

**No. 18-2181**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

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**CHARLES HAMNER**

**PLAINTIFF/APPELLANT**

**v.**

**DANNY BURLS, *et al***

**DEFENDANTS/APPELLEES**

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On Appeal from the United States District Court  
for the Eastern District of Arkansas, Little Rock Division  
Case No. 5:17-CV-79 JLH-BD  
Honorable James Leon Holmes

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**BRIEF OF APPELLEE**

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## SUMMARY OF THE CASE

Charles Hamner (ADC #143063), an inmate incarcerated by the Arkansas Department of Correction (“ADC”), seeks money damages and injunctive relief based on alleged due process, inadequate medical care and conditions of confinement claims. The district court dismissed *sua sponte* Hamner’s due process claims finding that Hamner’s confinement in administrative segregation did not give rise to a protected liberty interest under prevailing Eighth Circuit jurisprudence. After Hamner amended his original complaint to add claims of inadequate medical care and cruel and unusual punishment under the Eighth Amendment, the district court dismissed those claims for failure to state a claim upon which relief could be granted. On appeal, Hamner argues the district court erred in dismissing his claims. Defendants submit the district court was correct and the decision should be affirmed.

Appellee does not believe oral argument will be beneficial to the Court.

**TABLE OF CONTENTS**

Summary of the Case .....i

Table of Contents .....ii

Table of Authorities.....iii

Jurisdictional Statement.....iv

Statement of the Issues..... v

Statement of the Case ..... 1

Summary of the Argument ..... 6

Argument..... 7

I. The district court’s *sua sponte* dismissal of Hamner’s due process claim was proper because Hamner’s temporary assignment to administrative segregation did not give rise to a protected liberty interest.....7

II. The district court’s dismissal of Hamner’s inadequate medical care claim was proper because Hamner failed to allege the ADC defendants were aware of his medical needs and failed to allege they ignored or acted with deliberate indifference to such needs.....8

Conclusion ..... 11

Certificate of Service ..... 12

Certificate of Compliance ..... 13

**TABLE OF AUTHORITIES**

**Cases**

*Boyd v. Know*,  
47 F.3d 966, 968 (8th Cir. 1995) ..... 10

*Estelle v. Gamble*,  
429 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) ..... v, 5, 9

*Keeper v. King*,  
130 F.3d 1390, 1314 (8th Cir. 1997) ..... v, 10

*Langford v. Norris*,  
614 F.3d 445, 460 (8th Cir. 2010) ..... 9

*Moore v. Sims*,  
200 F.3d 1170, 1171 (8th Cir. 2000) ..... 7

*Orr v. Larkins*,  
610 F.3d 1032, 1034–35 (8th Cir. 2010) ..... v, 5, 7

*Phillips v. Norris*,  
320 F.3d 844, 847 (8<sup>th</sup> Cir. 2003) ..... v, 7

*Santiago v. Blair*,  
707 F.3d 984, 990 (8th Cir. 2013) ..... v, 9

*Schwarm v. Hubbard*,  
2015 WL 1789045 (E.D. Ark. April 15, 2015) ..... 10

**Constitutional Provisions, Rules, and Statutes**

28 U.S.C. § 1331 ..... iv

28 U.S.C. § 1291 ..... iv

28 USCA § 1915(e)(2) ..... 2,7

## **JURISDICTIONAL STATEMENT**

The United States District Court had subject matter jurisdiction of Hamner's civil action under 28 U.S.C. § 1331. An order and a final judgment were entered by the court on May 1, 2018, granting the motion to dismiss filed by the defendants. (Doc. Nos. 42 & 43). Hamner's Notice of Appeal timely was filed on May 23, 2018. (Doc. No. 46). This Court's jurisdiction is based on 28 U.S.C. § 1291, which provides for appellate jurisdiction over a final judgment entered by a United States District Court.

## STATEMENT OF THE ISSUES

- I. DID THE DISTRICT COURT ERR IN DISMISSING *SUA SPONTE* HAMNER'S DUE PROCESS CLAIM WHERE THE COURT FOUND THAT HIS CONFINEMENT TO ADMINISTRATIVE SEGREGATION DID NOT IMPLICATE A PROTECTED LIBERTY INTEREST?

*Orr v. Larkins*, 610 F.3d 1032, 1034 (8<sup>th</sup> Cir. 2010)  
*Phillips v. Norris*, 320 F.3d 844, 847 (8<sup>th</sup> Cir. 2003)

- II. DID THE DISTRICT COURT ERR IN DISMISSING HAMNER'S INADEQUATE MEDICAL CARE CLAIM WHERE THE COURT FOUND THAT HAMNER FAILED TO ALLEGE THAT DEFENDANTS KNEW ABOUT AND WERE DELIBERATELY INDIFFERENT TO HAMNER'S SERIOUS MEDICAL NEEDS?

*Estelle v. Gamble*, 429 U.S. 97 (1976)  
*Keeper v. King*, 130 F.3d 1390, 1314 (8<sup>th</sup> Cir. 1997)  
*Santiago v. Blair*, 707 F.3d 984, 990 (8<sup>th</sup> Cir. 2013)

## STATEMENT OF THE CASE

Charles Hamner (ADC #143063) is an inmate incarcerated with the Arkansas Department of Correction (“ADC”). At all times relevant to this case, Hamner was incarcerated at ADC’s Maximum Security Unit. On or about March 26, 2015, Hamner was placed in administrative segregation due to security concerns related to threats against Hamner. AA 14. Hamner remained in administrative segregation for 203 days—until he was transferred to another ADC unit on October 15, 2015. AA 14.

Hamner filed nine (9) grievances related to his being placed in administrative segregation,<sup>1</sup> all of which he attached to the Complaint filed with the district court on March 24, 2017. AA 6, 34-67. As described by the Appellant, these nine (9) grievances all related to “the process he was afforded in connection with the 72-hour, 7-day, and 60-day reviews” of his assignment to administrative segregation. Appellant Brief, p. 12. None of the grievances related to alleged

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<sup>1</sup> Appellant erroneously asserts that Hamner perfected 15 grievances in connection with review of his administrative segregation classification. Appellant’s Brief, p. 12. The pages of the Appendix cited by Appellant show only nine (9) grievances. These nine (9) grievances are the same as those referenced in the Declaration of Barbara Williams offered in support of Defendants’ Motion for Summary Judgment. AA 128-130.

inadequate medical care, retaliation, or conditions of confinement. AA 34 – 67.

Hamner filed his Complaint on March 24, 2017, alleging: 1) due process violations arising from his assignment to administrative segregation, including the review conducted by the unit classification committee, 2) that ADC failed to follow its own policies in placing him in administrative segregation, and 3) that ADC retaliated against him. AA 6.

Exercising its review authority pursuant to 28 USCA § 1915(e)(2) and based upon the magistrate’s recommended disposition, the district court dismissed Hamner’s due process claims. AA 70, 79. Specifically, the court found that, under prevailing law, assignment to administrative segregation could not be considered an “atypical and significant hardship” sufficient to give rise to a protected liberty



interest.<sup>2</sup> AA 71-72. The court permitted Hamner to proceed only on his retaliation claim.<sup>3</sup> *Id.*

ADC answered the retaliation claim on September 26, 2017. AA 119. ADC subsequently moved for summary judgment on the retaliation claim on grounds that Hamner failed to exhaust his administrative remedies under the Prison Litigation Reform Act and ADC policy. AA 125-172. On January 9, 2018, the magistrate judge issued a recommended disposition to dismiss the lone remaining retaliation claim, finding that Hamner failed to raise retaliation in any of the nine (9) relevant grievances. AA 173-176.

Hamner moved to amend his complaint, and the court declined to adopt the recommended disposition, finding that Hamner should be “given one opportunity to amend the complaint.” AA 177. Hamner filed

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<sup>2</sup> The court also dismissed Hamner’s failure to follow policy claims finding that “a prison’s failure to follow its internal policies and procedures is not a constitutional violation.” AA 72. The Appellant does not challenge this ruling on appeal.

<sup>3</sup> Appellant seems to suggest the court granted Hamner’s request to amend his complaint at this stage of the proceedings. Appellant Brief, p. 16. In fact, it was approximately nine (9) months later—after the magistrate judge recommended Hamner’s retaliation claim be dismissed for failure to exhaust. AA 177.

his amended complaint on February 7, 2018. AA 86. Rather than amend to remedy his failure to exhaust the remaining retaliation claim, Hamner raised new claims. Specifically, he asserted that he did not receive adequate medical care and that his assignment to administrative segregation constituted cruel and unusual punishment. AA 86 – 103.

ADC moved to dismiss Hamner's amended complaint. AA 178 – 185. ADC asserted that: 1) the court should not reconsider Hamner's due process claims as those claims already were dismissed *sua sponte*, 2) Hamner failed to exhaust his retaliation claim, and 3) Hamner failed to state a claim upon which relief could be granted with regard to his inadequate medical care and conditions of confinement claims. *Id.*

On April 9, 2018, the magistrate judge entered a recommended disposition finding, in relevant part, that: 1) Hamner presented no additional information that warranted reconsideration of the dismissal of the due process and failure to follow policy claims, 2) Hamner failed to exhaust his retaliation claim, and 3) Hamner failed to allege that the

ADC defendants were aware of his mental health needs or that they ignored or acted with deliberate indifference to his needs.<sup>4</sup> AA 107 - 110.

On May 1, 2018, the district court entered an order specifically dismissing the retaliation claim for failure to exhaust<sup>5</sup> and dismissing the inadequate medical treatment claim. The order noted that the due process and violation of policy claims previously were dismissed, with prejudice. AA 115.

Hamner timely filed his Notice of Appeal on May 23, 2018. AA 117. The district court's dismissal was correct and should be affirmed.

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<sup>4</sup> Appellant asserts that the district court decided to forego consideration of Hamner's conditions of confinement claim. Appellant Brief, p. 21. With regard to such claim, the recommended disposition stated, in a footnote, that "because the Court has determined that Mr. Hamner's deliberate indifference claim under the Eighth Amendment fails, however, it is unnecessary for the Court to further analyze this claim." AA 110. This analysis is consistent with the holding in *Orr v. Larkins*, 610 F.3d 1032, 1034–35 (8th Cir. 2010), wherein the court found that the inmate "also claims prison officials violated his Eighth Amendment rights by keeping him in administrative segregation without sufficiently considering his worsening mental illness. '[D]eliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment.'" *Id.* at 1034-35 (citing *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976)).

<sup>5</sup> Appellant does not challenge this holding on appeal.

## **SUMMARY OF THE ARGUMENT**

The district court's decision granting ADC's motion to dismiss was correct and should be affirmed by this Court. Hamner's Brief does not demonstrate error by the district court, and his appeal should be denied.

The district court properly dismissed Hamner's due process claims based upon its determination that assignment to administrative segregation did not give rise to a protected liberty interest. The district court properly dismissed Hamner's inadequate medical care based upon its determination that Hamner failed to allege ADC was aware of his mental health needs or that they ignored or acted with deliberate indifference to his needs. Accordingly, the district court's dismissal should be affirmed.

## ARGUMENT

### **I. The district court’s *sua sponte* dismissal of Hamner’s due process claim was proper because Hamner’s temporary assignment to administrative segregation did not give rise to a protected liberty interest**

Under section 1915(e)(2)(B)(ii), a District Court shall dismiss a complaint filed in forma pauperis “at any time if ... the action ... fails to state a claim on which relief may be granted.”<sup>6</sup> A district court’s dismissal under this section is subject to *de novo* review.<sup>7</sup>

The district court’s *sua sponte* dismissal of Hamner’s due process claims related to his assignment to administrative segregation was proper because such assignment did not give rise to a protected liberty interest. In dismissing Hamner’s due process claim, the court rightly reasoned:

It is well settled law that placement in administrative segregation for a limited time, even without cause, is not itself an atypical and significant hardship. *Orr v. Larkins*, 610 F.3d 1032, 1034 (8<sup>th</sup> Cir. 2010); *Phillips v. Norris*, 320 F.3d 844, 847 (8<sup>th</sup> Cir. 2003). Furthermore, periods of segregation significantly longer than Mr. Hamner’s are not considered atypical and significant hardships. *Orr*, 610 F.3d at 1034 (inmate was not deprived of liberty interest during nine months in administrative segregation). Without an

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<sup>6</sup> *Moore v. Sims*, 200 F.3d 1170, 1171 (8<sup>th</sup> Cir. 2000).

<sup>7</sup> *Id.*

underlying liberty interest, Mr. Hamner cannot move forward on his due process claim.

AA. 71-72. Appellant argues that the length and duration of segregation, as well as Hamner's alleged mental illness, warrants a departure from a straightforward "atypical and significant hardship" analysis. Appellant Brief, p. 41-43.

Under prevailing Eighth Circuit precedent, however, Hamner failed to assert facts sufficient to establish a *prima facie* protected liberty interest. Hamner presents no allegations that indicate his particular confinement presented an "atypical and significant hardship" different from those posed by ordinary prison life, and the court appropriately dismissed those claims.<sup>8</sup>

**II. The district court's dismissal of Hamner's inadequate medical care claim was proper because Hamner failed to allege the ADC defendants were aware of his medical needs and failed to allege they ignored or acted with deliberate indifference to such needs**

It is well established that, in order to state a viable claim for deliberate indifference to a serious medical need, a claimant must show

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<sup>8</sup> Appellant seems to concede that Hamner's original complaint presented no allegations sufficient to assert a protected liberty interest. See Appellant Brief, p. 41, III.A. ("Mr. Hamner's *Amended Complaint Adequately Pleads Conditions of Confinement Sufficient to Create a Liberty Interest.*") (emphasis added).

that a defendant “actually knew of but disregarded that need.”<sup>9</sup> Medical care is constitutionally inadequate only if prison officials knew about a prisoner's serious medical needs but deliberately disregarded those needs.<sup>10</sup>

Here, the district court properly dismissed Hamner’s inadequate medical care claim because he failed to allege that the ADC defendants knew he was not receiving his medication and that they also deliberately disregarded that need. AA 110.

Appellant hangs his hat on a few general statements presented in Hamner’s pleadings but none are sufficient to state a claim against the ADC Defendants.<sup>11</sup> It is not enough to generally assert that he was “deprived of his medication.” Instead, in order for a claim of deliberate

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<sup>9</sup> *Santiago v. Blair*, 707 F.3d 984, 990 (8th Cir. 2013).

<sup>10</sup> *Estelle v. Gamble*, 429 U.S. 97 (1976); *Langford v. Norris*, 614 F.3d 445, 460 (8th Cir. 2010).

<sup>11</sup> Hamner only generally states he was “deprived of medication that he needs for his mental illness,” (AA 89, ¶ 14) that he was “deprived of his prescribed adequate medical treatment and medication as prescribed by healthcare provider Shawn Richard,” (AA 90, ¶ 16), and that “the plaintiff was denied adequate medical care and medication which was prescribed by a healthcare physician to treat his serious mental illness.” (AA 93, ¶ 29). Hamner makes no allegations that any of the named ADC defendants knew about and intentionally ignored his need for medication.

indifference to succeed, it has to be brought against the individual or individuals directly responsible for the plaintiff's medical care.<sup>12</sup> Hamner makes no allegation that any of the individual defendants<sup>13</sup> knew about or disregarded his need for medication.<sup>14</sup>

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<sup>12</sup> *Schwarm v. Hubbard*, 2015 WL 1789045 (E.D. Ark. April 15, 2015) (citing *Keeper v. King*, 130 F.3d 1390, 1314 (8th Cir. 1997)).

<sup>13</sup> To the extent Hamner brings inadequate medical care claims against ADC defendants serving in supervisory roles (i.e. the warden and deputy warden), the Eighth Circuit has stated that “[t]he supervisor must know about the conduct and facilitate it, approve it, condone it, or turn a blind eye [to it].” *Boyd v. Know*, 47 F.3d 966, 968 (8th Cir. 1995). Hamner makes no such allegations in his complaint or amended complaint.

<sup>14</sup> Appellant argues that “prison personnel acknowledged that he was not regularly receiving [his medication] while he was in solitary confinement,” and cites to AA 74, 77 for this proposition. This simply is untrue. Hamner attached as an exhibit to his Objection to Partial Recommended Disposition (Doc No. 5) (AA 73), a medical grievance dated April 10, 2015 (MX-15-0985) (AA 76-78). This medical grievance indicates that Hamner believed a “black female nurse passing out medication” was the individual he told about not getting his prescription. Further, the exhibit indicates the medical grievance was reviewed and processed by health services personnel (not ADC employees)—none of which are the named defendants in this case. *See* AA 77 and 78.



## CONCLUSION

For the reasons stated above, Hamner is not entitled to the relief sought. The district court correctly granted defendant's motion to dismiss. The Appellee respectfully requests that this Court affirm the decision of the district court.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, William C. Bird III, Assistant Attorney General, hereby certify that on this 21st day of December, 2018, I filed this brief electronically with the Clerk of the Court using the CM/ECF system, which shall send notification of the filing to any participants, and by regular U.S. Mail to:

Mr. Charles Hamner, ADC #143063  
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*/s/ William C. Bird III*  
William C. Bird III

## **CERTIFICATE OF COMPLIANCE**

Because the applicable parts of this brief do not exceed 30 pages, it is unnecessary for Appellant to comply with Rule 32(a)(7)(B) and (C) of the Federal Rules of Appellate Procedure.

The brief was prepared in Microsoft Office Word 2010 and typed using Century Schoolbook 14-point font. The electronic version of the brief has been scanned for viruses and is virus-free.

*/s/ William C. Bird III*  
\_\_\_\_\_  
William C. Bird III