

No. 24-6054

ORIGINAL

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
Supreme Court of the United States

Joshua M. Stockton - PETITIONER

vs.

Dexter Payne, et al., - Respondent(s)

On petition for writ of certiorari to

United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Joshua M. Stockton

Wrightsville Mens Unit, P.O. Box 1500

Wrightsville, Arkansas 72183

(i)

Questions Presented

• Petitioner raises the question of the P.L.R.A Exhaustion Requirements in the Claims Exhaustion of 'Available' Administration, argued by material facts in dispute by Petitioner in District Court. The Question of the Availability of inmates grievance procedure against A.D.C Employees in this claim as Problem Solving Staff, on notice of a policy interfering with the Medical-Providers treatment Continuance, does this notice satisfy the 'Unavailable' criteria of this Courts decisions in Ross, 136 S.Ct. 1850?

• Petitioners Second Question is in this claim Is about, If the District Court relied on clearly erroneous facts that Petitioner did on multiple notices to the District Court and Appellate Level of the Eighth Circuit, and petitioners' wellpleaded material facts in dispute were not taken into account, even though they were timely upon Summary Judgment done, doesn't that require under Rule 56, A Reversal of the Lower Courts Judgements and Affirmations?

• Question three of petitioner, If the district Courts magistrate on his own, on the Record sets An Initial Scheduling order, ordering motions on the issue of exhaustion due by 9-28-2023 (Doc. 22), and the defendants failed to timely file their motions on the issue of exhaustion, and the magistrate in (Doc. 62) Confirms defendants 'PAST for the defense to raise the issue of exhaustion, no motion to dismiss has been filed and the deadline has long passed.' yet, the magistrate in final Summary Judgment allows defendants to raise exhaustion (Doc. 81, 82, 83), That Contradicts past exhaustion determination of (Doc. 22) of the defense not meeting their deadline to Any motion for dismissal on the issues of exhaustion. And the magistrate dismisses the case on Exhaustion reliance (material facts only relied on by Defense). Does this not, due to the time not being properly met make Defendants Exhaustion Summary Judgment NOT Able to be presented on a final Summary Judgment?

LIST OF PARTIES

[X] 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 Judgement is subject of this petition is as follows:

- Dexter Payne, Director, ADC;
- Aundrea Culclager, Deputy Director, Central office;
- Marshall Dale Reed, Chief Deputy Director, central office, ADC;
- Ramona Huff, Health Administrator, Wellpath, LLC (Pine Bluff);
- Ronald Stuskey, Doctor, Wellpath, LLC (Pine Bluff);
- Kennie Bolden, Deputy Warden, ADC Compliance Division;
- Louis Skinner, Captain, ADC Compliance Division

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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 Judgement below.

OPINIONS BELOW

The opinions of the United States Court of appeals appears at Appendix A to the petition and is reported at 'Page 2 of 2 of APPENDIX A at Judgement, Dated August 26, 2024

The opinions of the United States Court of Appeals appears at Appendix B to the Petition of Rehearing, Dated October 02, 2024

The opinion of the highest State Court to review the merits appear at Appendix C to the petition and is reported at 'order' of Document # 110-6 Filed 5/29/2024 of Case no. 4:23-cv-00477-BRW.

The opinion of the highest State Court to review the merits appear at Appendix D to the petition and is reported at 'order' of Document # 104-6 filed 5/13/2024 of Case no. 4:23-cv-00477-BRW.

JURISDICTION

The date on which the United States Court of Appeals decided my case was on August 26, 2024 in Appendix A.

A Timely Petition for rehearing was denied by the United States Court of Appeals on the following date: October, 02, 2024, and a copy of the order denying rehearing appears in Appendix B.

A Timely motion to stay the mandate, filed by Appellant on date: 10/21/2024 by USC A 8 [5448378] [24-2209] was denied as moot on October 22, 2024, in APPENDIX E.

The Jurisdiction of this Court is invoked under 28 USC § 1254 (1).

Constitutional and Statutory Provisions involved

U.S. Const. Amd VIII (1791) (United States Constitution (2017 ed.))

Excessive bail shall not be required, nor excessive fines -
imposed, nor cruel and unusual punishments inflicted.

U.S. Const. Amd. XIV Sec. 1 (United States Constitution (2017 ed.))

Section 1. All persons born or naturalized in the United States and -
subject to the jurisdiction thereof, are citizens of the United States
and of the State wherein they reside. No State shall make or
enforce any law which shall abridge the privileges or immunities of
Citizens of the United States; nor shall any State deprive any person
of Life, Liberty, or property, without due process of Law; nor deny
to any person within its jurisdiction the equal protection of the
Laws.

In State Code of Arkansas §12-27-103 (I.) Establishment - Powers and duties (B)(1), The Department of Corrections (Arkansas Division of Corrections) shall have exclusive Jurisdiction over the Care, charge, Control, Management, administration, and supervision of all persons and offenders Committed to, or in the custody of, The State penitentiary; (B)(6) The Department of Corrections shall secure such officers and quarters as are deemed necessary to discharge the functions of the department of Corrections. (B)(7) The Department of Corrections shall receive all offenders Committed to the department of Corrections for Conviction of felonies or other offences the Punishment of which is Commitment to the penitentiary under the Laws of this State, and shall be responsible for the Care, custody, and correction of such persons pursuant to the policies established by the Board of Corrections.

Authority - The Board of Correction and Community Punishment is Vested with the Authority to promulgate this Administrative Rule by ARK. Code Ann. §§ 12-27-105, §§ 16-93-1203, and §§ 16-93-1205 (Michie. Supp. 1995).

(II) Applicability - This Policy applies to Employees and offenders of the Department of Correction (D.O.C.) and the Department of Community Punishment (DCP) staff, inmates and residents of Community Punishment centers.

(III) Policy - It is the Policy of the Board of Corrections and Community Punishment that offenders are provided an opportunity to submit grievances regarding policy, conditions, incidents, or Actions related to incarceration/Confinement which directly impact them.

(IV) Guidelines - A.) Administrative Directives establishing Procedures will be set forth by Each Agency. B.) Procedures shall, at Minimum - Provide for the following: Timely, Effective and impartial processing of grievances; An Appeals Process; appropriate documentation of grievance activity; and Speedy disposition of Emergency situations, with Security-

and Safety the paramount concern.

C.) Use of the Grievance procedure shall occur without restraint, -
Coercion, discrimination, interference or reprisal. Violation of
of this guideline shall result in prompt and decisive action.

Current with Amendments received through November 15, 2022. -
ARK. Code 004.03.1 - 835.

(V) standards: American Correctional Association - Standard for Adult-
Community Residential Services, 3rd edition, Standard 3-ACRS-3D-
07 and Standards for Adult Correctional Institutions, 3rd Edition, Standard -
3-4211.

In, ARK. Code 12-27-103 Division of Correction - creation powers
and duties (Arkansas 2022) (b)(3) states, "The Department of
Correction, as the Division of Correction was known as prior
to July 1, 2019, assumed all obligations, contracts, indebtedness,
liabilities, and other obligations, of the State penitentiary system
existing on March 1, 1968."

"(b)(17) The Division of Correction shall assist the Board of -
Corrections in the furtherance of its goals by staffing the specific -
charges articulated for it through legislation and by the Board -
of Corrections; and

"(b)(18) The department of Corrections shall establish programs of -
research, evaluation, statistics, audit, and planning, including studies
and evaluation of the performance of various functions and activities
of the department and studies affecting the treatment of offenders
and information about other programs."

AR ADC 004.00.2-841

Inmate Property Control (Doc. 25 page 29-30) Plaintiff Ex. 6B
at p. 1 of 2 of (V)(C) states "C. Contraband - Any article -
not authorized nor issued to any inmate as personal or
State property, nor purchased by the inmate through the
Commissionary. Also included is nuisance Contraband." Source -
Ark. Admin. Code 004.03.1-841 Formerly cited as -
AR ADC 004.00.2-841, 004.03.1-841 inmate property control
(Cited from Westlaw).

Rule 56. Summary Judgment (Fed. R. Civ. P. 56)

56(2) Motion for Summary Judgment or partial Summary
Judgment. A party may move for Summary Judgment, identifying
each claim or defense - or the part of each claim or defense - on
which Summary Judgment is sought. The Court shall grant Summary
Judgment if the movant shows that there is no genuine dispute
as to any material fact and the movant is entitled to judgment
as a matter of law. The Court should state on the record the
reasons for granting or denying the motion.

STATEMENT OF THE CASE

Joshua M. Steckton (Plaintiff) is a prisoner in the Washington Unit of Arkansas Division of Correction ("A.D.C."). He has filed a 42 U.S.C. § 1983 claim, alleging nine defendants denied him his constitutionally adequate medical care when they enacted a policy of practice prohibiting the use of gel shoe inserts needed to alleviate his severe chronic foot pain, prescribed by his medical doctor at the Plaintiff's contract by William, LLC contractor as medical providers by A.D.C. under color of State Law. Plaintiff's medical provider, due to a contract decree policy and practice discontinued Plaintiff's prescription on accommodation Renewal Date of 10-4-2022, due to a policy of contract placed on gel inserts. Plaintiff's policy of guarantee notice personally informed by guarantee and or verbally each Defendant allowed. Coercive actions by directors of the A.D.C. levels did not correct the policy interference at any time and is currently uncorrected, even though the medical needs were never ceased by medical providers. The District Court only addressed the A.D.C. material facts in dispute and dismissed with prejudice the Plaintiff's defendants. Even though, Plaintiff timely did file his material facts in dispute for William, LLC and Employees (Doc 96). Plaintiff seeks Remand for trial setting and the well-known Dec. 96 Be Amended Summary Judgment was claimed as an unreasonable 10-19-24 inmate grievance procedure.

Reasons for granting the writ

Petitioner Joshua M. Strackon Raises The Question that his due process

right has been violated by the Eighth Circuit Court of Appeals and the District

Court's Decisions. It is axiomatic that a neutral decisionmaker is a -

quintessential pillar of a fair and objective process. see Grady v. Grumley, -

520 U.S. 899, 904-05, 117 S.Ct. 1793, 138 L.Ed.2d 97 (1997). (discussing the -

presence of a neutral arbitrator as a Constitutional Floor of due process). As

Petitioner's Summary Judgment Against Wellpath, LLC; Ramona Huff;

And Ronald Stucky, Petitioner's Summary Judgment was denied his

Proper Federal Rules of Civil procedure Rule 56 Rights by Both the Federal

Courts of Appeals for the Eighth Circuit And Eastern District Court of Arkansas

Central Division. As an abuse of discretion occurs if the district court -

rests its conclusions on clearly erroneous factual findings or if its

decision relies on erroneous legal conclusions "Id. (quoting International -

Ass'n of Machinists & Aerospace Workers v. Soe Line R.R., 852 F.2d 368 -

374 (8th Cir. 1988) (en banc), cert. denied, 489 U.S. 1016, 109 S.Ct. -

1118, 103 L.Ed.2d 181 (1989)).

Petitioner in his Appendix E of case: 4:23-cv-00477-Bew Doc. no. # 102-0 -

Filed 5/07/2024 on p. 2 of 8 of Magistrate Judge J. J. Volkes May 7, 2024

Recommended disposition in "I. Introduction", the Magistrate States -

"Defendant's Huff, Stucky, and Wellpath LLC ("Medical Defendants") have filed -

a Motion for Summary Judgment arguing they are entitled to judgment

as a matter of Law. (Docs. 87-89.) Plaintiff has not filed a Response, and

the time to do so has expired. See Local Rule 7.2(b) (Response to a motion

is due fourteen days after service). Thus, the facts in the Medical -

Reason For Granting writ

Defendants' Statement of undisputed facts (Doc. 89) are deemed admitted. See Local Rule 56.1 (C); Jackson v. Ark. Dept of Educ., Vocational & Tech. Educ. - Div., 272 F.3d 1020, 1027 (8th Cir. 2001). And, as will be discussed herein, these facts are supported by the record. After careful consideration, and for the following reasons, I recommend the motion be GRANTED, and Plaintiffs' claims against the MEDICAL Defendants be dismissed with prejudice.

Forewhich, The District Court Magistrate J.J. Valpe, in Doc. Nos. #102-0, District Court Judge Billy Ray Wilson in Appendix D of Document #104 He approved and adopted the PRD in all respects against all wellpath defendants on 13, May 2024 (forwhich he only cited 'Doc. Nos. 101, 103. 228 U.S.C.F. (9152423).) in his Decision footnotes. In Petitioner's Appendix C of Document #100-0, Filed 5/29/2024 District Court Judge Billy Ray Wilson cites Doc. 102 and Doc. no. 87 'Defendants motion for Summary Judgment' being 'granted'. 'Plaintiffs' claims against Defendants Strake, Huff and Wellpath, LLC are dismissed - with prejudice.' I certify that an in forma pauper's appeal from this order and the accompanying Judgment would not be taken in good faith - ordered 29, May, 2024 By B.R. Wilson, United States District Judge.

Petitioner's Appendix A of the Eighth Circuits Judgment summarily - affirmed the Judgment of the District Courts decision Dated August, - 26, 2024. Before BENTON, GRASZ and STRAS, Circuit Judges. and a Appendix B petition for rehearing Dated October 02, 2024 was denied. while, Petitioner had previously notified the District Court multiple times of the Magistrate and District Courts Judges NOT looking at, all this time to the cases record Document No. 96-0 Pages 1-29 Filed on 04/25/2024 of Plaintiffs' motion: Plaintiffs disposition of defendants' statement of -

Reasons for Granting Writ

Undisputed facts' (Wellbath LLC, and Employees). notice sent to the Court in Doc. no. 109-0 on Disposition of Doc. no. 402-0, notifying the Court of their mistake and overlooking Plaintiff's summary judgment material facts in dispute between the two parties. Petitioner, Again in Doc. nos. 116-0 did on District Court Judge Wilson's adoption and dismissal with prejudice decision, petitioner informed through the records of Doc. no. 116-0 of the deliberate (at this point) omission to overturn their ruling given the factual notices to the District Court (That the Eighth Circuit stated in Appendix A "This Court has reviewed the Original file of the United States District Court. It is ordered by the Court that the judgment of the district Court is summarily affirmed. Dated August 26, 2024.") Petitioner now is reliant upon the neutral decisionmaking of this Court's panel of judges as a matter of Jurisprudence on interpretation of Law and the Rules of Federal Civil procedure of Rule 56(2). Federal Rules of Civil Procedure Rule 56(2) states Summary judgment is appropriate when the record, viewed in a light most favorable to the nonmoving party, demonstrate that there is no genuine dispute as to any material fact, and the moving party is entitled to judgment as a matter of Law. "see Fed. R. Civ. P. 56(2); Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50 (1986). The moving party bears the initial burden of demonstrating the absence of a genuine dispute of material fact. Celotex, 477 U.S. at 323. Once that has been done, the nonmoving party must present specific facts demonstrating that there is a material dispute for trial. See Fed. R. Civ. P. 56(c); - Torgerson v. City of Rochester, 643 F.2d 1031, 1042 (8th Cir. 2011).

Reasons for Granting Writ

The Federal Rules of Civil Procedures 56.1(2) Clearly States, "A Separate, Short and Concise Statement of the Material Facts As to which he Contends there is no genuine dispute to be tried As required by Fed. R. Civ. P Rule 56.1(2). Petitioner has timely in his Case no. 4:23-CV-00477-BRW of Doc. no. 96-0 Pages 1-29, Evidence Petitioners Exhibit # 96-0 Dated 04/25/2024 of 'Motion: Plaintiff's disposition of defendants' Statement of - Undisputed Facts' (Doc. 89), Petitioner did dispute material facts on Doc. no. 89 of at 1 Through 9 as disputed (with cited Exhibits and cited - Court citations of Established court decisions on the disputed material facts. Only 1 undisputed (at 10) of Doc. no. 89 was not challenged and material facts 9/10 were left in dispute of material facts for trial of Defendants Wellpath, LLC; Romana Huff and Ronald Stucky.

Wherefore, Petitioner prays this Court Remand by Reversal of The District Courts Findings As A matter of Law As Petitioner timely filed his proper response of material facts, and notified the Courts on multiple opportunities of the Non addressed Doc 96-0 material facts that Petitioner Responded too properly, against The Wellpath Defendants in this case.

Reasons For Granting The Petition

"The state has an obligation, under the Eighth Amendment and state law, to provide adequate medical care to whom it has incarcerated." Estelle, Supra, 429 U.S. at 104, 97 S.Ct. at 291; SPICER V. WILLIAMSON, 191 N.C. 487, 490, 132 S.E. 291, 293. "In the prison context, medical care is within 'the exclusive prerogative of the state', in that the state is obligated to provide medical services for its inmates and has complete control over the circumstances and sources of a prisoner's medical treatment. Id., at 998, 999, Citing Blum v. Yaretsky, 457 U.S. 991 1011, 102 S.Ct. 2777, 2789, 73 L. Ed. 2d 534 (1982). The Court recognized in Estelle:

"An inmate must rely on prison authorities to treat his medical needs; if authorities fail to do so, those needs will not be met." 429 at 103, 97 S.Ct. at 290.

"Non exhaustion is an affirmative defense, and defendants have the burden of raising and proving the absence of exhaustion." Faulk v. Charrier, 262 F.3d 687, 697-98 (8th Cir. 2001) (defendants' burden includes showing that remedies were available). ('capable of use' to obtain - 'some relief for the Action complained of' Id. at 642, 136 S.Ct. 1850 Quoting Booth v. Churner, 532 U.S. 731, 738 121 S.Ct. 1819, 149 - L. Ed. 2d 958 (2001)); and "It is the Prison's requirements and not the P.L.R.A. that define the boundaries of proper exhaustion." - Jones, 549 U.S. at 218.

~~Petitioner~~ did in his Case no. 4:23-cv-00477-BRW-JV Filed on Date 4/25/2024 in Doc. no. 99-0 in 'Plaintiffs Disposition in opposition to - Defendants 'Statement of Undisputed Material Facts', disputed in pages 1 Through pages 75 A TOTAL OF 78 MATERIAL FACTS WERE ALL DISPUTED BY Petitioner, AND ONLY 6 MATERIAL FACTS WERE NOT DISPUTED ON Document 99-0 which was not merely An Exhaustion motion, which are to be brought in Summary Judgment AT The Earliest stages of the claims process.

Petitioner clearly did in Doc. 99-0, p.6 of Disputed material facts of "Doc. 91 p.1 of 15 (at 3) Through p.7 of 15 (at 36) is Disputed by the plaintiff under the following pages of unavailable Grievance procedures According to the Prisons own procedure in place AD-19-34" which on Doc. no. 99-0, p.6 petitioner did state, "Plaintiff points out the 'Textual - Exception' to the P.L.R.A Language "An inmate is required to Exhaust those, but only those, grievance procedures that are [available, i.e.,] 'capable - of use' to obtain 'some relief for the Action Complained of'. Ross et al, at 642 136 S.Ct. 1850 (quoting Booth v. Churner, 532 U.S. 731, 738 - 121 S.Ct. 1819, 149 L.Ed 2d 958 (2001)). of which, petitioner did Cite AD-19-34 ARE 'unavailable' to him as Plaintiffs grievances all were made Unavailable According to Section (4), Forward on p.3 of 31 (Doc. 95 Page 33 of 171) 'Non grievable Issues' at 7 'Matters beyond the Control of the division of Correction, including issues Controlled by State or Federal law or regulation'. The AD-19-34 Inmate Grievance procedure According to Doc. 95 p.31 of 171 of AD-19-34 -

'Approved: Original signed by Dexter Payne, Effective Date 12/2/2019

Clearly states on Doc. no. 95, Page 33 of 171 at '(I) Available Remedies'

"If the facts asserted by the inmate would, if true, fall within the definition of Grievance, the matter shall be investigated, unless previously investigated. If the grievance is found to be with merit, the Division - official designated to respond to the grievance shall have the authority, within the exercise of his or her discretion and consistent with the Division policies and the safety, security and good order of the facility, to offer actions by the Division designed to resolve the inmates - grievance. However, such available remedies do not include disciplinary action against an employee, Contractor, or volunteer, nor monetary damages."

on Doc. 95, Page 44 of 171 at "(H) Remedies A grievance with merit - will be afforded a reasonable range of meaningful remedies (1) The - Responsible Authority will review the conditions, policies or practices - grievance and take appropriate action," (3) The Division is to encourage the resolution of grievances found to have merit involving property losses, Confiscations or forfeitures through the return of the property or - replacement." Doc no. 95, Page 32 "(D) Appeal - a written request - directed to a Chief Deputy / Deputy / Assistant Director for further - action to resolve the issue or complaint in the grievance based upon the inmate's assertion that the issue has not been resolved at the Unit Level. (The appeal cannot raise new or additional issues or complaints)."

In AD-19-34 Doc. 95-0 P. 43 of 171 section (IV)(G)(4) 'Appeals relating to medical, mental health or treatment program issues are submitted to the Deputy Director for Health and Correctional programs.' All Appeals will be answered by the Chief Deputy / Deputy / Assistant Director regardless of whether those individuals are named in the grievance' AD-19-34 (IV)(G) - (6) 'The Chief Deputy / Deputy / Assistant Director will respond to the inmate concerning the decision within thirty (30) working days unless there is an extension or the appeal is rejected and the inmate is notified of the reason for rejection on the Acknowledgement of Grievance appeal / - rejection of Appeal form (see Attachment V). A decision or rejection of an appeal at this level is the end of the grievance process. The response shall be in written format.

Petitioner, on Doc. 95-0 P. 9 of 171 of Plaintiffs (Exhibit 1 D) produced for Evidence notice by 'Grievance' of 'factual content stating the following on Grievance PB-22-00294, "On October 4, 2022, you grieved - that you were informed by medical staff Dr. Ronald Stuckey: Arkansas - Department of Corrections are discontinuing the use of gel inserts for arch support for shoes. you stated this is deliberate indifference to your medical issues and violates your 8th Amendment Constitutional Rights." The medical department responded, the Gel sole are not available for us to order anymore. That does not mean you can not have another kind of insole. Therefore this grievance is without merit." On Appeal, the Deputy Director Andrea Culcager, Dated 12/14/2022 stated in her personal investigation as a 'Laymen' and A.D.C AD-19-34 (IV)(D) Appellate and (IV)(J) Problem Solving Staff At Appellate Level -

P25

"A review of electronic records indicates you were seen October 4, 2022, for an accommodation review and renewals. Dr. Stuckey addressed some of your restrictions however, he did not note that your insale restrictions were discussed. The medical department noted "the gel soles are not available for them to order anymore but does not mean you cannot have another kind of insale," which indicates another option was available. A review of your medical records indicates the provider has not noted an alternative for the gel insoles or that insoles are NOT medically necessary. Therefore, this appeal is with merit." Evidenced the medical needs not being met by both medical contractors or by ADC and no corrective Policy Action by Appeals Director pursuant to AD-19-34 on Doc. No. 95, Page 33 of 171 at (I) Available Remedies - if the facts asserted by the inmate would, if true, fall within the definition of grievance'..... 'If the grievance is found to be with merit, The Division official designated to respond to the grievance shall have the authority, within the exercise of his or her discretion and consistent with the Division policies'..... to offer actions by the Division designed to resolve the inmates grievance. However, such available remedies do not include disciplinary action against an Employee, Contractor'..... on Doc. 95 Page 44 of 171 at (H) Remedies (1), (3), as a policy of ADC, to not to continue the Gel insoles was not By Deputy - Director Ashlea Cudger offered by AD-19-34 the remedies available to her office at AD-19-34 section III (I), AD-19-34(11) - (H) (1) is the Review of the Policy or practices grieved, (H) (3) is The resolution of grievances found to have merit involving Confiscation through the return of the property or replacement as Policy AD-19-34

Policy Remedies.

petitioner, points to Doc. 95-0 P. 94 of 171 'Defendant Aundra - Culclager's answer to plaintiff's first set of interrogatories', evidences her 'layman' status on 'interrogatory no. 2: what medical qualifications do you currently possess, certificates, etc. as a Deputy Director of Medical - Appeal at Central office? Is this an elected or appointed position? by whom? (sic)' for which stated "Answer to interrogatory no. 2: I am not a medical professional. I was appointed to this position by the Director for the Division of Correction with the Approval of the Board of Corrections."

"Interrogatory no. 5: Did you attempt to in any corrective manner to Reverse the Contraband Restriction orders by A.D.C.? If so, how? (sic) For which, 'Answer to interrogatory no. 5: No. Evidences The A.D.C. was in AD-19-34 is 'unavailable' if the grievance Policy, custom and practice for which grievance # PB-22-00294 NAMED A.D.C. (Arkansas Department of Corrections are discouraging the Use of gel inserts for arch supports for shoes (as a Policy)' "violates" medical issues (needs) (Exhibit 1A Doc. 95-0 P. 6 of 171).

Petitioner, points to Doc. no. 95-0 P. 120 of 171 of Plaintiff's Exhibit 20 of 'Defendant Dexter Payne's Answers to Plaintiff's SECOND SET OF - Interrogatories Interrogatory No. 6. states, "upon 'answer to interrogatory NO. 1 you responded' there is no - Contraband decree regarding gel inserts. Gel inserts are Contraband because they are not issued by APC, They are no longer prescribed by medical, and they are not available from Commissary. Secretary Solomon Graves (or Dexter Payne) approved the

medical departments' decision to discontinue use of gel inserts on or about October 4, 2022," upon grievance #PB-22-00294 Date of grievance October - 04, 2022 on the Records, investigated by Deputy Director of A.D. Central office Andrea Culclager on 12-14-2022. Concluded her full investigation of Plaintiff's Allegations of Medical provider, Contracted by A.D.C. to provide the States medical duty owed under the inmates Eighth Amendment Constitutional Rights as well as State Rights, found Plaintiff's complained issues, "This appeal is with merit" meaning a full A.D.C. investigation was conducted of inmates notice and allegation of 'contraband decree' by ADC of which the A.D.C. Employee upon her full investigation never refuted A A.D.C. Contraband policy on gel inserts, of which the State Contractor Dr. Ronald Stucky stated was his underlined factor for not renewing Plaintiff's medical prescriptions for the gel inserts. Upon Grievance # PB-23-050096 ADC Chief Deputy Director Marshall Reed was informed of inmate Plaintiff's allegations of a A.D.C. Contraband decree, of which Plaintiff notified of Joe page III, C.T. Skinner, A. Culclager enforcing A Contraband decree upon a medically prescribed gel insert of which A.D.C. Chief Deputy Director of Central office Marshall Reed responded 'I find the unit is following Policy and procedures for your housing area'. Never once has a A.D.C. employee Denied A Contraband decree for gel inserts exists under A.D.C. Policy, Procedures and/or Customs' in their investigations. Did your office or Administrative Subordinates, Notify the State Contractor Wellpath, LLC of exceptions for medical needs of the inmates the State vested the Board of Corrections to A.D.C. inmates, and to meet their medically necessary-prescriptions by the State Contractor? (sic) —

Furthermore, 'Answer to Interrogatory No 6. States: The ADC does not - interfere with the medical decisions of wellpath. Medical Care is their sole responsibility.' (Signed under penalty of perjury on Doc. 95-0 P. 123 of 171 Verification Signed And Dated by Dexter Payne on 12-5-2023. And By Dexter Payne's Doc. 95-0 P. 86 of 171 Interrogatory No 1 (Answer) of 'Defendant Dexter Payne answers to plaintiff's first set of interrogatories stating... Secretary Solomon Graves approved the medical department's decision to discontinue use of gel insoles on or about October 4, - 2022'. Evidences ADC Secretary Solomon Graves did just that, interfered in the medical decisions of wellpath by NOT ensuring that inmates whom had the medical needs for gel insoles continued to receive them, as ultimately the state is responsible for the inmates serious medical needs under the eighth amendments clause of the Constitution.

Petitioner points out it is by Declaration Interrogatory Answer of NO. 6: 'The ADC does not interfere with the medical decisions of wellpath. - Medical Care is their sole responsibility.' Petitioner points out that AD-19-34 Policies are approved: Original signed by Dexter Payne Effective date: 12/2/2019 on Doc. 95-0 P. 31 of 171 That make 'unavailable' petitioners grievance policy details of ADC policy that interfered in petitioner's ability to continue to be prescribed his medically needed gel insoles by Petitioner's Doctor on October 4, 2022 in grievance # PB-22-06294. On Appeal, Amara Culchager on notice as Dexter Payne testified, 'A.D.C. does not interfere with the ^{medical} decision of wellpath.' and as Amara Culchager in Doc. 95 P. 94 of -

171, interrogatory no. 5, Defendant Culcager Admitted she did not reverse the Contraband decree (by stating) 'no'. Evidencing the criteria met that the textual exception to the P.L.R.A Language, "An inmate is required to Exhaust those but only those, grievance procedures that are [available] 'Capable of use' to obtain 'some relief for the action complained of.' Ross, at Id at 642 136 S.Ct. 1850 (quoting = Booth v. Churner, 532 U.S. 731, 738, 121 S.Ct 1819, 149 L.Ed 2d 958- (2001). AS Directors of AD.C Deputy Director Andrew Culcager And Chief deputy director Marshall Reed were both in the grievance policy of AD-IG-34 in grievances PB-22-00294, PB-23-00096, of the Contraband policy interference with petitioner's medical needs. "where the relevant administrative procedure lacks authority to provide any relief", the inmate has "nothing to exhaust". Id, at 736 and n.9, 121 S.Ct. 1819, of Booth. So too if administrative officials have apparent authority but decline ever to exercise it. once again: "The modifier - 'available' requires the possibility of some relief." Id at 738, 121 S.Ct - 1819, when the facts on the ground demonstrate that no such potential exists, the inmate has no obligation to exhaust the remedy, (quoted from Ross v. Blake, 136 S.Ct. 1850, 195 L.Ed. 2d 117, 578 U.S. 638 (2016))

P. 20
Petitioner did in his Doc. 96-0, p. 2 of 29 'Plaintiff's disposition of defendant's 'Statement of undisputed facts' for (wellpath employees). petitioner as plaintiff pointed on material fact (Doc. 89 at 1) Plaintiff petitioner disputed this material fact by evidencing "Plaintiff calls the trier of fact to Exhibit 4E. Exhibit 4E, is a health services encounter of a 'Provider sick-call' for -

DATE 1-24-2023, where provider Stukeey, Ronald John D.O. did under his 'Subjective notes' state, "seen for back pain and chronic foot pain. Having recurrent spasms and aches of mid to lower back. HX of moderate ODD by X-ray. No worsening but not improving. Requesting Conservative Management. Review systems otherwise non contributory. (Page 2 of 2) - "Assessment - Chronic back and foot pain" (Two separate issues of treatment). "Patient failed of multiple medications. Trial of Low-dose - gabapentin 100mg TID. Recheck for progress at chronic care or 90 days whichever comes first. Reassurance and encourage patient to stay active and make healthy choices longterm." "Discussed insoles that were removed from patient as newly defined contraband by ADC. Cannot Replace" proves by evidence, the medical doctor would have continued the gel insoles, IF A.D.C. Contraband Policy had not interfered in the medical needs for his patient inmate. And petitioner's severe foot pain continuing, but no intervention reversed any contraband decree or exceptions by Any ADC Director named.

It is well settled and established that "deliberate indifference to a prisoner's serious medical needs is cruel and unusual punishment in violation of the Eighth Amendment." See Gordon ex rel. Gordon v. Frank, 454 F.3d 858, 862 (8th Cir. 2006) (Citing Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed. 2d 251 (1976)).

OUT OF THE Eastern District's Case of Turning Point USA at Ark. STATE - Univ. v. Rhodes, 409 F. Supp. 3d 677 (E.D. Ark. 2019) ("A STATE official may be liable if he creates, applies, or interprets A policy or directive that leads to a Constitutional violation. Jackson, 747 F.3d at 543-45 (citing Bonner v. Outlaw, 552 F.3d 623, 679 (8th cir. 2009); Marchant v. City of Little Rock, Ark. - 741 F.2d 201, 205 (8th cir. 1984). see also Messimer v. Lockhart, 702 F.2d 729, 732 (8th cir. 1983) (holding that a Department of Corrections director may be liable for failing to change A particular prison's allegedly unconstitutional policy based on the director's statutory responsibility to supervise the administration of all Corrections facilities). Cf. Brown v. Mo. Dept. of Corr., 353 F.3d 1038 - 1040 (8th cir. 2004) (dismissing supervisory employees' because the complaint - did not allege "facts that would suggest personal involvement, direct authorization, or a policy directive" for the conduct at issue). Another case-on point is Messimer v. Lockhart, The plaintiff claimed that a prison warden's policy of confining protective custody inmates together violated his Constitutional rights. 702 F.2d at 732. Under state law, the state department of Corrections director had the statutory authority to change the policy. Id. The Eighth Circuit held that the complaint stated a claim against the director who "may be - responsible for his own failure to act". Id. The Messimer case has not been overruled and has been relied on for the same proposition as recently as 2014.

In, Terry V. Arnett, no. 2:20-cv-0066-DPM-PSH, 2021, WL 1772261 - (E.D. Ark. Mar. 22, 2021) rec. adapted, 2021 WL 1262146 (E.D. Ark. May 4, 2021; Emery V. Kelley, no. 1:18-cv-98-DPM-PSH, 2019 WL 4447273 - (E.D. Ark. Sept. 16, 2019) (In Terry and Emery, the courts explained - that if the grievance did not specifically 'name anyone' then it would be clear on its face that it was procedurally flawed'.

If A.D.C officials, never the less, addressed the grievance on the merits, then the procedural flaw (failing to name a specific individual) would be considered waived and the claim properly exhausted Against all individuals subsequently named in the lawsuit. Id. (Citing - Hammett V. Cofield, 681 F.3d 945, 947-48 (8th Cir. 2012).

Petitioners Doc. 99-0 'Plaintiffs Disposition in opposition to Defendants' statement of undisputed material facts' of (Doc. 91) of: "Doc. 91 p.1 of 15 starting at - 3. Through p.7 of 15 at 36 is disputed by plaintiff": of which in petitioners Doc. 99-0, Page 10 discussed the disputed material facts of grievance # PB-22-0294 asserting that By Naming (A.D.C) Arkansas Department of - Correction put clear enough administration notice of their actions are liable in the face of the grievance by naming A.D.C. By Dr. Stukeby being named it put Wellpath, LLC also on notice of liability as petitioner did pursue to AD-19-34 inmate grievance process to its final stages, and no corrective acts took place, grievance PB-22-0294 was exhausted prior to any suit filed in this case.

Petitioner, in his Document 31 'motion For Leave to File Supplemental-
Complaint by Joshua M. Stockton (Attachments: # 1 Supplemental-
Complaint)(lbb)(Entered: 08/14/2023) was filed with the court.
(Appendix G, p. 4 of 11)

Magistrate Judge Joe J. Volpe in his Document 32 stated, "(this is a-
Text Entry Only. There is no pdf document associated with this entry.)
Order granting in part plaintiff's motion for leave to file 31. plaintiff's -
attached grievance may be made a part of the record. (Doc. no. 31-1 -
at 10.) All other pages shall not be supplemented. If plaintiff -
chooses, he may file an amended Complaint but he is warned that
an amended Complaint supersedes the original Complaint. Signed by -
Magistrate Judge Joe J. Volpe on 8/14/2023." (Appendix G, p. 4 of 11)

Document # 31-1 Filed 08/14/2023 Page 10 of 10 is Plaintiff's Exhibit-
3E of Doc. no. 95 Filed 04/25/24 of p. 17 of 171 of Grievance #
PB-23-00133.

Federal Rules of Civil procedure Rule 15(d) Supplemental pleadings. On
motion and reasonable notice, the Court may, on just terms, permit-
a party to serve a supplemental pleading setting out any transaction,
occurrence, or event that happened after the date of the pleading to be
supplemented. The Court may permit supplementation even though the
original pleading is defective in stating a claim or defense. The
Court may order that the opposing party plead to the supplemental
pleading within a specified time.

By Magistrate Judge Joe J. Volpe Document 32 granting in part the Doc. 31 'Motion For Leave to Supplement Complaint' in his order of Doc. no. 31-1 at 10 (which was Grievance # PB-23-00133) that on the grievance Face States, "Wellpath, LLC on 10-4-2022 did allow my-Gel inserts Script to be invalid due to a policy of ADC (separate Agency). Mrs. Huff (administrator Wellpath, LLC) said that Wellpath does not have the Contract with the Gel insert distributor and couldn't get them any longer. On 4.6.23 Mrs. Huff on my step 1 response told me that she could buy them if I got a script reinstated for gel inserts when she answered my grievance on 4.6.23 Upon A. Culchager, which innately claims failure to intervene by Mrs. Huff on 10-4-2022 on grievance PB-22-00294 when ADC's Policy interfered with a medical Policy and need. Mrs. Huff in failing to intervene has put Personal Liability upon the issues at hand as result of not intervening in the overstep by non medical personnel (ADC Policy) and showed her own Deliberate Indifference to the Violation of Patients Rights to medical treatment as result which is a chronic pain issue and prescribed by her own Wellpath, LLC Doctor to alleviate chronic pain which has violated his 8th Amendment Rights". of which Andrew Culchager on 5/30/23 decided the merits.

Magistrate J.J. Volpe as a 'Supplemented' Attachment the Court did allow Pursuant to F.R.C.P Rule 15(d) Evidence PB#23-00133 is Petitioner's claims of ('after the fact') pleadings and not subject to

Any Rule 15(2) motion to amend complaints of initial complaint issues, as the Court did in Document 32, grant, in part 'Plaintiff's Attached - Grievance may be made part of the record (Doc. no. 31-1 at 10.' And Petitioner's motion, Doc. no. 31 is a motion for leave to file a Supplemental Complaint by Joshua M. Stockton (Attachments: #1 - Supplemental Complaint) (ld6) (Entered: 08/14/2023) granted in part, by Joe J. Volpe on this motion to Supplemental Complaint. (Appendix G p.4 of 4)

Petitioner, points to Document #22, 'Initial Scheduling order: Discovery - due by 1/28/2024. Dispositive motions due by 2/28/2024. Dispositive motions on the issue of exhaustion due by 9/28/2023. Signed by Magistrate Judge Joe J. Volpe on 07/28/2023. (Entered on 7/28/2023). (Appendix G, p.4 of 11)

petitioner, on his Document 60 'motion for Disposition Re Defendants' Dispositive Motions by Joshua M. Stockton (Entered: 01/23/2024) on the issues of Exhaustion of Named Defendants.

The court in Document 62 Answered by stating, " (This is a Text Entry - Only. There is no pdf document associated with this entry.) ORDER - finding as moot Plaintiff's motion for order 60. Plaintiff seeks - Confirmation that the time has past for the defense to raise the - issue of exhaustion. No motion to dismiss has been filed and the - deadline has long passed. Accordingly, Plaintiff's motion is moot. Signed by Magistrate Judge Joe J. Volpe on 1/23/2024. (leix) - (Entered: 01/23/2024). Evidencing the Exhaustion period was already past its deadline by Court order in Doc. #22's initial -

scheduling order, that clearly stated the Exhaustion Court's Deadline for Defendants to raise exhaustion as a defense by Date 9/28/2023, for all Defendants named in this Case. (Appendix G, P. 7 of 11)

Petitioner, points to Documents 81, Doc. no. 82 of this record.

Document 81 'motion for leave to file Exhaustion Argument -

Contemporaneous with motion for Summary Judgment on the merits

by Kennie Bolden, Andrea Cuddegar, Dexter Payne, Marshall Reed, Louis Skinner. (Morrison, Keria) (Entered 03/21/2024) and

Document 82 'Brief in Support re 81 motion for leave to file

filed by Kennie Bolden, Andrea Cuddegar, Dexter Payne, Marshall Reed, Louis Skinner (Morrison, Keria) (Entered 03/21/2024) was

on Document 83. " (This is a text entry only. There is no pdf -

document associated with this entry.) Order granting 81 motion -

for Leave to file. Signed by Magistrate Judge Doc J. Volpe on 3/21/2024. (Appendix G, P. 8 of 11)

That already by Doc # 22 did state this Court's deadline of

the issue of exhaustion due by 9/28/2023. Affirmed by this

Court's Response by Magistrate Doc J. Volpe in his decision as

my Doc. 60 motion, in Doc. 62 ('Plaintiff seeks Confirmation -

that the time has past for the defense to raise the issue of -

exhaustion. no motion to dismiss has been filed and the deadline

has long passed. Accordingly, plaintiff's motion is moot."

yet, this Court did continue to allow an Exclusion defense to the Defendants in doc nos. 90, 91, 92, which petitioner did still Evidence in his Doc. 99 'Response to 91 Statement of Facts (Local - Rule 56.1) filed by Joshua M. Stockton Entered: 04/25/2024. (Appendix G P. 8 of 11)

For which, this court's magistrate J.J. Volke in Document 101 'Partial-Recommended Disposition that the ADC Defendants' motion for - Summary Judgement be granted, and plaintiffs claims Against Defendants Payne, Culchager, Reed, Bolden, and Skinner be dismissed without prejudice 90. "objections due no later than 14 days from the date of this recommendation. signed by magistrate Judge Joe J. Volke on 4/26/2024." (Appendix G, P. 9 of 11)

of which, petitioner in his Document 103 'Objection to 101 Report - and Recommendations by Joshua M. Stockton (Entered 05/08/2024) was timely filed. (Appendix G, P. 9 of 11)

and

Document 104 order adopting 101 Partial Recommended Disposition in all respects; granting 90 motion for Summary Judgement; dismissing plaintiffs claims against Defendants Payne, Culchager, Reed, Bolden, and Skinner without prejudice" by Judge Billy Roy Wilson on 5/13/2024. was improper due to the magistrates decisions on Doc. 22 of 'Dispositive motions on the issue of exclusion due by - 9/28/2023 and Doc. 62 Confirmation the magistrate did confirm that the 'deadline has long passed'. and this petitioner did

on Doc. 122 'motion for reconsideration re 114 order by -
Joshua M. Stockton Entered 6/26/2024 Again notified the
Court of Exhaustion of all parties are Unavailable to the Court
of which, Doc. 123 (This is a text Entry only. There is no pdf
document associated with this entry.) order denying 122 plaintiff's
motion for Reconsideration. Signed by Judge Billy Ray Wilson on
6/26/2024 Entered: 6/26/2024
(Appendix G. P 10 of 11)

Conclusion

The Petition For A WRIT of Certiorari should be granted.

Respectfully Submitted,

Joshua Matthew Stockton
Wrightsville Unit, P.O. Box 1400
Wrightsville, Arkansas 72183



Date: 11-12-2024