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Fourth Circuit Court of Appeals

(Note: You may access the court's opinion by clicking on the case name)

Plaintiff Prisoner's Pro Se § 1983 Civil Lawsuit's Allegations Against Prison Doctors Alleging Deliberate Indifference To His Serious Medical Needs Under Eighth Amendment Were Sufficient Under Rule 12(b)(6) Concerning One Doctor But Insufficient Against Another Doctor

[Jackson v. Lighsey](#), ___ F.3d ___, 2014 WL 7210989 (4th Cir. Dec. 18, 2014). A North Carolina prisoner (Jackson) filed a pro se § 1983 civil lawsuit against two prison doctors alleging deliberate indifference to his serious medical needs (chronic heart condition) under the Eighth Amendment that adversely affected his health (heart attack and chronic and extreme pain). The court ruled that the claim against Dr. Lightsey was properly dismissed by the trial court under Rule 12(b)(6) because it failed to sufficiently allege deliberate indifference. The court stated that while a non-cardiologist's erroneous diagnosis of a serious heart condition, as alleged by Jackson, may represent a deviation from accepted standard of care, standing alone it is insufficient to clear the high bar of a constitutional claim. The court ruled that the claim against Dr. Guleria was improperly dismissed by the trial court under Rule 12(b)(6) because it sufficiently alleged deliberate indifference. Jackson wanted the testing and treatment that Dr. Guleria prescribed. However, Jackson alleged that Dr. Guleria failed to enter the orders necessary to provide him with the promised care, which resulted in his going without the testing and treatment for his serious heart condition that the doctor thought appropriate. The court stated that at the Rule 12(b)(6) stage, it is fair to infer that when the doctor prescribed these tests and treatments, he did so because he subjectively believed they were necessary, and therefore must have known that failing to provide them would pose an excessive risk to Jackson's health.

Defendant's Attorneys Did Not Provide Ineffective Assistance of Counsel Involving Legal Issues Concerning Traffic Stop and Prosecutor's Reference to Defendant's Post-Arrest Silence in Jury Argument

[United States v. Mason](#), ___ F.3d ___, 2014 WL 7210976 (4th Cir. Dec. 18, 2014). The defendant was convicted of a cocaine conspiracy offense in federal district court, and his conviction was affirmed on appeal. He later brought a petition under 28 U.S.C. § 2255 challenging his conviction based on ineffective assistance of counsel (IAC) during trial and appeal. Among his claims were his attorneys' failure to raise the issues of (1) racially selective law enforcement involving the traffic stop that led to his arrest, and (2) a Fifth Amendment violation concerning the government's reference in jury argument to the defendant's post-arrest silence. The court affirmed the district court's dismissal of both claims. The court noted that the attorneys, by choosing to pursue a Fourth Amendment challenge to the stop and its extension instead of an Equal Protection Clause racially selective enforcement challenge, acted effectively under the IAC standards set out in its opinion. In essence, the attorneys chose to raise the stronger Fourth Amendment challenge rather than weaker Equal Protection Clause challenge (the court noting that the latter was "a long shot"). Concerning the alleged Fifth Amendment violation described above, evidence was introduced by the government at trial of a secretly-recorded conversation between the defendant and his accomplice while they were seated in a patrol car after their arrests and having received *Miranda* warnings. The federal prosecutor during jury argument suggested that the defendant during this conversation did not express sufficient surprise at the presence of drugs in his car. The court

noted that the prosecutor's jury argument did not violate the Fifth Amendment under *Doyle v. Ohio*, 426 U.S. 610 (1976), because a defendant who voluntarily speaks following *Miranda* warnings has neither been induced to speak nor remained silent. There was no IAC claim because there was no constitutional violation to challenge.