

SUPREME COURT OF ALASKA

Diaz v. State of Alaska, Department of Corrections

239 P.3d 723 (Alaska 2010) · No. S-13151 · Decided October 1, 2010

SUMMARY

The Alaska Supreme Court affirmed summary judgment against Wenona Diaz on her 42 U.S.C. § 1983 claims arising from DOC officers' escort of her to a former employer's office, interrogation, return to prison, segregation, and telephone restrictions. The court held that the escort and interrogation did not violate the Fourth Amendment because Diaz was already in DOC custody, and that the conduct did not shock the conscience under substantive due process. It also held that the confinement conditions did not implicate a protected liberty interest and that the private defendants could not be liable for conspiracy absent an underlying constitutional violation.

CASE DETAILS

|                       |                                                                                                                                                                                                                                       |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Alaska                                                                                                                                                                                                               |
| WRITING FOR THE COURT | Winfree, Justice; Carpeneti, Chief Justice; Fabe, Justice; Christen, Justice                                                                                                                                                          |
| JURISDICTION          | Alaska                                                                                                                                                                                                                                |
| DECIDED               | October 1, 2010                                                                                                                                                                                                                       |
| DOCKET                | S-13151                                                                                                                                                                                                                               |
| DISPOSITION           | affirmed                                                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | Diaz appealed the superior court's grant of summary judgment dismissing her 42 U.S.C. § 1983 claims against DOC officers in their individual capacities and against a private detective and his agency on a conspiracy theory.        |
| STANDARD OF REVIEW    | The court reviewed the grant of summary judgment de novo, drawing all reasonable inferences in favor of the nonmoving party, and reviewed constructions of the United States Constitution de novo and using its independent judgment. |
| PRECEDENTIAL VALUE    | Published and precedential Alaska Supreme Court opinion                                                                                                                                                                               |
|                       |                                                                                                                                                                                                                                       |

## PARTIES

Wenona Diaz v. State of Alaska, Department of Corrections, Jennifer Christensen, James Bowers, McHenry Detective Agency, William Parlier, Probation Officer Brown, Probation Officer III McCarron, Probation Officer L. Williamson

## TOPICS

section 1983 substantive due process procedural due process standard of review appellate procedure

## PRACTICE AREAS

constitutional law civil rights prisoners' rights appellate procedure

## QUESTIONS PRESENTED

1. Whether DOC officers violated Diaz's Fourth Amendment rights by escorting her from electronic monitoring to her former employer's office and facilitating a custodial interrogation without Miranda warnings.
2. Whether the DOC officers' conduct during the interrogation violated Diaz's substantive due process rights under the Fourteenth Amendment because it shocked the conscience.
3. Whether Diaz's return to prison, approximately seventeen hours of segregation, and two days of restricted telephone access deprived her of a liberty interest without due process under the Fourteenth Amendment.
4. Whether the private detective and his agency could be liable under 42 U.S.C. § 1983 for conspiring with state officials when no underlying constitutional violation occurred.

## HOLDINGS

1. Diaz's officer-escorted trip to and interrogation at the travel agency did not violate the Fourth Amendment because she was already in DOC custody while serving her sentence in the electronic monitoring program.
2. The DOC officers' conduct, although disturbing and not condoned by the court, did not shock the conscience and therefore did not violate Diaz's substantive due process rights under the Fourteenth Amendment.
3. Diaz's transfer to prison, temporary segregation, and two-day telephone restrictions did not deprive her of a liberty interest protected by the Fourteenth Amendment.
4. The private detective and his agency were entitled to summary judgment on the § 1983 conspiracy claims because there was no underlying constitutional violation.

## KEY QUOTATIONS

*"We affirm the superior court's decision because: (1) Diaz's officer-escorted trip to and interrogation at the travel agency did not implicate her Fourth Amendment rights as she was already in DOC custody when the DOC officers "seized" her; (2) the DOC officers' actions, although disturbing, did not "shock the conscience"*

*as required for a violation of the Fourteenth Amendment; (3) Diaz's return to prison, her day of segregation from the general population, and the two days of telephone restrictions did not deprive her of a liberty interest in violation of the Fourteenth Amendment because her freedom was not restrained in excess of her sentence and she did not experience an atypical or significant hardship in comparison to ordinary prison life; and (4) the private detective and his agency are not liable for conspiring with state officials to violate Diaz's constitutional rights because no such violation occurred.” (724)*

*“Although we certainly do not condone the DOC officers' decision to make Diaz available for interrogation in this manner by her civilian accusers—in other circumstances such a decision could lead to unfortunate acts of vigilantism—the DOC officers' conduct bothers the conscience but does not shock it as required for a Fourteenth Amendment violation.” (730)*

*“We agree that Parlier and his detective agency were entitled to summary judgment because they could not have conspired with state actors to deprive Diaz of her constitutional rights, given that the officer-escorted trip to and interrogation at the travel agency, the transfer back to jail, the temporary segregated confinement, and the telephone restrictions did not deprive her of those rights.” (732)*

## FACTUAL BACKGROUND

Diaz was serving the final month of a felony sentence in the Alaska Department of Corrections' electronic monitoring program. After her former employer accused her of theft and embezzlement, DOC officers escorted Diaz from her workplace to her home and then to the former employer's travel agency, where private parties questioned her while DOC officers guarded her. The officers then searched her home and computer and returned her to jail, where she spent approximately seventeen hours in segregation and had telephone access restricted for two days. The accusations were later abandoned after the former employer was convicted of fraud.

## PROCEDURAL HISTORY

Diaz sued DOC, DOC officers, private parties, and a detective agency after DOC officers removed her from electronic monitoring, escorted her to her former employer's office for questioning, searched her home and computer, and returned her to jail. The superior court dismissed or granted summary judgment on various claims, including the claims at issue on appeal, and entered final judgment in May 2008. The Alaska Supreme Court affirmed the dismissal of the remaining federal constitutional claims.

## DISPOSITION

affirmed

## CASES CITED

- *Trombley v. Starr-Wood Cardiac Group, PC*, 3 P.3d 916, 918 n. 1 (Alaska 2000)
- *State, Department of Health & Social Services, Division of Family & Youth Services v. Native Village of Curyung*, 151 P.3d 388, 392 (Alaska 2006)
- *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 397 (1971)
- *Bush v. Lucas*, 462 U.S. 367, 376-78 (1983)

- Hertz v. Beach, 211 P.3d 668, 677 n. 12 (Alaska 2009)
- Lowell v. Hayes, 117 P.3d 745, 753 (Alaska 2005)
- Prentzel v. State, Department of Public Safety, 53 P.3d 587, 595 n. 46 (Alaska 2002)
- Will v. Michigan Department of State Police, 491 U.S. 58, 71 (1989)
- Sowinski v. Walker, 198 P.3d 1134, 1143 (Alaska 2008)
- Nichols v. State Farm Fire & Casualty Co., 6 P.3d 300, 303 (Alaska 2000)
- Shade v. CO & Anglo Alaska Service Corp., 901 P.2d 434, 437 (Alaska 1995)
- State, Department of Revenue v. Andrade, 23 P.3d 58, 65 (Alaska 2001)
- Waiste v. State, 10 P.3d 1141, 1144 (Alaska 2000)
- Parratt v. Taylor, 451 U.S. 527, 535 (1981)
- Daniels v. Williams, 474 U.S. 327, 330-31 (1986)
- Miranda v. Arizona, 384 U.S. 436, 444 (1966)
- State v. Salit, 613 P.2d 245, 257 (Alaska 1980)
- Lemon v. State, 514 P.2d 1151, 1157 n. 13 (Alaska 1973)
- Mapp v. Ohio, 367 U.S. 643 (1961)
- United States v. Childs, 277 F.3d 947, 950 (7th Cir. 2002)
- Johnson v. City of Cincinnati, 310 F.3d 484, 491 (6th Cir. 2002)
- Riley v. Dorton, 115 F.3d 1159, 1163-64 (4th Cir. 1997)
- Wilkins v. Gaddy, 559 U.S. 34, 130 S. Ct. 1175, 1177 (2010)
- Cottrell v. Caldwell, 85 F.3d 1480, 1490 (11th Cir. 1996)
- Wilkins v. May, 872 F.2d 190, 192-93 (7th Cir. 1989)
- Williams v. Boles, 841 F.2d 181, 183 (7th Cir. 1988)
- Rizzo v. Dawson, 778 F.2d 527, 530 (9th Cir. 1985)
- Chavez v. Martinez, 538 U.S. 760, 773, 779-80 (2003)
- Crowe v. County of San Diego, 608 F.3d 406, 431-32 (9th Cir. 2010)
- McConkie v. Nichols, 446 F.3d 258, 261 (1st Cir. 2006)
- Cooper v. Dupnik, 963 F.2d 1220, 1223, 1248-50 (9th Cir. 1992)
- Church v. State, Department of Revenue, 973 P.2d 1125, 1130 (Alaska 1999)
- Application of Obermeyer, 717 P.2d 382, 386-87 (Alaska 1986)
- Zinermon v. Burch, 494 U.S. 113, 125 (1990)
- Larson v. Cooper, 90 P.3d 125, 134-35 (Alaska 2004)
- Matson v. Commercial Fisheries Entry Commission, 785 P.2d 1200, 1206 (Alaska 1990)
- Morrissey v. Brewer, 408 U.S. 471, 480-82 (1972)
- Young v. Harper, 520 U.S. 143, 144-45, 149 (1997)
- Hewitt v. Helms, 459 U.S. 460, 468 (1983)
- Dominique v. Weld, 73 F.3d 1156, 1159-61 (1st Cir. 1996)
- Ferguson v. State, Department of Corrections, 816 P.2d 134, 139-40 (Alaska 1991)

- Rathke v. Correctional Corporation of America, Inc., 153 P.3d 303, 306-09 (Alaska 2007)
- Brandon v. State, Department of Corrections, 73 P.3d 1230, 1234 (Alaska 2003)
- McGinnis v. Stevens, 543 P.2d 1221, 1236-37 (Alaska 1975)
- Adickes v. S.H. Kress & Co., 398 U.S. 144, 150-52 (1970)
- Maines v. Kenworth Alaska, Inc., 155 P.3d 318, 326 (Alaska 2007)
- Crittell v. Bingo, 83 P.3d 532, 536 n. 19 (Alaska 2004)

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