

## Cruel and Unusual? Defining the Conditions of Confinement in the Mentally Ill

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### Seventh Circuit Disagrees With Dismissal of a Case Charging Bill of Rights Violation in the Treatment of a Prisoner With Mental Illness

In the case of *Vasquez v. Frank*, 209 Fed.Appx. 538 (7th Cir. 2006), the Seventh Circuit Court of Appeals reversed a case dismissed in U.S. District Court for the Western District of Wisconsin regarding an inmate who claimed repeated violations of his rights while in a Wisconsin prison. The Seventh Circuit ruled that prison officials were aware of the allegations regarding lighting in his cell and poor ventilation, and, in failing to remediate these conditions may have ignored a serious medical condition. The district court's dismissal was overturned, necessitating further proceedings on these claims.

#### Facts of the Case

Luis Vasquez, an inmate of the Waupun Correctional Institution, filed a complaint to the U.S. District Court stating that his constitutional rights had been violated repeatedly while he was confined at Waupun from December 2002 until March 2006. Mr. Vasquez suffered from a mental illness (emotional distress, depression, anxiety, and other psychological problems) for which he was receiving treatment. Specifically, his claim stated that the continuous illumination of his cell resulted in insomnia, migraines, eye pain, and blurry vision. His requests to turn off the light were denied by prison officials. He also alleged that his cell was dusty and poorly ventilated and that this caused nose bleeds, heat exhaustion, and dizziness. Mr. Vasquez also alleged that the hot, dusty, stagnant air in his cell intensified the side effects associated with the psychotropic medications he was taking to treat his psychiatric illness.

Mr. Vasquez sought damages and injunctive relief. These motions were dismissed at initial screening in U.S. District Court in Wisconsin. The reasoning of the federal district court was that Mr. Vasquez's claim regarding his cell's illumination would fail because another case regarding the illumination at Waupun, *King v. Frank*, 371 F.Supp.2d 977 (W.D. Wis. 2005), found that the lighting did not constitute cruel and unusual punishment. In regard to the air quality, the court ruled that it defied "common sense to assume" that the poor ventilation had caused the plaintiff's hemoptysis. On these bases, the claims were dismissed. Mr. Vasquez appealed, and the Seventh Circuit granted *certiorari*.

#### Ruling and Reasoning

The Seventh Circuit agreed with the district court that most of Mr. Vasquez's complaints failed to state a claim or were not pleaded with enough factual detail to sustain his claim. However, it disagreed with dismissal, ruling, per *Marshall v. Knight*, 445 F.3d 965 (7th Cir. 2006), that his claim could be dismissed only if "it appears beyond doubt that the plaintiff can prove no set of facts that would entitle him to relief" (*Marshall v. Knight*, p 968).

The Seventh Circuit found that Mr. Vasquez's allegations about the light and air quality were in fact not so fantastical that they could be dismissed out of hand. Mr. Vasquez had alerted the prison officials to his psychiatric condition. The prison officials' ignoring his requests may have constituted a violation of his Eighth Amendment rights. The Seventh Circuit cited two prior cases, one from the Seventh Circuit and one from the Ninth Circuit, that constant cell illumination was acknowledged to be a possible cause of severe suffering in mentally ill patients (*Scarver v. Litscher*, 434 F.3d 972 (7th Cir. 2006); and *Keenan v. Hall*, 83 F.3d 1083 (9th Cir. 1996)). Furthermore, the Seventh Circuit found that his claim regarding the policy of lighting at Waupun Correctional Institution could not be barred merely because the district court had decided on this same issue in an unrelated case. Case law cited in the ruling prohibits the barring of a litigant who was not party to prior action from litigating the identical matter, despite existing decisions that are contrary to the litigant's position (*Blonder-Tongue Lab, Inc. v. Univ. of Ill. Found.*, 402 U.S. 313 (1971)). The Seventh Circuit also cited *Helling v. McKinney*, 509 U.S. 25 (1993), in which the U. S. Supreme Court specified that a facility may

not create “an unreasonable risk of serious damage” to an inmate’s future health. Thus, Mr. Vasquez’s allegations that the lighting and stagnant air caused him to suffer adverse effects and that prison officials were made aware and yet did not remedy the conditions, were sufficient to survive screening. The Seventh Circuit vacated the district court’s dismissal and remanded the claims for further proceedings. In all other respects, the decision of the district court was affirmed.

*Discussion*

The case deals chiefly with the claim that a correctional facility subjected an inmate to inhumane conditions (constant illumination and poor ventilation of his cell) and that these negative conditions caused the prisoner numerous psychological and medical problems. The alleged systemic violation of Mr. Vasquez’s rights continued for three years, despite his numerous attempts to point out his symptoms and have his conditions of confinement changed.

The decision to overturn the district court’s dismissal hinges on the possible violation of an Eighth Amendment right for an incarcerated psychiatric patient. The move by the Seventh Circuit to protect Mr. Vasquez from cruel and unusual punishment indicates that the court gave credence to the possibility that environmental factors such as lighting and air quality play a role in physiologic and mental well-being and also that mental patients require protection from conditions set by the facility that may directly influence the severity and course of their illnesses. Whether the lighting or air quality truly exacerbated Mr. Vasquez’s symptoms was not the central issue of the appellate opinion. Instead, the Seventh Circuit focused on the right of an inmate to state a reasonable claim that his rights had been violated via deliberate indifference of prison officials to conditions that may have exacerbated an underlying mental illness. This alleged indifference could constitute a legitimate 42 U.S.C. § 1983 (2003) claim.

The Seventh Circuit cited its own ruling in *Scarver* as supporting the idea that continuous lighting and other harsh confinement conditions could worsen an inmate’s mental illness. But the Seventh Circuit was only using *Scarver* to point out the plausibility of such a claim, since their ruling in *Scarver* was that the prison conditions did not constitute cruel and unusual punishment and that the behavior of the prison

officials did not meet the deliberate indifference standard.

*Vasquez* signifies federal appellate court recognition of the potentially deleterious effects of severe confinement conditions on underlying medical and psychiatric conditions. The Seventh Circuit makes it clear that such claims (even those that appear “fantastical”) will not henceforth be dismissed *per se*. Psychiatrists (and other physicians) working in correctional facilities should be aware that medical claims based on indifference to prison confinement conditions can form the basis of a constitutional rights violation.

## Constitutional Challenge to Grave Disability

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### Supreme Court of Alaska Examines the Constitutionality of Gravely Disabled Criteria for Involuntary Civil Commitment

In the case of *Wetherhorn v. Alaska Psychiatric Institute*, 156 P.3d 371 (Alaska 2007), the Supreme Court of Alaska considered whether the gravely disabled criteria utilized in involuntary hospitalization in Alaska is constitutional. The defendant, Roslyn Wetherhorn, appealed the orders approving her civil commitment for 30 days under Alaska Stat. § 47.30.915(7)(B) (2007), which governs part of the criteria for involuntary hospitalization of a gravely disabled individual. On appeal, the Court held that the commitment statute involving grave disability was constitutional so long as it indicated a level of incapacity so substantial that the respondent was incapable of surviving safely in freedom.

*Facts of the Case*

On April 4, 2005, Dr. M. Lee of Valley Hospital submitted an application for the formal psychiatric evaluation of Roslyn Wetherhorn. Dr. Lee’s application stated that Ms. Wetherhorn was mentally ill and