

LOCAL

Panel sends inmate sexual assault suit back to lower court

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DOVER, Del. (AP) — A federal appeals court panel has overturned a judge's ruling in favor of a Delaware prison guard accused of sexually assaulting an inmate during a pat down in 2014.

The panel on Monday said the judge erred in granting summary judgment last year to Sgt. William Kuschel.

Inmate DeShawn Drumgo claims that Kuschel patted and groped him inappropriately as other inmates and staff watched, then squeezed his genitals so hard that the skin ruptured while other guards laughed and failed to intervene.

Other DOC workers testified that the search was proper and testified that they never heard Drumgo tell Kuschel to stop what he was doing, as other inmates had said.

The judge ruled that Drumgo had failed to show that Kuschel subjected him to cruel and unusual punishment. He also said Kuschel was immune from the suit as a government employee based on claims raised against him in his official capacity.

The appeal courts ruled Monday that the judge erred in ruling that Drumgo had failed to show sufficient facts to establish a claim that Kuschel violated his rights under the Eighth Amendment to be free from cruel and unusual punishment.

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The court said weighing the evidence presented by Kuschel against the evidence presented by Drumgo is a factual issue that must be resolved by a jury, not a judge.

DOC officials had won a previous summary judgment ruling after claiming that Drumgo had failed to exhaust available administrative remedies before filing his lawsuit. They said there was no record in the prison database indicating that Drumgo had filed a grievance.

But after Drumgo successfully appealed that ruling, prison officials told the court a subsequent search found that Drumgo did file a grievance against Kuschel. Officials said the grievance was docketed in a separate database for confidentiality reasons because it involved allegations of sexual misconduct.