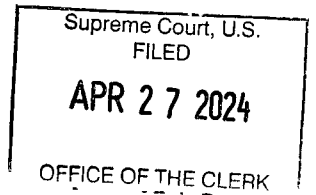


23-7417

ORIGINAL

Supreme Court Of The United States
May Term 2024
No.

Nervius Abdul Artisan
~~Petitioner.~~



- against -
State of Iowa et. al.
Respondents

Petition For A Writ of Certiorari
To The United States Court of Appeals
For The Eighth Circuit

Nervius A. Artisan
Black Hawk County Sheriff's Office
225 East 6th St.
Waterloo Iowa 50703

Questions Presented

1. Should petitioner, a "pretrial detainee" at the Black Hawk County Jail, be subject to the Jail's "privilege deprivation policy", whereby detainees are deprived of all "general population" privileges, under the holdings of Beard v. Banks 548 U.S. 521, 126 S. Ct. 2572 (2006) that "withholding privileges" is a proper and even necessary management technique to induce compliance with the rules of inmate behavior, especially for high-security prisoners who have few other privileges to "lose"?
2. Is it proper for the Eighth Circuit Court of Appeals to apply "convicted prisoner" cases such as Beard v. Banks 548 U.S. 521, 126 S. Ct. 2572 (2006) to a strictly "pretrial detainee" case using the penological and rehabilitative rationales present in Banks pertaining to prisoners under a sentence of punishment, and a valid conviction which sufficiently extinguishes a prisoners liberty he once possessed as a pretrial detainee?
3. Can the Eighth Circuit Court of Appeals justify punishing petitioner by withholding jail privileges, in an attempt at rehabilitating petitioner through the loss of jail privileges to accomplish retribution and deterrence?

Pantios

The Petitioner is Nervius Abduliel Antisaul, a criminal detainee at the Black Hawk County Jail in Waterloo Iowa 50703. The respondents are "good-will" because Petitioner's 42 USC 1983 was dismissed at "Unfinal Sentence" for "failure to state a cognizable claim." Defendants were Captain Nathan Neff, Jail Supervisor, Lieutenant Brown, Jail Command Staff, Sergeant Paulsen, Jail Command Staff, Sheriff Anthony Thompson. Elected Sheriff of Black Hawk County.

Table of Contents

Questions Presented

Parties

Table of Authorities

Decisions Below

Jurisdiction

Constitutional and Statutory Provisions Involved

Statements of the Case

Basis for Federal Jurisdiction

Reasons for Granting Writ

A. Petitioner, who is a criminal detainee, is suffering unconstitutional punishment

B. The Eighth Circuit Court of Appeals is attempting to institute the punishment of criminal detainees by applying a non-scientific and rehabilitative rationale of United States Supreme Court "convicted prisoner" case *Brand v. Banks* 548 U.S. 511, 126 S.Ct. 2572 (2006)

C. Convicted Prisoner cases analyzed under (penological) standards, and Eighth Amendment standards should not govern the rights of pretrial detainees, because "convicted prisoner" cases are analyzed under the expected parameters of a sentence of punishment pursuant to a valid conviction that extinguishes a prisoner's liberty.

Appendix

Decision of the United States Court of Appeals for the Eighth Circuit. A-1

Order of the United States Court of Appeals denying rehearing with suggestion of rehearing En Banc. B.1

Order of the United States District Court for the Northern District of Iowa - Eastern Division C.1

(It is written on with notes and is the only copy I have. Sorry.)

Table of Authorities

Beard v. Banks	548 U.S. 521 (2006)	#1-6-7-8
Bell v. Wolfish	441 U.S. 520 (1979)	#6-7-8-9-10-11
Platko v. Nix	957 F.2d 1480 (8 th Cir. 1992)	#6
Borstein v. Pugh	420 U.S. 103 (1975)	#6
Kennedy v. Mendoza-Martinez	372 U.S. 108 (1963)	#7
Karsjens v. Lourey	988 F.3d 1047 (8 th Cir. 2021)	#7
Morris v. Arpaio	188 F.3d 1054 (9 th Cir. 1999)	#8, #9
People v. CCA Detention Ctr.	422 F.3d 1090 (10 th Cir. 2005)	#9
Dumery v. Arpaio	378 F.3d 1000 (9 th Cir. 2004)	#9
Sandlin v. Connor	515 U.S. 472 (1995)	#9
Conino v. Immigration Dept. of Conn.	933 F.2d 128 (2 nd Cir. 1991)	#10
Dybal v. Hasty	490 F.3d 143 (2 nd Cir. 2017)	#12
Supremant v. Rivas	424 F.3d 5 (1 st Cir. 2005)	#12
Black's Law Dictionary	11 th Ed.	#10, #11

Decisions Below:

The decision of the United States Court of Appeals for the Eighth Circuit is unreported. A copy is attached as Appendix A to this petition (A.1). The order of the United States District Court for the Northern District of Iowa is not reported. A copy is attached as Appendix B to this petition.

Jurisdiction

The judgment of the United States Court of Appeals for the Eighth Circuit was entered on January 22nd 2024. An order denying a petition for rehearing with suggestion for rehearing en banc was entered on February 12th 2024 and a copy of that order is attached as Appendix B to this petition (). Jurisdiction is confirmed by 28 U.S.C. § 1254 (1).

Constitutional And Statutory Provisions Involved

This case involves Amendment XIV to the United States Constitution, which provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States and of the State wherein they reside: nor shall any State deprive any person of life, liberty, or property, without the due process of law: nor deny to any person within its jurisdiction the equal protection of the laws.

The Amendment is contained in Title 42, Section 1983, United States Code:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Statement of the Case

The petitioner complains and alleges that he was stripped of and denied all jail privileges while a pretrial detainee on pods A-1, A-2, and A-3, at the Black Hawk County Jail. Petitioner alleged that the jail's treatment of pretrial detainees constituted punishment that may not be inflicted upon detainees qua detainees. This punishment consisted of the absolute loss of all general population privileges afforded to all other pretrial detainees on pods B-C-D-E. The Jail's "privilege deprivation policy" subjects pretrial

detainees to unconditional punishment with the intent to give a detainee an "incentive" to both; reach the highest "level" at the jail and to: discourage backsliding on future retreating behavior while a jail protocol detainee. The petitioners complaint also alleged that the jail was denying them proper and necessary cleaning supplies, such as toilet brushes, mops on brooms. Petitioner suffered the loss of all jail privileges for over one full year and was forced to live in filthy, noxious odors and caked on urine feces and mold in the jail toilets that have not underwent routine cleaning in over a decade or more.

The District Court dismissed petitioners 42 USC 1983 complaint during "initial screening" on the grounds that petitioners complaint "failed to state a cognizable claim". Dismissed was August 9th 2023. The Court of Appeals affirmed in part as to the dismissal of the State of Iowa as a defendant, and as to Artisans challenges to his conditions of confinement. The Court of Appeals reversed the judgement of the District Court as to the dismissal of his due process claim. The case was remanded further proceedings in accordance with the opinion of the Eighth Circuit Court of Appeals.

Basis For Federal Jurisdiction

This case raises questions of interpretation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The District Court had jurisdiction under the general Federal question jurisdiction conferred by 28 U.S.C. 1331.

Reasons for Granting the Writ

A. The Eighth Circuit Court of Appeals is attempting to justify the punishment of "pretrial detainees" by applying the penological and rehabilitative rationales of United States Supreme Court case Beard v. Banks 548 U.S. 521, 126 S. Ct. 2572 (2006)

to petitioners punishment of "pretrial detainees" case. Narciso Antisani is being subjected to unconstitutional punishment as a pretrial detainee via the pre-con-viction holding conditions on the Jails "maximum security" pods A-1, A-2, and A-3, and these conditions and restrictions are intentionally punitive and subjects pretrial detainees to retribution in lieu of a valid conviction for either their pending charges or for violation of the jail rules.

"It has always been true that a person may not be punished by government without due process of law." Plotka v. Nix 959 F.2d 1480, 1484 (8th Cir. 1992) Pretrial detainees are those individuals whom the government has probable cause to believe have committed crimes. Gerstein v. Pugh, 420 U.S. 103, 114 S. Ct. 854, 863 43 L. Ed. 2d 541 (1975) Unlike convicted prisoners, the state has no right to punish them. Beall v. Walsh 441 U.S. 520, 535 (1979)

The Eighth Circuit Court of Appeals affirmed the dismissal of Antisani's conditions of confinement claim by using Beard v. Banks 548 U.S. 521 (2006). While a pretrial detainee at the jail, Antisani was subjected to the jail's "privilege deprivation policy" whereby

he was stripped of and deprived of virtually all jail privileges for the express purpose of subjecting him to punishment via the absolute loss of privileges to bring about an "incentive" to reach the jails highest level by punishing and depriving the jails lowest level, thereby accomplishing the traditional aims of punishment; "retribution and deterrence". "Retribution and deterrence are not legitimate governmental objectives". Kennedy v. Mendoza-Martinez 372 U.S. 168.

In its ruling, the Eighth Circuit Court of Appeals stated: "As to the remaining Defendants, this court affirms the dismissal of Artisan's challenge to his segregation restrictions as unconstitutional conditions of confinement." Soo Bold v. Wolfish 441 U.S. 520. 535 (1979) [in evaluating the constitutionality of conditions or restrictions of pretrial detention, the proper inquiry is whether they amount to punishment under the due process clause]: Karjane v. Lourey 988 F.3d 1047. 1052-53 (8th Cir. 2021) [regarding pretrial detainees, the prohibition against punishment encompasses conditions of confinement]. Artisan claimed that in segregation he was denied commissary privileges, some cleaning supplies, and the right to attend substance abuse classes and religious services. We conclude, based in part on the grievance responses Artisan submitted, that these conditions did not amount to punishment. See Beard v. Banks 548 U.S. 521. 533 (2006) [withholding privileges "is a proper and even necessary management technique to induce compliance with the rules

of inmate behavior, especially for high-security prisoners who have few other privileges to lose."

In Board v. Banks, a plurality of the United States Supreme Court endorsed the idea that administrative segregation conditions, which in theory are not supposed to be punitive, can be purposefully made unpleasant in order to create incentives for prisoners to behave better so they can stay out of such units. Board v. Banks 548 U.S. 521, 530-35 (2006).

"genuine privations and hardship over an extended period of time" constitutes punishment. Bald v. United States 441 U.S. at 542 (1979). Antisani suffered the jail's "privilege deprivation policy" for over a full year.

B. Convicted Prisoner Cases Should Not Apply To Pretrial Detainees

Board v. Banks was analyzed using the "Turner Factors," a four-pronged test designed to determine whether regulations that impact a prisoner's constitutional rights are reasonably allowable. But Turner v. Safley cannot apply in its entirety to pretrial detainees since the "penological interests" with which Turner was concerned include "interests that relate to the treatment (including punishment, deterrence, rehabilitation, etc. ...) of persons convicted of crimes."

The Eighth Amendment's ban on cruel and unusual punishment should not apply to pretrial detainees, since detainees cannot be punished at all.

Antisani v. Arpaio 188 F.3d 1054 (9th Cir. 1999) (en banc)

The court applied "Turner" standard to censorship of publications in a jail housing both sentenced prisoners and detainees, though it acknowledged that the rehabilitative rationale relied on has no application to detainees. Subsequently, the same court has applied Bell v. Wolfish and rejected Turner v. Sateley in a detainee case, ignoring Munoz v. Arpaio. See Demery v. Arpaio, 378 F.3d 1021, 1028-29 (9th Cir. 2004).

In Beard v. Banks, a case involving the 40 years prisoners that the State of Pennsylvania had to offer, it was analyzed by Eighth Amendment standards, and was based on the expected parameters of a sentence imposed by a court of law. The United States Supreme Court used penological rationales, related to rehabilitation and deterrence, to determine that withholding privileges is necessary and motivates better behavior, justifying the punishment that a convicted prisoner must suffer as a result of a valid conviction. In Sandin v. Conner 515 U.S. 472, 115 S. Ct. 2293 (1995), another clear convicted prisoner case, the Court severely criticized liberty interest analysis on grounds that seem applicable to pretrial detainees as well as convicted prisoners.

Yet, courts have clearly held that Sandin leaves Bell v. Wolfish, which governs pretrial detainees rights, "untouched". Peoples v. CCA Detention Centers 422 F.3d 1040, 1106 n.2 (10th Cir. 2005)

Under BDD, a detainee may not be punished prior to an adjudication of guilt. BDD at 441 US 535. Without an adjudication of guilt, no withdrawal of privi-

leges is permissible, as any loss of privileges amounts to punishment of the pretrial detainees.

This is not to say that the officials of a detention facility can justify punishment. They cannot. It is simply to say that in the absence of a showing of intent to punish, a court must look to see if a particular restriction or condition which may on its face appear to be punishment, is instead but an incident of a legitimate nonpunitive governmental objective. Bald v. Wolfsh footnote #19.

It is clear that the Tailis intent is to subject pre-trial detainees to its "privilege deprivation policy" to give detainees an incentive to reach "GP" and discourage backsliding.

Any "privilege deprivation policy" is first; punitively, second; rehabilitative and third: it seeks to deter. Punology - Penological. "The study of penal institutions, crime prevention and the punishment and rehabilitation of criminals. Black's Law Dictionary 11th Edition

Rehabilitation < rehabilitation is a traditional theory of criminal punishment, along with deterrence and retribution > Black's Law Dictionary 11th Edition

The rehabilitation of innocent detainees is by its very nature, unconstitutional, as rehabilitation can only begin after a finding of guilt, and involves behavior modification by inflicting punishment.

Penal. "The word penal connotes some form of punishment imposed upon an individual by the authority of the state." Id.

Punishment. A sanction - such as a fine, penalty, confinement, or loss of property, right, or privilege. Id.

Convicted prisoner cases concerning penological efforts in dealing with persons whose liberty has been extinguished due to a valid conviction, should not diminish the rights of detainees.

Any attempt to punish a pretrial detainee, with the specific intent to punish, for any cause at all, offends Bell v. Wiltish and its clear command that "Under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt."

The Eighth Circuit Court of Appeals is attempting to use Beard v. Banks to justify punishment of pretrial detainees at the Black Hawk County Jail by implementing and enforcing a "privilege deprivation policy" that punishes and deprives pretrial detainees. Such punishment includes; 18-23 hr. lockup, no TV, no radio, blanket ban on magazine subscriptions, no clergy visits, no access to gym exercise, 24 hr. cell illumination, no access to religious activities, denial of basic cleaning supplies, being housed with the severely mentally ill detainees, no library access.

Pods 1, 2, and 3 are veritable "dungeons" and subject pretrial detainees to unconstitutional punishment that is being justified by the United States Supreme Court's "convicted prisoner" case Beard v. Banks.

Pretrial detainees have a liberty interest in avoiding punishment, and are denied due process when they are punished as a result of false charges made by staff members with the intent to coerce them to be punished. Superviant v. Rivers 424 F.3d 5, 1911st Cir. 2005) Don Dugan v. Hasty 490 F.3d 143, 165. (2nd Cir. 2007). detainee was entitled to procedural protections based directly upon the Due Process Clause when he was subjected to conditions so harsh as to comprise punishment... regardless of defendant's punitive intent. In Govins v. Vermont Dept. of Corr. 933 F.2d 128, 130 (2nd Cir. 1991) (involvement in administrative segregation "smacks of punishment" and should be analyzed under Bell).

As of this writing, Arnesen has suffered punishment as a pretrial detainee for 432 days.

"The length of a detainee's punishment must also be considered in assessing the institutional practices. Bell v. Wolfish (1999).

Thus the court below seriously abrogated the clear command in Bell and failed to distinguish between pretrial detainee cases and convicted prisoner cases such as Board v. Banks that govern persons undergoing punishment pursuant to a valid conviction. The Court should correct that misapplication and make it clear that pretrial detainees may not be punished at all prior to an adjudication of guilt and certainly not for behavior modification, retribution, and deterrence of future rule infractions.

Conclusion

For the foregoing reasons, certification should be granted in this case.

April 27th 2024

Respectfully Submitted,
Nersis Aboulied Antisami