

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Kern v. Ho

Kern v. Ho · No. 2:24-cv-1931 TLN CSK P · Decided April 10, 2025

SUMMARY

The United States District Court for the Eastern District of California grants James Curtis Kern leave to proceed in forma pauperis but assesses the statutory filing fee. The court dismisses his 42 U.S.C. § 1983 complaint alleging deliberate indifference to serious medical needs by Dr. Ho, finding the allegations too vague and conclusory, while granting leave to amend within thirty days. The court also concludes that the request for injunctive relief is moot because Kern was transferred from the county jail to state custody.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Chi Soo Kim
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 10, 2025
DOCKET	2:24-cv-1931 TLN CSK P
DISPOSITION	other
PROCEDURAL POSTURE	Screening of a pro se state-prisoner complaint under 28 U.S.C. § 1915A.
STANDARD OF REVIEW	The court screened the prisoner complaint under 28 U.S.C. § 1915A, accepting well-pleaded allegations as true and construing the pleading in the light most favorable to the plaintiff. A complaint must contain sufficient factual allegations to state a plausible claim and may not rely on vague or conclusory assertions.
PRECEDENTIAL VALUE	unpublished district-court order; nonprecedential
PARTIES	James Curtis Kern v. Dr. Ho

TOPICS

- section 1983
- prisoners rights
- civil rights
- pleadings
- civil procedure

PRACTICE AREAS

civil rights

prisoner medical care

federal civil procedure

pleadings

remedies

QUESTIONS PRESENTED

1. Whether the complaint stated a cognizable Eighth or Fourteenth Amendment deliberate-indifference claim against Dr. Ho under 42 U.S.C. § 1983.
2. Whether plaintiff's requests for injunctive and declaratory relief remained justiciable after his transfer from county custody to state prison.
3. Whether dismissal should be with leave to amend.

HOLDINGS

1. The complaint failed to state a cognizable Eighth or Fourteenth Amendment deliberate-indifference claim because its allegations were too vague and conclusory and did not show that Dr. Ho acted with the constitutionally required deliberate indifference.
2. To the extent plaintiff was a pretrial detainee during the relevant events, the complaint did not allege facts satisfying the objective deliberate-indifference standard under the Fourteenth Amendment.
3. Plaintiff's request for unspecified injunctive relief against Dr. Ho was moot because plaintiff had been transferred from the county jail to state custody and alleged no reasonable expectation of returning to the county jail.
4. The complaint was dismissed with leave to amend within thirty days.

KEY QUOTATIONS

"The four-part test articulated in Gordon requires the plaintiff to prove more than negligence, but less than subjective intent—something akin to reckless disregard." (at 4)

"Here, plaintiff's allegations are too vague and conclusory to determine whether plaintiff can state a cognizable claim against Dr. Ho, an orthopedic specialist." (at 6)

"Finally, plaintiff's request for unspecified injunctive relief against defendant Dr. Ho is now moot because plaintiff is no longer housed at the Sacramento County Jail, but has been transferred to state custody, and plaintiff does not allege he has a reasonable expectation of returning to the county jail." (at 8)

FACTUAL BACKGROUND

Plaintiff alleged that orthopedic specialist Dr. Ho neglected and misrepresented the condition and treatment of a painful lipoma on plaintiff's left forearm. Plaintiff claimed that Dr. Ho delayed or failed to arrange surgery and other specialist treatment before plaintiff was transferred from county custody to state prison. Plaintiff alleged continuing pain and other symptoms and sought injunctive, declaratory, and monetary relief, but did not provide specific facts showing that Dr. Ho acted with deliberate indifference or controlled plaintiff's transfer or medical records.

PROCEDURAL HISTORY

Plaintiff filed a § 1983 complaint alleging deliberate indifference to serious medical needs and requested in forma pauperis status, injunctive relief, declaratory relief, and damages. The court granted in forma pauperis status, assessed the statutory filing fee and initial partial filing fee, screened the complaint, dismissed it for failure to state a cognizable claim, and granted thirty days to amend.

DISPOSITION

other

CASES CITED

- Neitzke v. Williams, 490 U.S. 319, 325, 327 (1989)
- Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984)
- Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989)
- Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir. 2000)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)
- Conley v. Gibson, 355 U.S. 41, 47 (1957)
- Erickson v. Pardus, 551 U.S. 89, 93 (2007)
- Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)
- Davis v. Scherer, 468 U.S. 183 (1984)
- Farmer v. Brennan, 511 U.S. 825, 832, 835, 837, 839-40, 844 (1994)
- Bell v. Wolfish, 441 U.S. 520, 535 n.16 (1979)
- Estate of Nelson v. Chelan County, 2024 WL 1705923, at *9 (E.D. Wash. Apr. 19, 2024)
- Russell v. Lumitap, 31 F.4th 729, 738 (9th Cir. 2022)
- Gordon v. County of Orange, 888 F.3d 1118, 1120, 1124-25 (9th Cir. 2018)
- Castro v. County of Los Angeles, 833 F.3d 1060, 1071 (9th Cir. 2016)
- Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006)
- Colwell v. Bannister, 763 F.3d 1060, 1066 (9th Cir. 2014)
- Toguchi v. Chung, 391 F.3d 1051, 1058, 1060 (9th Cir. 2004)
- Hamby v. Hammond, 821 F.3d 1085, 1092 (9th Cir. 2016)
- Stine v. Von Blankensee, 2024 WL 1406428, at *1 (9th Cir. Apr. 2, 2024)
- Andrews v. Cervantes, 493 F.3d 1047, 1053 n.5 (9th Cir. 2007)
- Johnson v. Moore, 948 F.2d 517, 519 (9th Cir. 1991) (per curiam)
- Greer v. KCSO Administration, 2021 WL 3857677, at *1 (E.D. Cal. Aug. 30, 2021), recommendation adopted, 2021 WL 4502818 (E.D. Cal. Oct. 1, 2021)
- West v. Atkins, 487 U.S. 42, 48 (1988)
- Rizzo v. Goode, 423 U.S. 362, 371 (1976)
- May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980)
- Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982)

- Ramirez v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015)
- Kern v. Superior Court, No. 2:24-cv-2432 DAD JDP P (E.D. Cal.)
- Bennett v. Medtronic, Inc., 285 F.3d 801, 803 n.2 (9th Cir. 2002)
- United States v. Basher, 629 F.3d 1161, 1165 (9th Cir. 2011)
- Foley v. Martz, 2018 WL 5111998, at *1 (S.D. Cal. Oct. 19, 2018)

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