

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Smith v. Snow

722 F.2d 630 (11th Cir. 1983) · Decided December 14, 1983

SUMMARY

The Eleventh Circuit considered a death-row inmate's request for an injunction pending appeal based on alleged arbitrary and capricious denial of clemency by the Georgia State Board of Pardons and Paroles. Relying on Connecticut Board of Pardons v. Dumschat, the court held that Georgia's discretionary clemency process created no due process right to particular procedures or relief and did not violate the Eighth Amendment. The court denied the motion for an injunction pending appeal and affirmed the district court's denial of injunctive relief.

CASE DETAILS

COURT	United States Court of Appeals for the Eleventh Circuit
JURISDICTION	Federal
DECIDED	December 14, 1983
DISPOSITION	affirmed
PROCEDURAL POSTURE	Section 1983 action challenging the Georgia State Board of Pardons and Paroles' handling of a clemency application; after the district court denied a preliminary injunction and an injunction pending appeal, Smith appealed and sought an injunction in the Eleventh Circuit to stay his scheduled execution.
STANDARD OF REVIEW	For requested injunctive relief and an injunction pending appeal: likelihood of ultimate success on appeal, irreparable injury to the movant, harm to appellees if relief is granted, and the public interest.
PRECEDENTIAL VALUE	Published Eleventh Circuit decision; precedential
PARTIES	John Eldon Smith v. Snow

TOPICS

- section 1983
- procedural due process
- cruel and unusual punishment
- appellate procedure
- equitable relief

PRACTICE AREAS

- constitutional law
- civil rights
- capital punishment
- clemency
- injunctive relief

QUESTIONS PRESENTED

1. Whether Smith was likely to succeed on his claim that the Board's discretionary clemency process violated procedural due process under the Fourteenth Amendment.
2. Whether the allegedly arbitrary and capricious clemency process violated the Eighth Amendment.
3. Whether Smith was entitled to an injunction pending appeal staying his scheduled execution.

HOLDINGS

1. Because Georgia vested the Board of Pardons and Paroles with completely discretionary authority to commute penalties, the clemency process conferred no constitutional right to procedures designed to prevent arbitrariness or curb discretion; Smith therefore had little or no likelihood of success on his Fourteenth Amendment due process claim.
2. The failure of Smith's Eighth Amendment claim followed from the absence of a procedural due process right in clemency proceedings; the unfettered discretion at the clemency stage did not render the legally imposed death sentence arbitrary and capricious in violation of the Eighth Amendment.
3. Smith was not entitled to an injunction pending appeal because he showed little or no likelihood of success on the merits, and the court affirmed the district court's denial of injunctive relief.

KEY QUOTATIONS

“the power vested in the Board to commute sentences “conferred no rights on respondents beyond the right to seek commutation.”” (632)

“The discretion involved at the clemency stage can never cause the imposition of the death sentence; it serves only as an act of grace to relieve that sentence even when the sentence has been legally imposed.” (632)

FACTUAL BACKGROUND

Smith was under a death sentence and sought clemency from the Georgia State Board of Pardons and Paroles. He alleged that the Board disposed of his clemency application arbitrarily and capriciously, while Georgia law gave the Board completely discretionary authority to commute penalties. The Board was not required to make the basis for its decision public in writing, subject to statutory requirements that it study the case and issue a written decision signed by a majority of its members.

PROCEDURAL HISTORY

Smith filed a § 1983 action in the Northern District of Georgia alleging that the Georgia Board of Pardons and Paroles acted arbitrarily and capriciously in disposing of his clemency application, violating the Fourteenth Amendment due process clause and the Eighth and Fourteenth Amendments. The district court denied preliminary and appellate injunctive relief. The Eleventh Circuit denied Smith's motion for an injunction pending appeal and affirmed the district court's denial of injunctive relief.

DISPOSITION

affirmed

CASES CITED

- Connecticut Board of Pardons v. Dumschat, 452 U.S. 458, 101 S.Ct. 2460, 69 L.Ed.2d 158 (1981)
- Justice v. State Board of Pardons and Paroles, 234 Ga. 749, 218 S.E.2d 45, 46 (1975)
- Spinkellink v. Wainwright, 578 F.2d 582, 617-19 (5th Cir. 1978), cert. denied, 440 U.S. 976, 99 S.Ct. 1548, 59 L.Ed.2d 796 (1979)
- Solem v. Helm, 103 S.Ct. 3001, 3016, 77 L.Ed.2d 637 (1983)
- Gregg v. Georgia, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976)
- Barefoot v. Estelle, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983)

OPINION

PER CURIAM.

PER CURIAM: John Eldon Smith filed this § 1983 action in the Northern District of Georgia. The complaint alleges that the Georgia State Board of Pardons and Paroles disposed of Smith's application for clemency in an arbitrary and capricious manner in violation of the due process clause of the Fourteenth Amendment and in violation of the Eighth and Fourteenth Amendments.

The complaint requests declaratory and injunctive relief. The district court promptly heard oral argument and issued an order denying a preliminary injunction and denying an injunction pending appeal. Smith noticed his appeal and moved in this court for an injunction (enjoining his scheduled execution) pending appeal.

The appropriate standard for our review of the requested injunctive relief and the motion for injunction pending appeal is: (1) the likelihood of ultimate success on appeal; (2) irreparable injury to the movant; (3) the harm to appellees if injunctive relief is granted; and (4) the public interest.

We conclude that there is little or no likelihood of success on the merits. In *Connecticut Board of Pardons v. Dumschat*, 452 U.S. 458, 101 S.Ct. 2460, 69 L.Ed.2d 158 (1981), the Supreme Court held that because the state of Connecticut had conferred "unfettered discretion" to commute sentences on the Connecticut Board of Pardons,¹ the power vested in the Board to commute sentences "conferred no rights on respondents beyond the right to seek commutation." *Id.* at 466-67, 101 S.Ct. at 2465-66.

Because the Georgia Parole Board's power to commute penalties is also completely discretionary, see *Justice v. State Board of Pardons and Paroles*, 234 Ga. 749, 218 S.E.2d 45, 46 (1975),² *Dumschat* is clearly controlling here and dictates the rejection of Smith's due process claim. See also *Spinkellink v. Wainwright*, 578 F.2d 582, 617-19 (5th Cir.1978) (rejecting Fourteenth

Amendment challenge in a death case to Florida clemency proceeding), cert. denied, 440 U.S. 976, 99 S.Ct.

1548, 59 L.Ed.2d 796 (1979). Although Dumschat involved only a Fourteenth Amendment due process claim, the failure of Smith's Eighth Amendment claim must follow from a finding that procedural due process does not attach to clemency proceedings. If one has no right to procedures, the purpose of which is to prevent arbitrariness and curb discretion, then one clearly has no right to challenge the fact that the decision is discretionary.

See Dumschat, 452 U.S. at 467, 101 S.Ct. at 2465 (Brennan, J., concurring) (Board may deny relief for "any constitutionally permissible reason or for no reason at all"); see also *Solem v. Helm*, - U.S. -, 103 S.Ct. 3001, 3016, 77 L.Ed.2d 637 (1983) ("The possibility of commutation is nothing more than a hope for 'an ad hoc exercise of clemency' "). Smith argues that this case is not controlled by Dumschat, *supra*.

The contention is that the Eighth Amendment does not permit arbitrary and capricious application of the death penalty. Since the Georgia commutation procedure is "unfettered" to the extent that the basis of the Board's decision is not even required to be made public in writing, appellant argues that judicial review of an arbitrary and capricious procedure is frustrated.

Given the elaborate procedures established by Georgia law and approved by the Supreme Court, *Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976), to govern the imposition of the death penalty, the presence of "unfettered discretion" in the clemency process does not render the imposition of the death penalty on Smith arbitrary and capricious in violation of the Eighth Amendment.

The discretion involved at the clemency stage can never cause the imposition of the death sentence; it serves only as an act of grace to relieve that sentence even when the sentence has been legally imposed. For the foregoing reasons Smith's motion for injunction pending appeal is DENIED, and the judgment of the district court denying injunctive relief is AFFIRMED.³ "The Connecticut statute imposes no limit on what procedure is to be followed, what evidence may be considered, or what criteria are to be applied by the Board." *Id.* 452 U.S. at 466, 101 S.Ct. at 2465..

The only requirements imposed on the Georgia Board in regard to commuting a sentence of death to life imprisonment are that it render a written decision signed by a majority of Board members, Ga.Code Ann. § 42-9-42(a) & (b) (1982), and that it personally study the case before it. *Id.* § 42-9-20.. By analogy to *Barefoot v. Estelle*, - U.S. -, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983), and because of time constraints, we have reached the merits of this appeal.