

24-5247
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
AUG 06 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Eric Cruz — PETITIONER
(Your Name)

vs.

Officer Domingo Cervantes RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Eric Cruz # 02059509
(Your Name)

815 12th St.
(Address)

Huntsville, Texas 77348
(City, State, Zip Code)

936-437-1390
(Phone Number)

QUESTION(S) PRESENTED

(I)

Did the U S District courts, failure to allow relevant evidence into trial proceeding violate, Brady Rule of Evidence under Brady v Maryland 373 U.S. 83 (see page four)
Due Process USCA 14th Amend. Also Right to have compulsory process

(II)

Did the District Courts abuse it's discretion by submitting to the jury the question of objecttional reasonableness of Certanez behavior. mistakenly, injected an "objectively unreasonable" element, into clearly established law prong of qualified immunity analysis? USCA 9th Amend. & 14th Amend.

(III)

Did Certanez action, violate Cruz's right to be free from harm held, under the Eight Amendment of the United States Constitution. Did the action or the failure to act properly by Certanez violate Texas Safe Prison Act?

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

Eric Cruz V. Domingo Cervantez — 5:16-cv-004-C 1/5/2016
United States District Court of Texas
Northern District of Texas
Lubbock Division

Eric Cruz V. Domingo Cervantez — 18-10255 9/9/2019
United States Court of Appeals
Fifth Circuit

Eric Cruz V. Domingo Cervantez — 5:16-cv-004-BQ 3/30/2020
United States District Court of Texas —
Northern District of Texas
Lubbock Division

Eric Cruz V. Domingo Cervantez — 5:16-cv-004-C 9/28/2021
United States District Court of Texas
Northern District of Texas
Lubbock Division

Eric Cruz V. Domingo Cervantez — 22-10483 3/20/2024
United States Court of Appeals
Fifth Circuit

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I do not have the actual Disc. Inmate not allowed. exhibit B

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 _____ 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 9-9-2019.

☐ 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: 4-23-24, and a copy of the order denying rehearing appears at Appendix A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including September 20, 2024 (date) on May 14, 2024 (date) in Application No. 23 A 1005.

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).

STATEMENT OF THE CASE

On the date of June 13, 2015 while I was in pre-trial dention at the Lubbock County, Texas Dention Center, during the day time hours, I was attacked by my cell-mate. There was a lot of comotion out-side the cell door because other inmates had gathered around to see the attack. At some point after the attack, the jailer who was employed by Lubbock County, Dention Center was concerned enough, to come to the cell and investigate what was happening. At that time I ask to be moved to another cell because of the attack, the officer jailer knowing what had happen did not move me, but ordered, that I stay in that cell. I was attacked a second time by the same inmate, who not only beat me but also had a home made knife which he cut me several times and stabled me in the head. At some point I was taken to the medical department at the center and my wounds were treated with super glue and Tylenol, I was at no time sent to receive proper treatment for my injuries. After inquiries there wa a judgment, defendat's offer in the amount of \$25.000, but the state had also attached leins to the defendant offer of judgment. My attorney and I refused the initial offer, and then an amount was set by me and my attorney in the amount of \$50.000 for each attack and \$50.000 in punitive damages. The trial court found that the officer Certanez, was deliberate indifferent to the health and sefety of me (Cruz). The County did an investigation of the matter and it was decided by the investigation the Certanez, had violated several of Lubbock County Dention Center employee code of conduct and policy, rule. A disciplinary was conducted and it was decided that, the officers action or the failure to at as required constituted, "unsatisfactory performance", dereliction of duty. He was in capacity of his duties and was acting under color of law, nevertheless, the court also said the Certanez was entitled to qualified immunity.

IN THE SUPREME COURT OF THE UNITED STATES

ERIC CRUZ,petitioner
TDCJ-ID No.02059509

PETITIONER'S PRO SE
PLEADING FOR CERTIORARI

HISTORY:

Petitioner,Cruz,was assaulted twice on June 13,2015 while in pre-trial dention at Lubbock County,Texas.The complaint filed under 42 U.S.C. 1983 as a deprivation of rights guaranteed under the Eight Amendment to the United States Constitution.During the day-time hours of June 13,2015,petitioner was attacked by another inmate, Spencer Terry,who was his cell-mate.At some point,the jailer,employed by Lubbock County Dention Center was concerned enough,about the safety of the petitioner to investigate the fight,petitioner ask to be moved to another cell.The jailer,officer Cervantez,did nothing to protect petitioner,but ordered that he remain,in the cell with Terry.leaving Cruz with no choice,but to remain in the scene of the assault and his attacker.Then,a second assault happen,petitioner was not only again beaten and assaulted but was also stabbed in the head with a shank,a knife possessed by Terry.Cervantez was in the area the entire time,he had been made aware of the fisrt attack but did nothing to prevent the second assault,which esclated to a stabbing.Afterwards petitioner was only then taken to the medical unit of the Lubbock County Dention Center.His stabb wounds were treated with super glue and Tylenol. Petitioner,Cruz,was never sent to a medical facility for proper

treatment options and proper equipment. No injections or medication, was issued to prevent any infections. Several inmates who had not been identified, witnessed the assault(s) and no action was ever taken by Cervantez to remedy the situation prior to it's escalation, nor to stop the second attack and stabbing. Depriving Cruz of his Eight Amendment Right, to be free from cruel and unusual, punishment. Petitioner, injuries included a deep penetrating stab wound to his head, number lacerations to his body, severe swelling, to his face and torso. Certanez's, duty of maintaining order, and ensuring the safety of the inmates within his certain area of control, that duty was breached. He knew of the danger to petitioner, health and safety, and he should have taken proper action, and procedure to prevent future risk to either person, to mitigate the risk or injury, but failed to do so. Then, following an investigation by administration at Lubbock County Sheriff Office and disciplinary notice on the date of 6/27/2015. Domingo Certanez was suspended without pay, he resigned a few days later., (se) Exhibit, (A). There was a judgement offered which included, a sum total of \$25,000 under civil action no. 5:16-cv-004-c. Petitioner, through his attorney did not accept, but filed an amended, and supplemental complaint, seeking \$ 50,000 for each act of assault, perpetrated against Cruz while he was incarcerated and deprived of protection by the defendant. Petitioner, through his attorney, also sought \$50,000 in punitive damages because Certanez had failed to protect him. Placing him in danger, aware of the risk nevertheless, ordered him to remain in the cell with someone who had already attacked him. Certanez, had and displayed deliberate indifference to the assaults and to the health and safety of Cruz.

The United States District Court, Northern District of Texas, Lubbock Division, later granted summary judgment in favor of defendant, Certanez, (see) Cruz v. Certanez N. 5:16-CV-0004 2018(N.D.Tex.Jan.30,2018). The Fifth Circuit Reversed and Remanded This case came before Circuit Judges; Stewart, Dennis, Wilson. Cory T. Wilson, Circuit judges. The appeal in the 5th. Cir. No. 22-10483, concerned an evidentiary ruling during trial and it's effects on the jury's verdict for officer Domingo Certanez concerning the deliberate indifference claims raised against him by "Eric Cruz," pursuant 42 USC 1983. At trial, the jury agreed that Certanez violated Cruz's constitutional right by showing deliberate indifference, but also decided that Certanez was nonetheless entitled to qualified immunity. Certanez, in his defense said that the first assault took place at 10 :00 am, Cruz, testifies that it had taken place at or about noon. This would support Cruz's requesting to be moved before the either assault had taken place. (see) 5th. Cir. 22-10483, (1), under, Relevant Facts To The Case. Cruz's time is confirmed, by video footage and a investigation report by Sergeant Brenda Hassell, indicating that the first assault occurred just after, noon. Also, Certanez, failed to report the assault to his supervisor. Later Hassler noticed large amounts of blood in Cruz's and Terry's cell. The Lubbock County Sheriff's Office initiated an investigation and disciplinary notice, concluding that Certanez's conduct constituted both "unsatisfactory performance" violating 100.37 of the LCSO'S General Orders and "dereliction of duty" in violation of 100.21 of the LCSO Policies and Procedures. [Breach of Duty and deliberate indifference] (see Exhibit A)

Cruz's attorney sought to enter the disciplinary notice, supporting, Certanez violations. Nevertheless, in spite of truth, facts and evidence the court dismissed Cruz claim. Despite the fact that an unreasonable summary judgement had been offered and refused. The 5th Cir. stated on page 10 @ II, "The Cruz of the appeal was whether, the district court erred in excluding evidence of the investigation, of Certanez's disciplinary and whether by failing to do so substantially affected Cruz's right. Does this error constitute Brady violation?

On page one, the trial jury ruled that Certanez did violate Cruz's Constitutional Right by showing deliberate indifference. The 5th. Circuit, does not argue this factual USCA, violation. The violation is affirmed. James L. Dennis, Circuit Judge, 5th. Cir. Ct. appeals as writing. "The Panel Should Reverse and Remand" to the district court with instructions to enter judgment in favor of Cruz and commence proceeding to calculate Cruz's damages.

(I)

Did the district courts failure to allow relevant evidence into trial proceeding violate Brady Rule of Evidence, Brady v Maryland 373 U.S. 83.

Relevant and materiality evidence must be relevant to be admissible, relevant evidence is defined as "evidence having any tendency, to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Circumstantial and or relevant, evidence is sufficient at prison misconduct hearing to support guilty finding. Rule of Evidence Rule 404 Rule of minimum, fairness. U.S. Higgs 713 F.2d 39, 42 (3rd. Cir 1991). In the United

States v. Vella 562 F.2d, the 3rd. Circuit held that ~~th~~rough interview, notes of [law enforcement officers] should be kept and produced, so that the trial court can determine whether the notes should be made available to the defendant under Brady. Had the evidence, been presented, any reasonable ^{Jury} would not have ruled, qualified immunity in favor of Certanez.

(II)

Did the district abuse its discretion by submitting to the jury the question of objectionable reasonableness of Certanez behavior, mistakenly injected an "objectively unreasonable" element into clearly established law prong of the qualified immunity analysis. In Parker v Blime 73 F.4th 400, state official was properly denied qualified immunity in inmates 1983 civil rights action, because it violated plaintiff due process right which was clearly established. Then in Baker v. Corburn 68 F.4th 240. Denying summary judgment, is appropriate when factual issues exist about whether an officer's action or failure to act was justified or unreasonably created by failing to properly act. Gaston v Ward 2022 U.S. Dist. Lexis 145804. Consistent with the usual practices of this court and 28 USC 636(b)(1), this matter was referred to the undersigned for a preliminary report and recommendation. For the reasons stated, below, the undersigned recommends that the court deny defendant [officer Ward] summary judgment motion, because there are triable issues of fact for a jury. Then in the Case of Cruz, Circuit Judge Dennis, stated that "though Cruz failed to raise the issue before the district court, the panel should nevertheless consider the "purely, legal matter" of the proper qualified immunity standard since, failure to do so would "result in a miscarriage of justice, (citing) Rollins v Home Depot USA, Inc 8Fth 393-397-98 (5th Cir 2021

Ebsinger v. Liberty Mut. Fire Inc Co., 534 F.3d 450, 455 (5th Cir 2008). And because Cruz, had in fact met the burden of rebutting Cervantez, assertion of qualified immunity. Certanez, similar to Ward who confessed to his violations. Certanez was found guilty by both the jury and the Sheriff's department's investigation. Marcum v. Moles 2022 U.S. dist. Lexis 125675. Also in the case of, McCarley v. Dunn, 2024 U.S. Dist. Lexis 40537., McCarley was stabbed by another inmate at St. Clair, where he attended substance abuse treatment. McCarley had sought to be moved and had reported threats of violence. he had plausibly plead his negligence claim and the defendants, were not entitled to state-agent immunity. Lemley v. Wilson, 78 so.3d 834, 841; Farmer 511 U.S. @833 Conclusion, defendants are not entitled to immunity.

Cruz presented his claim to the Court pro se, and ask that it be heard under liberal construction, asking the Supreme Court to exercise, jurisdiction and power and to apply proper application of governing Supreme Court Statute and Law in this matter before the Court. (citing) Johnson v Quaterman 479 F.3d 358, 359 (5th Cir. 2007); Kamen v Kemper Fin. Servs., Inc 500 U.S. 90, 99 (1991). Cruz has met that which is required to overcome the Supreme Court's, two-prong test for qualified immunity: (1) he has shown that Certanez "violated, a Statutory or Constitutional Right"; deliberate indifference 14th. and 8th. USCA. and (2) that the right was clearly established at the time of the challenged conduct., Ashcroft v Al-Kidd 563 U S 731, 735.

III

Did Certanez action, violate Cruz's right to be procted from harm held under the Eight Amendment of the United States Constitution. Did the action or the failure to act properly by Certanez violate, Texas Safe Prison Act?

The Eight Amendment of the United States Constitution guarantees, that no prisoner shall be subjected to cruel and unusal punishment, to include civilized standards, humanity and decency. The Eight Amendment requires ~~that~~ a jail offical must not be deliberate indifferent to a prisoners need for protection against, physical assault. A jail official or prison official acts under color of law; acting in ones capcity as a state official. In the case of Cruz, here before the Court, it goes undisputed that Certanez was at the time, under the employment of the government. And that the reckless behavior, callous neglect and, thoughtless, disregard show flagrant failure to protect. At trial the jury agreed, finding Certanez guilty of violating, Cruz's 8th. Amendment by showing deliberate indifference, knowingly, failing to, protect Cruz from being assaulted, twice, and the second assault, exclated to a stabbing and serious brusing to Cruz head and body. (see), .Domino v. Tex. Dep't. of Crim. Just. 239 F.3d 752 (5th.Cir.2001)

THE QUALIFIED IMMUNITY STANDARD

A qualified immunity defense "serves to protect a government official, from civil liability for damages based upon questionable violations of performance, duty, and functions within the capacity of job duties and responsibilities. Being mindful, that the official, has undergone special training, is mindful, of governmental rules and laws. And has been made aware of the failure to follow in each of these rules, policy and laws, would question the integrity, of profession, and that such failures would greatly affect the substantial rights of others or cause injury. In the case of *Cope v. Cogdill*, 142 S. Ct. 2573 (June 30, 2022). Supreme Court. Brixey and Cogdill were not entitled to qualified immunity because, their actions, decisions, violated departmental training. It also broke with the Texas Commission on Jail Standards of guidance. Certanez, breached his constitutional duty, violating Cruz's rights because Certanez had gained actual knowledge of the substantial, risk to Cruz's health and safety, (see) *Hare* 74 F.3d 648. Now regarding the second prong of the qualified-immunity analysis is, for a right to be "clearly established" it must be sufficiently, clear that every reasonable official would have understood that what he is doing violates the right. *Est. of Bonilla v. Orange, Cnty.* 982 F.3d 298, 306 (5th Cir. 2020) (quoting, *Ashcroft v. Al-Kidd*, 563 U.S. 731, 741 131 S.Ct. 2074 (2011). Additionally, the investigation, conducted by Certanez's supervisors found that he had engaged in "unsatisfactory performance" in violation of 100.37 of the Lubbock County Sheriffs General Orders, and to have engaged in "dereliction of duty-failure to observe and follow the policies

and procedures of the Sheriff's Office assigned division will not be tolerated, in violation of 100.21. Sergeant Brenda Hassell who was Certanez supervisor, clearly stated on the record, first, that there was too much blood in the cell for a fight to have just happened, Id @ page 8, appeal to Fifth Circuit. Also see page 4., wherein she also testified that reasonable officer would say "I need to check on the commotion". Certanez, failed to report any incident to her and that if he had done so she would have written it in her report. But he did not act as a reasonable officer.

Wherefore, facts and premises considered, and Cruz has met the two prong analysis, USSC. This Court should accept as true, the well-pleaded claim and draw reasonable inference in plaintiff's favor.

Respectfully..

Sign: Euphrasie
Date: July 28, 2024

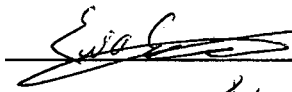
REASONS FOR GRANTING THE PETITION

Petition should be granted in my favor because first my Civil Right was violated, my Right to be free from cruel and unusual punishment held un the 8th. Amendent USCA. Because officer Certane ez, acted with deliberated indifference to my health and safety. Because within the capacity of his job duties and training, which was in a daily course of duty and having undergone special training, being mindful of the rules and policies and well aware of the failure to follow those rules and policies with integrity and professionalism. And the failure to do so would greatly affect the substantial rights of others or cause injury.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: July 28, 2024
~~July 12, 2024~~