



2002 Decisions

Opinions of the United
States Court of Appeals
for the Third Circuit

12-30-2002

Williams v. Consovoy

Follow this and additional works at: https://digitalcommons.law.villanova.edu/thirdcircuit_2002

Recommended Citation

"Williams v. Consovoy" (2002). *2002 Decisions*. 807.
https://digitalcommons.law.villanova.edu/thirdcircuit_2002/807

This decision is brought to you for free and open access by the Opinions of the United States Court of Appeals for the Third Circuit at Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in 2002 Decisions by an authorized administrator of Villanova University Charles Widger School of Law Digital Repository.

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

- - -

JOHN C. WILLIAMS, : NOS. 02-1587/1648
Appellant :
 :
v. : Philadelphia, Pennsylvania
 : November 5, 2002
ANDREW CONSOVOY; ROLANDO :
GOMEZ-RIVERA; RACHEL TORRES- :
CHOWANIEC; RUBY WASHINGTON; :
DON E. GIBBONS; :
KEVIN MAHONEY; NEW JERSEY :
STATE PAROLE BOARD, :
Appellees :
 :
Rachel Torres-Chowaniec; :
Ruby Washington, :
Appellants No. 02-1587 :
..... :
JOHN C. WILLIAMS, :
Appellant No. 02-1648 :
 :
v. :
 :
ANDREW B. CONSOVOY; ROLANDO :
GOMEZ-RIVERA; RACHEL TORRES- :
CHOWANIEC; RUBY J. :
WASHINGTON; DON E. GIBBONS; :
KEVIN MAHONEY; NEW JERSEY :
STATE PAROLE BOARD, :
Appellees :
.....

BENCH OPINION
BEFORE THE HONORABLE EDWARD R. BECKER
CHIEF JUDGE OF THE THIRD CIRCUIT
THE HONORABLE THEODORE A. McKEE
) SENIOR CIRCUIT JUDGE
THE HONORABLE JAMES C. HILL
SENIOR CIRCUIT JUDGE

- - -

APPEARANCES:

For the Appellants/ GREGORY A. SPELLMEYER, ESQUIRE
Cross Appellees: Office of Attorney General of New Jersey
P.O. Box 112
Richard J. Hughes Justice Complex
Trenton, NJ 08625

APPEARANCES: (Continued)

For the Appellee/ STEPHEN M. LATIMER, ESQUIRE
Cross Appellant: Loughlin & Latimer
 131 Main Street, Suite 235
 Hackensack, NJ 07601

- - -

Transcribed by: Tracey J. Williams, CET

(Proceedings recorded by electronic sound recording;
transcript provided by AAERT-certified transcriber.)

- - -

1 (The following is the bench opinion of the Court in
2 the above-captioned matter:)

3 THE HONORABLE JUDGE BECKER: I have communicated
4 during the course of argument with my colleagues on the panel
5 and I am now prepared to announce the judgment of the Court.

6 With respect to the direct appeal, we note that the
7 matters which Mr. Williams alleges were administrative acts
8 in fact are adjudicative, that do clearly merit immunity:
9 Ordering a psychological profile, failing to check into
10 Williams's prior criminal record before relying on it, and
11 failing for eight months to correct Williams's lack of
12 criminal record before revoking parole. We are satisfied
13 that each of these acts are judicial in character and fall
14 within *Clearinger v. Saxner*, 474 U.S. 193 (1985).

15 And our case law, and I'll supply citations when I
16 finalize this, which mandate that Torres-Chowaniec,
17 T-o-r-r-e-s-C-h-o-w-a-n-i-e-c, and Washington are entitled to

18 immunity with respect to those claims. Accordingly, we will
19 reverse the judgment of the District Court and direct it to
20 grant summary judgment for Torres and Washington on those new
21 claims.

22 With respect to the cross appeal, we are satisfied
23 that we have no jurisdiction over the cross appeal. There is
24 no 54(b) certification here. The only alleged jurisdiction
25 over the cross appeal is pendent appellate jurisdiction and

26 4
27 we find that the Heck v. Humphrey issues raised by the cross
28 appeal are not inextricably intertwined with the issues I
29 have just described. In National Union Fire Insurance, we
30 stated that pendent appellate jurisdiction over an otherwise
31 unappealable order is available only to the extent necessary
32 to ensure meaningful review of an appealable order. As Mr.
33 Latimer honorably conceded during the argument, that is not
34 the case here; we don't need to reach those vexing issues in
35 order to decide the issues on the direct appeal.

36 I also note that we have Consovoy and Gibbons,
37 claims against whom are alive in the District Court. So
38 there is no final order in the District Court that would
39 justify jurisdiction over what I describe as the Heck v.
40 Humphrey claims, that is the claims against Consovoy and
41 Rivera. And of course in Consovoy the case is very much
42 alive. There was
43 no judgment with respect to Consovoy in the District Court
44 because he had not yet appeared, and neither has anything
45 happened with respect to Gibbons. However, it should be for
46 consolation to Mr. Williams that his case remains alive in

47 the District Court and, who knows, the Supreme Court may do
48 something on the Heck v. Humphrey issues to clarify what is a
49 really a Delphic situation at best in terms of the
50 jurisprudence.

51 So, we will enter an order dismissing the cross
52 appeal for lack of appellate jurisdiction. This constitutes
53 the opinion and judgment of the Court.

54 Judge McKee, do you have anything to add?

55 THE HONORABLE JUDGE MCKEE: No.

56 JUDGE BECKER: Judge Hill?

57 THE HONORABLE JUDGE HILL: Nothing.

58 JUDGE BECKER: Very well. And the Clerk will
59 arrange for a transcription of this bench opinion.

60 And we thank counsel for their able arguments and
61 the panel will take a five-minute recess.

62 (Bench opinion concluded.)

63 * * *