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En Banc Court Sides with Prisoner in Eighth Amendment Medical Case

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Aug. 24, 2016 – Sitting en banc, the U.S. Court of Appeals for the Seventh Circuit has ruled (6-3) in favor of a prison inmate who claims his prison doctors violated the Eighth Amendment by failing to properly treat an Achilles tendon tear for more than two years.

The inmate, Tyrone Petties, filed a claim under [42 U.S.C. section 1983](#), alleging two prison doctors violated his right against cruel and unusual punishment when they failed to take medical actions that prolonged his pain and prevented his injury from healing.

Despite the high hurdle that prisoners must overcome in such cases, a six-judge majority in [Petties v. Carter](#), No. 14-2674 (Aug. 23, 2016), ruled that Petties “provided sufficient evidence to survive summary judgment,” remanding the case for trial.

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Three judges dissented. They said the proper question is whether an inmate received some treatment, not whether the treatment they received is woefully inadequate.

The Injury

Petties tore his Achilles in 2012 while walking up the stairs in an Illinois state prison. He visited the prison's health clinic. Dr. Imhotep Carter, the medical director, diagnosed the tear and ordered crutches, ice, and Vicodin. He also ordered in-cell meals for a week.

Dr. Carter also referred Petties to a specialist, but Petties did not see the specialist for more than six weeks. In addition, Dr. Carter failed to follow protocol for such injuries, which called for foot immobilization through a boot, cast, splint, or other device.

Two months later, Petties received an MRI. An orthopedic specialist noted that failing to immobilize the foot and ankle potentially caused the injury to worsen.

The specialist recommended an orthopedic boot to stop aggravating the injury and alleviate pain. The specialist also noted that the extent of the injury may require surgery.

Back at the prison clinic, Dr. Carter authorized use of the boot but said surgery would be too costly. Several months later, Petties saw an ankle specialist, who ordered physical therapy. By this time, the prison had a new medical director, Dr. Saleh Obaisi.

Dr. Obaisi authorized a second MRI but did not approve physical therapy or surgery. A second MRI indicated some healing. But Petties continued to complain of pain, and Dr. Obaisi continued to order minor measures without surgery or physical therapy.

More than two years after Petties sustained the injury, he filed his lawsuit against Carter and Obaisi for "deliberate indifference" in violation of the Eighth Amendment.

The Majority

The majority noted that prison officials, such as prison doctors, could violate the Eighth Amendment if they act with "deliberate indifference" with respect to an inmate's care.

But inmates must "provide evidence that an official *actually* knew of and disregarded a substantial risk of harm," Judge Ann Claire Williams wrote for the majority.

The majority explained that inmates don't need to show the harm was intentional, but mere negligence is not enough.

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“Even objective recklessness – failing to act in the face of unjustifiably high risk that is so obvious that it *should* be known – is insufficient to make out a claim,” Williams wrote.

In Petties' case, the district court granted summary judgment to the doctors, who had denied knowing that their treatment decisions could cause prolonged pain. But the majority found enough evidence for a jury to conclude that they did know.

“Together, these pieces of circumstantial evidence support a reasonable inference that Dr. Carter knew that failure to immobilize an Achilles rupture would impede Petties' recovery and prolong his pain,” Judge Wood wrote.

For instance, Dr. Carter testified that he knew the appropriate treatment for an Achilles rupture included immobilization. Other doctors also testified that immobilizing the foot and ankle is standard protocol for the injury. But Dr. Carter did not order immobilization until Petties' injury had worsened, and only after a specialist recommended it in writing.

“A reasonable inference to draw from this evidence is that Dr. Carter was aware of the need for immobilizing a ruptured tendon, but simply decided not to until he came under scrutiny,” Judge Williams wrote.

The majority also noted evidence that Dr. Carter did not view Petties' injury as an emergency, despite the severe pain that he was experiencing, delaying his appointment with the specialist that recommended the boot. Carter said it was a security issue.

“The harm stemming from the delay in receiving the boot would have been avoided by sending Petties to the emergency room so he could get an MRI,” Williams wrote.

“And the harm from the delay in seeing a specialist would have been mitigated by splinting Petties' foot while security issues were resolved.”

As for Dr. Obaisi, the majority said there was enough evidence to overcome summary judgment and let a jury decide whether he was deliberately indifferent when refusing to order physical therapy, despite the ankle specialist's recommendation.

Finally, the doctors argued that they had qualified immunity. But the majority ruled that the district court, which did not previously decide that issue, must first resolve the disputed question of whether the doctors acted with deliberate indifference.

Dissent

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Judge Frank Easterbrook wrote a dissent, joined by Judge Joel Flaum and Judge Michael Kanne. They said there was no cruel and unusual punishment.

“A court should begin with the conduct issue and turn to mental states only if the behavior was objectively cruel and unusual,” Judge Easterbrook wrote.

“[T]he [U.S.] Supreme Court’s sole decision addressing the question whether palliative medical treatment (pain relief without an effort at cure) violates the Eighth Amendment, holds that palliation suffices even if the care is woefully deficient.”

The dissenters noted a decision – *Gamble v. Estelle*, 429 U.S. 97 (1976), in which the U.S. Supreme Court concluded that an Eighth Amendment issue only arises if an inmate receives absolutely no care or the care does more harm to the inmate.

“*Estelle* holds that a claim of deficient medical care must proceed under state law rather than the Constitution,” Easterbrook wrote. “*Estelle* told the courts of appeals to relegate bad-treatment situations to state law, and we should carry out its approach.”

In this case, Judge Easterbrook notes that Petties received some palliative care, and he did not contend that the care provided made his condition worse.

Rather, the dissenters argued, Petties’ claim is that the doctors used bad medical judgment, and that is a medical malpractice issue, not an Eighth Amendment issue.

The dissenters also noted that the circuits are split on the issue, with at least three circuits focusing on whether the inmate received some treatment, not whether it was inferior treatment. Thus, the case could be ripe for U.S. Supreme Court review.
