Review of Recent Juvenile Cases (2009)

by
The Honorable Pat Garza
Associate Judge
386th District Court
San Antonio, Texas

Commitment to TYC not considered cruel and unusual punishment.[In the Matter of J.M.](09-3-6)

On June 16, 2009, the Texarkana Court of Appeals held that juvenile failed to establish that his commitment to TYC was cruel and unusual punishment.

¶ 09-3-6. **In the Matter of J.M.,** No. 06-08-00087-CV, ___ S.W.3d ___, 2009 WL 1658078 (Tex.App.-Texarkana, 6/16/09).

Facts: After having amassed a rather impressive record of offenses, J.M., a juvenile, was placed on probation for felony theft of a motorcycle. On July 7, 2008, the State filed its motion to modify the disposition, alleging that J.M. violated the terms of his probation by committing misdemeanor theft and resisting arrest, among other violations. The trial court found sufficient evidence supported the allegations and modified the disposition, sending J.M. to the Texas Youth Commission (TYC). J.M. moved for a new trial. In response to the motion for new trial, the trial court agreed that an error had been made in the judgment and reformed its judgment to correct that error. J.M. then filed another motion for new trial, this time unsuccessfully. It is from the order sending J .M. to TYC that this appeal is being sought.

On appeal, J.M. presents several points of error. One of which he contends the conditions present at the TYC facility constitute cruel and unusual punishment.

At a hearing on his motion for new trial, J.M. testified to a laundry list of unpleasant occurrences he has experienced while incarcerated at TYC: (1) He was solicited on four or five occasions to join a gang at TYC's McLennan County Orientation and Assessment Unit. (2) He has witnessed a fight every day that he has been there, although he has not engaged in any himself. (3) He testified that there are usually only two staff members (usually women) to supervise the twenty-five boys in each unit or dormitory and that the staff acts as if they are not really concerned about the fighting. (4) On several occasions, the juvenile in the bed next to J.M. threatened to shank him with a filed-down four-to-five-inch screw and then to put his penis in J.M.'s ear. Although J.M. reported the threats to staff members, they took no action to remedy it. After having reported the situation to the supervisor and asking to be moved, J.M. was only moved to the other side of the room. (5) He was threatened with violence for his decision to not join a gang.

On cross-examination, J.M. confirmed that there are surveillance cameras installed on the premises. He suggests that as a result of the threats against him, there was a dormitory shakedown, during which the staff recovered five screws in the possession of the person who had threatened J.M. J.M. went on to say that his nemesis had surreptitiously placed one of those screws under J.M.'s own bed and that the other young man had been sent to a security lockup for twenty-four hours as a disciplinary measure. J.M. admitted that this was the only specific person with whom he had continued, identifiable problems. He did, however, report more

general conflicts with the unwanted gang recruitment. He testified that the constant fighting results in constant reporting of those fights.

Held: Affirmed as corrected

Opinion: The Eighth Amendment prohibits the infliction of punishment that can be characterized as "cruel and unusual." U.S. Const. amend. VIII; Tex. Const. art. I, § 13. "Juvenile cases, though classified as civil proceedings, are quasi-criminal in nature and frequently concern constitutional rights and procedures normally found only in criminal law." *In re H.V.*, 252 S.W.3d 319, 323 (Tex.2008). Due to this similarity, we examine cases involving claims of cruel and unusual punishment in the context of confinement for criminal offenses for guidance here. Confinement in a state-prison facility is a form of punishment subject to scrutiny under the Eighth Amendment. The Eighth Amendment's prohibition of cruel and unusual punishment was made applicable to the states by the Due Process Clause of the Fourteenth Amendment.

We note that the Constitution does not mandate comfortable prisons. *See Rhodes*, 452 U.S. at 349.

> Today the Eighth Amendment prohibits punishments which, although not physically barbarous, "involve the unnecessary and wanton infliction of pain," or are grossly disproportionate to the severity of the crime. Among "unnecessary and wanton" inflictions of pain are those that are "totally without penological justification."

Id. at 346 (citations omitted).

There should not be a gross disproportionality between the conditions of confinement and the severity of the offense or condition which led to the confinement. *See id.* at 347.

J.M. does not address the seriousness of the offenses with which he was charged or the persistence of his conduct that precipitated the order of commitment to TYC. Further, the thrust of his argument does not advance the theory that he has been singled out for any treatment by TYC officials as any punitive measure. Rather, his allegations seem to rest upon the contention that the generally dangerous or frightening conditions to which virtually all those incarcerated at TYC are subjected during their stays amounts to the imposition of cruel and unusual punishment.

Much of the caselaw defining the term "cruel and unusual" rise from actions in tort wherein inmates in prison situations have sought to recover damages from the prison officials for what they have alleged were their subjection to cruel and unusual punishment. While not controlling here, it provides some guidance in drawing the parameters of the term "cruel and unusual."

In order to prove a claim of Eighth Amendment cruel and unusual punishment in a tort case against prison officials involving the "prison-conditions" context, an inmate must demonstrate: (1) that the deprivation alleged was "sufficiently serious" and (2) that there was an unnecessary and wanton infliction of pain.

In cases involving a failure to prevent harm, the plaintiff must demonstrate an incarceration under conditions posing a substantial risk of serious harm. In order to be "[O]bjectively, 'sufficiently serious' ... a prison official's act or omission must result in the denial of the 'minimal civilized measure of life's necessities.' " *Farmer*, 511 U.S. at 834 (citations omitted). Although routine discomfort inherent in the prison environment is inadequate to satisfy an Eighth Amendment inquiry, only "those deprivations denying 'the minimal civilized measure of life's necessities' ... are sufficiently grave to form the basis of an Eighth Amendment violation." *Wilson v. Seiter*, 501 U.S. 294, 298, 111 S.Ct. 2321, 115 L.Ed.2d 271 (1991) (quoting *Rhodes*, 452 U.S. at 347). In determining

whether a constitutional violation has occurred, we must consider the circumstances, nature, and duration of a deprivation of these necessities.

An inmate does have an Eighth Amendment right to be reasonably protected from the constant threat of assaults and violence by fellow inmates. A pervasive risk of harm is deemed to exist when inmates are assaulted by other prisoners with such frequency that there is a reasonable fear for their safety and jail personnel are reasonably apprised of the existence of the threat to inmate safety and the need for protective action. *see also* *State v. Mungia*, 119 S.W.3d 814, 817 (Tex.Crim.App.2003) (concluding no constitutional violation had occurred where record showed only the possibility appellee may be killed if sent to prison).

In determining whether the conditions of confinement violate the Eighth Amendment, the courts consider all of the circumstances of incarceration in order to arrive at a decision as to whether the circumstances affront contemporary standards of decency. The several conditions that might lend themselves to finding an overall violation must have a mutually enforcing effect that results in the deprivation of a single, identifiable human need such as food, warmth, or exercise.

Here, the evidence upon which J.M. relies is primarily anecdotal, showing attempts at intimidation by other TYC detainees and repeated fights among those other detainees, all of which apparently has caused him to fear for his safety. He has not alleged that he has actually suffered any physical harm by either other detainees or action on the part of TYC officials to unreasonably discipline him.

For the most part, people who are prone to obey rules and to follow the general mores of society are unlikely to be housed in TYC; it is not a church camp. It is likely that J.M.'s experience is not substantially different from most other persons in the custody of TYC and he is, in essence, requesting that we find that anyone who is placed in the custody of TYC has been deprived of constitutional rights. J.M.'s testimony and the quarterly reports concerning the reporting of incidences made within TYC do not establish an Eighth Amendment violation. The public has heard that TYC has experienced a good deal of safety concerns and problems with reporting of incidences, especially concerning misconduct by staff. However, J.M.'s account of *his* treatment and experience in the McLennan Unit fails to demonstrate the evidence of cruel and unusual punishment. According to J.M., he did report the threats made from the other juvenile concerning the shank and threatened sexual assault. The record suggests that at some point following his report or reports, the staff conducted a search of the dormitory and recovered the shanks, one of which was found under J.M.'s bed. Further, J.M. was moved away from that particular juvenile. While it is not entirely clear, it appears there is a common sleeping room at the facility, and J.M. was moved to the other side of that common area. J.M.'s specific testimony concerning the threats while in the facility are limited to the threats from this juvenile which, from the record, appear to have been addressed. His more general testimony regarding the gang recruitment provides very little detail other than a threat of being accosted if he did not join. The record is not clear that he reported those incidents.

It appears that J.M.'s stay at the facility has not been a pleasant one; the Constitution does not guarantee that it will be. It does appear the staff has taken measures to remove or reduce the risk to J.M. posed by the threatening juvenile. So, now that the search removed the shanks with which he was threatened and removed J.M. away from that juvenile, J.M. cannot establish that he continues to experience a sufficiently serious risk of harm. Further, and more definitively, J.M.'s contention fails to establish that TYC officials did not take steps to address J.M.'s concerns for safety, and TYC cannot be said to have acted in reckless disregard of the threats posed to J.M. We overrule J.M.'s point of error concerning cruel and unusual punishment.

Further, we are mindful of our role in the administration of justice. When reviewing policies designed to preserve internal order, discipline, and security, a court should accord broad deference to prison administrators regarding the reasonableness of the scope, the manner, the place, and the justification of a

particular policy. In other words, courts should play a very limited role in the administration of detention facilities.

Conclusion: Because the trial court did not abuse its discretion by modifying J.M.'s disposition and committing him to TYC, because the modification order is sufficiently specific, and because J.M. has failed to establish that his commitment to TYC is cruel and unusual punishment or is a violation of his right to equal protection of the law, we overrule his points of error. J.M. is correct in that the modification order contains an error when it states that theft, in this situation, is punishable by confinement; that error, however, does not affect the validity of the order or the outcome of the case. We have and do exercise the authority to correct the trial court's order to reflect that the offense of theft, on these facts, is not, as the order states, punishable by confinement. We affirm the judgment as corrected.