

In the
**United States Court of Appeals
for the Eleventh Circuit**

WILLIAM SIMS,
Plaintiff-Appellant,

V.

ALEXIS FIGUEROA,
SUED IN HIS INDIVIDUAL CAPACITY,
Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
Case No. 3:18-cv-00892-MMH-JBT

APPELLEE’S BRIEF

Robert C. Mayfield
Jacob B. Hanson
BRADLEY ARANT BOULT
CUMMINGS LLP
100 N. Tampa Street, Suite 2200
Tampa, FL 33602
(813) 559-5500
cmayfield@bradley.com
jhanson@bradley.com

Brian A. Wahl
BRADLEY ARANT BOULT
CUMMINGS LLP
One Federal Place
1819 5th Avenue North
Birmingham, AL 35203
(205) 521-8000
bwahl@bradley.com

Attorneys for Appellee, Alexis Figueroa

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

The following is a list of all judges, attorneys, persons, associations of persons, firms, partnerships, corporations, and other legal entities that have an interest in the outcome of this case, including subsidiaries, conglomerates, affiliates and parent corporations, any publicly held company that owns 10 percent or more of a party's stock, and other identifiable legal entities related to a party:

1. Bradley Arant Boult Cummings LLP (Counsel for Appellee);
2. Centene Corporation (NYSE: CNC), a publicly-traded company that owns 100% of Centurion of Florida, LLC;
3. Centurion of Florida, LLC, healthcare contractor for the Florida Department of Corrections;
4. Connolly, Chloe (Student Counsel for Appellant);
5. Cruser, Mitchell, Novitz, Sanchez, Gaston & Zimet, LLP (Former Counsel for Appellee);
6. Figueroa, Alexis (Defendant-Appellee);
7. Francolin Dolney, Ana (Former Counsel for Appellee);
8. Hanson, Jacob B. (Counsel for Appellee);
9. Hashimoto, Erica (Counsel for Appellant).
10. Kaufman Dolowitch Voluck, LLP (Former Counsel for Appellee);
11. Kronis, Nadya (Nadine) (Student Counsel for Appellant);

12. Liebowitz, Daniel S. (Former Counsel for Appellee);
13. Marcin, Joshua (Counsel for Appellant);
14. Mayfield, Robert C. (Counsel for Appellee);
15. Morales Howard, Marcia (United States District Judge for the Middle District of Florida);
16. Sims, William (Plaintiff-Appellant);
17. Smith, Brett A. (Former Counsel for Appellee);
18. Toomey, Joel B. (United States Magistrate Judge for the Middle District of Florida); and
19. Wahl, Brian A. (Counsel for Appellee).

This, the 22nd of November, 2021.

/s/ Jacob Hanson

One of the Attorneys for Appellees

STATEMENT REGARDING ORAL ARGUMENT

Defendant-Appellee does not request oral argument in this prisoner appeal. The summary judgment record is straightforward. The question presented in Plaintiff-Appellant William Sims's appeal is governed by familiar standards for the review of a grant of a motion for summary judgment under Fed. R. Civ. P. 56.

TABLE OF CONTENTS

	Page
CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT	i
STATEMENT REGARDING ORAL ARGUMENT	iii
TABLE OF AUTHORITIES	v
JURISDICTIONAL STATEMENT	1
STATEMENT OF ISSUES PRESENTED FOR REVIEW	2
STATEMENT OF THE CASE.....	3
I. Factual Background.....	3
II. Procedural History.....	7
STANDARD OF REVIEW	10
SUMMARY OF THE ARGUMENT	10
ARGUMENT	12
I. Mr. Sims’s occasionally bleeding hemorrhoids are not an objectively serious medical need.....	12
II. Dr. Figueroa was not deliberately indifferent to Mr. Sims’s occasionally bleeding hemorrhoids.....	16
A. Deliberate indifference standard.....	17
B. Dr. Figueroa’s provided minimally adequate care under the Constitution when treating Mr. Sims’s hemorrhoids.....	21
C. Mr. Sims’s complaint amounts to a mere disagreement as to what treatment he would receive.	23
D. Mr. Sims’s claim fails because he did not present expert medical opinions as to Dr. Figueroa’s treatment.	26
E. No evidence delay in treatment seriously exacerbated Mr. Sims’s medical condition.....	29
CONCLUSION.....	32
CERTIFICATE OF COMPLIANCE.....	34
CERTIFICATE OF SERVICE	35

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Adams v. Poag</i> , 61 F.3d 1537 (11th Cir. 1995)	19, 24, 25
<i>Ancata v. Prison Health Services, Inc.</i> , 769 F.2d 700 (11th Cir. 1985)	20
<i>Bennett v. Parker</i> , 898 F.2d 1530 (11th Cir. 1990)), <i>report and recommendation</i> <i>adopted</i> , No. 3:18CV1333-LC-HTC, 2020 WL 2216901 (N.D. Fla. May 7, 2020).....	13
<i>Bismark v. Fisher</i> , 213 F. App'x 892 (11th Cir. 2007)	19, 26
<i>Brown v. Hughes</i> , 894 F.2d 1533 (11th Cir. 1990)	20
<i>Chapman v. Parke</i> , 946 F.2d 894 (6th Cir. 1991)	28
<i>Christensen v. Burnham</i> , 788 F. App'x 597 (10th Cir. 2019)	29
<i>Ellis v. England</i> , 432 F.3d 1321 (11th Cir. 2005)	10, 27
<i>Estelle v. Gamble</i> , 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976).....	<i>passim</i>
<i>Farmer v. Brennan</i> , 511 U.S. 825, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994)	16, 18
<i>Farrow v. West</i> , 320 F.3d 1235 (11th Cir. 2003)	13
<i>Fields v. Rahimparast</i> , 43 F. App'x 966 (7th Cir. 2002)	28

<i>Fonseca v. Kuykendall</i> , 34 F. App'x 152 (5th Cir. 2002)	28
<i>Goebert v. Lee Cty.</i> , 510 F.3d 1312 (11th Cir. 2007)	30
<i>Goodman v. Kimbrough</i> , 718 F.3d 1325 (11th Cir. 2013)	18
<i>Green v. Shaw</i> , No. 3:17-CV-00913 (CSH), 2019 WL 1427448 (D. Conn. Mar. 29, 2019), <i>aff'd</i> , 827 F. App'x 95 (2d Cir. 2020)	15
<i>Hammonds v. Theakston</i> , 833 F. App'x 295 (11th Cir. 2020)	18
<i>Harris v. Thigpen</i> , 941 F.2d 1495 (11th Cir. 1991)	17, 23
<i>Hill v. Dekalb Reg'l Youth Det. Ctr.</i> , 40 F.3d 1176 (11th Cir. 1994)	30
<i>Hinson v. Bias</i> , 927 F.3d 1103 (11th Cir. 2019), <i>cert. denied</i> , 141 S. Ct. 233, 208 L. Ed. 2d 14 (2020)	13
<i>Hodge v. Smith</i> , No. 20-14004-CIV, 2020 WL 1262770 (S.D. Fla. Feb. 14, 2020), <i>report and recommendation adopted</i> , No. 20-CV-14004, 2020 WL 1262762 (S.D. Fla. Mar. 6, 2020)	15
<i>Hodge v. Smith</i> , No. 20-14004-CIV, 2020 WL 1262770, at *2 (S.D. Fla. Feb. 14, 2020)	14
<i>Hoffer v. Sec'y, Fla. Dep't of Corr.</i> , 973 F.3d 1263 (11th Cir. 2020)	<i>passim</i>
<i>Hope v. Pelzer</i> , 536 U.S. 730, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002)	30
<i>Howell v. Burden</i> , 12 F.3d 190 (11th Cir. 1994)	26

<i>Howell v. Evans</i> , 922 F.2d 712 (11th Cir.), <i>vacated pursuant to settlement</i> , 931 F.2d 711 (11th Cir. 1991).....	26
<i>Johnson v. Marlar</i> , 807 F. App'x 791 (10th Cir.), <i>cert. denied</i> , 141 S. Ct. 426, 208 L. Ed. 2d 125 (2020), <i>reh'g denied</i> , 141 S. Ct. 1141, 208 L. Ed. 2d 572 (2021).....	29
<i>Keohane v. Fla. Dep't of Corr. Sec'y</i> , 952 F.3d 1257 (11th Cir. 2020)	13, 16, 19
<i>Keohane v. Inch</i> , No. 20-1553, 2021 WL 4507694 (U.S. Oct. 4, 2021)	13
<i>Kuhne v. Fla. Dep't of Corr.</i> , 618 F. App'x 498 (11th Cir. 2015)	29
<i>Mandel v. Doe</i> , 888 F.2d 783 (11th Cir. 1989)	20
<i>Mann v. Taser Int'l, Inc.</i> , 588 F.3d 1291 (11th Cir. 2009)	12
<i>McElligott v. Foley</i> , 182 F.3d 1248 (11th Cir. 1999)	13, 20
<i>Melton v. Abston</i> , 841 F.3d 1207 (11th Cir. 2016)	16, 29
<i>Nunley v. Mills</i> , 217 F. App'x 322 (5th Cir. 2007)	28
<i>Patel v. Lanier Cty. Georgia</i> , 969 F.3d 1173 (11th Cir. 2020)	16
<i>Pounds v. Dieguez</i> , 850 F. App'x 738 (11th Cir. 2021)	24
<i>Rogers v. Evans</i> , 792 F.2d 1052 (11th Cir. 1986)	17, 26

<i>Snipes v. Oakdale Classification & Med. Ctr.</i> , 37 F. App'x 220 (8th Cir. 2002)	29
<i>Swain v. Junior</i> , 961 F.3d 1276 (11th Cir. 2020)	16, 17
<i>Taylor v. Adams</i> , 221 F.3d 1254 (11th Cir. 2000)	18, 30
<i>Thomas v. City of Jacksonville</i> , 731 F. App'x 877 (11th Cir. 2018)	26
<i>United States v. Chitwood</i> , 676 F.3d 971 (11th Cir. 2012)	10
<i>Waldrop v. Evans</i> , 871 F.2d 1030 (11th Cir. 1989)	19, 20, 26
<i>Washington v. Yardely</i> , No. 3:18CV1333-LC-HTC, 2020 WL 2231806, (N.D. Fla. Apr. 27, 2020)	13
<i>West v. Tillman</i> , 496 F.3d 1321 (11th Cir. 2007)	21
<i>Wright v. City of St. Petersburg, Fla.</i> , 833 F.3d 1291 (11th Cir. 2016)	10
Statutes	
42 U.S.C. § 1983	12
Other Authorities	
11th Cir. R. 28-2	1
Fed. R. App. P. 28(b)	1
Fed. R. App. P. 32(a)(5)	34
Fed. R. App. P. 32(a)(6)	34
Fed. R. App. P. 32(a)(7)(B)	34

Fed. R. App. P. 32(f).....	34
Fed. R. Civ. P. 56.....	iii
NIH Natl. Inst. of Diabetes and Digestive and Kidney Diseases, <i>Treatment of Hemorrhoids</i> , https://www.niddk.nih.gov/health-information/digestive-diseases/hemorrhoids/ treatment	7

JURISDICTIONAL STATEMENT

Pursuant to Fed. R. App. P. 28(b) and 11th Cir. R. 28-2, Dr. Figueroa is satisfied with Mr. Sims's Statement of Subject-Matter and Appellate Jurisdiction.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

This prisoner appeal presents one legal issue for review by this Court: Whether the district court erred in concluding Dr. Figueroa's treatment of Mr. Sims's hemorrhoids—with medications and ointment rather than referring him to a gastroenterologist—did not constitute deliberate indifference to a serious medical need in violation of the Eighth Amendment?

STATEMENT OF THE CASE

In this prisoner suit, Plaintiff-Appellant William Sims (a prisoner in the custody of the Florida Department of Corrections) alleges Defendant-Appellee Dr. Alexis Figueroa violated his Eight Amendment right to be free from “cruel and unusual punishment” by failing to provide adequate medical care for Mr. Sims’s hemorrhoids because Dr. Figueroa did not refer him to a gastroenterologist. Dr. Figueroa moved for summary judgment, arguing Mr. Sims could not prove he was deliberately indifferent to a serious medical need. Mr. Sims filed a declaration in opposition, attaching portions of his medical records that showed the treatment provided by Dr. Figueroa.

The district court granted Dr. Figueroa’s motion for summary judgment and entered final judgment. Mr. Sims appeals that order.

I. Factual Background.

William Sims is incarcerated in the custody of the Florida Department of Corrections (“FDC”). App. 9 (Doc. 1 at 1).¹ Mr. Sims has a history of prostate cancer and constipation. App. 12–13 (Doc. 1 at 4–5); App. 236 (Doc. 44-16 at 3).

In October 2017, Mr. Sims complained that “he’d been experiencing gross rectal bleeding since May of 2017 and had received no form of treatment.” App. 12

¹ “App.” refers to Appellant’s Appendix, filed October 15, 2021. “Doc.” refers to the district court EM/ECF docket number.

(Doc. 1 at 4). Notwithstanding these allegations, Mr. Sims admitted he had a colonoscopy on August 16, 2017, during which time he had polyps removed. App. 44 (Doc. 14 at 2); App. 12 (Doc. 1 at 4). The gastroenterologist noted that **the cause of Mr. Sims’s rectal bleeding was hemorrhoids**. App. 220 (Doc. 44-11 at 2).

Shortly after his colonoscopy, Mr. Sims was transferred to Suwannee Correctional Institution – Annex on August 30, 2017. App. 12 (Doc. 1 at 4). On September 8, 2017, Mr. Sims was seen by Appellant Dr. Figueroa. App. 12 (Doc. 1 at 4). Dr. Figueroa completed an FDC Consultation Request, referring Mr. Sims to a gastroenterologist for a “post-op visit for biopsy results and plan of care.” App. 185 (Doc. 44-2 at 2).

At some point, a decision was made not to refer Mr. Sims to a gastroenterologist; instead, he was placed on an alternative treatment plan (an “ATP”). App. 185 (Doc. 44-2 at 2). Dr. Figueroa thereafter noted follow-up for any rectal bleeding from Mr. Sims’s hemorrhoids would be handled on site. App. 191 (Doc. 44-4 at 2). This treatment plan is consistent with the gastroenterologist’s conclusion that the rectal bleeding was caused by hemorrhoids.

Mr. Sims did not make any complaints of rectal bleeding until October 30, 2017. *See generally* App. On October 30, 2017, Mr. Sims complained of rectal bleeding and was seen by a registered nurse on November 3, 2017. App. 197 (Doc. 44-6 at 2). Mr. Sims complained of rectal bleeding again on November 15 and 20,

2017, and December 1, 2017, and saw the registered nurse each time. App. 197–200 (Doc. 44-6 at 3–5).

Following his sick call request on December 1, 2017, Mr. Sims was seen by Dr. Figueroa. App. 194 (Doc. 44-5 at 2). Dr. Figueroa examined Mr. Sims and noted, “Rectal exam shows an inflamed hemorrhoid [is] still present.” App. 194 (Doc. 44-5 at 2). Dr. Figueroa also noted the inflamed hemorrhoid “could be the cause of the rectal bleeding.” App. 194 (Doc. 44-5 at 2). Dr. Figueroa prescribed Mr. Sims a stool softener, fiber laxative, and tube of hydrocortisone cream, all of which were later renewed. App. 13 (Doc. 1 at 5).

Mr. Sims did not again complain of rectal bleeding until January 31, 2018. App. 209 (Doc. 44-9 at 2). The sick call requests notes that he was seen by a registered nurse February 5, 2018. App. 209 (Doc. 44-9 at 2). Mr. Sims made another sick call request for rectal bleeding on February 6, 2018, and the request form notes he was seen on February 20, 2018. App. 210 (Doc. 44-9 at 3).

Mr. Sims submitted additional sick call requests on March 13, 2018, and April 16 and 23, 2018. App. 211–13 (Doc. 44-9 at 4–6). For each of these requests, though, Mr. Sims checked the boxes for “Pass/pass renewal” and “Medication renewal” as opposed to selecting the box for “Medical,” as he had done previously. *Compare* App. 198–200 (Doc. 44-6 at 3–5), *with* App. 211–13 (Doc. 44-9 at 4 –6).

According to his April 23, 2018 sick call request form, Mr. Sims was seen by a medical provider on April 26, 2018. App. 213 (Doc. 44-9 at 6).

In July 2018, Mr. Sims had a follow-up hematology/oncology appointment with Dr. Vernon Montoya, who referred Mr. Sims to a gastroenterologist. App. 217 (Doc. 44-10 at 2).² Dr. Figueroa reviewed Dr. Montoya's report and noted:

Request for [gastroenterologist] consult has been discussed with [Regional Medical Director] and due to the fact that the [gastroenterologist previously] stated on 8/16/17 that the cause of rectal bleeding was an inflamed hemorrhoid, this could be handled on site. **[Patient] had no complaint at site of rectal bleeding.**

App. 220 (Doc. 44-11 at 2) (emphasis added).

On September 11, 2018, Mr. Sims submitted another sick call request for “**reoccurance** (sic) of rectal bleeding”—his first since April 23, 2018. App. 214 (Doc. 44-9 at 7) (emphasis added). Mr. Sims was again seen by Nurse Hancock. App. 214 (Doc. 44-9 at 7).

On October 4, 2018, Mr. Sims had another follow-up with Dr. Montoya. App. 223 (Doc. 44-12 at 2). Notably, Dr. Montoya found Mr. Sims's “**Stool is guaiac**

² This was the third follow-up with Dr. Montoya that Mr. Sims had since being transferred to Suwannee Correctional Institution – Annex. App. 188 (Doc. 44-3 at 2), App. 203 (Doc. 44-7 at 2), and App. 217 (Doc. 44-10 at 2). Dr. Montoya made a recommendation for a gastroenterologist referral at every follow-up appointment. App. 188 (Doc. 44-3 at 2), App. 203 (Doc. 44-7 at 2), and App. 217 (Doc. 44-10 at 2). Following each referral, Dr. Figueroa noted treatment would continue on site. App. 191 (Doc. 44-4 at 2), App. 206 (Doc. 44-8 at 2), and App. 220 (Doc. 44-11 at 2).

negative on examination,” indicating Mr. Sims had no rectal bleeding at the time. App. 223 (Doc. 44-12 at 2) (emphasis added).

Mr. Sims did not submit any additional sick call requests. *See generally* App. In June 2019, Mr. Sims was transferred from Suwannee Correctional Institution – Annex, and Dr. Figueroa ceased treating him. App. 176 (Doc. 44 at 5).

Mr. Sims was ultimately seen by a gastroenterologist, Dr. Xiaoyo Li, in April 2020. App. 235–36 (Doc. 44-16 at 2–3). Dr. Li noted that Mr. Sims complained of “constipation, **on/off GI bleeding, severe hemorrhoids**, on narcotics due to his prostate cancer.” App. 236 (Doc. 44-16 at 3) (emphasis added). Dr. Li concluded Mr. Sims had GI bleeding and severe hemorrhoids, and he recommended a banding procedure to treat Mr. Sims’s hemorrhoids. App. 236 (Doc. 44-16 at 3); NIH Natl. Inst. of Diabetes and Digestive and Kidney Diseases, *Treatment of Hemorrhoids*, <https://www.niddk.nih.gov/health-information/digestive-diseases/hemorrhoids/treatment> (last visited November 10, 2021).

II. Procedural History.

Mr. Sims filed this lawsuit on July 18, 2018. App. 15 (Doc. 1 at 7). In it, he sued Dr. Figueroa for allegedly being deliberately indifferent to his serious medical need in violation of the Eighth Amendment to the U.S. Constitution. App. 12 (Doc. 1 at 4). Mr. Sims complained that he had not been referred to a gastroenterologist for his complaints of rectal bleeding. App. 12–14 (Doc. 1 at 4–6). Mr. Sims sought

(1) an injunction requiring (a) referral to a gastroenterologist and (b) treatment as directed by the gastroenterologist, (2) compensatory damages, and (3) punitive damages. App. 14–15 (Doc. 1 at 6–7).

Dr. Figueroa moved to dismiss the complaint on December 28, 2018. App. 29–41 (Doc. 8 at 1–13). Mr. Sims filed a declaration in opposition to the motion to dismiss. App. 43–67 (Doc. 14). The Court granted the motion in part, dismissing the monetary claims against Dr. Figueroa in his official capacity. App. 69 –95 (Doc. 16 at 1–27).

Dr. Figueroa then moved for summary judgment on August 28, 2020. App. 131–47 (Doc. 38 at 1–17). In it, Dr. Figueroa argued Mr. Sims could not prove he was deliberately indifferent to a serious medical condition because (1) Mr. Sims received adequate treatment and (2) Mr. Sims could not demonstrate Dr. Figueroa’s subjective knowledge of a serious risk of substantial harm that was disregarded by more than negligence. App. 138–39 (Doc. 38 at 8–9).³

Mr. Sims filed a declaration in opposition to Dr. Figueroa’s summary judgment motion, including 17 exhibits. App. 172–242 (Doc. 44). In it, he argued genuine issues of material fact prevented the district court from entering summary judgment. App. 173 (Doc. 44 at 2).

³ Other arguments that are not pertinent to this appeal were also raised.

On January 28, 2021, the district court granted summary judgment in favor of Dr. Figueroa. App. 244–60 (Doc. 45 at 1–17). The district court concluded, **“Although Sims disagrees with Figueroa’s treatment plan, he fails to point to any evidence that Figueroa was deliberately indifferent to his medical condition.”** App. 257 (Doc. 45 at 14) (emphasis added). Instead, the district court concluded “the record reflects that Figueroa regularly examined Sims, prescribed medication, discussed his treatment plan, and on two occasion[s] [sic] requested a gastroenterology consultation for him.” App. 257 (Doc. 45 at 14). The district court also noted, **“At some point, Sims’ rectal bleeding, under Figueroa’s care, even subsided without seeing a gastroenterologist.”** App. 258 (Doc. 45 at 15) (emphasis added).

Ultimately, the district court held Mr. Sims had “point[ed] to no evidence from which a jury could conclude that the treatment given to Sims was so grossly incompetent as to shock the conscious or that it caused an exacerbation of his condition.” App. 258 (Doc. 45 at 15). The district court then granted summary judgment in Dr. Figueroa’s favor. App. 260 (Doc. 45 at 17).

The Clerk of Court entered judgment in favor of Dr. Figueroa the next day. App. 262 (Doc. 46 at 1).

STANDARD OF REVIEW

This Court reviews a district court’s decision to grant summary judgment *de novo*. *Hoffer v. Sec’y, Fla. Dep’t of Corr.*, 973 F.3d 1263, 1269 n.1 (11th Cir. 2020) (citing *Ellis v. England*, 432 F.3d 1321, 1325 (11th Cir. 2005)). “Summary judgment is appropriate where the evidence shows ‘that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’ Genuine disputes are those in which the evidence is such that a reasonable jury could return a verdict for the non-movant.” *Ellis*, 432 F.3d at 1325–26 (cleaned up).

This Court may “‘affirm for any reason supported by the record,’ even if the district court did not rely on that reason.” *Wright v. City of St. Petersburg, Fla.*, 833 F.3d 1291, 1294 (11th Cir. 2016) (quoting *United States v. Chitwood*, 676 F.3d 971, 975 (11th Cir. 2012)).

SUMMARY OF THE ARGUMENT

This Court should affirm the district court’s January 28, 2021 Order granting Dr. Figueroa’s summary judgment motion for two main reasons:

First, Mr. Sims has not shown an objectively serious medical need. The record evidence demonstrates Mr. Sims suffered from occasional bleeding hemorrhoids. Although undeniably painful, nothing in the record suggests Mr. Sims’s condition was of sufficient severity to rise to the level of a constitutional concern. Indeed, such a conclusion is in line with both courts in this circuit and others.

Second, even if Mr. Sims had an objectively serious medical need, the record evidence demonstrates Dr. Figueroa's care, at the very least, satisfied the constitutional minimum level of care—which is quite minimal. There is no evidence in the record that Dr. Figueroa's actions violated the standard of care for treatment of hemorrhoids, much less was so inadequate as to be constitutionally infirmed. Indeed, the sole evidence upon which Mr. Sims relies to attempt to demonstrate that the care he received was inadequate are Dr. Montoya's referrals of Mr. Sims to a gastroenterologist. But Dr. Figueroa was not beholden to Dr. Montoya's opinion and, instead, was permitted to exercise his own medical judgment in determining the appropriate care for Mr. Sims's occasionally bleeding hemorrhoids. Thus, Dr. Figueroa was not deliberately indifferent.

Further, even if this Court were to conclude that Dr. Figueroa delayed in providing treatment to Mr. Sims, there is no evidence from which to conclude such delay could constitute deliberate indifference. To prove a delay in treatment violated the Constitution, Mr. Sims was required to place verifying medical evidence into the record to show Dr. Figueroa's delay in treatment seriously exacerbated his condition. Mr. Sims produced no such evidence, so no reasonable jury could conclude that Dr. Figueroa was deliberately indifference of that his actions injured Mr. Sims.

ARGUMENT

Mr. Sims brought a claim for deliberate indifference to a serious medical need claim against Dr. Figueroa pursuant to 42 U.S.C. § 1983. As the Supreme Court has explained, the Eighth Amendment’s Cruel and Unusual Punishment Clause prohibits “deliberate indifference to serious medical needs of prisoners.” *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). “To prevail on a deliberate indifference to serious medical need claim, plaintiffs must show: (1) a serious medical need; (2) the defendants’ deliberate indifference to that need; and (3) causation between that indifference and the plaintiff’s injury.” *Mann v. Taser Int’l, Inc.*, 588 F.3d 1291, 1306-07 (11th Cir. 2009). While the district court focused its analysis solely on the second element, Mr. Sims’s claim fails because he cannot satisfy any element, as explained below.

I. Mr. Sims’s occasionally bleeding hemorrhoids are not an objectively serious medical need.

This Court should affirm summary judgment because the record evidence does not demonstrate that Mr. Sims’s medical issue to which Dr. Figueroa was allegedly deliberately indifferent—his occasionally bleeding hemorrhoids—constitute an objectively serious medical need.

To establish a deliberate indifference claim, “First, the inmate must establish an objectively serious medical need—that is, one that has been diagnosed 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—that, **if left unattended, poses a substantial risk of serious harm.**” *Keohane v. Fla. Dep't of Corr. Sec'y*, 952 F.3d 1257, 1266 (11th Cir. 2020) (cleaned up) (emphasis added), *cert. denied sub nom. Keohane v. Inch*, No. 20-1553, 2021 WL 4507694 (U.S. Oct. 4, 2021); *accord Farrow v. West*, 320 F.3d 1235, 1243 (11th Cir. 2003). “[D]epending on the circumstances, severe pain that is not promptly or adequately treated can present a serious medical need.” *Hinson v. Bias*, 927 F.3d 1103, 1122 (11th Cir. 2019), *cert. denied*, 141 S. Ct. 233, 208 L. Ed. 2d 14 (2020) (citing *McElligott v. Foley*, 182 F.3d 1248, 1255-59 (11th Cir. 1999)).

Mr. Sims did not establish a serious medical need because he has not demonstrated he had a condition that, if left unattended as he claims it was by Dr. Figueroa, posed a substantial risk of serious harm. The record evidence shows the condition about which Mr. Sims complained was occasionally bleeding hemorrhoids—nothing more.⁴ A gastroenterologist noted in August 2017—before

⁴ To the extent Mr. Sims argues he had continuously bleeding hemorrhoids for the duration of time he was under Dr. Figueroa’s care, such a claim is flatly contradicted by the medical records he filed. In light of such contradiction, neither the district court nor this Court need accept his conclusory statements. *Hinson*, 927 F.3d at 1119 (explaining this Court would not accept an appellant’s version of events that were “flatly contradict[ed]” by the record evidence); *accord Washington v. Yardely*, No. 3:18CV1333-LC-HTC, 2020 WL 2231806, at *6 (N.D. Fla. Apr. 27, 2020) (explaining, “Self-serving statements by a plaintiff do not create a question of fact in the face of contradictory, contemporaneously created medical records,” and citing *Bennett v. Parker*, 898 F.2d 1530 (11th Cir. 1990)), *report and recommendation adopted*, No. 3:18CV1333-LC-HTC, 2020 WL 2216901 (N.D. Fla. May 7, 2020).

Mr. Sims was under the care of Dr. Figueroa—that Mr. Sims was suffering from rectal bleeding caused by an inflamed hemorrhoid. App. 220 (Doc. 44-11 at 2). Mr. Sims’s later told gastroenterologist Dr. Li that he suffered from “on/off GI bleeding, severe hemorrhoids.” App. 236 (Doc. 44-16 at 3). At an appointment with Dr. Montoya in October 2018, Mr. Sims’ “Stool [was] guaiac negative on examination,” indicating there was no blood in his stool. App. 223 (Doc. 44-12 at 2). All of this is consistent with Dr. Figueroa’s note from July 2018 that Mr. Sims “had no complaint at site of rectal bleeding” (App. 220 (Doc. 44-11 at 2)), and is consistent with the sometimes months-long gaps in sick call requests from Mr. Sims. App. 213–14 (Doc. 44-9 at 6–7) (showing more than four-month gap between sick call requests followed by Mr. Sims complaining of “reoccur[er]nce of rectal bleeding”). In fact, there is no evidence Mr. Sims had complaints of rectal bleeding following his January 2019 appointment with Dr. Montoya until he was transferred to a new facility in June 2019. *See generally* App.

Although this Court has not weighed in, hemorrhoids—even bleeding hemorrhoids—are routinely determined to not rise to a sufficient level to constitute a serious medical need by the district courts routinely presented with similar prisoner lawsuits. In *Hodge v. Smith*, a Southern District of Florida district court held painful, bleeding hemorrhoids did not constitute a serious medical need. *Hodge v. Smith*, No. 20-14004-CIV, 2020 WL 1262770, at *2 (S.D. Fla. Feb. 14, 2020) (“Based on the

Plaintiff’s description of his condition, this Court cannot find that the condition rises to the level of a ‘serious medical need’ of a constitutional proportion.”), *report and recommendation adopted*, No. 20-CV-14004, 2020 WL 1262762 (S.D. Fla. Mar. 6, 2020). In doing so, the district court relied on “the Second Circuit’s general rule that hemorrhoids, rectal bleeding, or painful bowel movements do not constitute an objectively ‘serious medical need’ for Eighth Amendment purposes.” *Id.* at *1 (citing *Green v. Shaw*, No. 3:17-CV-00913 (CSH), 2019 WL 1427448, at *6 (D. Conn. Mar. 29, 2019), *aff’d*, 827 F. App’x 95 (2d Cir. 2020)).

Nothing in the record suggests Mr. Sims’ recurrent, bleeding hemorrhoids posed a substantial risk of serious harm. There is no evidence Mr. Sims hemorrhoids developed into a more severe issue—such as anemia or an anal fissure requiring surgery—while under Dr. Figueroa’s care. There is no evidence Mr. Sims suffered an infection or some other illness as a result of his allegedly inadequately treated hemorrhoids. To the contrary, despite alleging a two-and-a-half-year delay between his first interaction with Dr. Figueroa and his examination by a gastroenterologist, Mr. Sims has not pointed to any serious harm imposed by this delay in treatment; instead, his condition of recurrent, occasionally bleeding hemorrhoids simply persisted unchanged throughout this period.⁵ Mr. Sims’s failed to sustain his burden to demonstrate a substantial risk of serious harm and, thus, fails to satisfy the

⁵ This concept will be explored more in § II.E.

objective component of his deliberate indifference claim. *Keohane*, 952 F.3d at 1266.

II. Dr. Figueroa was not deliberately indifferent to Mr. Sims’s occasionally bleeding hemorrhoids.

Even if Mr. Sims has established his periodic bleeding hemorrhoids constituted a requisite serious medical need, the record fails to establish that Dr. Figueroa was deliberately indifferent to that need. To show that Dr. Figueroa acted with deliberate indifference, Mr. Sims must show “(1) that [Dr. Figueroa] had ‘subjective knowledge of a risk of serious harm’ and (2) that [Dr. Figueroa] ‘disregard[ed]’ that risk (3) by conduct that was ‘more than mere negligence.’” *Id.* (internal citations omitted). As to the “more than mere negligence” requirement, this Court has explained the requirement is akin to “subjective *recklessness* as used in the criminal law.” *Patel v. Lanier Cty. Georgia*, 969 F.3d 1173, 1188 n.10 (11th Cir. 2020) (quoting *Farmer v. Brennan*, 511 U.S. 825, 839–40, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994)). “Summary judgment will be granted in favor of a defendant unless the plaintiff presents evidence of each of these elements.” *Melton v. Abston*, 841 F.3d 1207, 1223 (11th Cir. 2016).

This is an onerous standard, a point this Court has “been at pains to emphasize.” *Hoffer v. Sec’y, Fla. Dep’t of Corr.*, 973 F.3d 1263, 1271 (11th Cir. 2020); accord *Keohane*, 952 F.3d at 1266 (explaining a “prisoner bringing a deliberate-indifference claim has a steep hill to climb.”); and *Swain v. Junior*, 961

F.3d 1276, 1285 (11th Cir. 2020) (“As applied in the prison context, the deliberate-indifference standard sets an appropriately high bar. A plaintiff must prove that the defendant acted with ‘a sufficiently culpable state of mind.’”). As such, this standard bears an in-depth review prior to attempting to apply the record evidence to it.

A. Deliberate indifference standard.

As a starting point, this Court must recognize that the Eighth Amendment does not require prisoners’ medical care to be “perfect, the best obtainable, or even very good.” *Hoffer*, 973 F.3d at 1271 (citing *Harris v. Thigpen*, 941 F.2d 1495, 1510 (11th Cir. 1991)). Indeed, even mere medical malpractice does not violate the Eighth Amendment. *Estelle*, 429 U.S. at 106 (“Medical malpractice does not become a constitutional violation merely because the victim is a prisoner.”). This is because, as this Court has emphasized and reiterated in case after case, minimally adequate care sufficient to satisfy the Constitution is “quite minimal.” *Hoffer*, 973 F.3d at 1277 (citing *Harris*, 941 F.2d at 1505).

Instead, “[m]edical treatment violates the eighth amendment only when it is ‘so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness.’” *Harris*, 941 F.2d at 1505 (quoting *Rogers v. Evans*, 792 F.2d 1052, 1058 (11th Cir. 1986)). Thus, this standard “‘is far more onerous than normal tort-based standards of conduct sounding in negligence,’ and is in fact akin to ‘subjective recklessness as used in the criminal law.’” *Swain*, 961 F.3d

at 1288 (quoting, respectively, *Goodman v. Kimbrough*, 718 F.3d 1325, 1332 (11th Cir. 2013), and *Farmer*, 511 U.S. at 839–40). So to prove deliberate indifference, a plaintiff must prove a defendant had a “sufficiently culpable state of mind.” *Farmer*, 511 U.S. at 834.

This Court has also cautioned that the deliberate indifference standard is not a “perhaps they could be doing more” standard. *Hoffer*, 973 F.3d at 1271; *accord Hammonds v. Theakston*, 833 F. App'x 295, 301 (11th Cir. 2020). Indeed, if minimally adequate care has been provided, then a deliberate indifference claim must fail—regardless of whether a provider could have done more. *Hoffer*, 973 F.3d at 1271; *cf. id.* at 1277 (explaining minimally adequate care did not require provision of medication to inmates with certain levels of liver damage and, therefore, concluding the reason the medication was not provided was irrelevant); *accord Taylor v. Adams*, 221 F.3d 1254, 1259–60 (11th Cir. 2000) (concluding care provided was not “so objectively inadequate [to] satisfy *Estelle*’s high standard” and dismissing argument treatment was “so cursory to amount to no treatment at all”).

But even when there is a dispute as to whether the care objectively satisfies the Constitution, this Court has explained that “[w]here a prisoner has received some medical attention and the dispute is over the adequacy of the treatment, federal courts are generally reluctant to second guess medical judgments and to constitutionalize claims which sound in state tort law.” *Hoffer*, 973 F.3d at 1272. “[T]he question of

whether governmental actors should have employed additional diagnostic techniques or forms of treatment ‘is a classic example of a matter for medical judgment’ and therefore not an appropriate basis for grounding liability under the Eighth Amendment.” *Adams v. Poag*, 61 F.3d 1537, 1545 (11th Cir. 1995) (quoting *Estelle*, 429 U.S. at 10). That’s because “a simple difference in medical opinion between the prison's medical staff and the inmate as to the latter's diagnosis or course of treatment [fails to] support a claim of cruel and unusual punishment.” *Keohane*, 952 F.3d at 1266; *accord Bismark v. Fisher*, 213 F. App'x 892, 897 (11th Cir. 2007) (“Nothing in our case law would derive a constitutional deprivation from a prison physician's failure to subordinate his own professional judgment to that of another doctor; to the contrary, it is well established that ‘a simple difference in medical opinion’ does not constitute deliberate indifference.” (quoting *Waldrop v. Evans*, 871 F.2d 1030, 1033 (11th Cir. 1989))).

Mr. Sims, though, argues there are “multiple lines” of deliberate indifference cases under this Court’s precedent, and that applying certain lines of precedent should have led the district court to conclude there was a genuine issue of fact as to whether Dr. Figueroa was deliberately indifferent. App. Brief⁶ at 21. Not so.

Instead, this Court has identified situations where, **when minimally adequate care was *not* afforded**, a defendant could be found liable for deliberate indifference

⁶ “App. Brief” refers to Mr. Sims’s October 15, 2021 Appellant’s Brief.

even when some care was provided. For instance, in *Ancata v. Prison Health Services, Inc.*, this Court recognized that deliberate indifference could be found when “medical care provided was so cursory as to amount to no treatment at all.” 769 F.2d 700, 704 (11th Cir. 1985); *accord Mandel v. Doe*, 888 F.2d 783, 789 (11th Cir. 1989) (“When the need for treatment is obvious, medical care which is so cursory as to amount to no treatment at all may amount to deliberate indifference.”); *McElligott*, 182 F.3d at 1255 (same).

This Court has also concluded that “deliberate indifference may be established by a showing of grossly inadequate care as well as by a decision to take an easier but less efficacious course of treatment.” *McElligott*, 182 F.3d at 1255 (citing *Waldrop*, 871 F.2d at 1033) (emphasis added). And this Court has held that deliberate indifference can be found when “denying or delaying medical treatment is tantamount to ‘unnecessary and wanton infliction of pain.’” *Brown v. Hughes*, 894 F.2d 1533, 1537 (11th Cir. 1990) (quoting *Estelle*, 429 U.S. at 104).

Reviewing this Court’s deliberate indifference jurisprudence, the analytical framework under which claims are analyzed is as follows: First, a district court decides whether, objectively, minimally adequate care sufficient to satisfy the Constitution has been afforded—a bar which is quite minimal. *Hoffer*, 973 F.3d at 1277. If minimally adequate care has been provided, a deliberate indifference claim fails. Only if the district court cannot objectively conclude minimally adequate care

was provided does the analysis proceed to the second step, which requires the district court to consider whether the undisputed evidence demonstrates the care provided could constitute deliberate indifference. *West v. Tillman*, 496 F.3d 1321, 1327 (11th Cir. 2007) (explaining court can decide as a matter of law whether plaintiff has carried burden of demonstrating deliberate indifference).

B. Dr. Figueroa’s provided minimally adequate care under the Constitution when treating Mr. Sims’s hemorrhoids.

The district court properly concluded that Dr. Figueroa’s treatment of Mr. Sims’s occasionally bleeding hemorrhoids objectively satisfied the minimum care required by the Constitution. The district court held, “While perhaps not the treatment plan Sims desired, **he points to no evidence from which a jury could conclude that the treatment given to Sims was so grossly incompetent as to shock the conscious [sic]** or that it caused an exacerbation of his condition.” App. 258 (Doc. 45 at 15) (emphasis added).

As explained in the prior section, Mr. Sims was diagnosed by a gastroenterologist as having bleeding hemorrhoids in August 2017, before he came under Dr. Figueroa’s care. App. 220 (Doc. 44-11 at 2). In September 2017, Dr. Figueroa established a treatment plan to address Mr. Sims’s rectal bleeding. Mr. Sims’s condition was monitored and assessed on multiple occasions by a registered nurse for complaints of rectal bleeding. Then, in December 2017, Mr. Sims was referred to Dr. Figueroa for additional evaluation and assessment of his complaints.

At that time, Dr. Figueroa performed an examination that confirmed Mr. Sims continued to suffer from an inflamed hemorrhoid and prescribed a stool softener, a fiber laxative, and a tube of hydrocortisone cream, all of which were renewed. App. 13 (Doc. 1 at 5); App. 194 (Doc. 44-5 at 2). The record shows this treatment alleviated Mr. Sims's condition for several months.

Several months later, Mr. Sims complained of a "reoccur[er]nce of rectal bleeding" in September 2018, however an exam by Dr. Montoya in October 2018 showed Mr. Sims's stool was "guaiac negative." App. 214 (Doc. 44-9 at 7); App. 223 (Doc. 44-12 at 2). Mr. Sims later confirmed to his gastroenterologist Dr. Li in April 2020 that he his bleeding was intermittent. App. 236 (Doc. 44-16 at 3) (noting Mr. Sims's description of his condition as "on/off GI bleeding, severe hemorrhoids").

There is no record evidence that Dr. Figueroa's treatment of Mr. Sims's occasionally bleeding hemorrhoids failed to satisfy the level of minimally adequate care required by the Constitution. As this Court has explained, the Eighth Amendment "doesn't necessarily demand curative care." *Hoffer*, 973 F.3d at 1272. Instead, medical care exists along a spectrum of, on one end, "ignoring medical needs entirely," and, on the other end, "a prompt and effective ... cure." *Id.* And there is "a range of responsible treatment options between the two poles that will satisfy the Eighth Amendment." *Id.* Sometimes, even mere monitoring of a

condition—which may not entail providing any affirmative treatment at all—suffices. *Id.* at 1273 (noting a prisoner in early stages of progressive hearing loss “may have to content himself with asking people to speak up” for a time before the Eighth Amendment requires more than mere monitoring).

Dr. Figueroa’s care of Mr. Sims’s hemorrhoids lies within the range of care that does not violate the Eighth Amendment. Dr. Figueroa initially established a plan for on-site treatment of his inflamed hemorrhoids in September 2017, where Mr. Sims was monitored by nurses who saw him in response to sick call requests, which is acceptable. *Id.* When the inflamed hemorrhoid was still present a few months later, Dr. Figueroa aimed to address the cause of the hemorrhoids—Mr. Sims’s constipation that likely resulted from the narcotics he was prescribed for other medical conditions—with a stool softener, fiber, and hydrocortisone ointment. Such a course of treatment is not so grossly inadequate or conscience shocking as to violate the Constitution. *Harris*, 941 F.2d at 1505. Accordingly, the district court did not err in concluding Dr. Figueroa was entitled to summary judgment, and this Court should affirm.

C. Mr. Sims’s complaint amounts to a mere disagreement as to what treatment he would receive.

As described above, Dr. Figueroa’s treatment of Mr. Sims met the constitutional minimum. At base, Mr. Sims’s complaints amount to nothing more than a mere disagreement with the course of treatment set by Dr. Figueroa. Both the

Supreme Court and this Circuit have rejected such claims finding no deliberate indifference where the inmate merely wishes for more aggressive or different medical treatment. Here this is evidenced by the nature of Mr. Sims's claim and the relief he sought below. The crux of Mr. Sims's complaint, and the precise relief he sought, is that Dr. Figueroa did not refer him to a gastroenterologist for treatment (as Dr. Montoya recommended). App. 14 (Doc. 1 at 6).

Based on the nature of his claim, Mr. Sims's case presents the classic example that the Supreme Court and this Court have recognized does not give rise to a claim of deliberate indifference. This Court explained in *Adams* that "the question of whether governmental actors should have employed additional diagnostic techniques or forms of treatment 'is a classic example of a matter for medical judgment' and therefore not an appropriate basis for grounding liability under the Eighth Amendment." 61 F.3d at 1545 (quoting *Estelle*, 429 U.S. at 107). This Court recently held in an unpublished opinion involving strikingly similar facts that refusing to refer an inmate experiencing rectal bleeding to a gastroenterologist demonstrated "a classic example of a matter for medical judgment." *Pounds v. Dieguez*, 850 F. App'x 738, 741 (11th Cir. 2021). While not binding, this Court should nonetheless reach the same result.

Mr. Sims was diagnosed by a gastroenterologist as having an inflamed hemorrhoid that was bleeding in August 2017. App. 220 (Doc. 44-11 at 2). The

following month, Dr. Figueroa initially referred Mr. Sims to the gastroenterologist for a follow-up appointment, but it was later determined treatment for his hemorrhoid could be handled on site. App. 185 (Doc. 44-2 at 2); App. 191 (Doc. 44-4 at 2). When his hemorrhoid did not resolve, Dr. Figueroa prescribed Mr. Sims a stool softener, fiber laxative, and tube of hydrocortisone cream in December 2017. App. 13 (Doc. 1 at 5); App. 194 (Doc. 44-5 at 2). This treatment resolved his symptoms for several months.

Then, in July 2018, after Dr. Montoya recommended a gastroenterologist referral, Dr. Figueroa discussed the request with the Regional Medical Director. App. 220 (Doc. 44-11 at 2). Dr. Figueroa did not dismiss Dr. Montoya's recommendation, but instead considered it along with all of Mr. Sims's other relevant medical history, and in consultation with his superior, determined a referral was unnecessary "due to the fact that the [gastroenterologist previously] stated on 8/16/17 that the cause of rectal bleeding was an inflamed hemorrhoid, this could be handled on site." App. 220 (Doc. 44-11 at 2). These actions, and others cited above, indicate Dr. Figueroa was constantly exercising his medical judgment in determining how to treat Mr. Sims. And, as such, does not give rise to a claim of deliberate indifference. *Adams*, 61 F.3d at 1545.

That this case involves a claim premised on medical judgment is further evidenced by Mr. Sims's repeated reliance on Dr. Montoya's requests that Mr. Sims

be referred to a gastroenterologist as proof that Dr. Figueroa was deliberately indifferent. But this Court, relying on *Waldrop*, 871 F.2d at 1033, has explained that a deliberate indifference claim will not lie simply because a prison physician like Dr. Figueroa did not “subordinate his own professional judgment to that of another doctor.” *Bismark*, 213 F. App'x at 897.

D. Mr. Sims’s claim fails because he did not present expert medical opinions as to Dr. Figueroa’s treatment.

Because Dr. Figueroa’s actions required the exercise of his medical judgment, Mr. Sims’s deliberate indifference claim fails because he has not provided any expert medical opinion that Dr. Figueroa’s actions amount to more than negligence. *Howell v. Evans*, 922 F.2d 712, 720 (11th Cir.), *vacated pursuant to settlement*, 931 F.2d 711 (11th Cir. 1991), and *opinion reinstated sub nom. Howell v. Burden*, 12 F.3d 190 (11th Cir. 1994). As this Court has explained, this “method of proof [*i.e.*, expert medical testimony] often is essential when a doctor's actions are at issue, because the evaluation of medical care is frequently fact-specific and dependent on medical knowledge.” *Id.* Indeed, this Court has previously held whether a doctor’s actions “resulted from deliberate indifference or negligence is a factual question **requiring exploration by expert witnesses.**” *Rogers*, 792 F.2d at 1058 (emphasis added); *accord Thomas v. City of Jacksonville*, 731 F. App'x 877, 882 (11th Cir. 2018) (“Plaintiffs failed to provide any expert witnesses to support a finding of [] deliberate

indifference rather than mere negligence, thus failing to meet the requirements of their claim.”).

This record is devoid of any such medical expert testimony, and, thus, Mr. Sims failed to meet the requirements for proving deliberate indifference. Indeed, without expert medical testimony, there is no evidence that Dr. Figueroa’s actions fell below the standard of care at all, much less was such a departure from the standard of care that they can fairly be characterized as reckless as opposed to negligent. So because there is no evidence Dr. Figueroa’s actions were more than negligent, this Court should affirm the district court’s grant of summary judgment.

To that same point, Mr. Sims’s suggestion that Dr. Figueroa’s treatment was “so cursory as to amount to no treatment at all” is nothing more than an unsupported conclusion for the same reasons. App. Brief at 26; *Ellis*, 432 F.3d at 1326 (explaining “mere conclusions and unsupported factual allegations are legally insufficient to defeat a summary judgment motion.”). There is no record evidence showing that Dr. Figueroa’s treatment for Mr. Sims’s occasionally bleeding hemorrhoids with stool softeners, fiber, and hydrocortisone ointment was inappropriate—especially at the time Dr. Figueroa decided on that course of treatment shortly after Mr. Sims was diagnosed with an inflamed, bleeding hemorrhoid. Indeed, the record evidence shows the only disagreement in treatment expressed by Dr. Montoya was that he believed Mr. Sims should have been referred to a gastroenterologist, not that Dr.

Figueroa's treatment plan was inappropriate. So there is no record evidence from which to conclude Dr. Figueroa's medical treatment was so cursory to amount to no treatment at all.

Albeit non-binding, it is worth noting that the district court's conclusion that Dr. Figueroa was not deliberately indifferent to Mr. Sims's hemorrhoids given his course of treatment would be consistent with rulings from sister circuits. *See Fonseca v. Kuykendall*, 34 F. App'x 152 (5th Cir. 2002) (inmate who was denied referral to colon specialist to determine whether his hemorrhoids required surgery failed to make out deliberate indifference claim); *Nunley v. Mills*, 217 F. App'x 322, 324 (5th Cir. 2007) ("claim that [doctor] prescribed the wrong medication for his hemorrhoids, at best, ... stated a claim of negligence, malpractice, or disagreement with treatment, which will not support a finding of deliberate indifference under the Eighth Amendment."); *Chapman v. Parke*, 946 F.2d 894 (6th Cir. 1991) (concluding plaintiff had no deliberate indifference claim related to hemorrhoid treatment and explaining, "Plaintiff has no doubt suffered the pain and indignity which hemorrhoids inflict upon the sufferer but his treatment and the medical differences of opinion concerning it are common to all mankind."); *Fields v. Rahimparast*, 43 F. App'x 966, 968 (7th Cir. 2002) ("decision to prescribe the warm compresses as an alternative palliative to sitz baths does not support a finding that prison medical staff treated Fields' hemorrhoids with deliberate indifference.");

Snipes v. Oakdale Classification & Med. Ctr., 37 F. App'x 220, 221 (8th Cir. 2002) (complaints about treatment for rectal bleeding from internal hemorrhoid “fell far short of creating a triable issue” on deliberate indifference claim); *Johnson v. Marlar*, 807 F. App'x 791, 794 (10th Cir.), *cert. denied*, 141 S. Ct. 426, 208 L. Ed. 2d 125 (2020), *reh'g denied*, 141 S. Ct. 1141, 208 L. Ed. 2d 572 (2021) (concluding there was no triable issue on deliberate indifference claim where doctor “oversaw the provision of suppositories, stool softeners, ointments, and fiber” for treatment of hemorrhoids); *Christensen v. Burnham*, 788 F. App'x 597, 603 (10th Cir. 2019) (concluding there was no claim for deliberate indifference where a plaintiff “believes that surgery or an outside consultation [for hemorrhoids] is necessary, whereas [the doctor] does not.”).

E. No evidence delay in treatment seriously exacerbated Mr. Sims’s medical condition.

To the extent Mr. Sims argues Dr. Figueroa was deliberately indifferent by delaying treatment—either initially by not prescribing medications until December 2017 or by not referring him to a gastroenterologist—Mr. Sims’s claim fails because there is no evidence his medical condition was seriously exacerbated by any delay.⁷

⁷ This Court, in an unpublished opinion, has explained this requirement alternatively “can be phrased as a causation requirement.” *Kuhne v. Fla. Dep’t of Corr.*, 618 F. App'x 498, 504 (11th Cir. 2015). Regardless, whether this Court’s analysis is under the deliberate indifference element or causation element, the result should be the same as Mr. Sims’s would be unable to satisfy one of the necessary elements for his deliberate indifference claim. *Melton*, 841 F.3d at 1223.

“An inmate who complains that delay in medical treatment rose to a constitutional violation must place verifying medical evidence in the record to establish the detrimental effect of delay in medical treatment to succeed.” *Hill v. Dekalb Reg’l Youth Det. Ctr.*, 40 F.3d 1176, 1188 (11th Cir. 1994), *overruled in part on other grounds by Hope v. Pelzer*, 536 U.S. 730, 739, 122 S. Ct. 2508, 2515, 153 L. Ed. 2d 666 (2002). And the inmate must show not only a delay, but also that “the delay does *seriously exacerbate* the medical problem, and the delay is medically unjustified.” *Taylor*, 221 F.3d at 1259–60 (emphasis added). To be seriously exacerbated, Mr. Sims must demonstrate an “increased physical injury”—a worsening of his condition—caused by the alleged delay. *Goebert v. Lee Cty.*, 510 F.3d 1312, 1327 (11th Cir. 2007).

There is no record evidence that Dr. Figueroa delayed in treating Mr. Sims in a way that was medically unjustified for the reasons already argued above. But even if there was evidence of a delay, there is no evidence that Mr. Sims suffered an increased physical injury such that the delay seriously exacerbated his occasionally bleeding hemorrhoids. Instead, the record evidence shows the contrary to be true.

Mr. Sims was diagnosed with an inflamed, bleeding hemorrhoid in August 2017, shortly before coming under Dr. Figueroa’s care. App. 220 (Doc. 44-11 at 2). After giving the hemorrhoids time to heal on their own, Dr. Figueroa examined Mr. Sims in December 2017 and noted that the “inflamed hemorrhoid [was] still

present.” App. 194 (Doc. 44-5 at 2). There is no verifying medical evidence that Mr. Sims condition worsened at all during those few months, indicating any alleged delay in Dr. Figueroa’s treatment did not seriously exacerbate Mr. Sims’s condition.

Further, the evidence shows that after Dr. Figueroa prescribed a stool softener, fiber, and hydrocortisone ointment, Mr. Sims’s hemorrhoids stopped bleeding for several months. Mr. Sims did not complain of hemorrhoids from April 23, 2018, until September 11, 2018, when he noted a “reoccur[e]nce of rectal bleeding.” App. 214 (Doc. 44-9 at 7). Shortly after, Dr. Montoya examined Mr. Sims and found his stool was “guaiac negative,” indicating there was no blood in his stool. App. 223 (Doc. 44-12 at 2). An approximately ten-month period passed without complaint from Mr. Sims as to any rectal bleeding. App. 176 (Doc. 44 at 5) (Mr. Sims ceased being under Dr. Figueroa’s care in June 2019).

There is no verifying medical evidence that, during the course of Dr. Figueroa’s treatment, Mr. Sims’s condition was seriously exacerbated. There is no evidence he developed anemia, had an anal fissure, or developed any other complications from having hemorrhoids. Instead, the evidence merely demonstrates that Mr. Sims continued to occasionally suffer from the normal symptoms of hemorrhoids: pain and rectal bleeding. And that he suffered the normal symptoms of his medical condition does not evidence a constitutional violation. *Cf. Hoffer*, 973 F.3d at 1273 (explaining that, when referring to a hypothetical inmate in the early

stages of progressive hearing loss, “At least for a spell—until his condition worsens, anyway—the inmate may have to content himself with asking people to speak up.”).

Because there is no evidence Mr. Sims’s condition was seriously exacerbated by Dr. Figueroa’s alleged delay in treating Mr. Sims’s hemorrhoids, Mr. Sims has not shown Dr. Figueroa was deliberately indifferent. Accordingly, this Court should affirm the district court’s grant of summary judgment.

CONCLUSION

This Court should affirm the district court’s Order granting summary judgment. The record evidence fails to demonstrate Mr. Sims had an objectively serious medical need or that Dr. Figueroa was deliberately indifferent to a serious medical need. Instead, the record evidence shows Dr. Figueroa provided care consistent with the Constitution’s requirements or, alternatively, that there is insufficient evidence to demonstrate Dr. Figueroa’s care was so grossly inadequate as to constitute deliberate indifference as opposed to mere negligence.

Dated: November 22, 2021

Respectfully submitted,

/s/ Jacob Hanson

Attorney for Appellees

Robert Craig Mayfield
Jacob Brandon Hanson
BRADLEY ARANT BOULT CUMMINGS LLP
100 N. Tampa Street, Suite 2200
Tampa, FL 33602
(813) 559-5500

cmayfield@bradley.com
jhanson@bradley.com

Brian A. Wahl
BRADLEY ARANT BOULT CUMMINGS LLP
One Federal Place
1819 5th Avenue North
Birmingham, AL 35203
(205) 521-8000
bwahl@bradley.com

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 7,736 words.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Times New Roman font size 14.

This, the 22nd day of November, 2021.

Respectfully submitted,

/s/ Jacob Hanson

Attorney for Appellee

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2021, I filed the foregoing with the Clerk of the Court via CM/ECF, which will serve all counsel of record.

Respectfully submitted,

/s/ Jacob Hanson

Attorney for Appellee