

IN THE
Supreme Court of the United States

PARNELL MAY,
Petitioner,
v.

KAWHUN TIMS, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE UNITED STATES

BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether a genuine issue of material fact existed that precluded the lower courts from granting and affirming summary judgment; and whether the Clerk of the Eighth Circuit Court of Appeals violated Petitioner's due process by his restricting access to the Court.

TABLE OF CONTENTS

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED	1
COUNTER-STATEMENT OF THE CASE	2
SUMMARY OF THE ARGUMENT	3
REASONS TO DENY CERTIORARI	5
CONCLUSION	14

TABLE OF AUTHORITIES

Cases

<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)	9, 11
<i>Anuforo v. Comm’r</i> , 614 F.3d 799 (8th Cir. 2010)	8
<i>Berkemer v. McCarty</i> , 468 U.S. 420, 104 S.Ct. 3138, 3152, n. 38, 82 L.Ed.2d 317 (1984)	3
<i>Camberos v. Branstad</i> , 73 F.3d 174 (8th Cir.1995).....	6
<i>City of Monterey v. Del Monte Dunes at Monterey, Ltd.</i> , 526 U.S. 687, 119 S. Ct. 1624, 143 L. Ed. 2d 882 (1999)	12
<i>Easley v. Cromartie</i> , 532 U.S. 234, 121 S.Ct. 1452, 149 L.Ed.2d 430 (2001)	3
<i>Fidelity & Deposit Co. v. United States</i> , 187 U.S. 315, 23 S.Ct. 120, 47 L.Ed. 194 (1902)	12
<i>Garang v. City of Ames</i> , 2 F.4th 1115 (8th Cir. 2021)	11
<i>Glossip v. Gross</i> , 576 U.S. 863, 135 S. Ct. 2726, 2740, 192 L. Ed. 2d 761 (2015).....	3
<i>Graver Tank & Mfg. Co. v. Linde Air Products Co.</i> , 336 U.S. 271, 69 S.Ct. 535, 93 L.Ed. 672 (1949)	3
<i>Kasten v. Saint-Gobain Performance Plastics Corp.</i> , 563 U.S. 1, 131 S. Ct. 1325, 1336, 179 L. Ed. 2d 379 (2011) ..	10
<i>Paramount Pictures Corp. v. Metro Program Network, Inc.</i> , 962 F.2d 775 (8th Cir.1992)	6
<i>Parrish v. Ball</i> , 594 F.3d 993 (8th Cir. 2010)	6
<i>Rowe v. Norris</i> , 198 F. App’x 579 (8th Cir. 2006).....	10
<i>Sartor v. Arkansas Natural Gas Corp.</i> , 321 U.S. 620, 64 S.Ct. 724, 728, 88 L.Ed. 967 (1944)	5
<i>Scott v. Harris</i> , 550 U.S. 372, 127 S. Ct. 1769, 1771, 167 L. Ed. 2d 686 (2007).....	11
<i>Unicolors, Inc. v. H&M Hennes & Mauritz, L. P.</i> , 142 S. Ct. 941 (2022)	9

<i>United States v. United States Gypsum Co.</i> , 333 U.S. 364, 68 S.Ct. 525, 541, 92 L.Ed. 746 (1948)	6
<i>Walker v. Maschner</i> , 270 F.3d 573 (8th Cir.2001).....	6

Constitutional Provisions

U.S. Const. amend. XIV, § 1.....	1
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Statutes

42 U.S.C. § 1983.....	1
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Rules

Supreme Court Rule 14.4	9
Supreme Court Rule 15.2	9
Fed.R.Civ.P. 56(c)	5

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

Pursuant to the Fourteenth Amendment to the United States Constitution: “[n]o State...shall deprive any person of life, liberty, or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

Section 1983, codified as 42 U.S.C. § 1983, provides, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

42 U.S.C. § 1983.

COUNTER-STATEMENT OF THE CASE

At all levels, Petitioner has failed to present any evidence that would demonstrate a genuine issue of material fact existed that precluded the lower courts from granting summary judgment for Respondent.

The Petition does not contain any substantive allegations against Ms. Lowe. Petitioner's recitation of the facts as contained in his Petition does not reference Ms. Lowe or any alleged conduct on her behalf that would prohibit a court from granting summary judgment in her favor. Instead, Petitioner has alleged that Respondent Tims violated Petitioner's constitutional rights by refusing to allow Petitioner to file a complaint under the Prison Rape Elimination Act, and by using excessive force against Petitioner.

There are no issues or conflicts among lower courts requiring review from this Court. The Petition for a writ of certiorari should be denied.

SUMMARY OF THE ARGUMENT

Petitioner requests that this Court review the lower courts' finding of fact. Petitioner's request runs against decades of jurisprudence establishing that this Court "cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 336 U.S. 271, 275, 69 S.Ct. 535, 93 L.Ed. 672 (1949); *Easley v. Cromartie*, 532 U.S. 234, 242, 121 S.Ct. 1452, 149 L.Ed.2d 430 (2001) ("where an intermediate court reviews, and affirms, a trial court's factual findings, this Court will not 'lightly overturn' the concurrent findings of the two lower courts." *Glossip v. Gross*, 576 U.S. 863, 882, 135 S. Ct. 2726, 2740, 192 L. Ed. 2d 761 (2015)).

Even if review of facts by this Court was appropriate in this case, Petitioner has not presented any evidence or argument that would warrant additional review of the lower courts' factual findings. As stated in *Berkemer v.*

McCarty, 468 U.S. 420, 443, n. 38, 104 S.Ct. 3138, 3152, n. 38, 82 L.Ed.2d 317 (1984), “absent unusual circumstances, ... we are chary of considering issues not presented in petitions for certiorari.” *See also* *Stone v. Powell*, 428 U.S. 465, 481, n. 15, 96 S.Ct. 3037, 3046, n. 15, 49 L.Ed.2d 1067 (1976) (the Court will disregard Rule 14.1(a) and consider issues not raised in the petition only in the most exceptional cases.).

Petitioner has not demonstrated any genuine triable issue of material fact that would preclude the lower courts’ granting and subsequent affirming of summary judgment in Respondent’s favor. The Petition does not contain any substantive allegations against Respondent. There are no such extraordinary circumstances in this case that would warrant such departure from typical application of Rule 14.1. For these reasons, the Petition should be denied.

REASONS TO DENY CERTIORARI

I. APPELLANT HAS NOT STATED A BASIS FOR REVIEW OF THE EIGHTH CIRCUIT'S ORDER GRANTING SUMMARY JUDGMENT.

Petitioner requests that this Court review the lower courts' findings of fact regarding the circumstances surrounding his excessive force and due process claims. The lower courts have uniformly found that no issue of material fact existed that would preclude summary judgment in favor of the Respondents.

Rule 56 provides that the trial court may award summary judgment after motion, notice and hearing, provided the pleadings, depositions, admissions and affidavits on file show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P 56. This rule authorizes summary judgment "only where the moving party is entitled to judgment as a matter of law, where it is quite clear what the truth is, ... (and where) no genuine issue remains for trial ... (for) the purpose of the rule is not to cut litigants off from their right of trial by jury if they

really have issues to try.” *Sartor v. Arkansas Natural Gas Corp.*, 321 U.S. 620, 627, 64 S.Ct. 724, 728, 88 L.Ed. 967 (1944).

A district court’s findings of fact are reviewed under the clearly erroneous standard and its conclusions of law de novo.” *Walker v. Maschner*, 270 F.3d 573, 576 (8th Cir.2001); *Parrish v. Ball*, 594 F.3d 993, 997 (8th Cir. 2010); *Camberos v. Branstad*, 73 F.3d 174, 176 (8th Cir.1995); *Paramount Pictures Corp. v. Metro Program Network, Inc.*, 962 F.2d 775, 777 (8th Cir.1992)). Federal Rule of Civil Procedure 52(a) requires that a District Court’s findings of fact not be set aside unless clearly erroneous. *Pullman-Standard v. Swint*, 456 U.S. 273, 273, 102 S. Ct. 1781, 1782, 72 L. Ed. 2d 66 (1982). “A finding is ‘clearly erroneous’ when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. *United States v. United States Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 541, 92 L.Ed. 746 (1948). ”Summary judgment is appropriately entered

against a party who has failed to make a showing sufficient to establish a genuine dispute as to the existence of an element essential to its case and upon which the party will bear the burden of proof at trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). When a summary judgment motion is filed, the moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact based on the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, if any. *See id.* at 323, 106 S.Ct. 2548; *Anderson*, 477 U.S. at 248, 106 S.Ct. 2505. If the moving party has carried its burden, the nonmoving party must then go beyond its original pleadings and designate specific facts showing that there remains a genuine issue of material fact that needs to be resolved by a trial. Fed. R. Civ. P. 56(c). In considering a motion for summary judgment, the court's task is merely to decide, based on the evidentiary record that accompanies the filings of the parties, whether there really is any genuine issue concerning a material fact that still requires a trial.

See id. (citing *Anderson*, 477 U.S. at 249, 106 S.Ct. 2505. Mere “self-serving allegations and denials are insufficient to create a genuine issue of material fact.” *Anuforo v. Comm’r*, 614 F.3d 799, 807 (8th Cir. 2010).

The lower courts have thoroughly considered Petitioner’s allegations and found no issue of material fact. Accordingly, there is no issue requiring review by this Court. The Eastern District of Arkansas adopted the Magistrate Judge’s Report and Recommendation and granted summary judgment in favor of Respondents. The 24-page Report and Recommendation contained a comprehensive examination and analysis of the events alleged in the Petition through the recounting of the Petitioner, but as captured on surveillance camera and body camera footage.

By adopting this report, the District Court found there was no evidence that supports Petitioner’s version of events, and thus no genuine dispute of material fact. A disputed issue is “genuine” when the evidence produced “is such that a reasonable jury could return a verdict for the

nonmoving party.” *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

On appeal, the Eighth Circuit Court of Appeals summarily affirmed the District Court. Moreover, the court noted in its Order denying Petitioner’s appeal that an appeal from this Order or the accompanying Judgment would not be taken in good faith. Petitioner’s claims against Ms. Lowe were not sufficient to survive summary judgment. *Unicolors, Inc. v. H&M Hennes & Mauritz, L. P.*, 142 S. Ct. 941 (2022).

Petitioner has also made no argument to this Court concerning Ms. Lowe or any aspect of his medical care while he was a pretrial detainee. This Court has ruled that it does not normally consider a separate legal question not raised in the certiorari briefs. “The failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition.” Rule 14.4 and 15.2; *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 75, n. 13, 117 S.Ct. 467, 136

L.Ed.2d 437 (1996); *Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1, 17, 131 S. Ct. 1325, 1336, 179 L. Ed. 2d 379 (2011). The lower courts thoroughly examined the claims against Respondent Lowe and found no evidence that would support a § 1983 claim against her. May alleged that Lowe failed to ensure that he received adequate treatment for his complaints of leg and knee pain. The District Court found that “the record shows Lowe’s only involvement in May’s care was responding to one grievance where she stated that he had been treated on two separate dates.” Ms. Lowe was not a medical professional, nor did she provide any treatment to Petitioner. Rather, Ms. Lowe was a member of the Turn Key administrative staff at the jail. This alone is enough to support a finding that she did not delay or deny Petitioner from receiving medical treatment. Participation in the administrative grievance process alone is insufficient to establish liability under § 1983. *Rowe v. Norris*, 198 F. App’x 579, 580 (8th Cir. 2006).

At every level, Petitioner has failed to present any evidence beyond the pleadings that would support his

version of events. Petitioner's recounting of events is completely incompatible with the evidence in the record. Aside from Petitioner's statements in his Petition in Error, Petitioner has presented no evidence that controverts the lower courts' findings. Petitioner has also not presented any evidence that would demonstrate that the lower's courts' through analysis of the facts was erroneous. "The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986). "Where the record blatantly contradicts the plaintiff's version of events so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a summary judgment motion." *Scott v. Harris*, 550 U.S. 372, 372, 127 S. Ct. 1769, 1771, 167 L. Ed. 2d 686 (2007); *Garang v. City of Ames*, 2 F.4th 1115, 1121 (8th Cir. 2021) ("While this Court ordinarily adopts the plaintiff's version

of events, “this [C]ourt does not adopt the plaintiff’s version if it is ‘blatantly contradicted by the record.’”). Petitioner’s statements alone are insufficient to defeat a properly supported motion for summary judgment. Thus, the Petition should be denied.

Due Process

Petitioner also argues that by granting and subsequently affirming summary judgment in favor of Respondents, the lower courts violated his due process rights. Summary judgment is proper when no genuine issue as to any material fact exists, and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). A grant of summary judgment does not violate the Seventh Amendment right to a jury trial. *Fidelity & Deposit Co. v. United States*, 187 U.S. 315, 319–20, 23 S.Ct. 120, 47 L.Ed. 194 (1902). Petitioner’s § 1983 claim also does not in itself confer right to jury trial. *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 119 S. Ct. 1624, 143 L. Ed. 2d 882 (1999) (The character of § 1983 is

vital to our Seventh Amendment analysis, but the statute does not itself confer the jury right).

Petitioner also claims that the Court Clerk for the Eighth Circuit Court of Appeals violated his due process rights by “arbitrarily with[olding]” Petitioner’s Reply, Petition for Rehearing en banc, and Petition for Rehearing by Panel from being filed into the court record. Petitioner argues that this delay impeded his ability for the court to consider his argument, and caused the Eighth Circuit to deny his requested relief. Petitioner also claims that the Clerk “tampered with” the filings, but does not illustrate how or in what way they were modified.

Petitioner’s claims that his Reply brief was arbitrarily withheld by the Court Clerk for the Eighth Circuit Court of Appeals, and that the Clerk refused to electronically file his Reply Brief are similarly unsupported by evidence. These arguments also fail because these filings were irrelevant to the outcome in the Eighth Circuit. The Eighth Circuit did not request briefing from the parties. Despite this, Petitioner still filed a brief with the court, which the

court ruled to be premature. Because Petitioner's brief was premature, Respondents did not file any responsive briefs - making Petitioner's Reply brief even more unnecessary.

Concerning the Petition for Rehearing and Rehearing by Panel, though the Petitions were filed outside of the 14-day time limit allowed by Rule 40, neither of these filings were rejected for being filed out of time. Additionally, there is no evidence that the Eighth Circuit based their denial of these Petitions (or any of their rulings on review) on Petitioner filing out of time. Petitioner's claims that the Clerk "tampered with" are similarly unsupported by any evidence in the record.

Petitioner has not presented any evidence that his access to the courts was impeded by the Clerk, or that any such impedance would have had any effect on the outcome. Accordingly, there is no due process violation requiring review by the Court.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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