

Federal court upholds Virginia's solitary confinement policy

Joe Williams
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On March 10, the US Court of Appeals for the Fourth Circuit in Richmond ruled that the state of Virginia's policy of automatically placing all death row inmates in solitary confinement until their execution date does not violate the constitution.

By a 2-1 margin, the court overturned US District Judge Leonie Brinkema's 2014 decision that granted death row inmate Alfredo Prieto expanded visitation rights and recreational opportunities. Attorneys representing Prieto had argued that inmates have a legal right to avoid extreme confinement conditions, and are therefore entitled to due process before being placed in isolation.

The March 10 opinion by Judge Diana Motz declared that the court could not "conclude that death row inmates have a state-created interest in consideration for non-solitary confinement when the State's established written policy expressly precludes such consideration." Motz asserted that "Prieto, like any other inmate, can only be deprived of that to which he is entitled." In other words, Prieto's Eighth Amendment Constitutional right barring cruel and unusual punishment, as well as the Fourteenth Amendment's provision of the right to due process, are void within the confines of Sussex I state prison.

Prieto, who is mentally disabled, had been facing execution in California for a 1990 murder when DNA evidence in 2005 linked him to several crimes that had occurred nearly two decades earlier in Northern Virginia. California prosecutors had been frustrated by Prieto's successful legal challenges to his death sentence at the appellate level. California and Virginia prosecutors agreed to house Prieto in Virginia, a state known for harsh prisons and more restrictive appeals processes.

Prieto spends 163 of the 168 hours in a week inside a

cell about the size of an average walk-in closet. His only connection to the outside world is what one judge referred to as "a window in name only," as it is covered with thick mesh that obstructs any view it might have offered and allows in almost no natural light. Artificial light abounds, however, as the overhead lights of his 71 square foot cell shine 24 hours a day. For one hour, five days per week, he is allowed "recreation time," which consists of being allowed to sit or stand in an outdoor cage essentially the same size as his cell.

In 2010, Prieto's attorneys filed a lawsuit against Sussex I State Prison Warden Eddie Pearson and other state prison officials. At that time, the Commonwealth of Virginia asserted that inmates on death row had no right to avoid harsh conditions like solitary confinement, and that there was a legitimate security reason to isolate death row inmates, as such prisoners had "nothing to lose" and were therefore dangerous.

While she noted that Prieto had been "by all accounts a model prisoner" and had not "engaged in any of the behaviors that would normally support placement in segregated confinement," Judge Brinkema denied the contention that Prieto's solitary confinement constituted cruel and unusual punishment, which is forbidden by the Eight Amendment of the US Constitution.

Virginia's Attorney General, an appointee of Democratic Governor Terry McAuliffe, has applauded the new decision.

In a dissenting opinion to the March 10 decision, Judge James Wynn characterized the majority's ruling as "misleading," and stated that its logic "would mean that prisoners have no interest in avoiding even extreme hardships so long as a state simply removes all ... prison regulations or expressly disclaims any liberty expectation." Indeed, according to the majority's line

of reasoning, the Commonwealth of Virginia, or any state, could destroy any due process claims by prison inmates simply by formal announcement that no inmates have any rights not to endure solitary confinement and other barbaric conditions.

The US currently houses enough prisoners in solitary confinement to populate a small city. An ACLU report found that on any given day as many as 80,000 prisoners may be kept in solitary confinement in the United States. Between one-third and one-half of them suffer from mental illness, as does 20 percent of the prison population at large. Although the American Medical Association has made it clear that juveniles and the mentally ill should not be placed in isolation under any circumstances, 35 percent of juvenile inmates are at some point. Fifty percent of prison suicides occur in solitary confinement.

Organizations that oppose solitary confinement include the American Bar Association, the American Psychological Association, the American Public Health Association, and the World Medical Association. The National Lawyers Guild warned Congress in 2012 that it constitutes torture under international laws to which the US is signatory. Nonetheless, solitary confinement does not amount to cruel and unusual punishment as far as the federal judiciary is concerned.

Last week, Juan Méndez, the United Nations' Special Rapporteur on Torture, Cruel, Inhuman or Degrading Treatment or Punishment, accused the United States government of refusing him access to Guantánamo Bay and other federal prisons, where he wishes to investigate the use of solitary confinement. According to Méndez, it is not rare for prisoners to spend between 25 and 30 years in solitary confinement, locked in a cell with no human contact for 23 hours a day.



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