Jail Inmate Disciplinary Procedures

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By administrative regulation, North Carolina's jails are required to have written policies and procedures on inmate rules and discipline. 10A NCAC 14J .0203(a)(5). The only thing the jail regulations tell us about the substance of those policies and procedures is that they may not use food as a reward or punishment. 10A NCAC 14J .0902. Beyond that, the framework for how a jail should handle inmate disciplinary procedures is a question of constitutional due process. A recent case from the Fourth Circuit reminds us what process is due when a jail responds to alleged misbehavior by an inmate.

The case is Dilworth v. Adams, 841 F.3d 246 (4th Cir. 2016). Michael Dilworth was a pretrial inmate in a large North Carolina jail. He spent a total of about three months in administrative segregation as punishment for two disciplinary infractions.

The first infraction involved a fight with another inmate. The fight happened at 4:20 p.m. By 5:05 p.m., an officer had filed a disciplinary report and ordered a sanction of 45 days in disciplinary segregation. By 5:30, the watch commander had reviewed and approved that sanction.

Ten days later, Dilworth filed a written appeal to challenge the sanction. An administrative review officer dismissed the appeal, saying the videotape of the incident did not clearly show who started the fight.

The second infraction involved an altercation with detention officers. It's not clear how the incident started, but it ended with Dilworth on the floor, and another disciplinary report ordering 45 days of disciplinary segregation. Again, a lieutenant reviewed and approved the sanction, and again Dilworth appealed it. The administrative review officer dismissed the appeal.

At no point in the ordering, review, or appeal of Mr. Dilworth's sanctions did the jail conduct a hearing. As part of his appeal of the second infraction, Dilworth specifically asked for a hearing and an opportunity to present witness who would support his version of the events. The reviewing officer replied, "I am **NOT** required to recommend a disciplinary hearing if grounds for such do not exist."

Dilworth sued the detention officers and the sheriff in federal court under 42 U.S.C. § 1983, alleging that imposition of disciplinary segregation without a hearing violated his constitutional right to procedural due process. The federal district judge granted the officers' motion for summary judgment. Dilworth appealed to the Fourth Circuit.

He won there. Because Dilworth was a pretrial detainee, the appellate court applied the analytical framework set out by the Supreme Court in Bell v. Wolfish, 441 U.S. 520 (1979), and Wolff v. McDonnell, 418 U.S. 539 (1974). Under those cases, before a jail punishes an inmate, the inmate is entitled to:

- Written notice of the alleged violation at least 24 hours before a hearing;
- A hearing before an impartial factfinder, at which the inmate may make a statement on his own behalf, present witnesses and evidence, and ask questions of his accuser;
- the assistance of a fellow inmate or a member of the jail staff in preparing for the hearing, if the inmate is

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illiterate or otherwise in need of assistance;

- After the hearing, a written statement describing the reasons for the disciplinary action taken; and
- An opportunity to appeal.

The *Dilworth* court noted that the hearing need not be particularly formal. There is no right to counsel, for example, and the inmate's right to call witnesses can be limited if necessary to avoid threats to safety. The jail may also place a person in immediate segregation without a hearing ("administrative segregation," as many jails call it) after a fight or disruption to ensure order and security. **But there must eventually be a hearing before a final sanction is imposed.** Dilworth didn't get one for either of his infractions, and so the court reversed the district court's grant of summary judgment to the jail and remanded the case.

Technically, the analysis in Dilworth's case would have been different if he had been a sentenced inmate instead of a pretrial detainee. Under Sandin v. Conner, 515 U.S. 472 (1995), a convicted prisoner's liberty interests are infringed upon only when a jail or prison imposes a sanction on him that amounts to an "atypical and significant hardship on the inmate." A period of 90 days in disciplinary segregation probably would not be an "atypical and significant hardship" under *Sandin*, and so no hearing would have been required. *See, e.g.*, Beverati v. Smith, 120 F.3d 500 (4th Cir. 1997) (holding that a 6-month segregation period was not an atypical deprivation). My impression is that most jails do not have separate disciplinary procedures for sentenced inmates, who generally account for less than a third of their population.

I recently taught a class for jail administrators on jail disciplinary procedures. We talked about *Dilworth*, and walked through the basic elements of due process in *Wolff*. I got the sense that disciplinary procedures varied pretty widely around the state, with some jails conducting many disciplinary hearings each month, and others holding hardly any at all. Among those that conduct hearings, there was variability in the constitution of the panel conducting them, and in the person hearing appeals. That flexibility is fine, and to be expected given the differences in size and staffing among North Carolina's jails. *Dilworth* makes clear, however, that any jail that imposes disciplinary segregation as a sanction must have a hearing procedure in place. In light of the case, jails may wish to review their inmate discipline policies to ensure they comply with *Wolff* and are being followed in practice.

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