24-7046

ORIGINAL

NO. U.S.C.A. 10

No. 22-3163

IN THE

SUPREME COURT OF THE UNITED STATES

SHAIDON BLAKE - PETITIONER

VS.

(FNU) WALLACE; (FNU) GORMAN; (FNU) CHASTAIN; (FNU) CHRISTIAN; and CENTURION HEALTH - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

10th CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Shaidon Blake #Y64906
Lawrence Correctional Center
10930 Lawrence Rd.
Sumner, Illinois 62466

QUESTIONS PRESENTED

1. Does the Courts application of Hudson v. McMillian, 503 U.S. 1, 7 (1992) concerning use of force contradicts This Honorable Courts ruling in Guzman v. Missouri Dept. of Health?

2. Did the Court error in its interpretation and application of Washington v. Harper, using White v. Napoleon, 897 F.2d 103, 113 (3rd Cir. 1990) to circumvent and take away a Persons right to refuse any invaisive medical treatment?

3. Did the courts err in dismissing with prejudice not granting leave to amend complaint amount to an abuse of discretion?

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:

RELATED CASES

TABLE OF AUTHORITIES CITED

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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 judgment below.

OPINIONS BELOW

[✓] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[✓] reported at Blake v. Wallace, 22-3163 10th Cir. 2024; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[✓] reported at Blake v. Wallace et al, 21-3046-SAC; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix ___ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix ___ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts:**

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

[√] 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

1st amendment USC.
6th amendment U.S.C.
14th amendment U.S.C.
8th amendment U.S.C.
U.S.C §1985

STATEMENT OF THE CASE

* See Attatched

STATEMENT OF THE CASE

ON September 3, 2020, despite petitioner not being a threat to himself or others, was not provoking officers, and was not committing any infractions, defendants caused petitioner to be removed from his cell on the false notion that petitioner was having a stroke. This conclusion came as nurse with defendant was doing medication pass. The petitioner was startled at the banging of the door by the officer, which caused petitioner to hop up suddenly. This motion caused petitioner to have to catch balance before approaching the cell door. Because of this motion and the fact petitioner was complaining earlier about staff misconduct, defendants used this as a reason to harrass the petitioner. (See Appx. F & G)

This interaction was during quarinteen because of the pandemic. Because of the serious nature of the lockdown, petitioner wanted no contact with security staff or any one for fear of contracting the life threatening covid-19. Due to medical and security staff's insistance (defendants), petitioner agreed to be taken across the unit to the units medical exam room for a blood pressure check. Once blood pressure was taken and it was normal, petitioner then requested to be taken back to his cell, but Wallace and Christian decided that a hospital visit was neccessary, even though refusal was consistant. Petitioner requested refusal slip and

was denied. Wallace then called a signal code officer needs assistance, requesting a restraint chair. Petitioner continued to protest being forced to go to an out side hospital to no avail because defendants strapped petitioner into the restraint chair used for disciplinary problems, even though petitioner did not physically resist or fight the placement at all. (see Appx. H-1)

During all use of force, the incident is video recorded. On camera petitioner continues to refuse treatment and also exposed the racist behavior committed by the officer who held the camera. Petitioner fully articulated disagreement about needing treatment and the fact this act of retaliation was unprovoked. At no time during the transport from the unit to medical where the medics waited, was petitioner ever displaying signs of stroke.

Upon arrival to medical unit, Christian, the prisons medical staff supervising the transition into medics care with all (3) defendant correctional staff, even after petitioner refused all medical treatment, had petitioner medicated for pain. Petitioner was asked was he in pain and the response was no. The EMT's observed that there was nothing apparently wrong with petitioner, (R. Vol. II, video 1 at 18:20-23) (R. at 33; R. Vol II, video 1 at 11:01-03) Regardless of petitioner refusing treatment and stating he wanted nothing to make him sleepy, petitioner was forced given morphine and 10 minutes later given fentanyl

(See R. Vol. II, Video 2 at 5:09-14 and R. Vol. II, Video 2 at 5:12). Petitioner was then taken out to ambulance for hospital trip.

At hospital before any treatment, petitioner had to take a covid-19 test which came back negative. Once seen by doctor, he stated that no stroke or any symptoms of stroke existed (R. at 32 and R. at 34-35; see also R. at 196 proven by emergency room doctors at Wesley Hospital that petitioner having a stroke or anything similar was false.) Retaliation for filing grievances for misconduct to include falsifying official documents was the reason for the attack. Upon returning from the hospital, negative for covid, petitioner was placed in a quarinteen cell that was contaminated with Covid-19. This cell was occupied only minutes before petitioner ~~was~~ placed in it by a prisoner who was just transfered to the Covid unit at Lansing Correctional Facility. Petitioner was placed in this contaminated cell with out it being cleaned. the was placed in the cell by defendant Gorman who only gave him a styrofoam cup half filled with watered down Simple green and a hand full of paper towels which is not adequet to disintect the cell. Mass testing for Covid-19 was done approximately 3-5 days later and petitioner now tested positive for Covid and was gravely ill and had to be transfered to LCF's Covid unit.

Fialsified reports that got petitioner placed on long term segregation. Later after serving one year and eight months on seg, reporting officer came for ward stating petitioner never made threats on hospital run and the report had been "altered and what the narrative stated now is not what happened" (R. at 125-26; R. at 287; R. at 298; R. at 125-26) (See Appx. F2, F10)

Eventually after three years of ignoring petitioners grievances, KDOC that finally initiated an investigation after the media got involved and as a result, petitioner was shipped out of Kansas back to Maryland, the jurisdiction of conviction. (See F2, F9). The real problem is the liberty interest created by the deliberate indifference of the officers when committing the blatten misconduct that not only caused petitioner to be unjustly placed on long term seg, but also caused him to be passed for parole for 7 years. The rationale for the parole board passing petitioner was due to the disciplinary reports. The same reports petitioner had been grieving as being falsified. (See appx. F 2-10).

The grievances that were apart of the onslaught of false ~~formal~~ disciplinary reports issued became the subject of a investigation into misconduct conducted by KDOC. (See Appx. F 9) The disciplinary reports are obviously flawed and proven false. The disciplinary hearing officers were the subject of the investigation

because as noted in exhibit (4) of the disciplinary reports show all were conducted the same date, 8-17-20 and strangely, at the same time 0932 hrs. Report G-1A, 2A, 3A were conducted by hearing officer Sgt. Randolph, but 4A was held by Lt. Johnson. It would be impossible to hold (4) different hearings with (2) different hearing officers at the same time. (See Appx. G 1B, 2B, 3B & 4B).

This intentional falsification of official documents is the reason petitioner was denied parole. Petitioner after the elaborated grievance process, filed a U.S 42 § 1983 civil suite seeking relief in the District Court. The court ruled petitioner failed to state a claim in which relief could be granted despite all the evidence of misconduct presented. The District court ordered a Martinez report be prepared by KDOC, but it was this report that the courts used to ascertain the facts of the case. Even though KDOC was ordered to interview "All parties involved", they decided to complete the Martinez report without interviewing the petitioner with a defensive posture taken in attempts to distance themselves from the facts that makes KDOC culpable. The District Courts dismissal led to petitioner filing an appeal in the 10th cir which was dismissed stating petitioner does not challenge the facts stated in the Martinez report. This is incorrect. Petitioner challenges the entire report, statements and the conclusion.

Petitioner was represented by counsel appointed by the courts and oral arguements were held 11-22-24 in front of the 10th Cir.

REASON FOR GRANTING THE WRIT

See Attached

Reason for Granting the Writ

Does the courts application of Hudson v. Mc Millian, 503 U.S. 1, 7 (1992) concerning use of force contradicts this Honorable courts ruling in Cruzan v. Missouri Dept. of Health?

In Cruzan, the Supreme Court points out "while the Constitution protects a persons right to reject life preserving medical treatment (other right to die), states can regulate that interest if the regulation is reasonable. This court never took away the persons right to refuse, it just protected the patient from abuse from interference. Nancy Cruzan layed in a permanent vegetative state as a result of injuries sufferedin a auto accident. Her parents sought to withdraw life sustaining treatment and allow her to die, claiming she said this would be her wish under such circumstances. The state refused, and the Supreme Court upheld the states guidelines for the continuation of medical treatment, which allowed withdrawl of treatment "ONLY with clear and convincing evidence that this is what the patient would have wanted."

The court made it very clear the states regulation on a persons right to die or refuse life sustaining treatment would only be to protect the patient from abuse of such situations, when the patient can not or have not made it clear that refusal is what they wanted. (See Cruzan v. Missouri Dept. of Health, U.S. (1990))

In Hudson, the court "weighed whether force was applied in a good faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm". In petitioners case, no rule violation or incident requiring force was done, but the use of force was because petitioner refused medical treatment he didn't need. This being during Covid is material because the prison was on mandatory quarintean and locked down due to the wide spread of Covid-19. The least amount of physical contact was required to maintain control of the spread. With full lock down and no transfers or visits, the continued spread of Covid within the prison was due to contact with staff. So petitioner had that reason along with not being in medical distress to stay away from any contact with staff.

Petitioner has never been suicidal and has utilized the medical services on many occations, demonstrating the will to live a healthy life, so the use of force was very unreasonable with claims to be trying to save petitioners life. Once petitioners refusal was given and a refusal slip was requested, all contact should have ended instead of a request for assistance and a restraint chair. Appendix D, the ImPP for medical refusal states under Sec III Refusal (C)(8) The resident may not be punished or disciplined for refusing health care services. It also states in same section and sub section at 9, that the refusal can result in placement in the infirmary until evaluation of the

patient is done when the refusal may pose to jeparidize the persons safety of the safety of others. #10 The site doctor or designee is to counsel resident on the dangers of the refusal if refusal is deemed to be a risk to the health of resident; and documentation is required. No where in the regulation does it allow the escalation to a use of force because of refusal. It does not allow staff, rather medical or security, to make a decision on whether invasive medical treatment can be forced on a resident.

The courts in its denial states the defendants complied with established rules concerning refusal relying on the exception rule related only to psychotrophics when a prisoner is mentally ill and suffering a episode that could injure himself or others. I would argue along with presenting law to state the difference is consent can not be given or denied as in Cruzan, due to the mental conditionion of the patient would not allow a rational decision to be made, which makes states regulation necessary and exceptable by this Honorable court. That is not the case in petitioners situation and the interpretation and application of law pertaining to mental health involuntary intervention is abuse and improper.

The general order 09-132 for use of the restraint chair, clearly used for dangerous, assaultive prisoners states; Sec. II (C)(1)(II) "The use of the restraint chair shall be requested by SST, S.I.C, ONLY under the following circumstances:

1. The offender is physically abusive to staff, himself, combative, or unruly.
11. Conventional means of control are ineffective, i.e. talking to the offender in a calm manner in an attempt to de-escalate, placing the offender in a observation/isolation cell to remove external stimuli, and giving the offender an additional opportunity to calm down and cooperate even after the mobile restraint chair order has been given. If the offender demonstrates adequet self-control the order for use of force, use of the mobile restraint chair may be discontinued.

These requirements were ignored and subsequent use of force reports by defendants were falsified to attempt to try and justify the use of force and use of the restraint chair. Defendant Wallace, the officer in charge, reports "offender Blake started to get verbally aggressive" and this was why he requested the restraint chair and commenced a use of force. Petitioner denying services by requesting a refusal slip can not be misconstrewed as being "vebally aggressive." Once petitioner asked for a refusal slip the response was No, and refusal would not be excepted. Medical and security staff violated the established policy and escalated the situation with the threat of force. This escalation violates IMPP 02-118, the employement contract that pshibits conduct that results in a hostile enviornment.

This use of force violates the 8th, 8th, and 14th amendment of the U.S. Constitution. Once the defendants falsified use of force reasons and the official reports, this is now a violation of Fed.R.Crim.P. § 1512(c)(ii) obstruction of justice. which reads in part "alter, change, destroy, mutilate, any official document, with intent to impair the document's integrity or availability in a official proceeding is obstruction, punishable by a fine and or up to 20 years in prison. Once these reports that were falsified were used in a court, the obstruction was raised to a Rule 60(b) violation for fraud on the court. The unreliability of the documents used to determine the out come of case 5:21-cv-03046-JMC, appellate case No 22-231163 Blake v. Wallace, et.al. and Blake v. Maryland No. DLB-24-0697, 2024 WL 2553494 (D. Md. May 2024), took away the courts ability to properly function.

Appendix H-1, Wallace report states "We assisted the offender off the exam table to the restraint chair. In the Martinez report, the defendants state petitioner tried to hop off the examining table and this level of aggression they used to justify use of force and restraint chair. But this contradicts the supervising officers report. (See Appx. H-1). Another example of falsifying documents used to justify use of force and use of restraint chair was on incident report from officer Gorman, a defendant, who falsely states petitioner

was in distress and he states "Blake attempted to argue with CSI Wallace and began to get down from the examination table." This contradicts Wallace statement who said "We assisted the offender off the table". To say "Blake attempted to argue with CSI Wallace" indicates his state of mind because either petitioner argued or he didnt, either way to argue does not meet the standard for use of force. Gorman also falsely states petitioner suggested he would fight any escorting officer, which was missing from Wallace report who was present the entire incident. Gorman goes on to describe the incident as if petitioner resisted placement in the restraint chair. (See Appx. H-2). But Wallace report states "Offender Blake did not physically resist the chair placement." (See Appx. H-1)

Defendant Chastain also falsified his incident report stating petitioner resisted the chair placement. (See Appx. H-3) Appx. H-4, officer Silver who was on scene and gave account of the incident and report no resistance or hostility from petitioner, contrary to defendants Gorman and Chastains reports. This demonstraites the defendants willingness to cover up their crimes of assault and violation of petitioners civil rights. This makes the offense meet the 5th amendment standard because the force was not in good faith. To falsify official reports shows malicious intent and is obstruction. Due to the force being "objectively harmful", a violation of the

Constitutional magnitude is established. (See Wilkins v. Gaddy, 559 U.S. 34, 37-38 (2010) This excessive force led to the involuntary administering of narcotics. The courts used the unsubstantiated claim that petitioner was in a life-threatening medical distress to justify the use of force. If the application of law was wrong, the state being able to force medicate if they think the persons life is threatened, then the use of force is excessive. The state does not have the ability to arbitrarily impose force just because a prisoner does not comply with a order, and the regulation is clear about the use of the restraint chair, and the defendants behavior was unlawful.

The lower courts use of Hudson v. McMillian, abandons the established standard creating an additional reason to be able to use force, if the prisoner refuses medical treatment, and deems it atypical arbitrary and capricious, requiring reversal. In the courts ruling in Estelle v. Gamble, a prison official can be found liable under the 8th amend for denying a inmate humane conditions of confinement when they knowingly disregard an excessive risk to inmate health or safety. (See also Farmer v. Brennan, 511 U.S. 825, 837 (1994). There are no medical benifits in restraining a stroke patient in a restraint chair used for disciplinary actions, so the defendants claims to be trying to help fails on common sence alone along with medical rationale. The 14th amend. protects the liberty interest in avoiding unwanted treatment and

the lower court recognized this fact when quoting Washington v. Harper, but abandons the principle of the law using the supreme courts interpretation, that any such involuntary treatment must be reasonable related to legitimate penological interests. Using White v. Napoleon, out of the 3rd circuit, which allows a prison to compel a prisoner to accept treatment when officials in exercising professional judgement, deem it necessary to carry out out valid medical or penological objectives. They spoke specifically about mental institution authorities. Where the lower court abandoned the letter of the law is when it failed to recognize the latter portion of White v. Napoleon where it clearly states "the judgement of prison authorities will be presumed valid unless it is shown to be such a substantial departure from accepted professional judgement, practice, or standards as to demonstrate that person responsible actually did not base the decision on such judgement.

Under Washington v. Harper the court ruled the prisoner's have a constitutional liberty interest against the unwanted administration of mind altering medications under the due process clause of the 14th amend. Sell v. United States points out that when giving medication to a non-consenting prisoner, a finding is required that justifies the need as important, essential and over riding and a determination of medical need. There was no medical need at all, no medical benifit for the

involuntary administering of morphine than fentanyl, and because of the refusal, there is no overriding reason to give highly addictive opiods for pain petitioner clearly is not experiencing. (Citing Harper, 494 U.S. at 229). All examples of involuntary medicating that has been quoted or cited have been related to a mental health incident, which do not apply, yet was used to justify the actions of the defense and the dismissal of the complaint and appeal.

Petitioner was not hurt, in distress or in any pain, making the involuntary administration of two opiods for pain a violation of his rights. (See Riggins, 504 U.S. at 135; R. Vol II, Video 1 at 11:01:03) Because petitioner demonstrated that there was no penological or medical justification for the forced medication of morphine and fentanyl, a 14th amend. claim has been sufficiently stated. (See Riggins, 504 U.S at 135) It was impossible for the lower courts to properly weigh in on the issues presented because even after detailing the facts in depth, the courts still misinterpreted the complaint as merely being a disagreeing of medical decisions. This is far from what petitioner has stated. Petitioner claims and substantiates claims with documented proof, that the conclusion that a stroke was the reason for forcing medical treatment was not true, but due to petitioners extreme fear of contracting Covid-19 and the defendants willingness to retaliate against the petitioner is the reason for this bad interaction.

first of all HIPAA law prevents the authorities from being too involved with medical decisions due to medical privacy, but as you can see from transcripted evidence presented in Appeal brief of appellant, that Sgt Wallace made the decision with nurse Christian that petitioner could not refuse treatment, and he was also involved in the interaction with the EMT's when they were assessing petitioner before transport to hospital. He had input in whether petitioner was medicated. Once nurse was assessing petitioner, Wallace job was to wait for petitioner to be done to take me to the cell. Instead he acted as security and medical staff.

As pointed out in appellate brief, petitioner is claiming the defendants did not believe he was having a stroke, but used the moment to enact revenge for grievances and as they stated, for banging all day on the door concerning the staffs failure to act on the misconduct. (R. at 12) This makes it clear the claims are not a dispute of medical judgement but proof of retaliation. (See Appx. H2, report of officer who states petitioner was banging or rather "yelling out his door the entire shift prior to the recent moments." The schemes of retaliation are proven by Appx. F & G. The investigation became unavoidable due to media attention which exposed the wide spread corruption and misconduct in KDOC and specifically EDCF where petitioner was held.

(See pg. 31 & 35; Blaise Mesa, NPR KCUR (Oct. 11, 2023) https://www.kcur.org/News/2023-10-11/Kansas-inmates-say-prisons-discipline-them-for-false-reasons-one-man-says-it-cost-him-parole) (See also, e.g., R. at 31-35, 44-46) (R. at 298 officer stating "narrative was altered and what the narrative stated now was not what happened")

The article exposing the misconduct was not released until after the District Courts 8-12-22 decision. Defendants presented misrepresentations of petitioners condition to EMT's, to include Sgt Wallace at R. Vol. II; Video 2 at 12:24-28. This scheme accomplished its intended results. Get petitioner stuck on long term seg. Because of this off site hospital trip, false reports were wrote and got petitioner a year and eight months on seg. (See Appx. F 2-10)

As stated in appellate brief, the District court's analysis focused entirely on the hospitalization instead of the forced medication (R. at 312-13) In properly applying the standard, the District court should have not allowed forced medication just based on just the defendant stating they had medical or penological objectives. Compare R. at 312 quoting Lowry, 211 F. Appx at 712, with Riggins, 504 U.S. at 135, which makes forced medication impermissable absent a finding of over riding justification and a determination of medical appropriateness under Harper. There was no analysis past the court excepting the defendants purported

medical justification that lies still unsubstantiated. In fact, these claims were debunked and proven false by the doctors, even after EMT's stated they saw no signs of a stroke. It mattered not to the lower court that petitioner refused treatment and stated no pain was present, thus making pain medication unnecessary, especially of the magnitude administered. Petitioner was not given a simple aspirin or even a pain med more potent, but (2) addictive and dangerous opiods, one the center of a national crisis, fentanyl. In properly analysing whether medicating furthered any penological or medical objective, the courts could have only concluded No, because there is no medical benifit for a person suffering from a stroke to be force administered Morphine and fentanyl. As stated in appellate brief, unlike with a anti-psychotic medication, there is no logic in concluding that the opiods given for pain petitioner reported he was not experiencing, would have prevented petitioner from being a danger to himself or others, diminishing any claims of penological objectives.

Under Farmer v. Brennan, 511 U.S. 825, 832 (1994) quoting Hudson v. Palmer, 468 U.S. 517, 526-25 (1984) prison officials have an obligation to provide humane conditions of confinement pursuant to the 8th amend, guaranteeing the safety of inmates. This right includes to be secure in their bodily integrity and free from attacks by prison guards"

(Green v. Padilla, No. CIV 19-0751 JB/JFR, 2023 WL 6540904, at *42, __F. Supp. 3d__ (D.N.M. Oct. 6, 2023) Quoting Hovater v. Robinson, 1 F.3d 1063 (10th Cir. 1993)

Castillo v. Day, 790 F.3d 1013, 1021 (10th Cir. 2015) held that a prisoner sufficiently shows a culpable state of mind by showing the defendants knew he faced a substantial risk of harm and disregarded the risk. Quoting Callahan v. Poppell, 471 F.3d. 1155, 1159 (10th Cir. 2015); See also Farmer, 511 U.S. at 842, holding that intent to harm is not required. Because of defendants' actions, petitioner was exposed to potentially lethal narcotics, experienced episodes of P.T.S.D., and contracted life-threatening Covid-19. (See R. at 33-34, 38) These conditions presented and objective substantial risk of serious harm, necessary to meet the standard of a 8th amend. claim. (See Pearson v. Callahan, 555 U.S. 223 (2009). Based on the courts misunderstanding of petitioners claim, calling it a "disagreement about a diagnosis," the District court and 10th circuit invoked inapposite case law. (R. at 314-16)

The courts reviews is de novo, and a well pleaded complaint with factual allegations are accepted as true and construed in the light most favorable to the plaintiff. The factual matter must be plausible on it's face to state a claim for relief. The pleading must contain factual content that allows the court to draw reasonable inference that the defendants are liable for the misconduct alleged

(Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). The issues are very clear and the courts call the complaint "Volumous". The court stated they agree with petitioner that "whether these defendants are being sued in their individual capacities could be clarified with an amended complaint", Then refered to Pride v. Does, 997 F.2d 712, 715-16 (10th Cir. 1993), but then refused to allow the petition to be amended. (Appellate Opinion pg 4)

De Novo review is suppose to determine whether "it is obvious that the petitioner could not prevail on the facts alleged, and allowing him an opportunity to amend his complaint would be futile." (See Cohen v. Longshore, 621 F. 3d 1311, 1314-15 (10th Cir. 2010) quoting Hall, 935 F. 2d at 1110 - Petitioner presents adequet facts with exhibits in "Volumous pleadings" to satisfy this standard. Hall, 935 F.2d at 1110 n.3; accord Murray v. Archambo, 132 F. 3d 609, 612 (10th Cir. 1998) makes it clear that the courts should give freely leave (Fed. R. Civ. P. 15), for pro se litigants who are given reasonable opportunity to ramedy the deficiencies in their pleadings. "A court should dismiss with leave to amend if it is at all possible that the party against whom the dismissal is directed can correct the defect in the pleading or state a claim for relief. (Brever v. Rockwell Int'l Corp., 40 F.3d 1119, 1131 (10th Cir. 1994) quoting 6 C. Wright & A. Miller, Federal Practice and Procedure § 1483, at 587 (2d ed. 1990)

Information in complaint for retaliation was to support

the malicious intent for the forced treatment, but this claim amounts to a 1st amend. claim because the retaliation and subsequent attacks came as a direct result of grievances filed by petitioner and reports of serious misconduct by KDOC staff at EDCF. To be allowed to amend complaint could have furthered cleared any issues to state a claim relief should be granted. It is petitioners claim that according to the standard set for pro se litigants in Young v. Davis, 554 F.3d 1254, 1256 (10th Cir. 2009) at 1256 stating a complaint "should survive screening scrutiny if the complaint includes enough facts to state a claim to relief that is plausible on its face" (see complaint). Petitioners complaint contains enough factual allegations to raise a right to relief above the speculative level. (Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)

A complaint should only be dismissed ONLY if the factual allegations are "clearly baseless." (Shabazz v. Askins, 980 F.2d 1333, 1334 (10th Cir. 1992) Using these less stringent standards than applied to pleadings drafted by lawyers, petitioners complaint being dismissed was an abuse of discretion, with out being allowed a chance to amend. This is because complaint does contain many factual allegations that can be proven.

The factual allegations in the complaint points out a clear violation of U.S.C § 1985 Conspiracy to Violate Civil Rights with the retaliation and once two or more cons

together in furtherance of the violation of civil rights that then constitutes a conspiracy. When the defendants committed blatent overt acts that violated petitioners rights then tried to cover them up in falsifying incident reports, shows intent. Add that, with the exhibits in appendix F & G, a clear pattern of Atypical treatment and clear abuse amounting to gross negligence due to the deliberate indifference exhibited by the defendants wreckless abandonment of policy. Relief is required by law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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