

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Francis William Allison v. Derek Burnette, et al.

Allison v. Burnette · No. CV-25-00653-PHX-JAT (MTM) · Decided April 10, 2026

SUMMARY

The United States District Court for the District of Arizona dismissed Francis William Allison’s First Amended Complaint under 28 U.S.C. § 1915A(b)(1) for failure to state a claim. The court held that the allegations concerning delayed hernia treatment and injuries during surgery suggested, at most, negligence or medical malpractice rather than deliberate indifference, and dismissed the action without leave to amend. The dismissal may count as a strike under 28 U.S.C. § 1915(g), although the court found that an appeal could be taken in forma pauperis.

CASE DETAILS

COURT	United States District Court for the District of Arizona
WRITING FOR THE COURT	James A. Teilborg
JURISDICTION	United States District Court for the District of Arizona
DECIDED	April 10, 2026
DOCKET	CV-25-00653-PHX-JAT (MTM)
DISPOSITION	dismissed
PROCEDURAL POSTURE	A self-represented prisoner brought a 42 U.S.C. § 1983 action and filed a First Amended Complaint after the original Complaint was dismissed with leave to amend. The district court screened the amended pleading under 28 U.S.C. § 1915A and dismissed the action without leave to amend for failure to state a claim.
STANDARD OF REVIEW	Under 28 U.S.C. § 1915A, the court screens a prisoner complaint and dismisses claims that are frivolous, malicious, fail to state a claim, or seek monetary relief from an immune defendant. In assessing failure to state a claim, the court applies the Rule 8 plausibility standard, accepts well-pleaded factual allegations as true, and liberally construes a self-represented prisoner's filings.
PRECEDENTIAL VALUE	unknown
PARTIES	Francis William Allison v. Derek Burnette, Dr. Ju, Mercy Gilbert Hospital surgeon

TOPICS

section 1983 prisoners rights civil rights pleadings civil procedure

PRACTICE AREAS

civil rights prisoner medical care federal civil procedure

QUESTIONS PRESENTED

1. Whether the First Amended Complaint plausibly stated an Eighth or Fourteenth Amendment medical-care claim under 42 U.S.C. § 1983 against Burnette based on an alleged delay in arranging hernia surgery.
2. Whether the First Amended Complaint plausibly stated a Fourteenth Amendment medical-care claim under 42 U.S.C. § 1983 against Ju based on injuries allegedly caused during surgery.
3. Whether the court should grant further leave to amend after the plaintiff had already amended once and had previously been notified of deficiencies.

HOLDINGS

1. The First Amended Complaint failed to state a § 1983 medical-care claim against Burnette because the allegations suggested, at most, negligence in failing to schedule an outside surgical consultation and did not plausibly establish deliberate indifference.
2. The First Amended Complaint failed to state a § 1983 medical-care claim against Ju because the alleged failure to secure Allison during surgery suggested, at most, negligence or medical malpractice, neither of which constitutes deliberate indifference.
3. Further leave to amend was denied because Allison had already amended after receiving notice of the deficiencies, alleged essentially the same facts, and further amendment would be futile.

KEY QUOTATIONS

“A pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.”” (at 2)

“To act with deliberate indifference, a prison official must both know of and disregard an excessive risk to inmate health;” (at 3)

“However, negligence and medical malpractice do not constitute deliberate indifference.” (at 5)

FACTUAL BACKGROUND

Allison alleged that Dr. Derek Burnette evaluated him upon admission to Red Rock Correctional Center in May 2020, observed a large and previously ruptured testicular hernia, said he would recommend surgery, and failed to timely submit or schedule an outside surgical consultation. Allison alleged that he waited approximately four years and six months for surgery and required multiple surgeries. He also alleged that surgeon Dr. Ju failed to secure him during a March 2023 hernia operation, causing him to fall from the operating table, suffer an opened

incision, sepsis, and a back injury. The court found that the allegations, even if serious, suggested at most negligence or medical malpractice rather than deliberate indifference.

PROCEDURAL HISTORY

Allison, confined at Red Rock Correctional Center and proceeding in forma pauperis, filed a civil-rights Complaint against medical providers. The court dismissed the original Complaint with leave to amend. After reviewing the First Amended Complaint, the court concluded that neither medical-care count plausibly alleged deliberate indifference and dismissed the action without leave to amend, directing the Clerk to enter judgment and noting that the dismissal may count as a strike under 28 U.S.C. § 1915(g).

DISPOSITION

dismissed

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 678-79, 681 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010)
- Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam)
- Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006)
- Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004)
- Farmer v. Brennan, 511 U.S. 825, 835, 837 (1994)
- Estelle v. Gamble, 429 U.S. 97, 104-05 (1976)
- Clement v. California Department of Corrections, 220 F. Supp. 2d 1098, 1105 (N.D. Cal. 2002)
- Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980)
- Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989)
- Shapley v. Nevada Board of State Prison Commissioners, 766 F.2d 404, 407 (9th Cir. 1985)
- United States v. Corinthian Colleges, 655 F.3d 984, 955, 995 (9th Cir. 2011)
- Johnson v. Buckley, 356 F.3d 1067, 1077 (9th Cir. 2004)
- United States v. United Healthcare Insurance Co., 848 F.3d 1161, 1183 (9th Cir. 2017)
- Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003)
- Miller v. Yokohama Tire Corp., 358 F.3d 616, 622 (9th Cir. 2004)
- Chodos v. West Publishing Co., 292 F.3d 992, 1003 (9th Cir. 2002)
- Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012)

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