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ADMINISTRATION OF JUSTICE MEMORANDA

PUBLISHED BY THE INSTITUTE OF GOVERNMENT
University of North Carolina at Chapel Hill

March 1980

No. 80/02

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APR 16 1980

CIVIL LIABILITY FOR PAROLE DECISIONS

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In *Martinez v. California*, 26 Crim. Law Repr. 3061 (U.S. Supreme Court, January 15, 1980) the United States Supreme Court considered the extent to which state parole officials may be sued and required to pay damages to compensate citizens injured by paroled inmates. This memo discusses the *Martinez* decision and its significance for parole officials in North Carolina.

FACTS

In December 1969 Richard June-Jordan Thomas was convicted of attempted rape. Thomas was committed to a state mental hospital for six months and was classified as a "Mentally Disordered Sex Offender" not subject to treatment. After his discharge from the mental hospital Thomas was sentenced to serve a term of imprisonment of one to twenty years, *with a recommendation from the judge that he not be paroled.* Notwithstanding the judge's recommendation, Thomas was paroled five years later to the care of his mother. The parole officials were completely aware of his criminal history, his unfavorable psychological report, and the likelihood that Thomas would commit another violent crime. Five months after his release on parole Thomas kidnapped, tortured, and murdered 15-year-old Mary Ellen Martinez.

Mr. Martinez, Mary Ellen's father, sued the parole officials in state court and alleged that their reckless and malicious decision to release Thomas caused Mary Ellen's death. His lawsuit also included a claim against the parole officials under the federal statute 42 U.S.C. § 1983 which alleged that their decision to release Thomas violated Mary Ellen's constitutional rights by depriving her of life without due process of law. Mr. Martinez sought to collect \$2 million in damages to compensate for his daughter's loss and to punish the responsible parole officials. The trial court dismissed the case in favor of the parole officials and that decision was affirmed by California's appellate courts (explained below). The Supreme Court of the United States considered the case on appeal and affirmed the decisions of the lower courts.

LIABILITY UNDER STATE LAW

A public official may be sued in state court and required to pay damages to another for harm caused by the official's reckless or malicious performance of his duties. Mr. Martinez sought to invoke this general rule and have the parole officials responsible for Thomas' release held liable in damages for Mary Ellen's death. California parole officials, however, are exempted from the application of this general rule by the following statute:

Neither a public entity nor a public employee is liable for:
(a) Any injury resulting from determining whether to parole or release a prisoner or from determining the terms or conditions of his parole or release or from determining whether to revoke his parole or release. Calif. Govt. Code §845.8(a).

The statute, according to the California courts, grants parole officials absolute immunity from damage liability in lawsuits brought under state law. As a result, the California courts dismissed the state law claims against the parole officials in the lawsuit brought by Mr. Martinez. Mr. Martinez appealed to the United States Supreme Court and alleged that the immunity statute was unconstitutional because it encouraged the parole officials to make the careless and ill-advised decision that indirectly caused Mary Ellen's loss of life without due process of law.

The 14th Amendment to the Constitution declares that no state may act to deprive its citizens of life, liberty, or property without due process of law. Both requirements of a two-pronged test must be satisfied to establish that a particular state action has caused a deprivation of due process: (1) the challenged action by the state (enactment of the immunity statute) deprives someone of life, liberty, or property; and (2) the state action is arbitrary and not reasonably related to a legitimate interest of the state. The Court in *Martinez* unanimously agreed with the California courts and ruled that the first requirement of the test was not satisfied because California's enactment of the immunity statute (state action) did not deprive Mary Ellen of life, liberty, or property. The immunity statute provides parole officials with a complete defense against civil lawsuits for damages brought under state law, according to the Court, but it does not encourage or condone the taking of life. Parole officials may indeed have assumed greater risks in releasing inmates because of the protection against civil liability afforded them by the immunity statute. The risk of recidivism, however, is always present in parole and the enactment of a statute that has an incremental impact on the probability that a parolee will harm someone is too remote to be considered action by the state depriving someone of life. A state, according to the Court, has a legitimate interest in enacting a statute that will encourage parole officials to exercise their discretion without fear of civil liability.

LIABILITY UNDER FEDERAL LAW

A public official may be sued in state court and found liable for damages under federal statute 42 U.S.C. §1983 for official conduct that deprives a person of any constitutional right. Mr. Martinez also sued the parole officials in state court under §1983 and alleged that their decision to release Thomas deprived Mary Ellen of her life without due process of law in violation of the 14th Amendment to the Constitution. [This is different than the claim discussed above which sought to have the California immunity statute protecting the officials from liability under state law declared unconstitutional.] The Court in *Martinez* held that the parole officials were not liable under §1983 because it was the violent conduct of Thomas rather than their decision to release him that deprived Mary Ellen of her life. Even if the parole officials should have known that Thomas' release created a danger of injury to the general public, reasoned the Court, the decision to parole is too remote to be considered the cause of Mary Ellen's death. A more direct and predictable connection between the decision to parole and the harm subsequently caused by a parolee is required before a parole official will be held responsible in damages for violating someone's constitutional rights in a lawsuit brought under §1983.

IMPLICATIONS FOR NORTH CAROLINA PAROLE OFFICIALS

1. *Martinez* establishes that a state legislature may constitutionally enact a statute that grants parole officials absolute immunity from civil liability under state law for injuries caused by a decision to release an inmate. North Carolina does not have such an immunity statute. As a result, the general legal rules governing the civil liability of public officers must be studied to determine the protection available to North Carolina parole officials. Unfortunately, it is necessary to speculate because the North Carolina courts have never decided to what extent parole officials sued under state law are immune from damage liability. A North Carolina court might classify the parole decision as quasi-judicial and grant parole officials the same absolute immunity afforded judges. At the very least, though, parole officials in North Carolina will be considered policymaking officials and only subjected to civil liability for malicious, not careless, conduct that causes injury.

2. The *Martinez* decision also indicates that parole officials sued under the federal statute §1983 will not be required to pay for damages caused by a bad or careless decision that indirectly results in a violation of someone's constitutional rights. Parole officials, in other words, are not to be held personally accountable for the remote and unpredictable consequences of their decisions. The Court in *Martinez*, however, left open the possibility that under some circumstances a decision by parole officials to release an inmate could be considered the immediate cause of someone's death and could lead to liability for a constitutional violation under §1983. The *Martinez* case might have been decided differently, for example, if Mary Ellen had been singled-out by Thomas as a likely victim before his release and the parole officials had proceeded to release him in the face of such a specific danger. Parole

officials in North Carolina, however, should be reassured by *Martinez*. Even though the California parole officials should have reasonably foreseen that the release of Thomas might result in harm to someone, the Court unanimously decided that Mary Ellen's murder was a remote consequence of the parole decision for which the parole officials could not be held responsible.

3. Parole case analysts should also be reassured by the Court's decision in *Martinez*. If the actual decision to parole an inmate is too remote to be considered the cause of subsequent harm inflicted by that inmate, the recommendation of a case analyst to the Parole Commission must also be considered too remote to give rise to personal liability for harm caused by a released inmate.

4. The Court in *Martinez* did not resolve the issue of what immunity, if any, a state parole official is entitled to in a lawsuit brought under §1983 if it were determined that the parole decision caused a violation of someone's constitutional rights. [A state immunity statute like the one in *Martinez* only protects parole officials against liability in lawsuits brought under state law.] Again, parole officials may be treated like judges because of the quasi-judicial nature of the parole decision and receive absolute immunity from damage liability in a lawsuit brought under §1983 seeking to recover for an alleged constitutional violation. On the other hand, the courts might decide that parole officials are only entitled to a qualified good faith immunity and are subject to damage liability if their decision is reckless and deprives someone of a constitutional right.