

Court Reaffirms Rules Governing Excessive-Use-of-Force Lawsuits

By Stanley E. Adelman

Author's Note: This article deals with the Supreme Court case *Wilkins v. Gaddy*, 130 S. Ct. 1175, decided on Feb. 22, 2010.

In its latest decision concerning prisoner lawsuits that allege excessive use of force by correctional officers, the Supreme Court has reaffirmed what every well-trained and conscientious officer already knows: Excessive force that is used "maliciously and sadistically rather than as part of a good-faith effort to maintain or restore discipline" will subject the offending officer to the possibility of a civil rights lawsuit and the imposition of monetary damages against himself or herself personally.

Wilkins v. Gaddy: Allegations and Issues

The plaintiff in this case, a North Carolina state prisoner, brought a federal civil rights lawsuit against a correctional officer alleging that the officer had "maliciously and sadistically" assaulted him without any provocation, slamming him onto a concrete floor and then proceeding to "punch, kick, knee and choke" him, causing him multiple physical injuries (including a bruised heel, lower back pain, increased blood pressure, migraine headaches and dizziness) and also "psychological trauma and mental anguish."²

After the U.S. District Court for the Western District of North Carolina dismissed the suit at the very outset on the ground that the prisoner had not alleged a more than "*de minimis*" (i.e., minimal) injury, and after the dismissal was affirmed by the U.S. Court of Appeals for the Fourth Circuit, the Supreme Court reversed the lower

court rulings in a short "*per curiam*" decision.³ The effect of the Supreme Court's decision is to allow the prisoner's civil rights lawsuit to proceed.

Eighteen years prior to deciding this case, the Supreme Court, in the major precedential case of *Hudson v. McMillian*,⁴ rejected the notion that a prisoner lawsuit alleging the excessive use of force must contain an allegation of "significant injury" in order to be viable. Rather, the "core judicial inquiry" in these cases is "not whether a certain quantum of injury was sustained, but rather whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm."⁵

In *Wilkins*, as it had done 18 years earlier in *Hudson*, the Supreme Court addressed the two crucial factors that lower courts are to use in determining whether a prisoner's use-of-force lawsuit "states a claim": the *degree of injury alleged by the prisoner*, and the *state of mind of the officer* accused of acting excessively. With regard to the alleged injury, the court has always acknowledged that some alleged injuries are just too trivial (i.e., *de minimis*) to state a claim for violation of a prisoner's civil rights. "As we stated in *Hudson*, not 'every malevolent touch by a prison guard gives rise to a federal cause of action' . . . An inmate who complains of a 'push or shove' that causes no discernible injury almost certainly fails to state a valid excessive force claim."⁶ However, once the alleged injury rises above the level of the trivial, courts should refuse to dismiss the suit at the outset and should proceed to the "core inquiry" — whether the force was applied in good faith in order to maintain or restore discipline, or whether in a malicious and sadistic way intended to cause

harm. The types of injuries alleged to have occurred in both *Hudson* and *Wilkins* were not so serious as to be life-threatening or cause permanent disability (in *Hudson*, the prisoner alleged that the blows he received from the officers caused bruising, swelling, loose teeth, and a cracked dental plate), but nonetheless were above the level of *de minimis*. The Court in *Wilkins* concluded, "an inmate who is gratuitously beaten by guards does not lose his ability to pursue an excessive force claim merely because he has the good fortune to escape without serious injury."⁷

What the Supreme Court is doing in *Wilkins v. Gaddy* is cautioning lower courts not to measure the adequacy of an excessive force lawsuit by the severity of the injuries alleged, but rather by the "core inquiry" of whether the force was applied in good faith (and therefore justifiably), or out of malice (and therefore unjustifiably).

Advice Regarding the Use of Force

The job of a correctional officer is difficult and dangerous at best, and at times the use of force is an unavoidable "part of the job." Officers have the "unenviable task of keeping dangerous men in safe custody under humane conditions."⁸ Recognizing this reality, courts tend to be deferential to the kinds of decisions officers have to make daily, often on a split-second basis and with their own lives and safety and that of others at stake, as to whether or not to use physical force on an inmate who is acting in an assaultive or dangerous manner, and what degree of force is appropriate under the circumstances.

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In the heat of the moment, decisions can be made that may later be called into question and evaluated on the basis of “20/20 hindsight.” When conducting training⁹ for criminal justice and law enforcement agencies, I offer two key pieces of advice. First is that although officers are privileged to use force, even deadly force if necessary to preserve life and safety in the dangerous penal environment, that privilege lasts only as long as the emergency situation that initially justified the use of force. Once an inmate has ceased acting out dangerously and has been immobilized or rendered harmless, it is essential that the officer’s conduct also de-escalate commensurately. The temptation to give in to the “adrenaline rush” of an emergency situation or to “send a message” with one last but unnecessary blow, even where force was initially justified, must be avoided at all “costs” (pun intended – that last blow can indeed be the one that “costs” an otherwise responsible officer in terms of monetary damages).

My second, and closing, piece of advice is that when confronted with a dangerous situation without the luxury of time to plan your response, fall back on your training, your experience, your departmental policies, and your conscience. They will not steer you wrong.

ENDNOTES

¹ *Wilkins v. Gaddy*, 130 S.Ct. 1175, 1180.

² It is important to keep in mind that this case has not yet gone to trial, so there has not been any judicial determination of the truth or falsity of these allegations.

³ The Supreme Court often hands down per curiam decisions (literally meaning “by the court”) in cases where a strong majority of the court feels that the issue is so one-sided and the result so clearly required under the court’s precedents that the court can render its decision in a short, terse unsigned majority opinion, rather than requiring the full briefing and argument that the court reserves for clos-

er cases.

⁴ 503 U.S. 1 (1992).

⁵ 503 U.S. 1, 7.

⁶ 130 S.Ct. at 1178.

⁷ 130 S.Ct. at 1178-79.

⁸ *Farmer v. Brennan*, 511 U.S. 825, 845 (1994).

⁹ The importance of intensive departmental training (both recruit and in-service) in the use of force, not only as to proper force techniques but also as to when and to what degree force is justified, cannot be overstated.

Stanley E. Adelman is a professor of law at Albany Law School, and a criminal justice trainer and consultant. He is a former New York state parole officer and former senior litigation attorney for the Massachusetts Department of Correction. He is the author of a series of online courses on legal issues in corrections for ACA’s Corrections Online Training Collaborative; the courses will be added to the course library in late 2010. Adelman can be contacted at sadel@albanylaw.edu.

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