

THOMSON REUTERS NEWS & INSIGHT



Featuring content from WESTLAW

LEGAL

HOME

NEWS

INSIGHT

LEGAL MATERIALS



Force-feeding order did not violate inmate's rights: Court of Appeals

5/2/2013

COMMENTS (0)

By Daniel Wiessner

ALBANY, N.Y. (Reuters) - A court order authorizing prison officials to force-feed an inmate on a hunger strike did not violate his right to refuse medical treatment, a divided Court of Appeals held on Thursday.

Leroy Dorsey, who lost nearly 100 pounds during a series of 2010 hunger strikes at two upstate prisons, claimed inmates may only be force-fed if they are suicidal. He said he was only trying to draw attention to his alleged mistreatment, and not kill himself.

The court disagreed in a 4-2 decision, finding that Dorsey's reasons for not eating were irrelevant, and he could not use the hunger strike to "strong-arm" prison officials into granting him privileges.

"Whatever his purported intent, by refusing to eat for a prolonged period of time despite repeated warnings concerning the imminent physiological damage that behavior was causing, Dorsey knowingly inflicted injury on himself that, if continued, would result in his death," Judge Victoria Graffeo wrote for the majority.

Judges Eugene Pigott, Susan Read and Robert Smith concurred.

The decision came as roughly 100 inmates at the military prison at Guantanamo Bay, Cuba continued a hunger strike that began in February, and many are being force-fed.

Dorsey, 48, is serving a 16-year to life sentence for assault. He began a hunger strike in October 2010 - his third that year - as he sought a transfer from Great Meadow Correctional Facility to a different prison, the court said.

One month later, officials from the prison sought a court order allowing them to feed Dorsey through a tube that would be inserted into his stomach.

A trial court granted the petition, spurring Dorsey to end his hunger strike, the court said.

On appeal, he argued that the court order violated his due process right to refuse medical treatment.

A COURT ORDER TO FORCE-FEED

The Appellate Division, Third Department, last year affirmed, finding that the state's interest in protecting the health of inmates "outweighs an individual inmate's right to make personal choices about what nourishment to accept."

The Court of Appeals affirmed.

In dissent, Chief Judge Jonathan Lippman found that Dorsey's appeal was moot because he had not raised the argument at the trial court level.

Lippman, joined by Judge Jenny Rivera, also said that prison officials had failed to show that Dorsey likely would have died if his hunger strike continued, and faulted the majority for assuming that was the case.

"Rather than acknowledge that impediment to appellate review, the majority forges ahead, embracing the notion that the state's legitimate penological interest in force feeding hunger striking prisoners is in all cases self-evident," Lippman wrote.

Thomas Mailey, a spokesman for the state corrections department, praised the decision.

The department "has a statutory obligation to protect the health and safety of its inmates and today's decision confirms that the state is authorized to seek a court order to force-feed an offender threatening suicide or otherwise," he said.

The attorney general's office declined to comment on the decision. Dorsey's attorney, Shannon Stockwell, did not return a request for comment.

The case is Norman Bezio v. Leroy Dorsey, New York State Court of Appeals No. 65.

For Dorsey: Shannon Stockwell of the Mental Hygiene Legal Service of the Third Judicial Department.

For the state: Deputy Solicitor General Andrea Oser.

Follow us on Twitter [@ReutersLegal](#) | Like us on [Facebook](#)

MORE LEGAL NEWS

NLRB orders Target to hold new union election, revise handbook

Medicare and Medicaid ramp up healthcare exchange education efforts

Consolidating labor and employment firms see revenues rise

Judge sets aside \$6.5 mln verdict in first Takeda Actos trial

Florida hospital settles pregnancy discrimination complaint

In restructuring, communication is key but not easy - poll

Delaware judge transfers Facebook patent case to California

Marvell infringed 'millions of times per second,' school's lawyers say

Littler hires second group of lawyers from Ogletree

Judge questions whether M&A settlement knocks out stock-drop case

[Register or log in to comment.](#)

© 2013 THOMSON REUTERS

[CONTACT US](#) [PRIVACY POLICY](#) [TERMS OF USE](#) [COPYRIGHT](#) [SITE MAP](#)