

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

STACY L. PARTIN - PETITIONER

VS.

RON TILFORD - OPHTHALMOLOGIST - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
SIXTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

STACY L. PARTIN

KSP - 266 WATER ST.

EDDYVILLE, KY. 42038

QUESTION(S) PRESENTED

I. Whether the Sixth Circuit Court Of Appeals has unreasonably sanctioned an extreme departure from the principles of this court regarding the "availability" and "sufficient exhaustion" of administrative remedies with regard to 42 U.S.C. §1997e(a).

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:

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STATUTES/ACTS

42 U.S.C. §1997e(a)

Prison Litigation Reform Act of 1995 (PLRA)

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.

OPINION BELOW

The Opinion of the United States Court Of Appeals appears at Appendix A to the petition and is reported at PARTIN V. TILFORD U.S. APP. LEXIS 21083 (9-18-17).

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was 9-18-17.

☒ 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: _____, 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. § 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- **42 U.S.C. §1997e(a)**
- **Prison Litigation Reform Act Of 1995 (PLRA)**
- **42 U.S.C §1983**

Statement Of The Case

Due to total loss of vision in his right eye, Petitioner, Stacy L. Partin, was referred, by the prison Optometrist, to private Ophthalmologist, Ron Tilford, for a glaucoma/cataract evaluation. As the record shows, Defendant Tilford ignored those issues and scheduled an unnecessary, complex retinal re-attachment surgery before obtaining Petitioners consent. DN #3, pgs. 3,4. Due to the Defendants misrepresentation of facts, Petitioner ultimately signed a "faxed" consent form. As the Operative Report reflects, (exhibits I-1, I-2 in DN #90), surgery did not go well. There was hemorrhaging and Petitioner noted that he now had a big burn on his hand. He wrote a letter to the doctor about it, and had it notarized. (exhib. Z-1 in DN #90). Petitioner also wrote to the (1) Warden, (2) the top Medical Director of the D.O.C., (3) the Quality Assurance Coordinator of the D.O.C., (4) the Attorney Generals Office, (5) and the Medical Licensure Board, as reflected by exhibits Y-1 through Y-5 in DN #90. He also contacted the Human Rights Commission, as evidenced in DN #53. Petitioner was very diligent. He was generally aware that the prison had a grievance procedure to address prison issues, but he certainly did not know that it was a required step prior to suing a private doctor. Further, as described later, the grievance coordinator and a caseworker told Petitioner things which rendered the grievance process "unavailable", and they urged him to simply file a lawsuit. As for the Inmate Handbook and the prison grievance directions, neither contain any language indicating that a prison grievance is a required step that an inmate must take prior to filing suit against a private Ophthalmologist/doctor.

On 10-31-13, Petitioner Stacy Partin filed a Complaint under

42 U.S.C. §1983 (DN #1), and a Memo. Of Law in Support, (DN #3), alleging that private Ophthalmologist Ron Tilford was deliberately indifferent in violation of his 8th amendment rights in performing complex retinal surgery, as he knew of, and disregarded, the excessive risks to Partins health and safety.

During discovery, Defendant Tilford admitted that he knew Petitioner was more susceptible to the many risks due to his pre-existing conditions, and at a higher risk for complications, and that there was no emergency condition requiring surgery. DN #90, pgs. 9,10, and DN #3, pgs. 5,6. Due to the complex surgery, and the problems encountered, Petitioner Partin has experienced continual irritation, and the eye has deteriorated substantially. DN #3, pg.6.

On 1-10-14, Defendant Tilford filed a Motion To Dismiss, for failure to state a claim, wherein he claimed he was not a state actor, and that Petitioners Complaint alleged only malpractice, but not deliberate indifference. On 2-14-14, Senior Judge Thomas Russell denied that motion, urging that Petitioner did allege a malpractice claim, and that he also stated a cognizable claim regarding deliberate indifference. (Dn #14) He ruled that the claims survived initial review pursuant to 28 U.S.C. §1915A. The discovery process soon began and Petitioner was diligent and exercised his rights at every turn, submitting numerous pleadings, including three Motions for appointment of counsel - DN #6, #18, and #20, all of which were denied. Petitioners extreme need for counsel can be understood from a review of DN #23. Petitioner was also forced to move the Court on many occasions to address the refusal of prison staff to make the filing fee payments. DN #56, #67, and #92.

On 10-24-14, Defendant Tilford filed a Motion For Summary Judgment - DN #57 - and Petitioner/Plaintiff Partin submitted a

Memorandum In Opposition, DN #90. Noteworthy is how Defendants attorney displayed a pervasive lack of integrity from start to finish, using underhanded, shady tactics, continually taking advantage of Petitioners pro se, untrained status. For details, please see DN #106 and DN #38.

In 2016, Judge Russell transferred the case to Judge Charles Simpson. The Order Of Transfer was filed 5-18-16.(DN #120). Judge Russell had been immersed in this case for 31 months, reviewing, and ruling upon, a multitude of issues, and was in the best position to rule upon Defendants Motion For Summary Judgment. However, he simply transferred the case, and Judge Simpson then granted Defendants Motion For Summary Judgment less than 3 weeks after receiving the case. On 6-7-16, the Opinion and Seperate Order were filed, granting the Defendants Motion and dismissing Petitioners claims. DN #121 and DN #122. The Court also denied Petitioners Rule 59(e) Motion(DN #123), by Opinion and Order filed 8-3-16.(DN #127). Petitioners Notice Of Appeal was filed 8-24-16 and docketed 8-30-16, and his "Appellants Brief" was mailed 4-12-17. The Sixth Circuit Court Of Appeals issued an Order Affirming the District Courts Order on 9-18-17. This Petition, therefore, is timely.

REASONS FOR GRANTING THE PETITION

I. Petitioner respectfully suggests that this Petition should be granted, not only to ensure fairness to him, but also to address the issue of why the Sixth Circuit Court Of Appeals has unreasonably sanctioned an extreme departure from the principles stressed by this Court regarding "availability" of administrative remedies. As explained in this Courts "Guide For Prospective Petitioners For Writs Of Certiorari", October 2005, important considerations for accepting a case for review include "the existance of a conflict between the decision of which review is sought and a decision of another appellate Court on the same issue. An important function of the Supreme Court is to resolve disagreements among lower courts about specific legal questions. Another consideration is the importance to the public of the issue." In Petitioners case, both considerations do exist.

Under the Prison Litigation Reform Act of 1995, (PLRA), prisoner litigation brought under Section 1983 may only be brought after a prisoner has exhausted available administrative remedies. see 42 U.S.C. §1997e(a) ("no action shall be brought with respect to prison conditions under section 1983 of this title, or any other federal law, by a prisoner... until such administrative remedies as are available are exhausted.") However, there are considerations relevant to this issue, which are recognized/acknowledged by most circuits, but ignored by the Sixth Circuit in Petitioners case. In fact, this Court, too, has voiced numerous considerations such as whether the administrative remedies were available or not, and whether there were factors which prevented the inmate from being able to "discern" or "navigate" the process. Cases such as Ross V. Blake 136 S.Ct. 1850,

(2016), and Booth v. Churner 532 U.S. 731, (2001)) discuss these factors thoroughly.

As Petitioner described to the District and Circuit Courts, his caseworker, Marshall Peek, and the Grievance Coordinator, Dan Smith, both rendered the grievance process "unavailable". Caseworker Peek admitted, twice, that he advised Petitioner to file a lawsuit, not a grievance. see DN#90, Exhibits Dep. 3 and Dep. 4. Further, Mr. Peek acknowledged, in Exhibit Dep. 1, that his mention of the word "grievance" was not in regard to the surgery which Petitioner underwent. (It should be noted that the deposition referred to here is that which was administered by counsel for Defendant.) In Exhibit Dep. 4, Peek admitted he told Petitioner to file a lawsuit "just to get rid of him." This, in effect, rendered the grievance process "unavailable", as Petitioner believed that a lawsuit was his only remedy. (DN#90, pgs. 35-37 supply clarification.) Also, Peek stated he dont believe inmates can appeal any further than the Warden. This gives strength to Petitioners claim that Peek told him to just file a lawsuit "after you hear from the Warden." The Court in Flory v. Claussen WL 3404779 *3-4 (W.D. Wash. 2006 9th cir.) held that the prisoner exhausted where he followed officials advice and filed documents to the "Facility Risk Management Team" rather than a grievance. Of further relevance is fact that the Grievance Coordinator and inmate legal aides told Petitioner that his issue was "non-grievable" because issues are considered non-grievable if the Warden and top medical authority have already issued responses, as they had done in Petitioners case. See Appendix Exhibits D-1,2. This seemed reasonable to Petitioner because, at that point, filing a grievance after the top authorities had already ruled, could serve no purpose at all. It would be like a Private in the Army asking his Seargent to change the Generals' ruling. In Ross v. Blake 136 S.Ct.1850(2016),

this Court explained that "... an inmates obligation to exhaust hinges on the "availability" of administrative remedies. A prisoner is, thus, required to exhaust only those grievance procedures that are "capable of use" to obtain "some relief for the action complained of." see Booth v. Churner 532 U.S. at 738 (2001). Obviously, in Petitioners case, the grievance procedure in KSP was not capable of use to obtain any relief for the action complained of because the grievance committee had no authority to change the ruling of those top authorities who had already issued their decision. " Where the relevant administrative procedure lacks authority to provide any relief, the inmate has nothing to exhaust." Booth at 736. This Court also stated in Ross that "... as Booth made clear, an administrative procedure is unavailable when (despite what regulations or guidance materials may promise), it operates as a simple dead end..." Booth at 736, 738. That is precisely what the grievance process in Petitioners case was, a dead end. In Ross, this Court cited Turner v. Burnside 541 F.3d 1077, 1084 (11th cir. 2008) ("Remedies that rational inmates cannot be expected to use are not capable of accomplishing their purpose, and so are not available.") The KSP grievance process was a remedy which Petitioner Partin could not be expected to use, especially considering there was nothing telling him to, no direction in the prison handbook, and two top staff "thwarting" him from filing a grievance by misrepresentation. In Ross, this Court stated " An administrative scheme might be so opaque that it becomes, practically speaking, incapable of use." In Petitioners case, there was nothing anywhere informing him that a prison grievance was a necessary requirement prior to filing a lawsuit on a private doctor. Thus, the remedy was "unknowable". In Ross, this Court stated that

"...when a remedy is essentially unknowable so that no ordinary prisoner can make sense of what it demands, then it is also unavailable." **Id.**

Of great relevance in this case is fact that the Defendant was, and is, a private Ophthalmologist, not a prison doctor or a prison gaurd, and though it is true that KSP offers a grievance process, it is also true that it does not specify whether it should be used for Complaints against private doctors. Judge Simpson acknowledges this in his Memorandum Opinion. see Appx. Exhib. B, pg. 3. Though it is common knowledge that prison grievances exist for Complaints against prison staff and prison conditions, it is not common knowledge that they must be utilized, as a required step, prior to filing a suit against a private doctor. That requirement is not mentioned anywhere in the grievance forms or the handbook. Many courts have refused to dismiss for non-exhaustion under similar circumstances. see Cabrera v. LeVierge 2008 WL 215720 (1st cir.2008), where court refused to hold prisoners to rules and procedures not described in inmate handbook. see also Jackson v. Ivens 244 Fed. Appx. 508,513 (3d cir. 2007) ("We will not condition exhaustion on unwritten or implied requirements.")

Noteworthy is the language of 42 U.S.C. §1997e(a) which, in relevant part states "no action shall be brought with respect to prison conditions..." This language implies, to untrained persons, one category: prison conditions. Thus, even if Petitioner would have seen §1997e(a) prior to filing suit, he would not have known that "prison conditions" encompassed his "private doctor" issue, so he would not have known he needed to file a prison grievance. To untrained Petitioner, he believed that the choices which Defendant Tilford made and the harm he caused, did not pertain to the prison or the prison

staff, and therefore was not a "prison condition." Tilford himself was responsible. Also noteworthy is that this Court has stated that the PLRA's exhaustion requirement "applies to all inmate suits about prison life..." Porter v. Nusle 534 U.S. 516 (2012) Petitioners' suit against Tilford - a private Ophthalmologist - was certainly not about "prison life." Further, according to this Court, the purpose of a grievance in the prison context is "to alert prison officials to a problem." Jones v. Bock 549 U.S. at 219 (2007). As appendix exhibits D- 1-6 show, Petitioner Partin started alerting all officials from the start, but the District and Circuit Courts both ignored this. Petitioner wrote to the Warden, the top medical director of the D.O.C., the Quality Assurance Coordinator of the D.O.C., who was also a member of the Healthcare Grievance Committee, the Attorney General, the Medical Licensure Board (whom Petitioner ultimately did file a grievance to), and the Human Rights Commission. The first Circuit, in Parker v. Robinson WL 2904780 *7-12 (1st Cir. '06), refused to dismiss where prisoner sent his issue straight to the Commissioner. In Hairston v. LaMarche WL 2309592 *8,11 (2nd cir. '06), the Court found that Plaintiff had tried hard, and in multiple ways, to bring his issue to the attention of responsible officials, and that his efforts satisfied the purpose of the PLRA. Many Courts have declared that the exhaustion requirement is not meant to be a "trap" to unsophisticated prisoners. In Petitioner Partin's case, it is clear that he tried hard and in multiple ways to alert prison officials of his issue, but ultimately, the District Court ignored that, and chose instead to use the exhaustion requirement as a "trap" to justify granting Defendants Motion For Summary Judgment, and to dismiss Petitioners claims, and the Sixth Circuit sanctioned this. see Hooks v. Rich WL 565909 *5 (11th Cir. 2006).

Petitioner also sent a notarized letter, shortly after surgery, to the prison optometrist about the big burn he discovered on his hand when he took the hospital bandage off. see App. exhib. E. Petitioner also tried to contact the prison doctor, to no avail. see DN #89. In fact, DN#89 exhib. B shows he was still begging to speak to the doctor 7 months later.

The responses from the top authorities seemed to imply, to pro se Petitioner, that their decision was a judgment that any further administrative review by KSP wouldve served no purpose, and indeed, that is also what Grievance Coordinator Smith believed and told Petitioner. Please see Avendano v. B.O.P. Dir. U.S. Dist. Lexis 71047 (2013). Also, in Hemphill v. New York 380 F.3d 680, 686 (2d cir. 2004), the Court stated that what constitutes justification in the PLRA context "must be determined by looking at the circumstances which might understandably lead usually uncounselled prisoners to fail to grieve in the normally required way." see also Brookins v. Vogel WL 3437482 *3 (9th cir. 2006).

In Booth, this Court held that an inmate seeking only money damages must complete any prison administrative process capable of addressing the inmates Complaint and providing some form of relief, even if the process does not make specific provision for monetary relief. However, in Petitioner Partin's case, filing a prison grievance was not a process capable of addressing his Complaint and providing some form of relief. The damage to his eye was done. It was impossible to restore any vision, and no additional surgery could undo the aggravation of his pre-existing conditions which Defendant caused, the obvious deterioration, or the pain and discomfort he had already suffered. Even the KSP grievance coordinator himself acknowledged that filing a grievance would do absolutely nothing, as he would have to categorize it as "non-grievable"

since the top authorities had already ruled.

Though there are differences between Petitioners case and that of Curry v. Scott 249 F.3d 493 (6th cir. 2001), there is also a similarity, as both cases involve the question of whether it is fair to require a prisoner to "know" a certain thing, though the "things" were different. In Curry, this question was resolved in favor of the prisoner, yet in Petitioners case, it wasnt considered. In fact, there are several other Sixth Circuit cases which tend to show, by contrast, that the court did not fairly consider Petitioners issues/claims. see Thomas v. Woolum 337 F.3d 720 (6th cir. 2003), Wyatt v. Leonard 193 F.3d 876 (6th cir.1999), Bruce v. Corr. Med. Serv. Inc. 389 Fed. Appx. 462 WL 2842736 at *4 (6th cir. 2010), Baker v. Andes 2005 U.S. Dist. Lexis 43469 (2005), and Avendano v. B.O.P. Dir. U.S. Dist. Lexis 71047 (2013).

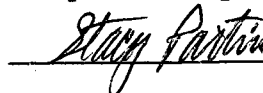
It is clear that the administrative remedy was rendered unavailable to Petitioner. It is also clear that he sufficiently exhausted despite not filing a prison grievance where the grievance coordinator wouldve rejected it as "non-grievable", and even had it been accepted, the Committee would not have had the authority to change the rulings of the top authorities. Of further interest is fact that in Woodford v. Ngo 548 U.S. 81, 106 (2006), the Court said it was relying on exhaustion law from administrative law and Habeas Corpus, for its proper exhaustion rule, both of which contain well established exceptions to exhaustion. In Petitioners case, the District Court ignored all the aforementioned issues, including the principles of Ross and Booth, and the Sixth Circuit sanctioned that departure. This Courts intervention is required in the interests of justice, to protect Petitioner and those similarly situated, and to protect the interests of the public.

This issue is also of importance to the public. Citizens in our society pay taxes and obviously have interests in America's prisons and the smooth, safe operation of them. Thus, the public has an interest in whether prisoner's medical needs, and constitutional rights are being properly protected. Of course, this includes a prisoners right to file legal pleadings, such as a §1983, and to receive fair review from the federal Courts.

Finally, this case is important for another reason as well. The deposition of Stephanie Peek has exposed Defendant Tilford's overly aggressive behavior, his improper obsession with the more invasive, bloody procedures, and evidence that dozens of citizens/patients begged Mrs. Peek to switch them to the other doctor in the office, as Mrs. Peek was an employee. Many told Mrs. Peek that Tilford was too aggressive, and some said he "hurt" them, among other things. Mrs. Peek worked there for years, and she exposed, in her deposition, the fact that Dr. Tilford was considered, by a multitude of people, both employees and patients, to be a very bad, dangerous, and hurtful doctor. She further describes how, for over three and a half years, "every single employee" in the Retinal Center complained about how Tilford treated patients, and she gave names. Mrs. Peek was conspicuously fired, and the reason she was given was that she "didn't fit in". Tilford still continues to abuse people, many of whom are elderly citizens, and many of whom do not realize that Tilford can and should be held accountable.

Petitioner respectfully requests that this Petition For Writ Of Certiorari be granted.

Respectfully Submitted,



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