

A06-2308

State of Minnesota
IN COURT OF APPEALS

LILLIAN VIRGINIA SIMMONS,

Appellant,

v.

JOAN FABIAN, Commissioner of Corrections,
in her Official and Individual Capacities

Respondent.

APPELLANT'S BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii-iii
STATEMENT OF THE ISSUE.....	1
STATEMENT OF CASE AND FACTS.....	2-3
STANDARD OF REVIEW.....	4
SUMMARY OF ARGUMENT.....	5
ARGUMENT.....	6-14
I. Fabian is not entitled to absolute immunity from suit in her capacity as the paroling authority because she is not a judicial officer and she is not acting in a judicial capacity.....	6-12
II. Even if Fabian is entitled to absolute immunity from a suit for monetary damages, she is not entitled to absolute immunity from injunctive or declaratory relief.....	13-14
CONCLUSION.....	15

TABLE OF AUTHORITIES

UNITED STATES CODE:

42 U.S.C. §1983 (1996).....	1, 13
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MINNESOTA STATUTES:

Minn. Stat. § 15.06 (2006).....	9
Minn. Stat. § 244.05, subdiv. 4 (1988).....	2
Minn. Stat. § 244.05, subdiv. 5 (2006).....	10, 11
Minn. Stat. § 244.11 (2006).....	12
Minn. Stat. § 589 (2006).....	9
Minn. Stat. § 589.01 (2006).....	11

UNITED STATES SUPREME COURT CASES:

<i>Burns v. Reed</i> , 500 U.S. 478 (1991).....	7
<i>Butz v. Economou</i> , 438 U.S. 478 (1978).....	5-8
<i>Cleavinger v. Saxner</i> , 474 U.S. 193 (1985).....	6, 9
<i>Forrester v. White</i> , 484 U.S. 219 (1987).....	6, 7
<i>Mitchell v. Forsyth</i> , 472 U.S. 511 (1995).....	12
<i>Payne v. Tennessee</i> , 501 U.S. 808 (1991).....	10
<i>Pulliam v. Allen</i> , 466 U.S. 522 (1984).....	13

MINNESOTA CASES:

Barton v. Moore, 558 N.W.2d 746 (Minn. 1997).....4

Bodah v. Lakeville Motor Express, Inc.,
663 N.W.2d 550 (Minn. 2003).....4

Dunn v. State, 486 N.W.2d 428 (Minn. 1992).....2

Kipp v. Saetre, 454 N.W.2d 639 (Minn. Ct. App. 1990).....1

Marquette Nat'l Bank v. Norris, 270 N.W.2d 290 (Minn. 1978).....4

*State By Ulland v. International Ass'n of Entrepreneurs of
America*, 527 N.W.2d 133 (Minn. Ct. App. 1995).....6

CASES FROM OTHER JURISDICTIONS:

Figg v. Russell, 433 F.3d 593 (8th Cir. 2006).....1, 6

Fralin & Waldron, Inc. v. Henrico County, Va.,
474 F.Supp. 1315 (E.D. Va. 1979).....6

OTHER AUTHORITIES:

Margaret Z. Johns, *A Black Robe is Not a Big Tent: The Improper
Expansion of Absolute Judicial Immunity to Non-Judges in
Civil-Rights Cases*, 59 SMU L. Rev. 265 (2006).....6, 7

Minnesota Department of Corrections,
<http://www.corr.state.mn.us/org/commoffice.htm>
(last visited January 22, 2007).....10, 14

STATEMENT OF THE ISSUE

In Minnesota, the Commissioner of Corrections has the sole authority to make decisions regarding parole. Is the Commissioner entitled to absolute immunity, even if her decisions are unconstitutional, when a suit challenging her parole decision is brought against her pursuant to 42 U.S.C. §1983?

The trial court held that Joan Fabian was absolutely immune from suit as a parole authority and granted her motion to dismiss.

42 U.S.C. § 1983 (1996)

Figg v. Russell, 433 F.3d 593 (8th Cir. 2006)

Kipp v. Saetre, 454 N.W.2d 639 (Minn. App. 1990)

STATEMENT OF THE CASE AND FACTS

Appellant, Lillian Virginia Simmons (hereinafter “Simmons”), was convicted of first degree felony murder, in violation of Minn. Stat. § 609.185(3). *Dunn¹ v. State*, 486 N.W.2d 428 (Minn. 1992). After her conviction, she was given a mandatory sentence of life in prison. Complaint (hereinafter “Comp.”) at ¶ 9, attached at appendix pages 1-6. With her life sentence, Simmons was required to serve a minimum of 17 years before she would be eligible for parole. Minn. Stat. § 244.05, subdiv. 4 (1988).²

Simmons is currently incarcerated at Minnesota Correctional Facility—Shakopee. *Id.* at ¶ 9. While in prison, Simmons has exhausted her facility’s educational and psychological resources. *Id.* at ¶ 11. She has not demonstrated any violent or threatening behavior during her sixteen years of incarceration and has exhibited sincere remorse for her crime. *Id.* at ¶ 11. Simmons has shown that she is rehabilitated and would not present a threat to society upon release. *Id.* at ¶12.

Simmons was eligible for parole in October of 2006. *Id.* at ¶ 9. Respondent, Joan Fabian (hereinafter “Fabian”), Commissioner of Corrections, is the state official responsible for granting or denying parole to inmates serving life sentences. *Id.* at ¶13. In March, 2003, Fabian and an advisory panel reviewed Simmons’ file and denied her parole. *Id.* at ¶ 13. The decision to deny Simmons

¹ Simmons legally changed her name from Dunn to Simmons

² After Simmons was sentenced, the minimum sentence for first-degree murder was increased from seventeen to thirty years.

parole was based on a policy adopted by Fabian that no individual serving a life sentence should be paroled at their minimum eligibility date. *Id.* at ¶ 14. Fabian declared that Simmons would not be considered for parole until 2010. *Id.* at ¶ 13.

Simmons brought this suit against Fabian, in her official and individual capacities. Simmons alleged that Fabian, by adopting a policy declaring that no person would be paroled after serving the minimum time set forth by the legislature, violated Simmons' constitutional right to due process and the prohibition against ex post facto laws. Fabian answered the complaint and then filed a motion to dismiss alleging that she is absolutely immune from suit for her actions as a parole authority. The trial court granted Fabian's motion to dismiss. *See* Memorandum and Order, attached at appendix pages 7-12. Simmons is appealing the trial court's determination that Fabian is entitled to absolute immunity.

STANDARD OF REVIEW

When an appellate court reviews a case that was dismissed for failure to state a claim upon which relief can be granted, the court must decide whether there was a sufficient claim for relief set forth in the complaint. *Barton v. Moore*, 558 N.W.2d 746, 749 (Minn. 1997). The standard of review is de novo. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 552 (Minn. 2003). “The reviewing court must consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party.” *Marquette Nat’l Bank v. Norris*, 270 N.W.2d 290, 292 (Minn. 1978).

ARGUMENT

Summary of Argument

The District Court erred when it granted Fabian's motion to dismiss because a parole authority is not entitled to absolute immunity. The United States Supreme Court has held that judicial officers, and those who are acting in judicial-like capacity, are entitled to absolute immunity. *See Butz v. Economou*, 438 U.S. 478, 514 (1978). Fabian is not a judicial officer and her position as a parole authority is not adjudicatory in nature. In addition, the functions she performs do not require absolute protection from liability. Rather, based on the factors set forth in *Butz*, the functions she performs require her to be accountable for her actions and she should not be granted absolute immunity.

Even if Fabian is entitled to absolute immunity for monetary damages arising out of the violation of Simmons' constitutional rights, she is not entitled to absolute immunity from injunctive or declaratory relief because she is not a judicial officer acting in a judicial capacity.

This court should reverse the District Court's order for dismissal and remand the proceedings to the trial court for a determination on Simmons' constitutional claims.

I.

Fabian is not entitled to absolute immunity from suit in her capacity as the paroling authority because she is not a judicial officer and she is not acting in a judicial capacity.

Fabian, as the Minnesota Commissioner of Corrections, is the parole authority in Minnesota. She contends that, as the paroling authority, she is entitled to absolute immunity. But the paroling authority should not be completely insulated from a civil rights suit; this court should hold that the parole authority is entitled to qualified, rather than absolute, immunity.³ offers an Eighth Circuit Court of Appeals case as her basis for this assertion.

Absolute immunity is the “right to be free” from the consequences of a lawsuit and having to defend oneself against the claim. *Fralin & Waldron, Inc. v. Henrico County, Va.*, 474 F.Supp. 1315, 1320 (E.D. Va. 1979). In determining whether to grant government officials any type of immunity, including absolute immunity, courts have to balance the benefits of civil liability, compensating victims and encouraging lawful conduct, against its undesirable consequences, intimidating decision-makers and undermining their independence. *Forrester v. White*, 484 U.S. 219, 223 (1987). *See also* Margaret Z. Johns, *A Black Robe is Not*

³ The Minnesota Supreme Court has not ruled on the issue of absolute immunity for parole board members and the United States Supreme Court has explicitly left this issue open. *Cleavinger v. Saxner*, 474 U.S. 193, 204 (1985). The Eighth Circuit Court of Appeals has held that the parole authority is absolutely immune, *Figg v. Russell*, 433 F.3d 593 (8th Cir. 2006), but Minnesota is not under an obligation to follow the Eighth Circuit’s holding on this issue. *See, e.g. State By Ulland v. International Ass'n of Entrepreneurs of America*, 527 N.W.2d 133, 136 (Minn. Ct. App. 1995).

a Big Tent: The Improper Expansion of Absolute Judicial Immunity to Non-Judges in Civil-Rights Cases, 59 SMU L. Rev. 265, 270-71 (2006) (hereinafter *Improper Expansion of Absolute Immunity*).

In determining whether to grant absolute immunity, the Supreme Court “has been cautious in recognizing claims that government officials should be free of the obligation to answer for their acts in court.” *Forrester*, 484 U.S. at 223-24. It is the burden of the individual seeking absolute immunity to show that it is justified for the functions she performs. *Burns v. Reed*, 500 U.S. 478, 486 (1991). In addition, the Court “has generally been quite sparing in its recognition of claims to absolute official immunity.” *Forrester*, 484 U.S. at 224. Absolute immunity is “strong medicine” that is justified only when the threat to effective performance of office is “very great.” *Improper Expansion of Absolute Immunity* at 270-271.

The Supreme Court found that this “strong medicine” was justified to protect judges from civil liability, reflecting the need for an independent judiciary and finality in judicial proceedings. *Improper Expansion of Absolute Immunity*, 272-73 (citations omitted). The Court has extended the protection of judicial immunity to government officials who perform the function of a judge. *See Butz*, 438 U.S. at 514 (federal administrative-law judges were entitled to judicial immunity because the federal agency proceedings were functionally the same as judicial proceedings). It is the nature of the official's function, rather than her particular location within the government, that is the relevant consideration. *Id.*

In *Butz*, the Supreme Court set out several factors to use in determining whether to apply absolute immunity to officials:

(a) the need to assure that the individual can perform his functions without harassment or intimidation; (b) the presence of safeguards that reduce the need for private damages actions as a means of controlling unconstitutional conduct; (c) insulation from political influence; (d) the importance of precedent; (e) the adversary nature of the process; and (f) the correctability of error on appeal.

Id. at 512.

In applying these factors, absolute immunity should not be applied to the Commissioner of Corrections.

A. The need to assure that the Commissioner can perform her functions without harassment or intimidation.

The Commissioner could perform her duties without absolute immunity; granting the Commissioner qualified immunity would be sufficient to ensure that she could perform her functions without harassment or intimidation. Through qualified immunity the Commissioner could quickly recognize, and dispose of, insubstantial or frivolous lawsuits. *Butz*, 438 U.S. at 507-08. “[I]t is not unfair to hold liable the official who knows or should have known he is acting outside the law, and . . . insisting on an awareness of clearly constitutional limits will not unduly interfere with the exercise of official judgment.” *Butz*, 438 U.S. at 506-507.

B. The presence of safeguards that reduce the need for private damages actions as a means of controlling unconstitutional conduct.

Other than a civil rights suit, there are not sufficient safeguards to control unconstitutional conduct. While a habeas corpus claim may be available to Simmons, it does not offer her the same ability to correct error as compared with those mechanisms available within a civil rights lawsuit. For example, discovery cannot be conducted in habeas proceedings. *See* Minn. Stat. § 589 (2006) (does not include provision for discovery). In Simmons' case, as well as others, discovery is necessary to prove constitutional violations. Further, habeas proceedings do not allow for the awarding of attorneys fees. Most, if not all, inmates who have served a significant amount of time in prison are indigent. If attorneys fees are unavailable, there is little or no possibility that indigent inmates will find representation.

C. Insulation from political influence.

The Commissioner is not insulated from political influence. The Commissioner is appointed by the Governor and serves until the presiding Governor vacates the office. Minn. Stat. § 15.06 (2006). She serves at the pleasure of the Governor, who is most obviously not insulated from the political process. *See Cleavinger*, 474 U.S. at 204 (in concluding that a prison disciplinary committee is not insulated from political influence, the court stated: "It is the old situational problem of the relationship between the keeper and the kept, a relationship that hardly is conducive to a truly adjudicatory performance.").

Importantly, political pressures could easily influence parole decisions because the Commissioner is solely responsible for parole decisions for first-degree murderers. Minnesota Department of Corrections, <http://www.corr.state.mn.us/org/commoffice.htm> (last visited January 22, 2007) (hereinafter “MN DOC website”).

D. The importance of precedent.

When courts make their judicial decisions, they are not made within an isolated sphere. Holdings from previous cases are taken into account and used to help guide the court’s decision making process. The Supreme Court described this reliance on *stare decisis* as, “the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.” *Payne v. Tennessee*, 501 U.S. 808, 827 (1991).

Contrast that statement to the parole hearing process. The Commissioner is only required to perform certain tasks prior to and during a parole hearing. Minn. Stat. § 244.05, subdiv. 5 (2006). The tasks include, for example, preparation of a community report which details the views of the sentencing judge, prosecutors, the victim and his family, and community sentiment regarding the inmate’s release and notifying the victim of the parole hearing. *Id.* In addition, the statute requires the Commissioner to take into account certain factors when granting parole, such as:

[T]he risk the inmate poses to the community if released, the inmate's progress in treatment, the inmate's behavior while incarcerated, psychological or other diagnostic evaluations of the inmate, the inmate's criminal history, and any other relevant conduct of the inmate while incarcerated or before incarceration.

Id. However, nowhere does the statute require that the Commissioner consider prior parole decisions of other inmates with similar offenses, disciplinary records, and rehabilitation efforts to be paroled after a similar length of time served. By not requiring reliance on prior parole decisions to dictate subsequent parole decisions, there is not likely to be consistency among those decisions. Presumably, since the Commissioner can make individual determinations for an inmate's release, she could choose not to parole an inmate simply for personal dislike or distaste for that particular inmate.

E. The adversary nature of the process.

As a general proposition, the more adversarial the process, the less need to provide for civil actions to remedy errors. In Minnesota, the parole process is not adversarial. An inmate does not have the right to be represented by an attorney during her parole hearing. In addition, the decision to parole an inmate is dictated by a review of the inmate's file and relevant documents prepared in anticipation of the hearing. *Id.* The Commissioner is not required to let an inmate speak on her own behalf during the hearing. *Id.* (the minimum requirements for conducting a parole hearing do not include allowing an inmate to testify at a parole hearing). Since the parole process is not adversarial by any means, there is a crucial need to provide civil action to remedy errors that take place during the process.

F. The correctability of error on appeal.

If a decision can be appealed, it provides an additional safeguard reducing the need for civil actions. The judicial system has appeals that allow the judicial process to self-correct. *See Mitchell v. Forsyth*, 472 U.S. 511, 522-523 (1995). The ability to appeal a sentencing decision from criminal court is codified in the Minnesota statutes. Minn. Stat. § 244.11 (2006).

By contrast, there is no review or appeal process of the parole decision in Minnesota as compared to the judicial process. This is especially problematic in Minnesota where the Commissioner has the sole authority to make parole decisions.

In sum, Fabian is not entitled to absolute immunity because her job functions do not require her to be insulated from suit. In fact, the parole process and the functions Fabian performs discourage the granting of absolute immunity.

II.

Even if Fabian is entitled to absolute immunity from a suit for monetary damages, she is not entitled to absolute immunity from injunctive or declaratory relief.

Along with monetary damages, Simmons sought declaratory and injunctive relief in her complaint. Even if this court believes Fabian is entitled to absolute immunity for monetary damages, Fabian is not entitled to absolute immunity from injunctive or declaratory relief.

Generally, absolute immunity from a suit seeking monetary damages does not bar granting injunctive or declaratory relief. *See, e.g., Pulliam v. Allen*, 466 U.S. 522, 536-537 (1984). The Court in *Pulliam* held that judicial immunity from claims for monetary damages does not preclude claims for injunctive or declaratory relief. *Id.* This general premise was narrowed by the 1996 amendment to §1983.

On its face, §1983 allows redress for constitutional violations through equitable or “other proper proceeding.” §42 U.S.C. § 1983 (1996). In 1996, the legislature passed an amendment to §1983 which added the following language, “[I]n any action brought against a *judicial officer* for an act or omission taken in such *officer’s judicial capacity*, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.” 42 U.S.C. §1983 (1996) (emphasis added). Upon the adoption of this amendment, the legislature created an exception which granted immunity from injunctive relief to judicial officers from suit alleging civil rights violations. The legislature narrowed

the exception by limiting protection of judicial officers only for acts committed within their official capacity. Had the legislators intended to create immunity from injunctive relief for those who perform judge-like activities, but are not technically judicial officers, they would have done so.

Fabian is not a judicial officer. She is a parole authority working for an agency created by the executive branch. The position of commissioner is also known as the chief *administrative* officer of the commissioner's office. MN DOC website (emphasis added). So even if her duties as a parole authority are comparable to a judge, she is not afforded protection from suit for injunctive relief because §1983 only offers this protection for judicial officers acting within their official capacity.

Since protection for injunctive relief in §1983 is limited to judicial officers acting within their official capacity, Fabian is not entitled to absolute immunity from injunctive or declaratory relief because she is not a judicial officer.

CONCLUSION

Simmons respectfully requests this court to vacate the District Court's order to dismiss and order a new parole hearing to be conducted on Simmons' behalf.

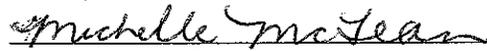
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Respectfully submitted,

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