[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-15121
Non-Argument Calendar

D.C. Docket No. 3:17-cv-00665-BJD-JRK

TYREE WRIGHT,

Plaintiff - Appellant,

versus

S. ALVAREZ,
Senior Health Administrator (SHSA) for
Corizon,
P. ENOCHS,
SLPN for Corizon,
MD R. VIVAS,
Doctor and/or Medical Director for Corizon,

Defendants - Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(December 17, 2019)

Before MARTIN, NEWSOM, and GRANT, Circuit Judges.

PER CURIAM:

Tyree Wright, a Florida state prisoner proceeding *pro se*, appeals the district court's grant of summary judgment in favor of defendants Stephanie Alvarez, Patsy Enochs, and Rodrigo Vivas on his section 1983 action. Wright alleges that the defendants, all employees of Corizon Health, Inc., violated his Eighth Amendment rights by failing to diagnose and treat his brain tumor. For roughly ten months before his diagnosis, Wright was being treated by the prison physician, Dr. Vivas, for headaches, dizziness, and equilibrium problems. After careful review of the record, including all of Wright's correspondence with prison officials, we affirm.

I.

We review the grant of summary judgment de novo, applying the same legal standards as the district court. *See Brown v. Crawford*, 906 F.2d 667, 669 (11th Cir. 1990). The question is whether the evidence, when viewed in the light most favorable to the nonmoving party, shows that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. *See id.*

II.

The essential elements of a 42 U.S.C. § 1983 claim are: (1) the violation of a constitutional right or federal statute; (2) by a person acting under color of state

law. *See* 42 U.S.C. § 1983; *Melton v. Abston*, 841 F.3d 1207, 1220 (11th Cir. 2016). The "medical treatment of prison inmates by prison physicians is state action" within the meaning of section 1983, regardless of whether the provider is employed by the state directly or by contract. *West v. Atkins*, 487 U.S. 42, 54–56 (1988). Thus, the Corizon defendants were state actors, and we proceed to evaluate Wright's claim that they violated his Eighth Amendment rights.

The Eighth Amendment's prohibition of "cruel and unusual punishments" governs "the treatment a prisoner receives in prison and the conditions under which he is confined." *Helling v. McKinney*, 509 U.S. 25, 31 (1993). The Amendment imposes an affirmative obligation to provide prison inmates with medical treatment. *Estelle v. Gamble*, 429 U.S 97, 103–04 (1976). A prison official's "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' proscribed by the Eighth Amendment." *Id.* at 104 (internal citation omitted).

To prevail on a section 1983 claim for such a violation, a prisoner "must show: (1) a serious medical need; (2) a defendant's deliberate indifference to that need; and (3) causation between that indifference and the plaintiff's injury." *Melton*, 841 F.3d at 1220. These elements encompass both objective and subjective components—there must be "an objectively serious need, an objectively insufficient response to that need, subjective awareness of facts signaling the need,

and an actual inference of required action from those facts." *Taylor v. Adams*, 221 F.3d 1254, 1258 (11th Cir. 2000). It is beyond contention that Wright's brain tumor qualified as a serious medical need. Thus, we turn to the question of whether the defendants acted with deliberate indifference toward that need.

To show "deliberate indifference," a prisoner must present evidence that the defendant actually knew that the inmate was at risk of serious harm if he did not receive medical treatment, but unreasonably delayed, failed to provide, or refused to provide medical treatment. *McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999). A showing of negligence or medical malpractice in the diagnosis or treatment of a prisoner's medical condition is not enough to meet this standard. *Estelle*, 429 U.S. at 105–06. Instead, when the alleged constitutional violation is the withholding of medical care, "there must be a subjective intent by the public officials involved to use the sufficiently serious deprivation in order to punish." *Taylor*, 221 F.3d at 1257.

"Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." *Farmer v. Brennan*, 511 U.S. 825, 842 (1994) (internal citation omitted). But "an official's failure to alleviate a significant risk that he should have perceived but did not,

while no cause for commendation, cannot under our cases be condemned as the infliction of punishment." *Id.* at 838.

III.

Even viewed in the light most favorable to Wright, the evidence here does not support Wright's claim that any of the three defendants intentionally disregarded a serious medical need. The facts surrounding Wright's appeal are well-known to the parties and are recounted in detail by the district court, so we mention only those aspects of the record that are vital to our conclusion.

During the roughly ten month period from May 2014 to March 2015, Wright had at least six interactions with Vivas, the physician at Florida State Prison. There is no evidence that, during these interactions, Vivas provided Wright anything less than well-intentioned, diligent care. Vivas made himself aware of Wright's medical history, conducted diagnostic tests (including an electrocardiogram, a syphilis test, and an x-ray), performed several tests of neurological functioning, and prescribed a variety of drugs intended to relieve Wright's symptoms.

We recognize that Wright told prison administrators that he was worried he might have a brain tumor. At least as early as June 2014, Wright warned of this possibility and requested a brain scan. But as the district court noted, Wright's medical history—multiple gunshot wounds, traumatic brain injury, brain surgery,

seizures, and numerous mental health concerns—made determining the source of Wright's vertigo and equilibrium disorder a complicated undertaking. Under these circumstances, it was not unreasonable—let alone a demonstration of deliberate indifference—for Vivas not to immediately order a CT scan of Wright's head.

On March 2, 2015, after Wright reported that his medications were not working and his symptoms were worse, Vivas ordered a CT scan. And after the CT scan showed a mass in Wright's brain, Vivas immediately ordered a brain MRI and neurosurgery consultation. Wright thus cannot show that Vivas was subjectively aware of Wright's brain tumor before the CT scan, was deliberately indifferent to the possibility that Wright had a brain tumor, or wrongly delayed treatment once he became aware of Wright's brain tumor.

Wright's claims against Alvarez and Enochs also fail. Alvarez is a health services administrator and Enochs is a nurse. Wright's amended complaint states that despite "begging for help" from both Alvarez and Enochs, both told him to "access sick call." But telling Wright to request medical care through proper prison procedures does not constitute deliberate indifference, at least when the prisoner's medical issue does not require emergency care. It is true that one does not need to be a physician to be guilty of deliberate indifference. In *Carswell v. Bay County*, for instance, we said that a physician's assistant may have demonstrated deliberate indifference when he failed to advise the physician of the

prisoner's serious medical situation—and likewise for a jail administrator who did not despond to the prisoner's specific requests to see a doctor. *See* 854 F.2d 454, 457 (11th Cir. 1988). Here, though, there is no evidence that either Alvarez or Enochs withheld information from Vivas or otherwise failed to properly perform their assigned duties.

IV.

Wright failed to present evidence sufficient to show that defendants knowingly disregarded his serious medical condition or that they delayed treatment long enough to exacerbate his serious medical condition. He did not present evidence that any defendant knew, or should have known, that he had a brain tumor. Nor did he present evidence that there was a delay in treatment that actually exacerbated his condition, and it is undisputed that he routinely received treatment. Because of Wright's failure to present evidence creating a genuine issue of material fact on his deliberate indifference claim, we affirm.

AFFIRMED.