Standard for Deliberate Indifference to Inmate Safety and Medical Needs

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Prison Employees Are Protected by Qualified Immunity When Making Minimal but Good-Faith Efforts to Protect Inmate Safety and Medical Needs

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Key words: deliberate indifference; qualified immunity; inmate safety; failure to protect; civil rights

In *King v. Riley*, 76 F.4th 259 (4th Cir. 2023), three deliberate indifference claims were raised following the murders of four inmates by two fellow prisoners. The Fourth Circuit Court of Appeals ruled there was no constitutional right for properly conducted security checks, nor were prison officials required to deliver medical services in an emergency if they attempted to obtain services. The court determined prison officials were entitled to qualified immunity.

Facts of the Case

John King was an inmate housed on the Immediate Care Services Unit (ICSU), a mental health ward of the Kirkland Correctional Facility in South Carolina. The unit held inmates with significant mental health difficulties that did not rise to the level of inpatient hospitalization. Inmates were employed as janitors, known as ward keepers. Ward keepers were recommended by mental health counselors and granted special privileges such as unit access and allowing peers in their cells.

In April 2017, two head ward keepers, Jacob Philip and Denver Simmons, lured Mr. King into Mr. Simmons's cell, strangled him, placed his body beneath the bed, and murdered three other inmates over the course of two and a half hours. On duty was Sergeant DeWaun McKan, who was required to conduct 30-minute security checks. He completed security checks but did not look inside the cells, despite training to do so. Thus, the murders went uninterrupted and undiscovered. Afterward, Mr. Philip and Mr. Simmons approached an administration building and suggested officers look in Mr. Simmons's cell. Sergeant McKan and Officer Damien Jones discovered the four bodies. Medical aid was requested but not personally administered.

Mr. King's estate sued Sergeant McKan and Officer Jones, their supervisors, and the warden and associate wardens at Kirkland, alleging correctional staff showed deliberate indifference to Mr. King's safety and need for medical intervention, violating his Eighth Amendment rights. Three deliberate indifference claims were raised. First, Sergeant McKan was deliberately indifferent to Mr. King's safety by failing to complete proper security checks. Second, Officer Jones and Sergeant McKan showed deliberate indifference to Mr. King's medical needs by requesting medical personnel but not personally administering care. Third, their immediate and extended supervisors were deliberately indifferent to Mr. King's safety under a theory of supervisory liability. The magistrate judge held the defendants were not deliberately indifferent and had qualified immunity on the three claims. Mr. King's estate appealed, and the matter was brought before the Fourth Circuit Court of Appeals.

Ruling and Reasoning

Unless an official knowingly violated the Eighth Amendment, the official would be entitled to a two-pronged qualified immunity analysis when a deliberate indifference claim is raised. The two prongs are objective and subjective as articulated in *Farmer v. Brennan*, 511 U.S. 825 (1994). A significant risk of harm must be demonstrated to satisfy the objective prong. The subjective prong is concerned with whether prison officials were aware of the substantial risk and understood their response was insufficient. Thus, even if a prison official knew of the risk of harm, if the response was reasonable, the official cannot be held liable.

Regarding the first claim of deliberate indifference concerning failure to protect, Mr. King's estate asserted Sergeant McKan's conduct was constitutionally deficient because, despite allegedly knowing about the risk of inter-inmate violence, he did not visually inspect cells during rounds. The court noted that government

workers who are sued as individuals are protected by qualified immunity. To surmount qualified immunity, a complainant must show a statutory or constitutional right was violated and that right was indisputable during the alleged incident. The Fourth Circuit determined there was no constitutional right dictating that Sergeant McKan look inside cells to reduce the risk of violence. Further, while Sergeant McKan was trained to look inside cells during security rounds, there was no institutional policy requiring this practice. Regardless, qualified immunity is concerned with the violations of "clearly established constitutional law" (*King*, p 268) not prison policy. Thus, Sergeant McKan was protected by qualified immunity.

Regarding the second claim related to medical needs, Mr. King's estate referenced four cases from other jurisdictions where prison officials were found deliberately indifferent for failing to provide first aid to unconscious or dead prisoners. They proposed these cases constituted a consensus that failure to provide medical aid was unconstitutional. The Fourth Circuit disagreed. Regarding the cases referenced, the court stated two of the cases were concerned with total failure to act, which is distinguishable from Mr. King's estate's claims. While the other two cases were similar to Mr. King's, the court stated two cases from other jurisdictions did not constitute consensus. The court ruled Sergeant McKan and Officer Jones put forth good-faith efforts to obtain medical assistance, thus negating deliberate indifference. Again, the officers did not violate a clearly established right and were thus entitled to qualified immunity.

Regarding the third claim connected to supervisory liability, Mr. King's estate alleged the officer's immediate supervisor, warden, and associate wardens all showed deliberate indifference within their supervisory roles. In *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Supreme Court ruled government officials are only liable for their own misconduct, not for the unconstitutional conduct of their subordinates. Because the complaint did not contain specific allegations of each individual supervisor's conduct, this claim was rejected. On all three deliberate indifference claims, the Fourth Circuit affirmed the summary judgment rulings.

Dissent

Regarding the failure-to-protect claim, the dissenting judge asserted Sergeant McKan knowingly failed to protect prisoners from inter-inmate violence and should not be entitled to qualified immunity. He said prison officials knew the nature of serious psychological problems experienced by inmates on the ICSU and that intensive monitoring was required by prison policy. Based on the nature of the unit and the prior violent offenses committed by the ward keepers involved, the dissent argued sufficient evidence existed to establish officials were aware of the risk of harm because of its obvious nature. Because Sergeant McKan admitted to knowingly conducting improper security checks, the dissent argued he was at minimum subjectively aware his actions were inadequate considering the risk. The majority was further criticized for not providing additional guidance regarding what would constitute an Eighth Amendment violation upon a prison official's dereliction of duty and for presenting officials with a future liability avoidance blueprint.

Discussion

The current case repeatedly refers to *Farmer v. Brennan*. In *Farmer*, the Supreme Court said that for a violation of an inmate's Eighth Amendment rights to have occurred, prison officials must be deliberately indifferent to the conditions of incarceration, which pose a substantial risk of serious harm. Second, there must be evidence of a prison official's knowledge of the risk, which the Court indicated need not require that the prison employee believed harm would come to an inmate based on their action or inaction. Rather, it is enough for prison officials to have knowledge of the risk of serious harm and disregard that risk to be held accountable for their action or inaction. In *King*, the Fourth Circuit concluded that no claims met the standard for deliberate indifference, because of the failure to establish a constitutional right violation. Thus, Sergeant McKan and Officer Jones were protected by qualified immunity. This doctrine can afford government officials performing discretionary duties immunity from individual lawsuits when damage occurs.

In correctional settings, regardless of one's specific discipline, employees are correctional officers first and are thus responsible for maintaining the safety and security of the institution (Federal Mediation and Conciliation Services, In the Matter of the Arbitration between American Federation of Government Employees, Council of Prisons Locals Union and U.S. Department of Justice Federal Bureau of Prisons Employer, Opinion and Award, 2017). While conducting security checks may not typically fall under the purview of all

correctional employees, the matter of deliberate indifference to medical needs is worth consideration. It is necessary for all correctional employees to consider the unique, environment-specific needs of a correctional setting, while maintaining awareness of their discipline-specific ethics. Individuals working within specific disciplines, such as medical personnel, psychologists, and social workers, may be called upon to provide some degree of medical care in a situation like the current case. For physicians, this is consistent with the American Medical Association (AMA) Code of Medical Ethics, which indicates that physicians can largely choose their patients and place of care except in emergencies. (American Medical Association. AMA principles of medical ethics. Opinion 1.1.2. 2016). It is important for all correctional employees, though, to consider personal safety as well as the safety and security of the facility. The findings in *King* indicate, at least within the Fourth Circuit's jurisdiction, that employees who make a good-faith effort to obtain medical assistance in an emergency will be protected by qualified immunity even if medical care is not personally delivered.

Dismissal of Involuntary Treatment Petitions following the Violation of a Commitment Statute

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Involuntary Treatment Orders Should Be Dismissed If the Requirements of a Commitment Statute Are Violated and Totally Disregarded

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In *In re Det. of A.C.*, 533 P.3d 81 (Wash. 2023), the Supreme Court of Washington ruled a petition for involuntary commitment should be dismissed when the requirements of the state's involuntary treatment act are disregarded. Moreover, it was asserted in circumstances where a patient's rights under the act were "plainly violated," appropriate remedies should be implemented.

Facts of the Case

In 1973, Washington State passed the Involuntary Treatment Act (ITA), providing a statutory framework for crisis responders to investigate, evaluate, detain, and commit individuals experiencing acute psychiatric symptoms. Individuals can be involuntarily treated without judicial oversight if their symptoms present a serious risk of harm or grave disability. Following this brief emergency detention, if the risk persists, a petition for involuntary treatment must be filed and the court must conduct a hearing to rule on an additional 14-day commitment. If stabilization is not attained, the court may order a consecutive 180-day commitment.

The present case involves three patients, identified as NG, CM, and AC. NG and CM were involuntarily hospitalized at Western State Hospital (WSH) under 180-day commitment orders. Although NG's commitment order expired because of a technological oversight, WSH held NG for over one month after the expiration. Similarly, CM was detained more than one month past the commitment's expiration. Although staff prepared an additional 180-day petition for CM's commitment, they failed to file because of a technical problem. When staff became aware of NG's and CM's expired orders, they reinitiated the ITA procedures; both patients were subsequently placed in emergency custody following evaluations. Shortly after, WSH filed new 14-day petitions to continue detaining NG and CM.

Both NG and CM moved to dismiss the petitions claiming the ITA's requirements were disregarded and violated. For NG, the state successfully argued the legislature would have not intended dismissal of her case, given how "gravely disabled" she was, and the case was not dismissed. NG appealed this denial and the order granting the ITA petition. In CM's case, a county commissioner granted the motion to dismiss after the state unpersuasively argued the legislature did not intend dismissal of the petition.

AC was placed under a 14-day commitment at Telecare North Sound Evaluation and Treatment Center. During this hospitalization, AC invoked her right to not be medicated 24 hours before her

upcoming court hearing; however, she was involuntarily medicated within that time frame. The judge continued the hearing for 24 hours after learning AC had been involuntarily medicated, extending the commitment. AC moved to have the ITA petition dismissed claiming her rights under the ITA were violated by continuing her commitment, but this was denied as the court concluded the state's interest in reaching the merits of the petition outweighed any violations of the ITA. Division One of the Court of Appeals affirmed the decision on appeal.

NG's and CM's cases were consolidated and heard by Division Two. The state argued that dismissal of new petitions in response to the commitment orders' expiring was not an appropriate remedy. Division Two held that dismissal of a new 14-day petition for involuntary treatment is acceptable when a committed person is improperly detained beyond the expiration of an involuntary commitment order and the ITA's requirements have been totally disregarded. Together, AC, MG, and CM sought review, which was granted by the Supreme Court of Washington.

Ruling and Reasoning

The Supreme Court of Washington ruled that if the requirements of the ITA are totally disregarded, the petition must be dismissed. But not every violation necessitates a dismissal. The court reviewed all three cases to determine if there was a total disregard for the statutory requirements and if the trial courts properly applied the law. The decision relied heavily on the holding from *In re Det. of Swanson*, 804 P.2d 1 (Wash. 1990), another case that addressed the ITA statutory requirements. The court in *Swanson* said that the goals of "continuity of care and protecting the public are decidedly not met if dismissal of properly filed and properly supported petitions turns on [things other] than on the court's determination of whether or not legal grounds for commitment exist" (*Swanson*, p 5).

The court must decide if there are legal grounds for a commitment based on legislative intent, including protecting both the patient and public, prevention of inappropriate and indefinite commitments, implementing prompt evaluation and treatment for those with behavioral health disorders, safeguarding patient rights, and ensuring care continuity for those with behavioral health disorders.

The court considered how neither "totally" nor "disregarded" are defined in the ITA. Considering common definitions of these words, it was concluded the ITA is totally disregarded when a person is involuntarily detained without legal authority set forth by the act. As the ITA noted, a person must be released once the order authorizing their detention expires, and NG and CM should have been released before new proceedings were initiated, afforded an attorney, and brought before a judge to reinstitute the commitment. Initiation of new proceedings while a person is still involuntarily detained under an expired court order is not permitted by the ITA and is not a remedy for disregard of the ITA requirements. Moreover, it would have been appropriate for NG and CM to be released into the community prior to a new evaluation. The court ruled that NG's and CM's rights were totally disregarded, and the new petitions should have been dismissed.

In the case of AC, the court determined her rights under the ITA were plainly violated but not totally disregarded. It was noted the trial court acted quickly to address the violation and detainment was under authority of the law. Focusing on the merits of the petition, the trial court did not abuse its discretion in denying her motion to dismiss.

Dissent

The dissent suggested that interpreting total disregard needs to be considered with the totality of circumstances constituting the alleged violation. According to the dissent, in all three of the petitioners' cases, the requirements of the ITA were not totally disregarded, and dismissal was not an appropriate remedy.

Discussion

In re AC provides guidance on what it means to totally disregard the requirements of Washington's ITA and, if the ITA is violated, what constitutes appropriate remedies. These matters were previously raised in *In re Det. of C.W.*, 53 P.3d 979 (Wash. 2002) and *Swanson*. Given a lack of definition of total disregard in the ITA, the court relied on use of common definitions as provided in the Merriam-Webster dictionary. The court acknowledged the legal interpretation of these words can vary by the context.

In re Det. of AC brings to light the intricacies of semantics within the law and how varying interpretations can depend on select words. This matter becomes more complex when interpretations may differ in legal and clinical settings. For instance, clerical oversights or errors led to the ITA's being

"totally disregarded" and a dismissal of a commitment petition. But, in a clinical context, providers must consider the implications of failing to provide mental health services for patients who are psychiatrically unstable. Providers are obligated, by their professional associations and licensing boards, to deliver ethical, empirically based care. For instance, the ethical guidelines of the American Psychological Association states that providers must avoid interruption of psychological services whenever possible (American Psychological Association. Ethical principles of psychologists and code of conduct. 2017). Similarly, The American Psychiatric Association's Principles of Medical Ethics (2013) highlights the importance of responsibility for patient care overlaid with community and public health. Although there were technical violations of the ITA, once known, it would have been unethical for providers to totally disregard their professional obligations and recommend patients who demonstrated a "serious risk of mortality" and "violent and assaultive" behavior be released, as was the case for NG and CM

In re Det. of AC highlights how interpretation of the law may be at odds with clinical practice, but also how legal remedies that fail to consider a patient's circumstances may be clinically contraindicated. It is prudent for clinicians to be aware of the requirements in law. When there are competing interests, clinicians may be able to clearly explain, based on a clinical justification, the rationale for continued detention. To ameliorate the inconsistencies between the legal and clinical professions, it is useful to engage in interdisciplinary consultation to improve how the law is applied to clinical matters and understanding of operational definitions within statutes and interpretive case law.