

Sufficiency of Students' Claims of Sex Discrimination and Due Process Violations against University

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Ninth Circuit Affirms Dismissal of Male Students' Claims of Sex Discrimination and Due Process Violations Against University

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In *Austin v. University of Oregon*, 925 F.3d 1133 (9th Cir. 2019), the Ninth Circuit Court of Appeals considered the sufficiency of three male student-athletes' claims of sex discrimination and due process violation against the University of Oregon and its administrators. Following the publication of a police report of a female student's allegation of sexual assault against the male student-athletes, the university proceeded with formal disciplinary processes that ultimately resulted in the university declining to renew the male student-athletes' scholarships and suspending the student-athletes. The Ninth Circuit affirmed the U.S. District Court for the District of Oregon's dismissal of the students' sex discrimination claim. In affirming the district court's dismissal of the due process claims, the Ninth Circuit assumed without deciding that the student-athletes had a liberty interest but held that the university did not violate the student-athletes' due process rights because the disciplinary proceedings provided the students with notice and a meaningful opportunity to be heard.

Facts of the Case

Brandon Austin, Dominic Artis, and Damyeon Dotson were basketball players on scholarship at the University of Oregon. In March 2014, a female student accused them of forcing her to engage in non-consensual sex at an off-campus apartment. She re-

ported the alleged assault to the Eugene Police Department in Lane County. The district attorney did not prosecute the student-athletes, and subsequently the university proceeded with a formal disciplinary process.

The University of Oregon Student Conduct Code at the time of the incident contained several definitions that were important in this case. "Sexual misconduct" included penetration without explicit consent. The code defined "explicit consent" as "voluntary, non-coerced, and clear communication indicating a willingness to engage in a particular act," including "an affirmative verbal response or voluntary acts unmistakable in their meaning" (*Austin*, p 1135, citing Or. Admin. R. 571-021-0105(30), 571-021-0120(3)(h) (2006) (Repealed by UO 1-2014, f. 6-26-14, cert. ef. 6-30-14)).

Under the university's disciplinary process, the student-athletes had the option to choose between two types of disciplinary hearings: a panel hearing or an administrative conference. The students selected the administrative conference, which included: notice of the character of the accusations against each student-athlete; a summary description of the types of processes available; the range of possible penalties; access to the case file; the opportunity to review and respond to the investigative report, including witness interviews; representation by an advisor, including counsel; and a neutral administrator as a hearing officer.

The university's Director of Student Conduct and Community Standards oversaw the hearing and found the student-athletes responsible for sexual misconduct as defined by the Student Conduct Code. This finding resulted in a four- to ten-year suspension and a decision not to renew their scholarships.

In response to the university's finding that the student-athletes were responsible for sexual misconduct, the three student-athletes brought gender discrimination and due process violation complaints against the University of Oregon and various university administrators. The district court dismissed the plaintiffs' claims, and the student-athletes appealed to the Ninth Circuit Court of Appeals.

Ruling and Reasoning

The Ninth Circuit affirmed the district court's dismissal of the student-athletes' Title IX claim because it failed to make any claims of discrimination

based on sex. The circuit court also held that the complaint failed to show lack of due process in the University's disciplinary proceedings.

Title IX provides that "no person in the United States shall, based on sex, be excluded from participation in, be denied benefits of, or subjected to discrimination under any education program or activity receiving federal financial assistance" (20 U.S.C. § 1681(a)(2009)). In its reasoning, the Ninth Circuit noted that, under Rule 8(a) of the Federal Rules of Civil Procedure, a plaintiff need only provide "enough facts to state a claim to relief that is plausible on its face" (*Austin*, p 1137, quoting *Bell Atl. Corp v. Twombly*, 550 U.S. 544 (2007), p 570). The Ninth Circuit held that the student-athletes failed to meet the "more than a sheer possibility" pleading standard for a Title IX claim because they failed to show sufficient nonconclusory allegations that plausibly linked the disciplinary action to gender discrimination (*Austin*, pp 1137–8, quoting *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), p 678). The Ninth Circuit cautioned that its opinion should in no way be interpreted as requiring a heightened pleading standard for Title IX claims.

The student-athletes presented three theories under Title IX: selective enforcement, erroneous outcome, and deliberate indifference. A selective enforcement claim asserts that, regardless of the student's guilt or innocence, the severity of the penalty or decision to initiate the proceedings was affected by the student's gender. The Ninth Circuit found that the student-athletes failed to provide evidence that the university's decision to discipline was based on gender bias.

Regarding the erroneous outcome claim, the Ninth Circuit found that the University of Oregon's disciplinary proceedings apply to all students and found no difference in procedure based on gender. The Ninth Circuit noted that female university students had not been accused of comparable misconduct. Although the student-athletes' complaint included an incident about a complaint accusing a female student of threatening another student with a knife, the Ninth Circuit agreed with the district court that this incident did not constitute sexual misconduct and the court's reasoning that "simply because enforcement is asymmetrical does not mean that it is selectively so" (*Austin*, p 1138, n 6).

Finally, the Ninth Circuit held that the student-athletes' claim of deliberate indifference was waived

because they did not explicitly or distinctly argue this point in the opening brief.

The Ninth Circuit held that the student-athletes' due process claims failed because they received constitutional due process through the university's disciplinary proceedings. While acknowledging that "some form of hearing is required before an individual is deprived of a property interest," (*Austin*, p 1139, quoting *Mathews v. Eldridge*, 424 U.S. 319 (1976), p 333), the Ninth Circuit explained that a hearing need not include every procedure possible, nor is one entitled to a hearing of one's own design. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner" (*Austin*, p 1139, quoting *Mathews v. Eldridge*, p 333). The Ninth Circuit, therefore, concluded that the plaintiffs' due process rights were not denied.

Discussion

This case highlights critical aspects for a university to consider in the disciplinary process, specifically when criminal proceedings are not pursued. It is essential that the university administration protect the students' constitutional rights throughout the disciplinary procedure while fostering a learning environment that is uninterrupted by misconduct.

The focus of the university is academic but may need to incorporate collegiate life both on and off campus. Many university students live on campus in general dormitories or sorority and fraternity housing, but a large percentage of students move off-campus after their freshman year. College students should be provided with information about their legal options if they are victims of sexual assault in either environment.

This case demonstrates several potential challenges for psychiatrists and other mental health professionals who work in the college setting. First, universities should have policies and procedures for campus psychiatrists and providers to report dangerous acts to university administration. Second, it is important to consider the utilization of substances (e.g., alcohol, marijuana) in sexual misconduct cases and the role that psychiatrists and other mental health clinicians have in screening for and identifying substance use disorders in college students. Third, when working in the university, community, or forensic setting, psychiatrists will likely encounter victims and perpetrators of sexual misconduct. It is

essential that psychiatrists and mental health clinicians recognize the potential criminal, civil, and administrative questions involved in the assessment of alleged sexual abuse between students.

Brain Maturity and Sentence Severity

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Claimed Developmental Immaturity Not Considered Grounds for Postconviction Relief

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In *Crow v. State*, 923 N.W.2d 2 (Minn. 2019), the Supreme Court of Minnesota addressed whether a postconviction court abused its discretion when it summarily denied a petition for relief by a man who was convicted of murder and sentenced to life in prison. The arguments in the petition referenced the petitioner's mental state during and after the trial. The postconviction court had dismissed these claims without an evidentiary hearing.

Facts of the Case

In 2006, Keith Crow, then 22 years old, assisted a 16-year-old male in knocking a man unconscious, stabbing him to death, and dropping his body in a river. He was convicted of two charges: aiding and abetting first-degree felony murder while committing a kidnapping, and aiding and abetting second-degree intentional murder. He was sentenced to life in prison without the possibility of parole. The minor received the same sentence.

Mr. Crow appealed his conviction immediately after trial, citing a number of procedural problems. This appeal was summarily denied. From 2008 to 2013, Mr. Crow filed three petitions for postconviction relief, making a variety of claims about the trial proceedings and the facts of the case. All of these were denied without a hearing as well, mainly for procedural reasons.

In the case of *Miller v. Alabama*, 567 U.S. 460 (2012), the Supreme Court of the United States ruled that mandatory sentencing of juvenile offenders to life imprisonment without the possibility of parole is unconstitutional, as it violates the Eighth Amendment's prohibition of cruel and unusual punishment. In *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016), the Supreme Court held that *Miller* applies retroactively. The Minnesota Supreme Court made a concordant ruling in *Jackson v. State*, 883 N.W.2d 272 (Minn. 2016), and the sentence for Mr. Crow's juvenile accomplice was reduced to life with the possibility of parole.

Mr. Crow again appealed for relief in 2017, his fourth appeal. Among his arguments was the claim that his young age and immaturity at the time of the crime should have merited the same sentencing relief as his younger accomplice. He also asserted that his mental health condition at the time of his conviction and appeals should have excused his failure to adhere to required timelines. As with his other appeals, this one was denied without an evidentiary hearing.

Mr. Crow appealed to the Minnesota Supreme Court, claiming that the postconviction court abused its discretion in dismissing the 2017 petition without a hearing.

Ruling and Reasoning

The Supreme Court of Minnesota ruled against Mr. Crow and affirmed that the lower court did not abuse its discretion in denying his appeals. The court noted that an evidentiary hearing is ordinarily required, unless the petition is procedurally barred or when the arguments do not have factual support (or, as they phrased it, when they are presented in an "argumentative or conclusory manner").

The court addressed Mr. Crow's six arguments in turn and explained why each was procedurally barred or presented in a "conclusory" manner. The three topics that relate specifically to Mr. Crow's mental state and his assertions of mental illness are discussed below.

First was Mr. Crow's assertion that his sentence should be reduced to match that of his then-jvenile accomplice. The court flatly stated that he was an adult at the time of the crime, and therefore the holdings in *Miller*, *Montgomery*, and *Jackson* were not applicable.

His second argument involved his maturity at the time of the offense. He referred to scientific research