



# Commander's Log

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**A prisoner may allege a continuing violation under 42 U.S.C. § 1983 by identifying a series of acts or omissions that demonstrate deliberate indifference to a serious, ongoing medical need.**

**Case: *Eric Joseph DePaola v. Harold W. Clarke, et al.*, United States Court of Appeals for the Fourth Circuit, Decided March 9, 2018**

### **The Prisoner's Mental Health History**

Eric J. DePaola, an inmate at the Red Onion State Prison in Virginia (Red Onion), began receiving both inpatient and outpatient treatment for several mental illnesses beginning at age six. Prior to his incarceration, he had been treated for symptoms of depression, psychomotor agitation, recurring suicidal thoughts, and bizarre thoughts. As part of this treatment, he took prescription medications for depression, ADHD, hallucinations, and psychomotor agitation.

DePaola's mental health history was documented in both a court-ordered psychological evaluation before trial and in his presentence report. The psychologist who conducted the court-ordered evaluation concluded that DePaola suffered from a major mental illness that involves depression and

impulsivity, as well as irrational thinking and poor judgment. The psychologist also indicated that DePaola likely suffered from incipient Bipolar Disorder. The psychological evaluation included a recommendation that DePaola receive ongoing mental health treatment.

When DePaola entered the Virginia Department of Corrections (VDOC) prison system in 2004 at the age of seventeen, he informed officials that he had been diagnosed with mental illness. Nevertheless, since DePaola's transfer to Red Onion in 2007, officials there have kept him continuously in solitary confinement. DePaola's projected release date is 2039.

### **The Prisoner's Lawsuit, the Motions to Dismiss, and the Trial Court's Ruling**

In July 2015, DePaola, representing himself, filed suit under 42 U.S.C. § 1983. In the lawsuit, DePaola alleged that, although he continued to experience mental health problems, including thoughts of suicide, certain officials at VDOC and Red Onion acted with "deliberate indifference" to his physical and mental health needs. In particular, he claimed that he notified several prison officials of his mental illnesses but had received no



treatment. Additionally, DePaola asserted that he had never received any mental health treatment while at Red Onion, including being denied the opportunity to speak to an institutional psychiatrist or psychologist.

The Defendants filed separate motions to dismiss. The United States District Court granted their motions, holding that DePaola's claims accruing before July 19, 2013 (two years before he filed suit) were barred by Virginia's two-year statute of limitations for personal injury claims. The court also ruled that DePaola's claims were insufficient to state a deliberate indifference to serious medical need claim. DePaola appealed.

### The Decision on Appeal

In his appeal, DePaola contended that the allegations in his Complaint were sufficient to survive a motion to dismiss. He also asked the appeals court to apply the "continuing violation" doctrine to his claims, asserting that doing so would prevent his claims from being barred by Virginia's two-year statute of limitations. The court first pointed out that a § 1983 claim of deliberate indifference to a serious medical need ordinarily accrues when a plaintiff becomes aware or has reason to know of the harm inflicted. However, when a harm has occurred more than once in a continuing series of acts or omissions, a plaintiff under certain circumstances may allege a "continuing violation" for which the statute of limitations runs anew with each violation.

Without a case on point in the Fourth Circuit, the court turned to decisions in other federal circuits and found that certain circuits have concluded that a prisoner may state a deliberate indifference claim for a continuing violation when prison officials have refused to provide medical attention for an ongoing serious condition. The prisoner need allege only one instance of deliberate indifference in a series that occurred within the limitations period. The court also found that no other federal appeals court had rejected the continuing harm theory in this

context. Under this theory, the statute of limitations (which, in Maryland would be three years, not two), does not begin to run until the date, if any, on which adequate treatment was first provided. And, the claim of a continuing violation may extend back to the time at which the prison officials first learned of the serious medical need and unreasonably failed to act.

The court then concluded that DePaola had alleged a continuing violation of deliberate indifference to his serious mental illnesses, at least against the defendants who allegedly had actual knowledge of his mental health conditions. The court also found that he had alleged that defendants' acts of deliberate indifference continued within the two years prior to the filing of his complaint. As a result, his suit was timely under Virginia's two-year statute of limitations.

**NOTE:** Procedurally, the appellate court's decision means only that DePaola's lawsuit survives the preliminary challenge to his Complaint. He still will have to prove the merits of his case. Substantively, the case stresses the difficulties faced by detention facilities in dealing with inmates with mental illness. It is important that such illnesses be diagnosed by medical staff, and treated on an ongoing basis during the inmate's period of incarceration. Courts will draw no legal distinction between physical and mental illness, and the principles of deliberate indifference apply equally to both.

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