

727 F.3d 983
United States Court of Appeals,
Ninth Circuit.

Barry A. HAZLE, Jr., Plaintiff-Appellant,
v.

Mitch CROFOOT; Individually and as Parole Officer of the CDCR; Brenda Wilding, Individually and as Unit Supervisor of the CA Dept. of Corrections; Matthew Cate, Individually and as Unit Supervisor of the CA Dept. of Corrections; Scott Kernan, Individually and as Chief Deputy Secretary of Adult Operations of the CA Dept. of Corrections and Rehabilitation; Tim Hoffman, Individually and as Director of the Division of Adult Parole Operations in California; Deputy Jallins, Individually and as Deputy Commissioner; Westcare, A Nevada Non-Profit Corporation, Defendants-Appellees.

No. 11-45354.

Argued and Submitted Feb. 12, 2013.

Filed Aug. 23, 2013.

Synopsis

Background: Parolee, who was an atheist, brought action against various state officials and a state contractor, seeking damages and injunctive relief for the deprivation of his First Amendment rights, after his parole was revoked following his refusal to participate in a residential drug treatment program, as a condition of his parole, that required him to acknowledge a higher power. After parolee was granted partial summary judgment, a jury awarded parolee zero damages, and the United States District Court for the Eastern District of California, Garland E. Burrell, Jr., Senior District Judge, 2011 WL 121643, denied parolee's motion for a new trial. Parolee appealed.

Holdings: The Court of Appeals, Reinhardt, Circuit Judge, held that:

[1] parolee was entitled to an award of compensatory damages;

[2] fact issue precluded summary judgment on parolee's § 1983 claim against state contractor; and

[3] parolee's claim for injunctive relief was not moot.

Reversed and remanded.

West Headnotes (11)

[1] Federal Courts

- ☞ Summary judgment
- 1708 Federal Courts
- 1708XXVII(K) Courts of Appeals
- 1708XXVII(K)(2) Scope and Extent of Review
- 1708K3576 Procedural Matters
- 1708K3604 Judgment
- 1708K3604(4) Summary judgment

(Formerly 1708K776)

Court of appeals reviews de novo a district judge's decision to grant summary judgment to determine whether there are any genuine issues of material fact and whether the district judge correctly applied the substantive law.

2 Cases that cite this headnote

Federal Courts

- ☞ Instructions
- 1708 Federal Courts
- 1708XXVII(K) Courts of Appeals
- 1708XXVII(K)(2) Scope and Extent of Review
- 1708K3576 Procedural Matters
- 1708K3601 Instructions
- (Formerly 1708K776)

Court of appeals reviews de novo whether a jury instruction misstates the law.

1 Cases that cite this headnote

Federal Courts

- ☞ New Trial, Rehearing, or Reconsideration
- 1708 Federal Courts
- 1708XXVII(K) Courts of Appeals
- 1708XXVII(K)(2) Scope and Extent of Review

1708XXVII(K)(2) Standard of Review
1708K3576 Procedural Matters
1708K3606 New Trial, Rehearing, or Reconsideration
1708K3606(1) In general

(Formerly 1708K825.1)

Court of appeals reviews for abuse of discretion a district judge's decision to deny a motion for a new trial; in such review, the court of appeals first looks to whether the trial court identified and applied the correct legal rule to the relief requested, and then looks to whether the trial court's resolution of the motion resulted from a factual finding that was illogical, implausible, or without support in inferences that may be drawn from the facts in the record.

Cases that cite this headnote

[4] Federal Courts

- ☞ Mode and sufficiency of presentation
- 1708 Federal Courts
- 1708XXVII(K) Courts of Appeals
- 1708XXVII(D) Presentation and Reservation in Lower Court of Grounds of Review
- 1708XXVII(D)(1) In General
- 1708K3392 Mode and sufficiency of presentation
- (Formerly 1708K635)

When a jury addresses solely the issue of damages, there is no duty to object that the verdict is inconsistent with a finding of liability before the jury is discharged.

1 Cases that cite this headnote

[5] Civil Rights

- ☞ Grounds and subjects; compensatory damages
- 78 Civil Rights
- 7811 Federal Remedies in General
- 78K1458 Monetary Relief in General
- 78K1462 Grounds and subjects; compensatory damages

Parolee, an atheist, was entitled to an award of compensatory damages for each day that he spent in prison as a result of the violation of his First Amendment rights by various state officials, arising from revocation of his parole

after he refused to participate in a residential drug-treatment program that required him to acknowledge a higher power. U.S.C.A. Const.-Amend. 1.

1 Cases that cite this headnote

Civil Rights

- ☞ Nominal damages
 - 78 Civil Rights
 - 7811 Federal Remedies in General
 - 78K1458 Monetary Relief in General
 - 78K1461 Nominal damages
- Nominal damages must be awarded when a defendant is found to have violated the plaintiff's constitutional rights in cases in which the plaintiff is not entitled to compensatory damages, such as cases in which no actual injury is incurred or can be proven.

9 Cases that cite this headnote

[7] Civil Rights

- ☞ Grounds and subjects; compensatory damages
- 78 Civil Rights
- 7811 Federal Remedies in General
- 78K1458 Monetary Relief in General
- 78K1462 Grounds and subjects; compensatory damages

When a plaintiff has indisputably suffered an actual injury in a civil rights action, an award of compensatory damages is mandatory once liability is found.

6 Cases that cite this headnote

[8] Civil Rights

- ☞ Acts or Conduct Causing Deprivation
- 78 Civil Rights
- 781 Rights Protected and Discrimination Prohibited in General
- 78K1030 Acts or Conduct Causing Deprivation
- 78K1031 In general

A finding of liability in a civil rights action requires, as a matter of law, that the defendant be the proximate cause of the § 1983 injury. 42 U.S.C.A. § 1983.

2 Cases that cite this headline

[9]

Questions of law or fact

379 Torts

3791 In General

379K148 Questions of law or fact

The question of whether an injury is capable of apportionment is a legal one to be decided by the judge, not the jury.

1 Cases that cite this headline

[10] Federal Civil Procedure

Civil rights cases in general

170A Federal Civil Procedure

170AXVII Judgment

170AXVII(C) Summary Judgment

170AXVII(C2) Particular Cases

170AK2491.5 Civil rights cases in general

Genuine issue of material fact existed as to whether state contractor's conduct was a proximate cause of parolee's unconstitutional imprisonment following his refusal to participate in a residential drug treatment program, as a condition of his parole, that required him to acknowledge a higher power, when it contracted only with drug treatment facilities offering solely religious based programs or services, and counseled and arranged for parolee to attend a religion-based facility as part of his state-imposed parole program, despite having been informed that parolee was an atheist and that he objected to such religious programming, precluding summary judgment on parolee's § 1983 claim against the state contractor for violations of his First Amendment rights. U.S.C.A. Const. Amend. 1; 42 U.S.C.A. § 1983.

1 Cases that cite this headline

[11] Injunction

Mootness and ripeness/indefiniteness

remedy

Injunction

Duration of confinement and release

212 Injunction

212I Injunctions in General; Permanent

Injunctions in General

212I(B) Factors Considered in General

212I106 Mootness and ripeness/indefiniteness

remedy

212 Injunction

212IV Particular Subjects of Relief

212IV(C) Criminal Matters and Proceedings

212I1200 Prisons and Prisoners

212I1206 Duration of confinement and release

Parolee's claim under California law for an injunction preventing both a state contractor and various state officials from expending state funds in an unconstitutional manner that required parolees to participate in religious treatment programs in order to be eligible for parole, failed to provide parolees with secular or non-religious treatment alternatives, and revoked the parole of those who protested or resisted participation in religion-based treatment programs, was not rendered moot after the state issued a directive stating that parole agents could not require a parolee to attend any religious based program if the parolee refused to participate for religious reasons, where the state directive had not been implemented in any meaningful fashion. U.S.C.A. Const. Amend. 1; West's Ann.Cal.C.C.P. § 526a.

2 Cases that cite this headline

Attorneys and Law Firms

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Appeal from the United States District Court for the Eastern District of California, Garland E. Burrell, Jr., Senior District Judge, Presiding. D.C. No. 2008-cv-02295-GER-BFB.

*986 Before: DOROTHY W. NELSON, STEPHEN REINHARDT, and MILAN D. SMITH, JR., Circuit Judges.

OPINION

REINHARDT, Circuit Judge:

In 2007, citing "uncommonly well-settled case law," we held that the First Amendment is violated when the state coerces an individual to attend a religion-based drug or alcohol treatment program. *Hooye v. Kernan*, 504 F.3d 705, 712, 716 (9th Cir. 2007). Plaintiff Barry Hazle is an atheist who, over his numerous objections, was forced as a condition of parole to participate in a residential drug treatment program that required him to acknowledge a higher power. When Hazle refused, he was removed from the treatment program and arrested; his parole was revoked, and he was imprisoned for an additional 100 days.

Hazle subsequently filed this suit, seeking damages and injunctive relief for the deprivation of his First Amendment rights. The district judge held, consistent with the "uncommonly well-settled case law," that the state defendants in this case were liable for the violation that Hazle alleged—a finding that the state defendants do not appeal. Nevertheless, the jury, which addressed only the issue of damages, awarded Hazle zero damages for the violation of his constitutional rights.

We hold that the district judge erred in denying Hazle's motion for a new trial based on the jury's failure to award damages, and therefore reverse. We also hold that the district judge erred in instructing the jury to determine whether liability should have been apportioned among the

multiple defendants in this case and in dismissing certain other of Hazle's claims. Accordingly, we remand to the district court for, *inter alia*, a new trial against the state defendants on the issue of damages.

I. Background

A. The Parties

Plaintiff Barry A. Hazle, Jr. is an atheist. As he put it at trial, "[T]hat simply means that you're not religious.... [T]hat means I don't believe in God...." He testified that he is a member of several secular humanist organizations, including American Atheists. When asked about the role of atheism in his life, he testified, "I never really had any great reason to get religious or to believe in God.... I don't think it's my position or duty to look at what anybody else believes and try and ... judge them because of it.... [My] beliefs have nothing to do with [others], and theirs have nothing to do with me. I just don't want them forced upon me."

Hazle's lawsuit names as defendants a number of state employees, sued both individually and in their official capacities. (We refer to them collectively as the "state defendants.") Defendant Mitch Crofoot was the parole agent assigned to Hazle during the events that form the basis of this suit. Hazle alleged that Crofoot threatened to revoke his parole and return him to prison when Hazle refused to participate in a religion-based drug treatment program, and that he eventually fulfilled that threat by recommending that Hazle's parole be revoked and deciding (in conjunction with other defendants) that Hazle should be returned to prison.

Defendant Brenda Wilding was, during the relevant events, Crofoot's Unit Supervisor. Hazle alleges that Wilding approved and ratified Crofoot's decision to revoke his parole. Defendant Richard Jalilias was the Associate Chief Deputy Commissioner with the California Department of Corrections and Rehabilitation's (CDCR) Board of Parole Hearings. Hazle alleges that Jalilias gave the final approval for the order revoking Hazle's parole and returning *987 him to state prison. 1

Defendant Westcare is a private entity that contracted with the CDCR as a regional Substance Abuse Services

Coordination Agency (SASCA) in Hazle's region of California. As a SASCA, Westcare creates a network of treatment facilities for parolees with drug-related convictions and coordinates with the State to place parolees in these programs. Empire Recovery Center (not a defendant) is a not-for-profit recovery center in Redding, California, that contracts with Westcare to provide substance abuse treatment to parolees upon their release. Empire uses a 12-step recovery program, developed by Alcoholics Anonymous and Narcotics Anonymous, that includes references to "God" and to a "higher power." (Hereinafter, a 12-step program will always refer to a religion-based treatment program.) Empire despite his request that he not be placed in a religion-based treatment program, and that Westcare has a policy of contracting only with religion-based treatment programs, thus rendering it unable to provide non-religious parolees with a secular treatment alternative.²

B. Factual Background

In 2006 Hazle entered a no-contest plea on state law charges pertaining to possession of methamphetamine, and was placed on probation. When his probation was revoked, he was incarcerated as a civil addict from February 27, 2006, until February 26, 2007, at the California Rehabilitation Center (CRC), a state prison in Norco, California.³ Hazle was released on parole on February 26, 2007, with the condition that he attend and complete a 90-day residential drug treatment program.

Prior to his release on parole, Hazle told correctional authorities and Westcare representatives that he was an atheist, and requested placement in a non-religious treatment program. A Westcare representative advised him that he should ask to be assigned to Empire, and Hazle was assigned to serve his residential treatment there. Upon arriving at Empire, Hazle quickly discovered that Empire uses a religion-based 12-step recovery program.

While at Empire, Hazle contacted Westcare representatives several times. He told them that he objected to the religious nature of the 12-step program and that he wished to be transferred to a secular program. When Hazle inquired whether a secular program existed, Westcare's representative informed him that the only alternative to Empire was a treatment facility whose

program had an even greater focus on religion than Empire's. Hazle also contacted Crofoot, asking him whether he could fulfill his requirement through a secular program. Crofoot told Hazle that he needed to continue at Empire and participate in the 12-step program while Crofoot looked into the issue. Crofoot called Westcare, which informed him that it had no secular programs in Northern California. Crofoot subsequently informed Hazle in 1988 that there were no available alternatives to the 12-step program he was in, but that, if he wanted to, he could file an Inmate/Parolee Appeal to petition for a change in the conditions of his parole. Crofoot again told Hazle that he should continue to participate in the treatment program, or else his parole would be revoked and he would be returned to prison.

On April 3, 2007, Hazle presented Crofoot with his appeal challenging the conditions of his parole, in which he stated his objection to participating in the faith-based program:

As an Atheist, I object to forced participation in any spiritual/religious activities... I have been told by my parole officer that I must complete the 90 days of spiritual treatment because there are no available secular recovery alternatives.

Since the CDCR [cannot] provide me with a secular alternative to 12-step based treatment, I would like the in-patient treatment stipulation removed from my parole conditions so that I may return home ASAP.

He attached a document explaining his beliefs, which included a summary of numerous court opinions holding that the Establishment Clause prohibits forcing nonreligious individuals to participate in a 12-step program. Hazle's attachment stated,

Let me begin by assuring you that my aim in this endeavor is not to get out of having to complete my Parole requirements. I have committed myself to a full and lasting *secular* recovery and complete abstinence from illegal drugs.

According to Crofoot, on April 6, 2007, representatives of Empire informed him that Hazle was being "disruptive, though in a congenial way, to the staff as well as other students." His demeanor was described as "sort of passive aggressive." That same day, Crofoot spoke with his

supervisor, Brenda Wilding, and they concluded that the proper course of action was to refer Hazle to the Board of Parole Hearings for a parole violation, because he was refusing to participate in the drug-treatment program that was a condition of his parole. Both Crofoot and Wilding knew that Hazle objected to participation in the Empire program because he was an atheist. They decided to have Hazle returned to prison.

Later that day, Crofoot arrested Hazle, and placed him in Shasta County Jail. After Hazle's arrest, Crofoot called CRC (the state prison in Norco) and requested that Hazle be returned to their custody. Crofoot obtained an oral order of return authorized by Deputy Commissioner Richard Jallins. Hazle was subsequently incarcerated for over 100 additional days, most of which he spent at the state prison in Norco.

While in prison, Hazle received a response regarding his parole appeal, stating that the Civil Addict Program required that he complete an inpatient program. It also stated:

It would behoove you to take advantage of the tools that are offered to you to help you with your addiction, behavior, and adjustment to society.

Per your Agent of Record, Mr. Crofoot, he has made attempts to locate treatment facilities to accommodate your preference, per Mr. Crofoot, Empire Recovery was the best suited for you. Your negative behavior toward staff caused you to be discharged from that program leaving your Agent of Record no other choice but to return you to CRC for further treatment.

Therefore, your request is denied.

Subsequent to Hazle's filing his complaint, the CDCR issued a directive in 1989 response to our decision in *Inouye v. Kernaz*, 504 F.3d 705 (9th Cir.2007), stating that parolees could not be compelled to attend a religion-based program if they refuse to participate in such a program for religious reasons. The directive requires that such parolees instead "be referred to an alternative nonreligious program."

C. Procedural History

The court held a two-day jury trial on the issue of damages. Prior to the opening statements, the jury was read a number of stipulated facts, including facts

Hazle filed a complaint seeking damages and injunctive relief and alleging two causes of action: a claim under 42 U.S.C. § 1983 for violation of his First Amendment rights, and a taxpayer injunction claim under California state law. Specifically, the complaint alleged that Hazle's rights under the First Amendment's Establishment Clause were violated when (1) he was required to participate in a 12-step program as a condition of his parole, (2) his requests to fulfill parole through a secular program were rejected, and (3) his parole was revoked, and he was incarcerated, when he refused to participate in the 12-step program. Hazle sought compensatory damages—both for emotional distress and for his loss of liberty in having been reincarcerated—as well as punitive damages.

Hazle subsequently moved for partial summary judgment against the state defendants (Crofoot, Wilding, and Jallins), seeking to establish their liability on his section 1983 claim for "violating [his] rights under the Establishment Clause ... by requiring him ... to continue participating in a '12-step' drug rehabilitation program that contained religious components." The district judge granted Hazle's motion. Notably, the district judge rejected the state's argument that it was Hazle's own behavior that had resulted in his being removed from the Empire program, concluding that "[t]his argument rings hollow in light of the undisputed facts showing that Plaintiff was only 'disruptive' in the program, 'in a congenial way.'"

In the same order, the district judge granted summary judgment in favor of Westcare on Hazle's section 1983 claim against it. The district judge held that Hazle had not established the necessary causal connection between Westcare's actions and the violation of his rights, and therefore could not prevail on this claim. The district judge did not address the issue of whether Westcare was a state actor for purposes of section 1983 liability.

The district judge also granted both Westcare and the state defendants summary judgment on Hazle's state law claim for injunctive relief, holding that this claim was moot in light of the state's directive requiring that individuals who object to religion-based treatment programs be placed in non-religious programs.

regarding the condition of California prisons. The district judge also gave the jury notice of his prior finding regarding the liability of the state defendants. At trial, the state defendants in Hazle's section 1983 claim—Crofoot, Wilding, and Jallins—all testified, as did Hazle himself. On the second day of trial, after closing arguments, the jury was charged.

The parties had submitted proposed jury instructions and verdict forms following a pre-trial conference. Before the jury was charged, the parties and the district judge extensively discussed the jury instructions and verdict form. Because the state defendants had testified at trial that they did not have the authority to change Hazle's conditions of parole, the district judge began to inquire about the liability of state employees other than the state defendants named in this case. He eventually *990 gave jury instructions and approved a jury verdict form that adopted defendants' proposal that the jury decide whether defendants were jointly and severally liable, or whether damages should be apportioned among the defendants (and, if the latter, instructing the jury to apportion damages).

The day after it was charged, the jury delivered a note to the district judge requesting "[v]erification of the Court's determination of a guilty verdict having been rendered against the Defendants for violation of the Plaintiff's constitutional rights." The jury further expressed its confusion regarding "whether the Defendants are the only parties who have been found in violation of the Plaintiff's rights." After extended argument, the district judge gave a supplemental instruction to the jury noting that defendants "are the only state employees who have been sued for damages and have been found liable."

Later that day, the jury returned a verdict finding that the defendants were not jointly and severally liable for either the emotional distress damages or the loss of liberty damages, and awarding Hazle zero damages from every defendant as to both sets of damages (both emotional distress and loss of liberty). Judgment was entered "in accordance with the jury verdict."

Hazle filed a timely motion for a new trial under Federal Rule of Civil Procedure 59(a). The motion contended, *inter alia*, that the jury erred in awarding zero damages, in that the jury's failure to award compensatory—or at least nominal—damages on his loss of liberty claim

was contrary to law and the weight of the evidence. 4 The district judge denied Hazle's motion for a new trial on two independent grounds. First, he ruled that Hazle had waived any objection to the verdict by failing to object before the jury was discharged. Second, he concluded, citing the jury's finding that damages could be apportioned among the defendants, that the jury's verdict was consistent with "the jury ... not finding any defendant was a cause of any of Hazle's injuries." We have jurisdiction over Hazle's timely filed appeal pursuant to 28 U.S.C. § 1291.

D. Standard of Review

[1] [2] [3] We review *de novo* the district judge's decision to grant summary judgment to determine whether there are any genuine issues of material fact and whether the district judge correctly applied the substantive law. *Burlington Inc. Co. v. Occam Design & Constr., Inc.*, 383 F.3d 940, 944 (9th Cir.2004). We also review *de novo* whether a jury instruction misstates the law. *See Wall Data Inc. v. Los Angeles City Sheriff's Dept.*, 447 F.3d 769, 784 (9th Cir.2006). We review for abuse of discretion the district judge's decision to deny a motion for a new trial. *United States v. Hinkson*, 585 F.3d 1247, 1263 (9th Cir.2009). In such review, "we first look to whether the trial court identified and applied the correct legal rule to the relief requested. Second, we look to whether the court's resolution of the motion resulted from a factual finding that was illogical, implausible, or without support in inferences that may be drawn from the facts in the record." *Id.*

II. Hazle's Motion for a New Trial

We first address Hazle's motion for a new trial based on the jury's failure to award him damages for his loss of liberty. *991 We hold, as a matter of law, that Hazle was entitled to compensatory damages from the state defendants for his unlawful term of imprisonment. We therefore reverse the denial of a new trial, and remand on the issue of damages.

A.

[4] As an initial matter, we hold that the district judge erred in concluding that Hazle waived his challenge to the jury's verdict awarding him zero damages by failing to object at the time the jury was discharged. The state defendants argue, citing our decision in *Phillipine Nat'l Oil Co. v. Garret Corp.*, that a party must object to a jury's zero-damages verdict "when the verdict [is] read," or else waive any objection to the verdict. 724 F.2d 803, 806 (9th Cir. 1984). Our decision in *Kode v. Carlson* however, clarified that the rule in *Phillipine National* applies only in those circumstances in which the verdict is "intrinsically inconsistent"—as when, for example, the jury decides both the issues of liability and damages, and does so inconsistently. 596 F.3d 608, 611 (9th Cir.2010). As we held in *Kode*, when a jury addresses solely the issue of damages, there is no duty to object that the verdict is inconsistent with a finding of liability before the jury is discharged. The jury's verdict in such a case is not inconsistent with another of its conclusions. *Id.* It is, at most, inconsistent with an extrinsic legal conclusion made by another (here, the district judge). *Id.* The state defendants offer no reason why *Kode* should not govern this case, and we accordingly reverse the district judge's determination that Hazle waived his objection to the jury's zero-damages verdict. 5

B.

[5] [6] We now turn to the question raised by Hazle's new-trial motion: whether Hazle is entitled to compensatory damages from the state defendants. 6 We hold that he is. The district judge's finding of liability establishes that Hazle suffered actual injury when he was unconstitutionally incarcerated. Given this undisputed finding that Hazle's constitutional rights were violated, and applying the rule that the award of compensatory damages is mandatory *992 when the existence of actual injury is beyond dispute, we hold that the district judge erred in refusing to hold that Hazle was, as a matter of law, entitled to compensatory damages. We therefore reverse the district judge's denial of Hazle's motion for a new trial.

[7] The Supreme Court has held that entitlement to compensatory damages in a civil rights action is not a matter of discretion: "Compensatory damages ... are mandatory; once liability is found, the jury is required to award compensatory damages in an amount appropriate to compensate the plaintiff for his loss." *Smith v. Wade*,

461 U.S. 30, 52, 103 S.Ct. 1625, 75 L.Ed.2d 632 (1983) (emphasis added). Consistent with *Smith*, when a plaintiff has indisputably suffered an actual injury in a case such as this, an award of compensatory damages is mandatory. The state defendants suggest that we are bound to affirm the district judge's decision under cases such as *Phillipine National*, in which we addressed the conflict between a jury's simultaneous finding of liability and its decision to award no damages, and held that the "failure to award damages does not by itself render a verdict invalid." *See* 724 F.2d at 806; *see also, e.g., Guy v. City of San Diego*, 608 F.3d 582, 588 (9th Cir.2010) (affirming an award of only nominal damages). In the cases in which we have upheld zero-damages verdicts, however, we have explicitly noted that the facts of those cases lent themselves to the conclusion that no actual injury had been suffered by the plaintiff. *See Guy*, 608 F.3d at 588 (noting that the jury could have discredited the plaintiff's testimony of injury, given that it had discredited some of his other testimony); *Wills v. Hayes*, 5 F.3d 412, 415 (9th Cir.1993) (reasoning that the jury reasonably "did not believe Wills suffered injury"); *Phillipine Nat'l*, 724 F.2d at 806 ("[T]he evidence about the damages that PNOOC sustained from [defendant's] misrepresentations was in conflict. The jury could have found that PNOOC sustained no damage from any misrepresentations."). We are aware of no cases in which we have affirmed a zero-damages verdict when, as here, the existence of actual injury was indisputable.

In this case, the fact that state defendants' unconstitutional conduct caused Hazle to suffer actual injury—namely, being imprisoned in violation of his First Amendment rights—was established as a matter of law. The district judge found that the state defendants were liable for the constitutional violations in his grant of partial summary judgment. As the district judge explained to the jury, "I decided in a pretrial ruling that each defendant violated plaintiff's First Amendment Establishment Clause right by ... arresting and incarcerating plaintiff because of [his] failure to participate in the program" (emphasis added). Further, the parties stipulated, in fact, read to the jury, that Hazle's period of reincarceration lasted from April 2007 until July 2007. Thus, it is not the failure to award damages, "by itself," that renders the jury's verdict invalid. *Phillipine Nat'l*, 724 F.2d at 806. What renders the jury's decision invalid is its decision to award zero damages in light of proof of actual injury: Hazle's unlawful imprisonment because of his exercise of his First Amendment rights.