

THOMAS HARDIMAN ON CRIMINAL JUSTICE

Highlights:

- Thomas Hardiman was extreme on issues related to criminal justice.
 - Hardiman wrote in a majority decision that jails could strip-search any inmate.
 - Hardiman opposed a decision ruling prison guards liable for an inmate's suicide.
 - Hardiman overturned a stay of execution for a man who claimed to be mentally incompetent.
 - Hardiman denied an inmate's argument that his life sentence should have been thrown out because his lawyer was inadequate.
 - Hardiman wrote a ruling that strengthened mandatory minimum sentences.
 - Hardiman wrote a right-wing law journal article encouraging judges to adhere to lengthy sentencing guidelines.

Hardiman Was Extreme On Judicial Issues Related To Criminal Justice

HARDIMAN WROTE IN A MAJORITY DECISION THAT JAILS COULD STRIP-SEARCH ANY INMATE

Hardiman Wrote In A Majority Opinion That Jails Could Strip-Search Inmates Regardless Of What They Were Arrested For And That Such Searches Did Not Violate The Fourth Amendment. According to the Los Angeles Times, "Hardiman also wrote an important opinion that upheld the power of jailers to strip-search all new inmates, even if they are being held briefly for failing to pay a fine and do not appear to pose a security risk. A class-action suit was brought on behalf of people who had been arrested and strip-searched in a county jail in New Jersey. They alleged these full-body exams amounted to 'unreasonable searches' in violation of the 4th Amendment. The lead plaintiff, Albert Florence, had been arrested and briefly jailed for not paying a fine that he had, in fact, paid. A district judge ruled for the plaintiffs, but Hardiman spoke for a 2-1 majority to throw out their claim." [Los Angeles Times, [1/27/17](#)]

- **Hardiman: The Jail's Interest In Preventing "Illegal Weapons And Drugs" From Getting Into The Facility Was "Vital To The Protection Of Inmates And Prison Personnel Alike."** According to the Los Angeles Times, "A district judge ruled for the plaintiffs, but Hardiman spoke for a 2-1 majority to throw out their claim. 'We do not minimize the extreme intrusion on privacy associated with a strip-search by law enforcement officers,' he said. However, the balance tips in favor of the county because the 'prevention of the entry of illegal weapons and drugs is vital to the protection of inmates and prison personnel alike.'" [Los Angeles Times, [1/27/17](#)]

HARDIMAN OPPOSED A DECISION HOLDING PRISON GUARDS LIABLE FOR AN INMATE'S SUICIDE

Hardiman Wrote A Dissent Against A Federal Appeals Court Decision That Ruled Two Delaware Department Of Correction Officials Could Be Held Liable For The Failure Of A State Medical Contractor To Properly Screen Inmates For Mental Health Issues, Resulting In A Suicide Of A Prisoner. According to the News Journal, "A federal appeals court has ruled that two Delaware Department of Correction officials can be held responsible for the failure of a state medical contractor to properly screen inmates for mental health issues, leading to a suicide at the Howard R. Young Correctional Institution. 'The court holds that two of the most senior executives in the Delaware prison system must stand trial in the suicide of Christopher Barkes,' wrote Circuit Court Judge Thomas M. Hardiman, in a lengthy dissent, arguing the majority was wrong to allow the case against former Delaware Department of Correction Commissioner Stan Taylor and former warden Raphael Williams to go forward. The lawsuit was filed in 2006 by Karen Barkes and her children over the Nov. 14, 2004, suicide of her husband, Christopher, while in custody, less than 24 hours after he was locked up for a probation violation." [News Journal, 9/15/14]

Hardiman Argued That The Correctional Officers Had To Display "Deliberate Indifference" And Be "Personally Involved With The Misfeasance" That Lead To The Prisoner's Suicide In Order To Be Legally Responsible.

According to the News Journal, “In his dissent, Hardiman argued that Taylor and Williams not only had to display ‘deliberate indifference,’ but also had to be personally involved with the ‘misfeasance’ to be held legally responsible. Culhane said that since a 2009 ruling - where the U.S. Supreme Court held that a supervisor could not be held liable just because they were a supervisor - the legal standard for liability had been unclear. This ruling clarifies that the standard is deliberate indifference by a supervisor - which in this case is ignoring prisoner’s rights, he said.” [News Journal, 9/15/14]

HARDIMAN OVERTURNED A STAY OF EXECUTION FOR A MAN WHO CLAIMED TO BE MENTALLY INCOMPETENT

Hardiman Lifted A Stay Of Execution For Shannon Johnson, Despite A U.S. District Judge’s Order Halting The Execution On Grounds The Defended May Not Have Been Mentally Stable. According to the News Journal, “However, legal maneuvering continued throughout Thursday night to prevent his execution. At press time around 10:45 p.m., Johnson’s fate was unclear after U.S. District Chief Judge Gregory M. Sleet issued a stay. His ruling followed the Delaware federal defenders’ earlier request on behalf of Johnson’s sister. [...] For much of the day leading up to that moment, it appeared doubtful the execution would proceed. A petition filed by the Delaware Federal Defender’s Office on behalf of Johnson’s sister, Lakeisha Ford, prompted Sleet on Wednesday to issue a stay of execution, saying he needed time to review the case. to digest the voluminous petition, which argued that Johnson is mentally incompetent, and that a state court review that determined he was competent was flawed. Prosecutors immediately appealed to the U.S. Third Circuit Court of Appeals, which lifted the stay just after 5 p.m. Thursday. The three judge panel wrote that the fact that Johnson himself joined in the appeal filed by prosecutors ‘speaks volumes about the case.’ ‘From the time of Johnson’s penalty phase to this very day, Johnson has consistently indicated his wish to proceed with his state-ordered execution,’ wrote Judge Thomas Hardiman on behalf of the panel. ‘[Johnson] has informed every court he has been before and every lawyer involved in his proceedings that he wishes to waive all further ... challenges and proceed to execution,’ Hardiman wrote.” [News Journal, 4/20/12]

- **Hardiman Opined That Johnson Had Consistently Informed The Court And Attorneys That He Wished To Waive Further Challenges And Undergo Execution.** According to Gannett News Service, “The three judge panel, in a decision handed down just after 5 p.m. EDT, wrote that the fact that Shannon M. Johnson himself joined in the appeal filed by Delaware prosecutors seeking to lift the hold on the execution ‘speaks volumes about the case.’ ‘From the time of Johnson’s penalty phase to this very day, Johnson has consistently indicated his wish to proceed with his state-ordered execution,’ wrote Judge Thomas Hardiman on behalf of the panel. ‘(Johnson) has informed every court he has been before and every lawyer involved in his proceedings that he wishes to waive all further ... challenges and proceed to execution,’ Hardiman wrote.” [Gannett News Service, 4/19/12]
- **Hardiman’s Panel Dismissed A Claim By Johnson’s Sister That Johnson Was “Not Competent To Waive His Appeals Because Of Mental Illness And Low Intelligence.”** According to Gannett News Service, “The petition filed by Johnson’s sister, Lakeisha Ford, through the Delaware Federal Defender’s Office late last week alleged that Johnson was not competent to waive his appeals because of mental illness and low intelligence. The panel dismissed that claim.” [Gannett News Service, 4/19/12]

HARDIMAN DENIED AN INMATE’S ARGUMENT THAT HIS LIFE SENTENCE SHOULD HAVE BEEN THROWN OUT BECAUSE HIS LAWYER WAS INADEQUATE

Hardiman Wrote For A Three-Judge Panel Denying An Inmate’s Argument That His Life Sentence In State Court Should Have Been Thrown Out Because His Lawyer Was Constitutionally Inadequate. According to SCOTUSblog, “In March 2018, Hardiman wrote for a three-judge panel in denying a Pennsylvania inmate’s argument that his life sentence in state court should be thrown out because his lawyer had been constitutionally inadequate. The inmate, Andy Rivera Rodriguez, contended that his lawyer should not have agreed to waive his right to a jury trial because Rivera Rodriguez was intellectually disabled, with an IQ of 58, and therefore could not have been sentenced to death. The court of appeals rejected that argument, explaining that there was no ‘bright-line rule for determining’ whether a defendant is intellectually disabled, and so it would not have been clear to Rivera Rodriguez’s attorney that he was ineligible for the death penalty based just on his IQ.” [SCOTUSblog, [7/2/18](#)]

HARDIMAN WROTE A RULING THAT STRENGTHENED MANDATORY MINIMUM SENTENCES

Hardiman Wrote A Majority Opinion That Strengthened Mandatory Minimum Sentencing For Criminals. According to the Washington Post, “Hardiman is a U.S. Appeals Court judge for the Third Circuit and also a Bush appointee. He’s a Georgetown Law grad and has written two majority opinions that were reviewed by the U.S. Supreme Court -- one that strengthens mandatory minimum sentences for criminals and another that ruled a Pennsylvania jail’s policy of strip searching the people it arrests does not violate someone’s 4th Amendment right of unreasonable searches and seizures.” [Washington Post, 5/18/16]

Hardiman Effectively Ruled That There Was No Particular Standard That Had To Be Met In Order To Justify More Severe Sentencing Than What Was Laid Out In Government Sentencing Guidelines. According to New Jersey Lawyer, “In Fisher, a case from Delaware, Judge Thomas M. Hardiman said that after the recent sentencing decisions by the U.S. Supreme Court -- in particular, United States v. Booker (2005) -- a 1990 3rd Circuit ruling on fact-finding in sentencing by judges is no longer good law. The 1990 case, United States v. Kikumura, said the preponderance-of-the-evidence standard must yield to the stricter clear-and-convincing evidence standard when a judge considers sentencing enhancements that overshadow the sentence that would be imposed under the crime actually charged. Circuit courts are split on the viability of Kikumura after Booker, which held the sentencing guidelines are advisory, not mandatory.” [New Jersey Lawyer, 9/17/07]

- **In Two Cases, The Third Circuit Court Ruled Against Defendants Arguing Against Sentencing Decisions That Far Surpassed The Timelines Established Under Federal Sentencing Guidelines.** According to New Jersey Lawyer, “In two key constitutional rulings, the 3rd U.S. Circuit Court of Appeals has come down squarely against defendants on sentencing issues. In United States v. Fisher, the appeals court said the Fifth Amendment’s due process clause does not require a judge find facts that support an enhancement of a sentence by a standard higher than preponderance of the evidence. And in United States v. Ausburn, the court said the due process clause was not violated by a judge’s failure to provide advance notice that he might sentence the defendant to more than double the top of the advisory range under the federal sentencing guidelines.” [New Jersey Lawyer, 9/17/07]

HARDIMAN WROTE A LAW JOURNAL ENTRY ENCOURAGING JUDGES TO ADHERE TO LENGTHY SENTENCING GUIDELINES

Hardiman Warned Of Legislative Intervention If Judges Did Not Apply Lengthy Sentencing Guidelines

Hardiman Wrote That Judges Should Adhere To Sentencing Guidelines, Including In Cases Of Crack/Powder Cocaine Disparities, In Order To Avoid Congressional Restrictions On Judicial Discretion. According to a Duquesne Law Review article by Thomas Hardiman and Richard Happner Jr., “Courts of appeals, in turn, will increasingly be required to review variances based on policy disagreements with various Guidelines. If such categorical variances become the norm, not only with respect to the crack/powder disparity, but across the Guidelines writ large, Congress might impose new, detailed statutory penalties that will leave district judges with even less discretion than they possessed in the mandatory Guidelines era. Whether Congress chooses to act in this regard might depend upon whether it deems the judiciary to be exercising prudent judgment as opposed to imposing its will on broad questions of crime and punishment.” [Duquesne Law Review, [1/1/12](#)]

Judge Mark Bennet Criticized Hardiman’s Call To Adhere To Sentencing Guidelines

Bennet Criticized Hardiman’s Call To Tailor Sentencing Out Of Fears Of “Legislative Backlash,” Arguing That Adhering To The Guidelines Contributed To Unjust Mass Incarceration. According to a Rutgers Law Review article by Mark Bennet, “Ironically, or perhaps serendipitously, the author was the sentencing judge in both Spears and Pepper, where he was reversed a whopping 5 times by the U.S. Court of Appeals for the Eighth Circuit (twice by an en banc court) before both defendants’ sentencing positions were vindicated by the U.S. Supreme Court. The article takes exception to two Third Circuit judges who have argued in law review articles that federal sentencing judges should be concerned about ‘legislative backlash’ if they sentence outside the now advisory guidelines. In the arc of the history of federal sentencing and its impact on mass incarceration, we are perched at a cresting point where the gravity of reason and our Nation’s experience with mass incarceration hopefully will pull towards greater justice in sentencing.” [Rutgers Law Review, [1/1/14](#)]