S. JAILS/PRISONS

TITLE: Blanck v. Ind. Dep't of Corr.
INDEX NO.: S.
CITE: (06-22-05), Ind., 829 N.E.2d 505
SUBJECT: No judicial review of prison disciplinary decisions
HOLDING: Neither Ind. Code 11-11-5-4, which prohibits DOC from imposing certain disciplinary actions, nor "Open Cts." provision of Article I, Section 12 of Indiana Constitution create subject matter jurisdiction over claims seeking judicial review of DOC discipline decisions. Ct. has never held that Open Cts. Clause provides a substantive "right" of access to Cts. or to bring a particular cause of action to remedy an asserted wrong. Martin v. Richey, 711 N.E.2d 1273 (Ind. 1999). Held, transfer granted, Ct. App.' opinion at 806 N.E.2d 788 vacated, dismissal of plaintiff's complaint affirmed but Ct. should have dismissed on grounds of lack of subject matter jurisdiction under Trial Rule 12(b)(1); Boehm & Rucker, JJ., concurring in result, believe that complaint should be dismissed because it fails to state a claim pursuant to Trial Rule 12(b)(6), & if private cause of action were provided under statutes, claim could be presented in a Ct. of general jurisdiction.

RELATED CASES: Varner, App., 905 N.E.2d 493, aff'd 922 N.E.2d 610 (the Blanck line of cases did not preclude trial court from hearing inmate's mandate action filed pursuant to Ind. Code 34-27-3-1 requesting that all five members of the parole board vote on his parole eligibility; inmate's mandate did not involve prison discipline and the regulation of the inmate population in general); Israel, 868 N.E.2d 1123 (seizure of inmate's settlement check was restitution as a result of a disciplinary sanction & is therefore not subject to judicial review, following Blanck); Kimrey, 861 N.E.2d 379 (Tr. Ct. properly dismissed inmates' complaint against DOC, which alleged that an administrative procedure prohibiting sexually explicit printed matter violated rights conferred upon them by Ind. Code 11-11-3-6(a). Inmates alleged no constitutional violations, & legislature did not intend to provide inmates with a private right of action to enforce Ind. Code 11-11-3-6).

S. Jails / Prisons
S.1. General Conditions

TITLE: Beard v. Banks
INDEX NO.: S.1.
CITE: 542 U.S. 406, 124 S. Ct. 2504, 159 L.Ed.2d 494 (June 28, 2006)
SUBJECT: Prisoner access to publications, First Amendment
HOLDING: A plurality of justices concluded that, based on the record before the Court, prison officials set forth adequate legal support for a policy forbidding inmates who are housed in Pennsylvania's Long Term Segregation Unit any access to newspapers, magazines, and photographs. The LTSU houses the state's most dangerous and recalcitrant inmates. Respondent filed a class-action suit alleging that the policy violated the class's First Amendment rights. The Third Circuit held that the prison regulation could not be supported as a matter of law. Plurality found that Petitioner's (prison secretary's) first justification for the policy - the need to motivate better behavior on the part of particularly difficult prisoners - sufficiently satisfied requirements under Turner v. Safley, 482 U.S 78 that restrictive prison regulation be "reasonably related to legitimate penological interests." The second, third, and fourth Turner factors -- whether "alternate means of exercising the right" remain open to inmates; the impact accommodating the right would have on guards and other inmates, and on the allocation of prison resources; and whether there are ready alternatives for furthering the government interest, add little to the first factor's logical rationale. Held, judgment reversed with Breyer, the Chief Justice, Kennedy and Souter, JJ. in the plurality; Thomas, J., joined by Scalia, J., concluded that the framework of his concurrence in Overton v. Bazzetta, 539 U.S. 125 provided the least perilous approach to resolving challenges to prison regulations and is most faithful to the Constitution. This approach would prove Pennsylvania's prison regulations permissible as sentencing a criminal, carries "with it the implied delegation to prison officials to discipline and otherwise supervise the criminal while he is incarcerated." Stevens, J., joined by Ginsburg, J., filed a dissent finding "the logical connection between the regulation and the asserted goal" to be so remote "as to render the policy arbitrary or irrational." *Citing* Turner*;* Ginsburg, J. filed separate dissent to address the plurality's misapprehension of the office of summary judgment, noting the slim evidence produced primarily through a deposition of the prison's deputy superintendent to support summary judgment. A rational trier could conclude that the challenged regulation is not Areasonably related to legitimate penological interests@ based on the record.

TITLE: Brown v. Plata
INDEX NO.: S.1.
CITE: (05-23-11), 131 S.Ct. 1910 (U.S. 2011)
SUBJECT: Prison Litigation Reform Act allows mandate to reduce prison population
HOLDING: The Prison Litigation Reform Act of 1995 (APLRA@) authorized the lower court's injunction mandating the State of California to reduce its prison population by releasing as many as 37,000 inmates over the next two years to remedy the violation of the prisoners' constitutional rights. If a prison deprives prisoners of basic sustenance, including medical care, the courts have a duty to remedy the resulting Eight Amendment violation. See Hutto v. Finney, 437 U.S. 678, 687 n.9 (1978).

California prisons are designed to house just under 80,000 inmates, but at the time the specially appointed three-judge panel entered the injunction, the inmate population was almost twice that number. The plaintiffs consist of two classes representing inmates with serious medical conditions and inmates with serious mental disorders. They argued that lack of care has resulted in an Aalarming@ death rate of one inmate every eight days. Some inmates needing medical or psychiatric care waited more than one year before receiving treatment. Twenty percent of the jobs for surgeons were vacant and 54% of the jobs for psychiatrists were vacant.

The three-judge panel did not err in finding that "overcrowding [was] the primary cause of the violation" and that no other relief would remedy the Eight Amendment violations. The panel adequately considered the potential adverse impact on public safety from its order. Held, judgment affirmed. Scalia, J., DISSENTING, joined by Thomas, J., stating, "[T]oday the Court affirms what is perhaps the most radical injunction issued by a court in our Nation's history." Justice Scalia also objected that the majority made it too easy for the State of California to seek a change in the release order. Alito, J., DISSENTING, joined by Roberts, C.J., (addressed public safety concerns, fearing that the majority's decision will lead to a grim roster of victims).

TITLE: Hope v. Pelzer

INDEX NO.: S.1.

CITE: 01-309 (27 June 2002), 122 S.Ct. 2508

SUBJECT: Conditions of confinement, cruel and unusual punishment, Eighth Amendment, qualified immunity

HOLDING: Hope, a prison inmate, as punishment for being uncooperative during a work detail and having an altercation with a guard, was handcuffed to a 'hitching post' for seven hours in the sun with no shirt, and was denied drinking water and bathroom breaks. The Eleventh Circuit found that the use of the hitching post violated the Eight Amendment prohibition against 'cruel and unusual punishment' but that the guards were entitled to summary judgment based on qualified immunity. The U.S. Supreme Court reversed, holding (1) that Hope's allegations, if true, established an "obvious" Eighth Amendment violation, (2) that the state of the law in 1995, at the time of the events at issue, gave the guards fair warning that their alleged treatment of Hope was unconstitutional. In this case the hitching post was used as a punishment which lasted all day, and not as a coercive measure to compel Hope to return to his work detail.

TITLE: Kaba v. Stepp
INDEX NO.: S.1.
CITE: (8/16/2006), 7th Cir., 458 F.3d 678
SUBJECT: Administrative remedies unavailable for threatened prisoner
HOLDING: The U.S. Court of Appeals for the Seventh Circuit held threats against a prisoner can make administrative remedies "unavailable" for purposes of the exhaustion of administrative remedies requirement of the Prison Litigation Reform Act. The PLRA provides, at 42 U.S.C. § 1997e(a), that "no action shall be brought" by prisoners challenging the conditions of their confinement "until such administrative remedies as are available are exhausted." The prisoner before the court argued that administrative remedies were not "available" to him because he was threatened with death if he sought such remedies. Embracing the approach used by the Second Circuit, the Court said that "the ability to take advantage of administrative grievances is not an 'either-or' proposition." See Hemphill v. New York, 380 F.3d 680 (2d Cir. 2004). In the present case, the Court noted the prisoner claimed that prison officials refused to give him the forms he needed to file a grievance. It added that an attack he suffered after seeking to file a grievance may have served to "transform administrative remedies from available to unavailable, for an ordinary prisoner in [his] shoes."

TITLE: Smith v. Indiana Department of Correction
INDEX NO.: S.1.
CITE: (04-09-08), Ind., 883 N.E.2d 802
SUBJECT: Three Strikes Law violates Open Courts Clause of Ind. Constitution
HOLDING: Indiana's Three Strikes Law violates the Open Courts Clause found in article I, section 12 of the Indiana Constitution. Both Three Strikes Law and Frivolous Claim Law, Ind. Code 34-58-1-2, were designed to screen and prevent abusive and prolific offender litigation in Indiana. An "offender" is defined as "a person who is committed to the department of correction or incarcerated in a jail." Under Frivolous Claim Law, trial court may summarily dismiss meritless claims from offenders. Here, trial court dismissed claim under Three Strikes Law, Ind. Code 34-58-2-1, which bars an offender from bringing a claim if he has filed three previous frivolous suits, unless court finds offender is in immediate danger of serious bodily injury.

In concluding that Three Strikes Law violates Open Courts Clause, Court noted that "the right to petition the courts is absolute," but Law imposes a complete ban on filing based solely on prior litigation. Exception in Three Strikes Law for claims of "immediate danger of serious bodily injury" does not cure this defect. Offender's claim for damages and injunctive/declaratory relief may not be dismissed solely because of his earlier litigation. Court noted that such a sweeping ban is unnecessary to accomplish legitimate objective of reducing unnecessary burdens on courts. If claim is truly frivolous, trial court can dismiss it under Frivolous Claims Law. If not, Open Courts Clause guarantees to any person the right of access to the court subject to reasonable conditions and a determination of whether the law affords a remedy.

Held, transfer granted, Court of Appeals' opinion at 853 N.E.2d 127 vacated and remanded to trial court to address whether complaint should be dismissed under Frivolous Claim Law. Shepard, C.J., dissenting, expressed concern that holding will "clog the courts to the exclusion of legitimate litigants." Sullivan, J., dissenting, said majority should have declared the Three Strikes statute unconstitutional only as applied in this case.

See also: Higgason, 883 N.E.2d 812 (offender's claim for photocopying costs may not be dismissed under Three Strikes Law, but should be dismissed under Frivolous Claim Law as a claim upon which relief may not be granted; offender maintains right to file written grievance with DOC concerning alleged violations of DOC policy giving right to gratuitous photocopies of legal proceedings).

TITLE: State v. Gick
INDEX NO.: S.1.
CITE: (7/12/2018), 106 N.E.3d 1052 (Ind. Ct. App 2018)
SUBJECT: DOC has control and ultimate decision-making authority regarding visitation requests
HOLDING: Trial court exceeded its authority in ordering the Department of Correction (DOC) to permit D, a sex offender against a minor victim, to have visitation with her minor child while D is in the custody of the DOC. Ind. Code § 11-11-3-9 explicitly authorizes the DOC to prevent inmates convicted of a sex offense with a minor from having minor visitors. The DOC policy permits wardens to grant a visitation request if authorized by a trial court, but the DOC retains discretion and is the ultimate decision-maker with regard to visitation. D had no statutory or administrative right to judicial review of the DOC's denial of her visitation request, nor can she claim that the denial was a violation of her constitutional rights. Held, judgment reversed and remanded with instructions to amend trial court's order to provide that visitation between D and her son is authorized and recommended, but not ordered.

TITLE: Woodford v. Ngo
INDEX NO.: S.1.
CITE: 548 U.S. 81, 126 S.Ct. 2378 (2006)
SUBJECT: Prison conditions, exhaustion of administrative remedies
HOLDING: The Prison Litigation Reform Act of 1995 (PLRA) requires a prisoner to exhaust any available administrative remedies before challenging prison conditions in federal court. 42 U. S. C. '1997e(a). Respondent filed a grievance with California prison officials about his prison con-ditions, but it was rejected as untimely under state law. He subsequently sued petitioner officials under § 1983 in the Federal District Court, which granted petitioners' motion to dismiss on the ground that respondent had not fully exhausted his administrative remedies under § 1997e(a). Reversing, the Ninth Circuit held that respondent had exhausted those remedies because none remained available to him. Court held the PLRA's exhaustion requirement requires proper exhaustion of administrative remedies. Petitioners claim that a prisoner must complete the administrative review process in accordance with applicable procedural rules, including deadlines, as a precondition to bringing suit in federal court, but respondent contends that '1997e(a) allows suit once administrative remedies are no longer available, regardless of the reason. To determine the correct interpretation, the Court took guidance from both administrative and habeas corpus law, where exhaustion is an important doctrine. Administrative law requires proper exhaustion of administrative remedies, which "means using all steps that the agency holds out, and doing so *properly."* Pozo v. McCaughtry, 286 F. 3d 1022. Habeas law has substantively similar rules, though its terminology is different. Given this background, the Court held that the PLRA requires proper exhaustion. The majority noted that construing § 1997e(a) to require proper exhaustion also serves the PLRA's goals. It gives prisoners an effective incentive to make full use of the prison grievance process, thus providing prisons with a fair opportunity to correct their own errors. It reduces the quantity of prisoner suits. And it improves the quality of those suits that are filed because proper exhaustion often results in creation of an administrative record helpful to the court. In contrast, respondent's interpretation would make the PLRA's exhaustion scheme totally ineffective, since exhaustion's benefits can be realized only if the prison grievance system is given a fair opportunity to consider the grievance. Held, judgment reversed and remanded; Breyer, J. filed an opinion concurring in the judgment; Stevens, J. filed a dissent, in which Souter and Ginsburg, JJ. joined.

S. JAILS/PRISONS

S.2. Medical/psychiatric treatment

TITLE: Doe v. Arpaio
INDEX NO.: S.2.
CITE: (1/23/2007), Ariz. Ct. App., 2007 Ariz. App. LEXIS 8; 1 CA-CV 05-0835
SUBJECT: Court order not necessary for prisoner seeking abortion
HOLDING: The Arizona Court of Appeals held a county policy requiring jail inmates who wish to have elective abortions at their own expense to obtain court orders authorizing the transportation outside the jail is unconstitutional.

The prisoner in the case wanted to be transported to a location outside the jail so she could obtain a first-trimester abortion at her own expense. She was also willing to pay any security and transportation costs. However, the county had an unwritten policy that prohibited transportation of inmates off-site for any elective medical procedure. The policy resulted in the prisoner's needing a court order directing the county to transport her for the procedure.

Court took an opposing view to that held in Victoria W. v. Larpenter, 369 F.3d 475 (5th Cir. 2004) in its analysis of factors listed in Turner v. Safley, 482 U.S. 78 (1987) balancing whether a prison regulation impinges on constitutional rights or is valid due to its being reasonably related to legitimate penological interests. Court here focused solely on the jail policy's impact on abortion rights, stressing that in such instances time is of the essence.

Court concluded that the county policy represented an exaggerated response to the county's preferred penological concerns and is invalid insofar as it applies to transportation for abortion services. Court believed that the county could fully accommodate the prisoner's abortion rights at de minimis cost to its cited interests in the safety and security of inmates and others, the conservation of government resources, limitation of the potential liability exposure, and ensuring that prison officials do not violate state law. Court noted that the county frequently and voluntarily transported inmates for court appearances, visits with dying family members or for funeral services, and for nonemergency medical care. It saw no evidence that transportation here posed any greater risk than those situations, or that a court order would lessen any dangers that did exist.

TITLE: Naked City v. State
INDEX NO.: S.2.
CITE: (3d Dist. 1/26/84), Ind. App., 460 N.E.2d 151
SUBJECT: Special medical treatment
HOLDING: Where D establishes need for extraordinary medical care at sentencing, judge must hear & weigh evidence of state's ability to provide medical care for D, balance rights of D & state, & determine appropriate sentence. Here, judge sentenced D to DOC contingent upon availability of treatment, leaving determination to DOC. Drost, founder of Naked City, contends sentencing him to prison constitutes cruel & unusual punishment. Ct. traces development of 8th Amend law & of prisoner challenges to medical treatment received in prison. Ct. concludes prisoners are entitled to reasonable medical care; mere adequacy of individual care, unless denied deliberately, does not implicate state or federal constitutions. Ct. remands case for further hearing. Held, convictions affirmed; remanded.

TITLE: Ratliff v. Cohn
INDEX NO.: S.2.
CITE: (3-27-98), Ind., 693 N.E.2d 530
SUBJECT: Medical/psychiatric treatment - claim of cruel & unusual punishment
HOLDING: Juveniles's complaint alleging that prison officials have been deliberately indifferent to her serious medical needs was sufficient to withstand Trial Rule 12(B)(6) motion to dismiss for failure to state claim as to aspect of her Eighth Amendment claim. Eighth Amendment to United States Constitution prohibits cruel & unusual punishment. To establish Eighth Amendment violation, juvenile must demonstrate that prison officials are deliberately indifferent to her serious medical needs by showing that levels of medical & mental health care are constitutionally inadequate from objective standpoint, & Ds knew of risk to juvenile's health that this inadequacy posed, & acted with disregard for this risk. Here, despite Commissioner's knowledge that juvenile had pre-existing psychological problems & Ct. psychologist recommended that she be placed in alternative setting because important aspects of her rehabilitation might not occur if she were placed in adult prison, Commissioner affirmed juvenile's placement at Ind. Women's Prison. Juvenile was placed in Special Needs Unit of prison where her group therapy sessions have been inappropriate for dealing with her psychological problems & have had adverse impact on her rehabilitation. Thus, without addressing merits of claim, juvenile stated claim sufficient to survive motion to dismiss. Held, transfer granted, Ct. App. decision at 679 N.E.2d 985 vacated & Tr. Ct.'s grant of motion to dismiss affirmed in part & reversed in part.

TITLE: Roe v. Crawford
INDEX NO.: S.2.
CITE: (1/22/2008), 8th Cir., 514 F.3d 789
SUBJECT: Prisoners have liberty interest in access to elective abortions
HOLDING: Eighth Circuit Court of Appeals held a state prison policy prohibiting the transportation of prisoners for elective, nontherapeutic abortions violated the inmates' 14th Amendment liberty interest in terminating pregnancy. However, Court decided that an elective abortion does not qualify as a "serious medical need" for purposes of the Eighth Amendment. Court analyzed 14th Amendment claim under Turner v. Safley, 482 U.S. 78 (1987), which held that a prison regulation that impinges on inmates' constitutional rights is nevertheless valid if it is reasonably related to a legitimate penological interest. Court found that "[b]y completing eliminating any alternative means of obtaining an elective abortion, the [prison] policy represents precisely the 'exaggerated response to . . . security objectives' that *Turner* forbids."

TITLE: Washington v. Harper
INDEX NO.: S.2.
CITE: (1990), 494 U.S. 210, 110 S.Ct. 1028, 108 L.Ed.2d 178
SUBJECT: Procedural protections - forcible treatment with anti-psychotic drugs
HOLDING: Due process requires certain procedural protections when state seeks to forcibly treat inmate with anti-psychotic drugs. Procedural protections required determined by consideration of private interests at stake, governmental interests, & value of procedural requirements. Mathews v. Eldridge (1976), 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18. Inmate's interest in avoiding unwarranted administration of anti-psychotic drugs is "not unsubstantial." Forced injection of drugs is substantial interference with liberty & may have serious, even fatal, side effects. However, inmate's interests adequately protected by allowing decision to be made by medical profession, rather than judge. Requiring judicial hearings would divert scarce prison resources from care/treatment of mentally ill inmates. State procedure here requires decision-maker independent of inmate's current treatment/diagnosis. Procedure includes notice, right to presence at adversary hearing, right to present & cross-examine witnesses, & right to judicial review of decision. Held, due process does not require judicial decision-maker, hearing conducted in accordance with rules of evidence, "clear, cogent, & convincing" standard of proof nor right to counsel at hearing to determine whether inmate will be forcibly medicated with anti-psychotic drugs. Stevens, joined by Brennan & Marshall, DISSENTING.

S. JAILS/PRISONS

S.3. Communication/access

TITLE: Avery v. Faulkner
INDEX NO.: S.3.
CITE: (12/19/84), Ind. App., 471 N.E.2d 1226
SUBJECT: Jails/prisons -- corresponding with other inmates
HOLDING: Inmate at state correctional facility brought action alleging that Ind. Code 11-11-3-2 placed restrictions on his ability to correspond with other inmates, thereby unconstitutionally conflicting with his right to free speech. Tr. Ct. dismissed action for failure to state claim & D appealed. Ct. held that statute is constitutional even though it restricts rights of correspondence between inmates in that it requires approval by departments. Constitutionally guaranteed rights may be restricted if restriction furthers substantial government interest & is no greater than necessary to protect interest involved. Peterson, 415 F. Supp. 198. Order, security & rehabilitation are government interests involved. Unrestricted correspondence could facilitate inmates planning further crimes, escapes, or disruptions. Therefore, prior approval of inmate correspondence furthers substantial government interest. Held, dismissal of D's complaint affirmed.

RELATED CASES: Perry, 505 N.E.2d 846 (seizure of inmate's letter addressed to another inmate was reasonable & did not violate Fourth Amendment; guard had right to inspect letter's content for plans concerning escape, riots, or other crimes because he had reasonable grounds to believe that letter posed immediate danger to safety of individual or serious threat to security).

S. JAILS/PRISONS

S.4. Preparation of legal defense

TITLE: Engle v. State
INDEX NO.: S.4.
CITE: (9/5/84), Ind., 467 N.E.2d 712
SUBJECT: Jails - access to legal materials; pro se D
HOLDING: Tr. Ct. did not err in denying D's writ of habeas corpus for direct access to legal materials where D had access to legal materials/assistance through stand-by counsel. Fundamental constitutional right of access to Cts. requires prison authorities to assist inmates in preparation/filing of meaningful legal papers by providing prisoners with law library or adequate assistance from persons trained in law. Bounds v. Smith, (1977) 430 U.S. 817, 97 S. Ct. 1491, 52 L.Ed.2d 72. Ct. finds D's right of access to Ct. was not undermined. Held, no error.

TITLE: Greene v. State
INDEX NO.: S.4.
CITE: (12/4/87), Ind., 515 N.E.2d 1376
SUBJECT: Prison - administrative segregation; preparation for trial
HOLDING: Tr. Ct. did not err in denying D's request to order him released to general prison population. D, who was incarcerated on unrelated charges, was in segregation prior to his present kidnapping charge & remained there because of it. D argues that segregation inhibited his efforts to assist in his defense by denying him access to law library & potential witnesses. D also alleges that being kept in shackles & chains made it difficult for him to concentrate during meetings with his attorney. D argues that kidnapping charge is insufficient government interest to justify subjecting him to administrative segregation, *citing* Lock v. Jenkins (7th Cir. 1981), 641 F.2d 488. However, Lock was a civil action involving a pretrial detainee, & is not applicable. Present case is similar to Shoulders 462 N.E.2d 1034, in which Ind. S. Ct. found that administrative segregation did not deny inmate access to attorney or to potential witnesses, through attorney. While D alleges he had no access to law library or witnesses, Ct. finds no prejudice since D's attorney could do legal research & interview witnesses. Segregation did not affect D's fair trial rights. Finally, D argues that Ind. Code 35-2.1-2-2 gives Tr. Ct. discretion to determine where a state prison inmate should be detained pending trial. However, Ind. Code 35-2.1-2-2 provides that Tr. Ct. may make this determination upon application of prosecutor. Here, prosecutor did not request it. Purpose of statute is to secure attendance of inmates at trial not to order prison officials where to locate their inmates. Held, no error.

TITLE: Hurley v. State
INDEX NO.: S.4.
CITE: (4/13/83), Ind., 446 N.E.2d 1326
SUBJECT: Preparation of legal defense - jail transfer
HOLDING: D who caused disturbance in Jasper County jail & was transferred to Lake County jail was not denied his right to confer with counsel who did consult with him in the Lake County jail. Here, at hearing contesting jail transfer, judge concluded D's disruptive conduct while incarcerated in Jasper County jail justified his administrative transfer to Lake County jail. On appeal, D contends his transfer resulted in a denial of effective assistance of counsel because he was prevented from consulting with his counsel at every stage of the proceeding. Ct. finds driving distance between Jasper & Lake counties was less than one hour. Defense counsel did confer with D in the Lake County jail. D made no showing of prejudice. Held, no error.

TITLE: Lewis v. Casey
INDEX NO.: S.4.
CITE: (1996), 116 S.Ct. 2174
SUBJECT: Prisons & Jails -- Access to Courts.; Law Libraries, etc.
HOLDING: Ct. presiding over class action alleging violation of inmates' constitutional right to access to Cts. cannot order system-wide relief absent showing of widespread actual injury, in form of hindrance to inmates' efforts to pursue legal claims. In Bounds v. Smith, 430 U.S. 817 (1977), Ct. acknowledged that inmates have constitutional right to access to Cts., & approved provision of law libraries & legal assistance programs as means to satisfy that right. However, Bounds does not require states to provide such libraries or assistance. Constitutional right to access to Cts. is violated only where inmate's pursuit of legal claim has actually been hindered. Proof of inadequacies in state's delivery of legal services to inmates is insufficient, by itself, to justify remedial order. Further, only type of legal actions covered by right of access are direct & collateral attacks upon convictions & challenges to confinement conditions. Thomas, J., CONCURS, questioning right of access in general. Souter, Ginsberg, & Breyer, JJ., CONCUR IN JUDGMENT; Stevens, J., DISSENTS.

S. JAILS/PRISONS

S.5. Prison discipline

TITLE: Waters v. State
INDEX NO.: S.5.
CITE: (1st Dist., 12-4-98), Ind. App., 691 N.E.2d 1228
SUBJECT: Prisons - expungement of record of alleged violation
HOLDING: Tr. Ct. erred in sua sponte dismissing inmate's action requesting that Tr. Ct. order Department of Corrections to expunge his institutional record of reference to offense for which he had been found not guilty. Where inmate has been found not guilty of charge, he is entitled to expungement of any reference to charge in his institutional record. Ind. Code § 11-11-5-5(10); Blackmon v. Duckworth, App., 675 N.E.2d 349. Here, inmate was charged with violation of prison regulation for which he was found not guilty. Held, judgment reversed & remanded for further proceedings.

TITLE: Young v. Indiana Department of Correction
INDEX NO.: S.5.
CITE: (12/8/2014), 22 N.E.3d 716 (Ind. Ct. App 2014)
SUBJECT: DOC credit-time restoration policy does not result in disparate treatment
HOLDING: Inmates at the Department of Correction are subject to having credit time taken away for disciplinary violations. DOC's policies provide for credit time to be restored later under certain circumstances, but only while the inmate is still serving the same sentence. Young had consecutive sentences to serve; during one, he had credit time taken away and later partially restored. After his first sentence was completed, while he was serving a later sentence, he petitioned for restoration of the remaining credit time from his first sentence. DOC denied the request based on its own policy. Court rejected Young's argument that the policy denied him equal protection under the Fourteenth Amendment to the United States Constitution and Article 1, Section 23 of the Indiana Constitution. Held, judgment affirmed.

S. JAILS/PRISONS

S.5. Prison discipline

S.5.a. Hearing procedure

TITLE: Sweeney v. Parke
INDEX NO.: S.5.a.
CITE: (5-12-97), 7th Cir., 113 F.3d 652
SUBJECT: Prison discipline - hearing procedure; due process
HOLDING: District Ct. did not err by denying inmate's petition for writ of habeas corpus. Inmate is entitled to due process protection if disciplinary proceedings could result in loss of his good-time credits, which would inevitably affect duration of sentence. Although inmate is entitled to documentary evidence & is permitted to call witnesses in his behalf at disciplinary hearing as long as documentary evidence or calling witnesses is consistent with institutional safety & correctional goals, inmate is only entitled to twenty-four hours to plan defenses. Here, inmate argued that he was not afforded due process because he was not granted continuance to inspect cell block's logbook & he was not permitted to call witnesses on his own behalf. However, inmate was given more than twenty-four hours to prepare for disciplinary hearing & did not request witnesses to testify on his behalf until day of hearing, which was too late. Thus, inmate received process he was due with regard to witnesses & documentary evidence. Held, denial of petition for writ of habeas corpus affirmed.

S. JAILS/PRISONS

S.5. Prison discipline

S.5.b. Punishment

TITLE: Lyons v. State
INDEX NO.: S.5.b.
CITE: (3d Dist. 3/28/85), Ind. App., 475 N.E.2d 719
SUBJECT: Prison discipline - punishment
HOLDING: Criminal & administrative conviction & punishment for same act does not constitute double jeopardy. Anderson (Ga. 1983), 300 S.E.2d 163. [Other citations omitted.] Here, D contends administrative punishment by Institutional Conduct Adjustment Board for his attempted escape bars subsequent criminal prosecution on double jeopardy grounds. Ct. finds Board is authorized to punish acts done within prison walls by imposing disciplinary sanctions to ensure peace & order but may not lengthen convict's term. The state is required to ensure safety/well-being of society & is authorized to punish those who attempt to escape by extending their term. Held, no error.

RELATED CASES: Brown, 172 N.E.3d 1273 (Ind. Ct. App. 2021) (administrative sanctions by DOC do not preclude subsequent prosecution for the same actions); Mullins, App., 647 N.E.2d 676 (Because DOC did not lengthen fixed term of D's sentence when it deprived her of good time credit, there was no impingement upon fundamental liberty interest triggering double jeopardy concerns; Tr. Ct. erred in granting D's motion to dismiss); Williams 493 N.E.2d 431 (same holding; Dixon & DeBruler DISSENT without opinion).

S. JAILS/PRISONS

S.6. Transfers

S.6.a. Pretrial (IC 35-33-11; change of venue, Ind. Code 35-36-6-3)

TITLE: Lucas v. State
INDEX NO.: S.6.a.
CITE: (11/14/86), Ind., 499 N.E.2d 1090
SUBJECT: Pretrial transfers - access to counsel
HOLDING: D, who was moved 10 times during pretrial incarceration, prompted by 2 alleged escape attempts, was not denied effective assistance of counsel. Ct. finds D was never at inaccessible distance from his attorney's office. D cites no specific harm resulting from transfer. Hurley 446 N.E.2d 1326. Held, no error.

S. JAILS/PRISONS

S.7. Religoius/Political Freedom

TITLE: Cruz v. Beto
INDEX NO.: S.7.
CITE: (3/20/72), 405 U.S. 319, 92 S. Ct. 1079
SUBJECT: Religious freedom in jail
HOLDING: Petitioner, alleged Buddhist, complained that he was not allowed to use prison chapel, that he was prohibited from writing to his religious advisor, & that he was placed in solitary confinement for sharing his religious material with other prisoners. Federal District Ct. denied relief without hearing or findings, holding complaint to be in area that should be left to sound discretion of prison administration. Ct. of Appeals affirmed. Ct. held that, on basis of allegations, Texas had discriminated against petitioner by denying him reasonable opportunity to pursue his Buddhist faith comparable to that offered prisoners adhering to conventional religious precepts. Held, cause remanded for hearing.

RELATED CASES: Thompson, 712 F.2d 1078 (proposition that inmates retain certain constitutional rights does not mean that these rights are not subject to restrictions & limitations).

TITLE: Griffin v. Coughlin
INDEX NO.: S.7.
CITE: (N.Y. Ct. App. 6/11/96), 88 N.Y.2d 674; 673 N.E.2d 98; 649 N.Y.S.2d 903
SUBJECT: Prison Benefit Cannot Be Tied to Participation in Alcoholics Anonymous
HOLDING: Alcoholics Anonymous 12-step protocol is sufficiently imbued with religious message that requiring atheist or agnostic inmate to participate as prerequisite for eligibility in extended family visit program violates 1st Amendment Establishment Clause. Dominant theme of AA doctrinal writings is "unequivocally religious: and "proselytizing."

TITLE: Holt v. Hobbs
INDEX NO.: S.7.
CITE: (1/20/2015), 135 S. Ct. 853 (U.S. Supreme Court 2015)
SUBJECT: Arkansas DOC's beard-grooming policy violated inmate's rights
HOLDING: The Arkansas Department of Correction's ("Department") policy of restricting beard length to 1/4 inch violated Petitioner's rights under the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA") because it burdens the Petitioner's ability to practice his Muslim faith. It burdens the exercise of faith even though Petitioner may manifest his faith in other ways. Also, the policy is not the least restrictive means to furthering the Department's objective of regulating contraband and preventing inmates from disguising themselves. For instance, even if an inmate could hide contraband in a 1/2-inch beard, the Department could simply search the inmate's beard. And while the Department's concern that an escaped inmate could disguise himself by shaving off his beard is legitimate, the Department could alleviate that concern by taking two pictures of such an inmate, one with facial hair and the other without. Held, cert. granted, Eight Circuit opinion at 509 Fed. Appx. 561 vacated, judgment vacated, and matter remanded. Alito, J., for the unanimous Court. Ginsburg, J., concurring, joined by Sotomayor, J.; Sotomayor, J., concurring.

TITLE: Kerr v. Farrey
INDEX NO.: S.7.
CITE: (7th Cir. 8/27/96), 95 F.3d 472
SUBJECT: Establishment Clause Bars Requiring Inmate to Attend Narcotics Anonymous Meetings
HOLDING: Seventh Circuit joins jurisdictions which have held that attendance at substance abuse programs with explicit religious content cannot be made a condition of probation, parole, or inmate security classification. Here, prison officials required inmate to attend Narcotics Anonymous, upon pain of being rated a higher security risk and suffering adverse effects for parole eligibility. Court finds that religious content permeates meetings and program, constituting coerced religious practice.

TITLE: Sossamon v. Texas

INDEX NO.: S.7.

CITE: (04-20-11), 131 S.Ct. 1651 (U.S. 2011)

SUBJECT: States can't be sued for damages under Religious Land Use and Institutionalized Persons Act (RLUIPA)

HOLDING: State prisoners may not sue states or state officials in their official capacity for money damages for violations of 42 U.S.C. ' 2000cc et seq., which limits the states' power to impose burdens on inmates' exercise of religion. The RLUIPA's authorization of "appropriate relief" for states' violations of religious rights does not so clearly authorize money damages that states' acceptance of federal funds constitutes consent to a waiver of sovereign immunity against inmate lawsuits for damages. Held, Fifth Circuit Court of Appeals' opinion at 560 F.3d 316 affirmed; Sotomayor, J., joined by Breyer, J., DISSENTING; Kagan, J., RECUSED.

S. JAILS/PRISONS

S.10. Miscellaneous

TITLE: Ashcroft v. Iqbal
INDEX NO.: S.10.
CITE: 129 S. Ct. 1937 (05-18-09)
SUBJECT: 9/11 detainee's discriminatory harsh confinement claim dismissed
HOLDING: Top government officials (U.S. Attorney General John Ashcroft and FBI director Robert Mueller) do not have to face claims that in the wake of the September 11, 2001, terrorist attacks they unconstitutionally singled out Arab Muslim prisoners for harsh confinement on the basis of their religion and ethnicity. The current and former federal officials were not liable for the actions of their subordinates absent evidence that they ordered the allegedly discriminatory activity. Plaintiff's complaint contained conclusory allegations that high-level government officials had knowledge of alleged wrongdoing by subordinate officials. Majority held that this failed to plead sufficient facts to state a claim for purposeful and unlawful discrimination. Detailed factual allegations are not required (see Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), but Federal Rule of Civil Procedure 8(a)(2) does call for sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." Plaintiff's pleadings did not comply with Rule 8 under Twombly. Allegations of beatings and other abuses by lower-level actors did not help Plaintiff's claims against Ashcroft and Mueller because they cannot be held vicariously liable under Bivens v. Six Unknown Agents, 403 U.S. 388 (1971). Held, Second Circuit opinion at 490 F.3d 143 reversed and remanded.

Souter, J., joined by Stevens, J., Ginsburg, J., and Breyer, J., DISSENTING, saying that despite the fact that Ashcroft and Mueller had conceded that an officer could be subject to Bivens liability as a supervisor on ground other than *respondeat superior*, "[t]he court apparently rejects this concession and... does away with supervisory liability under Bivens." The Majority then misapplies the pleading standard under Twombly to conclude that the complaint fails to state a claim. Breyer, J., DISSENTING, argued that the Second Circuit's "structured" discovery approach served the qualified immunity doctrine's goal of protecting officials from burdensome litigation.

TITLE: Fisher v. State
INDEX NO.: S.10.
CITE: (4/10/73), Ind. App., 294 N.E.2d 632
SUBJECT: Elements of escape from jail/prison
HOLDING: D, inmate at Indiana Women's prison, was discovered to be missing & was found twenty to twenty-five minutes later in corn field located between inner & outer security fence which surrounded prison. By her own admission, D climbed inner security fence & had in her possession keys to automobile of cottage security officer. In addition, D was not authorized to leave premises. D was then convicted of attempted escape from prison. D appealed & claimed that evidence was insufficient to sustain her conviction because she never left prison grounds. Moreover, fact that she was found lying in corn field between two security fences indicated that she abandoned any attempt to escape from prison. Ct. held that there was substantial evidence favorable to State, circumstantial or direct, which supported each of elements in that all three elements of attempted escape were present: D had intent to escape, she performed some overt act toward escaping, & she failed to escape. D demonstrated her intent & overt act to escape by departing without being authorized to do so & had progressed to extent possible to place herself in position to commit escape. Held, conviction affirmed, White, J., concurring.

TITLE: Roberts v. State
INDEX NO.: S.10.
CITE: (2/28/74), Ind. App., 307 N.E.2d 501
SUBJECT: Safety of D in jail/prison -- intentional assault by prison guards
HOLDING: Plaintiff-Appellant was inmate at Indiana State Reformatory & walking in prison exercise yard when large group of black inmates had gathered to protest some administrative action of officials of that institution. He attempted to leave area but was ordered by Defendant- Appellee Guards armed with shotguns to sit down or lie down on ground near protestors. He was not engaged in any unauthorized activity or violation of prison regulations. In response to orders from Captain of Guards, Guards fired into group & severely injured Plaintiff-Appellant. Plaintiff-Appellant brought suit for damages & charged willful & malicious assault & negligence. State moved to dismiss complaint claiming sovereign immunity & Tr. Ct. sustained motion & dismissed complaint. Plaintiff-Appellant appealed & claimed that he stated claim or claims for relief from which State & its employees would not be immune. Ct. held that complaint, alleging that prison guards, knowing of inmate's presence as innocent bystander near group of protestors, carelessly fired into crowd of inmates, causing inmate bodily harm, & alleging failure on part of guards & supervisors to adequately assure inmate's safety while he was under their control & custody, sufficiently stated negligence claim which could withstand claim of immunity by State & its employees. In addition, complaint alleged willful & intentional assault upon inmate's person by prejudiced prison guards & alleged causes of action for assault which could withstand claim of immunity by State & its employees. Held, dismissal of complaint reversed.

TITLE: State v. Avery
INDEX NO.: S.10.
CITE: (10/31/97), Ind. App., 687 N.E.2d 374
SUBJECT: Earning credit time in jail/prison
HOLDING: There are at least two ways for prisoner to reduce length of his or her incarceration by earning "credit time." Person imprisoned for crime, or who is imprisoned while awaiting trial or sentencing, is initially assigned to "Class I." Ind. Code 35-50-6-4. If prisoner violates prison rule, he or she can be assigned to Class II or III. Ind. Code 35-50-6-4. Class I prisoner earns one day of credit time for each day he or she is imprisoned. Ind. Code 35-50-6-3. Prisoners in other classes earn less credit time, or none. Legislature has also provided second type of credit time which can be used to reduce inmate's time in prison. Prisoner may earn credit time in addition to "good time" credit if he or she is in Class I for "good time" credit purposes; has demonstrated pattern consistent with rehabilitation; & completes requirements for various types of diplomas or degrees. Ind. Code 35-50-6-3.3(a). Prisoner earns one year of credit for completion of associates degree, & two years for completion of bachelor's degree. Ind. Code 35-50-6-3.3(b) Maximum amount of educational credit time inmate may earn is lesser of four years or one-third of prisoner's "total applicable credit time." Ind. Code 35-50-6-3.3(e). Here, D was sentenced to ten years, with six years to be served in prison & four years on probation. Department of Correction placed D in Gibson County jail. During entire time he was incarcerated, D was in Credit Class I, meaning he earned one day of good time credit for each day he served. D completed requirements for associates degree & bachelor's degree from Indiana University while he was incarcerated in Gibson County Jail. After serving two years of his six-year executed sentence, D filed petition for writ of habeas corpus. Tr. Ct. ordered him to be immediately released from prison. State appealed & asked that D be returned to Tippecanoe County to serve his remaining probation. State's issue was whether phrase "total applicable credit time," in statute providing for reduction of prison sentence for prisoner who successfully completes certain educational programs, is limited to credit time for good behavior, or includes both educational credit time & credit time for good behavior. Ct. noted that educational credit time statute, Ind. Code 35-50-6-3.3(a) explicitly provides that education credit time is to be granted in addition to "good time" credit & in addition to any reduction of sentence prisoner receives under Ind. Code 35-38-1-23. D's "good time" credit for his six-year sentence was three years, & he was entitled to three years' educational credit for two degrees he earned. That entitled him to total credit time of six years. Thus, his educational credit was two years, because that is one-third of his "total applicable credit time." That amount of credit time reduces maximum length of his incarceration from six years to four & by serving two years as Class I prisoner, he had earned two years of "good time" credit. As result, D was entitled to be released from prison after serving two full years. Held, determination of D's order of release affirmed.

TITLE: Weigel v. State
INDEX NO.: S.10.
CITE: (8/29/69), Ind., 250 N.E.2d 386
SUBJECT: Arrest of visitor to jail
HOLDING: Friend of D was prisoner in Lake County Jail. Friend had been addicted to narcotics & D was largely responsible for introducing friend to drugs. Day before D's arrest, friend's mom called police officer & told him that D planned to visit friend next day at jail & that he intended to slip friend some drugs. Next day, D was subsequently searched & arrested & he was found to possess heroin & drug paraphernalia. D was convicted of illegal possession of narcotic drug & appealed claiming that Tr. Ct. erred by refusing to grant D's motion for new trial. In this motion it was alleged that Tr. Ct. erred in denying motion to suppress certain evidence obtained pursuant to illegal arrest & subsequent search of D's person. Ct. held that arrest was not illegal because there had been probable cause upon which to base arrest due to fact that mother of friend had called, had told police that D would be visiting prison & bringing drugs, & had mentioned that D had introduced her son to drugs. In addition, D visited on day friend's mother had said he would. Held, conviction affirmed; DeBruler, C.J., concurring & dissenting.