Sexual Abuse in Confinement

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Introduction

"Cases involving sexual abuse are some of the toughest to investigate and prosecute. Sexual abuse in confinement has persistently presented even greater challenge to investigators and prosecutors because of internal and external barriers to reporting, including the behaviors, actions, and decision-making powers of first responders and other corrections staff that may result in the failure to make an official report to law enforcement. Additional challenges include issues related to: the very nature of confinement itself, including an institutional culture that demands its inhabitants be tough and resilient, as well as an inmate's fear of repercussions for reporting to those charged with caring for, overseeing, and policing every aspect of inmate daily life; evidence collection and retention; identification of pre- and post-abuse witnesses; and the multi-level biases against inmates. Unfortunately, sexual abuse in confinement historically has been minimized and has even been the subject of jokes. Sexual abuse, however, has 'severe consequences for victims, for the security of correctional facilities, and for the safety and well-being of the communities to which nearly all incarcerated persons will eventually return.'

…

Prosecutors have a duty to lead, and their important role in educating allied professionals and the public about crimes involving sexual abuse in confinement cannot be overstated. While cases involving sexual abuse in confinement may seem formidable to investigate and prosecute, they are not; there are several strategies that prosecutors can utilize to overcome obstacles."

Excerpted from Viktoria Kristiansson, Prosecuting Cases of Sexual Abuse in Confinement, 8 STRATEGIES (December 2012), *available at* http://www.aequitasresource.org/library.cfm.

This Digest comprises a variety of cases from state and federal jurisdictions, most of them involving criminal or administrative proceedings in which sexual abuse in confinement is a factor.[1] The following types of cases are compiled herein: criminal cases in which some form of sexual abuse in confinement was charged or was raised as a defense (*e.g.,* escape cases in which the defense of necessity was raised); administrative disciplinary proceedings against inmates or staff involving allegations of sexual abuse in confinement; criminal cases in which evidence of the defendant's prior acts of sexual abuse in confinement were presented for purposes of sentencing; appeals of post-sentence civil commitment proceedings (*e.g.,* commitment as a "sexually violent predator") in which evidence included acts of sexual abuse committed while in confinement; and civil cases presenting issues as to the investigation and response to reports of sexual abuse in confinement. This Digest does *not* include civil-rights or other civil lawsuits brought by victims of sexual abuse in confinement against their assailants or against institutional or governmental agencies; such cases have been compiled and analyzed in publications by other authorities.[2]

Case law has been included from each state and federal jurisdiction, where available, and is listed from highest court opinion to lowest, and in reverse chronological order with most recent cases listed first. Unreported cases have been included, and identified as such; the precedential value and ability to cite such cases will vary from one jurisdiction to another.

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[1] Because state statutes vary widely in their terminology denominating and describing various criminal offenses involving sexual abuse in confinement, the summaries in the Digest reflect the language used in the court opinion. For information regarding the rape and sexual assault statutes for each state, see Rape and Sexual Assault Analyses and Laws (Jan. 2013), *available at* http://www.aequitasresource.org/library.cfm.

[2] For more information on civil lawsuits and related issues to sexual abuse in confinement please visit *An End to Silence: The Project on Addressing Prison Rape*, AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW, http://www.wcl.american.edu/endsilence/ (Last visited Jan. 10, 2014).

Alabama

Johnson v. State, 576 So.2d 1289 (Ala. Crim. App. 1991).

Appeal of denial of *habeas* challenge to prison disciplinary action for aiding and abetting sexual assault of fellow inmate; reversed. Evidence consisting solely of arresting officer's hearsay testimony concerning the assault, together with polygraph results indicating the victim's testimony was true, was insufficient to support finding of guilt.

Williams v. State, 354 So.2d 48 (Ala. Crim. App. 1977).

Appeal of conviction for sodomy of fellow inmate; affirmed. Defendant and co-defendant inmates participated in oral and anal sex with the victim, by force and with the use of threats; affirmed. Trial court properly denied continuance for defendant to locate inmate witness who would have testified the victim was homosexual and had either consented to or provoked the incident; consent not a defense to sodomy. No error for trial court to permit co-defendants to be brought into courtroom for identification by victim. Trial court properly admitted evidence of threats made by defendant against inmate witness, as well as his apology to the victim and a request that the victim "go light on me." No prosecutorial misconduct for prosecutor to analogize defendant's actions against victim to rape.

Stevens v. State, 333 So.2d 852 (Ala. 1975)

Appeal from conviction for sodomy upon fellow inmate; affirmed. Defendant's contention that the victim's uncorroborated testimony concerning the acts was insufficient as a matter of law because the victim was an "accomplice" to the crime (which had no element of force) rejected where evidence showed that the victim's participation in the act was the product of force and duress. Evidence did not support defendant's request for a lesser-included offense charge of assault and battery.

Alaska

No case law found.

Arizona

Carlson v. Pima County, 687 P.2d 1272 (Ariz. Ct. App. 1983).

Appeal of order directing verdict in favor of sheriff in inmate plaintiff's suit for defamation based upon release to the media of a report stating that inmate had been accused of forcibly compelling fellow inmate to submit to oral sex; affirmed. Sheriff had duty to prepare the report, which was a public record properly subject to release.

Unpublished opinions:

State v. Randolph, 2012 WL 40384433 (Ariz. Ct. App. 2012).
Appeal of conviction for kidnapping, stalking, sexual abuse, and attempted sexual assault of fellow inmate; affirmed. No fundamental error in defendant's trial, conviction, or sentence.

State v. Driver, 2009 WL 1153287 (Ariz. Ct. App. 2009).
Appeal of police officer's conviction for sexual abuse of female detainees in custody; affirmed. Trial court properly precluded admission of an arrest form that defendant produced at trial but had failed to turn over to prosecutors for three years; no error in trial court's refusal to conduct an *in camera* review of defendant's Internal Affairs (IA) file to see if the arrest form was contained in that file, where the trial court had granted defendant's pretrial motion *in limine* to preclude any reference to the IA file or its contents; trial court properly denied defendant's motion to suppress statements made during criminal investigation; no prosecutorial misconduct for fleeting reference to hearsay statement during prosecutor's opening statement; no error in trial court's refusal to allow defendant to cross-examine one of the victims on the content of a notice of claim filed by her attorney; trial court properly made findings as to aggravating factors at the time of sentencing.

Arkansas

Linell v. Norris, 320 S.W. 3d 642 (Ark. 2009).
Appeal of inmate classification decision assigning inmate to segregated housing based, *inter alia*, upon his prior disciplinary adjudication for rape of fellow inmate; affirmed. Inmate's challenge improperly attempted to untimely "bootstrap" his challenges to the original prison disciplinary matters.

Unpublished opinions:

Rouse v. State, 2002 WL 531223 (Ark. Ct. App. 2002).
Appeal of youth services worker's conviction for first-degree sexual abuse of juvenile inmate; affirmed. Defendant's contention that trial court erred in failing to grant motion for directed verdict based upon insufficiency of evidence she acted with intent to facilitate assault by other juvenile inmates would not be considered on the merits due to defendant's failure to renew the motion following the State's case in rebuttal.

California

California Correctional Peace Officers Ass'n v. California, 98 Cal.Rptr.2d 302 (Cal. Ct. App. 2013).
Cross-appeals of preliminary injunction restraining certain practices of the California Department of Corrections (CDC) and the California Department of Justice (CDOJ) in their joint investigation of alleged conspiracy by corrections officers to "set up" sexual assault of an inmate and to cover up their activities; reversed and remanded with instructions to modify the injunction. Certain practices during investigation, which was initiated by the CDC with the invited assistance of the CDOJ, violated the Public Safety Officers Procedural Bill of Rights Act; trial court properly restrained CDC from practices during the investigation that violated the act. To the extent CDOJ was

acting in concert with the CDC, restraints against the CDC effectively restrained the CDOJ as well; however, the Act would not be applicable to a substantially independent criminal investigation by the CDOJ or other law-enforcement entity.

People v. Turner, 93 Cal.Rptr.2d 459 (Cal. Ct. App. 2000).

Appeal of commitment as "sexually violent predator" (SVP); affirmed. Committee, who admitted committing numerous sexual assaults against fellow inmates while serving sentences for sexual offenses, was properly re-tried on the SVP commitment after an initial trial resulted in a deadlocked jury.

People v. Fond, 83 Cal.Rptr.2d 660 (Cal. Ct. App. 1999).

Appeal of convictions for residential burglary and rape of fellow patient in locked psychiatric ward; affirmed. Room of fellow patient, despite the fact that it was not independently locked, was a "residence" for purposes of residential burglary statute.

People v. St. Andrew, 161 Cal.Rptr. 634 (Cal. Ct. App. 1980).

Appeal of hospital attendant's convictions for rape by threat and forcible oral copulation of patient in locked mental ward; reversed. Trial court erred in failing to advise defense counsel of deficiency in connection with motion for recusal of trial judge; trial court erred in failing to conduct a proper hearing on competency of victim; trial court erred in permitting People to introduce evidence that defendant had, on prior occasion, kissed another female patient.

People v. Lovercamp, 43 Cal.App.3d 823 (Cal. Ct. App. 1974).

Appeal of convictions for escape; reversed. Trial court erred in refusing to allow defendants to assert defense of necessity based upon threats of rape by fellow inmates; necessity defense would be limited to circumstances where threat was immediate, prior complaints were unavailing, there is no time for resort to the courts, no force is used in effectuating escape, and inmates must have intended to return to custody once reaching a place of safety.

Unpublished opinions:

People v. Padilla, 2009 WL 4893943 (Cal. Ct. App. 2009).

Appeal of commitment as "sexually violent predator;" affirmed. Evidence, including committee's acts of sexual assault upon fellow inmate while serving his prison term, supported jury's verdict.

People v. Pulizzi, 2006 WL 477774 (Cal. Ct. App. Feb. 24, 2006).

Appeal of commitment as "sexually violent predator" (SVP) and *habeas corpus* challenge to commitment; commitment affirmed; *habeas* challenge dismissed. No error in trial court's admission of police and prison reports detailing investigation of incidents of child abuse and sexual assault of fellow inmate; *Crawford* inapplicable to SVP proceedings; statements in reports bore indicia of reliability. No error in expert's testimony relying in part on report of non-testifying physician. No ineffective assistance of counsel for failure to object to admission of unredacted police and prison investigative reports.

Bravo v. Giblin, 2002 WL 31547001 (Cal. Ct. App. 2002).

Appeal of § 1983 verdict against investigator on mental hospital police force following wrongful conviction of hospital employee for rape of patient; affirmed. Substantial evidence supported finding that investigator misled sheriff's department and deputy district attorney about time rape incident occurred; substantial evidence supported finding that hospital police reports were not turned over or mentioned to sheriff's department

personnel; investigator was not entitled to qualified immunity; investigator's act of fabricating evidence that employee had raped patient, and concealing exculpatory evidence regarding such, was proximate cause of employee's violation of civil rights.

Colorado

People v. Martinez, 987 P.2d 884 (Colo. App. 1999).

Appeal of conviction for sexual assault of fellow inmate; affirmed. No error in trial court's limitation on cross-examination of inmate witness regarding potential bail-jumping charge where witness asserted Fifth Amendment privilege; trial court properly allowed introduction of evidence of prior sexual assault of another victim at different institution where facts were so similar and distinctive that they were probative of common scheme or plan, and bore on issue of lack of consent.

Talley v. Diesslin, 908 P.2d 1173 (Colo. App. 1995).

Appeal of order dismissing complaint to review disciplinary action for rape of fellow inmate; affirmed. Complaint not timely filed where it was delivered to prison officials on last day for filing in court.

People v. Trujillo, 586 P.2d 235 (Colo. App. 1978).

Appeal of conviction for escape; reversed. Trial court unduly restricted incidents threatening rape and other violence by fellow inmates about which defendant was permitted to testify in support of his defense of necessity.

Connecticut

Johnson v. Commissioner of Correction, 941 A.2d 248 (Conn. 2008).

Appeal of trial court's decision denying in part and dismissing in part petition for *habeas corpus* following *Alford* plea to aiding aggravated sexual assault of fellow inmate; reversed in part and affirmed in part. Defendant's plea arose from gang rape of female inmate by several male inmates in prison van during transportation to court. Evidence presented at *habeas* hearing failed to support defendant's claims of ineffective assistance of counsel for failure to adequately explain sentence and for failure to adequately investigate.

Delaware

No case law found.

District of Columbia

No case law found.

Florida

Wilson v. State, 288 So.2d 480 (Fla. 1974).
Appeal of Court of Appeals decision reversing conviction for sodomy of fellow inmate and remanding for trial under rape and forcible carnal knowledge statutes; reversed. Shortly after conviction, sodomy statute was held unconstitutionally vague. Although Court of Appeals properly reversed defendant's conviction under that statute, that court lacked power to "amend" the rape and forcible carnal knowledge statutes, which, by their terms, applied only to female victims.

Marshall v. State, 915 So.2d 264 (Fla. Ct. App. 2005).
Appeal of commitment as "sexually violent predator;" affirmed. Trial court properly admitted hearsay evidence, including statements of two inmate victims of sexual assault while committee was incarcerated, under various hearsay exceptions.

Hepburn v. State, 780 So.2d 326 (Fla. Ct. App. 2001).
Appeal of probation revocation for termination from mental-health treatment program for engaging in nonconsensual sex with fellow patient; affirmed. Fact that sentencing court had indicated it would terminate probation early after three years if no violations did not mean that probation automatically terminated after three years, so revocation proper for violations occurring after that time.

Holdren v. State, 415 So.2d 39 (Fla. Ct. App. 1982).
Appeal of conviction for escape; affirmed. Trial court properly precluded defendant from offering defense of necessity to avoid possibility of rape by fellow inmate; inmate failed to show he had made any effort to return to custody once reaching a place of safety.

Snow v. State, 399 So.2d 466 (Fla. Ct. App. 1981).
Appeal of convictions for conspiracy, kidnapping, and sexual battery of fellow inmate; affirmed. Defendants claimed their rights to speedy trial were violated, and that the 180-day time period for trial commenced when they were questioned about their involvement in assaults and moved to a different part of institution. Court of Appeals rejected argument, holding that speedy trial period did not commence until first information was filed.

Lewis v. State, 318 So.2d 529 (Fla. Ct. App. 1975).
Appeal of conviction for escape; reversed. Defendant entered plea of *nolo contendere,* reserving right to appeal trial court's determination precluding him from asserting defense of necessity based upon fear of sexual attack by another inmate. Trial court erred in precluding such a potential defense.

Georgia

Motes v. State, 288 S.E.2d 256 (Ga. Ct. App. 1982).

Appeal of conviction for aggravated sodomy upon fellow inmate; affirmed. Defendant's contention that the victim consented to the acts did not require that the victim's testimony be corroborated, under the theory that such a victim is an accomplice, whose testimony must be corroborated before a jury can convict on such testimony; corroboration requirement abrogated in cases of sex crimes.

Hawaii

No case law found.

Idaho

Idaho Dep't of Correction v. Anderson, 8 P.3d 675 (Idaho Ct. App. 2000).

Appeal of order affirming Department of Personnel's decision reversing dismissal of Department of Corrections employee for failure to properly investigate allegation of sexual abuse of inmate; affirmed. Anderson was manager of Receiving and Disciplinary Unit, which classifies inmates at the prison. Corrections officer, whose Sergeant was on vacation, reported to Anderson that a female inmate had complained of sexual touching by a male corrections officer. Anderson later convened a meeting consisting of himself, the complaining inmate, the accused officer, the reporting officer, and that officer's Sergeant. Complaining inmate broke down in tears and apologized for making accusation. Anderson and the officers believed the recantation and took no further action, apart from making a note in the complaining inmate's file. After several other female inmates made complaints against accused officer, officer was dismissed and major investigation ensued. Anderson was dismissed for violating policy in handling original complaint. Evidence was sufficient to support conclusion of Department of Personnel that Anderson violated no clearly established Department of Corrections policy, and that he cooperated with the investigation. Department of Personnel properly considered proportionality of discipline in view of discipline imposed on other employees in connection with the matter.

Illinois

People v. Pulliam, 680 N.E.2d 343 (Ill. 1997).

Appeal of conviction and sentence for capital murder; affirmed. No error for trial court to admit, during penalty phase, testimony by corrections officer that, while awaiting trial, defendant had been accused by fellow inmate of sexual assault (which was corroborated by observed injuries on victim but never adjudicated due to victim's refusal to cooperate).

People v. Redd, 670 N.E.2d 583 (Ill. 1996).

Appeal of conviction and sentence for capital murder; affirmed. Evidence presented during penalty phase included testimony of fellow inmate who testified defendant had raped and stabbed him during a previous term of imprisonment.

People v. Eddmonds, 578 N.E.2d 952 (Ill. 1991).

Appeal of trial court's order vacating previously-entered order denying post-conviction relief and ordering a hearing following defendant's conviction and sentence for capital murder and deviate sexual assault; affirmed in part and reversed in part. Evidence presented at penalty phase included evidence defendant had sexually assaulted fellow inmate while awaiting trial. Defendant's claims on post-conviction relief, of ineffective assistance of counsel based on failure to present mitigating evidence and failure to request competency hearing, rejected.

People v. Price, 801 N.E.2d 1187 (Ill. App. Ct. 2003).

Appeal of order denying defendant's motion for post-conviction DNA testing following conviction for criminal sexual assault of two fellow inmates; reversed and remanded for hearing. Defendant met his burden to show that: identity was at issue at trial, DNA results would be materially relevant to his claim of actual innocence, and that the chain of custody was sufficient to show that the samples were not altered. Remanded for a hearing as to whether any of the testing requested by defendant was unavailable at the time of trial.

In re Erbe, 800 N.E.2d 137 (Ill. App. Ct. 2003).

Appeal of commitment as "sexually violent person;" affirmed. Evidence of committee's history, which included a sexual assault of a fellow inmate at a juvenile detention center, along with expert testimony based upon actuarial instruments, supported trial court's decision to commit.

People v. King, 486 N.E.2d 978 (Ill. App. Ct. 1985).

Appeal of conviction for attempted murder and related charges; affirmed as modified to set aside extended-term sentence. People's failure to disclose fact that inmate witness had been investigated but not prosecuted for a sexual assault at the county jail was not *Brady/Bagley* violation where there was no evidence of an agreement not to prosecute witness, and where defendants had opportunity to question witness also about two other criminal cases where the witness received favorable treatment in exchange for his testimony.

People v. Chaney, 362 N.E.2d 1375 (Ill. App. Ct. 1977).

Appeal of convictions and sentences for deviate sexual assaults of fellow inmate; affirmed, with sentence of one codefendant reduced as excessive. Testimony of medical technician that victim reported he was sexually molested harmless where trial court issued prompt curative instruction. Testimony of prison warden to victim's reputation for chastity properly admitted to counter defense evidence that victim engaged in prostitution for contraband. Defendants not prejudiced by trial court's decision not to sequester victim from trial during testimony of prosecution witnesses. Corroborated testimony of victim was sufficient to support defendants' convictions. Sentences for two defendants not excessive, but sentence of third defendant was excessive where his criminal history was substantially less serious than that of codefendants.

People v. Unger, 338 N.E.2d 442 (Ill. App. Ct. 1977).

Appeal of conviction for escape; reversed. Trial court erred in instructing jury that reason for defendant's escape was immaterial. Defendant entitled to jury instruction on defenses of compulsion and necessity where he testified he was beaten and sexually assaulted by gang of inmates who thereafter threatened him with death as a result of his reporting the incident, and where he testified he intended to return to the institution despite being found two days later in a motel room. "Gun to the head immediacy" of the threat not required; here, defendant received a phone call at honor farm threatening him with death before day was over.

People v. Whitson, 334 N.E.2d 368 (Ill. App. Ct. 1975).

Appeal of convictions for deviate sexual assault of fellow inmate; affirmed. Evidence was sufficient to support convictions; no evidence of consent on the part of the victim. No error for trial court to give *Allen*-type instruction

at the beginning of deliberations. Any impropriety in prosecutor's remarks in summation were harmless where defense objections were sustained. No evidence that trial court relied on "stale" psychiatric report in imposing sentence, which was not excessive.

McClain v. People, 305 N.E.2d 423 (Ill. App. Ct. 1973).

Appeal of order denying post-conviction relief following conviction for deviate sexual assaults on fellow inmate; reversed. Inmate victim was sexually assaulted on successive nights by two different groups of inmates; defendant was charged and convicted for his involvement in one of the incidents. Defendant alleged sufficient facts to entitle him to evidentiary hearing on petition for post-conviction relief. Defendant entitled to hearing on claim of ineffective assistance of counsel for failure to request a psychiatric examination where defendant requested one and where there was evidence defendant had serious mental-health problems, and on claim counsel had conflict of interest by representing all defendants in multi-defendant case and by agreeing to consolidation of both cases against defendant's wishes.

People v. McClaine, 270 N.E.2d 176 (Ill. App. Ct. 1971).

Appeal of convictions for deviate sexual assaults on fellow inmate; affirmed. Inmate victim was sexually assaulted on successive nights by two different groups of inmates. Evidence was sufficient to support convictions where victim was able to identify all participants through photographic identification, where victim's testimony was corroborated by testimony of an uninvolved inmate and by results of medical examination, and where delay in reporting first assault was due to threats against victim if he told.

Unpublished opinions:

In re Howard, 2013 WL 1803984 (Ill. App. Ct. 2013).

Appeal of commitment as "sexually violent person;" affirmed. Evidence supported commitment based upon expert testimony and defendant's history, which included sexual assault of fellow inmate while incarcerated. No error in court's voir dire of potential jurors. No error in trial court's failure to give *sua sponte* limiting instruction regarding reports of incidents considered by experts as basis for experts' opinions. Prosecutor did not misstate the evidence during summation. Defendant received the effective assistance of counsel.

Indiana

Coleman v. State, 256 N.E.2d 389 (Ind. 1970).

Appeal of conviction for carnal knowledge of female inmate at School for Girls; reversed. Defendant engaged in sexual activity with female who had escaped from institution; escapee not an "inmate" for purposes of statute criminalizing sexual activity with female inmate.

Sanders v. State, 370 N.E.2d 966 (Ind. Ct. App. 1978).

Appeal of order denying new trial following conviction for sodomy upon fellow inmate; affirmed. Defendant not entitled to new trial based upon post-trial recantation of co-defendant who testified against him at trial; trial court properly found recantation not to be credible. Defendant not entitled to adverse-inference charge for victim's failure to testify where State called victim as witness but victim refused to testify and was cited for contempt.

Iowa

In re Mead, 790 N.W.2d 104 (Iowa 2010).

Interlocutory appeal of order denying motion to dismiss petition for commitment as "sexually violent predator;" affirmed in part and reversed in part. Trial court properly determined that inmate had statutory right to counsel before being interviewed by mental health expert for probable cause determination and properly struck the resulting report to the extent it relied upon interview. Trial court erred, however, in determining that remaining portions of report were insufficient to constitute probable cause to hold inmate for full evaluation as to his status as "sexually violent predator;" among facts considered was inmate's investigation for sexual assault of fellow inmate. Validity of trial court's decision to conduct a second probable cause hearing not addressed because first hearing established probable cause.

State v. Bolsinger, 709 N.W.2d 560 (Iowa 2006).

Appeal of decision affirming program supervisor's convictions for sexual abuse, sexual exploitation by a counselor, and sexual misconduct with a juvenile offender; conviction for sexual abuse reversed and remaining convictions affirmed. Where program supervisor touched genitals of juvenile offenders under his care with their express consent, on the pretext of examining them for various maladies, despite evidence that defendant did it for sexual gratification, the fraud was in the inducement rather than in the fact and thus did not constitute "deception" under the sexual abuse statute criminalizing acts committed with consent procured by deception. Touching of the genitals did constitute a "sex act" under the statutes criminalizing sexual exploitation by a counselor and sexual misconduct with a juvenile offender.

In re Willis, 691 N.W.2d 726 (Iowa 2005).

Appeal of commitment as "sexually violent predator;" affirmed. Provision requiring State to give notice of intent to commit 90 days before release date is not mandatory; notice less than 90 days before release is sufficient where notice was given as soon as practicable. Fact that defendant had not yet been sentenced, at the time of the petition for commitment, following a jury verdict finding him guilty of assault of fellow inmate with intent to commit sexual abuse, did not preclude consideration of that act as predicate offense, predicate offense may also constitute "recent overt act." Right to counsel during commitment proceedings does not necessarily afford a right to effective assistance of counsel.

State v. Beeson, 569 N.W.2d 107 (Iowa 1997).

Appeal of conviction for escape; affirmed. No double jeopardy violation for prosecution following disciplinary action for same offense. Trial court properly denied directed verdict based on necessity defense, and evidence supported jury's guilty verdict, where evidence showed defendant, who claimed necessity based on threats of assault and sexual assault by other inmates, planned his escape and did not immediately report his whereabouts after reaching a place of safety.

Mark v. State, 556 N.W.2d 152 (Iowa 1996).

Appeal of order denying petition for post-conviction relief following inmate disciplinary proceeding for engaging in sexual conduct and for making a false statement; affirmed. Disciplined inmate alleged he had been raped by a fellow inmate, stating he had not engaged in any sexual conduct for previous two years and that he was "100% sure" his assailant was armed with a knife. During interview preliminary to polygraph exam, disciplined inmate admitted he had engaged in consensual sexual conduct the previous week and that he was now uncertain whether the inmate who raped him had a knife. Claim of retaliatory discipline not supported where inmate was disciplined for consensual conduct he admitted and for contradictory statements during the investigation.

State v. Reese, 272 N.W.2d 863 (Iowa 1978).

Appeal of decision reversing conviction for escape; reversed. Defendant testified he escaped because he was sexually assaulted by another inmate who had also threatened him with death, and who demanded sex in exchange for "protection." Although there is a necessity defense for escape, it is limited to situations where, *inter alia,* the inmate immediately contacts authorities after reaching position of safety; defendant failed to meet criteria for necessity charge where he traveled several miles and hid on private property until he was located more than 24 hours after escape.

Unpublished opinions:

State v. Willis, 2000 WL 702396 (Iowa Ct. App. 2000).

Appeal of conviction for sexual abuse of fellow inmate; reversed. Trial court erred in admitting evidence of prior bad acts by defendant, in the form of his statements to investigator that he had committed similar acts in the past and that his reputation was known to the victim and to others in the prison; such evidence was not admissible for any proper purpose and was unfairly prejudicial; evidence was not harmless where there was no other evidence to corroborate victim's accusation.

Kansas

Unpublished opinions:

In re Martin, 2011 WL 4357844 (Kan. Ct. App. 2011).

Appeal of commitment as "sexually violent predator;" affirmed. Trial court did not inappropriately base its decision on a belief that committee was homosexual. Evidence of committee's history, which included an institutional infraction for sexually assaulting a fellow inmate, supported a finding that committee was a "sexually violent predator."

Kentucky

Mash v. Com., 376 S.W.3d 548 (Ky. 2012).

Appeal of conviction for first degree sodomy of fellow inmate; affirmed. Defendant failed to show that his jury panel was not drawn from a fair cross-section of the community. Trial court properly denied defendant's *Batson* motion challenging the prosecutor's peremptory strike of the lone black juror on the panel based upon race-neutral justification. Evidence was sufficient to support jury's verdict. No error in refusing charge on lesser-included offense of first degree sexual abuse where evidence would not have supported a finding of sexual contact that did not amount to sodomy.

Stanford v. Parker, 949 S.W.2d 616 (Ky. Ct. App. 1996).

Appeal of order dismissing action for "declaration of rights" following disciplinary action for sexual assault of fellow inmate; affirmed. Disciplined inmate's right to due process not violated by consideration of information provided by confidential informant where victim testified at hearing along with officer who found victim after assault. Standard of "some evidence" in support of charge was met.

Unpublished opinions:

Sharer v. Com., 2012 WL 1556240 (Ky. Ct. App. 2012).

Appeal of order denying post-conviction relief following conviction for complicity in first degree sexual abuse of fellow inmate; affirmed. Defendant's claim of ineffective assistance of counsel based on attorney's failure advise him of the need to complete a sex-offender treatment program before parole was without merit where court so advised him during plea colloquy and no evidence suggested that defendant would have rejected plea offer if counsel had advised him of requirement. Defendant's claim of inadequate investigation by counsel without merit where he failed to show how further investigation would have affected decision to plead guilty.

Louisiana

State v. Robinson, 387 So.2d 1143 (La. 1980).

Appeal of convictions for attempted aggravated rape of fellow inmate; reversed. Defendants were entitled to a new trial where the court reporter was unable to provide transcripts of testimony by two medical experts—one for the State and one for the defense—as to whether the victim's physical injuries were consistent with nonconsensual anal intercourse.

Maine

No case law found.

Maryland

Hall v. State; 249 A.2d 217 (Md. Ct. Spec. App. 1969).

Appeal of conviction for sodomy on fellow inmate; affirmed. Victim was knocked unconscious during prison riot and awoke on his stomach in the dark with someone on his back, sexually assaulting him. Victim's testimony that he heard someone ask who was "on him now," that someone else replied with defendant's name, and that he recognized defendant's voice complaining about his name being shouted, was sufficient to identify defendant as the assailant; conversation properly admitted as res gestae. Fact that defendant picked out and put on prison uniform with blood and seminal stains when asked to dress, selecting that uniform from among several other piles of clothing belonging to other inmates being medically examined at the same time, was sufficient to connect him to the uniform.

Massachusetts

Com. v. Hunt, 971 N.E.2d 768 (Mass. 2012).

Appeal of decision by Appeals Court affirming commitment as "sexually dangerous person;" reversed. Evidence of defendant's refusal to accept sex-offender treatment (which required waiver of therapist-patient privilege) did not violate defendant's privilege against self-incrimination, but the prejudicial effect of such evidence outweighed its probative value and thus was improperly admitted by trial court; evidence that defendant did not receive such treatment, however, was admissible. Trial court erred in admitting evidence of unsubstantiated rumors that defendant had sexually assaulted fellow inmate, which was offered to explain testimony, elicited on cross-examination of State's expert, that defendant had claimed he was fearful of being assaulted by others if he were returned from protective custody to general population; there was no evidence such an incident occurred and the only evidence of such rumors were defendant's own statements. Trial court erroneously characterized the testimony of defendant's expert witnesses in its jury charge, and its omission of a word in proposed jury charge had the potential to mislead the jury.

Com. v. Ciaburri, 876 N.E.2d 1185 (Mass. App. Ct. 2007).

Appeal of corrections officer's conviction for indecent assault and battery on inmate; affirmed. Evidence of defendant's prior sexual assaults upon same victim properly admitted; such evidence was relevant to defendant's use of authority to coerce the victim, to the use of force, and to defendant's claim that victim contrived the encounters to gather evidence for a civil lawsuit; limiting instructions properly advised the jury of limited purpose for which evidence could be considered. Trial court properly instructed jury on lesser-included offense (original charge was rape) of indecent assault and battery.

Com. v. Powers, 814 N.E.2d 763 (Mass. App. Ct. 2004).

Appeal of court officer's convictions for indecent assault and battery upon inmate and commission of lewd and lascivious act; conviction for indecent assault and battery affirmed; conviction for lewd and lascivious act reversed. Assaults took place in cubicle near holding cell when inmate was brought to court for proceedings. Evidence at trial was not sufficient to support conviction for lewd and lascivious act (which has, as element, that act occurred in "public" place); evidence did not suggest there was any likelihood any other person would be in a position to observe the act. Jury instruction on consideration of fresh complaint testimony was proper.

Michigan

People v. Standifer, 390 N.W.2d 632 (Mich. 1985).

Appeal of appellate court's decision reversing conviction for criminal sexual conduct upon fellow inmate; reversed. No unfair prejudice to defendant where State impeached its own witness, an accomplice testifying pursuant to a plea agreement whereby the charge for first of two incidents involving the same victim were to be dismissed in exchange for his guilty plea to second incident and his truthful testimony against defendant for the first incident, by inquiring about the circumstances surrounding accomplice's plea agreement after accomplice unexpectedly testified to having no knowledge about defendant's guilt and even denied his own guilt in spite of his guilty plea and inculpatory statement to police. Defense counsel was aware that accomplice witness had pled guilty to a different incident, and the choice not to highlight that fact was a matter of trial strategy. Since accomplice's testimony exculpated defendant, fact of guilty plea presented no danger of "guilt by association."

Gee v. Dep't of Corrections, 597 N.W.2d 223 (Mich. Ct. App. 1999).
Agency's appeal of order summarily reversing and remanding for a hearing agency's classification of inmate, disciplined for sexually assaulting fellow inmate, as "homosexual predator;" reversed. Disciplined inmate received full hearing at time of disciplinary action and was not entitled to another before classification as "homosexual predator."

People v. Medlyn, 544 N.W.2d 759 (Mich. Ct. App. 1996).
Appeal of order reversing deputy sheriff's conviction for willful neglect of duty; reversed. Deputy sheriff failed to report or take other action with regard to report that inmate had been sexually assaulted by other inmates, with the result that inmate was sexually assaulted several more times. Evidence that defendant failed to "remove the inmate from his ward; [to document] investigative statement of the allegations . . . in a report; and [to notify] supervisory personnel," in view of the dire consequences was sufficient to establish the "bad purpose" inherent in the element of willfulness.

People v. Bovee, 231 N.W.2d 529 (Mich. Ct. App. 1975).
Appeal of conviction for escape; affirmed. Defendant's assertion, between the date plea was accepted and sentencing, that he escaped to avoid sexual abuse by other inmates, was insufficient to cause the court to doubt the veracity of his plea; court offered to allow defendant to take a polygraph or to withdraw his plea and go to trial; subsequent request to withdraw guilty plea did not allege defendant escaped to avoid assault.

People v. Luther, 219 N.W.2d 812 (Mich. Ct. App. 1974).
Appeal of conviction for escape; reversed. Defendant testified at trial that he escaped to avoid "homosexual attacks" by other inmates; trial court's jury charge, which advised jury that escaping to avoid attacks is not a defense, was erroneous where that was the basis for the claimed defense of duress.

People v. Harmon, 220 N.W.2d 212 (Mich. Ct. App. 1974).
Appeal of conviction for escape; reversed. Trial court erred in refusing to give charge on defense for duress where defendant testified he was twice accosted by groups of inmates demanding sex and that he was beaten when he refused, and where second such attack took place day before escape.

People v. Gregory, 174 N.W.2d 905 (Mich. Ct. App. 1969).
Appeal of hospital attendant's conviction for "ravishing a female patient in a state institution for the feeble-minded;" affirmed. Defendant's contention that victim was not a "patient" for purposes of statute without merit where victim had been ordered committed to hospital in 1954 but committing judge had inadvertently failed to sign order until after date of crime.

People v. Noble, 170 N.W.2d 916 (Mich. Ct. App. 1969) (abrogated by People v. Benevides, 514 N.W.2d 208 (Mich. Ct. App. 1994)).
Appeal of conviction for escape; affirmed. Desperation to avoid "homosexual attacks" by other inmates not a defense to escape; escape is not specific intent crime. Trial court properly precluded evidence defendant acted under irresistible impulse because defendant failed to give required notice of mental-health defense.

Unpublished opinions:

People v. Childs, 2011 WL 4949692 (Mich. Ct. App. 2011).
Appeal of conviction for criminal sexual conduct and assault with a dangerous weapon upon fellow inmate. Evidence supported conviction. Defendant received effective assistance of counsel; failure to call some inmates as witnesses was reasonable trial strategy; failure to obtain victim's medical and counseling records not ineffective where defendant failed to show how they would have affected outcome of trial; defendant failed to demonstrate ineffective assistance for other alleged deficiencies.

Minnesota

State v. Hyatt, 281 N.W.2d 716 (Minn. 1979).
Appeal of order denying petition for post-conviction relief following conviction for criminal sexual conduct and sodomy for aiding and abetting rape of fellow inmate; affirmed. Defendant received the effective assistance of counsel; challenge to evidence admitted at trial without merit.

Unpublished opinions:

Williams v. Fabian, 2010 WL 1658405 (Minn. Ct. App. 2010).
Appeal of denial of *habeas* relief following inmate disciplinary action for sexual behavior and assault upon a fellow inmate; affirmed. Hearing officer's refusal to allow disciplined inmate to call two inmates and a corrections officer as witnesses did not deny him due process where inmates had no personal knowledge of incident and where corrections officer was not listed as a witness; refusal to allow disciplined inmate to view video recording of incident did not deny him due process where viewing video might compromise security and where there is no claim video would have been exculpatory; refusal to allow disciplined inmate to view results of medical exam did not deny due process where he admitted sex act but claimed consent.

In re Pittman, 2010 WL 1541453 (Minn. Ct. App. 2010).
Appeal of commitment as "sexually dangerous person" and person with "sexual psychopathic personality;" affirmed. Committee convicted of criminal sexual conduct, who raped a fellow inmate in prison and engaged in unwanted sexual conduct with two other inmates while in sex offender treatment facility, was not denied due process by the committing court's consideration of records pertaining to a prior diversionary disposition for sexual abuse of children.

Medley v. Ludeman, 2007 WL 1977274 (Minn. Ct. App. 2007).
Appeal of order affirming agency decision denying "mentally ill and dangerous" committee's petition for discharge from mental hospital and transfer to prison; affirmed. Committee's history, which included sexual assault of fellow inmates, along with diagnoses of sexual sadism and masochism, his refusal to participate in treatment, and recent self-injurious behavior supported finding that he continued to be a danger to self and others.

In re Shadee, 2002 WL 768845 (Minn. Ct. App. 2002).
Appeal of commitment as "sexually dangerous person" and person with "sexual psychopathic personality;" affirmed. Committee's history of violent behavior, including sexual assault of fellow inmate during prior

incarceration, along with other relevant facts, despite his recent participation in treatment, supported his continued indefinite commitment.

Coleman v. State, 1995 WL 164724 (1995).

Appeal of order denying post-conviction relief following conviction for offenses related to sexual assault of fellow residents at juvenile correctional facility; affirmed. Trial court did not err by declining to conduct in-camera review of facility records where defendant's reasons for seeking discovery of those records were speculative and where defendant's trial counsel was able to effectively cross examine State's witnesses and advance defense theories without them.

Mississippi

No case law found.

Missouri

State v. Brooks, 960 S.W.2d 479 (Mo. 1997).

Appeal of conviction and sentence for capital murder; affirmed. State's use, during cross-examination of defendant's mitigation expert, of defendant's prison records disclosing he had been placed in administrative segregation due to an allegation of forcible sexual conduct against a fellow inmate that did not result in an institutional infraction was proper; fact that defendant was not charged with the violation did not amount to the presentation of false evidence because records were used only to impeach the defense expert and records did not show defendant was exonerated; no *Brady*/*Bagley* or discovery violation for State's failure to provide records in discovery where prison records were equally available to defense.

State v. Trimble, 638 S.W.2d 726 (Mo. 1982).

Appeal of conviction and sentence for capital murder of fellow inmate; affirmed. Defendant had repeatedly sexually abused victim and staged murder to look like suicide after telling other inmates he planned to kill victim to prevent him from reporting sexual abuse when he went to court the following week. Evidence of the defendant's then-pending charge for raping two children properly admitted where he had told fellow inmates he intended to commit a capital murder by killing another inmate or guard while in jail to get more "respect" than a child molester would. State not required to prove defendant's arrest for child sexual assault was valid in order for jury to find aggravating factor that crime was committed while in "the lawful custody of a ... place of lawful confinement."

State v. Green, 470 S.W.2d 565 (Mo. 1971).

Appeal of conviction for escape; affirmed. Trial court properly refused to consider defense of necessity where defendant had been raped twice while in custody, had reported the assaults but refused to give the names of his assailants, and had been threatened with rape the day of his escape but did not escape while being pursued by assailants and had not reported the threats to authorities.

Goddard v. State, 144 S.W.3d 848 (Mo. Ct. App. 2004).

Appeal of commitment as "sexually violent predator;" affirmed. Trial court properly permitted testimony by State's expert, who testified committee was likely to recidivate based on a number of factors, including committee's sexual assault of a fellow inmate, about defendant's score based on actuarial instruments used to predict likelihood of recidivism.

State v. Nash, 972 S.W.2d 479 (Mo. Ct. App. 1998).

Appeal of order denying motion for unconditional discharge of committee found not guilty by reason of insanity; reversed. Where evidence showed committee had erroneously been diagnosed with schizophrenia but was later shown to be a drug abuser with anti-social personality disorder, despite fact that committee had sexually assaulted another patient while committed as well as engaging in other criminal acts and rule violations, fact that committee was erroneously diagnosed and never had any mental disease or defect required his unconditional release.

Taylor v. State, 728 S.W.2d 305 (Mo. Ct. App. 1987).

Appeal of order denying post-conviction relief; reversed. Inmate convicted of second-degree murder of fellow inmate; defense at trial was self-defense during an attempted sexual attack. On petition for post-conviction relief, inmate alleged ineffective assistance of counsel for failure to interview two inmates who knew that murder victim was part of a group sexually victimizing white inmates and who heard murder victim threaten defendant. Trial court erred in refusing to allow inmate to produce inmate witnesses for post-conviction relief hearing.

State v. Buck, 724 S.W.2d 574 (Mo. Ct. App. 1986).

Appeal of conviction for escape and sexual assault of fellow inmate; conviction for escape reversed; conviction for sexual assault affirmed. Male inmate broke through adjoining cell wall to sexually assault female inmate who was obviously incapable of consent due to a schizophrenic attack involving bizarre speech and behavior. Defendant did not present evidence sufficient to raise issue as to his belief victim was capable of consent. Mere movement from one cell in jail to another did not constitute escape.

State v. Koster, 684 S.W.2d 488 (Mo. Ct. App. 1984) (abrogated by State v. Bernard, 849 S.W.2d 10 (Mo. 1993)).

Appeal of defendant house parent's conviction of deviate sexual assault and sexual assault of juvenile detainee in his care; affirmed. Testimony of three other female detainees regarding sexual advances made by defendant toward them while under his care was admissible as evidence of "a scheme or plan by the defendant to exercise control and custody over his wards and to make them the target of his sexual excesses" as well as being so similar factually as to constitute a "signature crime." Defendant's silence when confronted with the accusation at a meeting with the county's chief juvenile officer, also attended by other juvenile officers and a sheriff's officer, was admissible where defendant was not in custody during meeting and where he requested a lawyer only after being Mirandized at the end of the meeting.

Montana

No case law found.

Nebraska

State v. Haley, 257 N.W.2d 833 (Neb. 1977).

Appeal of sentence imposed following conviction for assault of fellow inmate, amended from charge of first degree sexual assault; affirmed. Sentence of 18 months to five years not excessive where crime was demeaning and vicious.

State v. Williams, 257 N.W.2d 832 (Neb. 1977).

Appeal of sentence imposed following conviction for assault of fellow inmate, amended from charge of first degree sexual assault; affirmed. Sentence of 18 months to five years not excessive in view of defendant's youth where assault was violent and defendant had record of serious prior offenses.

Unpublished opinions:

State v. Burrell, 2004 WL 943131 (Neb. Ct. App. 2004).

Appeal of order denying correction officer defendant's motion to dismiss charges for first degree sexual assault of inmate on grounds his statutory right to a speedy trial was violated; affirmed. Defendant failed to properly revoke a previous waiver of his right to a speedy trial in accordance with procedure established by Nebraska Supreme Court.

Nevada

No case law found.

New Hampshire

State v. Foss, 804 A.2d 462 (N.H. 2002).

Appeal of correction officer's conviction for aggravated felonious sexual assault of inmate; reversed. Statute criminalizing sexual penetration of an inmate by a corrections officer who uses authority to coerce the inmate requires proof of coercion beyond that inherent in the actor's position as a corrections officer.

New Jersey

DeCamp v. N.J. Dep't of Corrections, 902 A.2d 357 (N.J. Super. Ct. App. Div. 2006).

Appeal of inmate disciplinary action for fighting with fellow inmate; reversed. In the absence of a regulation prohibiting use of force in self-defense, hearing officer erred in refusing to consider inmate's contention he was acting in self-defense during an unprovoked sexual attack.

In re G.A., 706 A.2d 1116 (N.J. Super. Ct. App. Div. 1998).
State's appeal of order denying motion for independent psychiatric evaluation of committee, committed after termination of rape sentence, to evaluate appropriateness of reduced supervision; reversed. State has right to independent examination for protection of public against dangerous, mentally ill sex offender, particularly where, as here, committee was alleged to have sexually assaulted a fellow patient; compelled evaluation did not violate defendant's Fifth Amendment rights where statements made during evaluation would be inadmissible on issue of his guilt of sexual assault charge involving fellow patient.

State v. Spann, 563 A.2d 1145 (N.J. Super. Ct. App. Div. 1989).
Appeal of correctional officer's conviction for sexual assault on inmate and official misconduct; reversed. Trial court erred in allowing State to introduce Human Leucocyte Antigen (HLA) blood test evidence on probability of defendant's paternity of child conceived by victim; probability of paternity requires assumption that mother and putative father have engaged in sexual intercourse; since the fact of intercourse was issue to be determined by jury, evidence of probability of paternity was irrelevant.

Unpublished opinions:

Harris v. N.J. Dep't of Corrections, 2009 WL 3430249 (N.J. Super. Ct. App. Div. 2009).
Appeal of classification decision placing inmate in high-security Management Control Unit; decision affirmed. Inmate's adjudication for numerous violent infractions while in custody, including sexual assault of fellow inmate and stabbing another after pressuring him to engage in sexual activity, supported Department's decision that he presented a danger to others such that classification to MCU was warranted.

LaQuer v. Dep't of Corrections, 2007 WL 966988 (N.J. Super. Ct. App. Div. 2007).
Appeal of disciplinary action placing inmate, who had attempted to rape fellow inmate at sex offender institution, in administrative segregation and transferring him to different, more secure, institution; affirmed. Inmate had no right to be assigned to a particular institution, and his actions while confined at sex offender institution posed threat to other inmates and disrupted the therapeutic environment there.

New Mexico

Perry v. Moya, 289 P.3d 1247 (N.M. 2012).
State's appeal of habeas relief for violation of due process at inmate disciplinary proceeding for rape of fellow inmate; reversed. Inmate had subsequently been criminally convicted of same rape; assuming arguendo inmate's due process right to call witnesses at the disciplinary proceeding was violated, trial court's remedy barring Corrections Department from any adverse action based upon the infraction was inappropriate remedy; Department need not ignore infraction established by way of criminal conviction.

State v. Jackson, 92 P.3d 1263 (N.M. Ct. App. 2004).
State's appeal of order dismissing with prejudice defendant correctional officer's indictment for criminal sexual penetration of inmate, as sanction for delays in compliance with discovery requests; reversed. Sanction of dismissal unwarranted where discovery problems were due to refusal of county and county's attorney to produce evidence gathered in connection with lawsuits filed by inmates for sexual assaults at jail; prosecution was only

responsible for providing materials within its control and defendant had failed to demonstrate prejudice as a result of delays.

New York

People v. Alls, 629 N.E.2d 1018 (N.Y. 1993).

Appeal of conviction for assault of fellow inmate (defendant acquitted of sodomy); remanded for new hearing on admissibility of defendant's statement to corrections officer. Trial court applied erroneous standard in determining whether questioning by corrections officer was "custodial" for purposes of *Miranda*; "When . . . the circumstances of the detention and interrogation of a prison inmate are no longer analogous to those kinds of detentions found not custodial in nonprison settings, but instead entail added constraint that would lead a prison inmate reasonably to believe that there has been a restriction on that person's freedom over and above that of ordinary confinement in a correctional facility, *Miranda* warnings are necessary." Id. at 1021.

People v. Reyes, 894 N.Y.S.2d 43 (N.Y. App. Div. 2010).

Appeal of conviction for second-degree falsifying business records by corrections officer (acquitted of rape of inmate and first-degree falsifying business records); reversed. Trial court erred in charging jury, over defendant's objection, with lesser-included offense of second-degree falsifying business records (requiring only general intent to defraud), where only theory advanced at trial was that defendant falsified duty log book to conceal fact that he was away from post raping inmate (first-degree falsifying business records to conceal crime); no basis in evidence for giving charge on lesser included offense.

Turner v. Goord, 821 N.Y.S.2d 309 (N.Y. App. Div. 2006).

Appeal of inmate disciplinary action for committing a sexual offense and engaging in inappropriate physical contact with fellow inmate; affirmed. Evidence supported finding where hearing officer personally interviewed one confidential inmate witness and heard testimony of officer detailing investigation including interviews with other confidential inmate witnesses, thereby providing an adequate basis for hearing officer to evaluate credibility of those witnesses.

Consilvio v. Alan L., 776 N.Y.S.2d 33 (N.Y. App. Div. 2004).

Appeal by secure facility of order transferring to less secure facility committee found not guilty by reason of insanity; reversed. Evidence presented, which included committee's denial that he had sexually abused a fellow patient despite evidence to the contrary, showed that committee remained a danger to himself and others.

People v. Insignares, 491 N.Y.S.2d 166 (N.Y. App. Div. 1985).

State's appeal of trial court's post-verdict dismissal, in the interests of justice, of indictment for drug distribution based upon defendant's alleged rape in jail following verdict; reversed. Assuming rape occurred, that fact did not warrant dismissal of defendant's indictment for selling two ounces of cocaine.

Boyd v. Coughlin, 481 N.Y.S.2d 769 (N.Y. App. Div. 1984).

Appeal of inmate disciplinary action for sexual assault of fellow inmate; affirmed. Although it was error not to advise inmate that confidential materials would be considered and no reason for their confidentiality was articulated, inmate was not prejudiced by content of those materials; inmate received effective assistance of inmate assistant at hearing.

North Carolina

No case law found.

North Dakota

No case law found.

Ohio

State v. Kelly, 754 N.E.2d 1273 (Ohio Ct. App. 2001).

Appeal of adjudication as "sexual predator;" affirmed. Evidence presented at hearing, which included institutional records showing inmate had sexually assaulted fellow inmates, sufficient to support trial court's findings.

State v. Harris, 596 N.E.2d 563 (Ohio Ct. App. 1991).

Appeal of convictions for rape and sexual battery by Youth Leader upon juvenile resident of Training School for delinquent youth; convictions reversed. Trial court erred in conducting a bench trial without following procedures to ensure waiver of jury trial was knowing, voluntary, and intelligent. Trial court erred in admitting the results of stipulated polygraph examination results for victim; although a defendant may stipulate to admission of his own polygraph results, he cannot do so for admission of victim's polygraph results.

Unreported opinions:

State v. Kelly, 2007 WL 4145793 (Ohio Ct. App. 2007).

Appeal of dismissal of a petition seeking relief from requirement that defendant register as a "sexual predator" based upon, inter alia, a finding that he had sexually assaulted other inmates while in prison; affirmed. Appellant could have raised his challenge to the registration requirement in his original appeal of his adjudication as a sexual predator; principles of *res judicata* require that this collateral challenge be dismissed.

State v. Carpenter, 2005 WL 3078207 (Ohio Ct. App. 2005).

Appeal of adjudication as "sexual predator;" reversed. Trial court failed to state, either in the judgment or on the record, its findings on the evidence in support of its decision (evidence included allegation of rape of fellow inmate during incarceration, which appellant contended had been proven false).

State v. Dunn, 1985 WL 10899 (Ohio Ct. App. 1985).

Appeal of convictions for sexual battery of fellow inmates; affirmed. Evidence was sufficient to support jury's finding of element of coercion where evidence was presented that defendants told victim that unless he performed sexual acts upon them in exchange for "protection" they would turn him over to another group of inmates who

would rape him.

State v. Dunn, 1985 WL 10662 (Ohio Ct. App. 1985).

State's appeal of post-verdict judgment of acquittal based upon sufficiency of evidence, following jury verdict of guilt for sexual battery of fellow inmates; reversed. Evidence was sufficient to support jury's verdict where evidence was presented that defendants told victim that unless he performed sexual acts upon them in exchange for "protection" they would turn him over to another group of inmates who would rape him.

State v. Hawkins, 1982 WL 4774 (Ohio Ct. App. 1982).

Appeal of conviction of rape of fellow inmate; conviction affirmed. Evidence was sufficient to support jury's verdict of rape by force or threat of force where evidence was presented that defendant and codefendant told victim that if he did not submit to sex acts he would be injured or killed by other inmates using a shank.

State v. Sullen, 1982 WL 4782 (Ohio Ct. App. 1982).

Appeal of conviction of rape of fellow inmate; conviction affirmed. Evidence was sufficient to support jury's verdict of rape by force or threat of force where evidence was presented that defendant and codefendant told victim that if he did not submit to sex acts he would be injured or killed by other inmates using a shank.

State v. Kocak, 1978 WL 215440 (Ohio Ct. App. 1978).

Consolidated appeals of convictions for rape of fellow inmate; conviction of one defendant reversed and conviction of second defendant affirmed. Trial court erred in permitting indictment charging one defendant with gross sexual imposition to be amended, during trial, to the greater charge of rape.

State v. Britton, 1976 WL 191072 (Ohio Ct. App. 1976).

Appeal of conviction for rape of fellow inmate; affirmed. No error by trial court in excluding defense witness where other evidence to same effect presented; defendant not entitled to mid-trial appointment of expert witness; evidence of bad acts committed by others not prejudicial to defendant.

Oklahoma

Grider v. State, 737 P.2d 1227 (Okla. Crim. App. 1987).

Appeal of conviction for escape; affirmed. Defendant's testimony that he escaped due to threats of rape and stabbing by other inmates did not warrant duress instruction where defendant did not inform corrections staff he was in fear for his life and where he gave a false name when arrested for escape; trial court did not err in specifically instructing the jury that the duress defense did not apply under these facts. Defendant's conviction following disciplinary action did not violate double jeopardy.

Oregon

State v. Jackson, 36 P.3d 500 (Or. Ct. App. 2001).

Appeal of conviction for second-degree sexual abuse of fellow inmate; reversed. Trial court's action, without any finding of necessity, to hold trial in a non-public area of the prison with simultaneous broadcast of proceedings to

courthouse denied defendant's right to a public trial. Issue of victim's testimony via videoconferencing as violating the Confrontation Clause not reached.

Reed v. Oregon State Penitentiary, 773 P.2d 5 (Or. Ct. App. 1989).

Appeal of disciplinary action for attempted sexual activity (allegation was attempted rape) with a fellow inmate; reversed. Hearing officer, whose decision was based upon signed statements of two confidential informants, erred in failing to make specific findings of reliability of statements as required by Department of Corrections regulations.

State v. Crawford, 698 P.2d 40 (Or. Ct. App. 1985).

Appeal of conviction for sexual penetration with foreign object upon fellow inmate; reversed. Trial court erred in not suppressing defendant's statement taken in violation of right to counsel where defendant had indicated he wished to speak with an attorney and officer re-initiated questioning.

Pennsylvania

Com. v. Budd, 821 A.2d 629 (Pa. Super. Ct. 2003).

Appeal of prison guard's conviction for institutional sexual assault of inmate; affirmed. Defendant, who was off duty, engaged in sexual activity with inmate, who was on work release, after offering her a ride to her job. Statute not unconstitutionally vague and overbroad; evidence sufficient to show defendant knew of inmate's status on work release at time of act.

Com. v. Brown, 460 A.2d 1155 (Pa. Super. Ct. 1983).

Appeal of conviction and sentence for escape; affirmed. Defendant asserted defense of duress, contending he escaped because threats of rape by other inmates were not adequately addressed by prison officials. Commonwealth presented sufficient evidence to disprove affirmative defense of duress; sentencing transcript showed that court considered defendant's personal circumstances in imposing sentence.

Com. v. Richbourg, 398 A.2d 685 (Pa. Super. Ct. 1979).

Appeal of conviction for involuntary deviate intercourse, simple assault, and conspiracy; affirmed. Testimony of victim. corroborated by co-conspirator (cooperating pursuant to plea agreement), sufficient to support conviction.

Rhode Island

No case law found.

South Carolina

Sellers v. State, 193 S.E.2d 513 (S.C. 1972).

Appeal of intermediate court's decision upholding indefinite administrative segregation of inmates who sexually assaulted fellow inmates (State's cross appeal of decision vacating loss of good time based on violation of due process abandoned); affirmed. Administrative segregation upheld where evidence at hearing included statements of confidential inmate informants, on grounds that administrative segregation "involved the good faith exercise of the discretionary power of the prison officials in the maintenance of order, discipline, and security among the prison population and, as such, is not subject to judicial review."

South Dakota

State v. Lee, 599 N.W.2d 630 (S.D. 1999).

Appeal of conviction for murder of cellmate; affirmed. Where defendant claimed he had awakened to cellmate engaging in oral sex with him, no error in trial court's denial of access to victim's disciplinary records for evidence of homosexual activity; although State had opened the door to the issue, trial court properly concluded after in-camera review that there was no relevant evidence. No error in trial court's preclusion of defendant's expert psychiatric testimony that defendant acted reflexively upon being awakened after drinking heavily and having a particular aversion to homosexual activity; jury could make determination without aid of expert testimony.

Tennessee

Unpublished opinions:

State v. McGee, 2010 WL 3528985 (Tenn. Crim. App. 2010).

Appeal of sentence for rape of fellow inmate; affirmed. Trial court's stated reasons for sentence imposed were adequate.

Wiggins v. State, 2010 WL 3075644 (Tenn. Crim. App. 2010).

Appeal of order dismissing habeas petition; affirmed. Defendant's sentence for rape of fellow inmate had long since been completed so no basis for habeas relief.

State v. Godsey, 1999 WL 966549 (Tenn. Crim. App. 1999).

Appeal of convictions for aggravated rape and conspiracy to commit aggravated rape of fellow inmate; affirmed. No *Brady* violation for State's failure disclose victim's civil claim against county where defense counsel knew of claim from other sources and introduced evidence of such claim; convictions for both aggravated rape and conspiracy did not constitute double jeopardy.

Whaley v. State, 1995 WL 256702 (Tenn. Crim. App. 1995).

Appeal of order denying post-conviction relief following conviction for aggravated rape of fellow inmate; affirmed. Defendant's claims of ineffective assistance of counsel rejected where: court had ruled evidence of victim's

homosexuality was inadmissible; defendant failed to produce evidence that treating physician's testimony that victim was delusional was anything more than speculation; lack of evidence of injury as proof of force irrelevant where force was not what elevated rape to aggravated rape.

State v. Whaley, 1992 WL 167342 (Tenn. Crim. App. 1992).

Appeal of conviction for aggravated rape of fellow inmate; affirmed. No error in court's exclusion of evidence of victim's homosexuality. No error in court's exclusion of doctor's opinion that many months after crime the victim may have suffered from some schizophrenia, paranoia, or delusions; such testimony was speculative at best and doctor did not feel comfortable giving an opinion about victim's mental condition. Evidence sufficient to find defendant and co-defendant had aided and abetted each other, elevating rape to aggravated rape.

Texas

Martinez v. State, 327 S.W.3d 727 (Tex. Crim. App. 2010).

Appeal of death sentence for murder; sentence affirmed. Among the evidence presented in penalty phase were defendant's boasts about having raped other inmates.

Jaubert v. State, 74 S.W.3d 1 (Tex. Crim. App. 2002).

Appeal of jury-determined sentence for murder; affirmed. Defendant had no right to pretrial discovery of evidence of prison rape and other bad acts offered by the State in rebuttal to defendant's evidence that he had reformed and found religion while in prison.

Rogers v. State, 550 S.W.2d 78 (Tex. Crim. App. 1977).

Appeal of conviction for aggravated sexual abuse as accomplice to rape of fellow inmate; affirmed. Repeated beatings accompanied by verbal threats to continue beatings amounted to threat to compel victim to submit to attacker.

Murphy v. State, 653 S.W.2d 567 (Tex. App. 1983).

Appeal of conviction for aggravated sexual abuse as both accomplice and principal to gang rape of fellow inmate; affirmed. Indictment alleging that both defendant and victim were male sufficiently alleged that the parties were not married; similarly, jury instruction not defective for failing to require the finding that the parties were not married. Defense had adequate opportunity to explore potential bias on part of State's inmate witness. No error in failing to charge "homosexual conduct" as lesser-included offense where no evidence of consent. Evidence of accomplice liability sufficient where defendant was one of several inmates who assaulted and taunted victim just before rape occurred and where defendant engaged in sexual conduct with the victim immediately after the others, who had communicated threats. Attempt by State to introduce portions of defendant's criminal record was harmless where court instructed jury to disregard testimony concerning record.

Unpublished opinions:

Kidd v. State, 2010 WL 391856 (Tex. App. 2010).

Appeal of conviction for escape; affirmed. Defendant not entitled to jury instruction on necessity defense where he alleged he had been raped by a corrections officer and by another inmate and threatened with other harm but conceded he was not in imminent danger when he escaped from prison van.

Shorts v. State, 2006 WL 2382775 (Tex. App. 2006).
Appeal of order denying post-conviction DNA testing in sexual assault of fellow inmate; affirmed. Appeal dismissed as frivolous.

Vaughn v. State, 2005 WL 15209 (Tex. App. 2005).
Appeal of conviction for aggravated assault; affirmed. No ineffective assistance of counsel for failure to raise incompetency to stand trial based upon defendant's outburst during trial, his suicidality, and his claim he had been sexually assaulted by other inmates while awaiting trial; record contained no indications of defendant's incompetence.

Jones v. State, 1999 WL 1062546 (Tex. App. 1999).
Appeal of conviction for aggravated sexual assault of fellow inmate; affirmed. Unanticipated testimony of victim regarding co-defendant's guilty plea sufficiently cured by instruction to disregard; admission of evidence concerning defendant's non-final conviction for armed robbery proper where defendant opened the door by testifying the sex was consensual and that he was "not an aggressor."

Glover v. State, 1998 WL 32410 (Tex. App. 1998).
Appeal of conviction for organized criminal activity; affirmed. Inmate victim was killed by gang of inmates who repeatedly beat victim to force him to pay attackers for "protection" from beatings and rape; circumstantial evidence supported defendant's agreement with co-defendants to attack the victim; admission of evidence of other bad acts, arguably barred by trial court's order, harmless in view of curative instruction.

Mayse v. State, 1994 WL 16189951 (Tex.App. 1994).
Appeal of conviction for sexual assault on fellow inmate; appeal dismissed as frivolous.

Utah

No case law found.

Vermont

No case law found.

Virginia

Remington v. Com., 551 S.E.2d 620 (Va. 2004).

Appeal of capital murder conviction and sentence for killing fellow inmate; affirmed. Defendant testified during penalty phase he had previously been raped in prison, that other inmates had threatened to rape him and that he believed murder victim was involved in those threats.

Washington

In re Mines, 266 P.3d 242 (Wash. Ct. App. 2011).

Appeal of civil commitment as "sexually violent predator;" affirmed. Testimony of prison inmates that defendant had recently sexually assaulted them as proof of "recent overt act" need not be bifurcated from rest of evidence supporting commitment; jury instruction properly permitted jury to consider such testimony in light of mental condition and history of behavior (rejecting proposed limiting instruction barring jury from considering recent overt act evidence for purposes other than mental defect and dangerousness).

Unpublished opinions:

In re Coleman, 2010 WL 2283510 (Wash. Ct. App. 2010).

Collateral challenge to commitment as "sexually violent predator;" affirmed. No ineffective assistance of counsel for failure to object to State's expert's consideration of two sexual infractions in prison as nonconsensual (despite fact that both parties were disciplined on both occasions).

State v. Roberts, 2009 WL 4981204 (Wash. Ct. App. 2009).

Appeal of order denying motion to withdraw guilty plea; affirmed. Defendant moved to withdraw plea based on recantation of victim of sexual assault in juvenile facility many years after conviction; trial court conducted hearing at which victim testified to recantation and properly found it lacked credibility.

State v. Snook, 1999 WL 9599 (Wash. Ct. App. 1999).

Appeal of conviction for sexual assault and murder of fellow inmate; affirmed. Defendant not unfairly prejudiced by security measures in courtroom. Evidence of premeditation included fact that victim had been transferred to defendant's tier at defendant's request. Inmate witnesses testified defendant threatened to rape and kill them if they provided information about the rape/murder of victim.

West Virginia

No case law found.

Wisconsin

State v. Wood, 780 N.W.2d 63 (Wis. 2010).

Appeal of order authorizing involuntary medication of civil committee following acquittal by reason of insanity for murder and for a separate, later incident in which he raped a female committee with whom he was confined; affirmed. State has legitimate interest in safety in its institutions and in preparing committees for life outside of institution; finding of present actual dangerousness not required.

In re Kaminski, 777 N.W.2d 654 (Wis. Ct. App. 2009).

Appeal of commitment as "sexually violent person;" affirmed. Commitment was supported by evidence, including psychological assessments partially based on allegation in a 1995 presentence report that committee had previously been transported from juvenile group home to jail after sexually assaulting another resident, despite lack of evidence he was ever criminally charged for that incident.

State v. Everett, 231 Wis.2d 616 (Wis. Ct. App. 1999).

Appeal of conviction for sexual assault of fellow inmate; affirmed. Prosecution of juvenile waived to adult court did not violate double jeopardy where juvenile had been disciplined for same incident prior to prosecution. Exclusion of defendant's testimony that a third juvenile who harbored a grudge against defendant had threatened to encourage the victim to report the assault was harmless error where evidence to that effect came in through other testimony and where "threat" was not clearly a threat to encourage false report.

Unpublished opinions:

State v. Blum, 2012 WL 3101833 (Wis. Ct. App. 2012).

Appeal of prison nurse's conviction for sexual assault of inmate; affirmed. Constitutional challenge to statute criminalizing sexual activity between staff and inmates as overbroad, vague, or as infringing on defendant's liberty interest in intimate association rejected. Statutory exception where inmate is "subject to criminal prosecution" for same act not an affirmative defense. No evidence to support defendant's claim that she lacked mental capacity to consent.

State v. Heine, 2009 WL 983029 (Wis. Ct. App. 2009).

Appeal of deputy sheriff's conviction for sexual assault of inmate; reversed. State failed to provide, in response to discovery requests, transcripts of internal affairs interviews of defendant and the victim following defendant's report that victim threatened to accuse him of rape if he did not pay her bail; statements had exculpatory value for impeachment of victim and failure to provide them violated *Brady*.

State ex rel. Tyler v. Smith, 2007 WL 10108 (Wis. Ct. App. 2007).

Appeal of order upholding inmate disciplinary action for sexually assaulting two fellow inmates; affirmed. Disciplined inmate not entitled to review of statements of confidential inmate informants (which were subject to in camera review); disciplined inmate not entitled to call former cellmate to testify he had not engaged in aggression toward him; disciplined inmate not entitled to review personal prison records regarding accusers; disciplined inmate had no right to "effective assistance" of inmate advocate at hearing.

State v. Wood, 2003 WL 21232103 (Wis. Ct. App. 2003).

Appeal of order denying NGI committee's application for supervised release; affirmed. Evidence supported denial

where committee continued to refuse medication to treat schizophrenia that caused criminal acts for which he had been committed (homicide of one victim and subsequent sexual assault of fellow committee).

Wyoming

No case law found.

U.S. Territories

No case law found.

Federal Law

(Arranged by Circuit)

United States v. Gray, 708 F.Supp. 458 (D. Mass. 1989).

Government's motion to vacate sentence amended to probation following defendant's allegation he had been raped in prison; motion granted and original sentence of imprisonment reinstated. Following hearing based upon investigation of rape allegation, court determined that no rape occurred and that incident had been fabricated by defendant to obtain a non-custodial sentence; court therefore set aside the sentence, which had been amended to a probationary sentence, and reinstated original custodial sentence.

United States v. Vasquez, 389 F.3d 65 (2d Cir. 2004).

Appeal of prison guard's sentence on conviction for sexual abuse of inmates; affirmed. District court properly declined to "group" under the sentencing guidelines multiple offenses involving harms to the same inmate on separate occasions; standard of review would accord "due deference" to sentencing court's determination on this application of guidelines to facts of this case.

United States v. Schwarz, 283 F.3d 76 (2d Cir. 2002).

Appeal of police officer's convictions for conspiracy and deprivation of civil rights by physically and sexually assaulting arrestee in his custody, and for conspiracy to obstruct the ensuing federal grand jury investigation; reversed. Defendant, who was alleged to have been present while declining to intervene when co-defendant police officer sexually assaulted victim-prisoner, received the ineffective assistance of counsel as a result of an unwaivable conflict of interest arising from his counsel's law firm's contract with the Policeman's Benevolent Association (PBA), which had a substantial interest in the outcome of the related civil lawsuit. Defense counsel's personal interest in multimillion-dollar contract with the PBA inhibited him from presenting at trial theory that another co-defendant officer was the second officer present during the assault, a decision that likely arose from the fact that the PBA had an interest in portraying the assault as one perpetrated by a "lone rogue police officer" rather than the result of systemic police brutality (suggested by presence and inaction of a second police officer). Trial court also erred in failing to hold a hearing to inquire whether jury was improperly influenced by extraneous extrajudicial information concerning the mid-trial guilty plea of the co-defendant officer who actually committed

the assault. Defendant's conviction for conspiracy to obstruct grand jury investigation reversed for insufficiency of evidence that false statements given by defendant and co-defendants to investigators were given with the specific intent to obstruct the federal grand jury.

United States v. Alter, 985 F.2d 105 (2d Cir. 1993).

Appeal of sentence imposed on director of halfway house following guilty plea to bribery (originally 20 counts charging him with using his position to coerce residents to engage in sexual conduct through threats and promises); reversed and remanded for resentencing. District court erred in failing to apply "grouping rules" in its analysis and application of sentencing guidelines.

United States v. Volpe, 78 F.Supp.2d 76 (E.D. N.Y. 1999).

Sentencing determination on conviction of police officer for violating the civil rights of arrestee in his custody by committing an act of aggravated sexual abuse. Defendant sentenced to 360 months' imprisonment based upon: (1) there could be no upward adjustment in base offense level, under Sentencing Guidelines, to reflect obstruction of justice occurring before investigation of incident began; (2) there was no double or triple counting arising from use of sentencing factors allegedly connected by fact that defendant was police officer; (3) sentencing guidelines for sexual assault were applicable, despite defendant's claim that he obtained no sexual gratification when he inserted broom handle into rectum of detainee; (4) downward departure from Guidelines sentence would be authorized to reflect notoriety of defendant and possibility of problems when he was incarcerated; (5) there would be no downward departure to reflect fact that cumulative impact of aggravating factors resulted in allegedly inappropriate sentence recommendation of life imprisonment; (6) downward departure was not warranted on grounds that behavior of defendant was aberrant, or reflected abnormal mental condition or diminished capacity; and (7) no downward departure would be granted due to victim's conduct. [Enumerated factors taken from opinion syllabus.]

United States v. Alter, 825 F.Supp. 550 (S.D. N.Y. 1993).

Sentencing determination on conviction of director of halfway house following guilty plea to bribery (originally 20 counts charging him with using his position to coerce residents to engage in sexual conduct through threats and promises). Defendant sentenced to 60 months' imprisonment based upon grouping of "analogous offenses" relating to three different residents, each of whom were exploited for sexual purposes.

United States v. Lucas, 157 F.3d 998 (5th Cir. 1998).

Government's appeal of sentence imposed upon prison warden following guilty plea to violation of civil rights by sexually abusing inmate in his custody and providing false information to investigators; reversed. Trial court erroneously applied guidelines pertaining to consensual criminal abuse of a ward, rather than forcible act admitted by defendant in his guilty plea; defendant's actions employed not only inherent coercion by virtue of his position of power, but also involved actual physical force and fear where he locked victim in room and forced her against table in course of assaulting her.

United States v. Jackson, 815 F.Supp. 195 (N.D. Tex. 1993).

Order on hearing to determine committee's continued dangerousness following his acquittal of armed robbery by reason of insanity and his subsequent involvement in sexual assault of fellow patient; continued commitment ordered. Committee failed to meet burden by clear and convincing evidence that he no longer posed a danger where no further mental evaluation was conducted following his sexual assault of fellow patient; even if his schizophrenia was in remission as long as he was compliant with his medication there was no evidence he was likely to remain in compliance.

United States v. Lanham, 617 F.3d 873 (6th Cir. 2010).

Appeal of corrections officers' convictions for conspiracy to deprive inmate of civil rights in connection with sexual assault of inmate and making a false entry in an official report to impede federal investigation; affirmed. Defendants conspired to place the victim, an 18-year old traffic offender of slight build who they deemed looked like a "sissy," into a "general population" cell with inmates known to be violent, with the request that those inmates "f-ck with" the victim. Those inmates taunted, beat, and raped the victim. Defendants then conspired to falsify in jail records as to the reason the victim had been placed in the cell. Although trial court erred in refusing to excuse for cause two jurors who were hesitant about their ability to be impartial, error was harmless where those jurors were excused by peremptory challenges and final jury was impartial. No plain error for trial court's restriction on cross-examination concerning plea agreement accepted by cooperating witness. Evidence was sufficient to support convictions. Application of aggravating and mitigating factors was proper, supporting sentences imposed.

United States v. Ross, 475 F.3d 871 (7th Cir. 2007).

Appeal of probationary sentence for lying to FBI, with condition that defendant participate in sex-offender treatment, based in part upon his history during previous prison terms in which he sexually "preyed upon" fellow inmates with histories of sexual abuse or who were in sex offender programs; affirmed. Although defendant's offenses did not directly involve sexual conduct, the nature of his lies suggested involvement in sexual abuse of children, and his prior conduct in prison, suggested that sex offender treatment was reasonably related to his need for rehabilitation and to the safety of the public.

United States v. Haynes, 143 F.3d 1089 (7th Cir. 1998).

Appeal of conviction for assault of fellow inmate; affirmed. Defendant entered guilty plea to assault by pouring hot cooking oil on fellow inmate, preserving his right to argue that the district court improperly barred him from asserting self-defense based upon assault victim's alleged threats of rape. Defendant's claim did not indicate that threat was actually imminent; defendant not entitled to engage in "self-help" where he admittedly had not reported the victim's conduct to prison authorities based upon his alleged fear that he would be labeled a "snitch."

United States v. Blue Coat, 340 F.3d 539 (8th Cir. 2003).

Appeal of sentence to supervised release, with the condition that defendant register as a sex offender, following guilty plea to burglary in which he waived his right to appeal; appeal dismissed. Defendant was originally charged with various sex offenses, including attempted sexual assault of fellow inmate. Because imposition of condition of registration was not an illegal sentence, defendant's waiver of appeal required court to dismiss appeal.

United States v. Reynolds, 49 F.3d 423 (8th Cir. 1995).

Appeal of decision revoking defendant's supervised release due to his discharge from mandated in-patient drug treatment program for sexually abusing fellow patients in the program; reversed. District Court erred in relying upon hearsay statements of victims of alleged abuse without any showing of reasons why victims could not have been called to testify and without any findings that the statements bore indicia of reliability.

Johnson v. United States, 539 F.2d 1241 (9th Cir. 1976).

Appeal of order denying defendant's motion to withdraw guilty plea to importation and conspiracy to import marijuana; affirmed. District court properly rejected defendant's contention that his plea was involuntary due to his attorney's failure to advise him that a witness had been located, the court's failure to more fully explain the special parole term that would follow his incarceration, and defendant's allegation that he entered the guilty plea due to his concern for the well-being of his wife (who allegedly was sexually assaulted while incarcerated on related charges) because the plea would result in her release from imprisonment.

United States v. Chong, 98 F.Supp.2d 1110 (D. Haw. 1999).

Rulings on admissibility of evidence of various incidents during penalty phase of capital murder trial. Among the evidence ruled admissible is evidence of defendant's assault and rape of fellow inmate.

United States v. Holly, 488 F.3d 1298 (10th Cir. 2007).

Appeal of sheriff defendant's conviction for deprivation of civil rights involving aggravated sexual abuse of several inmates and others, witness tampering, and making a false statement; affirmed in part and reversed in part. District Court's jury instruction, which would have permitted the jury to convict on the "aggravated sexual abuse" theory based either upon the use of force or the placing of the victims in fear of serious bodily injury, death, or kidnapping, was correct as to the definition of force, but erroneous as to the definition of the level of fear, was harmful error as to four of the counts but harmless as to the fifth count of "aggravated sexual abuse." Remanded for a new trial on four of the counts.

United States v. Smith, 464 F.2d 194 (10th Cir. 1972).

Appeal of convictions for sexual assault of fellow inmate; affirmed. Four co-defendants, all of whom were Indians, were not improperly subjected to arrest without a hearing before a magistrate when they were placed in administrative segregation following the assault; were not denied a speedy trial where much of the delay was attributable to defense pre-trial motions and where defendants never demanded a speedy trial; were not denied equal protection by being interrogated without another Indian present, by being confined at an institution with no Indians in administrative positions, or by being tried to a jury without any Indians on the panel; defendants were not entitled to an Indian attorney, nor to an interpreter where no interpreter was necessary; defendants were adequately represented by one attorney who represented them jointly.

United States v. Rodriguez, 213 F.Supp.2d 1298 (M.D. Ala. 2002).

Defendant's sentence for possession of cocaine hydrochloride with intent to distribute would receive significant downward departure in sentence as a result of being raped by a prison guard while awaiting sentence following her guilty plea. Even if government predicated its recommendation for downward departure partially on this fact, further departure warranted under unique facts of case.

United States v. Bridgeman, 523 F.2d 1099 (D.C. Cir. 1988).

Appeal of convictions for conspiracy, riot, armed kidnapping, and related charges arising from large-scale riot and attempted jailbreak, during which two inmates were repeatedly sodomized by force; affirmed. Among the issues determined on appeal: evidence concerning the sexual assaults was improperly admitted to support the element of "serious bodily injury" inflicted during the riot; probative value of evidence not outweighed by risk of unfair prejudice.

Unpublished opinions:

Rendelman v. United States, 2013 WL 140236 (D. Md. 2013).

Ruling on defendant's motion to vacate or correct his sentence following conviction for mailing threatening letters to President and other officials, based upon allegations of ineffective assistance of counsel; denied. No ineffective assistance of counsel for, *inter alia*, failing to present at sentencing evidence that defendant suffered from Rape Trauma Syndrome as a result of numerous alleged rapes while in prison, which defendant contended caused him to continue to send threatening letters from prison, and failing to argue that defendant was particularly vulnerable to abuse while in prison. Guidelines did not permit downward departure for mental status where conduct

threatened serious violence; evidence did not suggest defendant was especially vulnerable to abuse in prison and no evidence he ever requested counsel to urge this basis for downward departure on this ground.

United States v. Revland, 2011 WL 6749814 (D. N.C. 2011).

Ruling on government's certification for commitment as "sexually dangerous person;" commitment denied. Defendant's "admissions" to 149 acts of child molestation, made while enrolled in a sex offender treatment program, were fabrications to allow him to remain in the sex offender treatment program because of his fear of continued incarceration at Leavenworth, where, defendant convincingly testified, he was raped and brutalized by fellow inmates. Court rejects testimony of government's experts that defendant is a pedophile, since experts' opinions were largely based on defendant's discredited self-reports of child molestation.

United States ex rel. McCalvin v. Irving, 1986 WL 5017 (N.D. Ill. 1986).

Petition for *habeas corpus* alleging unlawful confinement based upon claim that parole board denied petitioner and other black inmates parole when similarly situated white inmates were granted parole; petition dismissed. Petitioner, who engaged in violent crime spree with co-defendant, after which he sexually assaulted a fellow inmate and escaped from custody, and engaged in violent and contemptuous behavior throughout his trial, was so uniquely situated that it would not be possible to compare his crimes and record with those of other inmates; no evidence to suggest that denial of parole was based upon anything but proper factors.

United States v. Dykstra, 1994 WL 108868 (8th Cir. 1994).

Appeal of sentence imposed for bank robbery; sentence vacated and remanded. District Court should consider whether downward departure is appropriate based upon defendant's unusual vulnerability in prison based upon his youth, his slight build, his prior rape by an older and bigger inmate, and his resulting psychological trauma.

United States v. Holly, 470 F. App'x 705 (10th Cir. 2012).

Appeal of order denying former sheriff's motion alleging due process violations following his conviction for deprivation of civil rights involving aggravated sexual abuse of several inmates and others, witness tampering, and making a false statement (four counts of aggravated sexual abuse having been dismissed on appeal); affirmed in part, reversed and remanded in part with directions to dismiss for lack of subject matter jurisdiction. Motion is yet another attempt to re-litigate original *habeas* petition without authorization; further filings on subject will not be accepted.

United States v. Holly, 444 F. App'x 309 (10th Cir. 2011).

Appeal of order denying former sheriff's motion "for Severance, 'Conflict of Interest' Change of Venue" following his conviction for deprivation of civil rights involving aggravated sexual abuse of several inmates and others, witness tampering, and making a false statement (four counts of aggravated sexual abuse having been dismissed on appeal); certificate of appealability denied and appeal dismissed. Motion is treated as second or subsequent *habeas* petition without authorization.

United States v. Holly, 435 F. App'x 732 (10th Cir. 2011).

Appeal of order dismissing former sheriff's petition for writ of *audita querela* (recharacterized as second or subsequent *habeas petition* without authorization) following his conviction for deprivation of civil rights involving aggravated sexual abuse of several inmates and others, witness tampering, and making a false statement (four counts of aggravated sexual abuse having been dismissed on appeal); certificate of appealability denied and appeal dismissed. Petition is treated as second or subsequent *habeas* petition without authorization.

United States v. Holly, 378 F. App'x 852 (10th Cir. 2010).

Appeal of order denying former sheriff's motion for a new trial following his conviction for deprivation of civil rights involving aggravated sexual abuse of several inmates and others, witness tampering, and making a false statement (four counts of aggravated sexual abuse having been dismissed on appeal); affirmed. Defendant's claims that (1) his counsel had a conflict of interest; (2) prior to trial, the government placed its witnesses in a "Laquinta Inn Motel," where a "drug party" occurred; (3) a prosecution witness was under the influence of drugs when she testified; (4) several witnesses committed perjury and had engaged in illegal activities in the past; (5) DNA evidence was concealed from the jury; (6) Holly was given psychotropic drugs while in jail; and (7) decisions made by the district judge during and after trial violated ethical canons insufficient to satisfy Rule's requirements for new trial.

United States v. Holly, 364 F. App'x 471 (10th Cir. 2010).

Appeal of order denying former sheriff's *habeas* petition following his conviction for deprivation of civil rights involving aggravated sexual abuse of several inmates and others, witness tampering, and making a false statement (four counts of aggravated sexual abuse having been dismissed on appeal); certificate of appealability denied and appeal dismissed. Defendant's claims that his counsel had a conflict of interest and that the judge assigned to the *habeas* petition should have been disqualified are clearly without merit.

United States v. McBride, 26 F. App'x 785 (10th Cir. 2001).

Appeal of corrections counselor's convictions for multiple counts of sexual abuse, abusive sexual contact, and sexual abuse of an inmate; affirmed. Parties agreed and stipulated that acts occurred at Federal Transfer Center in Oklahoma City, which they stipulated was a "federal prison." On appeal, defendant contended facility was not a federal prison. Defendant's stipulation bars him from challenging this element of the offenses on appeal; location of offense not jurisdictional in nature.

Military Law

United States v. Harman, 66 M.J. 710 (A. Ct. Crim. App. 2008).

Appeal of MP convicted of multiple acts of conspiracy, dereliction of duty, and abuse of detainees arising from several incidents at Baghdad Central Confinement Facility at Abu Ghraib, Iraq, including sexually humiliating conduct such as requiring detainees to pose naked in humiliating positions for photographs (acquitted of certain specifications); affirmed as amended. Evidence was sufficient to support specifications for which defendant was convicted.

United States v. Goldman, 43 C.M.R. 711 (A. C. M. R. 1970) (en banc).

Appeal of company commander's conviction for dereliction of duty for failing to protect a detainee from misconduct and for failing to report the non-battle death of the detainee; affirmed with sentence amended to remove fine. Two female Viet Cong nurses were captured, and both were subjected to rape and sexual abuse by members of company. One member of company handed rifle to a male prisoner and ordered him to shoot one of the nurses, following which that member shot the nurse two more times. Evidence sufficient to support convictions where evidence showed defendant had to have known about misconduct leading to the nurse's death.

Unpublished opinions:

United States v. Asbell, 2003 WL 260879 (A. F. Ct. Crim. App. 2003).

Appeal of conviction of "confinement supervisor" at Air Force Base (AFB) confinement facility for dereliction of duty for Sexual activity with a female inmate, failing to prevent contact between inmates of the opposite sex, and failing to report an alleged sexual assault of a female inmate; affirmed. Evidence was sufficient to support convictions; no prejudice to defendant arising from charging failure to report two alleged sexual assaults occurring on the same night in a single specification.