

## ***Martin v. Boise: Sleeping in Public***

Case Summary  
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On December 16, 2019, the United States Supreme Court denied certiorari in the *Martin v. City of Boise* case.<sup>1</sup> The denial means the Ninth Circuit’s 2018 ruling stands, and Boise’s sleeping-in-public ordinances are unconstitutional.<sup>2</sup>

One of the challenged ordinances made it a crime “to use any of the streets, sidewalks, parks or public places as a camping place at any time.”<sup>3</sup> The second classified sleeping in public as disorderly conduct.<sup>4</sup>

The plaintiffs in the case were homeless individuals living in Boise who were cited for violating the ordinances.<sup>5</sup> One of the plaintiffs, Janet Bell, was cited for violating the camping ordinance by sitting on a river bank while possessing a backpack with some of her belongings.<sup>6</sup> Ultimately the repeated enforcement of these ordinances relegated Bell to sleeping in the bed of a pickup truck outside of the city limits of Boise.<sup>7</sup> Another plaintiff, Craig Fox, was cited for disorderly conduct for sleeping on a bench in Ann Morrison Park while waiting for the shelters to open up.<sup>8</sup>

The plaintiffs challenged the constitutionality of the two ordinances under the Eighth Amendment arguing that they made the basic human necessity for sleep subject to criminal liability, which was cruel and unusual punishment.<sup>9</sup> These challenges were dismissed when the district court granted summary judgment in favor of the City.<sup>10</sup> The district court determined that the Rooker-Feldman doctrine<sup>11</sup> barred retrospective relief in the federal courts and that an intervening special order rendered the claims for prospective relief moot.<sup>12</sup> Boise’s Special Order 10-03 instructed that if shelter is not available then a homeless person found sleeping in public cannot be cited for violating the sleeping or camping ordinances.<sup>13</sup>

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<sup>1</sup> *City of Boise v. Martin*, 140 S. Ct. 674 (2019) (mem.).

<sup>2</sup> *See Bell v. City of Boise*, 834 F. Supp. 2d 1103, 1105–06 (D. Idaho 2011), *rev’d*, 709 F.3d 890 (9th Cir. 2013).

<sup>3</sup> *Id.* at 1105.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 1106.

<sup>6</sup> Complaint for Injunctive and Declaratory Relief, and Monetary Damages at 4, *Bell v. City of Boise*, 834 F. Supp. 2d 1103 (D. Idaho 2011), *rev’d*, 709 F.3d 890 (9th Cir. 2013) (No. 1:09CV00540), 2009 WL 4379719.

<sup>7</sup> *Id.* at 5.

<sup>8</sup> *Id.* at 6.

<sup>9</sup> *Id.* at 20.

<sup>10</sup> *Bell*, 834 F. Supp. 2d at 1117.

<sup>11</sup> Under the Rooker-Feldman Doctrine, federal courts cannot second guess state court decisions. *Id.* at 1109. If a party can appeal a state court decision in state court, a federal court will not decide a new suit on the matter. *Id.*

<sup>12</sup> *Id.* at 1109.

<sup>13</sup> Defendants’ Memorandum in Support of Summary Judgement at 9, *Bell v. City of Boise*, 834 F. Supp. 2d 1103 (D. Idaho 2011), *rev’d*, 709 F.3d 890 (9th Cir. 2013) (No. 1:09-cv-00540-REB), 2010 WL 11571115.

Plaintiffs appealed to the Ninth Circuit Court of Appeals, which reversed.<sup>14</sup> The Ninth Circuit found that the claims for retrospective relief were not barred by the Rooker-Feldman doctrine and that jurisdiction existed for the claims for prospective relief.<sup>15</sup> It remanded the case to the district court for further proceedings.<sup>16</sup>

On remand the district court again granted summary judgment for the City on the claim for retrospective relief.<sup>17</sup> It held that the plaintiffs failed to raise the Eighth Amendment challenge during their criminal prosecutions and thus could not raise them now for retrospective relief under the favorable termination requirement recognized in *Heck v. Humphreys*.<sup>18</sup> The district court, in a separate opinion, also ruled that the claims for prospective relief were not barred but ultimately still failed due to being rendered moot as a result of the special order and amendment to the city code.<sup>19</sup>

The plaintiffs appealed again.<sup>20</sup> The Ninth Circuit affirmed that the claims for retrospective relief were generally barred, with the exception of the claims regarding citations that were dismissed before conviction.<sup>21</sup> Additionally, the Ninth Circuit held that the prospective relief sought were not barred by *Heck*, and there was an issue of material fact regarding the plaintiffs' risk of future prosecution due to the regulations placed on the shelter options for the homeless individuals.<sup>22</sup> The court reversed the summary judgment granted in favor of the City.<sup>23</sup> One of the issues identified by the court was the fact that an individual who had to wait for admission to a shelter, due to certain time constraints, was exposed to being barred from seeking admission at another shelter.<sup>24</sup> Additionally, some individuals could be turned away from shelters due to the shelters' policies that required adherence to their religious practices.<sup>25</sup> On the merits of the Eighth Amendment challenge, the Ninth Circuit held that any restriction in the form of criminal penalties on an individual's ability to sit, sleep, or lay down when no valid alternatives are available is indeed cruel and unusual punishment and a violation of the Eighth Amendment.<sup>26</sup>

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<sup>14</sup> Bell v. City of Boise, 709 F.3d 890, 901 (9th Cir. 2013).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Bell v. City of Boise, 993 F. Supp. 2d 1237, 1239 (D. Idaho 2014), *aff'd in part, rev'd in part and remanded sub nom.* Martin v. City of Boise, 902 F.3d 1031 (9th Cir. 2018), *and opinion amended and superseded on denial of reh'g*, 920 F.3d 584 (9th Cir. 2019), *and aff'd in part, rev'd in part and remanded sub nom.* Martin v. City of Boise, 920 F.3d 584 (9th Cir. 2019).

<sup>18</sup> *Id.* (citing *Heck v. Humphreys*, 512 U.S. 477 (1994)).

<sup>19</sup> See Martin v. City of Boise, No. 1:09-CV-00540-REB, 2015 WL 5708586, at \*8 (D. Idaho Sept. 28, 2015), *rev'd and remanded*, 902 F.3d 1031 (9th Cir. 2018), *and opinion amended and superseded on denial of reh'g*, 920 F.3d 584 (9th Cir. 2019), *and rev'd and remanded*, 920 F.3d 584 (9th Cir. 2019).

<sup>20</sup> Martin v. City of Boise, 902 F.3d 1031 (9th Cir. 2018), *opinion amended and superseded on denial of reh'g*, 920 F.3d 584 (9th Cir. 2019), *cert. denied sub nom. Boise, ID v. Martin*, No. 19-247, 2019 WL 6833408 (U.S. Dec. 16, 2019).

<sup>21</sup> *Id.* at 1049.

<sup>22</sup> *Id.* at 1042.

<sup>23</sup> *Id.* at 1041–42.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 1041.

<sup>26</sup> *Id.* at 1048.

This ruling was followed with a request for an *en banc* rehearing, which was denied.<sup>27</sup> The denial contained two dissents, the first of which was written by Judge Smith. Judge Smith's dissent said the holding is beyond the scope of the court and not founded in precedent.<sup>28</sup> Additionally, Judge Smith voiced concerns on the impact of the ruling for cities all over when addressing the issue of homelessness.<sup>29</sup> The second dissent, by Judge Bennett, objected to the use of the Eighth Amendment, stating that the amendment's original purpose was to ban types of punishment, not to restrict cities from criminalizing activities.<sup>30</sup>

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<sup>27</sup>Martin v. City of Boise, 920 F.3d 584, 588 (9th Cir. 2019).

<sup>28</sup>*Id.* at 590–99. (Smith, J., Dissenting).

<sup>29</sup>*Id.*

<sup>30</sup>*Id.* at 599–603. (Bennet, J., Dissenting).