

23-6981

No. _____

ORIGINAL

FILED

FEB 08 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

EZEKIEL DAVIS

(Your Name)

— PETITIONER

vs.

SHADID ANSARI

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE TENTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

EZEKIEL DAVIS

(Your Name)

P.O. Box 240, 15151 OKLA. Hwy 39

(Address)

LEXINGTON, OKLA. 73051

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

- 1.) Whether the appeals court abused its discretion by denying Petitioner's In Forma Pauperis (IFP), when reviewing appeal on the merits, holding Petitioner to a higher pleading standard than formal pleading by lawyers.
- 2.) Whether Petitioner met 28 U.S.C. § 1915(g) of being under imminent danger of serious physical injury, when MRI's showed the degenerative areas in Petitioner's spine.
- 3.) Whether the District Court abused its discretion when granting Defendants Summary Judgment, when the Defendants were allowed to file a "Special Report" deemed by the court to be alarming incomplete with regards to Petitioner's grievance exhaustion related to Claim One.
- 4.) Whether the District Court held Petitioner to a higher pleading standard than those drafted by lawyers when granting "Protective Order" for the contract agreement between the State Department of Corrections and GEO Group Corrections, Inc., (GEO Group, Inc.) that showed Defendants had violated contractual agreement by having a "third party" beneficiary medical company that did not adhere to ODOC Policy OP-140121 that mandate procedures to be implemented in order to get outside specialist care for inmates with serious medical needs.

Cont. "QUESTIONS"
PRESENTED "
NEXT PAGE

Cont. From: QUESTIONS PRESENTED

- 5.) Whether both District Court and Appeals Court abused its discretion by not appointing counsel due to the complex medical issues and the "Protective Order" concerning the contractual agreement between the State and GEO.

End of Presented Questions.

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.) Shadiq Ansari, GEO/LCF Medical Director (Correct Care Solution);
- 2.) GEO Group Corrections, Inc., (Amber Martin, V.P.);
- 3.) Hector Rios, Jr., Warden GEO/LCF;
- 4.) Christina Thomas, Health Service Administrator;
- 5.) Dan Ronay, Supervisor Correct Care Solution;
- 6.) Sheryl Denton, Nurse Practitioner;
- 7.) Lt. Durant, Grievance Coordinator;
- 8.) Lt. Dawson, Grievance Coordinator;
- 9.) Sgt. Adams, Correctional Officer;

RELATED CASES

Davis v. GEO Group Corr., Inc., 696 F.App'x 851, 856 (10th Cir. 2017)

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505 (1986)

Estelle v. Gamble, 429 U.S. 97 (1976)

Cruz v. Betts, 405 U.S. 319, 327 n. 7 92 S.Ct. 1079, 1084, 31 L.Ed. 2d 263

Peltus v. Morgenthau, 554 F.3d 293, 298 (2d Cir. 2009) (Nexus test)

Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed. 2d 868 (2009)

Kay v. Bemis, 500 F.3d 1214, 1217 (10th Cir. 2007)

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

DAVIS v. GEO Group Corrections, Inc., 696 F. App'x
851, 856 (10th Cir. 2017) _____ 13, 18, 19, 22, 26

ANDERSON v. Liberty Lobby, Inc., 477 U.S. 242, 248,
106 S. Ct. 2505 (1986) _____ 19, 26

ESTELLE v. GAMBLE, 429 U.S. 97 (1976) _____ 19, 23, 25

CRUZ v. BETO, 405 U.S. 319, 327 n. 7, 92 S. Ct. 1079
1084, 31 L. Ed. 2d 263 _____ 19, 23

CONT. NEXT PAGE - 6 - 8

STATUTES AND RULES

42 U.S.C. sect. 1983 _____ 11, 24, 26

28 U.S.C. sect. 1915 (e)(2)(B); 1915 (A)(6); 1915 (g) _____ 11, 12,

57 OKL. ST. ANN. sect. 561.3 _____ 23

28 U.S.C.A. sect. 1254 _____ 9

FED. RULES CIVIL PROCEDURE. 56 _____ 18

OTHER

TABLE OF AUTHORITIES CITED

Dopp v. LARIMER, 731 F.App'x 748, 751 (10th Cir. 2018) ————— 19

Williams v. PARAMO, 775 F.3d 1182, 1188 (9th Cir. 2015) ————— 19

BANDS v. O'Guin, 144 F.3d 883, 885 (5th Cir. 1998) ————— 19

PETHUS v. MONGENTHAN, 554 F.3d 293, 298 (2d Cir. 2009) ————— 20

MARTIN v. SHELTON, 319 F.3d 1048, 1050 (8th Cir. 2003) ————— 20

Abdul-AKBAR v. MUKELVIE, 239 F.3d 307, 315 n.

1 (3d Cir. 2001) ————— 20

Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) — 22

Wulf v. City of Wichita, 883 F.2d 842, 864 (10th Cir. 1989) ————— 24

GREASON v. KEMP, 891 F.2d 829, 836 (11th Cir. 1990) ————— 24

Dopp v. RICHARDSON, 614 F.3d 1185, 1199 (10th Cir. 2010) ————— 24

Tillery v. OWENS, 719 F.Supp. 1256, 1308 (W.D.Pa. 1989) ————— 25

FERNANDEZ v. U.S., 941 F.2d 1488, 1493 (11th Cir. 1990) ————— 25

U.S. v. DeCologero, 821 F.2d 39, 43 (1st Cir. 1987) ————— 25

Howard v. City of Columbus, 239 Ga.App. 399, 405-06,
561 S.E.2d 5 (1999) ————— 25

TABLE OF AUTHORITIES CITED

BARRETT v. Coplan, 292 F. Supp. 2d 281, 285 (D.N.H. 2003) — 26

BROWN v. JOHNSON, 387 F.3d 1344, 1350 (11th Cir. 2004) — 27

HARRIS v. BEARD, 2007 WL 404042, 2 (M.D. Pa. Feb. 1, 2007) — 27

HAFFED v. BUREAU OF PRISONS, 635 F.3d 1172, 1179
(10th Cir. 2011) — 27

SHINE v. U.S. FED. BUREAU OF PRISON, 465 F.App'x 790,
793 (10th Cir. 2013) — 27

FULLER v. MYERS, 123, F.App'x 365, 366-68 (10th Cir. 2005) — 27

MR ALPHIN v. TONEY, 281 F.3d 709, 710-11 (8th Cir. 2003) — 27

HAINES v. KERNER, 404 U.S. 519, 92 S.Ct. 594 (1972) — 27

TABLE OF CONTENTS

OPINIONS BELOW	10
JURISDICTION.....	9
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	11
STATEMENT OF THE CASE	12-17
REASONS FOR GRANTING THE WRIT	18-27
CONCLUSION.....	28

INDEX TO APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

Appendix-G

Appendix-H

Appendix-I

Appendix-J

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 9 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 _____ 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 Oct. 27, 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: Nov. 21, 2023, and a copy of the order denying rehearing appears at Appendix 11.

☐ 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).

The judgment of the Court of Appeals for the Tenth Circuit was entered on Oct. 27, 2023, a timely petition for rehearing en banc was denied on Nov. 21, 2023. SEE: Appendix No. J

☐ 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

Const. LAW 8th AMENDMENT
Const. LAW 14th AMENDMENT
57 OKL. ST. ANN. SEC. 561.3
42 U.S.C. SEC. 1983
38 U.S.C. SEC. 1915(g)

STATEMENT OF THE CASE

- PETITIONER WAS INCARCERATED AT THE LAWTON CORRECTIONAL FACILITY, A PRIVATE PRISON OWNED AND OPERATED BY GEO GROUP CORRECTIONS, INC. (GEO GROUP, INC.) IN MAY 2016. PETITIONER FILED A COMPLAINT ASSERTING FOUR CLAIMS AGAINST 16 DEFENDANTS RELATED TO THE CONDUCT OF CERTAIN DEFENDANTS AT LAWTON CORRECTIONAL FACILITY (LCF), A PRIVATE PRISON UNDER CONTRACT WITH THE OKLAHOMA DEPARTMENT OF CORRECTIONS ("ODOC"). (DOC. 20; SEE ALSO: DOC. 101, AT 4)
- THE DISTRICT COURT *SUA SPONTE* PETITIONER HAD THREE STRIKES AND ORDER PETITIONER TO PAY THE FULL \$400.00 FILING FEE, AFTER DENYING PETITIONERS *IN FORMA PAUPERIS* (IFP).
ON FEBRUARY 10, 2017, PETITIONER FILED A MOTION TO REOPEN THE CASE AND TO PROCEED IFP.
- IN NOVEMBER 2016, PETITIONER ARGUED THAT HE COULD NOW MEET THE IMMINENT DANGER EXCEPTION, DUE TO DR. MUSALLAM WHO HAD REPLACED DR. GONZAGA, DIAGNOSED PETITIONER WITH "LUMBAR AND CERVICAL DEGENERATIVE DISK DISEASE WITH PROBABLE SPINAL STENOSIS AND RADICULOPATHY".
DR. MUSALLAM PRESCRIBED PETITIONER A MIND AND MOOD ALTERING DRUG CALLED "TRAZADON" WITHOUT TELLING PETITIONER THAT THE DRUG WAS A PSYCHOTROPIC MEDICATION.
- PETITIONER APPEALED FEBRUARY - MARCH 2017, AND THE TENTH CIRCUIT ISSUE AN ORDER *SUA SPONTE* NOTING PETITIONER HAS THREE STRIKES UNDER 28 U.S.C. § 1915(g), AND DIRECT PETITIONER TO SHOW CAUSE WHY THE APPEAL SHOULD NOT BE DISMISSED FOR FAILURE TO PAY THE ENTIRE FILING FEE.
ON MAY 23, 2017, THE TENTH CIRCUIT COURT OF APPEALS VACATED THE DISTRICT COURT'S ORDER DENYING IFP, AND

Cont. From: STATEMENT OF CASE

Remanding for further proceeding, with directions to the District Court, that the Court "may still dismiss Mr. Davis complaint through the screening process if it determines that his complaint is frivolous, malicious, fails to state a claim, or seeks monetary relief against an immune defendant. SEE: DAVIS v. GEO GROUP CORR. INC., 696 F. App'x 851, 856 (10th Cir., May 23, 2017)

- On Oct. 1, 2018, Defendant Christina Thomas, Dan Bonay Sheryl Denton, Dr. Musallam, Shadic Ansari, filed Motion(s) To Dismiss, SEE: Doc. Nos. At 102; 103; 104; 105; 106.
- On Oct. 8, 2018, Defendants Adams, Dawson, Durant, GEO Group Corr., Inc., (Amber Martini, V.P.), Hector Pias, Jr., filed Motion(s) To Dismiss. (Doc. No 107), Response due (11-20-18)
- On Oct. 10, 2018, Defendant Dr. Gonzaga filed Motion To Dismiss. (Doc. No. 110)
- On Oct. 17, 2018, Petitioner filed Reply Brief to Defendants Motions To Dismiss, in Motions Nos. 102, 103, 104, 105, 106.
- On Oct 24, 2018, Petitioner filed "Motion For Extension of Time", to respond to Defendant Dr. Gonzaga's Motion (Doc. No. 110). Extension granted until 11-20-18. SEE: Doc. Nos. At 126, 129 and 130.

Cont. Next Page

CONT. FROM: STATEMENT OF CASE

- On Sept. 17, 2018, PETITIONER WAS HOUSED AT THE DAVIS CORRECTIONAL FACILITY (DCF) OWNED BY PRIVATE PRISON CORE CIVIC, INC., (FORMERLY "CORRECTIONS COOPERATIONS OF AMERICA"), PETITION WAS TAKEN TO HOLDENVILLE GENERAL HOSPITAL WHERE MRI WAS DONE ON PETITIONERS CERVICAL AND LUMBAR SPINE.
ATTACHMENT AT APPENDIX A
- On Aug. 8, 2019, THE DISTRICT COURT GRANTED IN PART AND DENIED IN PART "MOTION TO DISMISS", REPORT AND RECOMMENDATION 8-19-19, (SEE: DOC. NO. 163)
- On Aug. 27, 2019, PETITIONER OBJECTION TO REPORT AND RECOMMENDATION, (SEE: DOC. NO. 164)
- On Sept. 9, 2019, DEFENDANTS Sheryl Denton, DR. MUSALLAM, DAN RENAY, CHRISTINA THOMAS, DR. GONZAGA, ADAMS, DAWSON DURANT, GEO GRP. CORRS., INC., (AMBER MARTIN, V.P.), HECTOR RIOS, JR. FILED "OBJECTIONS TO REPORT AND RECOMMENDATION" Doc Nos. 163; 165; 166; 167.
- On Sept. 25-20, PETITION WAS SENT TO OU-MEDICAL CENTER FOR MRI ON CERVICAL AND LUMBAR SPINE, SHOWING DEGENERATIVE DISC DISEASE, SEE: ATTACHMENT AT APPENDIX B
- On Oct. 14, 2020, DEFENDANTS ADAMS, DAWSON, DURANT, GEO GROUP CORR. INC., (AMBER MARTIN, V.P.), HECTOR RIOS, JR., FILED MOTION FOR SUMMARY JUDGMENT, SEE: DOC NOS. 246-250

CONT. NEXT PAGE

CONT FROM : STATEMENT OF CASE

- ON OCT. 15, 2020, DEFENDANT CHRISTINA THOMAS, Sheryl Denton, AND DAN RONAY filed "Motion for Summary Judgment." SEE: DOC. No. 237, 238 AND 239
- ON NOV. 30, 2021, PETITIONER WAS TAKEN TO THE COMANCHE COUNTY MEMORIAL HOSPITAL WHERE MRI WAS DONE ON MY CERVICAL AND LUMBAR SPINE SHOW DEGENERATIVE DISC DISEASE.
SEE: ATTACHMENTS AT No. C
- ON JUNE 1, 2022, PETITIONER TREATING PHYSICIAN AT OU-MEDICAL CENTER, DR. MICHAEL D. MARTIN, M.D. ENTER "CHART ENTRY".
SEE: ATTACHMENT AT No. D
- ON JUNE 27, 2022, PETITIONER WAS GIVEN MRI OF CERVICAL, THORACIC AND LUMBAR SPINE SHOWING DEGENERATIVE DISC DISEASE
SEE: ATTACHMENT AT No. E
- ON FEB. 2, 2023, PETITIONER WAS GIVEN MRI OF CERVICAL THORACIC AND LUMBAR SPINE SHOWING DEGENERATIVE DISC DISEASE AND THAT MY SPINAL STENOSIS HAS CAUSE SCOLIOSIS IN MY CERVICAL SPINE, WHERE NOW MY NECK/HEAD IS STARTING TO PROTRUDE FORWARD DUE TO THE CURVE OF MY SPINE HAS PROGRESSED TO SCOLIOSIS. SEE: ATTACHMENT AT No. F, 1 of 2.
- ON JAN. 12, 2023, THE DISTRICT COURT GRANTED DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT. SEE: (DOC. No. 330)

CONT. NEXT PAGE

CONT. FROM: STATEMENT OF CASE

- ON MARCH 1, 2023, PETITIONER FILED "OBJECTION TO REPORT AND RECOMMENDATION." (DOC. NO. 334)
- ON MARCH 16, 2023, THE DISTRICT COURT ADOPTED THE REPORT AND RECOMMENDATION. (DOC. NO. 336)
- ON MARCH 27, 2023, PETITIONER FILED "NOTICE OF INTENT TO APPEAL," (DOC. NO. 337)
- ON MARCH 29, 2023, THE TENTH CIRCUIT SUA SPONTE THE CASE AND FOUND THAT PETITIONER HAS FILED THREE OR MORE CIVIL ACTIONS OR APPEALS THAT WERE DISMISSED ON GROUNDS THAT IT WAS FRIVOLOUS, MALICIOUS, OR FAILED TO STATE A CLAIM ON WHICH RELIEF COULD BE GRANTED. THE COURT ORDER PETITIONER TO PAY APPELLATE FILING FEES OF \$505.00 TO THE DISTRICT COURT, OR (2) SHOW CAUSE IN WRITING WHY PETITIONER SHOULD NOT BE REQUIRED TO PREPAY THE ENTIRE FILING FEE AS REQUIRED BY 28 U.S.C. § 1915(g).
- ON APRIL 7, 2023, PETITIONER SENT "MOTION FOR A EXTENSION OF TIME" SEE: ATTACHMENT A
- ON JULY 13, 2023, PETITIONER FILED "APPELLANT'S REPLY BRIEF TO APPELLEES ANSWER BRIEF."
- ON OCT. 17, 2023, PETITIONER WAS TAKEN TO THE NORMAN REGIONAL HOSPITAL FOR MRI ONLY ON MY CERVICAL SPINE. SEE: ATTACHMENT A & G

CONT NEXT PAGE

Cont. From: STATEMENT OF CASE

- On Oct. 27, 2023, the Tenth Circuit filed "Order Denying Motion To Proceed On Appeal Without Prepayment of Costs or Fees". SEE: ATTACHMENT AT H.
- On Nov. 1, 2023, PETITIONER WAS TAKEN FOR A OFFICE VISIT AT OLI-MEDICAL CENTER, AND RECEIVED THE DOCTOR'S NOTES FROM JENNIFER RIOS, NP-NEUROSURGERY. SEE: ATTACHMENT AT I.
- On Dec. 19, 2023 when PETITIONER could not pay the full filing fee the Court dismissed the case for failure to prosecute. SEE: ATTACHMENT AT H.
- On Nov. 28, 2023, REHEARING WAS DENIED. SEE: ATTACHMENT AT J.

REASONS FOR GRANTING THE PETITION

1. PETITIONER BELIEVE THE DISTRICT COURT ERRED WHEN GRANTING SUMMARY JUDGMENT TO DEFENDANTS GEO GROUP CORRECTIONS INC., (AMBER MARTIN, V. P.) BY HOLDING PETITIONER TO A HIGHER PLEADING STANDARD WHEN PETITIONER PRESENTED THE COURT WITH DOCUMENTARY EVIDENCE OF MRI'S SHOWING THAT AT THE TIME THE COMPLAINT AROSE DEFENDANTS HAD REFUSED TO PROVIDE MEDICAL FOR MY SERIOUS MEDICAL NEEDS.

NO, MRI WERE DONE TO DETERMINE THE MEDICAL REASON(S) FOR PETITIONERS CERVICAL AND LUMBER PAIN. SEE: DAVIS V. GEO GROUP CORRECTIONS, INC., 696 F. App'x 851, 856 (10th Cir. 2017) (VACATED AND REMANDED).

THE ABOVE CASE IS THE SAME - AS DAVIS V. SHADID ANSARI, ET. AL., CIV-16-462-(PBW), IN WHICH PETITIONER SEEKS THIS HONORABLE COURT REVIEW AND JUDGMENT AS TO MATTERS OF LAW. PETITIONER, MET FEDERAL RULES OF CIVIL PROCEDURE, RULE 56 BY SHOWING THAT A FACTUAL DISPUTE EXIST. THE DEFENDANTS GEO GROUP CORR. INC., (AMBER MARTIN, V.P.), DAN RONAY, DR. SHADID ANSARI, CHRISTINA THOMAS, SHERYL DENTON AND SEVERAL OTHER DEFENDANTS THAT WAS ERRONEOUSLY DISMISSED DID NOT FOLLOW ODOC Policy OP-140121 "OUTSIDE HEALTH CARE MANAGEMENT", THAT MANDATE WHAT PROCEDURAL STEPS ARE REQUIRED FOR A REFERRAL FOR OUTSIDE SPECIALIST CARE IS REQUESTED.

THE DEFENDANTS DID NOT FOLLOW THE POLICY, BUT RATHER THE POLICIES OF GEO GROUP CORR, INC., MEDICAL COMPANY CORRECT CARE SOLUTION (CCS), DAN RONAY, DIRECTOR AND DR. SHADID ANSARI, CHIEF MEDICAL DOCTOR CCS WHO DEFERRED THE REFERRAL FOR MRI WITH NO MEDICAL REASON(S) BEING

(REASONS, NEXT PAGE)

Cont. from: REASONS FOR GRANTING THE PETITION

provide for his deferral. SEE: Complaint, Doc. No. 20
IN DAVIS v. GEO Group Corr., Inc., id, the Tenth
Circuit admitted it was a close call, taking PETITIONER
AVERMENT AS TRUE, that with NO MRI ON RECORD,
"which of his disks ARE deteriorating is UNCERTAIN, the
SEVERITY of his SPINAL STENOSIS is UNKNOWN, AND the
EXTENT of his RADICULOPATHY is UNCLEAR." 696 F. App'x 851,
856 (10th Cir. 2017). SEE ALSO: ANDERSON v. Liberty Lobby,
INC., 477 U.S. 242, 248, 106 S.Ct. 2505 (1986); ESTELLE v.
GAMBLE, 429 U.S. 97 (1976); LAUZ v. Beth, 405 U.S. 319, 327 n.
7, 92 S.Ct 1079, 1084, 31 L.Ed 2 263; 57 OKL. ST. ANN § 561.3
PETITIONER'S CASE WAS SUA SPONTE ON THE GROUNDS THAT I
HAVE THREE STRIKES, HOWEVER THE TENTH CIRCUIT ERRORED
by denying IN FORMA PAUPERIS (IFP), when PETITIONER
showed by MRI'S that I AM IN PAIN AND DETERIORATING AT
THE TIME OF APPEAL. SEE: Dopp v. LARIMER, 731 F. App'x 748,
751 (10th Cir. 2018); Williams v. PARAMO, 775 F.3d 1182, 1188 (9th Cir.
2015), BANDIS v. O'GUIN, 144 F.3d 883, 885 (5th Cir. 1998)
PETITIONER'S PRESENTED MEDICAL RECORDS OF MRI'S DONE
AT ANOTHER PRIVATE PRISON - DAVIS CORRECTIONAL FACILITY (D.C.F.)
OWNED BY CORE CIVIC, FORMERLY CORRECTIONS COOPERATIONS OF
AMERICA (CCA). SEE: ATTACHMENT A + App'd A, SEE ALSO:
MRI DONE 9-20-20 (OSP); AT OU-MEDICAL CENTER, App'd No. A;
MRI DONE 11-30-21 (GEO/CF), AT COMANCHE COUNTY MEMORIAL
App'd No. B; MRI DONE 6-27-2022 AT No. C; MRI DONE
2-1-23 AT No. D, DETERMINED TO HAVE Scoliosis 7-24-23
AT No. E 1 of 2.

CONT NEXT PAGE

CONT. FROM: "REASONS FOR GRANTING THE PETITION"

PETITIONER, CONTENDS THAT THE MRI'S SHOW A PROGRESSIVE DETERIORATION OF MY SPINAL CONDITION IS GETTING WORSE, CAUSING MY NECK TO PROTRUDE FORWARD, GRINDING BONE ON BONE, PAIN SHOOTING DOWN MY SPINE WHEN MY NECK POPS, ITS MORE DIFFICULT TO STAND AFTER BEING SITTING OR STANDING FOR LONG PERIODS, THERE'S A PAIN IN MY ARMS AND LEGS, I AM SUFFERING IN IMMINENT DANGER OF SERIOUS PHYSICAL INJURY AT THE TIME I FILED APPEAL. NOW, I'M SCHEDULED TO HAVE EPIDURAL STEROID INJECTIONS.

SEE: ATTACHMENT AT NO. F-10F2; SEE ALSO: PETLIS V. MONGENTHAN, 554 F.3d 293, 298 (2d Cir. 2009) (NEXUS TEST REQUIRES A STANDING INQUIRY); SEE ALSO: APPENDIX I,

2.) THE APPEALS COURT WAS PRESENTED WITH DOCUMENTARY EVIDENCE TO GRANT IFP; AND THE DISTRICT HAD THE MRIS OF 9-20-20 AT NO. A; 11-30-21 AT NO. B; AND 6-27-22 AT NO. E; BUT NOT MRI'S 2-1-23 AND DOCTOR'S REPORT AT NO. F & G RESPECTIVELY, OR THOSE OF APPENDIX "I".

THE RECORD(S) BEFORE THE DISTRICT COURT AND APPEALS COURT ESTABLISHES THAT THE IMMINENT-CHANGER EXCEPTION "FOCUSES ON THE RISK THAT THE CONDUCT COMPLAINED OF THREATENS CONTINUING FUTURE INJURY, NOT ON WHETHER THE INMATE DESERVES A REMEDY FOR PAST MISCONDUCT" QUOTING; MARTIN V. SHELTON, 319 F.3d 1048, 1050 (8th Cir. 2003); ABDUL-AKBAR V. MCKELVIE, 239 F.3d 307, 315 n. 1 (3d Cir. 2001).

PETITIONER, ASSERTS THAT UNDER 42 U.S.C. SEC. 1983 THE DEFENDANTS VIOLATED MY EIGHTH AMENDMENT AND SHOWED DELIBERATE INDIFFERENCE TO MY SERIOUS MEDICAL NEEDS AND CAUSE UNNECESSARY AND WANTON INFLICTION OF PAIN

Court From: REASONS FOR GRANTING THE PETITION

DUE TO UNNECESSARY DENIAL AND DELAY OF ADEQUATE MEDICAL CARE, CONTINUING TO-DATE I TAKE THE SAME MEDICATION. AS THE RECORD BEFORE THE COURT SHOWS THAT THE DEFENDANTS PROVIDED MEDICAL CARE FOR CERTAIN MEDICAL ISSUES, HOWEVER NO 'MEDICAL CARE WAS PROVIDED FOR PETITIONERS SERIOUS MEDICAL NEEDS, THAT WAS DIAGNOSED BY DR. MUSAHAM, GED GROUP CORRECTIONS, INC., MEDICAL DOCTOR - WITH "LUMBAR AND CERVICAL DEGENERATIVE DISK DISEASE WITH PROBABLE SPINAL STENOSIS AND RADICULOPATHY" (DOC. NO. 101, AT EX. 1 AT 15)

3) IN THE DISTRICT COURT "REPORT AND RECOMMENDATION," THE COURT ADMITTED TO THE FACT THAT DEFENDANTS SUBMITTED A "SPECIAL REPORT" THAT WAS ALARMINGLY INCOMPLETE WITH REGARDS TO PETITIONER GRIEVANCE RELATING TO "CLAIM ONE," INCLUDING BUT NOT LIMITED TO THOSE LISTED HERE AND INCLUDING AT LEAST ONE EXHAUSTED GRIEVANCE." SEE: DOC. NO. 330, FOOTNOTE AT 7; 164 SEE ALSO: ATTACHMENT NO. K; OBJECTION Sp. REPORT DOC. NO. 164.

THE DISTRICT COURT APPLIED THE INCORRECT LAW TO PETITIONERS COMPLAINT, PETITIONER WAS ~~NEVER~~ MERELY DISAGREEING WITH THE COURSE OF EFFECTIVE TREATMENT, RATHER THE MEDICATIONS GABAPENTIN/NEUROFIN 800 MG, BACLOFEN AND IBUPROFEN IS NOT WORKING TO MANAGE THE PAIN, AND PETITIONER IS THE ONLY ONE THAT CAN CONVEY TO THE TREATING PHYSICIAN THAT THE MEDICATIONS DOES NOT WORK; AND PETITIONER HAS SUFFERED LIVER DAMAGE FROM TAKING THE ABOVE MENTIONED MEDICATION(S) AND THOSE LISTED IN "SPECIAL REPORT". SEE: DOC. NO. 101; AND ATTACHMENT NO. E & I CYSTIC LESION WITHIN RIGHT LIVER.

CONT. NEXT PAGE

CONT. FROM: "REASONS FOR GRANTING THE PETITION"

4.) PETITIONER'S CASE HAS BEEN PENDING IN THE DISTRICT COURT FOR OVER SEVEN (7) YEARS AND THE DEFENDANTS HAVE FILED "MOTIONS TO DISMISS". SEE: DOC. NOS. 102, 103, 104, 105, 106, 107, 110; SEE ALSO: PETITIONER'S RESPONSE TO MOTIONS TO DISMISS DOC. NO. 115; 131

5.) THE DISTRICT COURT DISMISSED DR. SHADID ANSARI, DIRECT CORRECT CARE SOLUTION, (DOC. NO. 163) AND (DOC. NO. 186).

THE ERRONEOUS DISMISSAL OF DR. ANSARI WHOM DEFERRED PETITIONER'S REQUEST TO HAVE MRI DONE WITHOUT GIVEN ANY MEDICAL REASONS; NO REASON(S) WERE EVER GIVEN AS TO WHY DEFENDANT CHRISTINA THOMAS, HSA/LCF DID NOT FOLLOW ODOC POLICY OP-140121 WHICH MANDATES THAT ADDITIONAL STEP WERE TO BE TAKEN TO ENSURE THAT MEDICAL SERVICE BY A OUTSIDE SPECIALIST ISN'T BEING DENIED TO INMATES WITH SERIOUS MEDICAL NEEDS. THIS POLICY WAS NOT INCLUDED WITH SPECIAL REPORT, PETITIONER OBJECTED. DOC. NO. 101; 114.

PETITIONER RECEIVED THE FIRST MRI AFTER I WAS TRANSFERRED FROM THE LAWTON CORRECTIONAL FACILITY, OWNED BY GEO GROUP CORRECTIONS INC., AND SENT TO THE DAVIS CORRECTIONAL FACILITY JUNE 1, 2017 AFTER THE TENTH CIRCUIT RENDERED THEIR DECISION IN DAVIS V. GEO GRP., SUPRA

THE PETITIONER STATE A CLAIM FOR RELIEF ON ITS FACE, AS THE RULING OF SEVERAL COURTS STATED: ARE GROUNDS FOR RELIEF UNDER 42 U.S.C. SEC. 1983. SEE: ASHKROFT V. IGBAL, 556 U.S. 662, 678, 129 S. CT. 1737, 173 L. ED. 2D 868 (2009);

CONT FROM: "REASONS FOR GRANTING THE PETITION"

ESTELLE V. GAMBLE, 429 U.S. 97 (1976); CAUZY V. BETH, 405 U.S. 319, 327 n. 7 92 S.Ct. 1079, 1084, 31 L.Ed. 2d 263.

6.) THE DEFENDANTS GED GROUP CORRECTIONS, INC., (AMBER MARTIN, V.P.); DAN RONAY, DIRECTOR CCS; DR. SHADID ANSARI, M.D CCS; HECTOR RIOS, JR., WARDEN GED/LCF HAD ESTABLISHED A MEDICAL COMPANY CORRECT CARE SOLUTION TO PROVIDE MEDICAL CARE TO ODOC - OKLAHOMA DEPT. OF CORRECTIONS INMATES PURSUANT TO 57 OKLA. STAT. ANN. SEC. 561.3, AND IN ACCORDANCE WITH THE SERVICE CONTRACTUAL AGREEMENT BETWEEN THE STATE AND GED GROUP CORRECTIONS, INC., WERE MANDATE TO FOLLOW ODOC POLICIES WHEN SEEKING OUTSIDE SPECIALIST CARE. WHEN PETITIONER FILED PROPERLY SUBMITTED GRIEVANCE DEFENDANT CHRISTINA RESPONDED TO BOTH INMATE REQUEST TO STAFF AND GRIEVANCE, DENYING THE GRIEVANCE FOR REASONS NOT FOUND IN THE GRIEVANCE PROCEDURES, PETITIONER APPEAL TO ODOC CHIEF MEDICAL OFFICER DEFENDANT BUDDY HONAKER WHOM DENIED PETITIONERS REQUEST FOR MRI, CIRCUMVENTED THE GRIEVANCE PROCESS BY CREATING UNFOUND PROCEDURES THAT WERE THE RESPONSIBILITY OF THE REVIEW AUTHORITY. DEFENDANT BUDDY HONAKER APPLY ODOC'S "ONE ISSUE OR INCIDENT PER GRIEVANCE" TO THE "ACTION REQUESTED" NOT THE "SUBJECT" WERE THE ONE ISSUE APPLY. SEE: Doc. No. 114, 163

7.) THE DISTRICT COURT FURTHER ERRED IN GRANTING SUMMARY JUDGMENT TO THE DEFENDANT DAN RONAY STATING THAT PETITIONER DID NOT PRODUCE THE LETTER SENT TO DAN RONAY ON 4-17-16. SEE: Doc. No. 251 AT Exh. 10.

CONT. NEXT PAGE

Cont From: "REASON FOR GRANTING THE PETITION"

THE DISTRICT COURT IN REPORT AND RECOMMENDATION stated that PETITIONER had PRESENTED NO EVIDENCE of an affirmative link between DEFENDANTS CONSTITUTIONAL violation, when the DEFENDANTS GEO GAP. CORR., INC., (AMBER MARTIN, V.P.); DAN RONAY; DR. SHADID ANSARI; CHRISTINA THOMAS; HECTOR RIOS, JR.; SHERYL DENTON, did "(1) set in motion a series of acts by others, or knowingly refusing to terminate a series of acts by others, which they knew or reasonably should have known would cause others to inflict constitutional injury; (2) for culpable action or inaction in training, supervision, or control of subordinates; (3) for acquiescence in the constitutional deprivation by subordinates; or (4) for conduct that shows a "reckless or callous indifference to the rights of others". Id.; SEE ALSO: Wulf v. City of Wichita, 883 F.2d 842, 864 (10th Cir. 1989); GREASON v. KEMP, 871 F.2d 829, 836 (11th Cir. 1990)

8.) PETITIONER did show that under the supervisor liability to succeed in a SECTION 1983 suit... DEFENDANTS GEO GAP. CORR., INC., (AMBER MARTIN, V.P.); DAN RONAY; DR. SHADID ANSARI; CHRISTINA THOMAS; SHERYL DENTON; HECTOR RIOS, JR., did "promulgate, create, implemented or possessed responsibility for the continued operation of a policy that caused the complained of constitutional harm and acted with the state of mind required to establish the alleged constitutional deprivation," quoting Dodds v. Richardson, 614 F.3d 1185, 1199 (10th Cir. 2010)

CONT. NEXT PAGE

CONT. FROM: "REASON FOR GRANTING THE PETITION"

9) THE APPEALS COURT AND DISTRICT COURT HAD THE RECORD OF PETITIONER'S MEDICAL HISTORY, YET FOCUSED ON THE TREATMENT PROVIDED IN LESS SERIOUS MEDICAL ISSUES, BUT NOT PETITIONER'S SERIOUS MEDICAL NEEDS. THE RECORD BEFORE THE COURTS SUPPORT THAT I AM IN IMMINENT DANGER OF SERIOUS PHYSICAL INJURY.

THE DELIBERATE INDIFFERENCE SHOWN BY DEFENDANTS NAMED HEREIN FAILED TO INQUIRE INTO ESSENTIAL FACTS IN ORDER TO MAKE A PROFESSIONAL JUDGMENT BY NOT PROVIDING MRI. SEE: TILLERY V. OWENS, 719 F. Supp. 1256, 1308 (W.D. PA. 1989); id ESTELLE V. OWENS, SUPRA.

PETITIONER HAS BEEN SUFFERING IN PAIN DUE TO THE LACK OF ADEQUATE MEDICAL CARE; COURTS HAVE DEFINED "ADEQUATE" MEDICAL SERVICES AS "SERVICES AT A LEVEL REASONABLY COMMENSURATE WITH MODERN MEDICAL SCIENCE AND OF A QUALITY ACCEPTABLE WITHIN PRUDENT PROFESSIONAL STANDARDS" AND AS "A LEVEL OF HEALTH SERVICES REASONABLY DESIGNED TO MEET ROUTINE AND EMERGENCY MEDICAL, DENTAL AND PSYCHOLOGICAL OR PSYCHIATRIC CARE." QUOTING, SEE: FERNANDEZ V. U.S., 941 F.2d 1488, 1493 (11th Cir. 1990); ACCORD, U.S. V. DECOLOGERO, 821 F.2d 39, 43 (1st Cir. 1987); TILLERY V. OWENS, 719 F. Supp. 1256, 1305 (W.D. PA. 1989), AFF'D 907 F.2d 418 (3rd Cir. 1990); HOWARD V. CITY OF COLUMBUS, 239 GA. App. 399, 405-06, 561 S.E. 2d 51 (1999); SEE ALSO: BARRETT V. CAPLAN, 292 F. Supp. 2d 281, 285 (D.N.H. 2003) ("ADEQUATE MEDICAL CARE" REQUIRES TREATMENT BY QUALIFIED MEDICAL PERSONNEL WHO PROVIDE SERVICES THAT ARE OF A QUALITY ACCEPTABLE WHEN MEASURED BY

CONT. NEXT PAGE

Cont. from: "Reason for Granting The Petition"

prudent professional standards in the community, tailored to an inmate's particular needs, and that are based on medical considerations.") (citing DeCologero).

10.) The Defendants denial of adequate medical care cause delay in receiving treatment by a qualified physician - Neurologist that could make a professional judgment.

The Appeals Court granted in forma pauperis in Davis v. GEO Grp. Corrs., Inc., and at the time Petitioner appealed did show through the preponderance of the evidence did establish a prima facie case, that the acts or omission by Defendants constituted deliberate indifference to Petitioner's future well being. The evidence is such that should have precluded granting summary judgment to the Defendants and the Appeals Court denial of In forma pauperis on the merits of the case did not apply the correct law. id

Petitioner showed material facts (MIRIS) that might affect the outcome of the suit under the governing law (§1983); a genuine issue exist "if evidence is such that a reasonable jury could return a verdict for the nonmoving party. see: Anderson v. Liberty Lobby, Inc., 477 U.S. at 248. Fed. R. Civil P., Rule 56.

Petitioner asserts that at the time of appeal evidence was presented that Petitioner alleged the worsening of my spinal degenerative disease

CONT NEXT PAGE

CONT. FROM: "REASON FOR GRANTING THE PETITION"

AS SUFFICIENTLY DANGER OF SERIOUS PHYSICAL INJURY. SEE: BROWN V. JOHNSON, 387 F.3d 1344, 1350 (11th Cir. 2004); HARRIS V. BEARD, 2007 WL 404042, 2 (E.D. PA Feb. 1, 2007); HAFFED V. BUREAU OF PRISONS, 635 F.3d 1172, 1179 (10th Cir. 2011); STINE V. U.S. FED. BUREAU OF PRISONS, 465 F.App'x 790, 793 (10th Cir. 2012); FULLER V. MYERS, 123, F.App'x 365, 366-68 (10th Cir. 2005); MAGALIN V. TONEY, 281 F.3d 709, 710-11 (8th Cir. 2003).

THE PETITIONER WAS HELD TO A HIGHER PLEADING STANDARD, PETITIONER HAS BEEN SUFFERING IN PAIN FOR OVER SEVEN (7) YEARS DUE TO RECEIVING THE SAME MEDICATIONS THAT ARE CAUSING ME FUTURE HARM OF LIVER DAMAGE, THE CURVING OF MY SPINE FROM SCOLIOSIS, SEE: APPENDIX AT NO. E; NO. 3; HAINES V. KERNER, 404 U.S. 519, 92 S.Ct. 594 (1972)

CONCLUSION

FOR THE REASONS IN THE RECORD SHOWING EVIDENCE THAT PETITIONER MEETS THE REQUIREMENT OF 28 U.S.C. 1915(g) THAT AT THE TIME OF APPEAL WAS IN IMMEDIATE DANGER OF SERIOUS PHYSICAL INJURY. THE PETITIONER STATED A CLAIM FOR RELIEF THAT DEFENDANTS NAMED IN THIS MATTER DID SHOW DELIBERATE INDIFFERENCE TO MY SERIOUS MEDICAL NEEDS BY FAILING TO PROPERLY OBTAIN A PROFESSIONAL JUDGMENT FROM AND BY A QUALIFIED PHYSICIAN THAT SPECIALIZE IN MY PARTICULAR MEDICAL NEEDS.

THE petition state valid REASONS for this Courts
REVIEW, CERTIORARI should be GRANTED

Respectfully submitted

Ezekiel Davis
FEB 7, 2024 3-5-24

DATE

DECLARATION

I, EZEKIEL DAVIS, BEING OF LEGAL AGE AND OF SOUND MIND MAKE this declaration.

- 1.) I AM THE INDIGENT PRO SE PRISON PETITIONER THAT HAS petition this Court FOR CERTIORARI.
- 2.) PETITIONER HAS SET FORTH SPECIFIC FACTUAL ALLEGATION OF BEING IN IMMINENT DANGER OF SERIOUS PHYSICAL INJURY IN ACCORDANCE WITH 28 U.S.C. SEC. 1915(g).
- 3.) PETITIONER HAS STATED A CLAIM FOR RELIEF AS A MATTER OF LAW, IN THAT EVIDENCE WAS PRESENTED IN MRI'S THAT SHOWED I HAVE A SERIOUS MEDICAL INJURY AND DELAY AND DENIAL BY DEFENDANTS STATE A CLAIM FOR RELIEF.
- 4.) THE NAMED DEFENDANTS DID SHOW DELIBERATE INDIFFERENCE WHEN DENYING MRI AND DENYING ME AN OPPORTUNITY TO RECEIVING MEDICAL CARE BY A QUALIFIED PHYSICIAN THAT SPECIALIZES IN MY PARTICULAR MEDICAL NEED.
- 5.) PETITIONER HAS BEEN SUFFERING IN PAIN FOR OVER (7) YEARS DUE TO THE DELAY AND DENIAL OF MEDICAL CARE CAUSE BY DEFENDANTS INDIFFERENCE.

PURSUANT TO 28 U.S.C. 1796. I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

CONT. 2 PAGE

Ezekiel Davis / 3-5-24
SIGNATURE / DATE

DECLARATION

CONT PAGE (1)

6.) PETITIONER'S SPINAL CONDITION HAS GOTTEN WORSE AND I HAVE BEEN DIAGNOSE WITH "SPINAL STENOSIS WITH NEUROPATHY" AND "SCOLIOSIS"; FROM TAKING CERTAIN MEDICATIONS FOR SO LONG (Ibuprofen) I NOW HAVE A CYST ON THE RIGHT LOBE OF MY LIVER; I NEED A SURGERY TO REMOVE CERVICAL DISC 2-3, 3-4. SEE: APPENDIX A-I.

7.) PETITIONER PRESENTED THE APPEALS COURT WITH THE EVIDENCE THAT HE HAD AT THE TIME, MRI EVIDENCE SHOWS THAT AS THE TENTH CIRCUIT RULED IN DAVIS V. GEO GROUPS CORP., INC., 696 F. APP'X 851, 856 (10th CIR. 2017), THE DEFENDANTS DID SHOW DELIBERATE INDIFFERENCE IN VIOLATION OF MY EIGHTH AMENDMENT WHEN NO MRI'S WERE DONE TO DETERMINE WHICH DISC ARE DEGENERATING, THE EXTENT OF MY SPINAL STENOSIS OR THE RADICULOPATHY IS UNKNOWN.

PURSUANT TO 28 U.S.C. SEC. 1746. I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

E. Paul Davis / 3-5-24
SIGNATURE / DATE