



Judge rules Florida prisoner can seek punitive damages after guards threatened him with retaliation

JIM SAUNDERS

APR 13, 2021

Hoever filed the lawsuit in 2013, alleging that correctional officers threatened him with such things as physical harm and solitary confinement for filing grievances.

In a case that has drawn interest from a wide range of civil-liberties groups, a federal appeals court ruled Friday that a state inmate can seek punitive damages in a lawsuit that alleged threats by guards at a Northwest Florida prison violated his First Amendment rights.

The 11th U.S. Circuit Court of Appeals ruled that Conraad Hoever can seek punitive damages after a jury found that officers at Franklin Correctional Institution violated his rights by threatening him with retaliation after he filed grievances.

The full appeals court decided to take up the case after a three-judge panel last year ruled that Hoever was barred from seeking punitive damages. Friday's ruling said the Atlanta-based appeals court has been an outlier in its interpretation of a more than two-decades-old federal law known as the Prison Litigation Reform Act.

While the jury ruled that Hoever's First Amendment rights had been violated, he was awarded only \$1 in "nominal" damages and was blocked from seeking punitive damages. Friday's ruling said the law "does not bar punitive damages in the absence of physical injury," with punitive damages intended to punish defendants for misconduct.

"A jury found that Mr. Hoever's First Amendment rights were violated seven times," said the ruling written by Chief Judge William Pryor and Judge Beverly Martin and joined by eight other judges. "For those seven violations, he received only one dollar in nominal damages. On remand, Mr. Hoever should be given an opportunity to obtain punitive damages too."

Hoever filed the lawsuit in 2013, alleging that correctional officers threatened him with such things as physical harm and solitary confinement for filing grievances. A jury ruled against officers Robert Marks and Caleb Paul, and the three-judge panel of the appeals court upheld that judgment last year.

But in a somewhat-unusual move, the full appeals court decided to take up the punitive-damages issue --- a move known as considering the issue "en banc." A wide range of groups, including the American Civil Liberties Union, the Florida Justice Institute, the Americans for Prosperity Foundation and the Cato Institute joined together in a friend-of-the-court brief backing Hoever.

"A jury found that correctional officers repeatedly threatened to kill Mr. Hoever in retaliation for filing grievances about institutional misconduct and mistreatment, violating his First Amendment

rights,” the brief, filed in December, said. “Applying this circuit’s precedent, the trial court concluded he was barred from receiving punitive damages by the Prison Litigation Reform Act. This wrongful outcome not only deprives Mr. Hoever of just compensation for his injuries but also allows countless abuses of citizens’ constitutional rights to go virtually unchecked.”

Friday’s ruling said the law bars Hoever from seeking compensatory damages for mental or emotional injuries he alleged, but it allows “claims for punitive damages without a physical injury requirement.” Compensatory damages are designed to provide compensation for injuries or losses, as opposed to punishing defendants.

But in a dissenting opinion, Judge Kevin Newsom took issue with the distinction drawn between compensatory damages and punitive damages.

“In particular, the dispositive question, to my eye, is simply whether an inmate-plaintiff’s action concerns ‘mental or emotional injury,’ as opposed to some other kind of injury,” wrote Newsom in a dissent joined fully by Judge Elizabeth Branch and partly by Judge Robert Luck. “To the extent that it does, I would hold --- contra the court --- that (the law) precludes him from recovering either compensatory or punitive damages unless he has made the statutorily required showing of ‘physical injury.’”

A brief filed by Attorney General Ashley Moody’s office said Hoever was convicted in 2010 of lewd and lascivious molestation on a 15-year-old student while he was a math teacher. The state Department of Corrections website indicates the case stemmed from Broward County and that he is now an inmate at Union Correctional Institution.