

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

March 19, 2021

[Cite as *03/19/2021 Case Announcements, 2021-Ohio-833.*]

MERIT DECISIONS WITHOUT OPINIONS

2020-1551. *Faulkner v. Ohio Dept. of Rehab & Corr.*

Miscellaneous case. On motion to dismiss of respondents and intervening respondent, state of Ohio. Motion granted. Cause dismissed.

O'Connor, C.J., and Kennedy, Fischer, DeWine, Stewart, and Brunner, JJ., concur.

Donnelly, J., concurs, with an opinion.

DONNELLY, J., concurring.

{¶ 1} “[P]risoners do not shed all constitutional rights at the prison gate,” *Sandin v. Conner*, 515 U.S. 472, 485, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995), citing *Wolff v. McDonnell*, 418 U.S. 539, 555, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). A hallmark constitutionally protected right afforded to inmates found in the Due Process Clause of the Fourteenth Amendment to the United States Constitution is the right to access the courts to seek redress for legal grievances. *Wolff* at 556; *Woodford v. Ngo*, 548 U.S. 81, 104, 126 S.Ct. 2378, 165 L.Ed.2d 368 (2006) (Stevens, J., dissenting). Relator, Jake W. Faulkner III, sought to exercise that right by filing this original action seeking relief for the unjustifiable use of force and unlawful conditions of confinement that he has allegedly endured as an inmate under the custody and control of Madison Correctional Institution (“MCI”).

{¶ 2} According to his complaint, Faulkner has been the victim of numerous instances of physical assaults from correctional officers. Additionally, Faulkner alleges that correctional officers have engaged in other acts of illegal treatment, such as threatening and harassing him,

using the threat of restricted housing to coerce him to be untruthful when questioned about mistreatment, and subjecting him to racial slurs and derogatory comments. However, because of procedural deficiencies in this case, we cannot adjudicate his claims on the merits. I therefore concur in the majority’s judgment granting the motion to dismiss filed by respondents, Ohio Department of Rehabilitation and Correction Director Annette Chambers-Smith, MCI Warden Tom Sweitzer, and MCI Inspector Zachary Gould. I write separately only to note that our dismissal of this case does not mean that Faulkner’s allegations have fallen on deaf ears. Indeed, Chief Justice Maureen O’Connor is forwarding these allegations to the Correctional Institution Inspection Committee (“CIIC”) for further investigation.

{¶ 3} The CIIC, which was created by the General Assembly, is a subcommittee of the Ohio Legislative Service Commission. R.C. 103.71. This committee operates as an independent review authority; it is not under the supervision or control of any correctional institution. *See id.* and R.C. 103.73. According to the CIIC’s website, the committee serves legislators, taxpayers, and prison stakeholders “by assisting the state’s efforts to ensure a safe and humane correctional system.” <http://www.ciic.state.oh.us/> (accessed Mar. 16, 2021) [<https://perma.cc/KE3S-Q9UJ>]. As noted on its website, the CIIC conducts unannounced inspections of all state correctional facilities for an unvarnished view of current corrections in Ohio, analyzes thousands of staff and inmate contacts, conducts inquiries to the Department of Rehabilitation and Correction about specific incarcerated individuals, evaluates the grievance procedures of the Department of Rehabilitation and Correction and makes recommendations for improvement, and provides necessary information to decision-making legislators. *Id.* Thus, it seems that the CIIC is an appropriate body to consider the allegations contained in Faulkner’s complaint.

{¶ 4} It has been said that “[t]he degree of civilization in a society can be judged by entering its prisons.” Allen E. Honick, *It’s “Exhausting”*: *Reconciling a Prisoner’s Right to Meaningful Remedies for Constitutional Violations with the Need for Agency Autonomy*, 45 U.Balt.L.Rev. 155 (2015), quoting Fyodor Dostoyevsky, *The House of the Dead* (Constance Garnett trans., 1861). “Prisoners lose many rights upon incarceration, but fundamental human rights are not among them.” *Id.* at 191. Criminal justice includes an affirmative duty to protect incarcerated individuals. Sharon Dolovich, *Cruelty, Prison Conditions, and the Eighth Amendment*, 84 N.Y.U.L.Rev. 881, 891 (2009). This obligation necessarily includes ensuring that

basic human rights not be infringed. *Id.* I applaud Chief Justice O'Connor's action of requesting that the CIIC investigate the allegations raised in this matter.
