AELE Seminars:

Public Safety Discipline and Internal Investigations
Sept. 28-Oct. 1, 2020– Orleans Hotel, Las Vegas

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MONTHLY CASE DIGEST

- Some of the case digests do not have a link to the full opinion.
- Most Federal District Court opinions can be accessed via PACER. Registration required. Opinions are usually free; other documents are 10¢ per page.
- Access to cases linked to www.findlaw.com may require registration, which is free.

COVID-19

******Editor's Case Alert******

The highest state court in Massachusetts ruled that, due to the critical situation caused by the COVID-19 pandemic, it would exercise its superintendence authority to require the trial court departments to develop procedures to enable defense counsel to seek expedited approval of funds for social workers and others needed to establish medical parole eligibility for those who are being held pretrial, those who are civilly committed for substance abuse treatment, and those who are serving a committed sentence. Reports to a special master were ordered to help decrease the number of pretrial detainees to help avoid the spread of disease. To decrease exposure to COVID-19 within correctional institutions, the plaintiff defense attorneys sought the release to the community of as many pretrial detainees and convicted prisoners as possible. The court held, however, as to those serving final sentences for conviction of crimes, that the court could not use its constitutional authority to stay final sentences absent an ongoing challenge to the underlying conviction or a violation of constitutional rights as the requested global stays of sentences would have co-opted executive functions in ways that were not permitted. *Committee for Public Counsel Services v. Chief Justice of Trial Court*, #SJC-12926, 484 Mass. 1029, 2020 Mass. Lexis 231.

Governmental Liability: Policy/Custom

A pretrial detainee at a county jail fell out of the upper bunk to which he had been assigned and injured himself. He sued, asserting that his injuries were caused by the defendants' practice of ignoring medically necessary lower bunk prescriptions. Bridges cited five lawsuits filed by detainees who alleged that, between 2005 and 2012, they were injured when using upper bunks after their lower bunk prescriptions were ignored. A federal appeals court ruled that his federal civil rights lawsuit against the sheriff in his official capacity was properly dismissed. A local government may not be sued under 42 U.S.C. 1983 for an injury inflicted solely by its employees or agents. It is when the execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the governmental entity is responsible under section 1983. The county jail houses thousands of detainees, with hundreds entering and leaving on a daily basis. The cited three or five incidents over a seven-year period were inadequate as a matter of law to demonstrate a widespread custom or practice. Nothing connected the incidents, and they were not so common as to place the defendants on notice of a widespread practice. *Bridges v. Dart*, #19-1791, 950 F.3d 476 (7th Cir. 2020).

Medical Care: Dental

An Illinois prisoner who received extensive dental treatment while incarcerated sued his dentists and prison officials for alleged deliberate indifference to his serious medical needs. He argued that three dentists had been deliberately indifferent to his serious dental problems by declining to consider alternatives to extraction of decaying teeth. The trial court recruited a lawyer to assist him in filing an amended complaint that complied with the Federal Rules of Civil Procedure. The appointed lawyer defended the claims against two summary judgment motions, one arguing that the prisoner had not adequately exhausted his available administrative remedies and another on the merits. While the motions were pending, the plaintiff prisoner moved "for leave to represent himself," stating that he was "concerned that his counsel has filed a structurally, technically and legally insufficient response doomed to be denied." He requested to file his own brief, except "in the event this Honorable Court deems counsel's response … legally sufficient and Grants same[,] plaintiff would be open to continued effective representation." A magistrate judge denied the prisoner's motion, stating that he had "varie[d] between saying he would like to" represent himself and "indicating that he is happy with counsel′s representation as long as he prevails." The trial judge granted the motions for

summary judgment, citing professional judgment and finding "no competent evidence" of any policy that unlawfully influenced the dental-treatment decisions. A federal appeals court rejected the prisoner's argument that the trial court wrongly denied his "unqualified" right to proceed pro se under 28 U.S.C. 1654, the due process clause, the equal protection clause, and the Seventh Amendment. The trial court permissibly denied his "equivocal request." *Tuduj v. Newbold*, #19-1699, 2020 U.S. App. Lexis 13995 (7th Cir.).

Prison Litigation Reform Act: Exhaustion of Remedies

An Illinois prisoner diagnosed with a left-eye cataract became completely blind in that eye and experienced dizziness, acute pain, photophobia, and the feeling that some foreign substance was in his eye. While his doctors recommended cataract extraction surgery, they stated that without this common operation, they would be unable to detect other vision-threatening conditions. A private company which provided prison health services, refused to authorize the surgery, based on its "one good eye" policy. Subsequently, an optometrist diagnosed a right-eye cataract and a possible macular hole and vitreomacular traction. A few weeks later, a specialist recommended cataract extraction. Doctors then found no vision in the prisoner's left eye and cataracts in both eyes. He did not qualify for the surgery. He filed a grievance form, checking a box indicating an emergency. The prison's warden responded by checking a box stating that "an emergency is not substantiated. Offender should submit this grievance in the normal manner." The prisoner claimed that the Administrative Review Board (ARB) denied his grievance. When he subsequently filed a second grievance, the warden again denied emergency status. The ARB then returned the second grievance to the prisoner without addressing the merits. It checked boxes indicating that he had not satisfied the requirements of the standard procedure. He was required to provide responses from his counselor and others, which he allegedly failed to do.

The trial court dismissed his federal civil rights lawsuit, stating that he "did not file a standard grievance" after the denials of emergency status, thereby failing to adequately exhaust all available administrative remedies under the Prison Litigation Reform Act (PLRA), 42 U.S.C. 1997e(a). A federal appeals court reversed, finding that while the provider argued that the prisoner failed to appeal the warden's decision that the first grievance was not an emergency to the Administrative Review Board and thus he could not rely on it for exhaustion purposes, it waived any argument that it might have wanted to make about that

grievance. He did enough under the 2016 version of the Illinois Administrative Code to exhaust his remedies since before the 2017 amendment; nowhere in the Code did it say that an inmate who invoked the emergency process in a non-frivolous way had to start all over again with the standard procedure whenever the warden concluded that no emergency existed. The plaintiff's assertion that his grievance was an emergency was not frivolous. *Williams v. Wexford Health Sources, Inc.*, #19-1018, 2020 U.S. App. Lexis 13917 (7th Cir.).

Prisoner Assault: By Inmate

****Editor's Case Alert****

A prisoner claimed that prison officials violated his Eighth Amendment right to be free from cruel and unusual punishment when they failed to protect him from an attack by another prisoner. A federal appeals court reversed the trial court's grant of summary judgment for the defendant prison officials. It ruled that a reasonable fact-finder would be able to conclude that the defendants were subjectively aware of the substantial risk of serious harm to the plaintiff, and failed to respond reasonably. All of the officials were aware through firsthand information or through representatives that there was a substantial risk of serious harm to the inmate, who had been threatened by another prisoner. A reasonable juror could find that one official's response was not reasonable because she either participated firsthand in a dangerous housing assignment or knew about the assignment and did nothing to alleviate the risk. A second official's response was also not reasonable. Through placement of the inmate, not only did he fail to protect the inmate and undercut the ability of other officers to protect the inmate, but he also actively misled the inmate regarding his safety, reducing the inmate's ability to protect himself.

Any reasonable prison official in their position would know that the actions they took, and failed to take, violated the Eighth Amendment. None of the defendants could claim ignorance to a prisoner's right to be protected from violence at the hands of other inmates where that right had been clearly established in *Farmer v. Brennan*, #92-7247, 511 U.S. 825 (1994). Additionally, the appeals court panel noted that throughout the trial court proceedings the plaintiff "struggled" to obtain discovery from the defendants. On remand, the plaintiff should be provided with another opportunity to seek the materials he previously requested. The appeals panel encouraged the trial judge to appoint

him a lawyer. *Wilk v. Neven*, #17-17355, 956 F.3d 1143 (9th Cir. 2020).

A prisoner claimed that Mississippi state prison officials in their official and individual capacities violated the Eighth and Fourteenth Amendments by being deliberately indifferent to the risk that another prisoner (who had previously stabbed another inmate) would harm him. After being housed near him, this other prisoner also stabbed him. Upholding summary judgment for the defendants, a federal appeals court ruled that the claims against the defendants in their official capacities were barred under sovereign immunity, pursuant to the Eleventh Amendment. It further found that the magistrate judge correctly granted summary judgment on the plaintiff's theory that the defendants individually failed to protect him from the other inmate, where there was no evidence to suggest that they knew the other prisoner was a member of a gang or otherwise posed a specific threat to the plaintiff when they moved him into the plaintiff's zone. Additionally, the magistrate judge correctly granted summary judgment on the plaintiff's theory that the individual defendants violated his constitutional rights because they placed the other prisoner into the plaintiff's protective custody zone instead of following applicable departmental policy and placing the other prisoner in lockdown. In this case, the defendants did not thereby disregard an excessive risk to inmate health or safety. *Williams v. Banks*, #17-60716, 956 F.3d 808 (5th Cir. 2020).

A Wisconsin inmate was assaulted by another prisoner as they were returning to their housing unit after recreation. He suffered a fractured skull, broken teeth, cuts, and a number of other serious injuries. He sued three guards for failure to protect him against the attack. A federal appeals court upheld summary judgment for the defendants. While the plaintiff inmate pursued a complaint through all levels of the prison's inmate-complaint system, he never mentioned the claim he raised in the lawsuit, that the guards were aware of threatening behavior by the attacker in the recreation area before the assault and failed to take steps to protect him, and therefore, he failed to exhaust the single claim that survived screening as required by the Prison Litigation Reform Act. The appeals court rejected the argument that the trial judge should have "gleaned" from his complaint two additional factual grounds for a failure-to-protect claim--that the officers did not respond fast enough to an alarm about a medical emergency on his unit once the attack was underway and that they stood by without intervening to stop the attack. *Schillinger v. Kiley*, #18-2404, 954 F.3d 990 (7th Cir. 2020).

Prisoner Suicide

A man successfully committed suicide while incarcerated at a county jail. His mother sued the county for disability discrimination under Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act. A federal appeals court upheld summary judgment for the county. The plaintiff failed to prove that her son was subjected to intentional disability discrimination. The county did not intentionally discriminate against the decedent by failing to remove the towel covering his window or by failing to conduct observation rounds every twenty-five minutes. The non-medical staff at the jail did not intentionally discriminate against him by failing to provide additional accommodations, such as the suicide-prevention measures identified by the plaintiff. The non-medical staff attempted to accommodate his mental-health issues by referring him for psychiatric treatment. He was discharged from such treatment after showing improvement on a new medication regimen. Further, the nurse who spoke with him the night before he died did not intentionally discriminate against him by failing to refer him to the Mental Health Unit or by failing to implement suicide-prevention measures. While the nurse's assessment of him may have been wrong, no evidence suggested that her report or her testimony were dishonest. *Smith v. Harris County*, #19-20194, 956 F.3d 311 (5th Cir. 2020).

Prisoner Transport

A pretrial detainee sued a private inmate services company, claiming that the company violated his 14th Amendment right to be free from punishment when instead of a 17-hour extradition trip, it transported him shackled and unable to lie down, for eight continuous days across twelve states, with only momentary breaks for bathroom use. Prior to being found guilty of any offense, the plaintiff was allegedly subjected to painful, unsanitary, and severe conditions and restraints for over one week. A federal appeals court held that the company was not entitled to summary judgment because it was well within the company's practice to pick up and drop off prisoners on multi-state journeys such as this one, and a jury could reasonably view the extension of the trip as causing conditions that were arbitrary or excessive in comparison to the presumed goal of securely transporting the detainee from Colorado to Mississippi. *Stearns v. Inmate Services Corp.*, #18-3707, 2020 U.S. App. Lexis 13724 (8th Cir.).

Religion

An Iowa Muslim inmate failed to show that prison officials violated his right to religious freedom by requiring him to eat or serve pork products because the inadvertent and isolated incidents did not demonstrate a substantial burden on his ability to practice his religion. The prison food policies actually accommodated the beliefs of inmates who do not eat pork for religious reasons, the incidents in question arose from mere mistakes by the kitchen staff as to whether certain food products contained some ingredients derived from pork, and there was no showing that the prison had a de facto policy of ignoring or deviating from its free-exercise-compliant policies. *Mbonyunkiza v. Beasely*, #18-3611, 956 F.3d 1048 (8th Cir. 2020).

Resources

COVID-19: Correctional and Detention Facilities--Plan, Prepare, and Respond, Centers for Disease Control (CDC).

COVID-19: COVID-19 in U.S. prisons and jails, Prison Legal News.

COVID-19: Federal Bureau of Prisons web page on response to COVID-19

COVID-19: Keeping COVID-19 out of the Jails, San Francisco Sheriff's Office.

COVID-19: Viewpoint--COVID-19 in Prisons and Jails in the United States, Journal of the American Medical Association, April 28, 2020.

Reference:

- Abbreviations of Law Reports, laws and agencies used in our publications.
- AELE's list of recently-noted jail and prisoner law resources.

Cross References

Diet – See also, Religion
Disability Discrimination: Prisoners – See also, Prisoner Suicide
Medical Care – See also, COVID-19
Medical Care: Eye Care – Prison Litigation Reform Act: Exhaustion of Remedies
Medical Care: Mental Health – See also, Prisoner Suicide
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