
AELE Seminars:

Jail & Prisoner Legal Issues

January 25-28, 2021

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**A civil liability law publication for officers, jails, detention centers and
prisons**

ISSN 0739-0998 - Cite this issue as: 2020 JB November

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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******

Detainees in the Cook County, Illinois jail sued the sheriff, arguing that he violated their due process rights by failing to provide them with reasonably safe living conditions in light of the COVID-19 pandemic. They asked for an injunction requiring the jail to implement procedures related to social distancing, sanitation, diagnostic testing, and personal protective equipment for the duration of the pandemic. The trial court issued a temporary restraining order (TRO) requiring the jail to provide hand sanitizer and soap to all detainees and face masks to detainees in quarantine, and prohibiting the use of a “bullpen” for new detainees. Rejecting the sheriff’s argument that he faced feasibility limitations on further social distancing, the trial court later concluded that the detainees were reasonably likely to succeed on their claim that group housing and double-celling is objectively unreasonable, except in certain situations.

A federal appeals court ruled that the trial court erred in analyzing the issue of group housing and double-celling by failing to consider the sheriff's conduct in its totality, failing to afford proper deference to his judgment in adopting policies necessary to ensure safety and security, and citing an incorrect legal standard when evaluating the likelihood that the claims would succeed on their merits. Regarding the remaining relief, the trial court properly made detailed factual findings, properly considered the sheriff's conduct in its totality, and closely tailored the relief to CDC guidelines. [*Mays v. Dart*](#), #20-1792, 2020 U.S. App. Lexis 28359 (7th Cir.).

Editor's Note: For a detailed discussion of this and related cases, see [Courts Address COVID-19 Issues in Prisons and Jails](#), 2020-10 Monthly Law Journal (October 2020).

First Amendment

A prison nurse accused a prisoner of threatening her in the infirmary. Because of this, he was convicted of a disciplinary offense. He appealed, and the prison's superintendent overturned the conviction approximately 18 days later for lack of evidence. Prior to that, the prisoner was placed in "segregation" housing, lost his job as a "wheelchair pusher," and stopped receiving wages. After his successful appeal, he was returned to the normal cell block but not to his original cell. He sought return to his old cell, reinstatement to his old job or a better one, and back pay. He eventually received a new job and back pay but he filed several more grievances. He filed a federal civil rights lawsuit claiming violations of the First, Fourth, Fifth, and Sixth Amendments. The trial court screened the complaint, and allowed only the First Amendment claim against his casework manager to proceed. The plaintiff argued that the casework manager punished him for taking his appeal by refusing to restore his benefits. Later, trial the court granted summary judgment, rejecting that claim. A federal appeals court upheld that result, finding that no reasonable jury could conclude that the casework manager inflicted deprivations on the prisoner likely to deter "a person of ordinary firmness" from engaging in First Amendment protected activity. [*Douglas v. Reeves*](#), #18-2588, 964 F.3d 643 (7th Cir. 2020).

Medical Care

A man arrested for a failed robbery was detained at a county jail. Six days later, he suffered seizures. He was then sent to a local hospital, where he suffered another seizure, and was then airlifted to a university hospital. He recovered but continues to suffer headaches and other negative symptoms. He sued county defendants and a private medical company that provides medical services at the jail, and its medical staff, claiming that he received unconstitutionally inadequate medical care. He argued that the defendants were deliberately indifferent because they failed to adequately monitor him for drug withdrawal, allowing his vomiting to progress to the point of dehydration, which led to his kidney failure, which caused his seizures. The trial court granted the defendants summary judgment, finding that the detainee failed to establish that they acted with deliberate indifference to his serious medical needs. A federal appeals court agreed, ruling that there was no evidence that the nurse knew or should have known that the plaintiff's vomiting indicated a substantial risk to his health or that he was experiencing severe withdrawal symptoms.

The plaintiff made no effort to obtain further care other than two sick call slips he filled out in detox. There was no evidence that the nurse would have expected that he had not responded to the treatment provided. Even a failure to follow internal processes does not, alone, indicate deliberate indifference. There was no showing that treatment provided by jail medical personnel rose to the level of a constitutional violation, especially as they administered medications, took steps to identify the source of the detainee's condition, and attempted to treat him each time he complained of continuing symptoms. The detainee also did not demonstrate that the county failed to train its employees, particularly as the county provided training on EMS policy, and the detainee did not introduce any evidence of any additional training that would have been necessary. [*Griffith v. Franklin County*](#), #19-5440, 2020 U.S. App. Lexis 30107 (6th Cir.).

Prison Litigation Reform Act: Exhaustion of Remedies

An inmate at a Georgia state prison filed a federal civil rights lawsuit asserting that medical staff failed to provide him with proper medical treatment in violation of the Eighth Amendment. A federal appeals court overturned the dismissal of the lawsuit for alleged failure to exhaust available administrative remedies as required by the Prison Litigation Reform Act, 42 U.S.C. Sec.

1997e(a). Although the trial court was correct to dismiss the plaintiff's argument that his mental capacities made the grievance procedure unavailable, the appeals court held that the plaintiff's argument that misleading prison assistance caused his grievance errors should have been considered. In this case, the plaintiff alleged and provided some evidence that he received misleading assistance in the prison grievance process. [*Geter v. Baldwin State Prison*](#), #18-14824, 2020 U.S. App. Lexis 28731 (11th Cir.).

Prison and Jail Conditions: Radon

Current and former inmates of the Connecticut Department of Correction housed in a particular facility claimed that they were involuntarily exposed to indoor radon gas, a recognized human carcinogen, far in excess of any published safe level. A federal appeals court upheld the trial court's judgment to the extent that it determined that the defendants violated clearly established law as of the date of the Supreme Court's decision in [*Helling v. McKinney*](#), #91-1958, 509 U.S. 25, 29 (1993). In *Helling*, the U.S. Supreme Court ruled that an inmate can state a claim under the Eighth Amendment by alleging that prison officials have, with deliberate indifference, exposed him to levels of environmental tobacco smoke that pose an unreasonable risk of serious damage to his future health. Therefore, as of the date of that decision, reasonable officials would recognize that a failure to take any reasonable steps to abate the risk of excessive radon exposure, of which risk they were actually aware, would constitute deliberate indifference to a serious medical need that violated inmates' clearly established Eighth Amendment rights.

The court affirmed in part to the extent that the judgment denied the defendants' motions to dismiss the plaintiffs' federal claims for injunctive and declaratory relief, and reversed in part to the extent that the judgment denied the defendants' motion to dismiss the plaintiff's state-law claims for prospective relief against the official-capacity defendants, and ordered further proceedings. Facility officials were, however, entitled to qualified immunity for their alleged failures to reduce radon exposure prior to *Helling*. [*Vega v. Semple*](#), #18-3176, 963 F.3d 259 (2nd Cir. 2020).

Prisoner Discipline

After his disciplinary record of theft was expunged, a prisoner filed a federal civil rights lawsuit against prison officials, alleging violations of the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment. The trial court dismissed the Eighth Amendment claim with prejudice at the pleading stage and then awarded summary judgment to the defendants on the due process claims. A federal appeals court ruled that the prisoner received adequate notice in regard to the charges against him. However, it further held that his disciplinary conviction was not sufficiently supported by the evidence and the proceedings were tainted by “procedural lapses” that violated his due process rights. The defendant prison officers failed to consult readily available prison records to identify the officers with relevant information, limiting the prisoner’s ability to defend against the charges. The court also found that the trial court exceeded the permissible bounds of its discretion in dismissing the plaintiff’s Eighth Amendment claim without providing him with a meaningful opportunity to seek leave to amend his complaint. [*Elder v. McCarthy*](#), #17-2230, 967 F.3d 113 (2nd Cir. 2020).

Prisoner Suicide

A prisoner claimed that a correctional officer was deliberately indifferent to her serious medical needs arising from a psychological crisis. She asserted that the officer failed to take any measures to address her risk of suicide. A federal appeals court reversed the trial court’s denial of summary judgment based on qualified immunity to the defendant on the plaintiff’s claim of deliberate indifference. The appeals court found that the plaintiff failed to establish a triable material issue of fact showing either that the defendant’s actions, which led to a three-hour delay in medical treatment, showed deliberate indifference or that the defendant’s conduct was objectively unreasonable under clearly established law. In this case, the record did not support an inference that while in the defendant’s custody the plaintiff faced a substantial risk of suicide. Furthermore, the defendant’s conduct did not amount to inaction in response to the plaintiff’s outcry for psychological assistance. The detainee was monitored the entire time she was in the officer’s custody, and thus, a reasonable jury could infer that while the handcuffed detainee would have liked to have taken more sleeping pills, there was no substantial risk that she could have taken more pills, and thus, the detainee did not face a substantial risk of suicide by overdose while in the officer's custody. [*Baldwin v. Dorsey*](#), #, 964 F.3d 320 (5th Cir. 2020).

Religion

A Muslim inmate claimed that prison officials violated his rights by interfering with his observance of Ramadan during a five-day prison lockdown and by transferring him to a special housing unit where he was unable to participate in group prayer. A federal appeals court upheld a grant of the defendants' motion for summary judgment on the plaintiff's claims under the Free Exercise Clause of the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court ruled that the plaintiff's Free Exercise claims failed because the defendants were entitled to qualified immunity where there was no clearly established law requiring the accommodation of inmates' religious practices during a prison lockdown. Further, federal law does not provide any clearly established right of an inmate confined to the Special Housing Unit (SHU) to attend group prayer, and New York law actually prohibits it. The court also held that plaintiff's RLUIPA claims were moot because he was transferred to a different facility. [*Booker v. Graham*](#), #18-739, 2020 U.S. App. Lexis 27629 (2nd Cir.).

Sex Discrimination

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

Taking note of the deference owed to prison officials in light of the special duties that arise in the prison context, a federal appeals court ruled that that intermediate scrutiny applies to equal protection challenges of prison regulations which facially discriminate on the basis of gender rather than the deferential [*Turner v. Safley*](#), #85-1384, 482 U.S. 78 (1987) standard of whether the regulation was “reasonably related to legitimate penological interests.” Under the intermediate scrutiny test, the question is whether the regulation in question “serve[] important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.” In this case, the male prisoner sued claiming that prison officials discriminated against him based on his male gender by not allowing him to purchase certain prison vendor products available only to female inmates. Items whose availability depends at least in part on inmate gender include products that contain small metal pieces or otherwise may be used as a weapon, such as hair dryers and electric curling irons, as well as bath robes, scarves, kimonos, and bath towels, which could be used for strangulation; clothing, such as denim jeans, that “would allow [inmates] to blend in with the general public” and thus could be used to disguise escaped prisoners.

The appeals court held that plaintiff had sufficiently demonstrated that he has standing to bring his equal protection challenge of the regulation governing inmates’ personal property. It further ruled that imprisoned men and women of the same security classification subject to the challenged regulation are similarly situated for the purpose of this case, and that prison regulations such as this one, which facially discriminate on the basis of gender, must receive intermediate scrutiny. Therefore, the appeals court vacated the grant of summary judgment in favor of the prison officials. Because the appeals court had not yet established intermediate scrutiny as the applicable standard at the time the trial court reviewed the regulation at issue, the appeals court remanded for the trial court to determine the issue in the first instance. [*Harrison v. Kernan*](#), #17-16823, 971 F.3d 1069 (9th Cir. 2020).

Editor's Note: In previous decisions, both the D.C. Circuit and the 8th Circuit have applied intermediate scrutiny rather than [*Turner*](#) rational relationship scrutiny to claims that prison regulation discriminate on the basis of gender.

Sexual Assault

A former pretrial detainee at a county correctional facility claimed that she had been raped by a male jailer while incarcerated. The defendant moved for summary judgment, arguing that sex between him and the detainee was consensual and that, regardless, he was entitled to qualified immunity. The trial court determined that a jury could have found that the jailer had coercive, nonconsensual sex with the plaintiff and that such conduct would have violated her clearly established rights. A federal appeals court determined that existing caselaw on the sexual abuse of inmates clearly established the contours of the plaintiff's rights, and affirmed the denial of qualified immunity to the defendant. [*Brown v. Flowers*](#), #19-7011, 2020 U.S. App. Lexis 29028 (10th Cir.).

Resources

Female Prisoners: [Women in Prison: Seeking Justice Behind Bars](#) Briefing Report Before The United States Commission on Civil Rights Held in Washington, D.C. (Feb. 2020).

Solitary Confinement: [Time-In-Cell 2019: A Snapshot of Restrictive Housing Based on a Nationwide Survey of U.S. Prison Systems](#) by the Correctional Leaders Association (CLA) and the Arthur Liman Center for Public Interest Law at Yale Law School (2020).

Reference:

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

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