

Phil Dixon
919.966.4248
dixon@sog.unc.edu
UNC School of Government

Case Summaries: Fourth Circuit Court of Appeals (Jan. 12, 20, 25, and 28, 2022)

Omissions by juror about relatives in law enforcement and other topics during voir dire did not support juror bias claims

[Porter v. White](#), 23 F.4th 322 (Jan. 12, 2022). The petitioner was convicted of the murder of a police officer in state court in the Eastern District of Virginia and was sentenced to death. During jury selection, one juror did not reveal that his brother worked as a law enforcement officer when asked about relatives working in law enforcement (although he did disclose that his nephew worked in law enforcement). During later proceedings, it was discovered that the same juror also failed to reveal relatives who had been victims of violent crime and family members who had been arrested for crimes, despite having been questioned on those issues. After exhausting the state appellate and collateral review process, the petitioner sought habeas relief in federal court. He argued that the juror's omissions during the selection process showed bias, in violation of the petitioner's Sixth Amendment right to an impartial jury. After several dismissals, appeals, and remands, the district court conducted an evidentiary hearing on the juror bias claims. The juror in question testified that his omissions were not "deliberate" and that "he hadn't thought very hard" about his answers during jury selection but denied knowingly omitting relevant information from his answers. The district court found the juror credible and denied the petition. The petitioner appealed.

The district court's findings that the juror's omissions failed to show actual bias were supported by the record and not clearly erroneous. According to the court:

That Juror Treakle may have been careless when considering his responses to the voir dire questions, as Appellant argues, does not indicate that he had a preconceived notion about the result of Appellant's trial or that he could not decide Appellant's guilt or innocence based on the evidence adduced at trial. In short, carelessness is not equivalent to partiality. *Porter* Slip op. at 15.

The district court also rejected a juror bias claim under *McDonough Power Equipment, Inc. v. Greenwood*, 464 U.S. 548 (1984). This claim requires the petitioner to show that "a juror failed to answer honestly a material question on voir dire and (2) a correct response would have provided a valid basis for a challenge for cause." *Id.* at 556 (cleaned up). Further, the petitioner must show that the fairness of the trial was affected by the omission. The evidence in support of this claim was largely the same evidence as the actual bias claim and failed to establish that the juror in question would have been struck for cause if he had provided the omitted information during voir dire. The district court therefore properly denied this claim as well and was unanimously affirmed.

District court properly dismissed due process and deliberate indifference claims

[Moskos v. Hardee](#), 24 F.4th 289 (Jan. 20, 2022). The plaintiff was an inmate at a prison in Lumberton in the Eastern District of North Carolina. Following an altercation with a guard, he was placed in segregation, lost gained time credits against his sentence, and was transferred to a maximum-security facility. He sued various corrections officers under 42 U.S.C. 1983 for excessive force, alleged due process and Eighth Amendment violations, and a state tort claim for assault. The due process claim alleged that the defendants presented false evidence in order to impose discipline on the plaintiff, including the loss of credits towards his sentence. The Eighth Amendment claim alleged that the defendants were deliberately indifferent to the plaintiff's medical needs and the conditions of his confinement while he was in segregation following the altercation. The trial court dismissed the deliberate indifference and due process claims at the close of evidence, and the jury found the defendants not liable on the excessive force and assault claims.

The plaintiff appealed the dismissal of the two claims and the Fourth Circuit unanimously affirmed. Trial court correctly dismissed the due process claim. While the plaintiff was free to challenge his disciplinary punishment by way of a habeas petition, no such cause of action exists under 42 U.S.C. 1983. "It has long been settled law . . . that a plaintiff may not challenge the validity of a disciplinary conviction through a damages suit under § 1983." *Moskos* Slip op. at 8. As for the Eighth Amendment claim, the plaintiff failed to show a significant delay in his medical treatment that put him at "substantial risk of serious harm." *Id.* at 13 (citation omitted). He likewise failed to present any evidence that the defendants were aware of or had control over his conditions of confinement following the altercation. There was therefore insufficient evidence of an Eighth Amendment deliberate indifference claim, and the district court properly dismissed it as well.

A challenge to an evidentiary ruling by the trial court was also rejected and the district court's judgment was affirmed in full.

Ineffective assistance at sentencing was apparent from the record and required resentencing

[U.S. v. Freeman](#), 24 F.4th 320 (Jan. 25, 2022). In this case from the District of South Carolina, the defendant developed an opiate addiction following an injury as a teen. She later became involved in forging prescriptions for the drugs and eventually began selling them. She pled guilty to federal drug offenses without a plea bargain and was sentenced to 210 months (more than 17 years). Appellate counsel submitted a no-merits *Anders* brief. In response, the Fourth Circuit directed appellate counsel to brief whether the defendant received ineffective assistance at sentencing. Over a dissent, the initial panel granted relief on that claim in a divided opinion (summarized [here](#)). See *U.S. v. Freeman*, 992 F.3d 268 (Fourth Cir. 2021). Sitting en banc, the full court affirmed. Trial counsel waived meritorious objections to the sentence and failed to object to a sentencing enhancement despite having strong grounds to do so. Given the impact of trial counsel's actions on the defendant's sentence, this was prejudicial. The cold record conclusively established trial counsel's ineffectiveness. In the words of the majority:

Counsel frankly explained to the court that he was waiving Freeman's objections because he incorrectly and unreasonably believed that her objections would not affect her Guidelines range. Counsel also described Freeman's objections as 'minimal,' even though they could have reduced the low end of her Guidelines range by almost ten years . . . *Freeman* Slip op. at 19.

Thus, the sentence was vacated, and the matter was remanded for resentencing.

Judges Quattlebaum, Wilkinson, Niemeyer, Agee, and Rushing dissented. They argued that that the matter should have proceeded through the collateral review process instead of being decided on direct appeal.

Disparate treatment of youthful offender by Virginia's sex offense registration program did not violate the plaintiff's due process or equal protection rights, and the registry is not a punishment within the meaning of the Eighth Amendment

[Doe v. Settle](#), ___ F.4th ___, 2022 WL 260866 (Jan. 28, 2022). At age 18, the plaintiff had sex with a 14-year-old. He was prosecuted for taking indecent liberties with a child in Virginia state court, although the conduct at issue qualified for the more serious state offense of having carnal knowledge of a child. Upon conviction, he was ordered to enroll in the state sex offender registry for life. Pursuant to the rules of the state registry, the plaintiff would have been eligible to petition for removal after 15 years, had he been convicted of the carnal knowledge offense. Having been convicted of the less serious indecent liberties offense, the plaintiff was not eligible this relief and was required to register for life. After more than 10 years on the registry, he sued in the Eastern District of Virginia. He argued that state sex offender registry's disparate treatment of the more serious offense compared to its treatment of his less serious offense constituted an Equal Protection violation and violated his substantive due process rights. He also argued that lifetime registration for his youthful crime was a cruel and unusual punishment in violation of the Eighth Amendment. The district court dismissed the claims, and the plaintiff appealed.

The Fourth Circuit unanimously affirmed. Because the plaintiff's status as a sex offender is not a suspect classification, the court applied rational basis review to the Equal Protection claim. Assuming arguendo that the plaintiff was similarly situated to persons convicted of the more serious offense, he failed to show that the registry's different treatment of the two offenses lacked a rational basis. As for the defendant's Eighth Amendment claim, the court determined that sex offender registration was not a "punishment" pursuant to *Smith v. Doe*, 538 U.S. 84 (2003). The Virginia registration system was intended as a civil regulation and not a punitive measure. Further, the registry laws do not have such a punitive effect to be deemed punishment despite its regulatory nature. The court likewise rejected the substantive due process claim, and the district court was affirmed in full. In closing, the court acknowledged the unjust result but noted its limited role:

The judiciary is not meant to revise laws because they are clumsy, unwise, or—even in some cosmic sense—unfair. In cases like this, courts are asked to make judgments about what is inside and what is outside the precise lines drawn by the Constitution. And whatever else they may be, Virginia's sex-offender registry and its narrow Romeo-and-Juliet provision are constitutional. *Doe* Slip op. at 38.