



LGIT'S COMMANDER'S LOG

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Prisoner's fear of gang violence and failure-to-protect claims under 42 U.S.C. § 1983

QUESTION: **Can an inmate's generalized fear for his safety related to his past or present gang activity or affiliation support a failure-to-protect claim under federal law?**

ANSWER: **No. An inmate's generalized fear of attack from gang members, including rival gang members, is insufficient to state a claim. The inmate must establish that an official actually recognized the substantial risk of harm to the inmate and purposely disregarded it or took other actions that were equally inappropriate.**

CASE: ***Derek Alexander Roberts v. Gary D. Maynard, et al.* (Unpublished)
United States District Court for the District of Maryland
Decided November 30, 2010**

Derek Alexander Roberts was confined at the Western Correctional Institution (WCI). On October 20, 2009, he was placed in an overflow unit which housed general population, as well as administrative segregation and disciplinary segregation inmates. Tags were placed on disciplinary segregation inmates' cells to alert staff of security issues, including gang affiliation. This was done to ensure that rival gang members were not placed in the same cell and were kept separated during cell moves. On October 29, 2010, Roberts was moved to another housing unit where the gang-affiliation tag was not utilized.

On November 12, 2009, Roberts filed an administrative grievance regarding his safety while on the segregation unit due to "gang profiling" and threats from members of the Black Gorilla Family (BGF) (the gang which he belonged to), as well as members of rival gangs. The administrative response to the grievance acknowledged the placement of the gang information on the cell door and indicated that it was for both staff awareness and safety to prevent placing rival gang members together along with preventing the placement of those inmates who may be in danger from a gang in a cell with a known gang member. The response also noted that approximately two weeks prior to the filing of his grievance, Roberts was moved to another housing unit where the gang-affiliation tag was not utilized.

As a result of his complaint, Roberts was placed on administrative segregation while his claims were investigated. He was removed from administrative segregation due to his inability to substantiate his claims, his lack of cooperation, and his failure to provide information regarding enemies. It should be noted that the practice of writing and publishing gang profiles on cell doors in the WCI segregation unit was discontinued and terminated in late December 2009.

On or about the same day he filed his grievance, Roberts filed suit under 42 U.S.C. § 1983 alleging a failure to protect claim based upon his assignment to the segregation unit and the publication of an

alleged gang affiliation on the door of his cell. He claimed that he had no affiliation with the BGF, and that the publication of the “gang profile” put his life in danger from BGF’s rival gangs and from BGF members themselves. In an amended complaint, Roberts alleged that he was released from segregation to the general population and housed on a unit designated for gang members. He stated that he complained to officers and was offered protective custody status, but the assignment process was not implemented. Roberts asserted that his life was in danger while in general population and officials were wrongly treating him “like a gang member.”

The officers and administrators who were sued moved to dismiss or, alternatively, for summary judgment. They argued that Roberts had referenced no threats against him since the initial week of his incarceration and named no enemies. They further argued that Roberts had been housed in general population for three and a half months without incident. The defendants also submitted evidence that Roberts was indeed a validated BGF member who had tried to recruit younger members while incarcerated at MCI in Jessup and had tried to orchestrate an assault on correctional officers. Finally, the defendants argued that there is a formal process that an inmate can utilize to renounce membership in a security threat group (STG). Roberts, however, had not invoked the process.

The court granted defendants’ motion for summary judgment on grounds that the undisputed facts established that Roberts was transferred to WCI and placed in a disciplinary segregation cell in late October 2009. The tag placed on the outside of the cell door identified Roberts as a BGF gang member based on a prior investigation which showed that he had accumulated sufficient points, under an established criteria (tattoos, observed association with known STG members, and contact with known associates), to be deemed a member of a STG. In fact, the intelligence reports concerning Roberts dated back to 2002 and 2003. Finally, Roberts was removed from disciplinary segregation, where the STG tag designation practice was in effect, on October 29 2010. During his nine-day stay in disciplinary segregation, Roberts suffered no physical injuries and there was no evidence of injuries during his time in administrative segregation or upon his re-classification to general population. These reasons, coupled with SCI’s prompt investigation of Roberts’ complaints, established that no defendant had been deliberately indifferent to Roberts’ safety.

NOTE: Deliberate indifference in the context of a prisoner failure-to-protect claim requires that a defendant “knows of and disregards an excessive risk to inmate health and safety; the official must both be aware of the facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” Also, the inmate must show a serious physical injury resulting from the failure-to-protect. Despite the difficulty of meeting this test, inmates exposed to gang violence while incarcerated can pursue this avenue in the courts. Accordingly, it is critically important for staff members who become aware of a particularized threat of gang violence against an inmate or inmates take prompt and adequate steps to prevent it.

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