

165 F.3d 29

Unpublished Disposition

NOTICE: THIS IS AN UNPUBLISHED OPINION.

(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA6 Rule 28 and FI CTA6 IOP 206 for rules regarding the citation of unpublished opinions.)

United States Court of Appeals, Sixth Circuit.

Ross WEBSTER, Jr., Plaintiff-Appellant,
Don SHAW, et al., Plaintiffs,

v.

Dewey SOWDERS, Warden, Northpoint Training Center; George Wilson, Secretary, Corrections Cabinet for the Commonwealth of Kentucky; Al C. Parke, Commissioner, Bureau of Corrections; Steve Berry, Director of Assessment & Classification, Bureau of Corrections; Commonwealth of Kentucky; Unknown Defendant Employees and Officials of the Commonwealth; Phillip Parker, Deputy Warden, Northpoint Training Center; Cecil Bremer, Director of Construction, Bureau of Corrections, Defendants-Appellees.

No. 97-5869. | Aug. 10, 1998.

Before MERRITT, KENNEDY, and GILMAN, Circuit Judges.

Opinion

*1 Ross Webster, Jr., a Kentucky prisoner proceeding pro se, appeals a district court order terminating the prospective relief provisions of a consent decree in this prisoner's civil rights case. 42 U.S.C. § 1983. The appeal has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R.App. P. 34(a).

Webster and other inmates sued the Kentucky prison officials alleging that they violated the plaintiffs' civil rights by exposing them to asbestos. The district court certified a class and appointed counsel. In 1990, the parties entered a consent decree governing the exposure of inmates to asbestos.

After the enactment of the Prison Litigation Reform Act in 1996, the defendants moved to terminate the prospective relief provisions of the consent decree. *See* 18 U.S.C.A. § 3626(b)(2) (West Supp.1998). After various proceedings, the district court entered an order terminating the prospective relief provisions but leaving intact the provisions governing the accrual of claims for statute of limitations purposes. Webster appealed pro se, raising one claim: whether the application of the Prison Litigation Reform Act to the consent decree violated the Ex Post Facto Clause of the Constitution.

The defendants argue that the termination of prospective relief in this case is a civil matter and that the Ex Post Facto Clause does not apply in this situation. The argument is well-taken. The Ex Post Facto Clause applies only to punitive, criminal legislation. *See Galvan v. Press*, 347 U.S. 522, 531 & n. 4, 74 S.Ct. 737, 98 L.Ed. 911 (1954); *Gardner v. City of Columbus, Ohio*, 841 F.2d 1272, 1280 (6th Cir.1988). The relevant provision of the Prison Litigation Reform Act is civil in nature, and the Ex Post Facto Clause does not apply. Nor is there any retroactivity problem with respect to the application of the Prison Litigation Reform Act to this case. *See Hadix v. Johnson*, 133 F.3d 940, 942-43 (6th Cir.) (per curiam), *cert. denied*, 524 U.S. 952, 118 S.Ct. 2368, 141 L.Ed.2d 737 (1998). Webster's claim lacks merit.

The order of the district court is affirmed. Rule 9(b)(3), Rules of the Sixth Circuit.

Parallel Citations

1998 WL 537537 (C.A.6 (Ky.))