Anderson v. Romero

72 F.3d 518 (1995)

Country: United States
Region: Americas
Year: 1995
Court: 7th Circuit Court of Appeal
Health Topics: Health information, HIV/AIDS, Infectious diseases, Prisons, Sexual and reproductive health
Human Rights: Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Right to privacy

Facts

The Appellee, Anderson, brought this challenge against two prison officials at the cell house in which he was placed. Anderson alleged that a superintendent and a guard violated his constitutional right to privacy and the Illinois AIDS Confidentiality Act by revealing that he was infected with the AIDS virus to an inmate sleeping in Andersonâ€™s cell and to the inmate barber. He also alleged that they had deprived him of the equal protection of the laws and of liberty without due process by preventing him from having his hair cut and denying him yard privileges for several months. Anderson further alleged that all these acts, which took place in 1992, constituted cruel and unusual punishment. In support of his contentions, Anderson mentioned homophobic slurs the guard had made toward him.

The Defendant prison officials motioned to dismiss the complaint on grounds of qualified immunity of public officers from suits for damages. The District Court declined, holding that the prison officials were not entitled to the qualified immunity of public officers because there were â€œnot enough facts in the record to determine whether the defence of immunity was valid.â€• Anderson died of AIDS while the appeal was still pending, the suit was determined to have survived him and was carried on by his estate. This review of the denial of immunity followed.

Decision and Reasoning

The court held that the prison officials were protected by qualified immunity with respect to disclosure of Andersonâ€™s HIV status. It held that a constitutional right to privacy, other than that deriving from the Fourth Amendment, had been recognized by the circuit in 1992 (at the time of the alleged acts), but its boundaries were still ill-defined and did not clearly extend to this particular case. The court held that Andersonâ€™s claim that his constitutional rights were violated by the disclosure of his HIV status to other inmates was therefore barred by the doctrine of official immunity. In holding so, the court applied the objective test for immunity: immunity applied if the action was â€œjustifiable if considered without regard to the actor's motive.â€•

The court held that the disclosures of Andersonâ€™s HIV status were objectively justifiable if considered without regard to the officialsâ€™ motives. In deciding the issue, the court considered whether there was a clearly established right of prisoners to the confidentiality of their medical records at the time the acts took place in 1992. The court, noting that prisoners did â€œnot have all the rights of free persons,â€• found no earlier holding indicating that prisoners had such a right. It ultimately decided that, in 1992, it was not unconstitutional to reveal the condition of HIV positive inmates â€œto other inmates and to guards in order to enable those other inmates and guards to protect themselves from infection.â€•

The court held that the Constitution did not require â€œuniversal precautionsâ€• to be taken, leaving segregation an ad hoc warnings as the methods of limiting the spread of AIDS in prison. Segregation was held to be constitutional in Harris v. Thigpen, 941 F.2d 1495 (11th Cir.1991), which involved a challenge to compulsory HIV testing and segregation of seropositive inmates, although non-binding district court opinions and unpublished opinions suggested it was unconstitutional, especially as segregation identified HIV status much more openly. And ad hoc warnings had not been found clearly unconstitutional in a published opinion by 1992. The court also stated that the consequences of identification were less in prison and that any reasonable belief that a greater risk of violence may result could be mitigated by asking for protection. The court added that the fact that the Illinois AIDS Confidentiality Act forbade the disclosure of HIV test results was not decisive evidence that prisoners had a right to privacy in their HIV status. The court declared that any â€œduty to protect prisoners from lethal encounters with their fellows that is derived from the Eighth

Amendment would take precedence over a state law.â€• It stated that the Eighth Amendment prohibited cruel and unusual punishments but it â€œdid not require the most intelligent, progressive, humane, or efficacious prison administration.â€•

The court stated, however, that certain egregious disclosures of medical information or records would be â€œactionable under the cruel and unusual punishments clause of the Eighth Amendment rather than the due process clauseâ€• of the Fourteenth Amendment. These included the branding or tattooing of HIV-positive inmates and circumstances where prison employees, knowing that an inmate identified as HIV-positive was a likely target of violence, nevertheless gratuitously revealed his HIV status to other inmates and a violent attack ensued.

The court held that the prison officials were not protected by qualified immunity with respect to denying Anderson access to the barber and yard privileges. It held, however, that it did not have jurisdiction to review the denial of immunity with respect to determining this issue, as it involved the resolution of conflicting factual assertions. The court remanded to the District Court because it could not unequivocally establish that Andersonâ€™s HIV status was the sole reason for the Respondents refusing him a haircut and yard privileges.

The court did note, however, that it had long been clear that the Eighth Amendment prohibited the state to punish people for a physical condition and that the equal protection clause prohibited the state to treat one group, including inmates, arbitrarily worse than another. It added that denying a prisoner â€œall opportunity for exercise outside his cell would . . . violate the Eighth Amendment unless the prisoner posed an acute security risk.â€• Thus if the sole reason for the Defendantsâ€™ actions was Andersonâ€™s AIDS status and they were not justified as AIDS fighting measures, immunity would not be extended â€œinsofar as those actions [were] alleged to have been taken purely to punish him.â€• Homophobic slurs directed toward Anderson, while not part of the objective test, could be used as evidence in this regard. The denial of immunity related to the claim of cruel and unusual punishment for the denial of yard privileges was not appealed, so the Court declined to address it.

Decision Excerpts

â€œIf prison officials disseminated humiliating but penologically irrelevant details of a prisoner's medical history, their action might conceivably constitute the infliction of cruel and unusual punishment; the fact that the punishment was purely psychological would not excuse it . . . We can imagine, also, that branding or tattooing HIV-positive inmates (the branding of persons who are HIV-positive was once seriously proposed as a method of retarding the spread of AIDS), or making them wear a sign around their neck that read "I AM AN AIDS CARRIER!," would constitute cruel and unusual punishment. So too if employees of the prison, knowing that an inmate identified as HIV positive was a likely target of violence by other inmates yet indifferent to his fate, gratuitously revealed his HIV status to other inmates and a violent attack upon him ensued.â€• 72 F.3d, p. 523.

â€œ[E]ven if a right of prisoners to the confidentiality of their medical records in general had been clearly established in 1992, it would not follow that a prisoner had a right to conceal his HIV status. There is a great difference, so far as the balance between privacy and public health is concerned, between a communicable and a noncommunicable disease. A person with a noncommunicable disease is a danger only to himself, and the compelled disclosure of his condition to others is unlikely to further a legitimate interest of the state. But a person with a communicable disease is a danger to others â€” a grave danger when as in the case of HIV-AIDS the disease is invariably fatal and has already reached epidemic proportions. The fact that some methods of protecting the public from a communicable disease are barbarous, such as branding, does not entail that all are.â€• 72 F.3d, p. 524.

â€œ[E]ven if the adoption of universal precautions were the best approach for a prison to take [to reconcile the interests of HIV-positive inmates with the interests of potential targets of infection], it would not follow that the Constitution required it, let alone that such a requirement was clearly established in 1992. The Constitution rarely requires â€˜the best.â€™ That would imply the micro-management of American government by the federal courts. The Eighth Amendment forbids cruel and unusual punishments; it does not require the most intelligent, progressive, humane, or efficacious prison administration. â€• 72 F.3d, p. 524.

â€œA barber, especially if he uses a razor, may cut the skin of the person whose hair he is cutting and if he gets the person's blood on a part of his skin where he has a cut or abrasion may become infected. The danger, as we said, is slight, though given the violence endemic to American prisons and the prevalence of HIV and AIDS in those prisons cannot be considered entirely fanciful. It is possible that [the prison official] labored under a profound misconception about how HIV is transmitted (the ice-machine episode suggests that he

did), or that his motivation was vindictive rather than protective, or that it would be far more sensible to tell the barber to wear gloves when cutting any inmate's hair (â€˜universal precautionsâ€™) than to warn him about a specific HIV-positive inmate. But these points are wide of the issue whether a prisoner has a constitutionally protected right to the concealment of his HIV-positive status from prison staff. We doubt that he has such a right; we are sure the right was not clearly established in 1992.â€• 72 F.3d, p. 526.

â€œIf, as the cases we have cited hold â€” we believe correctly, in view of the prevalence of HIV in prisons and the amount of violence and homosexual intercourse in prisons â€” HIV-positive inmates can be segregated from the rest of the prison population, it would seem to follow that they can be identified, since segregation automatically identifies them. Identification might be considered a less restrictive means of protecting the rest of the population than quarantining the infective inmates.â€• 72 F.3d, p. 526.

â€œIt is one thing to warn other prisoners that an inmate is an HIV carrier; it is another to â€˜punishâ€™ him for beir carrier by refusing to allow him to get a haircut or to exercise in the prison yard. Although this is the first appellate case in which these specific modalities of punishing HIV carriers have been alleged, it has long been clear that the Eighth Amendment forbids the state to punish people for a physical condition, as distinct from acts . . . and that the equal protection clause forbids the state to treat one group, including a group of prison inmates, arbitrarily worse than another. If the only reason that the defendants denied haircuts and yard privileges to Anderson was that he was HIV-positive, and there is no conceivable justification for these as AIDS-fighting measures, then the absence of a case involving this specific form of arbitrary treatment would not confer immunity on the defendants.â€• 72 F.3d, p. 526.

â€œTo deny a prisoner all opportunity for exercise outside his cell would, the cases suggest, violate the Eighth Amendment unless the prisoner posed an acute security risk if allowed out of his cell for even a short time . . . Prisoners are entitled to reasonable medical care, and exercise is now regarded in many quarters as an indispensable component of preventive medicine.â€• 72 F.3d, p. 527-28.