

No. 17-7640

In the Supreme Court of the United States

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CEDRICK SAMS, PETITIONER

V.

DANIEL QUINN AND JOHN KLUDY

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. If a prisoner is incoherent because he needs medical attention (here, because he was having a hypoglycemic reaction) and refuses to leave his cell to go to the infirmary, does it constitute malicious or sadistic treatment (and so cruel and unusual punishment) for a corrections officer to protect the prisoner from the medical concern by using force (here, a taser) to secure him so he may be transferred from his cell to the infirmary?
2. Where a prisoner has admitted the controlling facts (here, that he needed immediate medical treatment and yet refused orders to leave his cell), may a court resolve the qualified-immunity question before discovery (here, of a video of the incident)?

PARTIES TO THE PROCEEDING

The petitioner, Cedrick Sams, was the plaintiff-appellant in the proceedings below. He is a state prisoner confined in the Michigan Department of Corrections (MDOC).

The respondents, Daniel Quinn and John Kludy, are employees of the MDOC and were defendants-appellees in the proceedings below.

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OPINIONS BELOW

The order of the court of appeals (Pet. App., C.A. Op. 1–5), which affirmed the district court’s judgment, is unreported but is available at 2017 WL 4574497. The order of the United States District Court for the Western District of Michigan (Pet. App., Dist. Ct. Op. 1–6), which granted summary judgment to the respondents on Sams’s 42 U.S.C. § 1983 complaint, is not published but is available at 2017 WL 1190548.

JURISDICTION

The district court had jurisdiction over Sams’s claims under 28 U.S.C. § 1331. The court of appeals had jurisdiction to review the district court’s final judgment under 28 U.S.C. § 1291. The court of appeals filed its order affirming the district court’s judgment on September 7, 2017. This Court’s jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution states:

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

42 U.S.C. § 1983 states, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

INTRODUCTION

The proverb that “no good deed goes unpunished” is apropos in this case.

Sams, a diabetic prisoner, experienced hypoglycemia while in his cell and needed medical care; as he observed in his amended complaint, low blood sugar could cause him to enter a diabetic coma. Responding to this serious and immediate medical need, MDOC staff repeatedly ordered him to exit his cell so they could take him to the infirmary. Sams admits that he refused those orders, but contends that his refusals were unintentional because his hypoglycemia had already caused him to be confused and of a “diminished capacity.” After about 10 minutes of Sams refusing to leave his cell despite repeated orders to do so, a corrections officer deployed a taser on Sams to compel Sams to exit his cell so that Sams could be taken to the infirmary for treatment. Sams contends that the taser use amounted to cruel and unusual punishment in violation of the Eighth Amendment.

While Sams acknowledges that he failed to plead an Eighth Amendment claim in his original complaint, he contends that the district court erred by denying his motion to amend his complaint as futile. Sams also contends the district court erred by refusing to order the defendants to produce a video of the tasing incident and that the district court and Sixth Circuit erred by determining that the defendants were entitled to summary judgment.

In support of his petition, Sams relies on legal standards articulated under Fourth Amendment jurisprudence addressing excessive use of force, not Eighth Amendment caselaw addressing claims of cruel and unusual punishment. But in a prison setting, prison officials should be afforded wide-ranging deference to deal with

and respond to safety and security issues, and are entitled to qualified immunity where, as here, their actions were taken in a good-faith effort to address a safety or security issue, as opposed to maliciously and sadistically to cause harm.

The Sixth Circuit applied the correct legal standard when it assessed Sams's Eighth Amendment claim and affirmed the district court's decision to grant defendants summary judgment based on qualified immunity. The Sixth Circuit also properly affirmed the district court's decision to deny Sams's request to amend his complaint and to deny Sams's request to require the defendants to produce a video of the tasing incident. Certiorari is therefore unwarranted in this case.

STATEMENT OF THE CASE

The underlying facts in this case are not in dispute. Sams, a diabetic prisoner of the MDOC, suffered a hypoglycemic episode and needed medical treatment. Pet. App., C.A. Op. 1. For a diabetic, low blood sugar can cause, as Sams explained in his amended complaint, a diabetic coma. Pet. App., R. & R. 1. Because Sams was experiencing a diabetic reaction, his cellmate summoned two corrections officers—defendants Lt. Daniel Quinn and Sgt. John Kludy—for help. Pet. App., C.A. Op. 1. Sams then confirmed to Quinn and Kludy that he needed to see medical staff. *Id.* Sgt. Kludy spoke with Sams for about 10 minutes and ordered him to leave his cell and go to the infirmary. Sams Aff., R. 21-1, Page ID # 144. Sams refused those orders. *Id.* at 2, 4, 5; *id.*, Dist. Ct. Op. 5; Sams Aff., R. 21-1, Page ID # 144. After a final warning that Sams needed to get off his bunk and go to healthcare, Sams responded, “Shoot me, shoot me.” Sams Aff., R 21-1, Page ID #144. Sgt. Kludy then tased Sams and took

Sams to the infirmary, where medical staff treated Sams by giving him an injection of glucagon, thereby stabilizing Sams and preventing further decline in his blood sugar. Pet. App., C.A. Op. 2.

Sams filed a complaint against MDOC employees Sgt. Kludy and Lt. Quinn, contending that he was improperly tased before he was taken to the infirmary to treat his hypoglycemia. Kludy and Quinn moved for summary judgment and asserted qualified immunity, contending that Sams failed to plead an Eighth Amendment violation against them because Sams did not make any factual allegations against them in his complaint. *Id.* at 2. A magistrate judge agreed that Sams failed to plead an Eighth Amendment claim against Kludy or Quinn, and recommended granting the defendants summary judgment. *Id.*

In his objections to the magistrate judge's report and recommendation, Sams conceded that he failed to state an Eighth Amendment claim against Kludy or Quinn, but he moved to amend or supplement his complaint and attached an affidavit with an amended statement of facts in support of his motion to amend his complaint. In his amended statement of facts, Sams asserted: "he was having a diabetic reaction; he had diminished capacity as a result of low blood sugar; he was in a non-combative state when the officers came to take him to the infirmary; he did not completely understand what Kludy was saying to him; he disobeyed Kludy's commands to leave his bunk due to diminished capacity; Kludy warned him he would be tased if he did not leave his bunk; he told Kludy to tase him." Pet. App., C.A. Op. 2.

The district court overruled Sams's objections to the magistrate judge's report and recommendation and granted defendants summary judgment. In doing so, the district court determined that Sams's proposed amended complaint would be futile because he failed to plead an Eighth Amendment claim: based on Sams's statements, defendants acted "reasonably for the purpose of getting Sams emergency medical care rather than maliciously and sadistically to cause harm." Pet. App., C.A. Op. 3; see also Pet. App., Dist. Ct. Op. 5 ("[T]he [amended] complaint would require dismissal because the actions were reasonable under the circumstances and the officers would be entitled to qualified immunity."). In addition to denying Sams's motion to amend his complaint, the district court also denied Sams's motion for defendants to produce video of the tasing incident. Pet. App., C.A. Op. 3.

On appeal, the Sixth Circuit determined that the district court did not err in denying Sams's motion to file an amended complaint because the proposed amendment, including Sams's affidavit in support thereof, still failed to establish an Eighth Amendment excessive-force claim. Specifically, Sams failed to show that the prison officials acted "maliciously and sadistically for the purpose of causing harm," as opposed to acting in a "good faith effort to maintain or restore discipline." Pet. App., C.A. Op. 4. And as for Sams's request for video of the tasing incident, the Sixth Circuit determined that, "[i]n light of Sams's admissions and the de minimis nature of his injuries, it is not likely that the video of the incident would have allowed him to successfully withstand the motion for summary judgment." *Id.* at 5.

REASONS FOR DENYING THE PETITION

I. The lower courts applied the correct legal standard for a cruel-and-unusual-punishment claim brought under the Eighth Amendment, properly granted the defendants summary judgment, and properly denied Sams’s request to amend his complaint.

Even though Kludy acted in good faith to ensure Sams received prompt medical attention, Sams contends that Kludy’s conduct amounted to cruel and unusual punishment in violation the Eighth Amendment. According to Sams, it violated his rights because Sams was “totally incoherent” and “unable to comprehend any instructions/orders.” Pet. 8. In short, he says that because he was in this state of “diminished capacity,” it was objectively unreasonable to tase him. Pet. 11. But it isn’t cruel and unusual punishment to save the life of someone with diminished capacity.

Sams relies on *Champion v. Outlook Nashville, Inc.*, 380 F.3d 893 (6th Cir. 2004), to support his claim that Kludy violated his clearly established right against cruel and unusual punishment because Sams had diminished capacity to understand Kludy’s orders. Sams contends that Kludy’s good-faith effort to ensure that he was provided needed medical attention does not mitigate the fact that Kludy tased him because Kludy’s motive is not relevant. Specifically, Sams cites the following language in *Champion*, 380 F.3d at 904:

We recognize that the Officers perhaps did not intend to harm Champion; indeed, they may have believed they were helping him. Such a consideration is immaterial, however, because the qualified immunity doctrine is an objective one; motive is irrelevant.

But *Champion* is inapposite, because it involved a different constitutional right and a different standard. That case involved the alleged excessive use of force by three Nashville police officers that resulted in the death of Calvin Champion, an autistic

man. Champion was a pretrial detainee and alleged violations under the Fourth Amendment (excessive force) and the Fourteenth Amendment (failure to render medical assistance). *Id.* at 898. Following an adverse jury verdict, the three police officers asserted that the district court erred by failing to grant them qualified immunity. In affirming the jury verdict, the Sixth Circuit noted the parties' widely divergent version of events and that in reviewing the district court's denial of the Rule 50(b) motion, it must "draw all reasonable inferences in favor of the nonmoving party." *Id.* at 900. The Sixth Circuit also stated that claims of excessive force by law enforcement officers are properly analyzed under the Fourth Amendment and its "reasonableness" standard. *Id.* at 901 (citing *Graham v. Connor*, 490 U.S. 386, 395 (1989)). Based on these standards and the evidence presented at trial, the Sixth Circuit affirmed the denial of qualified immunity, determining that the evidence supported that "the officers lay on top of Champion, a mentally retarded individual who had stopped resisting arrest and posed no flight risk, and sprayed him with pepper spray even after he was immobilized by handcuffs and a hobbling device." *Champion*, 380 F.3d at 901. Further, the Sixth Circuit noted that the officers conceded that the alleged use of force, if it was in fact applied, was not objectively reasonable. *Id.*

The standard set out in *Champion* is not relevant here. First, the individual in *Champion* was not experiencing a life-threatening medical emergency and was not refusing to go get medical treatment because of his diminished capacity. Second, *Champion* involved a Fourth Amendment claim and, as such, the police officers' actions were properly considered under the objectively reasonable standard articulated

in *Graham*. But in a post-conviction prison setting, the Eighth Amendment applies, not the Fourth Amendment, and under the Eighth Amendment a prison official's actions should be reviewed to determine whether the official acted in good faith or with malicious and sadistic intent. *Whitley v. Albers*, 475 U.S. 312, 321–22 (1986). While a police officer's subjective intent in a pre-detention situation may not be relevant to whether the use of force is objectively unreasonable, such is not the case in a prison setting. In a prison, a “‘prisoner must satisfy both an objective and subjective component’ to make out an excessive-force claim under the Eighth Amendment.” *Hopper v. Plummer*, 887 F.3d 744, 752 (6th Cir. 2018) (quoting *Williams v. Curtin*, 631 F.3d 380, 383 (6th Cir. 2011)).

Courts have consistently applied the “malicious and sadistic” standard when evaluating an excessive use of force claim in a prison setting—that is—“‘whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.’” *Whitley v. Albers*, 475 U.S. 312, 320–21 (1986) (quoting *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973) (Friendly, J)). Indeed,

Prison administrators . . . should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security. That deference extends to a prisoner security measure taken in response to an actual confrontation with riotous inmates, just as it does to prophylactic or preventive measures intended to reduce the incidence of these or any other breaches of prison discipline. It does not insulate from review actions taken in bad faith and for no legitimate purpose, but it requires that neither judge nor jury freely substitute their judgment for that of officials who have made a considered choice. . . . [C]ourts must determine whether the evidence goes beyond a mere dispute over the reasonableness of a particular use of force

or the existence of arguably superior alternatives. Unless it appears that the evidence, viewed in the light most favorable to the plaintiff, will support a reliable inference of wantonness in the infliction of pain under the standard we have described, the case should not go to the jury. [*Whitley*, 475 U.S. at 321–22 (internal citations and quotations omitted).]

Here, the facts alleged reveal that Kludy had Sams's best interest in mind when he deployed his taser; there is no debate that Sams needed immediate medical attention. Sams Aff., R. 21-1, Page ID #143–44 (admitting that because of a diabetic reaction, he could not understand the situation); Pet. App., R. & R. (admitting that if his blood sugar had gone lower, he was at risk of a diabetic coma). And there is no dispute that Sams repeatedly refused to comply with Kludy's order for Sams to exit his cell. Even if Sams's alleged "diminished capacity" somehow impeded his ability to understand and comply with Kludy's orders, unlike the plaintiff in *Champion*, Sams was not restrained and was not compliant. In fact, if Sams was already incoherent, as he alleges, as a result of his diabetic episode, to the extent that he could no longer think clearly enough to accept help getting to the infirmary, then that only confirms the seriousness of the medical emergency and the need for Kludy to get Sams to the infirmary without further delay. Moreover, the amount of force that Kludy used was neither malicious nor wanton. Indeed, once tased, Sams was secured and taken to the infirmary where he was provided needed medical treatment. While Sams was no doubt upset about being tased, the injuries he sustained were "minor taser barb punctures that required only cleaning and covering with an adhesive bandage." Pet. App., C.A. Op. 5. If Kludy had not deployed his taser and gained control over Sams, Sams may not have made it to the infirmary and could have suffered a much more serious fate. See Pet. App., R. & R. 2 (quoting from Sams's amended complaint, where Sams

acknowledged that his low blood sugar when he reached the infirmary was “at his all time low” and could “without question cause a diabetic [coma]”). And given Sams’s alleged disoriented state, MDOC employees could have been injured had they attempted to place their hands on Sams and attempted to physically restrain him without the assistance of the taser. Indeed, his statement encouraging them to “Shoot me, Shoot me,” Sams Aff., R. 21-1, Page ID # 144, may have further suggested that he was not acting rationally and therefore could be a risk to restrain.

Here, the Sixth Circuit applied the correct legal standard when it determined that Sams’s request to amend his complaint would have been futile because Sams’s proposed amendment still would not show an Eighth Amendment violation. Because Sams could not establish that Kludy’s actions were taken maliciously and sadistically, his Eighth Amendment claim necessarily failed, and the defendants were therefore entitled to qualified immunity. Sams’s reliance on Fourth Amendment legal analysis to support his excessive-use-of-force claim was properly rejected where, as here, he was not a pre-trial detainee and the Fourth Amendment was not at issue. Certiorari is not warranted.

II. The district court did not err by resolving the qualified-immunity question before discovery.

After defendants filed their motion for summary judgment, Sams filed a motion with the district court asking the court to order the defendants to produce to the court and Sams a copy of the video showing the tasing incident. On appeal, Sams contends that the district court abused its discretion by denying his request for the video. He

even asserts that it was an abuse of discretion to deny him, as the non-moving party, any opportunity for discovery. Pet. 9 (citing *White's Landing Fisheries, Inc. v. Buchholzer*, 29 F.3d 229, 231–32 (6th Cir. 1994)).

But in the context of qualified-immunity, he has no entitlement to discovery. Quite the opposite, “[q]ualified immunity is ‘an immunity from suit rather than a mere defense to liability.’” *Pearson v. Callahan*, 555 U.S. 223, 237 (2009) (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)). Indeed, this Court has “made clear that the ‘driving force’ behind creation of the qualified immunity doctrine was a desire to ensure that insubstantial claims against government officials [will] be resolved *prior to discovery*.” *Pearson*, 555 U.S. at 231 (emphasis added; some quotation marks omitted; alteration in original). As a result, “[u]nless the plaintiff’s allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery.” *Behrens v. Pelletier*, 516 U.S. 299, 306 (1996) (quoting *Mitchell*, 472 U.S. at 526). Accordingly, there is no abuse of discretion where the requested discovery “‘would not have changed the legal and factual deficiencies’” asserted in the summary-judgment motion. *Centra, Inc. v. Estrin*, 538 F.3d 402, 420 (6th Cir. 2008) (quoting *Maki v. Laakko*, 88 F.3d 361, 367 (6th Cir. 1996)).

Here, the district court did not abuse its discretion by denying Sams’s request for video of the tasing incident because, based on Sams’s allegations and admissions, the video would not have changed the outcome in this case. While Sams claims the video would have shown that he had a “diminished capacity” and that he did not

intentionally refuse to comply with Kludy's orders to exit his cell, Sams admits that he did not respond to Kludy's repeated orders. Moreover, Sams does not dispute that Kludy's actions were taken to ensure that he received timely medical attention, and that Kludy did not act maliciously or sadistically for the purpose of causing Sams harm.

Additionally, other than being tased, Sams does not allege that Kludy, or any other MDOC employee, engaged in any other form of alleged excessive force. Simply, there was no dispute that Sams needed medical attention, that Sams refused to comply with Kludy's repeated orders to exit his cell so Sams could be taken to the infirmary, that the sole alleged use of excessive force was being tased or, as the Sixth Circuit properly determined, Sams's alleged injuries as a result of being tased were minor and "required only cleaning and covering with an adhesive bandage." Pet. App., C.A. Op. 5. Based on Sams's allegations and admissions, and applicable caselaw, producing video of the tasing incident would not have resulted in a different outcome.

Finally, notwithstanding Sams's request for the video of the tasing incident, it is not as if Sams was without information about the content of the video. Included as an attachment to Sams's complaint was a letter to Sams from the Office of Legislative Corrections Ombudsman, with whom Sams apparently filed a complaint about the tasing incident. Compl., R. 4-2, Page ID ## 23–24. The Office of the Legislative Ombudsman is a nonpartisan agency, independent from the MDOC, created by the Michigan Legislature. The Ombudsman is empowered to investigate complaints by prisoners, as well as the general public, regarding the state prison system. Mich. Comp.

Laws § 4.351–4.364. A representative from the Legislative Ombudsman reviewed the video “numerous times” and described its content in detail to Sams. Compl., R. 4-2, Page ID ## 23–24. The representative concluded that it “seem[ed] reasonable that custody staff believed they had to get you to health care as soon as possible given your condition, and that they did not feel you could be safely treated in your unit. And they were instructed by health care staff to have you escorted to health care as opposed to keeping you in the unit, so they were also complying with the medical professional who would know best what type of treatment you needed and where to administer it.” *Id.* at Page ID # 24. The representative further observed, “If I had been the nurse required to treat you, I personally would have been concerned for my safety if asked to enter a cell with a man who was clearly not in his right state of mind, as I directly observed on the video.” *Id.* “And I would have been concerned for *your* safety as well, because the longer you kept refusing to comply with the treatment, the more threatening your condition would have become.” *Id.* In sum, the review by the Ombudsman representative did not identify any violations of policy and instead determined that MDOC staff acted reasonably under the circumstances.

Given Sams’s admissions in his complaint, including his failure to comply with repeated orders to exit his cell, his failure to rebut evidence that Kludy did not act with malice and used only enough force to get Sams to comply with his orders, and the Legislative Ombudsman’s independent determination that MDOC staff did not act improperly under the circumstances, the video of the tasing incident would not have changed the legal and factual deficiencies in Sams’s case. Accordingly, the Sixth

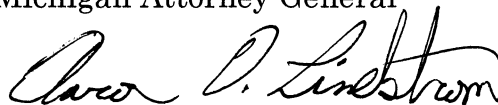
Circuit properly determined that the district court did not abuse its discretion when it denied Sams's motion to order defendants to produce video of the tasing incident.

CONCLUSION

Accordingly, this Court should deny the petition for writ of certiorari.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Aaron D. Lindstrom". The signature is fluid and cursive, with the first name "Aaron" being more prominent.

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Dated: MAY 2018