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# 🌸 ([/subscribe/digital/](#)) Over \$386,000 Awarded to Mississippi Prisoner, Plus Hip Surgery He Was Denied

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by David M. Reutter

On March 31, 2022, the federal court for the Southern District of Mississippi granted a state prisoner's petition and enjoined the state Department of Corrections (DOC) to provide him total hip revision surgery. He was also awarded damages and attorney fees totaling over \$386,000.

Since age two, prisoner Thad Everett Delaughter has suffered from severe rheumatoid arthritis. As a result, he received a bilateral hip replacement and a bilateral knee replacement prior to his imprisonment in 2006. Four years later, Delaughter began complaining about severe pain in his left prosthetic hip. He was referred to Dr. Elliot Nipper, an orthopedic specialist.

In July 2011, Dr. Nipper found that Delaughter's prosthetic hip had failed. Surgery was scheduled for October 2011, but it was cancelled and never rescheduled. When no surgery had happened 30 months later, Delaughter filed suit *pro se* in January 2014. The Court then granted summary judgment to Defendants, DOC, Dr. Ronald Woodall (an employee of its privately contracted health care provider, Wexford Health Sources), and South Mississippi Correctional Institution Medical Administrator Dr. Michael Hatten. Delaughter appealed the judgments in favor of Woodall and Hatten, and the U.S. Court of Appeals for the Fifth Circuit affirmed the former and reversed the latter. See: *Delaughter v. Woodall*, 909 F.3d 130 (5th Cir. 2018).

On remand, the district court appointed attorneys Christopher E. Smith and Grady M. Holder of Smith & Holder PLLC in Gulfport to provide counsel for Delaughter. They filed an amended complaint for him against Hatten and DOC's Chief Medical Officer, Dr. Gloria Perry. A jury then found them deliberately indifferent to the prisoner's serious medical needs on December 15, 2021, awarding him \$382,000 in compensatory damages.

Following trial, the district court had to decide whether Delaughter was entitled to prospective injunctive relief from Perry's successor, Dr. Donald Faucett. The Court found Faucett has "some connection" and authority to compel the provision of surgery because he is the one responsible for finding a willing surgeon and coordinating treatment. Thus, the exception to sovereign immunity laid out in *Ex Parte Young*, 209 U.S. 123 (1908), applied to Faucett, so the Court had authority to enter injunctive relief.



It then found Delaughter was suffering an ongoing constitutional violation. There was no dispute that “total hip revision surgery is medically necessary.” Yet, the record showed continued delays or inaction to obtain the surgery for Delaughter.

To end the ongoing injury, which caused Delaughter’s condition to progressively worsen and make surgery harder, the Court found injunctive relief was necessary. It therefore ordered Dr. Faucett to “obtain and coordinate Delaughter’s total hip revision” and report his efforts to the Court every three weeks “until ... revision and post-surgical treatment is complete.” That order on March 31, 2022, also included the jury’s verdict. See: *Delaughter v. Hatten*, 2022 U.S. Dist. LEXIS 59601 (S.D. Miss.).

Perry then moved for Judgment as a Matter of Law or, alternatively, a New Trial or Remittitur of the award. Faucett filed a motion to Alter or Amend Judgment.

Since there was ample evidence presented to the jury that both Perry and Nipper denied Delaughter access to outside specialists and reconstructive surgery they deemed too expensive, the Court said “the facts and inferences do not ‘point so strongly and overwhelmingly in favor of the moving party that reasonable jurors could not arrive at a contrary verdict,’” the standard to overturn a judgment laid out in *Carmona v. Sw. Airlines Co.*, 604 F.3d 848 (5th Cir. 2010).

Nor was Remittitur appropriate since the jury’s award wasn’t “contrary to right reason” nor “entirely disproportionate to the injury sustained,” the Court added, quoting *Caldarera v. Eastern Airlines, Inc.*, 705 F.2d 778 (5th Cir. 1983). Moreover, the fact that Delaughter’s hip revision had begun did not count as “new evidence” that might moot his request for injunctive relief, since mootness can’t occur before “the event sought to be enjoined takes place,” the Court noted, citing *Harris v. City of Houston*, 151 F.3d 186 (5th Cir. 1998).

Thus both motions were denied by the Court on July 6, 2022. See: *Delaughter v. Hatten*, 2022 U.S. Dist. LEXIS 118294 (S.D. Miss.).

That same day, the Court also awarded Plaintiff attorney fees and costs totaling \$99,627.05, with \$4,127.05 paid directly by Perry and the remainder coming from Delaughter’s compensatory damages award, as set out in U.S.C. § 1997e(d)(2). See: *Delaughter v. Hatten*, 2022 U.S. Dist. LEXIS 118292 (S.D. Miss.).

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## Related legal cases

### Delaughter v. Hatten

# Conduct Report

Institution: DCI

Case Number: DCI-21-000374

Name: GARKO, TERI R

Number: W84180

Lock: I/INF/104

Date/Offense: 1/27/2021

Time/Offense: 08:03 AM

Location: TPU P2-23

**Rule(s) Violated: 51**

Possession of contraband, including any article knowingly possessed which has been altered or for which permission has not been given; Possession of escape materials; including keys or lock picking devices (may include maps, tools, ropes, material for concealing identity or making dummies, etc.);

**Supporting Facts (Describe what occurred and how the inmate violated the rule(s)):**

On the above date and time, be advised inmate Garko 84180 did conceal her identity by using her cloths as a dummy to make it appear she was laying in her bed (33) Possession of escape materials; including keys or lock picking devices (may include maps, tools, ropes, material for concealing identity or making dummies, etc.). Also be advised Garko used her shoe strings as a method to hang herself on the vent in her cell in an attempt to commit suicide (49) Possession of contraband, including any article knowingly possessed which has been altered or for which permission has not been given.

(Use Conduct Report Supplement sheet, if needed)

As the Charging Official, do you wish to have input into the disciplinary proceedings? ☒ Yes ☐ No

Printed Name: dillon

Signature: 

Shift: 1st

Days Off: Thur fri

Date: 1/27/2021

A copy of this conduct report was served upon the above-named inmate on: February, 18, 2021, at 13:35 PM

Staff Signature: 

I acknowledge receipt of the conduct report on the above stated date and time:

Inmate Signature: 

Number: W84180

DRC 4018 (rev 12/05) DISTRIBUTION: WHITE - RIB CANARY - Unit File PINK - RIB Board GOLD - Inmate ACA 4214 through 4236, 4269



**Union County Court of Common Pleas  
Criminal Court Division**

**CASE NO.** 2020-CR-0055  
**JUDGE** Don W. Fraser

**BILL OF PARTICULARS**

State of Ohio,  
**Exhaust** Plaintiff  
vs. **Denied**

**Teri Garko,** Defendant

Mr Hill  
Son + Steve  
Stregal

Responding to the request of the Defendant, Teri Garko, for a Bill of Particulars, the Assistant Prosecuting Attorney says that the State of Ohio will prove on the trial of the above-entitled case, the following:

- Count 1: Harassment with a Bodily Substance, 2921.38(A), 2921.38(D)**

That on or about December 13, 2019, and at the location of 1479 Collins Ave, Marysville, OH 43040, the Defendant, Teri Garko, did, while being confined at a detention facility, with intent to harass, annoy, threaten, or alarm Corrections Officer Jones, cause or attempt to cause Corrections Officer Jones to come into contact with blood, semen, urine, feces or another bodily substance by throwing or expelling substance at Corrections Officer Jones or in any other manner contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

On or about December 13, 2019, the Defendant was an inmate in the Ohio Reformatory for Women, a prison with the Ohio Department of Rehabilitation and Corrections, and had been in the RIB office. In order to be escorted back, a Corrections Officer was asked to come to the RIB office. As the Corrections Officer was escorting the Defendant back to her cell, she began to pull and yell at the Corrections Officer. She then turned her head and spit on the Corrections Officer. She was then taken to the ground, OC spray was deployed and compliance was gained. The jacket of the Corrections Officer was obtained and it was submitted to BCI for testing. Following the testing, it was determined that amylase, a component of saliva, was found on the jacket. This occurred in Union County, Ohio.

See Response to Request for Discovery for further information.

R.H.  
Transport To Rib handcuff in back  
handcuff During Rib  
handcuff Transport back from Rib  
During Rib witness Rib reporter  
+ Jones

Told Bennet about Due process  
rights - replied - I'll spray you

Took Shouns  
to go to infirmary  
2:00 pm

excessive force  
use  
M.A.C. 5301.09  
S.A.C. 5301.09