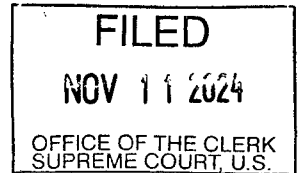


24-6017

ORIGINAL

IN THE SUPREME COURT OF
THE UNITED STATES OF AMERICA

Case No.: _____



HANOI HORMACHEA,
Petitioner,

Vs.

DR. HARIDAS BHADJA, M.D.,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT.

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case arises from a Civil Rights Complaint brought under 42 U.S.C. §1983 for the deliberate indifference by Respondent herein in violation of the 8th and 14th Amendments to the United States Constitution. This Petition presents the following questions for review:

WHETHER THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE ELEVENTH CIRCUIT ERRED BY DISMISSING THE APPEAL WHEN PETITIONER HAD IN FACT PROPERLY EXHAUSTED HIS ADMINISTRATIVE REMEDIES PURSUANT TO FLORIDA ADMINISTRATIVE CODE, CHAPTER 33-103?

WHETHER THE UNITED STATES DISTRICT COURT ERRED BY DISMISSING THE CIVIL RIGHTS COMPLAINT FOR FAILING TO PROPERLY EXHAUST HIS ADMINISTRATIVE REMEDIES WHEN PLAINTIFF HAS IN FACT PROPERLY EXHAUSTED HIS ADMINISTRATIVE REMEDIES PURSUANT TO FLORIDA DEPARTMENT OF CORRECTIONS POLICY?

**PARTIES TO THE PROCEEDING
AND BLUE 29.6 STATEMENT**

Petitioner, HANOI HORMACHEA was the Plaintiff-Appellant in the Court below.

Respondent Dr. Haridas Bhadja, M.D., was the Respondent-Appellee in the Court below,

The Petitioner is not a corporation, No party is parent or publicly held company owning 10% or more of any corporation stock.

LIST OF PARTIES

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

STATEMENT OF RELATED PROCEEDINGS

- Hormachea v. Bhadja, M.D., United States District Court for the Southern District of Florida, Case No.: 21-14227-CIV-Martinez
- Hormachea v. Bhadja, M.D., United States Court of Appeals, For the Eleventh Circuit, Case No.: 22-12635-A

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- Appendix B:* Denial of the appeal by the United States District Court of Appeal for the Eleventh Circuit.
- Appendix C:* Denial of a motion for rehearing by the Eleventh Circuit.

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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 judgments bellow.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit appears at Appendix B to the petition an is reported at Hormachea v. Secretary, Florida Department of Corrections, et al., 2024 U.S. App. Lexis 5835 (11th Cir. 2024).

The opinion of the United States District Court for the Southern District of Florida appears at Appendix A to the petition and is reported at Hormachea v. Bhadja, 2022 U.S. Dist. Lexis 127835 (S.D. FL. 07/19/22).

JURISDICTION

The date on which the United States Court of Appeals decided my case was March 12th, 2024.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 16th, 2024, and a copy of the order denying rehearing appears at Appendix C.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. 8th Amendment to the United States Constitution
2. 14th Amendment to the United States Constitution
3. 42 U.S.C. §1983
4. Florida Administrative Code, Chapter 33-103

STATEMENT OF THE CASE

On June 2nd, 2021, Petitioner filed a 42 U.S.C. §1983 Civil Rights Complaint against Mark S. Inch, former Secretary of the Florida Department of Corrections (FDOC); Centurion Health Services of Florida (Centurion); Dr. Haridas Bhadja, M.D. Chief Medical Officer at Okeechobee Correctional Institution; and William B. Betz, M.D., Radiologist at the Florida Department of Correction's Reception and Medical Center (R.M.C.) Lake Butler, Florida.

Petitioner alleged that Respondent(s) were deliberately indifferent to his serious medical needs by failing to properly treat his broken right shoulder while he was housed at Okeechobee Correctional Institution. On August 12th, 2021, the United States District Court dismissed the complaint without prejudice and allowed Petitioner to file an Amended complaint.

On October 8th, 2021, Petitioner filed an amended complaint. The amended complaint re-alleged the deliberate indifference claims against the same four defendant(s), adding four new defendant(s).

On May 10th, 2022, the District Court dismissed all but one of Petitioner's claims for failure to state a claim. The only claim that was allowed to proceed was Petitioner's deliberate indifference to his serious medical needs against Dr. Bhadja, M.D.

Petitioner alleges that on June 11th, 2019, while assigned to the kitchen at Okeechobee Correctional Institution, he slipped on a puddle of standing water in the dining room area.

The next day, Petitioner began suffering much pain and swelling in his right shoulder that he could not move. Petitioner declared an emergency medical request and was later seen by Respondent Bhadja. (Bhadja).

During this appointment, Bhadja told Petitioner: "You know our policy...if it's not bleeding, it is not classified as a medical emergency, and I am not going to put my job on the line for you!"

Bhadja nevertheless prescribed Petitioner thirty tablets of Ibuprofen and told Petitioner that his bruises were "ordinary bruises" and they would go away.

Dr. Bhadja then told Petitioner that if he wanted to get something for his injury, Dr. Bhadja would have to get authorization from her boss Centurion. Dr. Bhadja again stated: "I am not about to put my job on the line for you."

A few days later, on July 25th, 2019, Petitioner filed an information grievance he grieved the fall in the dining hall on July 11th, 2019 and was seen by a doctor on July 15th, 2019, who prescribed him thirty Ibuprofen for ninety days and scheduled Petitioner for an x-ray on July 17th, 2019.

Petitioner complained that he had not seen the doctor since then and that he was unable to move his right arm as a result of the pain. He also complained that

he had not yet received an ointment the doctor prescribed him on July 11th, 2019. His grievance was approved and responded to on July 29th, 2019.

The respondent stated that Petitioner had a “scheduled appointment with the provider in the near future” and that if he experienced future problems he may present his concerns to the health care staff through sick call.

Three months later, on October 10th, 2019, Dr. Bhadja had Petitioner transferred to R.M.C. in Lake Butler, Florida, “for some unexplained reason.” Petitioner learned upon arrival that he had been transferred to R.M.C. for treatment for his right shoulder injury.

After learning this, and because of the continued pain, Petitioner began filing medical grievances.

On the day he arrived at R.M.C., Petitioner was seen by Dr. Thomas Winters, orthopedic, who ordered x-rays and diagnosed Petitioner with a broken bone in his right shoulder. Dr. Winters prescribed an injection for the pain and scheduled another appointment within four weeks.

At R.M.C., Petitioner learned that the bone in his shoulder hitch had been broken from his slip and fell on the wet floor at Okeechobee Correctional Institution.

Petitioner’s fall had reinjured his right shoulder and caused the bone to re-grow improperly, which was likely the source of his pain. Petitioner advances that,

had Dr. Bhadja examined Petitioner's shoulder and previous medical records regarding his injury, the likely outcome would have been different.

Petitioner filed a formal grievance three months later on October 20th, 2019. In the formal grievance, Petitioner stated that Dr. Bhadja failed to provide proper treatment for his shoulder on July 15th, 2019.

He grieved that Dr. Bhadja's determination that there was nothing wrong with his right shoulder constituted as deliberate indifference to his serious medical condition. The formal grievance was denied on November 4th, 2019, with no mention of non-compliance with the grievance procedures.

Petitioner appealed the decision to the office of the Secretary of the Florida Department of Corrections. The appeal was returned without action on December 13th, 2019, for non-compliance with the grievance procedures.

On June 6th, 2022, Respondent filed a motion to dismiss. Respondent alleged two points. First, plaintiff failed to properly exhaust his administrative remedies. Second, Plaintiff failed to State an 8th Amendment Claim.

On June 30th, 2022, Petitioner filed his response to Respondent's motion to dismiss. On July 19th, 2022, the District Court dismissed Petitioner's amended complaint as failing to exhaust administrative remedies.

On August 3rd, 2022, Petitioner filed a notice of appeal. On September 26th, 2022, Petitioner filed his initial brief. Petitioner alleged that contrary to the opinion

of Respondent and the District Court, Petitioner indeed properly exhausted his administrative remedies.

On August 28th, 2023, Respondent(s) filed their answer brief. The alleged again that Petitioner had failed to exhaust his administrative remedies.

On March 12th, 2024, the Eleventh Circuit affirmed the appeal in favor of the Respondent(s). Petitioner's motion for rehearing was denied on August 16th, 2024.

This Petition timely follows:

REASONS FOR GRANTING THE WRIT

UNITED STATES DISTRICT COURT

The District Court erred by dismissing Petitioner's 42 U.S.C. §1983 Civil Rights Complaint for failing to properly exhaust his administrative remedies.

The Eleventh Circuit has explicitly held that exhaustion of all administrative remedies is required even if exhaustion would be futile. See, Garcia v. Glover, 197 F.App'x 866, 868 (11th Cir. 2006) (Citing, Alexander v. Hawk, 159 F.3d 1321, 1323-24 (11th Cir. 1998).

Petitioner will show this Court that Petitioner indeed properly exhausted his administrative remedies in accordance with Florida Administrative Code, Chapter 33-103.

On July 25th, 2019, Petitioner filed an information grievance concerning a slip and fall in the dining hall at Okeechobee Correctional Institution. The informal

grievance was approved on July 29th, 2019. The District Court recognized this in the order dismissing the complaint.

Once an informal or formal grievance has been approved there are no other remedies available. The approval is the equivalent to admittance to the merits of the grievance. At this point, the approval of Petitioner's informal grievance exhausted the administrative remedies.

The Eleventh Circuit recognized in *Parzyck v. Prison Health Services, Inc.*, 627 F.3d 1215, 1218 (11th Cir. 2010): "In November, 2006, *Parzyck* filed an informal grievance complaining that he had been waiting three months for a promised orthopedic consultation for his continued and severe back pain and asking to be seen by an orthopedist immediately. The grievance was returned with instructions to file a formal grievance, as an informal grievance was unnecessary for medical complaints."

In the instant case, instead of returning the informal grievance for this reason, the Respondent approved the informal grievance that constituted the exhaustion of this administrative remedy.

When petitioner had not received the treatment as set forth in the approved grievance, due to Petitioner's continued experiencing extreme pain, on October 20th, 2019, at R.M.C., Petitioner filed a grievance of medical nature.

Petitioner alleged the same facts as the informal grievance and further alleged that the delay or denial of proper treatment constitutes deliberate indifference.

Petitioner also alleged in the medical grievance that Dr. Bhadja and Centurion Health Services of Florida were denying Petitioner proper treatment in the name of cost.

The district Court recognized in the medical grievance: “The formal grievance was denied on November 4th, 2019, without mention of non-compliance with the grievance procedure.” Therefore, the medical grievance was accepted as timely and “properly filed.”

In his response, Dr. R. Bassa, M.D., C.C.H.P of R.M.C. stated: “You have been evaluated by a specialist and treatment place has been determined,” then denied the grievance.

By the nature of his response, Dr. Bassa, should have approved the medical grievance due to the admittance of treatment being scheduled. However, as with ALL FDOC STAFF, including Centurion employees, will deny ALL Grievances rather than approve them where appropriate. As the District Court recognized, the grievance was not denied as non-compliance with the grievance procedure.

The informal and medical grievances were within the time frames of Florida Administrative Code, Chapter 33 -103.011, therefore “properly” exhausted.

Due to Dr. Winter's determination that Petitioner suffered a broken bone, contrary to Dr. Bhadja's determination that nothing was wrong with Petitioner's right shoulder, Petitioner filed his appeal to Office of the Secretary of the Florida Department of Corrections.

The District Court recognized in its order of dismissal: "A formal grievance must be received no later than 15 days from: 1. [t]he date on which the informal grievance was responded to; or 2. [t]he date on which the incident or action occurred if an informal grievance was not filed pursuant to the circumstances specified in Florida Administration Code, Chapter 33-103.006(3) and Florida Administrative Code, Chapter 33 -103.011(1)(b) "

The medical grievance was filed within fifteen (15) days of Dr. Winter's determination that Petitioner's shoulder had broken bone contrary to Dr. Bhadja's assessment. Therefore, the medical grievance was timely filed due to the action being grieved occurring by Dr. Winter's determination.

The appeal was filed within the fifteen days of the denial of the medical grievance to the Secretaries Office of the Department of Corrections. The informal grievance being approved and the medical grievance held that treatment had been scheduled causing the refiling the grievance again futile. Petitioner filed his appeal within the time frame as prescribed by Florida Administrative Code, Chapter 33-103.011(1)(b).

However, as standard operating procedure of the Florida Department of Corrections the grievance was returned due to the medical grievance being past fifteen days of Dr. Bhadja's wrongful determination rather than the action being grieved by Dr. Winter's determination. The Secretary returned Petitioner's grievance as being in non-compliance with the grievance procedure.

The Secretary failed to recognize the facts of Petitioner's grievances being filed within fifteen days of Dr. Winter's determination that Petitioner indeed suffered a broken shoulder bone contrary to Dr. Bhadja's assessment that nothing was wrong with Petitioner's shoulder.

The Secretary, as a standard operating procedure, relied on the time frame of the approved informal grievance rather than the action occurring from Dr. Winter's determination to return the appeal as non-compliance with the grievance procedure.

Therefore, Petitioner complied with the time frames as prescribed by Florida Administrative Code, Chapter 33 -103.011, properly exhausting his administrative remedies. Wherefore, the District Court erred by dismissing Petitioner's 42 U.S.C. §1983 Civil Rights Complaint as failing to properly exhaust his administrative remedies.

ELEVENTH CIRCUIT COURT OF APPEALS

The Eleventh Circuit Court of Appeals erred by dismissing the appeal for failing to properly exhaust administrative remedies.

The eleventh Circuit held in Hormachea v. Secretary, Florida Department of Corrections, et al., 2024 U.S. App. LEXIS 5835, at 5 (11th Cir. March 12, 2024): “Hormachea received a response to his informal grievance July 29th, 2019 and under Florida’s Inmate grievance Procedure, he was required to file his formal grievance no later than 15 days after receiving that response. See, Florida Administrative Code, Chapter 33-103.011(1)(b). However, Hormachea did not file his formal grievance until October 21st, 2019, over two months after the administrative deadline expired. Because Hormachea’s formal grievance was untimely filed, he failed to comply with procedural rules of the inmate grievance procedure as required to exhaust administrative remedies.”

In the instant case, the Eleventh Circuit recognized that the informal grievance was filed concerning Petitioner’s medical condition. However, the Court overlooked the fact the informal grievance was approved.

The Court overlooked Florida Administrative Code, Chapter 33-103.016 titled “Follow Through on Approved Grievances.” In accord with the grievance procedures, there are No further administrative remedies for approved grievances. In fact Petitioner attached this provision as an appendix to the appeal.

The Court further held in Hormachea v. Secretary, Florida Department of Corrections, et al., id. at footnote 9: “[d]eciding a motion to dismiss for failure to exhaust administrative remedies is a two-step process.” Turner v. Burnside, 541 F.3d 1077, 1082 (11th Cir. 2008). “[F]irst, we take the Plaintiff’s factual allegations as true and determined if they entitled the defendant to dismissal for failure to exhaust administrative remedies. Id. Second, if dismissal is not warranted at the first step, the court should make specific findings to resolve disputes of fact and should dismiss if, based on those findings, the defendant has shown a failure to exhaust.”

Here, the Court failed to take Petitioner’s factual allegations along with appendices as being true. The Court overlooked the fact that the informal grievance had been approved, therefore, ending the exhaustion process in this area.

As the Court recognized in Parzyck v. Prison Health Services, Inc., id., an information grievance was unnecessary for a medical grievance. Therefore, the approval of the informal grievance was unnecessary to be attached to the medical grievance and did not trigger the fifteen days to file the medical grievance.

Florida Administrative Code, Chapter 33-103.006(3) provides in pertinent part: “the following types of grievances may be filed directly with the reviewing authority as defined in subsection 33-103.002(15) F.A.C., by passing the informal grievance step,...(e) Medical Grievance.”

In accord with the foregoing provision, an informal grievance is unnecessary for medical grievances. Therefore, the time line for filing the medical grievance was not from the response to the informal grievance.

The Court misconstrued the provision of Florida Administrative Code, Chapter 33-103.011(1)(b) action occurring. The Court is only recognizing when the incident occurred.

Florida Administrative Code, Chapter 33-103.011(1)(b) provides: “A formal grievance must be received no later than fifteen days from: 2. The date on which the incident or action occurred if an informal grievance was not filed pursuant to the circumstances specified in subsection 33-103.006(3).” [Emphasis added].

In Hormachea v. Secretary, Florida Department of Corrections, et al., id., the Court held: “Hormachea received a response to his informal grievance on July 29th, 2019, and under Florida’s inmate grievance procedure, he was required to file his formal grievance no later than fifteen days after receiving that response. See, Florida Administrative Code, Chapter 33-103.011(1)(b). However, Hormachea did not file his formal grievance until October 21st, 2019, over two months after the administrative deadline expired.”

If the Court had complied with its own precedent and reviewed Petitioner’s factual allegations as true, review of those factual allegations along with

appendices show Petitioner had timely and properly exhausted his administrative remedies.

The action occurring in this case was that Dr. Bhadja misdiagnosed Petitioner's medical condition in such a way to save herself from being terminated from her job.

Dr. Bhadja continued to tell Petitioner that nothing was wrong with his right shoulder. However, when Petitioner was examined by Dr. Winter's orthopedic, Petitioner was informed that he indeed have a broken bone in his right shoulder and surgery was required to repair his right shoulder.

On October 20th, 2019, Petitioner filed a medical grievance when he had been diagnosed by Dr, Winters with a broken bone in his right shoulder after Dr, Bhadja determined that nothing was wrong with petitioner's right shoulder.

Contrary to the Secretary's response to the grievance appeal, the district court and Eleventh Circuit's decisions, Petitioner fully complied with Florida Administrative Code, Chapter 33-103.011(1)(b), in that the medical grievance was filed within fifteen days from the action of Dr. Winters diagnosed Petitioner's shoulder injury contrary to Dr. Bhadja's diagnosis.

Therefore, Petitioner did in fact "timely" and "Properly" file his medical grievance in accord with Florida Administrative Code, Chapter 33-103.011.


Wherefore, the Eleventh Circuit erred by dismissing the appeal as failure to exhaust administrative remedies.

CONCLUSION

WHEREFORE, based on the argument and authorities, the writ should issue.

I hereby declare under penalty of perjury that I have read the foregoing Petition for Writ of Certiorari and the Facts and matters are true and correct.

Executed this 12 day of November, 2024.

/s/ 
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