

September 19, 1975

No. 75-44 BURRELL (prison guard)  
v. McCRAY, et al (prisoners)  
CA4 en banc

The attached cert note gives the full story. This case brings up four § 1983 suits by prisoners against prison guards. They present two important issues:

Exhaustion: The suits were instituted for damages and injunctive relief without exhaustion of administrative remedies provided by state statute. Such remedies included making complaint to an "Inmate Grievance Committee", which had authority to conduct a hearing and submit a recommendation to the Secretary of Correctional Services. The Secretary's order is subject to judicial review in the courts.

CA4, in what apparently is an exhaustive and exhausting opinion, reviewed the long and somewhat meandering line of Supreme Court cases starting with Monroe v. Pape, which are arguably relevant to the exhaustion issue.

In the end, a majority of CA4 concluded that state remedies did not have to be exhausted before/prison inmate could bring a 1983 suit, particularly if his suit were for damages.

In my view, past decisions of the Court have gone too far in allowing 1983 suits where state remedies are available. In this case, in addition to the administrative remedies

there is no reason to believe that suit could not have been brought for damages in the state court.

It is difficult, however, to identify a rationale which would distinguish prior Supreme Court cases. There is a good deal of law review commentary that I have not read, and which possibly may be enlightening. I will await discussion.

Cruel and Unusual Punishment: In two (and possibly more) of the cases, the prisoners were placed in solitary confinement under shockingly primitive conditions on the ground that their respective jailers believed that they were a threat to fellow prisoners and possibly to themselves. But medical help (psychiatric) was not provided promptly in either case. As the cert memo points out, CA4 seems to have combined denial of medical treatment with 8th Amendment considerations in reaching a conclusion that the 8th Amendment had been violated.

This aspect of the case is quite fact specific, and perhaps we could deny the petition without significant precedential results.

Moreover, CA4 remanded these cases for consideration of the "official immunity" defenses.

L.F.P., Jr.