

SUPREME COURT OF VERMONT

Zachary Rose v. Michael Touchette, Commissioner, Department of Corrections

2021 VT 77 · No. 2020-274 · Decided October 8, 2021

SUMMARY

The Vermont Supreme Court considered whether the Department of Corrections’ termination of Zachary Rose from a treatment program constituted punishment under 28 V.S.A. § 851, thereby requiring a statutory hearing and due process protections. The Court held that Rose’s challenge to DOC’s failure to provide a hearing was reviewable under Vermont Rule of Civil Procedure 75 and that the Bell v. Wolfish framework governs whether the termination was punishment. Because genuine factual disputes remained regarding punitive intent and the relationship between the termination and legitimate security objectives, the Court reversed summary judgment and remanded.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Reiber, C.J.; Robinson, J.; Eaton, J.; Carroll, J.; Cohen, J.
JURISDICTION	Vermont
DECIDED	October 8, 2021
DOCKET	2020-274
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed from the superior court’s grant of summary judgment to the Department of Corrections in his Rule 75 action challenging his termination from treatment programming without a disciplinary hearing.
STANDARD OF REVIEW	Summary judgment decisions are reviewed de novo under the same standard applied by the trial court. Summary judgment is proper only when there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	published
PARTIES	Zachary Rose v. Michael Touchette, Commissioner, Department of Corrections, Department of Corrections

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QUESTIONS PRESENTED

1. Whether Rose's challenge to DOC's failure to provide a statutory disciplinary hearing before terminating him from programming was reviewable under Vermont Rule of Civil Procedure 75.
2. Whether the Bell v. Wolfish framework, rather than the constitutional due-process prerequisites discussed in Conway v. Cumming, governs whether an action constitutes punishment under 28 V.S.A. § 851.
3. Whether the undisputed facts established as a matter of law that Rose's termination from treatment programming was or was not punishment under § 851.
4. Whether either party was entitled to summary judgment.

HOLDINGS

1. A Rule 75 claim is reviewable when an inmate alleges that DOC failed to perform the clear legal duty imposed by 28 V.S.A. §§ 851-852 to provide a hearing before imposing punishment. Because Rose presented a colorable claim that his termination may have been punitive, the Supreme Court had jurisdiction to review the claim.
2. The proper framework for determining whether DOC action constitutes punishment under § 851 is the three-factor test adopted from Bell v. Wolfish: whether officials intended to punish, whether the action serves a legitimate governmental purpose, and whether the action is excessive in relation to that purpose. An alleged punishment need not independently violate constitutional due-process rights for §§ 851-853 to apply.
3. Program termination is not necessarily punishment, but it may constitute punishment depending on the circumstances. The record contained unresolved factual issues concerning DOC's intent, the relationship between Rose's escape comment and the security designation, the compatibility of his minimum-custody classification with the asserted security risk, and the one-year review period. Accordingly, neither party was entitled to summary judgment.

KEY QUOTATIONS

"A court must decide whether the [condition] is imposed for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose." (¶ 20)

"Accordingly, we conclude that the proper legal framework applicable to plaintiff's § 851 claim is the Bell test, and the superior court erred by first engaging in a constitutional due process analysis and granting summary judgment to DOC on this basis." (¶ 25)

“Program termination is not necessarily punishment, but termination may be punishment in some circumstances.” (§ 29)

FACTUAL BACKGROUND

Rose, an inmate required to complete a treatment program to become eligible for release before the end of his maximum sentence, whispered “escape” to a classmate during a February 2019 class session and later said he was joking. DOC officials placed him in administrative segregation during an investigation, then classified him as a security risk and terminated him from the program, resulting in a six-month addition to his projected release date. Although he was assigned minimum custody at another facility and was not otherwise treated as a security risk, DOC would not review his security designation for one year. Rose received no disciplinary report or statutory hearing concerning the escape comment.

PROCEDURAL HISTORY

Rose was terminated from the Vermont Treatment Program for Sexual Abusers after officials classified him as a security risk following an escape-related comment and other alleged program infractions. He pursued DOC’s grievance process and then filed a Vermont Rule of Civil Procedure 75 action, arguing that the termination was punishment requiring the procedures in 28 V.S.A. §§ 851-853. The superior court granted summary judgment to DOC, concluding that the termination was not punishment and that the claim was not reviewable under Rule 75. The Vermont Supreme Court reversed and remanded because the claim was reviewable and the factual record did not entitle either party to summary judgment.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further factual development and application of the Bell factors to determine whether DOC’s termination of Rose from programming constituted punishment under 28 V.S.A. § 851 and therefore triggered the statutory protections in §§ 851-853.

CASES CITED

- Bell v. Wolfish, 441 U.S. 520, 535-39 (1979)
- Conway v. Cumming, 161 Vt. 113, 119, 636 A.2d 735, 738 (1993)
- Borden v. Hofmann, 2009 VT 30, 185 Vt. 486, 974 A.2d 1249
- Inman v. Pallito, 2013 VT 94, 195 Vt. 218, 87 A.3d 449
- Rheume v. Pallito, 2011 VT 72, 190 Vt. 245, 30 A.3d 1263
- Wool v. Office of Professional Regulation, 2020 VT 44, 212 Vt. 305, 236 A.3d 1250
- State v. Cole, 150 Vt. 453, 456, 554 A.2d 253, 255 (1988)
- Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168 (1963)
- State v. Strong, 158 Vt. 56, 59-60, 605 A.2d 510, 512 (1992)

- Provost v. Fletcher Allen Health Care, Inc., 2005 VT 115, ¶ 15, 179 Vt. 545, 890 A.2d 97 (mem.)
- PH W. Dover Prop., LLC v. Lalancette Eng'rs, 2015 VT 48, ¶ 31, 199 Vt. 1, 120 A.3d 1135

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