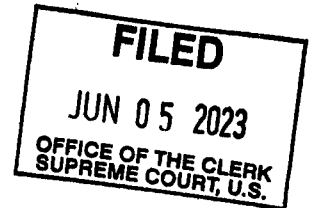


23-5723
No. SAC11-1867

ORIGINAL

Reception & Medical Center
Date: 6/9/23
Initials: SJW

IN THE
SUPREME COURT OF THE UNITED STATES



JAMES DARYL WEST — PETITIONER
(Your Name)

vs.

MARC INCH, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JAMES Daryl West #651314
(Your Name)

Sago Palm ReEntry
(Address)

500 Bay Bottom Road
(City, State, Zip Code)

Phoenix, FL 33476
(Phone Number)

QUESTION(S) PRESENTED

Specifically with regards to Defendant Barry Morris, Warden Petitioner poses the question to this Court of whether the Eleventh Circuit Court of Appeals decided this case contrary to the three prong standards set forth in: McElligot v. Foley, 182 F.3d 1248, 1255 (11th Cir. 1999).

Petitioner posits that even based on a through reading of the Eleventh Circuits opinion in West v. Inch, USCA 11 Case: 20-14867, as it relates to Warden Barry Morris. Petitioners complaint and factual assertions did meet the three prong standard of McElligot, sufficient to surpass the District Courts erroneous sua sponte dismissal of Petitioners Second complaint for failure to state a claim.

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. Michelle Shcovest
2. Barry Morris
3. Janice Hills
4. Daniel Conn
5. Wexford Health Sources, Inc

RELATED CASES

West v. Inch, 2020 U.S. Dist LEXIS 222740 (S.D. Miq 2020)

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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☒ is unpublished.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 B to the petition and is

☐ reported at 2020 U.S.D. LEXIS 222740; 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 March 6, 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 July 10, 2023 (date) on September 10, 2023 (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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1915 (e)(2)(B)(ii)

42 U.S.C. § 1983

STATEMENT OF THE CASE

A reasonable jurist could debate on the issue of whether Warden Barry Morris' actions were more than negligence, that constituted deliberate indifference under the Eighth Amendment which prohibits prison deliberate indifference by prison officials, such as defendant Barry Morris, (Warden) with regards to any substantial risks of serious harm to Plaintiff. See: Farmer v. Brennan, 511 U.S. 825, 828 (1994). "Deliberate indifference has three components: (1) Subjective knowledge of a risk of serious harm; (2) disregard of that risk; (3) by conduct that is more than mere negligence. The Plaintiff must show that the Warden was aware of the facts from which the inference could be drawn that a substantial risk of serious harm existed, and drew the inference, Warden Barry Morris failed to alleviate a known substantial risk.

In the Eleventh Circuits opinion on page 3, A reasonable jurists could debate on the issue of whether Warden Morris' actions were more than negligence and constituted deliberate indifference in violation of the Eighth Amendment. Specifically, the opinion by the Eleventh Circuit acknowledges an unrefuted material fact that, Petitioner verbally notified Warden Morris of the serious risk of harm associated with the worn and torn - tractionless shoes and then at that time this was sufficient enough to assail Warden Morris with "Subjective Knowledge" of the risks of serious harm (Notably, the opinion by the Eleventh Circuit is silent on the fact that Warden Morris also took a digital photo of the shoes with his cellphone), See: (Opinion at, p. 9.) Therefore, Warden Morris had an informed "Custodial Obligation" not

to disregard the risks associated with the worn shoes.

Thus, the Eleventh Circuit had an obligation to "liberally construe" Petitioners pro se claim with regards to a magical-words allegations that Warden Morris disregarded said risk, because the Eleventh Circuits opinion plainly quotes that "...[Warden Morris stated he would email Janice Hills, concerning the shoes condition." (Opinion at, p. 9). Therefore, Warden Morris' actions (or inactions) in not following up on a known substantial risk of serious harm and his failure to alleviate that risk, as the Petitioners custodian, does ——— contrary to the Eleventh Circuits opinion ——— constitutes deliberate indifference and is a material fact that reasonable jurist must debate. Wherefore, Certiorari review should be Granted on this point

REASONS FOR GRANTING THE PETITION

Certiorari review should be granted on the question posed to this Court regarding the Eleventh Circuit's erroneous ruling affirming the district court's sua sponte dismissal of the Petitioners' second amended complaint. A miscarriage of justice has occurred by allowing Warden Barry Morris' deliberate indifference to go unpunished.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James Daryl West

Date: September 8, 2023