

No.:24-0274

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

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**WEST VIRGINIA DIVISION OF CORRECTIONS
AND REHABILITATION and JOSEPH WOOD,
Superintendent, North Central Regional Jail,**

Defendant Below, Petitioner

v.

**Upon Appeal
West Virginia Supreme Court of Appeals
(Case No.: 21-C-1078)**

ROBERT NEWBROUGH,

Plaintiff Below, Respondent.

**PETITIONERS WEST VIRGINIA DIVISION OF CORRECTIONS
AND REHABILITATION’S AND JOSEPH WOOD’S REPLY BRIEF**

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I. ASSIGNMENT OF ERROR

The circuit court erred when it denied Petitioner's Motion for Summary Judgment because Petitioners were entitled to summary judgment on the basis of qualified immunity.

II. ARGUMENT

A. The record fails to support the assertion that a clearly established right was violated. Thus, the circuit court erred and the Petitioners are entitled to summary judgment.

Petitioners are entitled to qualified immunity and subsequently summary judgment. Thus, the circuit court exceeded its authority in failing to recognize qualified immunity in this matter.

In response to Petitioners' appeal, Respondent has asserted that Petitioners are not entitled to summary judgment because they failed to follow applicable statutory authority, as well as internal policies and procedures. Respt. Robert Newbrough's Response Br. p. 6 (September 26, 2024). Additionally, Respondent alleges that, even if qualified immunity is appropriate, regarding potential risks to Mr. Newbrough, they are not entitled to qualified immunity regarding failures in their observation and supervision of other inmates. *Id.* Lastly, Respondent alleges that the Petitioners violated Mr. Newbrough's "Eighth Amendment constitutional rights when it acted with deliberate indifference toward his safety by failing to observe Respondent and other inmates in time period during which he was beaten while the Petitioners had knowledge that Respondent was in danger because of his sexual abuse charges." *Id.*

1. The circuit court erred in its determination that sufficient facts existed to support an Eighth Amendment violation claim.

Respondent has alleged that, even if qualified immunity was appropriate, Petitioners acted with deliberate indifference towards Mr. Newbrough's safety. Respondent has asserted that Petitioners failed to adequately provide for Mr. Newbrough's safety, specifically in their failure to perform adequate "counts" and in the alleged mis-housing of Inmate Hughes.

To support a violation, an inmate must show an objective and subjective knowledge of the risk of harm. *Farmer v. Brennan*, 511 U.S. 825, 828, 114 S. Ct. 1970, 1974 (1994). “A prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Id.* at 837.

However, “[t]here is no clearly established constitutional right to properly conducted security checks.” *King v. Riley*, 76 F.4th 259, 264 (4th Cir. August 4, 2023). “This risk must be more specific than “the general risks that all the inmates posed to one another and prison officials.” *Id.* at 266 (quoting *Rich v. Bruce*, 129 F.3d 336, 338 (4th Cir. 1997)). There is no deliberate indifference when facts fail to show that a defendant-guard “knew that his actions exposed [inmate] to a specific risk distinct from the general risk of violence from other inmates . . . to which [inmate] was always exposed” *Id.* at 266, n. 7 (citing *Parrish ex rel. Lee v. Cleveland*, 372 F.3d 294, 305 (4th Cir. 2004)).

No one is disputing that what happened to Mr. Newbrough was unfortunate. However, “atrocities occur in prison without the prison bearing responsibility: “[E]very injury suffered by one prisoner at the hands of another” does not translate “into constitutional liability for prison officials responsible for the victim’s safety.”” *Id.* at 270 (quoting *Farmer*, 511 U.S. at 834).

Further, Respondent has still provided no evidence that Inmate Hughes was a known threat to anyone’s safety, most importantly, to Mr. Newbrough. Respondent relies heavily on the testimony of Shannon Sams, but Sams’ testimony failed to show that any official or officer acted with any cognizable state of mind. Indeed, her testimony relies on what she thinks “should have” taken place, assuming the facts, as presented by Petitioner, are true; such as the supposition that

Hughes' history was particularly violent or that he was not a sex offender. Sams had "no idea" whether or not Inmate Hughes was a sex offender. (JA0437-0438). Indeed, there is no evidence that Inmate Hughes presented an articulated danger to anyone, much less Mr. Newbrough.

"Like" housing was used to house similarly charged inmates, such as sex offenders. It is not hyperbole to assert that sex offenders are at risk from other inmates. However, Inmate Hughes was also a sex offender.

Q. Okay. Now, have you ever looked at the charges of Nathan Hughes?

A. Yes.

Q. Okay. Does he have any sexual charges?

A. He has got a previous charge – and those charges are also used when – when doing housing. And he has previous charges of sexual assault by a parent or guardian, and then he's also got a failure to register as a sex offender on prior charges, which would place him in like charges section.

(JA0232).

Aside from the speculation that either Inmate Hughes or another inmate may have seen Mr. Newbrough's court papers in his cell, there has been no evidence to show that Mr. Newbrough was specifically targeted due to his underlying criminal charges. And again, all those housed with Mr. Newbrough, including Inmate Hughes, were housed together due to their similar criminal backgrounds. The record has failed to show that a specific right was violated. Thus, the circuit court erred in failing to grant summary judgment.

2. The circuit court erred when it denied summary judgment and determined that there existed a "bona fide dispute" regarding the failure to follow applicable statutory authority, as well as internal policies and procedures.

While these Defendants do not concede that any "policy" was violated, even if a "policy" had been violated it would not, in and of itself, create a cause of action for the Respondent. Even if the Petitioners violated its policies relating to security checks or any other type of internal policy,

this does not rise to the level of a constitutional violation. “It is, in fact, settled law that a violation of departmental policy does not equate with constitutional unreasonableness.” *Abney v. Coe*, 493 F.3d 412, 419 (4th Cir. 2007).

In its ruling, the circuit court not only gave great weight to policies and procedures, it gave undue weight to rules that were no longer in effect.

Far from ‘failing to identify a clearly established law’ and ‘fail[ing] to even identify a policy or procedure that was violated,’ the Plaintiff, with substantial evidentiary support developed in the record, has identified numerous clearly established laws which a jury could find to have been violated by the acts or omissions of the WVDOC employees . . . Those clearly established laws include the provisions of The West Virginia Minimum Standards for Construction, Operation, and Maintenance of Jails as contained in W. Va. Code C.S.R. §§ 95-1-11, et seq.

(JA0653, ¶ 26).

The Respondent failed to rebut the uncontroverted fact that the above-referenced rules were repealed at the time of the incident at issue. Thus, the circuit court’s error was two-fold. One, the circuit court erred in its ruling that an alleged violation of a policy and/or procedure was sufficient to give rise to a constitutional violations. Second, the circuit court erred in appointing import to a rule that was no longer in effect.

In sum, Respondent simply cannot point to any action taken by Petitioners that overcomes qualified immunity. As a result, summary judgment should have been granted for Petitioners on this basis.

III. CONCLUSION

Petitioners respectfully move this Honorable Court to reverse the circuit court’s order denying summary judgment and that the matter be remanded with instructions that Petitioners are entitled to qualified immunity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, counsel for Petitioners West Virginia Division of Corrections and Rehabilitation and Joseph Wood do hereby certify that on the 16th day of October 2024, I electronically filed the foregoing *“Petitioners West Virginia Division of Corrections and Rehabilitation’s and Joseph Wood’s Reply Brief”* with the Clerk of the Court using the electronic filing system which will send notification of such filing to the following participants:

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