

## Civil Rights Update

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### Excessive Force

Wilkins v. Gaddy, 2010 U.S. LEXIS 1036

In this case, the United States Supreme Court clarified the excessive force standard for prisoner cases. In *Hudson v. McMillian* (503 U.S. 1), the United States Supreme Court held that the use of excessive physical force against a prisoner may constitute cruel and unusual punishment, even when the inmate does not suffer serious injury. In the recent *Wilkins* case, the District Court dismissed the prisoner's excessive force claim based entirely on its determination that his injuries were de minimis. The Supreme Court held that the District Court's approach was at odds with *Hudson's* direction to decide excessive force claims based on the nature of the force, rather than the extent of the injury.

In March 2008, the petitioner Jamey Wilkins, a North Carolina state prisoner, filed suit in the United State District Court for the Western District of North Carolina pursuant to 42 U.S.C. §1983. Wilkins alleged that on June 13, 2007, he was maliciously and sadistically assaulted without any provocation by a corrections officer. According to the complaint, the defendant corrections officer, apparently angered by Wilkins' request for a grievance form, snatched Wilkins off of the ground and slammed him onto the concrete floor. Wilkins alleged that the defendant then proceeded to punch, kick, knee and choke Wilkins until another officer had to physically remove him from Wilkins. The District Court dismissed the claim holding that Wilkins' alleged injuries were de minimis and could not survive a motion to dismiss.

The United States Supreme Court held that it was the nature of the conduct, not the injury, that is the issue. The Court held that it is the force that ultimately counts. The Court held that an inmate that is beaten by guards does not lose his ability to pursue an excessive force claim merely because he has the good fortune to escape without serious injury.

### Fourth Amendment

Burg v. Gosselin, 2010 U.S. App. LEXIS 289 (2d Cir. 2010)

The Second Circuit held that the issuance of a pre-arraignment, non-felony summons requiring a later court appearance, without further restraint, does not constitute a Fourth Amendment seizure. The defendant, a K-9 Control Officer, received a complaint about the plaintiff's dog. Six days later, on October 26, 2005, defendant issued a summons to the plaintiff at her home requiring the plaintiff to appear in court at a later date. The plaintiff was not handcuffed, removed from her home, restricted from using her property, or restricted from travel. Sometime after November 8, 2005, the plaintiff was arrested for failure to appear, handcuffed and taken

into physical custody. The plaintiff sued defendants on the ground that defendant's issuance of the summons constituted an unreasonable seizure in violation of the Fourth Amendment. The Court held that a seizure did not exist. The summons did no more than require the plaintiff to appear in court on a single occasion, which was held not to be a seizure. A summons merely operates to effectuate due process.

## **Due Process**

Monserrate v. The New York State Senate, 2010 U.S. Dist. LEXIS 14937 (SDNY 2010)

Plaintiffs, Hiram Monserrate and several voters from the 13<sup>th</sup> Senatorial District, brought a federal civil rights action against the New York State Senate and certain legislative and executive officers of the State of New York. Plaintiffs asserted, among other things, violations of their rights under the 14<sup>th</sup> Amendment of the U.S. Constitution. Plaintiffs moved to preliminarily enjoin defendants from enforcing a resolution expelling Monserrate from the Senate, holding a special election on March 16, 2010 in the 13<sup>th</sup> Senatorial District, and removing Monserrate from the payroll of the State of New York. Monserrate was found guilty of assault in the third degree. A Select Committee conducted an investigation and recommended that Monserrate be expelled from the Senate. The Senate adopted a resolution expelling Monserrate. The next day, Governor Paterson ordered a special election for March 16, 2010.

The Court held that the expulsion of a sitting legislator is infrequent and the power of a body to determine the fitness of its members is embedded in American democracy. The Court held that Monserrate was expelled only after a specially-formed committee investigated his actions and an overwhelming majority of the Senate authorized expulsion. The Court held that New York has an interest in the orderly operation of its legislature. The Senate articulated a legitimate state interest for exercising its power of expulsion because Monserrate "severely damaged the institution's honor, dignity, integrity, and public reputation."

The Court held that there was no due process violation. Legislative Law §3 provides a procedure for the expulsion of a legislator. It requires that charges be formally lodged against a legislator, a committee be organized to investigate the charges, and the committee produce a report on the charges. The Court held that these procedures satisfy the requirement of due process. The Court held that the Senate followed these procedures and Monserrate had the opportunity to address the Committee but chose not to do so. The Court upheld the expulsion and allowed the special election on March 16<sup>th</sup> to go forward. The Second Circuit affirmed. Monserrate lost the special election.