No. 23-5557

IN THE

SUPREME COURT OF THE UNITED STATES

Millard E. Price — PETITIONER
(Your Name)

vs.

Centurion of Delaware, LLC et. al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Delaware Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Millard E. Price
(Your Name)

P.O. Box 9561
(Address)

Wilmington, DE 19809
(City, State, Zip Code)

N/a
(Phone Number)

QUESTION(S) PRESENTED

I. When a state court of last resort issues a decision in conflict with the U.S. Court of Appeals when deciding an important federal question, requiring expert testimony in lieu of circumstantial evidence when deciding the subjective prong of a deliberate indifference claim to a prisoner's serious medical needs so as to call for this Court's supervisory power?

II. When a prisoner alleges deliberate indifference to his serious medical needs, does his unrebutted affidavit avering defendants:

- made racial slurs
- shouted at him
- fabricated bizarre medical diagnosis
- misrepresented medical test
- told him that "policy" prevented them from prescribing Tramadol, a pain medication
- opted for less efficacious treatment because of policy

create a fact issue sufficient to survive summary judgement?

III. When a state court of last resort condones the denial of a prisoner's attempt to gain discovery and written depositions from evasive defendants because he was a prisoner and indigent deny him a fair and impartial proceeding when the court ruled against him in summary judgement for failure to produce evidence and expert testimony?

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:

1. Christine Claudio, Centurion of DE, LLC, 841 Silver Lake Blvd., Dover, DE 19904.

2. Andrew Abrahamson, Centurion of DE, LLC, 841 Silver Lake Blvd., Dover, DE 19904.

3. Jaskir Kaur, Centurion of DE, LLC, 841 Silver Lake Blvd., Dover, DE 19904.

4. Amegbo Taffa, Centurion of DE, LLC, 841 Silver Lake Blvd., Dover, DE 19904.

TABLE OF CONTENTS

OPINIONS BELOW 1

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 4

REASONS FOR GRANTING THE WRIT 10

CONCLUSION 30

INDEX TO APPENDICES

APPENDIX A Supreme Court Order - State of Delaware

APPENDIX B Superior Court Order - State of Delaware

APPENDIX C Plaintiffs Answer To Summary Judgement

APPENDIX D

APPENDIX E

APPENDIX F

Table Of Authorities Cited

Cases — Page(s)

Anderson v. Liberty Lobby, 477 US 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986) 20

Brightwell v. Lehman, 637 F.3d 187 (3rd 2011) 19

Brock v. Wright, 315 F.3d 158, 162 (2nd 2003) 18

Bushman v. Halm, 798 F.2d 651, 660 (3rd 1986) 25

Campbell v. Sikes, 169 F.3d 1353, 1372 (11th 1999) 12

Celotex Corp. v. Catrett, 477 US 317, —, 54 USLW 4775, 4776, 91 L.Ed.2d, 106 S.Ct. 2548 (1986) 26

Durmer v. O'Carroll, 991 F.2d 64, 69 (3rd 1993) 12, 15, 16, 19

Estelle v. Gamble, 429 US 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) 11

Farmer v. Brennan, 511 US 825, 837, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994) 20

Gans v. Mundy, 762 F.2d 338, 340 (3rd), cert. denied, 474 US 1010, 106 S.Ct. 537, 88 L.Ed.2d 467 (1988) 25

Hathaway v. Coughlin, 841 F.2d, 48, 50 (3rd 1988) 20

Helling v. Mckinley, 509 US 25, 32, 113 S.Ct 2475, 125 L.Ed.2d 22 (1993) 10

Hunt v. Williams, 755 F.2d 306, 308 (3rd 1985) 24

In re Kauffman, 675 F.2d 127, 128 (7th 1981) 15

Johnson v. Connections Community Support Programs, Inc., WL 5044331 * 2 (2018 Del) 10

Maldonado v. Ramirez, 757 F.2d 48, 50-51 (3rd 1985) 24

Monmouth Cnty. Corr. Inst. v. Lanzaro, 834 F.2d 326 (3rd 1987) 10, 15, 17

Montgomery v. Pinchak, 294 F.3d 492, 499 (3rd 2002) 10

Table Of Authorities Cited

Cases — Page(s)

Palakovic v. Wetzel, 854 F.3d 209 (3rd 2017). . . . 16
Pearson v. Prison Heath Serv., 850 F.3d 526 (3rd 2017). . . . 10, 12, 16, 20
Rodriquez v. Manenti, 606 Fed. Appx 25 (2nd 2015). . . . 18, 20
Rouse v. Plantier, 182 F.3d 192, 197 (3rd 1999). 10
Salahuddin v. Goord, 467 F.3d 263, 281 (2nd 2006). 20
United States ex rel Walker v. Fayette City, 599 F.2d 573, 575 n.2 (3rd 1979). 15, 19
United States v. Michener, 152 F.2d 880, 850 (3rd 1945). 19
West v. Keve, 571 F.2d 158, 162 (3rd 1978). 17
Williams v. Vincent, 580 F.2d 541, 544 (3d 1974). 17

Statutes And Rules

Delaware Superior Court Civil Rule 36 27
Delaware Superior Court Civil Rule 37 28

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 _____ 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 A to the petition and is unknown

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Delaware Superior Court court appears at Appendix B to the petition and is unknown

[ ] 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 _____.

[ ] 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 6/27/2023. A copy of that decision appears at Appendix A.

[ ] 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

1. Eighth Amendment to the United States Constitution.
   - Cruel and Unusual Punishments Clause
   - Deliberate Indifference

2. State of Delaware, Superior Court Civil Rules of Discovery 26-36.

STATEMENT OF THE CASE

Price has suffered severe spinal issues since 2017 when he was first diagnosed by an x-ray. He was diagnosed by an MRI in 2018 (Appendix C, exhibit "A"). A neuro-surgeon, Dr. James Mills diagnosed his condition by "Attestation" as needing surgery (Id., exhibit "B"). A second MRI was performed, again diagnosing Price's condition as "severe" (Id., exhibit "C"), Dr. Mills performed surgery on Price's Thoracic Spine, and attested a second surgery was required for his Lumbar (Id., exhibit "D"). Subsequently, the medical contract with Connections (prison medical) was terminated by the State for improprieties. Centurion of Delaware, LLC became the new prison medical provider on 4-1-2020. Subsequently, Price is scheduled to see a different neurosurgeon, Dr. P. Tim Bowles. Dr. Bowles attested the lumbar surgery was necessary (Id., exhibit "E"). Surgery is performed 6-29-2020 (Id., exhibit "F"). Price's pain remained unchanged by the surgery. On 12/2/2020 Price's pain medication, Tramadol, was permitted to expire. Price submitted multiple sick call requests which were ignored, and he went through withdraw for 2-weeks. It should be noted Price had been taking Tramadol since 2017. Price's sister called the prison and demanded answers. Subsequently, Price was seen by Amegbo Toffa, PA on 1-5-2021 but not examined. Toffa advised Price he was going to "Wean" him off Tramadol because he suffers from "acute kidney disease" demonstrated by Price's extremely high Creatinine levels in his blood test. Price was shocked, no one had ever diagnosed him as having "acute kidney disease", and Price asked to see the blood test results. Toffa became enraged that Price had questioned him

and made a racial slur, "You white people." Toffa continued to rant, "I don't need to explain myself to you and I don't care who your sister calls no one is going to tell me what to do." Toffa was shouting this at Price and officers came into the room and escorted Price out of the room. Toffa never addressed Price's pain nor did he prescribe a substitute for the Tramadol he decided to wean him off. (Id., exhibit "G"). Later, Price acquired the latest blood test performed before his surgery by Garcia Laboratories and Christiana Care performed 6-23-2020 and 6-25-2020 which demonstrated Creatinine levels of 1.23 and 1.10, respectively. The lab reports demonstrate Creatinine levels are both in the "normal range" (Id, exhibit "H"). In sum, Toffa deliberately allowed Price to withdraw for 2-weeks, fabricated a false diagnosis "acute kidney disease" to justify weaning Price off Tramadol, falsely misrepresented laboratory blood test, made racial slurs, shouted at him, and refused substitute Medication for the Tramadol he was weening him off. These facts were sworn to by Price in an affidavit which were never rebutted by Toffa (Id, Affidavit In Support of Plaintiffs Answer To Summary Judgement).

Price continued to submit sick call requests complaining of severe pain. He was never examined by Toffa again. Instead, Price was seen by Dr. Abraham a Centurion provider. Price was lectured that Tramadol was used for acute pain as opposed to chronic pain, and that Medical policy at the prison,

as well as federal law, prohibited him from prescribing Tramadol for long term chronic pain. Price continued to submit sick calls complaing of severe pain. Price was seen a second time by Abraham who prescribed a small dose of Tramadol for a limited time and warned he would not be renewing the 30-day prescription because of policy (Id., exhibit "I"). Price continued to submit sick call request complaining of pain. Abraham refused to treat Price again. Instead, he was seen by nurse provider Jasvir on 2-22-2021. Price complained of severe pain and informed his adult daily activities are limited, causing excessive weight gain, high blood pressure and high cholesterol due to his inactivity. Jasvir responded, "you shouldn't be in pain anymore," being more than 6-months post surgery. Jasvir advised she could not prescribe Tramadol for long term chronic pain because Medical policy prevented it (Id., exhibit "J"). Price was never treated by either provider again. The providers stated their actions were prohibited by Medical policy, and Price aveered to these facts in an affidavit (Id., Affidavit In Support of Plaintiffs Answer to Summary Judgement). No one rebutted Prices affidavit. Price submitted a Medical grievance stating providers lacked the requisite expertise to treat his pain. Price prevailed at the grievance and was scheduled to see a Pain Management Specialist. In the interim, Price continued to submit sick call request complaining of severe pain. He was seen by a fourth Medical provider who stated she could not prescribe Tramadol for long term chronic pain but if a Pain Management Specialist recommended it, she

would write the prescription. Provider Muhammad advised Medical policy prohibited her, but if a doctors orders it than she could write the prescription.

On 6-28-2021 Price was sent to Delaware Pain & Spine to see Dr. Uthaman. Dr. Uthaman examined Price and was appalled that no Centurion providers had ordered any diagnostic test to ascertain Price's pain. Dr. Uthaman ordered a battery of test (x-ray, MRI, EMG, blood, etc...) (Id., exhibit "K"). An MRI was performed by St. Francis Hospital diagnosing Price's condition as "severe" with bone on bone contact in the spine (Id., exhibit "L"). On 9-28-2021 an EMG was performed by Christiana Care Neurology Specalist. Dr. Fisher diagnosed Price's condition as "severe" and informed Price he would eventually lose use of his left leg if pressure is not taken off the nerve in his Lumbar (Id., exhibit "M"). Price was returned to Delaware Pain & Spine. Dr. Uthaman, a pain management specialist, concluded that surgery was necessary and order Price to be seen by neuron surgeon. Dr. Uthaman prescribed Tramadol for pain and ordered Price to return in 2 months for follow up treatment. Price was technically under the care of Dr. Uthaman (Id., exhibit "N"). Centurion provider Muhammad reluctantly prescribed the Tramadol 2 weeks after Dr. Uthaman's order. (Id., exhibit "O"). Since the filing of suite in the instant case Price's claim of deliberate indifference - inadequate medical care and prescribing less efficacious medications for non-medical reasons has morphed into a delay of medical treatment, interference and termination of medical treatment for

non-medical reasons, intentional denial of access to Medical care by a specialist, and delay of surgery for non-medical reasons. Price has not received hrs surgery to date and more than 2 years have elapsed since filing this suit.

Price waited 8 months to see a neurosurgeon. In the interim, Centurion provider Muhammad, NP, terminated Prices Tramadol that was prescribed by Dr. Uthaman stating "tramadol is not indicated for chronic non-cancer pain." (Id., exhibit "P"). Nurse Practioner consciously chose a less efficacious treatment and prescribed the drug Cymbalta, a psycho drug with known dangerous side effects and explicit warnings of its use. Price was denied any further treatment by Dr. Goyal and left to suffer again. In June 2022, Price was finally examined by a neurosurgeon 8 Months after Dr. Uthaman's recommendation. Dr. Goyal attested Price's condition was serious and in need of surgery several options were laid before Price. Price was encouraged to contemplate the options and to seek a second opinion (Id, exhibit "Q"). Price sought a second opinion and was denied. Subsequently, Price opted for surgery. However, was advised by Centurion provider Dr. Martin that Goyal was no longer with Baylealth. Therefore, Price would have to be scheduled with another surgeon at Baylealth. To date, Price has been delayed consultation with another neurosurgeon thus delaying his surgery even longer.

Defendants sought Summary Judgement and Price answered

and provided the Delaware Superior Court with all the documentation in Appendix C. The Superior Court granted the Summary Judgement stating Price failed to produce the policy Defendants relied upon, and failed to produce expert testimony. Price appealed and claimed that expert testimony was not required at Summary Judgement phase and that Price submitted circumstantial evidence as well as his unrebutted affidavit to demonstrate a genuine issue of dispute. The affidavit, circumstantial evidence and references to the standard of care regarding opiods by the Bureau of Prisons, American Correctional Association, CDC and National Correctional Association on healthcare all state that "opiods should be considered with caution" and that "policies [practices] banning opiods should never be eschewed." Price submitted unrebutted evidence and testimony to satisfy both the subjective and objective prongs of the deliberate indifference established by this Court. The appeal was denied by the Supreme Court of Delaware. Wherefore, Price has submitted this Petion for Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

I. The Delaware Supreme Court, a state court of last resort, issued a decision involving an important federal question of deliberate indifference pursuant to the Eighth Amendments Cruel and Unusual Punishment Clause, where the state, deciding the claim, ruled that expert testimony was necessary when deciding the second prong of a deliberate indifference analysis which conflicts with opinions of the United States Court of Appeals for the third circuit. The Eighth Amendment via its prohibition on cruel and unusual punishment prohibits the imposition of "unnecessary and wanton infliction of pain contrary to contemporary standards of decency." Pearson v. Prison Health Serv., 850 F.3d 526 (3rd 2017) citing Helling v. Mckinley, 509 U.S. 25, 32, 113 S.Ct. 2475, 125 L.Ed.2d 22 (1993). Defendants denied Price Tramadol, a proven medication for the effective treatment of his pain from 2017 - 2020. Defendants ceased to prescribe Tramadol and told him that "policy" prevented it. Subsequently, prescribed less efficacious medications that caused Price to suffer needlessly.

To sustain a constitutional claim of deliberate indifference "a plaintiff must make a (1) subjective showing that 'the defendants were deliberately indifferent to [his] medical needs" and (2) an objective showing that those needs were serious." Rouse v. Plantier, 182 F.3d 192, 197 (3rd 1999); see also Montgomery v. Pinchak, 294 F.3d 492, 499 (3rd 2002). In this particular case the lower court agreed with Price that his medical condition was serious (Appendix B, page 9, paragraph 11) citing Johnson v. Connections Community Support Programs, Inc., 2018 WL 5043331 @ *2 (2018) citing Monmouth Cnty. Corr. Inst. Inmates v. Lanzaro, 834 F.2d 326 (3rd 1987).

The Delaware Supreme Court affirmed the lower court's identification of Price's condition as "serious." (Appendix A, pages 4-5, paragraph 7). Therefore, the objective prong of the deliberate indifference analysis was sufficiently satisfied leaving only the subjective prong for debate.

Price in his initial complaint filed against Defendants in 2021 alleged deliberate indifference to his serious medical needs when Defendants failed to adequately treat his pain, and due to Defendants reliance on policy that bans treatment of chronic pain with opiods. Thereby, electing less efficacious medications which did not effectively treat his pain causing him to suffer needlessly, and their reliance upon policy denied him the individualized care the constitution affords him. The lower court incorrectly reasoned that Price's claim was one solely of inadequate treatment. Price when he submitted his Answer to Defendant's Motion for Summary Judgement submitted an affidavit under oath that Centurion providers terminated his treatment with a pain management specialist because he prescribed Tramadol, and terminated the Tramadol for non-medical Reasons, and delayed his surgery (Appendix C, affidavit in support of Plaintiff's Answer). Additionally, Price averred that he submitted 50+ sick calls that he was in pain and suffering. Price demonstrated the issue was not one only of inadequate medical care but of interference of medical treatment that had already begun and delay of his surgery. Accordingly, in Estelle v. Gamble, 429 US 97, 97 S.Ct 285, 50 L.Ed 2d 251 (1976) the Supreme Court held that prison officials violate the Eighth Amendment when they act deliberately indifferent to a prisoners serious medical needs by "intentionally denying or delaying access to medical care or interfering with treatment once prescribed." Id @ 104-105.

The crucial matter before this Court is whether expert testimony is necessary to create a triable issue on the subjective prong of a deliberate indifference claim, and whether Price produced sufficient extrinsic/circumstantial evidence to defeat summary judgement. Price would argue to the Court that the subjective prong encompasses a state of mind. Durmer v. O'Carroll, 991 F.2d 64, 69 (3rd 1993) (noting that when "intent becomes critical", it is important that the trier of fact hear the defendant's testimony in order to asses his or her credibility). See Pearson, 850 F3d @ *534 citing Campbell v. Sikes, 169 F3d 1353, 1372 (11th 1999).

Price's unrebutted affidavit created a fact issue regarding what he was told by Defendants and their conduct, and its paramount to note neither Defendant rebutted his account. Specifically, Price was told by Defendants Kaur and Abraham that "policy" prohibited either from prescribing Tramadol for chronic pain. (Appendix C, affidavit in support of Plaintiff's Answer to Summary Judgement, paragraphs 12-14). The fact issue stems from what he was told by the Defendants and their reasoning for not prescribing Tramadol eventhough Price had been receiving Tramadol from 2017-2020 to treat his chronic pain. Price produced extrinsic evidence as proof in his Answer that such a "policy" would be inconsistent with several professional accreditation agencies such as the ACA, NCCHA, BOP, CDC and community standards. Dr. Uthaman, Delaware Pain & Spine, is a specialist treating pain in the community. The standard of care in the community obviously is not to terminate opiods, but to prescribe them only in cases that are so warranted. The Federal Bureau of Prisons (BOP) "Pain Management Of

Inmates" Clinical guideline "does not prohibit the use of opiods." (http:www.bop.gov/resources/pdfs/pain_mgnt_inmates_cpg.pdf). The American Correctional Association (ACA) list the BOP clinical guidelines, "Pain Management of Inmates" as its clinical guideline to be its standard. (http:www.aca.org/ACA_Member/Healthcare/Resource Center/Clinical Guidelines). The National Committee on Corrections Health Care (NCCHC) published a position statement on Management of Noncancer Chronic Pain" recommending that when patient function remains poor and pain is not well controlled, and other options have been exhausted a therapeutic trial of medication including opiods should be considered ... Policies banning opiods should be eschewed." (http:www.ncchc.org/positionstatements). The CDC issued guidelines for the use of opiods to treat non-cancer chronic pain, titled the "CDC Guideline for Prescribing Opiods for Chronic Pain-United States 2016. The objective of the guideline is "[T]o provide recommendations about opiod prescribing for primary care clinicians treating adult patients with chronic pain outside of active cancer treatment, palliative care and end of life care." Price established through extrinsic evidence that Defendants decision to terminate his Tramadol was not based on professional standards or federal law, and their decision not to prescribe Tramadol for chronic pain was totally unfounded by any professional standard of care.

Perhaps the most bizarre medical treatment was received at the hands of Defendant provider Toffa. This provider allowed Prices tramadol to expire and refused to renew it and Price went "cold turkey" off opiods for two (2) weeks. After Prices sister reported the incident to authorities he was then seen but never examined by Toffa on 1/5/21. Toffe proceeded to rant a bizarre diagnosis that Price

suffered "acute kidney disease" and that Price's high Creatinine levels in his blood confirmed it. Toffa ranted on that he decided to "wean" him off Tramadol only after attention was brought to his unprofessional conduct not to wean Price off Tramadol. Furthermore, Price has never been diagnosed with a kidney problem. Toffa shouted, "I don't need to explain myself to you", and didn't care who my sister contacted stating, "you white people!" and that no one was going to tell him what to do. (Appendix C, affidavit, pages 2-3, paragraph 10). Later, Price obtained copies of his blood results. (Appendix C, exhibit "H"). The blood test from Garcia, 6/23/20, revealed Creatinine level of 1.23 considered to be normal range. The blood test from Christiana Care, 6/25/20, revealed Creatinine level of 1.10 to be in the normal range. Price demonstrated that Toffa misrepresented the blood test to fabricate his bizarre medical diagnosis to deny Price Tramadol. Price demonstrated with extrinsic proof that Toffa's treatment was lacking professional judgement and disregarded clinical guidelines. Toffa's actions were racial, bizarre and demonstrated a wantoness to cause Price pain and suffering.

The Defendant Abraham saw Price on 1-25-21 because Price's pain was left untreated by Toffa. Abraham noted that Price has "no known kidney or liver problems. (Appendix C, exhibit "I").

The clinical guidelines for treating inmates with chronic non-cancer pain are established by the ACA, NCCHC, BOP and CDC. They were extrinsic proof as to the adequacy of Medical care for inmates, and was sufficient to create an issue of fact. Nurse practioner, Muhammad terminated Price's treatment of Tramadol recommended by a pain specialist, Dr. Uthaman, stating, "tramadol is not indicated for chronic

non-cancer pain" demonstrates just how outrageous the standard of care was. A nurse practioner terminating a doctors prescription that specalizes in pain management. The nurses reason conflicts with every Major organizations dictum on opiat use in treating non-cancer chronic pain. "[J]udgements that have no sound medical basis contravene professional norms, and appear designed simply to justify an easier course of treatment... may provide the basis of a claim under the Eighth Amendment." Stevens v. Goord, 535 F. Supp 2d, 373, 388 (SDNY 2008).

The U.S. Court of Appeals for the third circuit decided for the first time whether and when medical expert testimony may be necessary to create a triable issue on the subjective prong of a deliberate indifference case. In answering this question three principles guided their analysis. The first is that deliberate indifference is a subjective state of mind that can, like any other form of scienter, be proven through circumstantial evidence and witness testimony. Durmer, 991 F.2d @ 69; In re Kauffman, 675 F.2d 127, 128 (7th 1981) (noting "intent... must be gleaned from inferences drawn from a course of conduct"). The second principle is that there is a critical distinction "between cases where the complaint alleges a complete denial of medical care and those alleging inadequate medical treatment." United States ex rel. Walker v. Fayette Cty, 599 F.2d 573, 575 n.2 (3rd 1979). Because "Mere disagreement as to the proper Medical treatment" does not "support a claim of an eighth amendment violation." Monmouth Cty. Corr. Inst, 834 F.2d @ 346. (when medical care is provided, we presume that the treatment of a prisoner is proper absent evidence

that it violates professional standards of care). See Brown v. Borough of Chambersburg, 903 F.2d 274, 278 (3rd 1990) ("It is well established that as long as a physician exercises professional judgement his behavior will not violate a prisoner's constitutional rights). The third and final principle is that the mere receipt of inadequate medical care does not itself amount to deliberate indifference, the defendant must also act with the requisite state of mind when providing that inadequate care. Durmer, 991 F.2d @ 69 n.13 (noting a plaintiff can only proceed to trial when there is a genuine issue of fact regarding both the adequacy of medical care and the defendant's intent). This observation is critical because it makes clear that there are two very distinct subcomponents to the deliberate indifference prong of an adequacy of care claim. The first is the adequacy of the medical care - an objective inquiry where expert testimony could be helpful to the jury. The second is the individual defendant's state of mind - a subjective inquiry that can be proven circumstantially without expert testimony. Pearson, 850 F.3d @ *535.

The Delaware Supreme Court ruled that Price received "continuous" medical care and therefor was not denied adequate care. Conversely, Price has maintained that if he received "continuous" care that does not translate into adequate medical care because Defendants refused Tramadol, a proven effective medication, for less efficacious medications because of 'policy', which is what they told him, causing him to suffer needlessly. The third circuit reasoned in Palakovic v. Wetzel, 854 F.3d 209 (3rd 2017) that "there are circumstances in

which some care is provided yet is insufficient to satisfy constitutional requirements. For instance, prison officials may not, with deliberate indifference to the serious Medical needs of the inmate, opt for 'an easier and less efficacious treatment' of the inmates condition. Citing West v. Keve, 571 F.2d 158, 162 (3rd 1978) quoting Williams v. Vincent, 508 F.2d 541, 544 (1974). Nor may "prison authorities deny reasonable requests for Medical treatment ... [when] such denial exposes the inmate 'to undue suffering or the threat of tangible residual injury," quoting Monmouth, 834 F.2d @ 346, and 'knowledge of the need for care [may not be accompanied by the] ... intentional refusal to provide that care.'" Price demonstrated that he was passed along to four different providers because they refused to care for him. Providers were armed with evidence of MRI's demonstrating bone on bone in his spine, EMG that revealed Price may lose use of his left leg if pressure on the nerve in his spine is not corrected. Instead, did nothing but prescribe less efficacious Medications knowing that he suffered extreme pain.

Price demonstrated clinical guidelines by way of extrinsic evidence from the ACA, NCCHC, BOP and CDC regarding opiods prescribed for chronic care that was 'non-cancerous 'eschewing" any policy that would ban their use for chronic pain. Price's complaint and his affidavit created an issue of fact, in that he was told by Kaur and Abraham they could not prescribe Price Tramadol for long term chronic pain because of "policy." Subsequently, Price was seen by a pain management specialist Dr. Uthaman who ordered test (MRI, EMG, blood, x-ray,

etc...). Subsequently, Dr. Uthaman prescribed Tramadol after digesting the various test and referred Price to a neuro-surgeon. Dr. Uthaman demonstrated the proper clinical guidelines for diagnosing and treating pain. Thereafter, nurse practioner Muhammad terminated the doctors Medication orders stating, "Tramadol is not indicated for chronic non-cancer pain." Not only was the medication terminated so was his treatment of Price altegether. The Eighth Amendment forbids not only deprivations of Medical care that produce torture and lingering death, but also less serious denials which cause or perpetuate pain. Rodriguez v. Manenti, 606 Fed. Appx 25 (2nd Cir. 2015) quoting Brock v. Wright, 315 F.3d 158, 162 (2nd 2003). Taking Price's unrebutted affidavit as true and viewing the extrinsic proof in his favor, was a sufficient showing necessary to defeat summary judgements because the actions of defendants were not in conformity with the professional standards and guidelines set forth in Prices evidence. Furthermore, the actions of Toffa who deliberately caused Price to withdraw Tramadol for two weeks until Prices sister intervened casting a spot light on his unprofessional standards which ignited Toffa's ire. He shouted at Price, "I don't care who your sister calls, no one is going to tell me what to do." Made a racial slur, "You white people!" Misrepresented Medical test to formulate a bizarre diagnosis, "acute kidney disease" to justify not to renew the prescription, then weaned Price off Tramadol left him with no substitute and refused to treat again. Toffa is the epitome of a culpable state of mind.

Nonetheless, for two reasons the Delaware Supreme

Courts decision clashed with the U.S. Court of Appeals for the 3rd Circuit creating conflict worthy of this Courts review. First, the Delaware Supreme Court concluded that expert medical testimony was necessary. The state court ignored the conclusion of the 3rd Circuit in Brightwell v. Lehman, 637 F3d 187 @ 194 n.8 (3rd 2011), that expert testimony "is not necessarily required" where other forms of extrinsic proof may suffice. Perhaps this this way explain the state court disregarding Price's affidavit and other extrinsic evidence. Second, Price raises two additional claims in his affidavit: (a) his treatment with Dr. Uthaman, a pain management specialist, was interfered with when nurse practioner Muhammad terminated his prescription for Tramadol (Appendix C, exhibit "P"). Subsequently, Price was denied any further treatment with Dr. Uthaman, and (b) his spinal surgery has been delayed for 2+ years. It would be apparent to a layperson that defendants violated a professional standard of care, and these claims must be treated differently than an adequacy of care claim. Walker, 599 F.2d @ 575 n.2. All that is needed for the additional claims is for the surrounding circumstances to be sufficient to permit a reasonable jury to conclude that the actions by defendants were motivated for non-medical reasons. See Durmer, 991 F.2d @ 68-69; United States v. Michener, 152 F.2d 880, 885 (3rd 1945) stating, "it's for the jury to determine weight to be given each piece of evidence... particularly where the question at issue is credibility of the witness."

An inmate who alleged a delay of over 2-years in arranging surgery to correct broken pins in his hip "raised a factual dispute sufficient to survive summary judgement as to whether defendant was deliberately indifferent to his

serious Medical needs." Hathaway v. Coughlin, 841 F.2d 48, 50 (2nd 1988). See Salahuddin v. Goord, 467 F.3d 263, 280 (2nd 2006) (where a 5-month delay of liver biopsy was "objectively serious" where plaintiff put forth evidence that he suffered pain). "An official acts with deliberate indifference when he knows of and disregards an excessive risk to inmate health or safety." Farmer v. Brennan, 511 US 825, 827, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994). A person on a jury reasonably could have realized that a nurse practioner terminating a doctor's specific treatment plan without his consent or knowledge, ignoring the doctor's instruction to have Price returned for follow-up treatment, and denying Price the opportunity to be treated again by that doctor for non-Medical reasons was inconsistent with professional standards. In addition, acted with the full knowledge of the MRI results, the full knowledge of the EMG results, the full knowledge that Price was delayed in seeing a neurosurgeon, and had intimate knowledge Price was suffering intolerable pain could have easily resulted in a jury verdict of deliberate indifference. The 2 year delay on his surgery perpetuated Price's pain for a long time. Rodriguez 606 Fed. Appx. @25, quoting, Todaro v. Ward, 565 F.2d 48, 52 (2nd 1977), which concluded "a reasonable juror might find that a reasonable official would have realized that denying plaintiff's surgery request would cause or perpetuate pain." Accordingly, the court in Todaro denied defendants motion for summary judgement. When deciding a motion for summary judgement, the evidence of the non-movant is to be believed, and credibility determinations must be left to the jury. Pearson, 850 F.3d @ 540, quoting Anderson v. Liberty Lobby, 477 US 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d

202 (1986). In sum, a decision such as that rendered by the state's highest court in this case could have the potential effect of precluding most, if not all, deliberate indifference cases submitted by prisoners in the state of Delaware. Here it would be anomalous to impose the extra burden of requiring a plaintiff to introduce expert medical testimony on the issue of adequate medical care where a plaintiff's pain and suffering is attributable to an objectively-identifiable cure when extrinsic evidence and affidavit identifies the cessation of his pain and suffering. The issue of cessation is the termination of Tramadol which Price demonstrated with extrinsic evidence and testimony was done for non medical reasons and defendants opting for less efficacious medications where he has lingered intolerably in pain and suffering.

II. Price's unrebutted statement of claim and affidavit created a fact issue sufficient to defeat summary judgement. His statement of claim was that he was denied adequate medical care when defendants denied him adequate pain relief. Instead opted for less efficacious medications after defendants told Price they could not prescribe Tramadol for long term chronic pain because of medical policy. Price demonstrated through extrinsic evidence that opiods can and should be used to treat chronic pain. Price was prescribed Tramadol from 2017-2020. The abrupt change would bring about a presumption that their decision was based on some new medical policy. It should be stressed that not one of the defendants ever rebutted they told Price their decision was based on medical policy. Price's affidavit sets

forth chronologically various events, MRI's and doctor attestations describing his serious condition and dealings with defendants (Appendix C, affidavit in support of plaintiffs answer to defendants summary judgement).

Price states he continued to suffer pain after his second spinal surgery June 2020. However, his pain was being managed with Tramadol as it had for the past three (3) years. Id., para 8. Price's Tramadol expired 12-23-20, and Defendant Toffa refused to see or renew Price's prescription, causing him to withdraw for 2-weeks Id., para 9. Price's sister intervened calling prison authorities about his withdraw. Price is summoned to medical to see Toffa who did not examine Price, and informed him he was going to "wean" him off Tramadol because he suffers "acute kidney disease." Price asked how he came to that bizarre conclusion and Toffa advised Price's Creatinine levels in his blood were high. Price asked to see the blood results and Toffa explodes, "I don't need to explain myself to you... and I don't care who your sister calls no one is going to tell me what to do,.. you white people!" Guards came into the room and escorted Price out of Toffa's office. Id., para 10. Later Price acquired the blood test demonstrating Creatinine levels of 1.23 and 1.10 both test were within "normal range." Id., para. 11. Price continued to submit sick calls complaining of pain when Defendant Abraham saw Price and advised him that federal law and Medical policy prevented him from prescribing Tramadol for long term chronic pain. However, Abraham did prescribe 50 mg/day for 30 days. Id., para. 12 and 13. Price continued to submit sick calls complaining of pain and was seen by Defendant Kaur who responded, "you shouldn't be in

pain 6-months after surgery." She refused to prescribe Tramadol citing Medical policy. Id., para. 14. Price continued to submit sick calls as his pain was intolerable. Price was seen by provider Muhammad who refused citing medical policy. However, she advised I was scheduled to see a pain management specialist and whatever he recommended she would do,

Price was scheduled and saw Dr. Uthaman, Delaware Pain & Spine who was appalled Defendants had performed no testing to diagnose Price's pain. Subsequently, he ordered a battery of test. Id., para. 16. On 9-8-21 an MRI was completed revealing Price had 'severe' spinal issues remaining that were not corrected by surgery. Id., para. 17. On 9-28-21 an EMG was performed by Dr. Fischer at Christiana Care Neurology Specialist. Dr. Fischer told Price if the pressure on his nerve located at L4 is not corrected he may lose use of his left leg. Id., para. 18. When I returned to see Dr. Uthaman on 10-11-21 he told me my back was still 'messed-up'. Dr. Uthaman started treating my pain with Tramadol, referred me to a neuro-surgeon and ordered my return in two (2) months for follow-up treatment. Id., para. 19. My pain was manageable while taking Tramadol medication, which medical records prove was an efficacious medication. Id., para. 20. In March 2022, nurse practioner Muhammad interferred with Dr. Uthaman's treatment for non-medical reasons. She terminated the Tramadol medication and refused Price any further treatment by Uthaman, and resumed treating Price for which she lacked requisit expertise with less efficacious medications, again. Id., para. 21. Price was delayed seeing a neuro-surgeon for 8-months. Price was

seen by neuro-surgeon Amit Goyal at Baylealth Neuro-surgery in June of 2022. Dr. Goyal attested that Prices condition was "severe" and needed surgery. Id., para. 22. To this date, 2-years since Dr. Uthaman's referal, Price has been delayed/denied surgery. Price has submitted over 50-sick calls for untreated severe pain, and if treatment was provided it was with less efficacious medicines. Id., para. 27. Accordingly, Defendants have knowledge of Prices pain and suffering.

Price's unrebutted statements of claim and his unrebutted affidavit was admissible for establishing the requisite proof that he suffered needlessly because Defendants opted for easier less efficacious treatment for two reasons: 1) Prices oaths are a product of first hand knowledge, observations, and attestament to the pain he experienced; and 2) It speaks directly to the material fact in issue, the element of causation. Maldonado v. Ramirez, 757 F.2d 48, 50-51 (3rd 1985); Hurd v. Williams, 755 F.2d 306, 308 (3rd 1985). Price's affidavit testified that his pain was managed with Tramadol and he experienced recurrent unmanaged pain when defendants terminated his Tramadol prescribing less efficacious medications that did little to abate his pain. Price did not need expert testimony to establish this issue of fact. Also, Price demonstrated Toffa's medical treatment was outside professional norms. Defendants Abraham and Kaur stated they were prohibited prescribing Tramadol for long term chronic pain. Either they acted pursuant to policy which was outside professional norms established through extrinsic evidence or they lied to Price. Simply put, people don't lie for no reason, and

a jury needed to hear and weigh their credibility on the matter. At no time did either defendant rebut Price's statements. Rather a clever attorney representing the defendants relied upon notes entered on an "EHR" to convince the court they made sound professional judgements, even after Price established those judgements were not in line with professional standards. Price had adequately drawn into question the objective nature of his pain and suffering through his own statements. The pain and suffering he experienced immediately after being taken off Tramadol is directly linked to objectively identifiable symptoms associated with his spinal issues which are fully documented evidence.

Price sufficiently established an issue of fact sufficient to defeat summary judgement via his own sworn testimony. While Price's credibility may be challenged by opposing counsel at trial, it is not the function of the state courts to assume the role of the fact finder upon summary judgement. Bushman v. Halm, 798 F.2d 651 *660 (3rd 1986). On summary judgement a court is concerned with the sufficiency and not the weight by taking the word of defendants notes verses Prices sworn affidavit. In re Japanese Electronics Products Antitrust Litigation, 723 F.2d 238, 258 (3rd 1983). Moreover, the sufficiency of any evidence presented on summary judgement is tested only after it has been reviewed in a light most favorable to Price. Obviously, the state court gave weight to defendants notes that do not rebut Prices claims as opposed to Prices sworn testimony. See Sons v. Mundy, 762 F.2d 338, 340 (3rd)

cert. denied, 474 US 1010, 106 S.Ct 537, 88 L.Ed 2d 467 (1985). Conversely, even if the state court were to grant partial summary judgement on Price's claim of adequacy of medical claim, the court could not grant summary judgement on Price's sworn affidavit that his medical treatment by a pain management specialist was interfered with by a nurse practioner who terminated Prices Tramadal medication, denied Price any further treatment by Dr. Uthaman and the delay of his surgery which has perpetuated his suffering. In sum, the state court may not grant summary judgement on an important federal question where the non-moving party has made "a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 US 317 — 54 USLW 4775, 4776, 91 L.Ed.2d, 106 S.Ct 2548 (1986).

III. A state court of last resort abrogated a prisoner's attempt to acquire discovery and written deposition necessary to defend against summary judgement because of his status and indigency which denied him a fair and impartial hearing. Price sought admissions from defendants (D.I. 35) and interrogatories (D.I. 36). Defendants responded (D.I. 38-40). However, defendants systematically answered the admissions with the identical evasive verbage, to-wit:

"Defendant is without sufficient knowledge or information to provide an

answer therefore this request is denied. Defendant ... refers Plaintiff to his medical records."

The responses were void of good faith and specifically violated Delaware Superior Court Civil Rule 36(a) which states; "an answering party may not give lack of information or knowledge as a reason to admit or deny." Price responded with a motion to compel (DI 42). Subsequently, the court agreed with Price and issued an Order compelling discovery, in part, (DI 48). Amended responses from Defendants were sent to Price (DI 52, 53 and 54). However, Defendants again responded evasively. To illustrate this point Defendant Tolfa was asked and answered, infra:

18. The neurosurgeon P. Tim Boulas performed surgery on the plaintiff who recommended "long term pain management" for plaintiff who was still under the surgeon's care on 1-5-2021.

Answer: Defendant Tolfa cannot admit or deny the request after a reasonable review of Plaintiffs medical records so the request is denied.

20. You made a medical notation in plaintiffs electronic health record (EHR) on 1-5-2021 that plaintiff had a bad attitude but made no reference to his pain.

Answer: Defendant Tolfa cannot admit or deny the request after a reasonable review of Plaintiff's medical records so the request is denied.

Price illustrates these examples to demonstrate that all five (5) defendants answered similarly. Clearly they acted in bad faith. The "EHR" is a time/date stamped archive. Price specifically referred to the date 1-5-2021 and a "reasonable" review would have enabled the Defendant to answer. Fact of the matter, the Defendant did not want to admit that he did not consult the treating neuro-surgeons recommendations or that on 1-5-2021 Tolfa took the time to remark on Price's attitude but failed to mention his pain which was the reason Price saw Tolfa on 1-5-2021. Pursuant to Delaware Superior Court Civil Rule 37, "evasive or incomplete answer(s) or respone(s) is to be treated as a failure to answer or respond." When there's a failure to comply with the court's order sanctions are permitted Rule 37(b)(2). Price submitted a Motion to compel and a motion for show cause. The court refused to get involved any further advising Price in a letter that discovery should be resolved by the parties. By denying Price's motions to compel and show cause he was left with no alternatives.

Pursuant to Delaware Superior Court Civil Rule 31, Price had a discovery right to submit written depositions. Price motioned the court for a third party to administer oaths, propound written questions and transcribe the record. (D.I. 59) Subsequently, the court

denied the Motion and thereby denied Price discovery where he sought to obtain expert testimony. The courts concern was cost since the plaintiff was an indigent prisoner. Ultimately, defendants sought a protective order from Prices discovery request, Motions to compel and motions to show cause. Price contested the protective order citing all he desires from the defendants are answers not evasive excuses why they cant answer. The court granted defendants protective order and denied Price the equal protection every Delaware litigant enjoins by Delawares Rule of Discovery. The court effectively shut down Prices request and ability to acquire evidence and expert testimony which the court later required from Price when answering Defendants summary judgement. Thereby, denying Price a fair and impartial proceeding. The court impeded upon Prices rights when determing an important federal question of deliberate indifference requiring this Courts exercise of it's judicial powers.

Conclusion

The federal question invdving the Eighth Amendments Cruel and Unusual Punishment Clause concerning a claim of Deliberate Indifference was egregiously decided by the state's highest court which conflicts with decisions of the 3rd Circuit U.S. Court of Appeals. The impact of the state's decision will impact the constitutional rights of all Delaware state prisoners. The Court's supervisory powers are needed. In sum, I was sent to prison as punishment for my crimes, I was not sent to prison to be punished. There is a distinction and that distinction is the Eighth Amendment. The petition for a writ of certiorari should be granted for reasons stated herein.

Respectfully submitted,
Millard E. Price

Millard E. Price

Date: August 30, 2023