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Code Enforcement: Attempt to Enter Premises Does Not Form Basis for Section 1983 Cause of Action

***Sweetman v. Borough of Norristown*, No. 13-3540 (3d Cir. Jan. 28, 2014).**

In 2011, Gerhard Sweetman filed an action against the Commonwealth of Pennsylvania, the Borough of Norristown and others asserting that, in 2009 various code enforcement officers came to his apartment, attempting to kick in the door and yelling "terroristic threats" at him. He claimed that the traumatic event later caused him to have a heart attack. He brought a Section 1983 action, claiming violation of his Fourth Amendment rights.

The District Court for the Eastern District of Pennsylvania granted defendants' motions to dismiss and denied Sweetman's motion for reconsideration. He appealed.

HELD: The Third Circuit affirmed: Sweetman did not state a Section 1983 cause of action because none of his rights had actually been violated.

DISCUSSION: Sweetman essentially set forth a series of attempted violations of his rights. He claimed that officers had committed an "attempted apartment invasion and attempted entry." Although officers may have kicked at his door (a fact not alleged in Sweetman's original pleading and unsupported by the evidence), and may have made threatening noises, Section 1983 only operates against "any person" who, under color of state law, deprives another of rights protected by the Constitution." (emphasis added). "It may be that Sweetman thinks that the Norristown officials should be liable because they planned, wanted or conspired to deprive him of his Fourth Amendment rights. If so, §1983 does not provide a remedy."

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Here, because Sweetman did not actually submit to the inspection of his home, he was not deprived of his right to be free of unreasonable searches. Similarly, because there was no unreasonable search, Sweetman could not successfully allege that the municipalities had in place a policy authorizing code enforcement personnel to take unlawful action.

http://www2.ca3.uscourts.gov/opinarch/133540np.pdf (last accessed Feb. 5, 2014).

Due Process: State Not Liable Under "State Created Danger" Doctrine Where Parolee Kills Police Officer After Being Allowed to Remain At Large

***Lipscomb v. Pennsylvania Board of Probation & Parole,* No. 13-1902 (3d Cir. Jan. 30, 2014).**

The estate of a police officer killed by a parolee sued the Pennsylvania Board of Probation & Parole (Board) and a number of officers individually and in their official capacities as agents of the Board for violations of Section 1983.

In October 2011 the Board released a prisoner from state prison after serving the maximum sentence for carrying a firearm without a license, at which point his three-year probationary period commenced. Shortly thereafter, the parolee was arrested and charged with robbing a man at gunpoint. At the hearing for armed robbery, the judge ordered that the parolee be placed on house arrest with electronic monitoring and that he would be re-incarcerated if he violated the terms of his probation by testing positive for drugs. Despite the court order, the defendants never put the parolee on house arrest or electronic monitoring. Within the month, the parolee failed a drug test. Nevertheless, the defendants denied an officer's request for a warrant to arrest the parolee. Three days after the denial, the parolee shot and killed a Philadelphia police officer, Officer Walker.

Walker's estate filed suit under Section 1983, claiming that the defendants violated Walker's substantive due process rights under the Fourteenth Amendment by failing to protect him from harm inflicted by the parolee. The defendants brought a motion to dismiss the claims and the district court granted that motion.

HELD: On appeal, the Third Circuit affirmed the decision of the district court dismissing the plaintiff's Section 1983 claim for failing to assert a constitutional violation.

DISCUSSION: The plaintiff argued on appeal that the defendants created and executed a policy whereby they "designate[d] specific dates/times during which they [would] not seek and/or issue arrest warrants for probation/parole violations." The plaintiff claims that the policy was put into place to "give the appearance that recidivism rates for the probation/parole violations are lower than they would otherwise be." The plaintiff claimed that defendants' failure to arrest the parolee created the circumstances leading to Officer Walker's death under the "state created danger" theory.

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