

24-5566

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

FILED

SEP 14 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Curtis Hunter, Petitioner,

✓

Riverbend Correctional Facility, et al., Respondents

On Petition for a writ of Certiorari to the United States
Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

Curtis Hunter
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RECEIVED

SEP 17 2024

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SUPREME COURT, U.S.

Questions Presented

Where defendant only administer tests, x-Ray, MRI, which revealed the only solution is a Total Knee Replacement, and fail to Perform the Surgery, then released Petitioner in need of a TKR, who continue suffering, whether Failure to Perform the Procedure Violates the Eighth Amendment.

Whether the Court Reporter "minute sheet" (DOC 75) Rescheduling or modifying the schedule extension from its Previous deadline of July 13, 2021 to October 3, 2021 Violates Rule 16 (b)(4) and L.R. 7.1 (b) renders Defendants October 1st, 2021 Request for extension and Summary Judgement Motion Null & Void.

Whether Petitioner Slip and Fall and shattered his Tibia Plateau on Condensation dripping on Floor from Skyliner Pose to a level of Unsafe Living environment with Defendants Personal Observation of Warden Inspection 5 Times a week; Unit Manager inspection and moving inmates from bunk 35 that drops Condensation on and Officer Carnt 7 times daily Satisfies the Objective Component and Subjective Component.

LIST OF ALL PARTIES

The Petitioner is Curtis Hunter Pro Se
The Respondents are Riverbend Correctional Facility et, al.,
Freeman Mathis and Gary LLP.
Bentin Sumrall and Ladner, LLC, Attorney for Dr. Niesarth

STATEMENT OF RELATED CASES

The Proceedings identified below are directly related to the
above-captioned case in this Court

Hunter v. Riverbend Correctional Facility, et, al., 5:19-cv-00491-MTT

Hunter v. Lieutenant Morris, et, al., 5:19-cv-00491-MTT Date
Filed 12/11/2019, Date Judgment 4/08/2022

Notice of Appeal entered on 5/04/2022

U.S.C.A. Case Number 22-11599-AA 11 Circuit Court of Appeals entered
on 5/11/2022

Motion For Leave to Appeal in Forma Pauperis entered 6/3/2022

Order Doc 103 denying Motion To Leave to Appeal in Forma Pauperis

Eleventh Circuit Court of Appeals Cases:

20-10260-CC

20-13432-DD

21-10260-GG

22-11599-AA Curtis Hunter v. Riverbend Correctional Facility, et,

LIEUTENANT MORRIS, individual and official capacity

TAMMY BAILEY,

THE GEO GROUP.

Date entered: June 18, 2024 [DO NOT PUBLISH]

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NO _____

IN THE SUPREME COURT OF THE UNITED STATES

Curtis Hunter, PETITIONER,

V.

Riverbend Correctional Facility, RESPONDENTS.

On Petition For a Writ of Certiorari to the United States
Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Curtis Hunter, a former inmate incarcerated at Riverbend Correctional Facility in Milledgeville Ga, Pro Se Respectfully Petitions this Court for a writ of Certiorari to review the Judgment of the Eleventh Circuit Court of Appeals.

OPINION BELOW

The decision by the Eleventh Circuit Court of Appeals, denying Petitioner direct Appeal is Reported as Curtis Hunter v. Riverbend Correctional Facility, et al., 22-11599-AA NOW Argument Calender, [DO NOT Publish]. The Eleventh Circuit Court of Appeals denied Petitioner's Petition for rehearing, en banc on June 18, 2024, June 24, 2024,

JURISDICTION

Petitioner Petition for Rehearing, Rehearing en banc to the Eleventh Circuit Court of Appeals was denied on June 18, 2024. June 24, 2024, Petitioner invokes this Court Jurisdiction under 28 U.S.C. § 1254 (1) having timely Filed this Petition for a writ of Certiorari within 90 days of the Eleventh Circuit Court of Appeals Judgement.

CONSTITUTION AND STATORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION AMENDMENT VIII

Excessive bail shall not be required, nor excessive Fines imposed nor Cruel and unusual Punishment inflicted.

Federal Rules of Civil Procedure Involved

The Fed. R. Civ. P. were first adopted by the Supreme Court in 1937 and became effective in 1938. The Federal Rules of Civil Procedure (FRCP) govern civil proceedings in U.S. District Courts, with the goal of ensuring that every action is determined fairly, quickly, and inexpensively. Civil Procedure refers to the rules and parties that governs courts, lawyers and litigants in the resolution of disputes. Civil Procedure is the body of law that regulates the process that courts must follow when hearing cases of a civil nature, and to provide the ability for courts to give rights to private parties to seek remedies for disputes in the area of civil law.

F.R.C.P. Rule 16 (b) (4)

Resetting the Schedule

A court may modify a scheduling order at any time for good cause is shown to modify a scheduling order. A party must:

- Establish good cause for the proposed modification,
- Explain how the modification will affect any deadlines,
- If modifying discovery deadlines, describe what has been completed, why not all discovery has been completed, how long it will take to finish.

LR 16.3

Modification of a Scheduling Order

(a) A motion under Fed. R. Civ. P. 16 (b) (4) modification of scheduling order, even a stipulated or untested motion - must be made in accordance with L.R. 7.1 (b)

- (b) (A) Party that moves to modify a scheduling order must:
- (1). Establish good cause for the proposed modification; and

(2) explain the proposed modifications' effect on the deadline

(c) IF a Party moves to modify a scheduling order's discovery, the Party must also:

- (1) describe what discovery remains to be completed.
- (2) describe the discovery that has been completed.
- (3) explain why not all discovery has been completed.
- (4) state how long it will take to complete discovery.

(d) Except in ordinary circumstances, before the passing of a deadline that a Party moves to modify, the Party must obtain a hearing date on the Party's motion to modify a scheduling order, the hearing may take place after the deadline.

F.R.C.P Rule 6 (b)(B)

(b) Computing and extending time; time for a motion papers

(b) Extending time

(1). In General when an act may or must be done within a specified time, the Court may for good cause, extend the time

(B). On motion made after the time has expired if the Party fails to act because of excusable neglect.

In testing whether the neglect was excusable the Court look Consider:

- (1). The Prejudice to the opponent;
- (2). The length of the delay and its potential impact on the course of the judicial proceedings;
- (3). The Cause of the delay and whether those causes were within the reasonable control of the moving Party;
- (4). The moving Party good Faith;
- (5). Whether the omission reflected professional incompetence, such as ignorance of the Procedural rules;
- (6). Whether the omission reflected an easily manufactured excuse that the Court could not verify;
- (7). Whether the moving Party had failed to provide for a consequence.

that was readily foreseeable; and

(8). whether the omission constituted a complete lack of diligence.

Statement of the Case

This Petition arises from the effort by Petitioner not receiving adequate medical treatment arising from a slip and fall on Condensation that drips from the skyliner on the Floor during cold weather in I building B dorm. Since 2011 with defendant's knowledge, that shattered Petitioner Tibia Plateau with a 7mm step off, and diagnosed in need of a total knee replacement. Petitioner was dismissed by Dr. Niesarth without performing the procedure, and later released from custody in need of a TKR, and have been denied a full appeal as stated in the U.S. Constitution; Fed. R. Civ. P.; FRD.

On December 11, 2017 while Petitioner was at Pill Cell the bloods (gangs) and muslims were in a physical altercation when the muslims prevented a blood from assaulting a officer in IA bldg, after returning from Pill Cell, in IB dorm a verbal altercation rescalated between bloods and muslims, Petitioner attempted to stop the altercation, the bloods started attacking the muslims with locks in socks, as Petitioner attempted to stop a blood from striking him with the lock in sock Petitioner slipped on the Condensation that drips on the Floor from the skyliner and shattered his Tibia Plateau with a 7mm step off

Defendants was clearly aware of the Condensation dripping on the Floor, due to their "Personal Observation" warden head inspection, unit Manager Hawkings inspection, making inmates from bunk 35 that Condensation leaks on, and officer Count Seven Times a day.

After a month in Segregation with no treatment, warden head instructed medical to treat me at medical, an appointment was made to Dr. Niegarth outside treating Physician who took XRay, and a MRI, revealing a shattered tibia Plateau Shatter with a 7mm step off, Dr. Niegarth informed that Petitioner Needs a total Knee Replacement to fix knee, he released Petitioner in need of a TKR with no medical reason, in pain and discomfort.

After Release from Custody in need of a total Knee Replacement Petitioner Filed a 1983 Civil Suit against Riverbend Correctional Facility, et al.,

Petitioner Filed a Motion For RFP on May 2020, defendants fail to Produce them; Petitioner requested a hearing through Court Reporter for hearing in March 69; upon entering clerk handed me a order Doc 74 granting defendants a fourteen day extension till July 13, 2021, Purpose of hearing to get defendants to Produce the documents, to no avail, Petitioner Filed a Motion to Complete discovery Doc 38 on August 4, 2020, denied on September 30, 2020; Motion to Compel discovery Sept. 2, 2020 Doc 48, denied Sept. 30, 2020 Doc 55;

motion For Sanction June 2, 2021 Doc 71, Denied August 24, 2021;
motion For Compel discovery Doc 80 August 31, 2021; Denied April 7, 2021

On June 30, 2021 at hearing in macon Ga. Plaintiff received
a order Doc 73 Granting defendants extention untill July 13, 21 to
File dispositive motion Purpose of the hearing Per se Plaintiff
due to defendants Failure to Produce documents/videos, defendants
state a 14 day extention was needed to File dispositive motion

July 3, 2021 Plaintiff received a mmute sheet Doc 75, resetting
the time to File dispositive motion till 10.3.21. 82 days
without defendants ever requesting extention by way of motion
to enlarge, extend modify the schedule, only motion Requested was
Doc 73 to File dispositive motion, no hearing Requested by
defendants Per se Docket sheet. see: Doc 73 defendants motion for
extention Dated June 25, 2021, Requesting (14) days, the Outstanding
issues herefes to is the Videos Plaintiff requested, they Fail to Produce
and the hearing on Such issues are the Videos defendants Fail to
Produce that the Plaintiff requested a hearing in macon Ga to
address said issues and defendants Further states that Plaintiff wont
will not be Persuaded by granting defendants request For Such a short
extention, and NO Further Request For extention are anticipated at this
time.

The Slip and Fall; Visit to Dr. Niegarth and The hearing

After returning from Pill Cell. the blacks (gang) and muslims were in a verbal altercation. about 15 minutes I attempted to stop it from escalating in I B dorm. the blacks started attacking muslims with Locks in Socks. while attempting to prevent being hit with a Lock. I slipped on Condensation on the floor that drips from the skyliner shattering his Tibia Plateau with 7mm step off. The defendants knew condensation drips due to warden need inspection; unit manager inspection; she moved inmates from bunk 35 condensation drips on. Officers counts 7 times daily, Condensation been dripping on floor since 2011.

Visit to Dr. Niegarth

Plaintiff visited Dr. Niegarth in January 2018. he took x-ray, gave a stabilizer brace for 1 month, in february he ordered a MRI. the results shows a shattered Tibia Plateau with a 7mm step off that requires a Total Knee Replacement, Dr. Niegarth informed plaintiff he's too young for the procedure but its needed to correct the injury, in March 2018 Dr. Niegarth released plaintiff without performing the procedure, while plaintiff was in pain and discomfort. No pain meds, the brace was taken back

Resetting, Modification OF The Schedule

A hearing was held in request by Plaintiff Per se Court order Doc 67 Prior to Filing motion to Compel on June 30, 21 upon entering the Court, Clerk handed me a Order Doc 82 granting defendants a 14 day extension to file Dispositive motion till July 13, 2021. Around April 3rd 2021 Plaintiff Received a docket sheet that modified the schedule to file dispositive motion to October 3, 2021. there were no motion from defendants to modify schedule, or order for hearing see; Docket sheet. on October 1st defendants Filed a motion For Extension 14 days Doc ~~81~~ 82 which was granted Doc 82 which is null and void because the Court extended modified the schedule extension from July 13, 21 till October 3, 2021 without motion from defendants to modify schedule, further no hearing held. or leave of Court.

REASONS FOR GRANTING THE WRIT

The Plaintiff Requested the documents and Videos on May 2020 they Fail to Produce, the Court Fail to Compel defendants to Produce the documents, Fail to Sanction defendants, denied Plaintiff right to Complete discovery, the defendants knew the Condensation dripps on the Floor due to their Personal observation: "warden inspection" unit manager inspection and moving inmates from bulk 35 due to Condensation dripping on it and officer Counting 7 times a day since 2011, and Fail to Fix the Problem which rose to a level of an unsafe Living environment Violating the Eighth Amendment. In Helling v McKinney 509 U.S. 25, 33, 113 S.Ct 2475 (1993) Prison officials must provide a reasonably safe Living and work environment for Prisoners: Danley v. Allen 540 F.3d 1298, 1315 (11 Cir 2009) challenging that defendants through reports and similar documents: Inmate Complaint; Jailers Complaint; Attorneys Complaint; Judicial officer Complaint and their Personal observation. see: Curry v. Kneak 163 F.Supp 2d 232, 237 (S.D.N.Y 2001) (the defendants said a Complaint about hazardous shower Condition should be dismissed because the complaint allege they were Negligent, the Court held that even though he used the word, the Fact is he allege the defendants Fail to make repairs over a 9 months despite being informed of the Condition supported

supported a claim of deliberate indifference. see: Ramos v. Lamm 639 F.3d 554, 568 (10 Cir 1980) (Prisoners are entitled to shelter which does not... threatens their physical and mental well being.

under the objective standard, the skyliner leaking on the floor during cold weather since 2011 rose to the level of a dangerous condition that affects safety of Plaintiff causing slippery areas on the floor where inmates can slip and hit their head on floor could lead to brain injury, broken bones, even death Farmer v. Brennan, 511 U.S. 825 (1994); the Plaintiff slipped and shattered his Tibia Plateau with a 7mm step off.

Under the Subjective standard the defendants knew the skyliner leaked condensation on the floor during cold weather, through their personal observation warden head inspection, unit manager Hawkins moving several inmates from bunk 35 that condensation leaks on it, also in inspection and officer counts 7 times daily, and fail to fix the problem that led to an unsafe living environment, even though defendants fail to produce the more slips from Hawkins moving inmates from bunk 35; the court fail to compel them to produce the documents they had personal observation of the danger of the condensation leaking on the floor, and fail to fix it.

VISIT TO DR. NIEGARTH

After visiting with Dr. Niegath, he only administered tests to me for a second opinion. Released plaintiff in need of a TKR. Knee replacement. Dr. Niegath fail to perform the procedure or refer a shattered Tibia Plateau with a 7mm step off. that needs a total me to use a stabilizer brace for a month. Once the MRI revealed determine the extent of the knee injury, X-Ray; MRI, he allowed

The Eight Amendment protects prisoner rights to medical care. the Constitution guarantees prisoners that right. This Court explained that this is because an inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met Estelle v. Gamble, 429 U.S. 97, 103 (1976); Shumie v. City of New York, 579 F.3d 176, 184 (2d Cir. 2009) (where plaintiff claim was not settled by his frequent seen doctors who administered

all sorts of policy of disregarding medical recommendation for treatment, tests) The district Court relied on Kochane v. FL Dept of Corr. 973 F.3d 1263, 1271, 1266 where inmate received medication of pills in

Liquid form to treat a medical condition, whereas plaintiff need of an orthopedic to treat broken bones in knee with a TKR or the injury will BNE has worsen a continued loss of mobility, hindered pressure, discomforts, lack of exercise loss of function, other knee is go out, sharp pain using it more. Dr. Niegath reason for not

performing the Procedure were⁵⁶ Plaintiff was too young⁵⁷ when the Plaintiff was 52 yrs, the medical association assessed candidacy for ETKR 50 yrs to 80 yrs even younger if it causes for the Procedure, Dr. Nicgarth fail to address the Problem Sutton v. Wright 265 F. Supp 2d 292, 300 (S.D. NY 2003) (even if a inmate receives extensive medical care, a claim is stated if the⁵⁸ gravamen of his Problem is not addressed⁵⁹; Lawrence v. Campert 243 F. Supp 2d 821, 843.

RESET, MODIFICATION OF THE SCHEDULE DEADLINE

The Plaintiff renewed his argument the defendants requested TWO extensions for 14 days first June 25, 2021 DEC 73 and the second October 1, 2021 DEC 81 Plaintiff never received copy of said motion. the Court grants the first Extension on June 29, 2021, day of the hearing, DEC 74 for 14 days till July 13, 2021.

the second request for extension was on October 1st 2021, 82 days after the deadline of July 13, 2021. However, on July 3, 2021 Plaintiff received a minute sheet from the clerk that reset the extension deadline from July 13, to October 3, 2021 in violation of L.R. 7.1 (b) and Rule 16 (b)(1)(4) 16 (3)(c)(b) no motion from defendants to modify the schedule set DEC 73. Plaintiff was never served with a copy of such motion.

to modify the Schedule. Furthermore the Court was in error to modify the Schedule if the defendant did not file a motion to modify, see: L.R. 7.1, L.R. 16.3 FRCP Rule 16(b)(4). Any motion made after July 13 deadline is subject to Rule 6(B) motion after the deadline, instead the Court applied Rule 6(b)(3) motion for good cause when defendants clearly knew they didn't file a motion to modify, nor served Plaintiff with said motion, therefore defendants motion for Extension Doc 81 is 92 days late is not excusable neglect which renders Null and Void.

After the July 13, 2021 deadline expired, defendants motion for Summary Judgment Doc 90 Filed on December 6, 2021 is Null and Void time to file dispositive motion July 13, 2021 Doc 74. Furthermore the defendants motion for extension Doc 81 Filed October 1, 2021 is Null and Void also.

CONCLUSION

The Petition for writ of Certiorari should be granted
Respectfully Submitted.

Christopher P. Se.

September 14th 2024