

Memo

To: Alan
From: Rachel
Date: 7/2/2009
Re: Ross case summaries

Courts rejecting Force Feeding

[Singletary v. Costello](#), 665 So.2d 1099 (Fla.App. 4 Dist. 1996)

Prisoner was fasting to protest his punitive transfer from one prison to another as well as to protest an allegedly false disciplinary report filed against a Chaplain in the prison. Prisoner sought and succeeded at enjoining the DOC from imposing non-consensual medical intervention or hindering or interfering with the prisoners fast. DOC claimed that they possessed a compelling state interest in preserving life, preventing suicide, protecting innocent third parties, maintaining the integrity of the medical profession, preserving internal order and discipline, maintaining institutional security, and finally, the rehabilitation of prisoners. Court held that the prisoner had a right under State Constitution to refuse medical care which was not vitiated by fact that he had been imprisoned; and the state did not have interest sufficient to override inmate's interest in refusing medical care.

[Zant v. Prevatte](#), 286 S.E.2d 715 (Ga. 1982)

Not a religious freedom case. State brought a petition asking the Court to authorize it to impose medical examinations upon prisoner against his will and, if necessary, to force feed prisoner to prevent his death. Prison doctors found that without food, the prisoner would die within three weeks. The prisoner was sane and rational but was on a hunger strike because he feared for his life. The State argued that it has a duty to protect the health of those who are incarcerated in the state penal system; and that there is a compelling state interest to preserve human life. The State contends it should be allowed to prevent prisoner from starving himself to death. Prisoner contends that he has the right to control his own body; he says his right to express himself through his hunger strike is of constitutional proportions and that it would be a violation of those rights. Court held that a prisoner on hunger strike, by virtue of his right of privacy, could refuse to allow intrusions on his person including forced feeding, even though calculated to preserve his life, and the State had not shown such a compelling interest in preserving the life of the prisoner, as would override his right to refuse medical treatment.

[Thor v. Superior Court](#), 855 P.2d 375 (Cal. 1993)

Quadriplegic went on hunger strike causing severe weight loss and threatening his health. He also has refused necessary medication and treatment for his general care. Staff psychiatrists have examined

Andrews and found him depressed about his quadriplegic condition but mentally competent to understand and appreciate his circumstances. Physician initiated ex parte proceeding seeking order allowing him to use surgical tube to feed and medicate quadriplegic prisoner who had refused such medical treatment. The California Supreme Court held that physician had no duty to provide further life-sustaining procedures for prisoner and such medical treatment would not be imposed upon prisoner. Right to refuse medical treatment is equally "basic and fundamental" and integral to concept of informed consent.

Jurisdictions Allowing Forced Feedings

[People ex rel. Illinois Dept. of Corrections v. Millard](#), 335 Ill.App.3d 1066, 782 N.E.2d 966, 270 Ill.Dec. 407 (4th Dist. 2003)

Prisoner began a hunger strike (1) protesting his transfer to Pontiac, (2) objecting to having his tracheostomy tube replaced while in the Department's custody, and (3) claiming he was being wrongfully detained beyond his discharge date. He vowed to continue his hunger strike until he (1) was sent back to East Moline, (2) was released from prison, or (3) died. **Defendant does not assert that his hunger strike is an expression of his first amendment right to free speech and/or religion.** It would appear defendant's main purpose in refusing nutrients was to manipulate the system. Defendant claims that forcing him to take in nutrients is a violation of his right to privacy. Department of Corrections sought permanent injunctive relief authorizing it to force-feed hunger-striking inmate through surgical implantation of percutaneous endoscopic gastrostomy (PEG) tube, use of intravenous injections, nasogastric tube, or jejunostomy tube. The Appellate Court held that the Department's interests in preserving life, preventing suicide, and maintaining orderly and disciplined institution outweighed hunger-striking inmate's constitutional right to privacy and, thus, Department could force-feed inmate.

[Com., Dept. of Public Welfare, Farview State Hosp. v. Kallinger](#), 580 A.2d 887 (Pa. Cmwlth. 1990)

State sought authorization for involuntary administration of necessary nutrition and medical treatment to a prisoner who wanted to starve himself to death. Prisoner was committed to a mental hospital for the criminally insane and suffers from a **serious mental illness**, Prisoner wanted to be allowed to die and argues that his right to privacy overrides any interests of the Commonwealth because the use of a nasogastric tube to feed him is an overly intrusive procedure which could last a number of years. The Commonwealth Court held that the interest of the Commonwealth in the orderly administration of its prison system, together with the need to preserve the integrity of the psychiatrists working within the penal system, outweighed any diminished right to privacy held by the prisoner, and, thus, the hospital had the right and the duty to force feed the prisoner.

[Laurie v. Senecal](#), 666 A.2d 806 (R.I. 1995)

Department of Corrections sought to force-feed prisoner who was attempting to end his life by refusing to take solid or liquid nourishment. The State Supreme Court found that a prisoner who did not suffer from terminal illness had no constitutional right to end his life by starvation, and Director of Department of Corrections could take steps to force-feed prisoner to save his life; Director had both right and duty to intervene in prisoner's suicidal attempt to end his life by deliberate starvation, and prisoner had no right

under State or Federal Constitution which would override compelling interest of State in preserving life and preventing suicide.

[Grand Jury Subpoena John Doe v. U.S.](#), 150 F.3d 170 (2nd Cir. 1998)

Force-feeding order issued against civil contemnor who started a hunger strike for political and religious reasons did not violate contemnor's constitutional rights; the institution where contemnor was confined was responsible for his care while incarcerated, and there were compelling governmental interests for issuing the order, such as the preservation of life, prevention of suicide, and enforcement of prison security, order, and discipline.

[In re Caulk](#), 480 A.2d 93 (N.H. 1984)

The prisoner stopped eating solid food and had been allowing himself to die slowly by refusing to consume any nourishment. He has purposely selected this method of dying so that he can remain competent. The defendant's course of conduct is calculated to achieve only one purpose; namely, his death. He did not make any demands or ask for anything in return for his fast. The State Supreme Court, held that, where the prisoner was not facing death from illness but, rather, set the death-producing agent in motion with specific intent of causing his own death, state's interests in maintaining an effective criminal justice system and in preserving life would prevail, and the prisoner had no such right under the State Constitution or the Federal Constitution.

[In re Soliman](#), 134 F.Supp.2d 1238 (N.D. Ala. 2001)

Alien claimed he was being illegally detained. In protest alien began a hunger strike. The court recognized that under some circumstances, prisoners have a First Amendment right to communicate with the press. Likewise, a hunger strike may be protected by the First Amendment if it was intended to convey a particularized message. However, so long as reasonable and effective means of communication remain open and no discrimination in terms of content is involved, prison officials are accorded latitude in fashioning restrictions on time, place and manner of communications. Such restrictions must be reasonably related to a legitimate penological interest. Force-feeding hunger-striking Immigration and Naturalization Service (INS) detainee was reasonable, and did not offend the First Amendment so long as nasogastric tube or intravenous feeding procedures were employed; government had valid concerns for the maintenance of security and orderly institutional operations within the detention facility, for preservation of life, and over the administrative costs and burden precipitated by detainee's hunger strikes, and detainee had alternative means of protesting his detention.