

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Williams v. Paramo

775 F.3d 1182 (9th Cir. 2015) · No. 13-56004 · Decided January 7, 2015

SUMMARY

The Ninth Circuit held that a prisoner subject to the Prison Litigation Reform Act's three-strikes provision must qualify for the imminent-danger exception at the time of appeal, but is entitled to a presumption that a danger found by the district court continues. The court also held that the district court improperly granted judgment to the defendants on exhaustion because the evidence raised a genuine dispute regarding whether administrative remedies were available. The judgment was vacated and the case was remanded for further proceedings.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Stephen Reinhardt; Harry Pregerson; Jacqueline H. Nguyen
JURISDICTION	Federal
DECIDED	January 7, 2015
DOCKET	13-56004
DISPOSITION	vacated
PROCEDURAL POSTURE	Prisoner civil-rights appeal from the district court's dismissal for failure to exhaust administrative remedies and from the treatment of the dismissal as a judgment on the pleadings or summary judgment.
STANDARD OF REVIEW	De novo review of summary judgment. The evidence is viewed in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Lonnie Clark Williams, Jr. v. Daniel Paramo, Warden, R. Olson, Correctional Counselor II, E. Marrero

TOPICS

[summary judgment](#) [prisoners rights](#) [section 1983](#) [civil procedure](#) [appellate procedure](#)

PRACTICE AREAS

[Prisoner civil rights](#) [Federal civil procedure](#) [Appellate procedure](#)

QUESTIONS PRESENTED

1. Whether a prisoner subject to the PLRA's three-strikes provision must demonstrate imminent danger at the time of filing a notice of appeal to proceed in forma pauperis on appeal when the district court previously found an imminent danger.
2. What standard governs the imminent-danger inquiry on appeal and whether a prisoner previously found to allege imminent danger is entitled to a presumption that the danger continues.
3. Whether the district court properly granted judgment to defendants for failure to exhaust available administrative remedies.
4. Whether defendants carried their burden under the Albino burden-shifting framework to establish that available administrative remedies existed and were not exhausted.

HOLDINGS

1. A prisoner subject to the PLRA's three-strikes provision may be required to demonstrate that she is under an imminent danger of serious physical injury at the time the notice of appeal is filed in order to proceed in forma pauperis on appeal.
2. The Andrews standard applies to determine whether a prisoner has shown imminent danger on appeal; a prisoner may satisfy the exception by alleging an ongoing danger at the time of filing the notice of appeal, including a continuing prison practice or continuing effects of such a practice.
3. A prisoner whom the district court found to have sufficiently alleged imminent danger is entitled to a presumption that the danger continues when the notice of appeal is filed; ordinarily, an affidavit or declaration alleging an ongoing danger will suffice.
4. Williams sufficiently alleged an ongoing danger related to the conduct alleged in her complaint and could proceed in forma pauperis on appeal.
5. When a district court considers extraneous evidence in resolving a motion for judgment on the pleadings concerning exhaustion, the ruling may be treated as summary judgment; under Albino, summary judgment is the proper procedural vehicle for determining exhaustion.
6. Defendants failed to establish that Williams did not exhaust available administrative remedies, and summary judgment on exhaustion was improper.

KEY QUOTATIONS

"We thus hold, consistent with Andrews, that a prisoner subject to the three-strikes provision may meet the imminent danger exception and proceed in forma pauperis on appeal if he alleges an ongoing danger at the time the notice of appeal is filed." (775 F.3d at 1194)

"We also conclude that a prisoner who was found by the district court to sufficiently allege an imminent danger is entitled to a presumption that the danger continues at the time of the filing of the notice of appeal." (775 F.3d at 1195)

"Because Defendants did not meet their burden of demonstrating that Williams had not exhausted available administrative remedies, we conclude that summary judgment was improper and we remand for further

proceedings." (775 F.3d at 1200)

FACTUAL BACKGROUND

Williams, a California prisoner and transgender woman, alleged that prison officials Paramo, Olson, and Marrero spread rumors that she was a convicted sex offender and placed an "R" suffix on her prison record. She alleged that the resulting designation caused gang members to threaten her and that officials refused to accept her grievance and appeal concerning the danger. After her transfer to another facility, she alleged that the original defendants' disclosures continued to cause inmates to threaten her with serious physical harm.

PROCEDURAL HISTORY

Williams filed a 42 U.S.C. § 1983 action alleging that prison officials caused her to be identified as a sex offender, thereby exposing her to threats and danger from other inmates. The district court granted her in forma pauperis status under the imminent-danger exception to the PLRA's three-strikes rule. It later granted defendants' motion for judgment on the pleadings based on failure to exhaust administrative remedies, considered evidence outside the pleadings, and entered judgment for defendants. The district court denied reconsideration, and Williams appealed. The Ninth Circuit permitted her to proceed in forma pauperis, construed the district court's ruling as summary judgment, vacated it, and remanded.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The district court's order granting judgment to defendants on exhaustion was vacated, and the case was remanded for further proceedings on whether Williams exhausted available administrative remedies.

CASES CITED

- Jones v. Bock, 549 U.S. 199, 202, 216 (2007)
- Woodford v. Ngo, 548 U.S. 81, 84, 90-91 (2006)
- Andrews v. Cervantes, 493 F.3d 1047, 1051, 1053 n.4, 1055-57 (9th Cir. 2007)
- Khatib v. County of Orange, 639 F.3d 898, 902 (9th Cir. 2011) (en banc)
- United States v. Saavedra-Velazquez, 578 F.3d 1103, 1110 (9th Cir. 2009) (Reinhardt, J., specially concurring)
- Baños v. O'Guin, 144 F.3d 883, 885 (5th Cir. 1998)
- Choyce v. Dominguez, 160 F.3d 1068, 1070-71 (5th Cir. 1998)
- Ball v. Famiglio, 726 F.3d 448, 467 (3d Cir. 2013)
- Martin v. Shelton, 319 F.3d 1048, 1050 (8th Cir. 2003)
- Hafed v. Federal Bureau of Prisons, 635 F.3d 1172, 1180 (10th Cir. 2011)
- Abdul-Akbar v. McKlevie, 239 F.3d 307, 314 (3d Cir. 2001)

- Thomas v. Holder, 750 F.3d 899, 904-09 (D.C. Cir. 2014) (Tatel, J., specially concurring)
- Von Kennel Gaudin v. Remis, 282 F.3d 1178, 1183 (9th Cir. 2002)
- Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam)
- Albino v. Baca, 747 F.3d 1162, 1166, 1168, 1171-72 (9th Cir. 2014) (en banc)
- Del Monte Dunes at Monterey, Ltd. v. City of Monterey, 920 F.2d 1496, 1507 (9th Cir. 1990)
- Anderson v. Angelone, 86 F.3d 932, 934 (9th Cir. 1996)
- Booth v. Churner, 532 U.S. 731, 736 (2001)
- Hilao v. Estate of Marcos, 103 F.3d 767, 778 n.5 (9th Cir. 1996)
- Brown v. Croak, 312 F.3d 109, 112-13 (3d Cir. 2002)
- Brown v. Valoff, 422 F.3d 926, 937 (9th Cir. 2005)
- Keenan v. Hall, 83 F.3d 1083, 1090 n.1 (9th Cir. 1996)
- Hemphill v. New York, 380 F.3d 680, 687-89 (2d Cir. 2004)
- Dillon v. Rogers, 596 F.3d 260, 267-69 (5th Cir. 2010)