr. Pastryk and Dr. Daughtry further stated that Petitioner's residual functionality include: Familiar Surroundings with practiced familiarity. Pastryk and Daughtry's summarized Petitioner's limitations to be a Medically Determined Physical Impairment that substantially limits activities to work for pay or profit that involves doing significant physical activities or a combination of both and Petitioner's impairment has lasted and is expected to last for a continuous period of at least 60 months. Based on Dr. Pastryk and Dr. Daughtry's certification(s), findings, and conclusion(s), The United States Department of Education "discharged" all of Petitioner's student loans. (See Appendix ____ and Appendix ____).

Note: Please review Optical Findings Summary and Appendix __ for additional information regarding Petitioner's visual disability.

It is worth noting The United States District Court Western District of Wisconsin granted Petitioners motion for recruitment of Counsel due to Petitioners visual difficulties (Citing Pennewell v. Parish, United States Court of Appeals, Seventh Circuit. May 3, 2019 923 F.3d 486), however, after unsuccessfully recruiting counsel for Petitioner, the Court proceeded with accommodations. District court erred in exercising its discretion with respect to appointment of counsel for indigent plaintiff in civil rights action on the basis of unavailability of counsel. 28 U.S.C.A. § 1915(d); 42 U.S.C.A. § 1983., Branch v. Cole, United States Court of Appeals, Fifth Circuit. September 20, 1982 686 F.2d 264). These accommodations were measured, however, Petitioner was unable to fully present the facts and merits during the initial summary judgment phase as a result of the lack of assistance and availability of other inmates who were willing and able to assist Petitioner. It is also worth noting that Petitioner was unable to review medical records that were needed to present the merits of the case. Nevertheless, the Court granted summary judgment for the defendant, forcing Petitioner to appeal to The Seventh Circuit Court of Appeals. Petitioner submitted a motion to The Court of Appeal requesting recruitment of counsel, (Citing Pennewell v. Parish, United States Court of Appeals, Seventh Circuit. May 3, 2019 923 F.3d 486), however, the Court of Appeals denied Petitioners request noting the possibility of a successful outcome in favor of Petitioner would not be likely. The Court's denial even before Petitioner had the opportunity to present his case along with finding evidence that was unavailable to Petitioner due to the fact that he was unable to see his medical and other records due to his visual disability is nothing short of a abuse of discretion.

District court abused its discretion in denying former state inmate's motion for recruitment of counsel under federal *in forma pauperis* statute, in inmate's § 1983 action against contractor that provided medical care to state inmates and its medical director for deliberate indifference to his glaucoma condition; district court did not address challenges that inmate, as blind and indigent prisoner with a tenth-grade education and no legal experience, faced in being able to investigate crucial facts and depose witnesses and did not explain why inmate's claims were not of sufficient complexity to merit recruitment of counsel. U.S.C.A. Const. Amend. 8; 28 U.S.C.A. § 1915(e)(1); 42 U.S.C.A. § 1983. Dewitt v. Corizon, Inc., 760 F.3d 654 (7th Cir. 2014).

If an indigent plaintiff has made a reasonable attempt to obtain counsel and then files a motion for recruitment of counsel under in forma pauperis statute, the district court should ask whether the difficulty of the case, factually and legally, exceeds the particular plaintiff's capacity as a layperson to coherently present it to the judge or jury himself. 28 U.S.C.A. § 1915(e)(1).

District court abused its discretion in denying former state inmate's second motion for recruitment of counsel under federal in forma pauperis statute, in inmate's § 1983 action against contractor that provided medical care to state inmates and its medical director for deliberate indifference to his glaucoma condition, without addressing inmate's new argument that contractor and director were intentionally abusing discovery rules and delaying their responses to his interrogatories so as to gain upper hand with closing of the court-imposed deadlines; whether inmate was capable of putting a stop to alleged discovery abuses directly related to whether the case exceeded inmate's capacity as a layperson to present the case. U.S.C.A. Const.Amend. 8; 28 U.S.C.A. § 1915(e)(1); 42 U.S.C.A. § 1983. Dewitt v. Corizon, Inc., 760 F.3d 654 (7th Cir. 2014).

District court's denial of former state inmate's motions for recruitment of counsel under federal in forma pauperis statute prejudiced inmate, in his § 1983 action against contractor that provided medical care to state inmates and its medical director for deliberate indifference to his glaucoma condition; counsel could have helped inmate present sufficient facts to create a genuine issue about why medical director declined to follow a specialist's recommendations and could have assisted in addressing inmate's concerns about alleged discovery violations. U.S.C.A. Const.Amend. 8; 28 U.S.C.A. § 1915(e)(1); 42 U.S.C.A. § 1983. Dewitt v. Corizon, Inc., 760 F.3d 654 (7th Cir. 2014).

On appeal from the denial of an indigent civil litigant's motion for appointment of counsel, the inquiry is not whether the Court of Appeals would have recruited a volunteer lawyer in the circumstances, but whether the District Court applied the correct legal standard and reached a reasonable decision based on facts supported by the record. 28 U.S.C.A. § 1915(e)(1). Eagan v. Dempsey., United States Court of Appeals, Seventh Circuit. February 9, 2021 987 F.3d 667.

A court abuses its discretion when: (1) the record contains no evidence upon which the court could have rationally based its decision; (2) the decision is based on an erroneous conclusion of law; (3) the decision is based on clearly erroneous factual findings; or (4) the decision clearly appears arbitrary. Eagan v. Dempsey., United States Court of Appeals, Seventh Circuit. February 9, 2021 987 F.3d 667.

When confronted with an indigent civil litigant's motion for appointment of counsel, a district

court is to make the following inquiries: (1) whether the litigant has made a reasonable attempt to obtain counsel or has been effectively precluded from doing so, and, if so, (2) given the difficulty of the case, whether the litigant appears competent to litigate it himself. 28 U.S.C.A. § 1915(e)(1). *Eagan v. Dempsey.*, United States Court of Appeals, Seventh Circuit. February 9, 2021 987 F.3d 667.

In determining whether an indigent civil litigant, who has filed a motion for appointment of counsel, is competent to litigate the case himself, a court should consider whether the difficulty of the case, factually and legally, exceeds the particular litigant's capacity as a layperson to coherently present it to the judge or jury himself, and this assessment extends beyond the trial stage of proceedings, and it must include the tasks that normally attend litigation, i.e., evidence gathering, preparing and responding to motions and other court filings, and trial. *Eagan v. Dempsey.*, United States Court of Appeals, Seventh Circuit. February 9, 2021 987 F.3d 667.

While there are no fixed criteria for determining whether an civil litigant, who has filed a motion for appointment of counsel, is competent to litigate his own case, a district court certainly should consider the litigant's literacy, communication skills, educational level, litigation experience, intellectual capacity, and psychological history. *Eagan v. Dempsey.*, United States Court of Appeals, Seventh Circuit. February 9, 2021 987 F.3d 667.

District court abused its discretion in denying former state inmate's motion for recruitment of counsel under federal *in forma pauperis* statute, in inmate's § 1983 action against contractor that provided medical care to state inmates and its medical director for deliberate indifference to his glaucoma condition; district court did not address challenges that inmate, as blind and indigent prisoner with a tenth-grade education and no legal experience, faced in being able to investigate crucial facts and depose witnesses and did not explain why inmate's claims were not of sufficient complexity to merit recruitment of counsel. *Dewitt v. Corizon, Inc.*, United States Court of Appeals, Seventh Circuit. July 25, 2014. 760 F.3d 654.

Petitioners visual disability is well documented, however, Petitioner's inability to maintain a working relationship with fellow inmates is also key and worth noting. Dr. Pastrky stated that Petitioner has difficulty reading, writing, walking, etc (See Appendix ____), these difficulties include viewing information on the law computers, drafting and typing. As a result, Petitioner is dependent upon other inmates to assist in this crucial task. As a result of the prison environment, inmates are moved from one housing unit to another at any given moment. Inmates are transferred to other facilities at any given moment and the availability of inmates to assist Petitioner is also limited to the inmates work schedule. Once an inmate is moved, Petitioner must find another inmate who is "willing" and able to assist, more importantly, Petitioner must start all over in terms of informing the "new" inmate assistant of the details

of his case which takes a significant amount of time. Without the assistance of another inmate, Petitioner would not be able to perform the necessary tasks to present his appeal nor this Writ of Certiorari. One of the critical aspects of Petitioners limitations that other inmates do not have access to is Petitioners medical records. The task of viewing medical records solely falls on Petitioner and the time allotted to view medical records is limited to 30 minutes per month, thus, it is impossible for Petitioner to obtain the necessary records due to Petitioner's visual disability.

Unusual circumstances of federal inmate's action against prison officials and medical staff, in which she asserted deliberate indifference to her serious medical needs, warranted remand of inmate's case on appeal from denial of her motion for appointment of counsel with instructions that district court appoint counsel; to meet evidentiary standard for showing of deliberate indifference, inmate likely would be required to engage in extensive discovery and document review related to lengthy treatment periods, and limitations on inmate's litigating abilities were exacerbated by her deteriorating health condition. U.S.C.A. Const.Amend. 8. (Sanchez v. Chapman, United States Court of Appeals, Fifth Circuit.November 9, 2009352 Fed.Appx. 955).

On a motion to appoint counsel in a civil case, the inquiry considers all tasks that normally attend litigation including evidence gathering, preparing and responding to court filings and motions, navigating discovery, and putting on a trial. Pennewell v. Parish. United States Court of Appeals, Seventh Circuit.May 3, 2019923 F.3d 486.

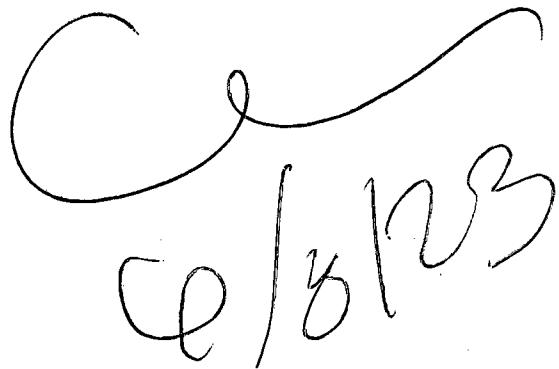
When an indigent prisoner files a motion for appointment of counsel for civil litigation, the court must examine specifically the prisoner's ability to litigate the case, as opposed to the ability of any "jailhouse lawyer" assisting the prisoner. Eagan v. Dempsey., United States Court of Appeals, Seventh Circuit.February 9, 2021987 F.3d 667.

Petitioner filed a § 1983 action against Defendant Charles E. Larson, MD (herethereafter known as Defendant) as a result of Defendant cancelling a surgery after the "incident" in which Defendant became physically and verbally abusive towards Plaintiff in the presence of two Correctional Officers. Petitioner was eventually transferred to another institution under the care of Dr. Karl Hoffman who sent Petitioner to the same surgeon, Dr. Eric Nelson, who "again" recommended that Petitioner undergo a Total Knee Replacement even at his age. Dr. Nelson stated, that he did not know "why" the Department of Corrections didn't follow through with Petitioners surgery, however, Petitioner, according to Dr. Nelson, had two choices to either undergo the surgical procedure or to live with the pain. Based on Dr.

Nelson's findings and recommendations, Dr. Hoffman submitted the necessary authorizations and approvals for Petitioner to undergo the surgery. Petitioner was forced to wait a total of 349 days from the time Defendant cancelled the previously scheduled surgery until the time Petitioner had the total knee replacement performed by Dr. Nelson.

The District Court granted Defendant's motion for summary judgment even after staying the case to recruit counsel which was unsuccessful. Petitioner appealed and in the Seventh Circuit ruling denying Petitioner request for recruitment of counsel, the Court stated Petitioner had no chance to succeed on Petitioner's appeal.

Petitioner's main focus is recruitment of counsel to assist Petitioner as a result of Petitioner's visual difficulties and the complexity of the case. Without the assistance of counsel, Petitioner will not be able to present his appeal. Petitioner has received as much assistance from fellow inmates, yet, that assistance is sporadic at best. Further, fellow inmates are prohibited from assisting Petitioner find and locate medical and other records.

A handwritten signature in black ink, appearing to read "Celia M. B." The signature is fluid and cursive, with the first name "Celia" on top and the middle initial "M." followed by the surname "B." below it.

REASONS FOR GRANTING THE PETITION

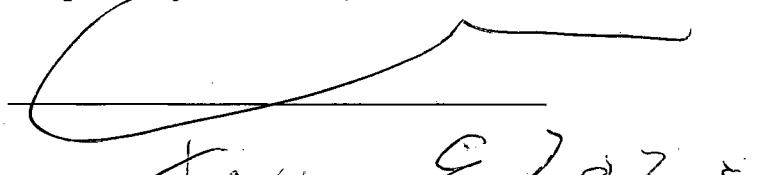
I am visually impaired and
I cannot present my
Case without help. I
Need Court appointed Counsel
due to my visual impairment
and the complexity of my
Case.

I have a right to a full appeal and without appointment of counsel my rights will be violated.
I am visually impaired

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: June 8, 2023