

May 10, 2005

Dear Sir or Madam:

The Judicial Review Project at Stanford Law School is pleased to announce the publication of its report on Judge William H. Pryor, a nominee for the U.S. Court of Appeals for the Eleventh Circuit. The enclosed report comprehensively examines Judge Pryor's rulings on various issues of interest to the Senate and the general public. Compiled by law students at Stanford, this report is intended to provide decision-makers and other interested persons with an objective, unbiased look at the nominee. It attempts no argument regarding whether or not the nominee should be confirmed, and it seeks to characterize the nominee's views objectively through a review of his jurisprudence.

Concerned by the dearth of reliable, unbiased information on pending judicial nominees, the Judicial Review Project endeavors to inform the debate surrounding confirmation of federal judicial nominees. This debate is often marked by angry rhetoric and partisan hyperbole. While partisanship certainly has its place, we believe that the debate surrounding a judicial nominee should at the very least be grounded in an understanding of the nominee's views. We hope that the enclosed report is useful to you in this important process.

Our methods in preparing this report were simple. A team of over a dozen law students versed in constitutional issues reviewed each of the opinions authored by the nominee during his tenure on the 11th Circuit. For each opinion, a student composed a concise and evenhanded summary as well as issue paragraphs summarizing the nominee's views on important topics. The summaries and a compilation of these issues are included in this report. We welcome your suggestions for making reports on future nominees more useful.

The enclosed report is intended to be widely distributed to lawmakers, the media, and other interested parties. Dissemination of its contents, with attribution, is encouraged. Please contact us if you have any questions or would like further copies of the report.

Sincerely,

Nolan Reichl
Judicial Review Chair
Stanford Law School
P.O. Box 11002
Stanford, CA 94309
(650) 497-1005
nreichl@stanford.edu

**Report:
Judge William H. Pryor of the
Eleventh Circuit Court of Appeals
of the United States**

**Judicial Review
Stanford Law School
April 28, 2005**

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SUBSTANTIVE ISSUE SUMMARIES

CONSTITUTIONAL ISSUES

Fifth Amendment

In *Hardison v. Cohen* (2004) (p.14), Judge Pryor held that Congress did not intend to allow monetary damages for the improper dismissal of medical residents. Furthermore, medical residents appointed under federal statute do not have a property interest in their job and, therefore, are not entitled to due process protection.

Sixth Amendment

In *De Lisi v. Crosby* (2005) (p.11), Judge Pryor held that the preclusion of cross-examinations intended to impeach a star government witness did not violate the Confrontation Clause and Compulsory Process Clause of the Sixth Amendment where the jury's view would not have been substantially changed by the excluded evidence and where substantial evidence had been introduced for the same purpose.

Fourteenth Amendment

In *Wilson v. BE Aerospace* (2004) (p.18), Judge Pryor held that statements that a female employee is the “obvious choice” for a position but that women usually are not hired for the position in question does not constitute direct evidence of sex discrimination. However, such statements do constitute circumstantial evidence sufficient to create a genuine issue of fact as to whether there was discrimination and, thus, sufficient to preclude summary judgment.

IMPORTANT FEDERAL STATUTES

11 U.S.C. § 547 (c)(2)

In *In Re Isaac LeaseCo, Inc.* (2004) (p.16), Judge Boyle emphasized the importance of industry standards when determining whether a transfer made prior to bankruptcy is in the “ordinary course of business” and thus exempt from being voided as a “preferential transfer.”

Age Discrimination in Employment Act (ADEA)

In *Bost v. Federal Express Corporation* (2004) (p.9), Judge Pryor dismissed an Age Discrimination in Employment Act (ADEA) claim for failure to file an Equal Employment Opportunity Commission Charge (EEOC) charge before proceeding with a civil suit. Judge Pryor found that a filing an EEOC pre-intake questionnaire would not satisfy the requirement of filing a formal EEOC charge as there was no reasonable ground for the plaintiff to believe that he had filed a formal charge. Judge Pryor further refused to equitably toll the statute of limitations on an ADEA claim when plaintiffs failed to promptly re-file after an earlier dismissal without prejudice.

Americans with Disabilities Act

In *Higdon v. Jackson* (2004) (p.15), Judge Pryor held that a prima facie claim for retaliation against a private individual under the Americans with Disabilities Act requires more adverse action than mere rude and uncivil conduct. Furthermore, proof of a causal relationship between the uncivil conduct and a subsequent adverse action requires more evidence than merely proximity of time (in this case, three months) between the two events.

Electronic Communications Privacy Act

In *DirectTV v. Treworgy* (2004) (p.13), Judge Pryor held that under 18 U.S.C. § 2520(a) a private right of action granted against those engaging in disclosure, interception, or use of certain communications should not be extended to include individuals merely possessing equipment that could be used to disclose, intercept, or use such communications.

Illegal Immigration Reform and Immigrant Responsibility Act

In *Sarmiento Cisneros v. United States Attorney General* (2004) (p.17), Judge Pryor held that 8 U.S.C § 1231(a)(5) of the Illegal Immigration Reform and Immigrant Responsibility Act is ambiguous as to its temporal scope, would be impermissible if applied retroactively, and therefore only applies prospectively.

Prison Litigation Reform Act

In *Brown v. Johnson* (2004) (p.10), Judge Pryor held that the Prison Litigation Reform Act does not confine a prisoner's right under Federal Rules of Civil Procedure 15(a) to amend a complaint before responsive pleadings are filed.

Religious Land Use and Institutionalized Persons Act (RLUIPA)

In *Benning v. Georgia* (2004) (p.8), Judge Pryor upheld the constitutionality of RLUIPA, a law requiring that state prisons receiving federal funds not burden the religious exercise of prisoners. Judge Pryor found that this law does not violate the Spending Power Clause or the Establishment Clause.

LEGAL ISSUES

Criminal Law

In *Diaz v. Secretary for the Department of Corrections* (2005) (p.12), Judge Pryor held that neither a defendant's absence from portions of his trial nor the trial court's failure to conduct a pre-trial competency hearing or perform other functions (such as providing the defendant with a trial transcript) were sufficiently prejudicial to warrant Petitioner's lawyer to raise them on appeal. Judge Pryor held, therefore, that Petitioner did not suffer ineffective assistance of counsel and consequently denied his petition for the writ of habeas corpus.

Judge Pryor
Circuit Court Opinions

Benning v. Georgia
391 F.3d 1299 (11th Cir. 2004)
Dec. 2, 2004

Case Summary

Plaintiff Benning is a “Torah observant Jew” who requested a kosher diet and permission to wear a yarmulke while in prison. When prison officials denied the request, the plaintiff filed suit against Georgia under the Religious Land Use and Institutionalized Persons Act (“RLUIPA”). Georgia made a facial challenge to the constitutionality of RLUIPA. The district court ruled that RLUIPA did not violate the Establishment Clause, and was thus constitutional. Georgia made an interlocutory appeal of this ruling to the 11th Circuit.

Judge Pryor held that the RLUIPA was constitutional on Spending Power grounds. He applied a four-part test identified by the Supreme Court with only three parts being at issue. First, RLUIPA satisfied the test that conditions on state receipt of federal funds must be unambiguous. Judge Pryor followed Supreme Court precedent in holding that spending conditions prohibiting discrimination are still “unambiguous” when the manner of discrimination and methods of complying with the prohibition of discrimination vary widely. Next, Judge Pryor found RLUIPA to be rationally related to a federal interest: respecting the religious freedom of prisoners. Lastly, Judge Pryor rejected Georgia’s claim that RLUIPA regulations violate the Tenth Amendment. He held that the regulations do not compel Georgia to regulate religious discrimination in a specific manner.

Judge Pryor also held that RLUIPA did not violate the Establishment Clause. Judge Pryor applied the test established by the Supreme Court in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). First, Judge Pryor held that RLUIPA has two secular purposes: promotion of the free exercise of religion and prisoner rehabilitation. Next, Judge Pryor held that RLUIPA neither advances nor inhibits religion. He dismissed Georgia’s argument that RLUIPA impermissibly gave more weight to the right to religious exercise than to other constitutional rights. Furthermore, RLUIPA is flexible with regulations concerning the health and safety of the prison community that make compliance not unduly burdensome to Georgia. Lastly, Judge Pryor held that compliance with RLUIPA would not entangle Georgia excessively with religion.

Case History

The 11th Circuit denied a request for rehearing *en banc*. The issue of whether RLUIPA compels Georgia to accommodate Benning’s religious requests was remanded to the district court.

Bost v. Federal Express Corporation
372 F.3d 1233 (11th Cir. 2004)
June 8, 2004

Case Summary

Plaintiffs, as a class, brought suit under the Age Discrimination in Employment Act (“ADEA”) against FedEx. The Middle District Court of Florida dismissed the suit. In dismissing the case, the district court distinguished two groups of plaintiffs: the Bost plaintiffs were dismissed for failure to bring a mature claim; the Freeman plaintiffs were dismissed for failure to bring a claim within the statute of limitations. Both sets of plaintiffs appealed seeking a reversal of the dismissal and an equitable tolling of the statute of limitations. Judge Pryor affirmed the district court decision under *de novo* review.

Judge Pryor affirmed the dismissal of claims brought by the Bost plaintiffs because the claims were premature. Under the ADEA, potential plaintiffs must first file a charge with the Equal Employment Opportunity Commission (“EEOC”) and wait 60 days before filing a civil action. Plaintiffs filed an intake questionnaire with the EEOC, but did not file a formal EEOC charge before filing a civil suit. Judge Pryor ruled that the intake questionnaire alone did not satisfy the requirements of an EEOC charge. This ruling was based on the fact that the lead plaintiff knew that the questionnaire did not qualify as a formal charge. Plaintiff’s knowledge of this fact was evidenced by his later filing of a formal charge, by a statement on the questionnaire itself that it was not a formal charge, and by the EEOC’s response to the questionnaire. Judge Pryor distinguished prior case law in which the plaintiff reasonably believed that a pre-intake questionnaire served as an EEOC charge. Judge Pryor dismissed the claims of the Bost plaintiffs because no formal EEOC charge had been filed when the civil suit was brought.

Judge Pryor affirmed the dismissal of claims brought by the Freeman plaintiffs because the statute of limitations ran before the claim was filed. An initial proceeding in the case was dismissed without prejudice on September 25, 2000, with instructions to amend the complaint by October 23, 2000. Plaintiffs instead elected to appeal this dismissal and order to amend. Following precedent, once the time to amend expired on October 23, 2000, the dismissal without prejudice became an adjudication on the merits. This adjudication on the merits started running the 90-day statute of limitations, and the period elapsed before the plaintiffs filed their new complaint. Judge Pryor declined to allow for equitable tolling of the statute of limitations as the plaintiffs did not give a reason to use the “extraordinary remedy” of equitable tolling, nor did they indicate why they failed to re-file promptly in accordance with the order from September 2000.

Case History

Certiorari denied by the Supreme Court of the United States. 125 S. Ct. 656 (2004).

Brown v. Johnson
387 F.3d 1344 (11th Cir. 2004)
Oct. 18, 2004

Case Summary

Plaintiff Brown, a prisoner suffering from HIV and hepatitis, claimed that his medical treatment was wrongfully terminated and that his health was seriously deteriorating. Brown filed an action under 42 U.S.C. § 1983 alleging deliberate indifference to his serious medical needs in violation of the due process clause of the Fourteenth Amendment and the Eighth Amendment. A magistrate judge denied his motion to proceed *in forma pauperis* (without paying filing fees and court costs) under the Prison Litigation Reform Act (“PLRA”). The judge denied the motion because Brown had at least three strikes against him under 28 U.S.C. § 1915(g) for filing meritless lawsuits and had not "shown how he was in imminent danger of serious physical injury at the time he filed his complaint" (which would have triggered an exception under PLRA). In the Southern District Court of Georgia, Brown filed objections to the recommendations of the magistrate judge as well as a motion to amend his complaint. The district court denied Brown's motion to amend his complaint because of the previous meritless lawsuits, adopted the recommendations of the magistrate judge, and dismissed Brown's complaint without prejudice.

Judge Pryor reversed this decision, holding that the district court abused its discretion when it denied plaintiff's motion to amend his complaint. As this was a case of first impression for the 11th Circuit, Judge Pryor followed the majority of circuit courts in finding that the PLRA does not deny prisoners filing complaints *in forma pauperis* the benefit of Federal Rules of Civil Procedure 15(a), which permits the complaining party one amendment as a matter of course at any time before a responsive pleading is served. Judge Pryor further held that plaintiff's complaint as amended alleged imminent danger of serious physical injury. Accordingly, the complaint should not have been dismissed under the three strikes provision of 28 U.S.C. § 1915(g) because of the explicit exception for prisoners in imminent danger of serious physical injury.

Case History

There is no subsequent case history.

De Lisi v. Crosby
402 F.3d 1294 (11th Cir. 2005)
Mar. 18, 2005

Case Summary

Defendant De Lisi had been convicted in state court for trafficking in excess of 100 pounds of marijuana and for violating the Florida Racketeer Influenced and Corrupt Organizations Act (“RICO”). In the state trial court, Florida's case depended on the testimony of James White, a “convicted felon” and “confidential informant.” Following his conviction, De Lisi filed for a federal writ of habeas corpus. De Lisi argued in federal district court that the state trial court had violated his rights under the Confrontation Clause of the Sixth Amendment (by excluding evidence of White's bank statements and by allowing White's invocation of his Fifth Amendment privilege against self-incrimination to preclude De Lisi's cross-examination concerning White's tax returns) and the Compulsory Process Clause of the Sixth Amendment (by quashing De Lisi's subpoenas for the tax returns of White and White's wife). The district court granted habeas corpus; the State of Florida appealed.

Writing for a unanimous panel, Judge Pryor reversed the district court's grant of habeas corpus. Judge Pryor held that the trial court did not violate the Confrontation Clause when it allowed White to assert his Fifth Amendment privilege, even though White had waived his Fifth Amendment privilege, pre-trial, by answering questions concerning his tax returns. Assessed in the context of the other evidence presented to attempt to impeach White, Judge Pryor held that White's invocation of the right against self-incrimination amounted to a harmless error because it “actually benefitted De Lisi” and the evidence of the tax returns “would not have substantially changed the jury's view of White's bias or credibility.”

Judge Pryor also found no violation of the Confrontation Clause in the trial court's preclusion of cross-examination concerning White's bank records. De Lisi's overall showing, “even without the bank records, that White had suspiciously extensive assets,” again afforded the jury sufficient opportunity to assess White's bias and credibility. “If anything, exclusion of the bank records saved De Lisi from a potential embarrassment,” as a subsequent evidentiary hearing forced De Lisi to drastically revise his assertion concerning the amount of White's deposits.

Judge Pryor further held that to establish a Compulsory Process Clause violation De Lisi would have had to prove that White's tax returns were material. Since “De Lisi does not argue that the subpoenaed tax returns would have proved anything different from the precluded cross-examination” of tax returns and bank records, and since the limitation of that cross-examination was a harmless error, De Lisi was unable to establish that the suppression of the tax returns was material.

Case History

There is no subsequent case history.

Diaz v. Secretary for the Department of Corrections
402 F.3d 1136 (11th Cir. 2005)
Mar. 14, 2005

Case Summary

Petitioner Diaz, who had been convicted of capital murder and sentenced to death for his part in the robbery and killing of a Miami bartender, sought a writ of habeas corpus under 28 U.S.C. § 2254. Diaz claimed prejudicial ineffective assistance of counsel stemming from his lawyer's failure to raise issues during petitioner's state court appeal pertaining to petitioner's absence from various stages of the criminal trial as well as several other aspects of the original proceeding. The Southern District Court of Florida denied Diaz's petition for habeas corpus; Diaz appealed.

Judge Pryor affirmed the district court ruling, denying the habeas petition. Judge Pryor initially examined Diaz's claims that his absences from trial should have been raised by his lawyer on appeal because those absences violated a defendant's right, as articulated by the Supreme Court in *Kentucky v. Stincer*, 482 U.S. 730 (1987), "to be present at any stage of the criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure." Petitioner claimed that his absences from pretrial hearings regarding expert testimony as well as from conversations with the trial judge regarding the scheduling of closing arguments, the availability of certain witnesses, Diaz's competency to represent himself and several other discussions violated his rights under *Stincer*. In analyzing these claims under the ineffective assistance of council framework laid out by the Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984), Judge Pryor found that none of these absences rose to the level of prejudice called for under *Strickland*, and thus, that Diaz's lawyer's failure to raise these issues did not constitute ineffective assistance of counsel.

Judge Pryor next analyzed petitioner's claims that he suffered ineffective assistance of counsel when his appellate lawyer failed to raise arguments regarding the trial court's (1) refusal to suspend its proceedings in order to conduct a competency inquiry, (2) refusal to allow petitioner to call several witnesses in his defense, (3) refusal to allow Diaz to represent himself during the trial's penalty phase, (4) failure to provide Diaz with a complete record of the trial proceedings, (5) insistence that a security guard be present for meetings between Diaz and his lawyer, and (6) failure to weigh aggravating and mitigating factors during the penalty phase. After analyzing each of these claims, Judge Pryor found that none constituted sufficiently prejudicial error, and thus that Petitioner's attorney was not required to raise them on appeal.

Because Judge Pryor found that none of the trial court's actions constituted sufficiently prejudicial error, petitioner's lawyer was not required to raise them on appeal and, thus, was not ineffective in his appellate representation. Therefore, Judge Pryor denied the petition for habeas corpus.

Case History

There is no subsequent case history.

DirecTV v. Treworgy
373 F.3d 1124 (11th Cir. 2004)
June 15, 2004

Case Summary

Defendant Treworgy illegally possessed pirate access devices, violating the Electronic Communications Privacy Act (“ECPA”), 18 U.S.C. § 2512(b)(1), but Plaintiff DirecTV (“DTV”) could not show that these devices had been used to intercept its communications. A separate section of the ECPA, § 2520(a), created a private right of action against those engaged in the unauthorized disclosure, interception, or use of oral, wire, or electronic communications. On interlocutory appeal, plaintiff DTV argued that § 2520(a) also created a private right of action against individuals possessing equipment that could be used to intercept such communications, without a showing of interception, when such possession violated 18 U.S.C. § 2512(b)(1).

Judge Pryor held that § 2520(a) did not create a private right of action in this case. To reach this conclusion, Judge Pryor relied primarily on the plain language of the statute and the legislative history of § 2520. While acknowledging that some district courts had read the section differently, Pryor concluded that regardless of the desirability of creating a private right of action in cases such as this, it was not the place of the courts to make determinations that Congress was more qualified to make.

Case History

There is no subsequent history.

Hardison v. Cohen,
375 F.3d 1262 (11th Cir. 2004)
July 8, 2004

Case Summary

Dr. James Hardison, a resident at the Miami Department of Veterans Affairs Medical Center, was dismissed after being accused of various acts of misconduct and poor performance of his medical duties. Hardison attempted to appeal his dismissal. He maintained that regulations of the Medical Center and grievance policies of the Council on Podiatric Medical Education required a pre-termination hearing and a post-termination appeal. Hardison's requests were denied. He then filed suit in the Southern District Court of Florida, alleging that he had been denied his Fifth Amendment due process rights and seeking monetary and equitable relief. The district court dismissed Hardison's case for failure to state a claim upon which relief could be granted. Hardison appealed.

Judge Pryor upheld the lower court's dismissal of Hardison's claims. Judge Pryor held that Congress did not intend to allow money damages for the improper dismissal of medical residents. Under 38 U.S.C.A. § 7461 and precedent, a permanent physician at the hospital would not be able to seek monetary damages. Allowing residents to do so would "undermine" the policy behind the law "as it would give greater rights to residents than to permanent VA physicians." Judge Pryor further held that equitable relief would not be appropriate because Hardison's job was, by its nature, temporary. The transitory nature of the job, in combination with the specific provisions of the federal statute under which he was appointed (38 U.S.C.A. § 7406), meant that Hardison did not have a property interest in his job and, therefore, he was not entitled to due process.

Case History

There is no subsequent history.

Higdon v. Jackson
393 F.3d 1211 (11th Cir. 2004)
Dec. 16, 2004

Case Summary

Plaintiff Higdon brought a number of claims against employees of the State of Georgia: federal claims of retaliation against requested accommodations under the American with Disabilities Act (“ADA”), state law claims for retaliation, and a claim of intentional infliction of emotional distress. Higdon was a disabled individual (her leg had been permanently injured in a car accident) who worked as commercial car title processor. There are a number of lines for car title processing at the DMV, including a line for commercial processors and a line for disabled individuals. The implementation of a new system in 1999 caused inordinately long lines at the DMV. Higdon waited in line for over 3 hours and her leg began to swell and hurt. She asked to move from the commercial processor line to the disabled line, but DMV Supervisor Mary McMichael refused her request. McMichael’s refusal was based on the fact that Higdon could sit down while waiting in line and that an accommodation would give her a competitive advantage over other commercial processors. The alleged retaliatory actions of the employees included rude and embarrassing treatment in the title processing office and an incident three months later in a parking lot in which McMichael bumped her car into Higdon’s car. The District Court for the Northern District of Georgia granted the employees’ motion for summary judgment.

Judge Pryor affirmed the grant of summary judgment on all claims. Judge Pryor held that the rude treatment, while embarrassing and uncalled for, had “no tangible negative effect” that could rise to the level of an adverse action under the ADA. Judge Pryor quoted 11th Circuit precedent, writing that the “civil rights laws were not intended to be a civility code” and that no action can be brought for mere rudeness. Judge Pryor held that as to the alleged car bump, while it could be a minor assault, there was a lack of evidence to establish causal connection between the requested accommodation and the alleged retaliation. Judge Pryor held that more than just the proximity in time of three months between the protected expression and the adverse action was needed to prove causality. Judge Pryor held that the state law claim was duplicative of the ADA because the ADA provided its own cause of action and that the rude conduct, while “tasteless,” did not come close to rising to the level of extreme and outrageous conduct needed for intentional infliction of emotional distress. The District Court’s grant of summary judgment was affirmed.

Case History

There has been no subsequent case history.

In Re Isaac LeaseCo, Inc.
389 F.3d 1205 (11th Cir. 2004)
Nov. 8, 2004

Case Summary

Barrett Dodge Chrysler Plymouth and Isaac LeaseCo had a six-month business relationship in which Barrett Dodge sold used cars to LeaseCo. LeaseCo filed for bankruptcy and initiated an adversary proceeding against Barrett Dodge, seeking the return of funds paid to Barrett Dodge for ten used cars purchased during the 90 days before the filing of the petition for bankruptcy. The bankruptcy court held that three of these ten transfers must be returned to LeaseCo as preferential transfers. Creditor Barrett Dodge appealed.

Judge Pryor upheld the bankruptcy court's decision. He relied on relevant industry standards to determine that the bankruptcy court had not clearly erred by deciding that the three sales at issue (all of which took greater than 50 days to close) were not in the "ordinary course of business." Experts at trial had testified that the industry standard for payment was within 20 to 45 days. Judge Pryor based this decision on 11 U.S.C. § 547 (c)(2), which provides an exception from the normal rule requiring return of preferential transfers and allows transfer made in the "ordinary course of business" to remain.

Barrett Dodge argued that the court should look exclusively to the credit arrangement between the parties rather than to industry standards. Alternatively, Barrett Dodge argued that the court should permit additional deviation from industry standards since the parties engaged in substantial business together. Judge Pryor rejected both of these arguments. He concluded that evaluations based on objective industry standards provide a basis with which to judge the parties' characterization of the transaction and that such evaluations reassure other creditors that they are receiving equal treatment. Since Barrett Dodge and LeaseCo's business relationship only lasted six months, their relationship was not sufficiently enduring or steady to permit deviation from industry standards.

Case History

There is no subsequent case history.

Sarmiento Cisneros v. United States Attorney General
381 F.3d 1277 (11th Cir. 2004)
Aug. 27, 2004

Case Summary

Petitioner Cisneros, a native and citizen of Mexico, had been deported to Mexico in 1996 by an order of the Bureau of Immigration and Customs Enforcement (“BICE”), but he illegally reentered the United States in 1997. He subsequently married a United States citizen and was granted status as a legal permanent resident in March 1997. BICE reinstated its original deportation order under the authority of 8 U.S.C. § 1231(a)(5) of the Illegal Immigration Reform and Immigrant Responsibility Act, which allows the Attorney General to reinstate orders of removal for aliens who reenter illegally and precludes the alien from applying for any relief. The effective date of § 1231(a)(5) was April 1, 1997. Petitioner claimed that § 1231(a)(5) did not apply to him because Congress did not intend for it to apply retrospectively.

Judge Pryor ruled in favor of petitioner by vacating BICE’s decision reinstating the deportation order. Judge Pryor found that Congress was ambiguous in its intention regarding the temporal scope of § 1231(a)(5) and held that a statute that is ambiguous with respect to its retroactive application should be construed as unambiguously prospective. Judge Pryor further held that applying the statute to petitioner would have an impermissible retroactive effect because petitioner had been granted a status change *before* the effective date of the statute.

Case History

There is no subsequent case history.

Wilson v. B/E Aerospace, Inc.
376 F.3d 1079 (11th Cir. 2004)
June 30, 2004

Case Summary

Plaintiff Loretta Wilson brought a sex discrimination claim against defendant B/E Aerospace both for failing to promote her when she was the most qualified candidate for an open position and for later terminating her. She claimed that when she inquired about the position in 1999, Roman Ptakowski, who was in charge of hiring, told her she was “the obvious candidate...even though women aren’t typically in that type of position.” Both Wilson’s supervisor and a subordinate also claimed that Ptakowski said Wilson was an excellent candidate. Ptakowski denied making any of these remarks and claimed that Wilson was not qualified for the position.

In January 2001, Norm Baker, who was hired for the position Wilson was denied, asked her to move her office. She protested, but eventually said she would comply. She packed her office contents, took some belongings home, and told Baker she had a personal issue and had to leave the office immediately. When her supervisors investigated the office, it appeared to them that she had vacated, and they inferred that she had quit. The supervisors did not believe her explanation that she had been preparing to move her office and terminated her for insubordination, after which she filed this lawsuit. The district court entered summary judgment for the defendant employer on Wilson’s claim of gender discrimination both for the denial of her promotion and her termination. Wilson appealed.

Judge Pryor affirmed the district court’s holding in part and reversed and remanded in part. He held that Ptakowski’s alleged statements were not direct evidence of discrimination because the statement that women aren’t usually hired for the position may be viewed simply as a factual observation. Judge Pryor thus analyzed the case under a circumstantial evidence framework: The plaintiff must make a prima facie case of discrimination, which the employer may rebut with a non-discriminatory explanation. The plaintiff can prevail only if sufficient evidence is produced to allow a fact-finder to disbelieve the employer’s explanation. Judge Pryor held that she may be able to make a prima facie case for discrimination: Ptakowski’s alleged statements were substantial evidence that she was qualified, and the statements provide a pretext for disbelieving B/E’s explanation because they suggest “discriminatory animus.” Thus, there existed a genuine issue of fact that a jury must decide as to whether B/E unlawfully discriminated based on sex. Judge Pryor thus found that summary judgment on this issue was inappropriate, and remanded the case for trial.

Judge Pryor affirmed summary judgment for B/E on Wilson’s termination claim because she failed to provide any evidence that she was terminated because of her sex. Sex discrimination cannot be inferred based on the promotion incident alone, Judge Pryor held, because the events, one year apart, are temporally too remote from each other.

Case History

Rehearing *en banc* denied, 2004 WL 2157109 (11th Cir. 2004).

JUDICIAL REVIEW MEMBERSHIP

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