



COMMANDER'S LOG

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QUESTION: Do Prisoners or Pretrial Detainees Have a Clearly Established Constitutional Right to Visitation?

ANSWER: No. Inmates, Whether Convicted or Pre-Trial, Have No Clearly Established Right to Visitation.

CASE: *Jerome Williams v. Jon Ozmint, Director SCDC et al.*
U.S. Court of Appeals for the Fourth Circuit, Decided May 15, 2013

The facts of the case showed that Jerome Williams is a prisoner serving a life sentence at the Evans Correctional Institution in South Carolina. In March 2007, Williams met with a visitor, Marilyn Massey, in the prison visitation room. Officer Johnson monitored the visit. During the visit, Officer Johnson observed Massey pass suspected marijuana to Williams. Officer Johnson also thought that he saw Williams place the suspected contraband material in his pants before proceeding to walk toward the restroom. Several officers, including Officer Johnson, intercepted Williams. They informed him that they suspected that he had received contraband from Massey, and they escorted him to a separate area to be strip searched. The officers searched Williams and did not find any contraband on his person. However, just before the search, Officer Johnson saw Williams place something in his mouth and swallow immediately. As a result, the officers placed Williams in a "dry cell," a cell without running water, for a period of 72 hours. The officers searched Williams' excrement for evidence of the suspected marijuana but found none. Williams was later transferred to the "Special Management Unit" where he was held in disciplinary confinement for a little over two months. He was not charged with a disciplinary offense, and there was never an administrative finding that he possessed contraband or violated any other prison rule.

On April 4, 2007, the warden informed Williams that his privileges to see visitors were suspended for two years. The notice stated that Williams' visitation was suspended because he was observed receiving contraband from his visitor and placing it in his pants. The notice also said that although Williams was not found guilty of any crime or disciplinary offense, agency policy provides that action may be taken by the warden regarding rules violations in the visitation room.

As a result, Williams filed suit in state court. He sued the Director of the South Carolina Department of Corrections, the warden, and two prison guards, including Officer Johnson. Essentially, Williams challenged the suspension of his visitation privileges. Williams sought both money damages and injunctive relief. Because of the federal claims, the defendants removed the case to federal court. After discovery, they moved for summary judgment. The defendants prevailed on the visitation claim, as the court ruled that prisoners do not have a constitutional right to visitation. Williams appealed.

The appeals court reviewed Williams' claim that the suspension of his visitation privileges for two years violated his First Amendment right to association, his Eighth Amendment right to be free from cruel and unusual punishment, and his Fourteenth Amendment right to procedural due process.

Although Williams conceded that the rights of prison inmates are subject to substantial restrictions, he urged that incarceration does not and cannot extinguish a prisoner's qualified right of visitation.

The court approached the case by first considering the "qualified immunity" defense raised by the defendants. Through this defense, the defendants contended that prisoners did not have any clearly established constitutional right to visitation. As such, they argued they were entitled to qualified immunity as they had not violated any clearly established law. Simply stated, there is no constitutional right to prison visitation, either for prisoners or visitors. In fact, the Supreme Court has held that even pretrial detainees do not have a right to contact visits when administrators have exercised their sound discretion in determining that such visits will jeopardize the security of the facility. So, the court affirmed this aspect of the lower court's decision, finding that the Williams' visitation privileges were not suspended arbitrarily and that he had no clearly established constitutional right to visitation in prison.

Qualified immunity, however, is a defense only against claims for money damages. It protects against money damages claims in those "gray areas" of constitutional rights or the violation of such asserted rights. But, in this case, Williams, in addition to money damages, sought prospective or injunctive relief, specifically that his visitation privileges be restored. By the time of the court's decision, however, the two year suspension had expired, and Williams' visitation privileges had been restored. Accordingly, Williams' request for injunctive relief was "moot."

NOTE: Since visitation is generally allowed in detention centers, it is best to have clear written policies governing it in place. Such regulations may include bases for immediate suspension of visitation privileges, as well as the provision of written notice prior to the suspension and the opportunity to contest the action in other instances. If limited suspensions of visitation privileges are based upon sound administrative reasons, and are not arbitrary or capricious, a reviewing court will generally side with the facility. However, a permanent denial of visitation or a very lengthy suspension may draw more judicial scrutiny. As such, make sure that all regulations governing visitation are adhered to, and document clearly the reasons for any/all restrictions on or suspensions of visitation.

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