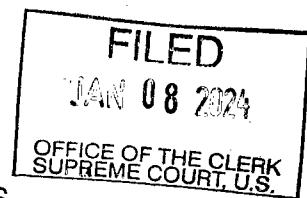


23-6525

ORIGINAL

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES



MICHAEL DUKES — PETITIONER  
(Your Name)

vs.

STEPHANIE WOOD AND RACHEL MEDLOCK — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

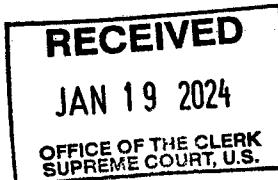
MICHAEL DUKES  
(Your Name)

48 OVERLOOK DRIVE [SCI-FAYETTE]  
(Address)

LaBELLE, PA 15450-1050  
(City, State, Zip Code)

N/A  
(Phone Number)

-1-



**QUESTION(S) PRESENTED**

**DOES OBSTRUCTION PREVENTING DISPOSITIVE  
MATERIAL EVIDENCE FROM BEING PRESENTED IN  
COURT CONSTITUTE 'EXTRAORDINARY CIRCUMSTANCES'?**

**Answered in the Negative by the lower court.**

## **LIST OF PARTIES**

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

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## **RELATED CASES**

**Dukes v Wood et'al, 22-1669, 2023 WL 314300, 3d Cir. [1-19-23]**

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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**

**[X] 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,  
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[X] is unpublished.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**

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 12, 2023.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October 11, 2023, 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. N/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 \_\_\_\_\_.  
  

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[ ] 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. N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **EIGHT AMENDMENT**

**“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted”**

## STATEMENT OF THE CASE

Petitioner was denied doctor ordered medical care because the defendants concluded it cost too much. Petitioner filed an administrative appeal through to the state's commonwealth court.

Defendants claimed<sup>1</sup> Dr. William Smith's order was reversed by the in-house-prison-doctor, Dr. Barry Russell.

Defendant's maintained this defense during state, federal 1983 and 60(b) court proceedings.

The federal courts, district and Appellate, held, petitioner had a full and fair opportunity to vindicate his 8<sup>th</sup> amendment claim in state court and, consequently res judicata barred federal review.

Petitioner presented dispositive record evidence Dr. Russell did not reverse Dr. Smith's medical prescription, maintaining he, Dr. Smith and petitioner sought the same medical prescription.

In his 60 (b) motion, Petitioner factually plead Defendants actively used their government position to prevent his timely access to Dr. Russell. For over two years they removed his name from the list(s) to be seen by Dr. Russell who serviced the prison quarterly or on an as needed basis.

Petitioner plead this **extraordinary circumstance** prevented timely presentation before the state and federal courts.

### MATERIALLY RELEVANT FACTS OF RECORD CONCEDED AND/OR ASSERTED BY THE DEFENDANTS.

1. The instant controversy [eye injury] is one of a 'serious medical need' as defined by the defendants and found as fact by the Commonwealth Court of Pennsylvania.
2. Defendants assert the controversy was adjudicated by State Court finding 'Dukes' was simply dissatisfied with the 'medical professionals' determinations.
3. Both treating physicians Barry Russell and William Smith pursued their medically prescribed treatment; one Petitioner asked the Court to enforce as a matter of his 8<sup>th</sup> Amendment Rights.

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<sup>1</sup> Defendant Wood's statements attributed to and rebutted by Dr. Barry Russell:

"he did see the glasses in his clinic and did examine your vision and said the glasses were correct." (ECF 1-15)

"Dr. Russell agrees that your glasses were made properly[.] and you are not authorized to receive another pair at this time." (ECF No. 1-14).

4. Defendant Medlock denied this treatment because it cost too much. [ECF. 1 para 8]
5. Defendant Wood lied and said Dr. Russell reversed the medically ordered treatment of Dr. Smith. [ECF. 1-N]
6. Dr. Russell submitted an affidavit affirming he did not reverse Dr. Smith's prescription and maintains Petitioner receive the original prescription.
7. Petitioner argued in each judicial forum, he believed Medlock lied on Dr. Russell, but had no proof.
8. The Commonwealth Court believed the lie of Defendant Medlock over Petitioner's lack of proof to the contrary.
9. Petitioner was unable to timely obtain proof of this lie because he was prevented from seeing Dr. Russell for over two years!<sup>2</sup>

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<sup>2</sup> The grievance process of prison industrial complex was weaponized against Petitioner to ensure his name was removed from the patient list to see Dr. Russell and to protect their colleague no one would simply interview Dr. Russell to obtain the truth.

## REASONS FOR GRANTING THE PETITION

THIS IS A MATTER OF **EXTREME PUBLIC INTEREST**: THE MACHINERY OF GOVERNMENT IS ON THE MINDS OF OUR CITIZENRY BECAUSE OF **CLAIMS OF ITS' WEAPONIZATION AGAINST 'WE THE PEOPLE'**. THIS IS A CASE WHERE THE GOVERNMENT MACHINERY HAS BEEN USED TO PREVENT WITNESS TESTIMONY.

### SUMMARY OF THIRD CIRCUIT COURT PER CURIUM AFFIRMANCE

The panel affirmed the district court finding the **obstruction** preventing Petitioner from proving the fraudulent statements, i.e., Dr. Smith's ordered medical treatment, had been reversed by Dr. Russell; was not extraordinary circumstance, denying him a 'full and fair opportunity' "to argue about them in state court."

### TWO QUESTIONS NAGGING AT THE HEART OF JUSTICE

1. FOR PURPOSE OF RULE 60 (b)(6) DOES STATE ACTOR'S WITNESS OBSTRUCTION CONSTITUTE '**EXTRAORDINARY CIRCUMSTANCES**'?
2. IS SUSPECTING AND ARGUING DEFENDANT'S STATEMENTS ARE FRAUDULENT VERSUS HAVING PROOF THEY ARE FOR THE PURPOSE OF RULE 60 (b)(6) LEGALLY THE SAME CONTROVERSY TO BE DETERMINED BY THE FACTFINDER?

Both Answered in the Negative by the Third Circuit.

The Panel held Defendant obstruction preventing Petitioner from access to witness Dr. Barry Russell did not deny a full and fair opportunity to present his 8<sup>th</sup> Amendment claim to Commonwealth Court of Pennsylvania.

The Commonwealth Court is bound by the same standard of review required by the federal Courts; i.e., 'Accepting as true all well plead facts' in the complaint.

"The documentation included as exhibits to the Petition illustrates not only that those medical visits and consultations occurred, but that they resulted in determinations by the medical professionals consulted that **Petitioner's eyeglasses were both properly made and adequate for his needs. Petitioner's dissatisfaction with these determinations does not transform them into deliberate indifference to Petitioner's medical or optical needs**. In effect, Petitioner attempts to mandate the Department to follow his particular preferred course of medical treatment. However, this Court will not second-guess the propriety or adequacy of a particular course of treatment determined appropriate by the professional judgment of medical professionals employed by the Department to make such determinations. *Kretchmar v. Dep't of Corr.*, 831 A.2d 793, at 799. (2003) (Emphasis Added),

"In this case, none of the factual averments contained in the Petition, even if accepted as true, demonstrate the elements necessary for success on a claim under the Eighth Amendment for unconstitutional conditions of incarceration based on deliberate indifference by prison officials to Petitioner's medical/optical care. Therefore, Petitioner is not entitled to the mandamus relief he requests.

For the foregoing reasons, we sustain the Preliminary Objections and dismiss the Petition with prejudice. Further, because we sustain the Preliminary Objections and dismiss the Petition, Petitioner's outstanding Motion for Special and Summary Relief based upon the Petition is dismissed as moot.

Dukes v PA-DOC, 250 A. 3rd 549, 551 (Table) Feb. 17, 2021

The facts plead and argued in state court by Petitioner: the lie told by Defendant Woods by law had to be in writing. Because it was not, more likely than not, Dr. Russell did not reverse Dr. Smith's medically ordered prescription.

In addition to accepting that fact as true, to sustain motion to dismiss, that fact must clearly fail to state a cause of action; no reasonable jury could find in Petitioners' favor.

"I note that the standards for reviewing preliminary objections are well settled. The Court shall sustain preliminary objections and dismiss a complaint only when it is clear and free from doubt that the law will permit no recovery.

*Sweatt v. Department of Corrections, 769 A.2d 574 (Pa.Cmwlth. 2001); Stone Edwards Insurance Agency, Inc. v. Department of Insurance, 616 A.2d 1060 (Pa.Cmwlth. 1992).* When ruling on preliminary objections, the Court must accept as true all well-pleaded material allegations of the complaint and must accept all inferences reasonably deducible from those allegations. *Id.*

*Buck v. Beard, 834 A.2d 696, 702 (Pa. Cmmw. Ct. 2003)*

It is conceded the panel correctly identified the facts in issue. However, it misapprehended those facts and erred as a matter of law in its abuse of discretion analysis, failing to take into account the lower court, et'al, did not accept as true, the law requiring any change in a Doctor's prescription be in writing. See, 28 Pa Code 115.31-33.

More importantly, Petitioner's Rule 60 (b) motion plead he was actively prevented from securing dispositive evidence Defendant Wood lied when issuing fraudulent written instrument stating Dr. Russell<sup>3</sup> had reversed Dr. Smith's original prescription.

"To prevail on a Rule 60(b)(3) motion, Dukes was required to establish, by clear and convincing evidence, see *Brown v. Pa. R.R. Co., 282 F.2d 522, 527 (3d Cir. 1960)*, "that the [defendants] engaged in fraud or other misconduct, and that this misconduct prevented [him] from fully and fairly presenting his case," *Stridiron v. Stridiron, 698 F.2d 204, 207 (3d Cir. 1983)*. [ECF 14 Panel op. p. 2]

<sup>3</sup> Dr. Russell provided affidavit contradicting the fraudulent statement: "he did see the glasses in his clinic and did examine your vision and said the glasses were correct." (ECF. 1-N) "Dr. Russell agrees that your glasses were made properly[.] and you are not authorized to receive another pair at this time." (ECF No. 1-14).

Petitioner plead he was prevented from seeing the witness for over two years and was only able to obtain Dr. Russell's 'clear and convincing' affidavit establishing fraud, through the assistance of counsel.

"As he contended in his Rule 60(b) motion, Dukes asserts on appeal that he is entitled to relief because defendants made false statements about his physician's medical opinion in 2019, which they prevented him from learning about and refuting until after his appeal from the District Court's dismissal. C.A. Dkt. No. 11 at 17; Dkt. No. 53 at 2 &4; Dkt. No. 57 at 3. Because of the defendants' fraud, Dukes argues, his state court case was not a "full and fair opportunity" to assert his rights, so res judicata did not bar his federal suit. C.A. Dkt. No. 11 at 17. [ECF 14 Panel op. p. 3]

The Panel held preventing Petitioner from timely obtaining Dr. Russell's affidavit did not deny him a 'full and fair' hearing before the state court.

"Dukes also argues that, although his Rule 60(b)(3) motion was filed beyond the rule's one-year limit, he alleged "extraordinary circumstances" entitling him to equitable tolling under Rule 60(b)(6). *Id.* at 14-18.

"We discern no abuse of discretion by the District Court. As the District Court correctly explained, Dukes' Rule 60(b)(3) motion, filed more than a year after the District Court entered its judgment, was untimely. See Fed.R.Civ.P. 60(c)(1). Dukes has not alleged any "extraordinary circumstances" justifying relief under Rule 60(b)(6), see *Budget Blinds*, 536 F.3d at 255, and he may not use this rule to circumvent the one-year limitation on Rule 60(b)(1)-(3), see *Stradley v. Cortez*, 518 F.2d 488, 493 (3d Cir. 1975). [ECF 14 Panel op. p. 3]

The Panel held "Dukes has not alleged any extraordinary circumstances justifying relief . . ." and went on to opine:

Even if Dukes' Rule 60(b)(3) motion were timely, his allegations of fraud do not satisfy the requirements for relief under this rule. As the District Court explained, regardless of the veracity of defendants' statements, they were not withheld from Dukes, and there is no indication that he was unable to argue about them in state court. Dukes learned of the statements, which appeared in the denial of Dukes' administrative grievance, in late 2019. Dkt. No. 1-14. He appealed from that decision, and it was affirmed in March 2020. Dkt. No. 1-15. Dukes filed suit in state court in April 2020, and the Commonwealth Court of Pennsylvania extensively addressed his medical care in its opinion. See *Dukes v. Pa. Dep't of Corr.*, No. 281 MD 2020, 2021 WL 608918, at \*2-5 (Pa. Commw. Ct. Feb. 17, 2021). In his federal suit, Dukes identified the same statements, arguing that defendants misrepresented his physician's opinion. Dkt. No. 1 at 12-13. The affidavit from his physician that Dukes offered in support of his Rule 60(b)(3) motion does not demonstrate that Dukes was prevented from fully litigating his case in state court. See Dkt. No. 57-1. We will affirm the District Court's judgment. *Dukes v. Wood*, No. 23- 1711, at \*2-4 (3d Cir. Sep. 12, 2023)

Access to the Defendants' statements does not a full and fair hearing provide; rather it is the absence [through obstruction] of proof positive, Wood's statement was false, that **mocks the state procedure as unfair.**

Doctors' Russell and Dr. Smith are in agreement with Petitioner,<sup>4</sup> the glasses provided as a substitute by Defendants (because the Doctor ordered prescription 'cost too much'); were medically inadequate. Petitioner suggests this denial violated the mandate of Estelle v Gamble.

Petitioner submits the 'obstruction' he endured for more than two years qualifies as an 'extraordinary circumstance' within the intent and purpose of rule 60 (b)(6), to hold otherwise would result in an absurd outcome.

Rule 60 (b)(6) stands on its own as a basis for relief; where active weaponization of the grievance process against Petitioner denied him the ability to speak to or be serviced by Dr. Barry Russell.

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<sup>4</sup> Contrary to State Court and reaffirmed through Panel decision Petitioner was not simply dissatisfied. with the professionals determinations. Petitioner sought court directed compliance with Doctor's orders.

## CONCLUSION

Defendants' orchestrated acts preventing witness testimony, weaponized the machinery of government against Petitioner, and this obstruction should be deemed "extraordinary circumstances" pursuant Rule 60 (b)(6) and standing independently should provide equitable relief from the District Court's final order.

This may or may not be an issue of first impression; but government weaponization against United States citizens, is surely an issue of major public importance.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Fukes

Date: January 7, 2024