

Solitary Watch

Criminal Justice Issues and Prisoners' Rights

<https://solitarywatch.org/2012/09/20/new-york-prisoner-gets-five-years-in-solitary-for-having-cell-phone-smuggled-in-by-guard/>

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by [James Ridgeway and Jean Casella](#) | September 20, 2012

Philip Miller was midway through a twenty-year sentence for robbery at Sing Sing Prison in New York, with an almost spotless prison record, when he was caught with a mobile phone in his cell in April 2010. He was charged with two disciplinary violations: possession of contraband and also altering state property, since he had hidden the cell phone and charger in a compartment carved out of the windowsill.

Miller was brought before an internal prison disciplinary hearing and pled guilty to the two charges. But he sought to call various inmates who could attest to his good behavior and to describe what actually had happened. The hearing officer denied him his request, claiming that he, the prison officer, knew all about Miller and it wasn't necessary to call the witnesses. Miller was found guilty of both charges and sentenced to 60 months—five years—in solitary, with a proviso that 24 months might be suspended if he incurred no further disciplinary charges. Despite the nonviolent nature of his offenses, Miller was shipped off to serve his time at Southport, the all-solitary supermax facility south of Elmira.

Long stretches in the so-called Special Housing Unit (the SHU or, more commonly, the box) is an everyday punishment in New York State prisons. Currently, about 4,500 inmates are serving time in some form of 23-hour-a-day lockdown, with sentences ranging from months to decades. As we wrote in an [earlier article](#), New York leads the nation in the use of disciplinary segregation, and isolation is very much a punishment of first resort, doled out for minor rule violations as well as major offenses. In New York, the most common reason for a stint in solitary is creating a disturbance or demonstration. Second is dirty urine testing positive for drugs of any kind. Other infractions include refusing to obey orders, interfering with employees, being out of place and possession of contraband—not only a shiv but a joint, a cellphone or too many postage stamps.

Miller appealed his conviction and sentence within the prison system, insisting that he had been denied his right to have witnesses testify on his behalf. He lost. He then went to state court and lost there. Finally, he took his case to the state courts' appellate division where the [decision against him](#), handed down in August 2012, contained this rather incoherent passage:

Petitioners claim that he was improperly denied the right to call character witnesses to mitigate the penalty to be imposed as a result of his guilty plea is also unavailing. Petitioners' witnesses would have testified about his positive prison record, which was known to the Hearing Officer and considered in the disposition of this matter. Since the Hearing Officer considered petitioners' character before imposing the penalty, the testimony of the witnesses would have been redundant and, therefore, properly excluded.

Out of the panel of five judges in the appellate court, four of them upheld the lower courts' decision unreservedly. The fifth, Judge J. Garry, concurred in part and dissented in part. In his opinion, Judge Garry wrote: While I do not disagree with the resolution of petitioners' constitutional and evidentiary challenges, I cannot countenance the penalty imposed, i.e., confinement for 60 months in the special housing unit (hereinafter SHU), with 24 months suspended. The severity of this penalty is disproportionate to the offense.

In explaining why the punishment was excessive, Judge Garry pointed to prisoners charged with violent offenses who had in fact received shorter sentences in the box. He also revealed another aspect of the case: Philip Miller had not, in fact, had the cell phone smuggled into prison for him. He had bought it from another prisoner, who had in turn bought it from a guard.

In explaining the penalty, the Hearing Officer stated that the penalty was intended to deter petitioner and others from similar conduct in the future. However, he further stated that the penalty was justified by the sophistication of this scheme to smuggle a cell phone into this facility. This aspect of the penalty is unsupported by the record, as petitioner was not found guilty of smuggling or conspiring to smuggle cell phones into the prison. The primary participants in the scheme were a correction officer who brought contraband into the facility and certain inmates who received the contraband and resold it to other inmates. The evidence did not reveal that petitioner was one of these participants, rather than a mere purchaser who acquired the cell phone from one of them, and thereafter concealed it, nor did the evidence reveal use of this phone to facilitate the smuggling.

The corrections officer in question was 12-year veteran Leon Strand. According to information provided upon request by the New York

State Department of Corrections and Community Supervisions Office of Public Information, Strand was arrested on felony dangerous contraband charges by the New York State Police on May 21, 2010. The following day, Strand was suspended without pay, and he resigned from his Correction Officer position while facing DOCCS disciplinary charges. The Public Information Office also reported that on November 23, 2010, Strand pleaded guilty to Promoting Prison Contraband, but was not aware what sentence he had received. Records show that Strand never served any time in the New York State prison system, and as far as we can ascertain, never did any jail time, either.

Philip Miller remains in solitary confinement at Southport. According to the DOCCS Public Information Office, he received an additional small reduction in his sentence for good behavior, and is now eligible to return to the general population on January 27, 2013, after serving 32 months and 16 days in the SHU.

Sarah Kerr of the [Legal Aid Societys Prisoners Rights Project](#) brought Millers case to our attention, and commented on it in an email:

That Philip Miller was sentenced to five years in solitary confinement for possessing a cell phone introduced to the prison by a member of DOCCS Correction staff demonstrates the need for time limits on the use of solitary confinement in our prisons. Although 24 months of the sentence were suspended, even 36 months is an excessive, harsh and inhumane sentence. Moreover, Mr. Miller will have to endure 3 years of the harsh conditions in isolation without breaking any more prison rules to guarantee that the suspended 24 months are not invoked by DOCCS. As noted by the dissent of Judge Garry, this penalty is disproportionate to the offense and shockingly unfair.

As Kerr points out, the appeals court had an opportunity to remit the case for reconsideration of the penalty, and its failure to do so suggests that legislative limitations on New Yorks ability to impose sentences of solitary confinement are required to end its excessive and inhumane overuse in our States prisons.

James Ridgeway (1936-2021) was the founder and co-director of Solitary Watch. An investigative journalist for over 60 years, he served as Washington Correspondent for the Village Voice and Mother Jones, reporting domestically on subjects ranging from electoral politics to corporate malfeasance to the rise of the racist far-right, and abroad from Central America, Northern Ireland, Eastern Europe, Haiti, and the former Yugoslavia. Earlier, he wrote for The New Republic and Ramparts, and his work appeared in dozens of other publications. He was the co-director of two films and author of 20 books, including a forthcoming posthumous edition of his groundbreaking 1991 work on the far right, Blood in the Face. Jean Casella is the director of Solitary Watch. She has also published work in The Guardian, The Nation, and Mother Jones, and is co-editor of the book Hell Is a Very Small Place: Voices from Solitary Confinement. She has received a Soros Justice Media Fellowship and an Alicia Patterson Fellowship. She tweets @solitarywatch.

Accurate information and authentic storytelling can serve as powerful antidotes to ignorance and injustice. We have helped generate public awareness, mainstream media attention, and informed policymaking on what was once an invisible domestic human rights crisis.

Only with your support can we continue this groundbreaking work, shining light into the darkest corners of the U.S. criminal punishment system.

by [Juan Moreno Haines](#)

October 25, 2022

by [Solitary Watch Guest Author](#)

October 13, 2022

by [Vaidya Gullapalli](#)

September 29, 2022

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Blimey, crazy punishment that. Those supermax prisons are places you go to decay mentally.

It needs to be taken up by the state supreme court in all states, as to the total inhuman unjust manners that these guards who entice, encourage, co-erce, and intimidate our inmates into buying cell phones from them, as to supplement their incomes, but when the inmate gets caught with the phone, they almost never snitch on the guard for fear of worse problems, so they are absolutely disregarded as humans, tucked away, given no visits, no communication with anybody for years and years, and for what? having a phone, something we all take for granted everyday. this is absurd people, get with it. Force our government, to look into the system. it is very corrupt. look at what just happened in north Carolina, that warden should be shot! after first, sitting in a box for 5 years to rot. and as for these lying guards, they all should get thrown into prison for life, for letting this happen to our inmates who want nothing but to communicate with their families. we all know this prison is nothing but a warehouse, and the states profer from each inmate they torture daily. its time that these politicians and such, judges, everyone. gets a real look at what really goes on. and folks, when your son or daughter, husband or wife, ends up in prison day, you then will take notice about what happens inside. maybe its time that our gov, of Va. takes a visit inside, hmmmmmm, chicken shit.

Your views are slanted in this type of case. You are so rabid in your support for those convicted of crimes you have no ability to understand, nor attempted to comprehend the severity of the use of cell phones in a prison.

1) They are illegal inside of prisons for ALL employees with the exception of a couple of DOCCS administrators provided their cell phones by DOCCS itself.

2) The severity of what could happen, and has happened, from the use of cell phones within prisons cannot be overstated. You are there for punishment, not to call your family or friends, whom you abandoned by doing a crime and being caught.

3) In this case, this is not sham justice or anything else in the matter. They stated the reasons, and even on the record stated they agreed with his exemplary record, but the inmate/offender/convict knowingly broke the rules and paid the price.

4) The Officer who brought the cell phone in for another inmate, should have served prison time, that i wont deny, if anything you should all be upset with that.

Due to the rise of cell phones, there are numerous states currently getting FCC permission to test and implement Cell Phone Jamming withing prisons. This will alleviate most of the problems, but it will not eliminate all cell phone use for those intelligent enough to find ways around them, something quite a few convicts are good at and the state is pretty horrible at preventing.

How are we different from the Third Reich? This kind of abuse was rampant then and now in Syria? These prison guards should all be fired and given a dose of their own medicine.

<http://www.securitymanagement.com/news/hearing-weighs-pros-and-cons-cell-phone-jamming-inside-prisons-005891>

Quote:

the reason contraband cell phones are a problem inside prisons in the first place is because of compromised prison guards. Smuggling cell phones is big business, which is one reason inmates can corrupt guards into smuggling the devices inside prisons.

Inspector General John M. Moriarty of the Texas Department of Criminal Justice told lawmakers that his offices investigations revealed that a smuggled cell phone can cost an inmate anywhere from \$400 to \$2,000.

Instead of resorting to cell jamming technology he said, Congress and states need to impose tougher penalties for smuggling cell phones inside prisons. Largent noted a California inspector general report that described a correctional officer who made \$150,000 smuggling cell phones into his prison. The officer was terminated but faced no criminal charges.

Prisons across the country have seen an epidemic of contraband cell phones being smuggled inside their gates.

California confiscated 2,800 cell phones throughout its prison system in 2008, doubling the previous year. Texas prison officials collected 678 cell phones from prisoners between August 2007 and September 2008, up almost 29 percent over the previous year, according to the Texas Department of Criminal Justice.

The phones have been used to commit various crimes, including murder, credit card fraud, and prison escape. In one incident last year, Texas death row inmate Richard Tabler used a smuggled cell phone to call Texas State Senator John Whitmire. Tabler told the state senator that the senator had two daughters, where they lived, plus other details.

Frankly, Whitmire told members of the Senate Committee on Commerce, Science, and Transportation, that scared the hell out of me and convinced me that an inmate having this ability represented a major public safety issue.

It is a damn shame that this guard can walk away free and clear while this guy has to pay for the guards smuggling operation.

No wonder prisoners have no respect for COs or the judicial system in general. They dont deserve it. And remember weapons, and drugs enter the same way as these cell phones.

In my opinion Prison is a cruel gauntlet, with rouge guards on one side and predatory inmates on the other. These two adversarial groups have consciously or unconsciously colluded together to met out societys punishment to all those trying to just do their time down the middle.

Carl said it beat. One of their own made them look bador more accurately put, exposed how unprofessional and rotten some COs can be. The prisoner gets 5 years in the hole and the CO doesnt get one minute of time. Whats shocking is why they didnt promote the CO to Sergeant and give him a raise.

thanks for this revealing look into a world of sham justice. as a general rule, the severity of the penalty in a prison discipline hearing is merely discretionary, and raises no legal issue for a court to address. The unique thing about Millers case was that one judge was willing to say that this penalty or any penalty is excessive.

This is not about a cellphone, contraband or anything else related to his disciplinary report ~ this is about public embarrassment, security breakdown by staff, hurt feelings that their domain was compromised and somebody has to pay the price for such hurt feelings.

Trust me, down deep inside sits an angry and humiliated prison employee of significant rank or authority that is fuming that his or her unit was breached in the manner reported and someone from the top laid the law down on this never happening again hence the harsh or severe punishment to teach every inmate a lesson that if you play the game, you lose and get the box for five years. Behavior modification at its best where the punishment doesnt fit the crime but it doesnt matter because they can do this without any due process or judicial reviews by an outside source.

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