

No. 17-7640

IN THE SUPREME COURT OF THE UNITED STATES

CEDRICK SAMS, PETITIONER

V.

DANIEL QUINN AND JOHN KLUDY

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

REPLY BRIEF (PETITIONER)

Cedrick Sams (#169006)
Petitioner in Pro se
CHIPPEWA CORRECTIONAL FACILITY
4269 West M-80
Kincheloe, Michigan 49794-9200

Pro se (Prisoner) Petitioner-
Litigant whom receiving
prisoner assistance from
Kenneth Colvin Jr. (#192744)

UNITED STATES SUPREME COURT RULE

"6. Any petitioner may file a reply brief addressed to new points raised in the brief in opposition, but distribution and consideration by the Court under paragraph 5 of this rule will not be deferred pending its receipt. Forty copies shall be filed, except that a petitioner proceeding in forma pauperis under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2.

The reply brief shall be served as required by Rule 29."

"5....(I)f a brief in opposition is timely filed, the Clerk will distribute the petition, brief in opposition, and any reply brief to the Court for its consideration no less than 14 days after the brief in opposition is filed, unless the petitioner expressly waives the 14-day waiting period."

United States Supreme Court Rules, Rule 15.5 & 6

"2....(A)n inmate confined in an institution, if proceeding in forma pauperis and not represented by counsel, need file only an original petition and motion."

United States Supreme Court Rules, Rule 12.2

REPLY BRIEF

REPLY ISSUE I

Daniel Quinn and John Kludy stated that *Champion v. Outlook Nashville, Inc.*, 380 F.3d 893 (6th cir. 2004), a diminished capacity excessive use of force case was "...*(i)n*apposite, because it involved a different constitutional right and a different standard', and "...*(i)n* a post-conviction prison setting, the Eighth Amendment applies, and 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." See: Brief in Opposition, Pages 6; 8. Sams had used the correct standard cited in both *Hudson v. McMillian*, 503 U.S. 1, 7 (1992) and *Johnson v. Glick*, 481 F.2d 1028, 1033 (2n cir. 1973), which states:

"The extent of injury suffered by an inmate is one factor that may suggest whether the use of force could plausibly have been thought necessary in a particular situation, or instead evinced such wantonness with respect to the unjustified infliction of harm as is tantamount to a knowing willingness that it occur.

In determining whether the use of force was wanton and unnecessary, it may also be proper to evaluate the need for the application of force, the threat reasonably perceived by the responsible officials, and 'any efforts made to temper the severity of a forceful response'."

Sams never posed any threat to staff or prisoners, as Kludy and Quinn were there for a medical issue that both admitted that Sams was not responsive to their commands (as the ten (10) minute taser video footage will show); Kludy and Quinn never presented to any Court the options that they took to temper the severity of the forceful response -i.e. bring the nurse to Sams; grabbing Sams' arms and escorted him to the wheelchair; giving Sams a honey pack (which would had simply risen his sugar level, and etc. (viable options that they would had used if the taser was not available)), and therefore, tasing Sams was not done in good faith. *Champion*, just as the case of *Estate*

REPLY BRIEF

OF Hill v. Miracle, 2016 U.S. Dist. Lexis, 72372; 853 F.3d 306 (6th cir. 2017) were only cited because of the fact in these cases, the victims were in an obvious diminished capacity state that the defendants were aware of, as was pointed out in Hill:

"(D)efendant also knew that the manner in which he used the taser -drive stun mode- was not recommended. Thus, he used a taser in a manner that was not recommended on an individual suffering from a diabetic episode even though he 'didn't really know everything that was going on medically.'" Hill, 2016 U.S. Dist. Lexis 72372 (*13).

It is clearly malicious and sadistic to tase a person, that you are aware that he is not responsive to your commands, because he is totally incoherent and having a diabetic episode. This action had no legitimate purpose, especially when you have not used other available options first. If that is the case, you would deploy (tase) a non-threatening and unresponsive person out of convenience simply because you have the access to the taser -and that is not the purpose of the taser. Quinn and Kludy did not have Sams best interest in heart, when they never exercised other non-painful options.

In regards to injury, the Seventh Circuit notes, "(a)s the Supreme Court has said, pain, not injury, is the barometer by which we measure claims of excessive force..." Lewis v. Downey, 591 F.3d 467, 475 (7th cir. 2009). With respect to the use of a taser, the Sixth Circuit has held that "the gratuitous or excessive use of a taser would violate a clearly established constitutional right." Landis v. Baker, 297 F. App'x 453, 463 (6th cir. 2008). Tasing constitutes sufficient force to satisfy the first element set forth in Whitley. It is clear that Sams suffered torturous, unbearable pain from the unwarranted use of force. This goes directly against Quinn and Kludy minor injuries claims cited in their brief. See: Brief, page 9.

Quinn and Kludy claim that they '...(c)ould have been injured had they attempted to place hands on Sams and attempted to physically restrain him

RELIEF BRIEF

without the assistance of the taser." See: Brief, Page. 10. But there has never been a case before the taser program has been instituted with the Michigan Department of Corrections since 2012, that a staff member has been injured (and they have not produce an incident with any Court) for simply escorting a prisoner to a wheelchair or having a nurse come to the prisoner.

RELIEF ISSUE II

Sams simply requested the taser video footage for the Court would consider in the record for summary judgment, pursuant to Scott v. Harris, 550 U.S. 372, 380 (2007), as the ten (10) minute video footage will show what exactly occurred.

In regard to the letter/report from the Legislative Ombudsman Office, this is not a trier of fact, and should not be considered on this matter before the Court.

CONCLUSION

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

Respectfully submitted,
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