

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

McMahon v. Landon

154 A.D.2d 745 (3d Dep't 1989) · Decided October 12, 1989

SUMMARY

The New York Appellate Division considered an appeal from an order compelling correction officers to comply with subpoenas issued by the State Commission of Correction during an investigation of a prison hostage incident. Because the respondents had already testified, the court dismissed the appeal as moot and held that the controversy did not qualify for an exception to the mootness doctrine.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Yesawich, Jr., J.; Mahoney, P. J.; Casey, J.; Levine, J.; Harvey, J.
JURISDICTION	New York
DECIDED	October 12, 1989
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from an order of Supreme Court, Albany County, compelling respondents to comply with subpoenas ad testificandum issued by the State Commission of Correction.
STANDARD OF REVIEW	Appellate review of mootness and the exception to the mootness doctrine.
PRECEDENTIAL VALUE	published
PARTIES	Jeffrey Landon, Thomas McKernon, other respondents v. State Commission of Correction

TOPICS

- mootness
- appellate procedure
- administrative law
- right to counsel
- civil procedure

PRACTICE AREAS

- Civil procedure
- Administrative law
- Appellate procedure
- Constitutional criminal procedure

QUESTIONS PRESENTED

1. Whether the appeal from the order compelling respondents to comply with the Commission's subpoenas was moot after respondents testified pursuant to the order.
2. Whether the exception to the mootness doctrine applied because the issue of counsel's presence during investigatory administrative questioning was likely to recur.
3. Whether *Miranda v. Arizona* altered the prior rule concerning counsel's presence during an investigatory administrative proceeding.

HOLDINGS

1. The appeal was moot because respondents had already testified pursuant to Supreme Court's order and their rights could not be affected by a determination on the appeal.
2. The appeal did not qualify for the exception to the mootness doctrine because, although the issue might recur, it would not typically evade judicial review and the case presented no substantial or novel question.
3. *Miranda v. Arizona* did not undermine the prior holdings concerning the absence of a right to have counsel present during the Commission's investigatory questioning.

KEY QUOTATIONS

“Because respondents have already complied with the subpoenas and their rights cannot be affected by any determination on this appeal, the underlying controversy is now moot” (746)

“Although the question of whether counsel may be present during the Commission’s interrogation of a witness is likely to recur, it will not typically evade judicial review” (746)

FACTUAL BACKGROUND

Following an incident at Cocksackie Correctional Facility in which inmates took five correction officers hostage, the State Commission of Correction investigated the facility's management and security. The Commission subpoenaed correction officers, including Jeffrey Landon and Thomas McKernon, and directed that their counsel leave the interview room while remaining available outside for consultation. At counsel's direction, Landon and McKernon refused to answer questions, leading Supreme Court to compel compliance; they subsequently testified under that order.

PROCEDURAL HISTORY

After correction officers declined to answer questions during the Commission's investigation unless their attorneys could remain in the interview room, the Commission obtained an order from Supreme Court compelling compliance with its subpoenas. Respondents appealed, but they testified pursuant to the order while the appeal was pending. The Appellate Division dismissed the appeal as moot and without costs.

DISPOSITION

dismissed

CASES CITED

- Matter of Armstrong v. Town of Hoosick Hous. Auth., 84 A.D.2d 886, 887
- Matter of Hearst Corp. v. Clyne, 50 N.Y.2d 707, 714-715
- In re Groban, 352 U.S. 330, 334-335
- Anonymous v. Baker, 360 U.S. 287, 294-295
- Matter of Popper v. Board of Regents, 26 A.D.2d 871
- Miranda v. Arizona, 384 U.S. 436
- Matter of First Energy Leasing Corp. v. Attorney-General of State of N.Y., 68 N.Y.2d 59, 64
- Ronayne v. Lombard, 92 Misc. 2d 538, 545-546

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