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BURRELL v. McCRAY

CA 4 (enbanc): Winter, Field (concur & dissent, w/ Russell), Widener (concur & dissent w/ Russell)
7-0 on § 1983 and exhaustion of state admin.
4-3 on 8th/14th amend violation remedies

Petrs are various Md. state officials who were named as defendants in various prisoner § 1983 actions. The following actions were consolidated on appeal for en banc consideration by the CA 4: McCray v. Smith (seeking damages and injunctive relief pro se against prison guard for placement in bare cell w/o clothing for 48 hrs. and failure to give notice to psy. authorities); McCray v. Burrell (seeking damages from captain of the prison guards who placed McCray nude into a bare cell for 48 hrs. and did not notify psy. authorities -- separate incident from that involved in suit vs. Smith); Stokes v. McClellan (seeking declaratory, injunctive, and monetary relief for denial of permission to receive to newspapers, the Gay Liberator and Akwesasne Notes); Washington v. Boslow (sought compensatory and punitive damages and declaratory relief for failure of prison doctor to provide necessary medical care).

The DC had dismissed each of the actions for the prisoners failure to exhaust the administrati remedy provided by the Md. Inmate Grievance Committ

The DC also found that there had been no 8th/14th amendment violations in Smith's and Burrell's treatment of McCray.

The CA 4 en banc reversed the DC. The CA 4 unanimously held that under present Supreme Court decisions there was no requirement that a prisoner exhaust state administrative remedies before bringing a § 1983 action to challenge the conditions of his incarceration. Judge Winter's opinion carefully traced this Court's § 1983 decisions from Monroe v. Pape forward and demonstrated that those decisions clearly foreclosed the CAs from requiring prisoners to exhaust state remedies prior to seeking relief in federal court via § 1983. Judge Winter noted that the adequacy of the state remedy was also challenged by the prisoners because the administrative decision of the greivance committee is only a recommendation rather than a binding determination and because no damages are available. The CA 4 did not rule on the adequacy of the adm. remedy in view of these alleged deficiencies. Two of the seven judges, Judges Widener and Russell, indicate that they believed that only Part II of Wilwording v. Swenson foreclosed the exhaustion issue. [Judge Russell's position is ambiguous since he joined both Judge Field's opinion and Judge Widener's opinion which indicate somewhat differing [redacted] shades

of certainty as to how well established the no exhaustion rule is].

The CA 4 majority found that McCray had been subjected to cruel and unusual punishment by both Smith and Burrell. In the action against Burrell, the majority found violations in both (1) the placing of McCray nude in a bare cell, w/ crude and unsanitary toilet facilities and no articles of personal hygiene and (2) he "noncompliance with the constitutionally minimum requirements of the written directive concerning isolation of mentally disturbed inmates." In the action against Smith, the detention cell confinement itself was not deemed sufficient to constitute an 8th/14th amd. violation but the confinement in conjunction with Smith's failure to notify pysch. personnel of McCray's condition was deemed a constitutional violation. Judges Field, Widener, and Russell dissented on the 8th/14th amendment determination finding the measures justified and not too harsh.

The main issue presented by the cert petition is whether this Court should alter its past decisions and require prisoners to exhaust adequate state administrative remedies prior to bringing a § 1983 action in federal court. Although I imagine that there is some support for such a requirement

among some members of this Court, the Court's numerous recent pronouncements stating that there is no exhaustion requirement would seem to "bar" a change absent a sharp departure from very recent determinations or a disingenuous reading of prior decisions. In addition to the unseemly nature of either of those courses, I believe that the remedy in this case may well be inadequate thereby rendering the core exhaustion issue inappropriate for decision. Aside from these matters, I find the no exhaustion requirement sound as a matter of policy.

In Monroe v. Pape, 365 U.S. 167, this Court held that there was no requirement to exhaust state judicial remedies before bringing a § 1983 action. Monroe was applied to deny a claim that state administrative remedies must be exhausted in McNeese v. Bd. of Education, 373 U.S. 668. Although it could be argued that in that case the administrative remedy was inadequate, the Court per curiam in Damico v. California, 389 U.S. 416, reversed a 3-judge DC decision that had required petrs to exhaust "adequate administrative remedies." The Court did not reverse on the grounds that the administrative remedies were inadequate but rather quoted McNeese to the effect that there is no exhaustion requirement because § 1983

was designed to provide " a remedy in the federal courts supplementary to any remedy any State might have." Next, in Houghton v. Shafer, 392 U.S. 639, the Court per curiam applied McNeese, Monroe, and Damico to a prisoner's § 1983 action. The Court noted that "it seems likely" that the administrative remedy was futile but did not rest on that ground. Instead of ruling on whether the administrative remedy was in fact inadequate, the Court stated that "[i]n any event, resort to these remedies is unnecessary in light of our decisions." If there was any doubt left by these decisions, it should have been erased by Wilwording v. Swenson, 404 U.S. 249. There the Court (unanimously)* stated that prisoners [redacted] were entitled to have their actions treated as § 1983 claims "not subject ... to exhaustion requirements." The Court explicitly noted that "[s]tate prisoners are not held to any stricter standard of exhaustion than other civil rights plaintiffs". The Court also addressed prisoner actions in Preiser v. Rodriguez, 411 U.S. 475. There the Court marked out a scheme for prisoner actions that required habeas corpus actions for suits that would affect the date of the prisoner's release and permit § 1983 actions in cases challenging the conditions of incarceration. The key distinction was that habeas corpus required the

* The Chief Justice alone dissented on another issue.

prisoner to exhaust state administrative and judicial remedies whereas § 1983 had no exhaustion requirement. In Preiser v. Rodriquez, the Court specifically reaffirmed the § 1983 decisions in Houghton and Wilwording and noted that § 1983 permited a state prisoner to file in "federal court without any requirement of prior exhaustion of state remedies." 411 U.S. at 494 499. The exhaustion requirements urged by petrs in this case are directly in conflict with the scheme set forth in May, 1973 in Preiser.

Petrs claim that Wolff v. McDonnell and Huffman v. Pursue support their claim that an exhaustion requirement should be adopted. They contend that Wolff permits different treatment of prisoners and other § 1983 plaintiffs. Petrs grossly misconstrue Wolff. There Justice White merely noted that unlike free citizens, the prisoners' rights may be restricted by the "needs and exigencies of the institutional environment." 418 U.S. at 555. This is similar to the Chief Justice's statement in Morrisey that a parolee has a more limited liberty interest for due process balancing purposes than a free citizen. Wolff is addressed to the special factors that incarceration lend to a

a determination of the occasions on which a hearing is needed and the procedures required at hearings in a prison context. Justice White in Wolff reaffirmed that prisoners have a right of access to the courts. There is no indication in Wolff that a prisoner's right of access can be specially burdened by an exhaustion requirement not applicable to other civil rights pls. The extra burden would not relate to the needs of prison security and would be contrary to the explicit statement in Wilwording that the same standards apply to state prisoners that apply to other civil rights plaintiffs.

Huffman v. Pursue involved an extention of Younger v. Harris to prevent federal judicial interference with ongoing state proceedings that are civil in form but closely akin to criminal proceedings. In fn 21 the Court distinguished Monroe as a case where no state proceedings had been initiated. Huffman's limited holding has no application to this situation.

The CA 4 en banc unanimously found that the no exhaustion rule was established by recent decisions of this Court. Petrs cite no CA decision

expressing any doubt as to the state of the law in this area. Even if the Court wanted to reexamine the question, this would not appear to be an appropriate case because the remedy is not clearly adequate. The absence of a provision for awarding damages makes it impossible for resps to obtain a significant portion of the relief they requested (indeed all of the relief requested by McCray against Burrell). The DC's argument that the damage relief would merely be postponed seems weak since the DC's prime argument for exhaustion is the speed of the state remedy and the reduction of the burden on the federal courts. The state remedy is futile if it is clear that the relief requested cannot be provided. In addition, the fact that the independent greivance comm. only makes recommendations to the decisionmaker, the Secretary of Public Safety and Correctional Services, suggests that the admin. system may be inadequate because the ultimate decisionmaker is the state official responsible for the conditions that the prisoners are challenging. Rudimentary due process has normally required a neutral decisionmaker and it is unclear the extent to which the Secretary will be implicated in the conditions complained

by the prisoners.

I see no justification for a decision that requires exhaustion only of prisoner § 1983 actions. Prisoners have a right of access to the courts which this Court has continually protected as an essential right that has added importance in a prisoner context. Although [redacted] access can clearly be conditioned on exhaustion, as in habeas corpus, there should be no special burdens placed on prisoners merely because of their incarcerated status. The prison context is clearly one in which the states have [redacted] important interests and in which federal courts should be hesitant to interfere w/ state administrators. But the state interest in avoiding undue interference w/ its administrators would [redacted] not seem markedly greater than in the context of the state welfare system or school system. A special rule for prisoners would be an unfortunate throwback to the time when prisoners were deemed to be without rights. [redacted]

Moreover, I see no merit in the DC's and perts' argument that the absence of an exhaustion requirement impedes the development of state grievance

procedures for inmates. As petrs themselves note, a number of state procedures have developed in recent years. If, as the DC contends, they are actually much speedier than federal court actions then one presumes that prisoners will opt for the administrative remedies rather than filing or before filing § 1983 actions. The presence of the § 1983 alternative merely provides a healthy incentive to maintain responsive state procedures.

In sum, I would deny the petition on the exhaustion question since I believe that the established § 1983 law should not be altered and there is no confusion as to what the law presently requires.

The 8th/14th amendment issue does not merit review in this Court. Although a substantial argument could be made there was no violation, the argument would turn on the facts of this case and not the legal standard applied by the CA 4 majority. The guards' treatment of McCray was extremely harsh and (at the very least) bordered on an 8th/14th amend. violation. Resps' brief points out that one of the dentention cells has been closed since 1/74 and that a new policy has been adopted on stripping prisoners and use of bare cells. These changes in

the conditions at the prison and the fact-specific nature of the issue render the 8th/14th amend claim uncertworthy.

DENY ras OPN: PET at 7a
Response