

RENDERED: May 30, 2003; 10:00 a.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2001-CA-001016-MR

BUSTER CHANDLER

APPELLANT

v.

APPEAL FROM LYON CIRCUIT COURT  
HONORABLE BILL CUNNINGHAM, JUDGE  
ACTION NO. 01-CI-00013

PHIL PARKER, GLENN HAEBERLIN,  
JOHN T. DAMORON, BILL CUNNINGHAM

APPELLEES

OPINION  
AFFIRMING

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BEFORE: DYCHE, HUDDLESTON, AND KNOPF, JUDGES.

KNOPF, JUDGE. On January 19, 2001, the appellant, Buster Chandler, filed a petition for declaration of rights in the Lyon Circuit Court against Phil Parker, warden of the Kentucky State Penitentiary (KSP), Glenn Haeberlin, deputy warden, John T. Damoron, an attorney with the Department of Corrections' Office of General Counsel, and Hon. Bill Cunningham, Judge of the Lyon Circuit Court. In his petition, Chandler objected to the KSP's

policies 14-04-01 § G (2)(A) and 14-04-01 § E (1). These policies limit the number of free photocopies an inmate may make, and this limitation, Chandler argued, is unconstitutional. Chandler argued that the appellees entered into a conspiracy and through the use of these policies unconstitutionally restricted his access to the courts not only in the Commonwealth but also in other states. The appellees, through counsel, successfully moved to dismiss Chandler's petition. Subsequently, Chandler appealed to this Court.

Before we discuss Chandler's arguments, it will be helpful to look at the policies in question. Policy 14-04-01 § G (2)(A) reads:

Indigent inmates shall be entitled to two (2) copies of court "legal pleadings" at no cost. Indigent inmates who need additional copies shall show proof of indigency and the need for additional copies. Carbon paper shall be used if the inmate wishes an additional copy.

According to Chandler, policy 14-04-01 § E (1) reads:

Indigent inmates will be only allowed two (2) free copies of Correction or Institutional policies.

In his *pro se* brief, Chandler argues that KSP policy 14-04-01 § G (2)(A) prohibits him from complying with CR 76.12(3), which requires an appellant to this Court to file five (5) copies of his brief. It also requires an appellant to our Supreme Court to file ten (10) copies of his brief. Since KSP

policy 14-04-01 § G (2)(A) limits Chandler to only two free copies of any legal pleading, he contends that this policy frustrates his access both to this Court and the Supreme Court.

Chandler also argues that the photocopy policy prevents him from complying with CR 5.01. Chandler contends that CR 5.01 requires him to serve copies of his complaints on the numerous defendants in his multiple civil lawsuits. (We note that Rule 4 of the Kentucky Rules of Civil Procedure controls service of process on civil defendants.) Chandler argues that his various lawsuits have multiple defendants but since this policy limits him to only two copies of legal pleadings, he is unable to obtain service of process on all the defendants in his lawsuits. Thus, he claims, this policy frustrates his access to trial courts both in the Commonwealth and in other states.

Chandler insists that this policy, 14-04-01 § G (2)(A), violates sections one (1) through six (6) of the Kentucky Constitution and the Fifth Amendment's right to equal protection and the Fourteenth Amendment's right to due process. He concedes that both this Court and the Supreme Court of Kentucky allow indigent appellants, such as him, to file only one copy of their briefs. However, he points out that both this Court and the Supreme Court require all other taxpayers to file the requisite number of copies of their briefs pursuant to CR

76.12(3). Chandler argues that this violates equal protection. He insists that this policy denies him the "right" to make the same number of copies of legal pleadings that all other taxpayers have. He insists that the Legislative Research Commission and the Kentucky Supreme Court gave him a constitutional "right" to file the same number of copies as any other taxpayer. Thus, this "right" rises to the level of a liberty interest; thus, denial of the "right" violates the Fourteenth Amendment's right to due process.

Chandler also argues that KSP policy 14-04-01 § E (1) violates sections one, two, three, six, and fifty-nine of the Kentucky Constitution and the Fourteenth Amendment's right to equal protection and right to due process. Chandler insists that this policy limits him to only two free copies of the KSP's policies and procedures. Because of this limit, he contends that he does not have enough copies of the KSP's policies to attach to his civil complaints when serving process on the numerous defendants in his various lawsuits. He argues this causes him to lose his lawsuits due to insufficient service of process. Chandler also argues that because he cannot make the required number of copies, this policy denies him access to the courts, which violates his First Amendment rights.

We find Chandler's arguments unpersuasive. While the United States Supreme Court has held that an inmate has a

constitutional right to adequate, effective, and meaningful access to the courts based on the Fourteenth Amendment's right to due process, adequate, effective and meaningful access does not include free and unlimited photocopies for inmates. Sands v. Lewis, 886 F.2d 1166, 1168 (9<sup>th</sup> Cir. 1989) citing Bounds v. Smith, 430 U.S. 817, 52 L.Ed.2d 72, 97 S.Ct. 1491 (1977).

For an inmate to make a credible claim that his right to access to the courts has been violated, he must show an actual injury. He must demonstrate that his efforts to pursue a nonfrivolous claim have been hindered. Penrod v. Zavaras, 94 F.3d 1399, 1403 (10<sup>th</sup> Cir. 1996). In other words, a correctional institution's policy regarding photocopies must have actually hindered an inmate's efforts to pursue a nonfrivolous lawsuit. Jones v. Franzen, 697 F.2d 801, 803 (7<sup>th</sup> Cir. 1983), see also Gibson v. McEvers, 631 F.2d 95 (7<sup>th</sup> Cir 1980). We agree with the federal courts that inmates do not have the right to free and unlimited photocopies from correctional institutions.

We point out that Chandler fails to show that any of his various lawsuits were negatively affected let alone dismissed due to the KSP's policies regarding photocopies. We note that Chandler failed to cite even one specific incident where the KSP actually refused to provide him photocopies. The very fact that he successfully filed his petition with the Lyon Circuit Court and successfully filed an appeal with this Court

demonstrates that the KSP's policies have not hindered his access to the courts. Therefore, we find the circuit court did not err when it dismissed Chandler's petition. We find that KSP's policies regarding photocopies as applied to Chandler did not violate any of his constitutional rights.

Chandler also argues that Judge Cunningham abused his discretion by failing to disqualify himself. Chandler filed with the circuit court a motion for Judge Cunningham to recuse. Chandler argued that he had named Judge Cunningham as a defendant, and since the judge was a party, he should disqualify himself. Chandler argued the judge was not impartial. The circuit court never ruled on the motion, and Chandler never insisted on a ruling. As a result, Chandler failed to preserve this issue for appeal. Since Chandler failed to preserve the issue, we shall not address it.

For the foregoing reasons, we affirm the Lyon Circuit Court's order dismissing Chandler's petition.

ALL CONCUR.

BRIEF FOR APPELLANT:

No brief for appellee

Buster Chandler, *pro se*  
Eddyville, Kentucky