

FILED
SUPREME COURT
STATE OF WASHINGTON
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Court of Appeals No. 78808-6

IN THE SUPREME COURT OF THE STATE OF WASHINGTON



GEORGE ARTEM & OTHERS SIMILARLY SITUATED

Appellants,

VS

KING COUNTY DEPARTMENT OF ADULT & JUVENILE DETENTION

WILLIAM HAYES, DIRECTOR

Respondent.



PETITION FOR REVIEW



GEORGE ARTEM, PRO SE
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IDENTITY OF THE PETITIONER

The petitioner’s legal name is George Artem, who brings this petition as a representative of a class of others that have been similarly detained in isolated segregation as pre-trial inmates at the King County Correctional Facility at 500 5th Avenue in Seattle, Washington.

It is estimated that over one thousand inmates with mental health disabilities are held in isolated segregation pre-trial every year across the State, of which, several hundred reside at the King County Correctional Facility.

FACTS

On September 6th, 2014, Mr. Artem was arrested on suspicion of attempted kidnapping based on the allegations of a teenage boy who, as it later turned out, was taking care of the girls Mr. Artem displayed concern for while their parents were at a bar nearby.

Mr. Artem observed the parents leaving the girls in the parking lot of Marina Park in Kirkland, Washington and the teenager approach them. Out of concern for their safety, Mr. Artem ran out of the establishment he was in with his friends in order to ensure that the girls were familiar with the teenager and that they were safe.

The boy claimed to police that Mr. Artem grabbed one of the girls, blatant hearsay, inevitably leading to his arrest.

On September 7th, after briefly standing in front of the door to his holding tank in general population at King County Correctional Facility and requesting an attorney, albeit irately, Mr. Artem was transferred to

isolated segregation and not brought in front of a judge until his mental state had decompensated to such a degree that required competency restoration treatment.

When Mr. Artem was brought in front of a judge, competency restoration treatment at Western State Hospital was ordered. Instead of taking Mr. Artem to Western State Hospital, the respondent kept Mr. Artem in isolated segregation at the King County Correctional Facility and subjected Mr. Artem to continued risk of serious harm, by inadequate accommodation amounting to violating his 8th and 14th amendment rights.

Mr. Artem refused medications once his due process rights had been denied when he was placed in isolated segregation, had a manic episode while in isolation and could not assist in his own defense.

Inmates in isolation at the King County Correctional Facility at 500 5th Avenue in Seattle, Washington are routinely denied access to commissary and family visitation. In some cases, as with what happened to Mr. Artem, isolated segregation gets in the way of basic due process proceedings like arraignment.

Mr. Artem was denied arraignment in the first week of his incarceration at the King County Correctional Facility. Mr. Artem was never arraigned for the charge of attempted kidnapping and pled guilty to assault in the 4th degree several months later in December, while under the heavy influence of anti-psychotic medication that prevented Mr. Artem from assisting in his own defense.

The amount of damages requested in the complaint was representative of the damages being requested for the class of pre-trial detainees in isolated segregation with mental health disabilities, and, as is made clear in the appellants Amended Motion for Summary Judgement, is requested to be endowed upon a mental health foundation, less more modest personal damages to Mr. Artem.

DISCUSSION OF FACTS

In general, the facts of this case are not disputed, the characterizations of the facts and questions of law that arise from the facts are. King County admits that Mr. Artem was held in isolated segregation and denied due process rights as a pretrial detainee but does not admit any wrongdoing. King County does not dispute that Mr. Artem was not arraigned until mid-December, even though his arrest occurred in early September.

Although the official set of events that led to Mr. Artem's initial arrest were based entirely on hearsay, they are accepted by the court as fact; yet, Mr. Artem's own statements of fact, are not taken at face value even though they are made under penalty of perjury.

It is materially impossible to throw a mattress out of a cell in isolated segregation.

King County is the sole arbiter of any attainable evidence from the King County Correctional Facility. Discovery was never ordered.

COURT OF APPEALS DECISION

The Washington State Court of Appeals Division I affirmed Judge Marianne Spearman's decision to grant summary judgement to the respondent.

ASSIGNMENT OF ERRORS

The court relied on hearsay to determine that Mr. Artem 'grabbed' the girl he expressed concern for.

The court did not appropriately consider the appeal of summary judgement 'de novo'. The appellate court ignored the appellants Amended Motion for Summary Judgement.

The court ignored Mr. Artem's request to certify the cause as a class action.

The court ignored the material questions of law surrounding the pre-trial solitary confinement of the mentally ill, instead choosing to focus on the procedural details of the case.

ISSUES PRESENTED FOR REVIEW

De novo review requires the court to consider all motions and evidence brought before the trial court. The courts did not consider Mr. Artem's Amended Motion for Summary Judgement.

King County Adult & Juvenile Detention violated the 8th and 14th amendments of the Constitution of the United States by imposing cruel and unusual punishment and denying Mr. Artem's due process rights and the rights of others while in isolated segregation.

King County Adult & Juvenile Detention violated the Americans with Disabilities Act by denying Mr. Artem and others access to commissary and family visitation.

ARGUMENT

The court should review and assess the ramifications of the appellants amended motion for summary judgement.

The appellants amended motion for summary judgement was submitted seven days prior to the cross-motion hearing on summary judgement. King County was late in providing an answer to the complaint and the balance of the procedural deficiencies of both parties is even.

Instead of focusing on the procedural elements of the case, the court should review the paramount questions of law presented by the appellant.

The appellant contends that King County Adult & Juvenile Detention violated the 8th and 14th amendments of the Constitution of the United States by imposing cruel and unusual punishment and denying Mr. Artem's due process rights and the rights of others while in isolated segregation; and that King County Adult & Juvenile Detention violated the Americans with Disabilities Act by denying Mr. Artem and others access to commissary and family visitation while in isolated segregation.

CONCLUSION

Based on the balance of the preceding facts and argument, the Supreme Court of the State of Washington should accept this Petition for Review and remand the cause to the trial court for a new trial.

STATEMENT OF AUTHORITIES

FEDERAL CASES

CASSIE CORDELL TRUEBLOOD et al., v. WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES (Peschman, 2014): C14-1178 MJP

TROY ANDERSON v. STATE OF COLORADO, DEPARTMENT OF CORRECTIONS, SUSAN JONES (Jackson, 2012): 1:10-cv-01005-RBJ-KMT

FRED GRAVES, ISAAC POPOCA, et al., v. JOSEPH ARPAIO, SHERIFF OF MARICOPA COUNTY; MARICOPA COUNTY SUPERVISORS, et al. (Wake, 2014): CV-77-00479-PHX-NVW

OVIATT BY AND THROUGH WAUGH v. PEARCE, SHERIFF OF MULTNOMAH COUNTY; 90-35146, 90-35314 954 F. 2d 1470 (9th CIRCUIT 1992)

SAUCIER v. KATZ et al.; 99-1977 (UNITED STATES SUPREME COURT 2001)

DARNELL v. PINEIRO; 849 F. 3d 17 (2nd CIRCUIT 2017)

KINGSLEY v. HENDRICKSON et al.; 135 S. Ct. 1039 (UNITED STATE SUPREME COURT 2015)

BELL v. WOLFISH; 441 US 520 (UNITED STATES SUPREME COURT 1979)

RULES, STATUTES AND OTHER AUTHORITIES

WASHINGTON STATE RULES OF PROCEDURE

State of Washington CR 59(a) on Reconsideration and New Trial

State of Washington Rule 4.2 of RAP – Law Unconstitutional, Public Issues, Action against a State Officer

King County Local Civil Rule 5 – Service by Mail

King County Local Civil Rule 56 – Summary Judgement

Civil Rules 4, 5 of Washington Courts of Limited Jurisdiction

WASHINGTON ADMINISTRATIVE CODES

WAC 388-877A-0200 Crisis Mental Health Services

WAC 388-877-0600 Individual Rights

WAC 388-877(a)(b)(c) Competency Restoration

REVISED CODES OF WASHINGTON

RCW 10.77.068 Competency Restoration

THE UNITED STATES CONSTITUTION

Article 6 of the Bill of Rights – In all criminal prosecutions, the accused shall enjoy the right to a speedy trial, by an impartial jury of the State. To be informed the nature and cause of the accusation; to be confronted with the witnesses against him and to have compulsory process for obtaining witnesses in his favor.

Article 8 of the Bill of Rights – Excessive Bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.

Article 14 of the Bill of Rights, Section 1 – nor shall any State deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

TITLE IV ARRAIGNMENT AND PREPARTATION FOR TRIAL

United States Federal Criminal Rule 5 – Initial Appearance

Preliminary Hearing 5.1.c – the judge must hold hearing within a reasonable time, but no later than 14 days after initial appearance if the defendant is in custody.

5.1.d – Extension of time without showing extraordinary circumstances in the case that the defendant has not consented to a time extension.

United States Federal Criminal Rule 10 – Arraignment and Preparation for Trial Sections A & B

ARTICLE VI TRIALS

United States Federal Rule of Civil Procedure 52(a) on Findings and Conclusions

ARTICLE IX GENERAL PROVISIONS

United States Federal Criminal Rule 48

ADDITIONAL UNITED STATES PROVISIONS

18 U.S.C. Section 3161

42 U.S.C. Section 1983

42 U.S.C. Section 1988

Title II Section 12132 of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973

Respectfully Submitted By:

A handwritten signature in black ink, appearing to be 'GA', with a horizontal line extending to the left and a vertical line extending to the right, crossing the 'A'.

June 3rd, 2019 in Seattle, WA

GEORGE ARTEM
161 16th Avenue
Seattle, WA 98122

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

GEORGE ARTEM,)	
)	No. 78808-6-I
Appellant,)	
)	DIVISION ONE
v.)	
)	
KING COUNTY DEPARTMENT OF)	
ADULT & JUVENILE DETENTION,)	UNPUBLISHED OPINION
)	
Respondents.)	
_____)	FILED: April 22, 2019

MANN, A.C.J. — Pro se appellant George Artem filed suit against the King County Department of Adult & Juvenile Detention (DAJD), asserting multiple causes of action arising from his incarceration at the King County Correctional Facility Solitary Housing Unit. The trial court dismissed Artem’s claims on summary judgment. We affirm.

FACTS

On September 6, 2014, police arrested George Artem for attempted kidnapping in the second degree after he grabbed an eight-year-old girl who was playing at a park in Kirkland. Artem was booked into the King County Correctional Facility (KCCF). At the Jail Health Services (JHS) intake screening, Artem indicated that he had a history of bipolar disorder and was currently taking Zyprexa, an antipsychotic medication. He stated that he received mental health care through Harborview Medical Center and that

he had been hospitalized in 2007 for psychiatric issues. The intake nurse observed that Artem was calm, cooperative, and speaking clearly. After verifying Artem's diagnosis with Harborview, the nurse prescribed a daily dose of Zyprexa, scheduled a mental health examination, and cleared him to be housed in the general population.

On the afternoon of September 7, Artem began to exhibit disruptive behavior. He blocked the dayroom door, argued with other inmates, and yelled and cursed at the corrections officer. Artem was subsequently removed from the general population and placed in a single occupancy cell in predisciplinary housing. That evening, Artem refused to take his Zyprexa.

On September 8, a corrections officer reported that Artem was staring, not speaking, and throwing items out of his cell. That evening, Artem again refused to take his Zyprexa and requested melatonin instead. When told that JHS does not prescribe melatonin, Artem asked to be prescribed lithium. The nurse reported that although Artem made occasional odd statements, he did not appear to be delusional. She placed a referral to psychiatric services for review of his medication refusal.

On September 9, 2014, DAJD staff and corrections officers reported that Artem had been exhibiting increasingly erratic and bizarre behavior. The nurse assessed that Artem appeared to be having a mental health crisis. Accordingly, JHS transferred Artem from predisciplinary housing to "yellow" level psychiatric isolation housing.¹ Artem

¹ KCCF has three levels of psychiatric housing based on mental health symptoms and level of functional impairment. "Green" level housing is for inmates who exhibit active mental health symptoms and moderate functional impairment. "Yellow" level housing is for inmates who exhibit active mental health symptoms and severe functional impairment. Inmates at this level who present significant security concerns or are unable to meaningfully engage with others may be placed in "yellow isolation" housing. Inmates at risk of serious self-harm in the immediate future are placed in "red" level housing.

agreed to release his medical records to his mother and his attorney. That evening, Artem again refused to take his Zyprexa.

On September 10, 2014, Artem exhibited signs of acute psychosis during his initial mental health evaluation. The JHS psychiatric evaluation specialist made a provisional diagnosis of “Bipolar I Disorder, Manic” and concluded that Artem should remain in yellow-level psychiatric isolation for his safety and the safety of others. Later that day, a JHS psychiatrist confirmed Artem’s diagnosis. She discontinued the Zyprexa and prescribed a twice-daily dose of lithium, but Artem refused to take it.

On September 12, a JHS psychiatric evaluation specialist met with Artem. Artem’s cell was wet and dirty, and he was naked, agitated, and “floridly psychotic.” The evaluator scheduled a follow up appointment and recommended that Artem remain in yellow-level isolation housing.

On September 14, a JHS psychiatrist determined that Artem’s condition had deteriorated significantly, and that he was “gravely disabled” and “a danger to others.” She recommended a Harper hearing to determine whether Artem should be involuntarily medicated.²

The Harper hearing took place on September 19. The committee concluded that Artem was at an increased risk of harm to others as a result of his mental disorder, that his capacity to meet his basic health needs was impaired, and that he was gravely disabled. Accordingly, the committee found that Artem should be required to take antipsychotic medication for 14 days.³ That evening, Artem was placed in a restraint

² Washington v. Harper, 494 U.S. 201, 110 S. Ct. 1028, 108 L. Ed. 2d 178 (1990).

³ Artem received notice prior to the hearing, and he and his lay advocate were present at the hearing. Artem refused to accept a copy of the hearing decision, so a psychiatric evaluation specialist

chair and given an injection of medication. After that, Artem began taking his medication orally when offered. His condition gradually improved.

On October 6, following a second Harper hearing, the committee decided not to extend the involuntary medication order. Artem subsequently agreed to return to yellow-level group housing. On October 13, he was transferred to green-level psychiatric housing. On October 28, the antipsychotic medication was discontinued and Artem was prescribed only lithium. On November 18, 2014, Artem was released from the KCCF.

On December 18, 2014, Artem attended an opt-in hearing for King County District Court Regional Mental Health Court.⁴ After Artem agreed to plead guilty to a misdemeanor charge of assault in the fourth degree, the court sentenced him to a 24-month suspended sentence with credit for time served and 24 months of supervised probation, on the condition that he abide by all mental health court conditions. The State then dropped the felony charge of attempted kidnapping in the second degree. Artem was generally compliant with the conditions of mental health court. His case was closed on December 13, 2016.

On September 6, 2016, Artem filed a pro se complaint against King County DAJD, seeking \$150,000,000 in damages arising from loss of economic opportunity, permanent damage to his good name, mental and psychological duress, and inhumane treatment while in the custody of the State of Washington. Artem's complaint was based on the following factual allegations:

appealed the decision on his behalf. The head of JHS psychiatric services, Dr. Michael Stanfill, reviewed the record and affirmed the decision.

⁴ Defendants with certain mental illnesses who agree to comply with a treatment plan may be eligible to opt into mental health court.

3.1 That George Artem was booked into King County Correctional Facility on 9.06.14 having been charged with the crime of attempted kidnapping 2nd

3.2 That on or about 9.07.14 was placed into the King County Correctional Facility Solitary Housing Unit

3.3 That as a result of being placed into solitary custody Mr. Artem suffered what is commonly referred to as a "manic episode"

3.4 That Mr. Artem served 74 consecutive days in jail with an additional 14 days served while under the custody of King County Regional Mental Health Court.

On September 20, 2016, Artem filed a motion for preliminary injunctive relief regarding construction of a new police complex in north Seattle. On September 29, 2016, Artem filed a motion for summary judgment, arguing that he was entitled to an award of damages because King County (1) failed to timely serve its answer, (2) damaged his good name, (3) caused him to suffer mental and psychological duress while in solitary confinement at KCCF, (4) forced him to spend excessive time in custody, and (5) subjected him to inhumane treatment while in solitary confinement. He also reiterated his request for injunctive relief. In support of his motion for summary judgment, Artem attached several unauthenticated documents.

On February 28, 2017, King County filed a cross-motion for summary judgment. Artem did not file a response to King County's motion. Rather, on March 24, 2017, seven days before the summary judgment hearing, Artem filed an amended motion for summary judgment. The amended motion included several new allegations not previously raised, as well as a request to maintain the suit as a class action.

On March 31, 2017, the trial court granted summary judgment to King County, denied Artem's motion for summary judgment, and dismissed his claims with prejudice. The trial court also denied Artem's subsequent motion for reconsideration.

On March 16, 2018, Artem filed a motion on the merits under RAP 18.14(a) seeking direct review at the Washington Supreme Court. On May 4, 2018, a Washington Supreme Court commissioner denied Artem's motion, ruling that Artem had failed to show that the trial court clearly and reversibly erred when it dismissed his action. On June 18, 2018, Artem filed a motion for en banc hearing, which King County opposed. On August 7, 2018, the Washington Supreme Court transferred Artem's appeal to this court pursuant to RAP 4.2.

ANALYSIS

We review summary judgment orders de novo. Seybold v. Neu, 105 Wn. App. 666, 675, 19 P.3d 1068 (2001). Summary judgment is proper if, after viewing all facts and reasonable inferences in the light most favorable to the nonmoving party, there are no genuine issues as to any material fact and the moving party is entitled to a judgment as a matter of law. CR 56(c); Elcon Const. Inc. v. E. Wash. Univ., 174 Wn.2d 157, 164, 273 P.3d 965 (2012). The moving party bears the initial burden of showing the absence of an issue of material fact. If the moving party meets this initial showing and is a defendant, the burden shifts to the plaintiff. Young v. Key Pharmaceuticals, Inc., 112 Wn.2d 216, 225, 770 P.2d 182 (1989).

A party opposing a motion for summary judgment may not rely on speculation, argumentative assertions that unresolved factual issues remain, or its affidavits considered at face value. Rather, "the nonmoving party must set forth specific facts that

sufficiently rebut the moving party's contentions and reveal that a genuine issue as to a material fact exists." Herman v. Safeco Ins. Co. of Am., 104 Wn. App. 783, 787-88, 17 P.3d 631 (2001). In so doing, the nonmoving party "may not rely on speculation, argumentative assertions that unresolved factual issues remain, or in having its affidavits considered at face value." Seven Gables Corp. v. MGM/UA Entm't Co., 106 Wn.2d 1, 13, 721 P.2d 1 (1986). If the nonmoving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial," summary judgment is proper. Young, 112 Wn.2d at 225 (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)).

Artem contends that the superior court erred in dismissing his complaint on summary judgment. But Artem presented no competent, admissible evidence showing a genuine issue of material fact regarding any of the claims raised in his complaint or addressed in King County's motion for summary judgment. There appears to have been no discovery. Nor did Artem attempt to support his allegations with affidavits or offers of proof from witnesses or experts who could substantiate his claims. "Bare assertions that a genuine material [factual] issue exists will not defeat a summary judgment motion in the absence of actual evidence." Trimble v. Wash. State Univ., 140 Wn.2d 88, 93, 993 P.2d 259 (2000).

Artem's unsubstantiated allegations of fact are not, by themselves, sufficient to overcome a motion for summary judgment. The trial court did not err in dismissing his claims.

No. 78808-6-1/8

Affirmed.

Mann, ACJ.

WE CONCUR:

Dimick, J.

Andrus, J.

1987

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Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 97215-0
Appellate Court Case Title: George Artem v. King County Department of Adult & Juvenile Detention
Superior Court Case Number: 16-2-21341-3

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