7-30-2020

Franklyn Prillerman v. City of Philadelphia

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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No. 19-3685

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FRANKLYN PRILLERMAN,
Appellant

v.

CITY OF PHILADELPHIA; WARDEN CURRAN FROMHOLD CORRECTIONAL FACILITY; C.O. SAM; C.O. COLEMAN; C.O. LYNCH; SYLVIA MELTON, Correction Officer

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On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-13-cv-01414)
District Judge: Honorable Cynthia M. Rufe

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Submitted Pursuant to Third Circuit LAR 34.1(a)
June 23, 2020
Before: AMBRO, GREENAWAY, JR. and PORTER, Circuit Judges

(Opinion filed: July 30, 2020)

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OPINION*

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PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Pro se appellant Franklyn Prillerman appeals the District Court's order granting summary judgment to the defendants. We will affirm the District Court's judgment.

Prillerman was detained in the Curan-Fromhold Correctional Facility (CFCF) while awaiting extradition to Arkansas, where he faced charges of violating the terms of his probation. Before the extradition hearing, Corrections Officer Tanya Lynch permitted Prillerman to speak to his lawyer, a public defender, over the telephone. However, Officer Lynch allegedly instructed Prillerman to answer only "yes" to questions posed by the attorney and prohibited him from asking questions or otherwise discussing his case. Prillerman complied with these instructions. During the subsequent video-conference hearing, Prillerman waived extradition after being questioned on the record. He was then returned to Arkansas. The trial court found him guilty and sentenced him to five years' imprisonment, but the Court of Appeals reversed. See Prillerman v. State, 2014 Ark. App. 46 (Ark. Ct. App. 2014).

Prillerman then filed a complaint under 42 U.S.C. § 1983, alleging that Officer Lynch violated his constitutional rights by preventing him from speaking freely to his attorney and that the City of Philadelphia was liable under Monell.[1] The District Court granted the defendants' motion for summary judgment, and Prillerman appealed. We affirmed the District Court's judgment in large part, vacating and remanding only to permit the District Court to consider in the first instance Prillerman's claim that Lynch's conduct violated his rights under the Due Process Clause (and the related Monell claim).

[1] Monell v. Dep't of Soc. Servs., 436 U.S. 658 (1978).

See Prillerman v. Fromhold, 714 F. App'x 184, 186 (3d Cir. 2017). On remand, the District Court granted summary judgment to the defendants on these claims as well, concluding that Prillerman had no constitutional right to counsel and therefore could not "state a due process claim that he was denied the opportunity to consult with counsel at the hearing." ECF No. 77 at 5. Prillerman appealed.

We have jurisdiction pursuant to 28 U.S.C. § 1291. We exercise plenary review over the District Court's grant of summary judgment. See Wiest v. Tyco Elecs. Corp., 812 F.3d 319, 327-28 (3d Cir. 2016). We may affirm on any ground supported by the record. See Munroe v. Cent. Bucks Sch. Dist., 805 F.3d 454, 469 (3d Cir. 2015).

We will affirm the District Court's judgment as to Lynch because she is protected by qualified immunity. Qualified immunity "shields officials from civil liability so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." James v. N.J. State Police, -- F.3d --, No. 18-1432, 2020 WL 1922370, at *3 (3d Cir. Apr. 21, 2020) (quoting Mullenix v. Luna, 136 S Ct. 305, 308 (2015)).[2] "[C]learly established rights are derived either from binding Supreme Court and Third Circuit precedent or from a robust consensus of cases of persuasive authority in the Courts of Appeals." Id. at *4 (quoting Bland v. City of Newark, 900 F.3d 77, 84 (3d Cir. 2018)).

[2] There are two prongs to the qualified-immunity analysis—the plaintiff must show "(1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct." Ashcroft v. al-Kidd, 563 U.S. 731, 735 (2011) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). We have discretion to consider the prongs in either order, see id., and conclude that it is appropriate here to begin with the second prong.

Here, Prillerman has not cited, and our independent research has not revealed, any case law holding that a defendant has a due process right to counsel during an extradition hearing. Prillerman argues that such a right is created by the Pennsylvania Rules of Criminal Procedure, but "officials do not forfeit qualified immunity from suit for violation of a federal constitutional right because they failed to comply with a clear state statute"; rather, the "clearly established right must be the federal right on which the claim for relief is based." Doe v. Delie, 257 F.3d 309, 318–19 (3d Cir. 2001); see also Walker v. Coffey, 905 F.3d 138, 150 n.63 (3d Cir. 2018). Accordingly, because Prillerman has not shown that Lynch's conduct violated his clearly established due process rights, she is entitled to judgment in her favor. See generally Mann v. Palmerton Area Sch. Dist., 872 F.3d 165, 174 (3d Cir. 2017).

Further, Prillerman failed to show that Lynch's conduct was based on a policy or custom so as to establish that the City of Philadelphia is liable under Monell. Rather, it appears that Lynch's alleged conduct was essentially "ad hoc . . . without reference to any formal administrative or policy channels"—which is insufficient to establish Monell liability. McTernan v. City of York, 564 F.3d 636, 659 (3d Cir. 2009). Nor has Prillerman "demonstrate[d] that [the] city's [alleged] failure to train its employees 'reflects a deliberate or conscious choice.'" Estate of Roman v. City of Newark, 914 F.3d 789, 798 (3d Cir. 2019) (quoting Brown v. Muhlenberg Twp., 269 F.3d 205, 215 (3d Cir. 2001)).

Accordingly, we will affirm the District Court's judgment