

Constitutional Law — Black Prisoner Denied Medical Attention: Eighth Amendment Rights Violation Versus Inherent Biases in Medical Racism — *Sherman v. Corcella*, 2020 U.S. Dist. LEXIS 125931 (D. Conn. 2020)

By Samantha Das*

Under the Eighth Amendment of the United States Constitution,¹ it is prohibited for a prisoner to experience deliberate indifference to their serious medical needs by any employer or agent of a correctional facility.² However, the burden is on the prisoner to show that the alleged deprivation is sufficiently serious and the defendant acted with a “sufficiently culpable state of mind.”³ In *Sherman v. Corcella*,⁴ the United States District Court for the District of Connecticut considered whether the Connecticut Department of Correction (“DOC”) failed to provide adequate medical treatment to a prisoner suffering from arthritis and degenerated bone loss in his spine, shoulders, and other limbs.⁵ The court found that Sherman’s Eighth Amendment claim may proceed, but only with specific DOC officials as defendants who had actual knowledge of Sherman’s pain.⁶

Frank Melvin Sherman is a fifty-four-year-old African American male who is currently incarcerated at the Connecticut DOC.⁷ Sherman suffers from chronic arthritis and “degenerated bone loss”, causing partial paralysis in his right shoulder and causing him to experience “extreme pain”, sometimes unbearable.⁸ Consequently, Sherman brought suit against defendants Warden Anthony Corcella, Dr. Mahboob, Advanced Practitioner Registered Nurse Dawn Lee, Nurse Supervisor Kara Phillips, Registered Nurse (“RN”) Carla Ocampo, Lieutenant John Doe Ballaro, RN Michael McDonald, RN Janine Brennan, RN Donna Adams-Conahan, and Corrections Officers Jane Doe Sagan, John Doe Griggs, and Jane Doe Diaz for failing to provide Sherman adequate medical treatment.⁹ Specifically, defendants Dr. Ashraf, Nurse Lee, Supervisor Phillips and Nurse

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¹ See U.S. CONST. amend. VIII (“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted”).

² See *Chance v. Armstrong*, 143 F.3d 698, 702 (2d Cir. 1998); see also *Estell v. Gamble*, 429 U.S. 97, 104 (1976) (explaining Eighth Amendment claim requirement that prisoners prove deliberate indifference to their serious medical needs).

³ See *Chance*, 143 F.3d 698 at 702.

⁴ 2020 U.S. Dist. LEXIS 125931, *1 (D. Conn. 2020).

⁵ See *id.* at *1-4.

⁶ See *id.* at *57-58.

⁷ See *id.* at *1.

⁸ See *Sherman*, 2020 U.S. Dist. LEXIS 125931, at *4.

⁹ See *id.* at *1. Sherman also claims the defendants permitted unsanitary conditions of confinement and used excessive force against him. *Id.*

Ocampo allegedly failed to treat Sherman's arthritis, separated shoulder, and second-degree burn on his foot by providing him with ineffective pain medication.¹⁰ As a result, Sherman sought accommodations for his shoulder and arthritis pain by requesting to wear a button down shirt instead of a pullover sweater, as well as requesting a permanent bottom bunk and a double mattress, but these requests were denied by all four defendants.¹¹ Sherman continued to endure pain and told Nurse Lee that because he was forced to put on his pullover sweater when he had an arm sling, he experienced "cruel and unusual punishment."¹² Despite Sherman repeatedly complaining about his pain, the medical staff still refused any accommodations and requests for a Magnetic Resonance Imaging ("M.R.I.") scan or an appointment with a bone specialist until July 23, 2019, when Sherman suffered a seizure.¹³ The seizure knocked Sherman unconscious and only then did DOC officials bring him to the hospital to receive a head scan and x-rays.¹⁴

On August 31, 2019, Sherman was making coffee when his untreated right arm gave out, causing him to spill boiling water on his foot resulting in second-degree burn.¹⁵ To mitigate the pain from the burn, Sherman asked for pain medication, but Nurse McDonald only gave him Tylenol and Bacitracin and told him his foot was "all right."¹⁶

¹⁰ See *id.* at *4. Sherman also alleges that he suffers from several conditions affecting his feet including hammer toes, bunions, burns, and arthritis. *Id.* at *8. Sherman was in constant extreme pain even after receiving any pain medication. *Id.* at *18.

¹¹ See *Sherman*, 2020 U.S. Dist. LEXIS 125931 at *4-5. His requests were denied because the medical staff stated he needed permission from "custody," known as a certain branch of prison staff, but custody stated he needed a medical order. *Id.* at *5. According to Sherman, his requests were "pingponging" for two years. *Id.*

¹² See *id.* at *5. Sherman had a shoulder sling, but Defendant Lieutenant John Ballaro still forced Sherman to put on his pullover shirt stating nothing was wrong with his shoulder. *Id.* As a result of Lieutenant Ballaro's statement, Nurse Lee and Nurse Ocampo took away Sherman's sling and reasoned that they would not go against "custody" for Sherman, meaning they would not defy the correctional officers. *Id.* at *6.

¹³ See *MRI Scans*, MEDLINEPLUS, <https://medlineplus.gov/mriscans.html> (last visited March 13, 2021) (explaining that a Magnetic resonance imaging uses a large magnet and radio wave to look at organs and structures inside your body); see also *Sherman*, 2020 U.S. Dist. LEXIS 125931, at *7. Sherman originally took seizure medication in 2014 but stopped because it was damaging his liver. *Id.* at *6. Since then, he complained to medical staff about his discontinuation of his seizure medicine but was not prescribed any new medication. *Id.*

¹⁴ See *id.* at *7. Plaintiff waited seven days until DOC officials brought him to the hospital for the scans. *Id.* After receiving Sherman's scans, he was cleared, but Sherman still complained of seeing a white flashing light in his right eye. *Id.*

¹⁵ See *Sherman*, 2020 U.S. Dist. LEXIS 125931, at *7.

¹⁶ See *Burns*, WEBMD, <https://www.webmd.com/pain-management/guide/pain-caused-by-burns#1> (last visited Feb 1, 2021) (listing antibiotic cream and creams prescribed by a doctor as proper treatments for second-degree burns); see also Kelly M. Hoffman et al., *Racial Bias in Pain Assessment and Treatment Recommendations, and False Beliefs about Biological Differences Between Blacks and Whites*, 113 PROC. NAT'L ACAD. SCI. U.S. 4296 (2016) (detailing medical personnel are less likely to believe black people are experiencing the level of pain compared to their white counterparts); *Sherman*, 2020 U.S. Dist. LEXIS 125931, at *7. Nurse McDonald said he would provide Sherman with medication, wrap the burn on his foot, and get him a wheelchair for showering. *Id.* at *8. However, as of September 2, 2019, neither Nurse McDonald nor the medical staff provided Sherman with anything. *Id.* See generally René Bowser, *Racial Profiling in Health Care: An Institutional Analysis of Medical Treatment Disparities*, 7 MICH. J. RACE & L. 79 (2001) (describing the pattern of racial disparities in medical treatment); Austin Frakt, *Bad Medicine: The Harm that Comes from Racism*, N.Y. TIMES (Jan. 13, 2020), <https://www.nytimes.com/2020/01/13/upshot/bad->

Soon after, Sherman requested a bucket to soak his feet and a sneaker pass or medical order to purchase shock absorbent sneakers, but again the defendants denied the requests without providing an explanation.¹⁷ Dr. Ashraf, Supervisor Phillips, and Nurse Lee never examined Sherman's feet nor questioned his symptoms of numbness, pain, and stiffness from his untreated arthritis, degenerated bone loss, and shoulder separation.¹⁸ Sherman alleges that he had an "on-going battle" with medical staff who refused to treat him, which Sherman also wrote up for harassment and violations of employee conduct.¹⁹ On September 3, 2019, Sherman was in his cell taking a sponge bath when Officer Diaz and Lieutenant Ballaro dragged Sherman by his arms, despite Sherman asking the correctional officers to be careful of his shoulders, in order to take him to a "Behavioral Observation" cell.²⁰ On that same day, Nurse Adams-Conahan allegedly threw Band-Aids at Sherman for his burned foot and did not provide additional treatment or medical attention.²¹

In addition to having his medical needs ignored, Sherman suffered from racial discrimination and property destruction by Officers Sagon and Griggs.²² First, on April 9, 2019, Officer Sagon allegedly tore up Sherman's photographs of his deceased mother, father, and sister, and eight days later, Sherman learned that Officer Griggs also partook in destroying more property in his cell.²³ When asked why Officer Griggs destroyed his property, Officer Griggs responded that Sherman disrespected Officer Sagon and then called Sherman a derogatory slur: "nigga."²⁴ Later, in August 2019, Nurse Brennan allegedly would not process Sherman's medical grievances without an inmate request—a request form that allows prisoners to advocate their subjective needs to the DOC.²⁵

medicine-the-harm-that-comes-from-racism.html (describing how racial bias still affects many aspects of healthcare today in treatments). People of color tend to receive less or worse care than white Americans typically because of racial stereotyping based on false beliefs. *Id.*

¹⁷ *See Sherman*, 2020 U.S. Dist. LEXIS 125931, at *8. The foot bucket Sherman requested was for his second-degree burn, but medical staff denied his request. *Id.*

¹⁸ *See id.* at *9; *see also* Childs v. Weis, 440 S.W.2d 104 (Tex. Civ. App. 1969) (describing an ER doctor who denied medical treatment to a black woman in labor). There is a duty of proper care and treatment with a patient-physician relationship. *Id.* at 106.

¹⁹ *See Sherman*, 2020 U.S. Dist. LEXIS 125931, at *9-10. Sherman alleges that custody staff would harass, complain, and hound Sherman to get a sling pass from medical staff, but medical staff refused to interfere. *Id.*

²⁰ *See id.* at *10-12. Officer Diaz came into Sherman's cell because he was covering his window, which he was not allowed to do. *Id.* at *10-11. As Sherman tried to get dressed and push the alert button, Officer Diaz turned it off and Lieutenant Ballaro came in. *Id.* at *11-12. There, Lieutenant Ballaro told Sherman he was going to "seg" and, as they were bringing him, they told Sherman that nothing was wrong with his shoulders as they continued to drag him. *Id.* at *11-12. Sherman pleaded the whole time to not lift up his arms high or place resistance holds on him. *Sherman*, 2020 U.S. Dist. LEXIS 125931 at *12.

²¹ *See id.* Ten days later Sherman fainted and was rushed to a hospital where he had kidney failure and an infected right foot. *Id.*

²² *See id.* at *13.

²³ *See id.* Officer Sagon tore up Sherman's photographs because Sherman defied Officer Sagon's previous orders of taking down a Dallas football team photograph from his wall. *Id.* Eight days later, Griggs allegedly also destroyed Sherman's cosmetics, television, paperwork, and all of his books. *Sherman*, 2020 U.S. Dist. LEXIS 125931 at *13.

²⁴ *Id.* Sherman also alleged that Officer Boden looked like he was going to "jump him." *Id.*

²⁵ *See id.* at *14. Inmate request forms are available for inmates to request different items or services, but even when Sherman wrote a request form, the staff still did not respond within fifteen business days. *Id.* *See also Inmate Request*, SAN DIEGO COUNTY SHERIFF'S DEP'T (Revised

Sherman argues that Nurse Brennan participated in denying him access to the courts and prevented him from protecting his rights.²⁶ The District Court found claims against six out of the twelve defendants for violating Sherman's Eighth Amendment rights regarding the deliberate indifference to his arthritis, degenerated bone loss, and the second-degree burn on his foot, while dismissing the case against the other DOC officials because they did not have sufficient knowledge of Sherman's pain.²⁷

The Eighth Amendment of the United States Constitution prohibits deliberate indifference to serious medical needs of prisoners, whether that is manifested through the actions or inactions of prison officials.²⁸ Under the Eighth Amendment, two requirements must be met, the objective and subjective standards, in order to find that prison officials intentionally denied or delayed a prisoner's access to medical care.²⁹ Under the objective requirement, the inmate must establish that the deprivation of their medical care was sufficiently serious and there was an unreasonable risk of serious damage to the prisoner's health.³⁰ To determine if the deprivation of medical care is sufficiently serious, the prisoner must actually be deprived of the adequate care and show that the inadequacy in medical care was sufficiently serious.³¹ The subjective requirement entails that the charged official acted with a "culpable state of mind."³² The prisoner must establish that the defendant knew of the inmate's medical needs and disregarded an excessive risk to the prisoner's health or safety.³³

06/12) (last visited March 13, 2021)

<https://apps.sdsheriff.net/PublicDocs/SB978/Human%20Resource%20Services%20Bureau/Professional%20Staff%20Development/Inmate%20Processing/DPT%20Training/DPT%20Training%20Manual/INMATE%20REQUESTS.pdf>.

²⁶ See *Sherman*, 2020 U.S. Dist. LEXIS 125931, at *14. Sherman alleged that Nurse Brennan interfered with his grievance process and thereby impeded and frustrated his efforts. *Id.*

²⁷ See *id.* at *57.

²⁸ See *Estelle v. Gamble*, 429 U.S. 97, 2014 (1976). If a prison official intentionally denies or delays a prisoner's access to medical care, the prisoner experiences deliberate indifference. *Id.* In short, a deliberate indifference constitutes the unnecessary and wanton infliction of pain. *Id.* (citing *Gregg v. Georgia*, 428 U.S. 153, 172 (1976)). *But see* *Salahuddin v. Goord*, 467 F.3d 263, 279 (2d Cir. 2006) (holding "not every lapse in medical care is a constitutional wrong.").

²⁹ See *Salahuddin*, 467 F.3d at 279-80.

³⁰ See *Darnell v. Pineiro*, 849 F.3d 17, 30 (2d Cir. 2017). Temporary deprivations cannot be objectively unconstitutional. *Id.* at 26. Plaintiff must show that they were regularly being denied basic human needs or were exposed to unreasonable risks. *Id.*

³¹ See *Salahuddin*, 467 F.3d at 280. A prison official's duty is to ensure that inmates receive adequate medical care. *Id.* at 279. The reason why is because when providing reasonable care or responding in a reasonable way, prison officials cannot be found liable. *Id.* at 280. See also *Chance v. Armstrong*, 143 F.3d 698, 703 (2d Cir. 1998). The court noted different considerations for the objective requirement such as (1) whether a reasonable doctor or patient would find the existence of the injury important, (2) whether the medical condition significantly affects an individual's daily activity, and (3) whether there is chronic and substantial pain. *Id.*

³² See *Salahuddin*, 467 F.3d at 280.

³³ See *Darnell*, 849 F.3d at 32. The subjective prong is defined objectively where the plaintiff must show that the prison official intentionally failed to act with reasonable care even though the officials knew or should have known that the condition posed an excessive risk to the inmate's health. *Id.* at 35. See also *Farmer v. Brennan*, 511 U.S. 825, 837-38 (1994). The Supreme Court declared that a prison official cannot be found liable under the Eighth Amendment unless the officials knew and disregarded an excessive risk to the inmate's health. *Id.*

Courts recognize that when analyzing an Eighth Amendment violation, mere negligence is not enough to establish a constitutional violation, even if it counts as medical malpractice.³⁴ When establishing an Eighth Amendment violation, deliberate indifference to medical needs is not the disagreement over proper treatment; as long as the treatment given is adequate, regardless if the prisoner prefers a different treatment plan, there is no constitutional violation.³⁵ This bartering process for adequate treatment mirrors that of other legislation, such as the Americans with Disabilities Act.³⁶ The Eighth Amendment also prohibits unnecessary confinement and excessive force.³⁷ Similar to the deliberate indifference to serious medical needs, a two-element test is applied when determining confinements that constitute “cruel and unusual punishment.”³⁸ With regard to confinement, the prisoner must objectively demonstrate that the confinement resulted in “unquestioned and serious deprivations of basic human needs” and subjectively show that the DOC official acted with a sufficiently “culpable state of mind.”³⁹ In terms of excessive force, the prisoner must only objectively establish that the force used was excessive.⁴⁰

Although these claims were not brought, Sherman could have also tried to bring a suit under the Equal Protection Clause of the Fourteenth Amendment for disparate treatment by the correctional officers, particularly when the guard called him a racial slur.⁴¹

³⁴ See *Clay v. Kellmurray*, 465 F.App’x 46, 47 (2d Cir. 2012) (detailing negligence in medical malpractice is not enough to trigger an Eighth Amendment violation). See also *Chance*, 143 F.3d at 703. The court established that medical malpractice can be used to show the deliberate indifference when it involves capable recklessness, but negligence in itself is not enough for a constitutional claim. *Id.*

³⁵ See *Chance*, 143 F.3d at 703. See also *Hathaway v. Coughlin*, 37 F.3d 63, 70 (2d Cir. 1994). The court stated it will not second guess a doctor when there is dispute concerning treatment with an inmate. *Id.*

³⁶ See 42 U.S.C. § 12111(9) (requiring employers to reasonably accommodate employees with disabilities).

³⁷ See U.S. CONST. amend. VIII.

³⁸ See *Farmer*, 511 U.S. at 834.

³⁹ *Anderson v. Coughlin*, 757 F.2d 33, 35 (2d Cir. 1985).

⁴⁰ See *Hudson v. McMillian*, 112 S. Ct. 995, 999 (1992) (requiring claim to have both objective and subjective elements met to establish a constitutional violation). The objective component does not extend to the inmate’s injuries as a result of the prison official’s conduct and should not be taken into consideration when determining if the objective element has been met or not. *Id.* at 1000. There is a subjective standard to consider whether or not there was good-faith effort to maintain or restore discipline or if it was simply sadistic to cause harm. *Id.* at 999. See also *Whitley v. Albers*, 106 S. Ct. 1078, 89 (1986) (holding a shooting of inmate was not excessive but a good-faith effort to restore prison security); *Kingsley v. Hendrickson* 135 S. Ct. 2466, 2470 (2015) (rejecting that prisoners need to show officers were subjectively aware that the force was unreasonable). A prisoner just needs to show that the force was objectively unreasonable but there is a subjective test on whether it was used with good faith. *Kingsley*, 135 S. Ct. at 2475.

⁴¹ See U.S. CONST. amend. XIV (protecting prison inmates against unequal treatment based on race). Courts however tend to defer to prison officials regarding prisoners’ rights and apply a rational basis test, making claims for discrimination in prisons more difficult. See also *Prisoners’ Rights*, LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/prisoners%27_rights (last visited Feb. 28, 2021). There also seems to be race discrimination based on the population of prisoners, since more black people make up the jail population than they do the U.S. population. See generally FED. BUREAU OF PRISONS, https://www.bop.gov/about/statistics/statistics_inmate_race.jsp (last updated Jan. 30, 2021) (listing 38% of prisoners are black); but see *Quick Facts*, U.S. CENSUS BUREAU,

Another remedy Sherman could have sought was a violation of the Model Sentencing and Corrections Act, which also protects interests in freedom from discrimination based on race.⁴² Section 2-501 of the Model Sentencing and Corrections Act requires divisions of correctional medical services to diagnose and treat the physical, dental, or mental health problems of confined individuals.⁴³ Under the Model Act, if a prisoner has been discriminated against because of their race the option exists for them to seek a violation against the defendant.⁴⁴

In *Sherman v. Corcella*, the court first examined whether Sherman's arthritis and bone degeneration satisfies the objective requirement as a serious medical condition.⁴⁵ To make this determination, the court considered these factors: (1) whether a reasonable doctor or patient would perceive the medical need in question as worthy of treatment; (2) whether the medical condition affects daily activities; and (3) whether there is the existence of chronic pain.⁴⁶ The court found that Sherman's arthritis and degenerated bone loss are

<https://www.census.gov/quickfacts/> (last visited Feb 9, 2021) (marking 13% of the U.S. population are black individuals).

⁴² See MODEL SENTENCING AND CORR. ACT (UNIF. LAW COMM'N 1979), <https://www.ojp.gov/pdffiles1/Digitization/55600NCJRS.pdf>. The National Conference of Commissioners of Uniform State Laws (NCCUSL) adopted and published its proposed Uniform Rules of Criminal Procedure, hoping to replace the criminal system to provide a higher degree of equal treatment. *Id.* at 1-2. Then, in 1979, the Commissioners put forward the Model Sentencing and Corrections Act. *Id.* It sought to bring justice and the rule of law to the correctional process and give fundamental rights of confined people. *Id.* at 6. The act is divided into six sections, where Article 4 contains provisions directly related to treatment of sentenced inmates, including medical care and discrimination. *Id.* at 6.

⁴³ See *id.* at 68. See also Marvin Zalman, *Prisoners' Rights to Medical Care*, 63 J. CRIM. L. & CRIMINOLOGY 185, 187 (1972),

<https://scholarlycommons.law.northwestern.edu/jclc/vol63/iss2/3>. This duty has sometimes been interpreted to mean prisoners must receive the kind of medical care that a reasonable person would secure for himself if he were free to do so. *Id.* at 187.

⁴⁴ See Carl T. Drechsler, Annotation, *Relief Under Federal Civil Rights Acts to State Prisoners Complaining of Denial of Medical Care*, 28 A.L.R. Fed. 279 (1976) (recognizing a deprivation of medical care to inmates for reason of race would violate 18 U.S.C. § 242); 18 U.S.C. § 242 (2020) (disallowing depriving prisoners of their constitutional rights); see also MODEL SENTENCING AND CORR. ACT § 2-501 (UNIF. LAW COMM'N 1979), <https://www.ojp.gov/pdffiles1/Digitization/55600NCJRS.pdf> (creating a duty for correctional medical services to treat inmates).

⁴⁵ See *Sherman v. Corcella*, 2020 U.S. Dist. LEXIS 125931, *1, *18 (discussing Sherman's arthritis and bone degeneration); see generally *Osteoporosis and Arthritis: Two Common but Different Conditions*, NATIONAL INSTITUTE OF HEALTH,

<https://www.bones.nih.gov/health-info/bone/osteoporosis/conditions-behaviors/osteoporosis-arthritis> (Dec. 2018) (last visited March 13, 2021) (describing the symptoms and debilitating effect of arthritis and osteoporosis).

⁴⁶ See *Sherman*, 2020 U.S. Dist. LEXIS 125931, at *18-19; *Chance v. Armstrong*, 143 F.3d 698, 702 (2d Cir. 1998); *McGuckin v. Smith*, 974 F.2d 1050, 1059-60 (9th Cir. 1992) (listing the factors that courts consider). "[T]he existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual's daily activities; or the existence of chronic and substantial pain." *McGuckin*, 974 F.2d at 1059-60. See also *Gutierrez v. Peters*, 111 F.3d 1364, 1373 (7th Cir. 1997) (citing the standards to determine if a medical condition is serious); *Laaman v. Helgemoe*, 437 F. Supp. 269, 311 (D.N.H. 1977) ("A 'serious' medical need is one that has been diagnosed

chronic and existed before he arrived at the Correctional Center.⁴⁷ The court also reasoned there is sufficient evidence to satisfy the objective requirement because a doctor would reasonably consider Sherman's condition to be treatment-worthy and his condition impedes on his daily activities since he is unable to dress himself or sleep due to the chronic pain.⁴⁸ Next, Sherman must also satisfy the subjective element, and the court justly found that Supervisor Phillips, Nurse Lee, and Lieutenant Ballaro deliberately disregarded the medical needs for Sherman's health conditions.⁴⁹ As a supervisor, Supervisor Phillips had personal notice of Sherman's need for treatment and showed deliberate indifference by failure to address his specific medical needs.⁵⁰ Nurse Lee and Lieutenant Ballaro also had personal notice of Sherman's need for treatment since Nurse Lee intentionally took away Sherman's arm sling when Lieutenant Ballaro wrongfully indicated to Nurse Lee that there was nothing wrong with Sherman's shoulder.⁵¹

In analyzing Sherman's second-degree burn, the court decided to treat it as if it satisfied the objective element.⁵² Because Sherman alleged that there was a delay in

by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention."').

⁴⁷ See *Sherman*, 2020 U.S. Dist. LEXIS 125931, at *18; see also *Harrison v. Barkley*, 219 F.3d 132, 137 (2d Cir. 2000) (recognizing a medical condition can become serious overtime if left untreated); *Brock v. Wright*, 315 F.3d 158, 162 (2d Cir. 2003) (finding no exact calculation for the court to estimate the seriousness of prisoners' medical conditions).

⁴⁸ See *Sherman*, 2020 U.S. Dist. LEXIS 125931, at *19; see also *Greeno v. Daley*, 414 F.3d 645, 653 (7th Cir. 2005) (noting "deliberate indifference to serious medical needs" contains both an objective and subjective requirement); *Gutierrez v. Peters*, 111 F.3d 1364, 1369 (7th Cir. 1997) (suggesting the objective requirement necessitates "that the inmate's medical need be sufficiently serious.").

⁴⁹ See *Sherman*, 2020 U.S. Dist. LEXIS 125931, at *25. The court finds that Sherman failed to have a plausible claim against Dr. Ashraf and Warden Corcella because Sherman failed to provide specific evidence that he told Dr. Ashraf he needed more effective pain medication, a shirt pass, or treatment for his arthritis and Dr. Ashraf was aware of Sherman's pain. *Id.* at *20. Sherman also failed to establish that Dr. Ashraf disregarded a substantial risk of serious harm. *Id.* Regarding Warden Corcella, the court found that there were no facts to support Sherman's allegations that he made complaints to the warden, such as specific dates or manner of communication. *Id.* at *21.

⁵⁰ See *id.* at *25. Sherman specifically alleged that he made requests to Supervisor Phillips, Nurse Lee, and Lieutenant Ballaro arising from his bone loss degeneration and need for treatment, but they were ignored. *Id.* at *23.

⁵¹ See *id.* at *24-25. Nurse Lee also allegedly stated to Sherman that they would not defy the correctional officer's order for him and denied a bone specialist to see him because custody would not allow it. *Id.* at *24. The court did not find a claim against Nurse Ocampo who, also alongside Nurse Lee, took away Sherman's arm sling because Sherman could not prove that Nurse Ocampo was aware that removing his sling would pose a substantial risk of harm to Sherman. *Id.* at *25. See also *Brandon v. Kinter*, 938 F.3d 21, 37 (2d Cir. 2019). Supervisor officials who are aware of prisoner's grievances and fail to remedy the wrong may be held liable for § 1983 Civil Rights deprivation violation. *Id.*

⁵² See *Sherman*, 2020 U.S. Dist. LEXIS 125931, at *29. The court notes that unless the burn is "so debilitating that the failure to treat it subjected him to a significant risk of harm. . ." then it does not satisfy the objective element under the Eighth Amendment. *Id.* at *28. However, the court does treat this second-degree burn as sufficient to satisfy the objective prong. *Id.* See *Walker v. Vargas*, 2013 U.S. Dist. LEXIS 121184, 25 (S.D.N.Y. 2013) (establishing second-degree burns as serious enough to satisfy the objective prong of the Eighth Amendment).

treatment, the court considered this deprivation of care as a possible risk of harm.⁵³ The court found that the actions of both Nurse McDonald and Nurse Adams-Conahan were a deliberate disregard to Sherman's serious medical needs because Nurse McDonald failed to provide his promised treatments to Sherman and Nurse Adams-Conahan only provided Band-Aids, which contributed to an infection.⁵⁴ The court, however, did not find a claim against Supervisor Phillips, Nurse Lee, or Dr. Ashraf for Sherman's untreated second-degree burn because Sherman did not provide sufficient evidence that his request for treatment affected his feet and constituted as deliberate indifference to a serious medical need.⁵⁵

In evaluating the court's analysis of the two-prong test in deciding whether the defendants deliberately disregarded Sherman's serious medical needs, in violation of the Eighth Amendment, the court incorrectly applied the subjective standard and should have applied a more expansive and consistent approach.⁵⁶ First, the court states that Sherman did not provide enough evidence that Nurse Ocampo knew that removal of Sherman's sling would pose a substantial risk of harm, however, Nurse Ocampo was with Nurse Lee when his sling was removed, and the court found Nurse Lee liable.⁵⁷ They both made the decision to remove the sling, but the only difference between Nurse Ocampo and Nurse Lee in this situation, is that Nurse Lee specifically stated she was not going against custody for Sherman.⁵⁸ Nurse Ocampo also knew of Sherman's pain because of Sherman's multiple requests for a no-shirt pass.⁵⁹ The court was inconsistent when finding Sherman met the two-prong test against Nurse Lee, but not with Nurse Ocampo, which is why the court should have adopted a more expansive and consistent approach.⁶⁰

⁵³ See *Sherman*, 2020 U.S. Dist. LEXIS 125931, at *29; see also *Smith v. Carpenter*, 316 F.3d 178, 186 (2d Cir. 2003) (allowing courts to take into account the severity of the temporary deprivation alleged by the prisoner).

⁵⁴ See *Sherman*, 2020 U.S. Dist. LEXIS 125931, at *30. Sherman alleged that Nurse McDonald promised to provide him medication, a wheelchair for showering, and wrappings for his burns, but failed to do so, which the court found was enough evidence that Nurse McDonald deliberately disregarded his medical condition. *Id.* at *30.

⁵⁵ See *id.* at *31. Sherman requested a foot bucket and an order to permit him to obtain sneakers from outside vendors to address his foot condition, but the court found that Sherman failed to provide any underlying facts to demonstrate that any of the defendants personally were aware of his serious need for medical treatment and were aware of the substantial risk of harm to him. *Id.* at *31-32. The court also looked into the excessive force and confinement issues but dismissed the claims for failing to meet certain elements. *Id.* at *58.

⁵⁶ See *id.* at *25.

⁵⁷ See *Sherman*, 2020 U.S. Dist. LEXIS 125931, at *25. The court contradicted itself by finding Nurse Lee liable, but not Nurse Ocampo. *Id.* See also *Brandon v. Kinter*, 938 F.3d 21, 37 (2d Cir. 2019) (holding officials who are aware of prisoner's grievances and fail to remedy the wrong may be held liable).

⁵⁸ See *Sherman*, 2020 U.S. Dist. LEXIS 125931, at *6. Sherman specifically asked Nurse Lee why they took his sling away. *Id.*

⁵⁹ See *id.* at *25. The court states that Sherman failed to provide evidence that Nurse Ocampo was aware of the risk of harm to Sherman, but Nurse Ocampo was aware of that risk since there were multiple occasions Sherman stated how restricted his right shoulder is and he had severe pain, which is why he wanted a no shirt pass. *Id.* at *9. See *Salahuddin v. Goord*, 467 F.3d 263, 280 (2d Cir. 2006) (charging officials when there is proof of awareness of a substantial risk of the harm).

⁶⁰ See *Sherman*, 2020 U.S. Dist. LEXIS 125931, at *25-26.

Second, the court erroneously found that Dr. Ashraf did not deliberately disregard Sherman's serious medical needs.⁶¹ The court reasoned that Sherman failed to provide facts that Dr. Ashraf was actually aware of his needs, but the court was inconsistent with its reasonings because during his time at the correctional facility, Sherman told Dr. Ashraf, Nurse Ocampo, Nurse Lee, and Supervisor Phillips about his arthritis and provided evidence on how they refused an arm sling pass for his separated shoulder.⁶² The subjective element requires that the charged official is aware of the substantial risk, and based on Sherman's allegations, this should have been enough to prove that Dr. Ashraf was aware.⁶³

When analyzing the court's determination of whether all the defendants were deliberately indifferent to Sherman's medical needs, the court failed to take into consideration outside factors that may have biased the defendants during Sherman's treatment.⁶⁴ Based on what is required for a plaintiff to be successful under an Eighth Amendment violation claim, the court solely looks to the two-prong test, involving objective and subjective elements, but does not recognize any other public policy issues involving race, such as medical racism.⁶⁵ Sherman is an African American male and based on the alleged facts, has faced racial discrimination in the Correctional Facility by at least one officer who called him the n-word.⁶⁶ There has been a long standing history of African Americans not receiving proper medical care due to the color of their skin.⁶⁷ The court should adopt a more expansive view when determining whether a defendant deliberately disregards the serious medical needs of a person of color, due to the possible biases that are developed in healthcare professionals when treating people of color.⁶⁸ Although in this particular case there were no facts indicating that the nurses or doctor had any racial bias towards Sherman's medical treatment, their actions could suggest otherwise.⁶⁹ In the future, courts should consider this factor in an Eighth Amendment

⁶¹ See *id.* at *21-22.

⁶² See *id.* at *4, *9.

⁶³ See *id.* at *24-25; see also *Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017) (holding the subjective element satisfied when DOC official known or should have known of substantial risk); *Farmer v. Brennan*, 511 U.S. 825, 837-38 (1994) (charging DOC officials when they know and disregard the substantial risk).

⁶⁴ See *Sherman*, 2020 U.S. Dist. LEXIS 125931 at *16-18; see also MODEL SENTENCING AND CORR. ACT § 2-501 (UNIF. LAW COMM'N 1979), <https://www.ojp.gov/pdffiles1/Digitization/55600NCJRS.pdf> (providing prisoners a claim for medical discrimination due to race).

⁶⁵ See *Sherman*, 2020 U.S. Dist. LEXIS 125931 at *16-18; see also *Hoffman et al.*, *supra* note 16, at 4297 (illustrating medical students believing black patients are biologically different). This causes racial bias in pain treatment recommendations. *Id.* at 4298.

⁶⁶ See *Sherman*, 2020 U.S. Dist. LEXIS 125931, at *13. Officer Sagon called Sherman a "nigga" when Sherman simply asked Officer Sagon why Officer Griggs destroyed his property. *Id.*

⁶⁷ See *Bowser*, *supra* note 16, at 96 (finding through studies how unconscious racism is a factor in thousands of treatment decisions); see also *Childs v. Weis*, 440 S.W.2d 104 (Tex. Civ. App. 1969) (illustrating an ER doctor who refused to treat a black woman in labor).

⁶⁸ See *Hoffman et al.*, *supra* note 16, at 4298, (showing a study that Black Americans are systemically undertreated for pain relative to White Americans); see also *New Biloxi Hosp., Inc. v. Frazier*, 146 So. 2d 882 (Miss. 1962) (describing the death of a black man left untreated for hours at the emergency room).

⁶⁹ See *Sherman*, 2020 U.S. Dist. LEXIS 125931, at *15. Race was only mentioned when Officer Griggs called Sherman a racial slur. *Id.*

violation because of the growing problem people of color face every day.⁷⁰ For instance, black people represent only 13.4% of the U.S. adult population, but 38.6% of people in prison are black, displaying inequality and injustice towards people of color.⁷¹

In *Sherman v. Corcella*, the United States District Court for the District of Connecticut considered whether the DOC failed to provide adequate medical treatment to a prisoner with arthritis, degenerated bone loss, and second-degree burn. In its application of the relevant legal principles, the court misapplied the subjective standard with certain medical staff members by inconsistently finding some medical providers liable for deliberate indifference to the prisoner's medical needs, while dismissing the case on others, when the facts were analogous. The court also failed to recognize the prisoner's circumstances as an African American male - already facing discrimination from the officers with the use of a racial slur. Ultimately, the court ignores the possibility of the defendant's disregarding Sherman's medical needs due to his race. Although the plaintiff did not make a specific claim against racial discrimination, this should be an issue addressed by courts in Eighth Amendment violations.

⁷⁰ See generally Frakt, *supra* note 16 (describing racial bias still looms in healthcare when treating patients).

⁷¹ See FED. BUREAU OF PRISONS, *supra* note 41 (listing inmate race statistics); see also *Quick Facts*, *supra* note 41 (listing U.S. population by race).