

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-11720
Non-Argument Calendar

D.C. Docket No. 5:18-cv-00007-LGW-BWC

COREY ALLAN DONALDSON,

Plaintiff - Appellant,

versus

GEO GROUP, INC., et.al.,

Defendants,

TONY NORMAND,
Federal Agent (F.B.O.P.)

Defendant - Appellee.

Appeal from the United States District Court
for the Southern District of Georgia

(May 26, 2021)

Before NEWSOM, ANDERSON and DUBINA, Circuit Judges.

PER CURIAM:

In our panel opinion in this case, we held: “[p]unitive damages are not available to prisoners under the PLRA, absent the demonstration of physical injury that satisfies 42 U.S.C. § 1997e(e)’s physical injury requirement, and this applies even to constitutional claims.” See *Donaldson v. GEO Group, Inc., et al.*, 843 F. App’x 161 (11th Cir, 2021). In so holding, we followed our prior panel precedent of *Al-Amin v. Smith*, 637 F.3d 1192, 1198–99 (11th Cir. 2011).

Recently, the Eleventh Circuit heard *en banc* in *Hoever v. Marks*, No. 17–10792, ___ F.3d ___, 2021 WL 1326618 (11th Cir. Apr. 9, 2021), the identical issue raised before us in *Donaldson*. Specifically, our court considered “whether the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e(e), bar[s] punitive damages for constitutional claims, including First Amendment claims, without a showing of physical injury?” Because our court answered that question in the negative, we *sua sponte* vacate our panel opinion in *Donaldson* as well as vacate the district court’s order dismissing Donaldson’s *Bivens v. Six Unknown Named Agents*, 403 U.S. 388, 91 S. Ct. 1999 (1971), action for failing to state a claim upon which relief could be granted and remand this case to the district court for further consideration in light of this court’s *en banc* holding in *Hoever*.

VACATED AND REMANDED.