

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002093-MR

FRANK SIMPSON

APPELLANT

v.

APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 02-CI-00114

JAMES MORGAN, WARDEN

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, GUIDUGLI, AND TACKETT, JUDGES.

BUCKINGHAM, JUDGE: Frank Simpson, an inmate at the Northpoint Training Center in Burgin, Kentucky, appeals from an order of the Boyle Circuit Court dismissing his motion for declaratory judgment challenging the constitutionality of Correction's Policy and Procedure (CPP) 17.1(8).¹ We conclude that the circuit court properly dismissed the motion and thus affirm.

¹ Simpson had a prior appeal involving a similar issue with Warden Morgan. See 2000-CA-001031-MR.

Simpson ordered a comic book and several fantasy magazines from a retailer specializing in used and out-of-print role-playing games and magazines. Upon receipt of the publications at the prison institution, prison officials determined that the publications violated CPP 17.1(8). That prison regulation provides that "[a]n inmate shall not be permitted to own or possess any role playing games, including Dungeons and Dragons, Vampires, etc." Therefore, the prison officials did not allow Simpson to have the publication.²

Simpson filed a motion for declaratory relief with the circuit court arguing that the regulation violated his rights under the First Amendment of the U.S. Constitution. The court disagreed and dismissed Simpson's motion. This appeal followed.

"[W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." Turner v. Safley, 482 U.S. 78, 89, 107 S.Ct. 2254, 2261, 96 L.Ed.2d 64 (1987). In the Turner case, the U.S. Supreme Court noted

² Although Simpson argues in his brief that the publications are not "games" within the meaning of the regulation, he acknowledged in his motion for declaratory relief that "[t]he current regulation, apparently authorizes rejection of all T.S.R. publications, including comic book and fantasy magazines." Thus, we will not address this argument. We are "without authority to review issues not raised in or decided by the trial court." Regional Jail Authority v. Tackett, Ky., 770 S.W.2d 225, 228 (1989).

several factors that are relevant in determining the reasonableness of the regulation at issue. They are:

- 1) There must be a "valid, rational connection" between the prison regulation and the legitimate governmental interest put forward to justify it.
- 2) Whether there are alternative means of exercising the right that remain open to prison inmates.
- 3) The impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally.
- 4) The absence of ready alternatives is evidence of the reasonableness of a prison regulation.

482 U.S. at 89-90, 107 S.Ct. at 2262.

First, regulations aimed at protecting prison security are "central to all other corrections goals." Pell v. Procunier, 417 U.S. 817, 823, 94 S.Ct. 2800, 2804, 41 L.Ed.2d 495 (1974). There is evidence in the record that materials like those ordered by Simpson "have the potential to cause disruption among the inmates and possibly threaten the safety and security of the institution." See affidavit of Joseph Rion, Deputy Warden of Security at Northpoint Training Center. Therefore, there is a "valid, rational connection" between the regulation

prohibiting such materials and the prison's interest in maintaining security.

The second factor is whether there are alternative means of exercising the right that remain open to Simpson and other prison inmates. Where other avenues are available for the exercise of the asserted right, courts should be conscious of the "measure of judicial deference owed to correction officials . . . in gauging the validity of the regulation." Pell, 417 U.S. at 627, 94 S.Ct. at 2806. Simpson acknowledges that the prison library has numerous comic books and fantasy-related magazines. The prison regulation excludes only those materials used to participate in role-playing games. The regulation does not prevent Simpson or other inmates from reading the fantasy or science fiction literature available in the prison library. Thus, alternative means exist through which Simpson might readily exercise his First Amendment rights.

The third relevant factor is the impact accommodation of the asserted constitutional right will have on guards and other inmates and on the allocation of prison resources generally. "When accommodation of an asserted right will have a significant 'ripple effect' on fellow inmates or on prison staff, courts should be particularly deferential to the informed discretion of corrections officials." Turner, 42 U.S. at 90, 107 S.Ct. at 2262, citing Jones v. North Carolina Prisoners'

Labor Union, Inc., 433 U.S. 119, 132-33, 97 S.Ct. 2532, 2541, 53 L.Ed.2d 629 (1977). We conclude that accommodating Simpson's right to the publications could have a significant "ripple effect" on fellow inmates or on prison staff. Thus, we defer to the discretion of the corrections officials and their regulation.

Finally, we must determine whether the reasonableness of the regulation is evidenced by "the absence of ready alternatives." Id. "[T]he existence of obvious, easy alternatives may be evidence that the regulation is not reasonable, but is an 'exaggerated response' to prison concerns." Id. "[I]f an inmate claimant can point to an alternative that fully accommodates the prisoner's rights at *de minimis* cost to valid penological interests, a court may consider that as evidence that the regulation does not satisfy the reasonable relationship standard." 482 U.S. at 91, 107 S.Ct. at 2262.

Simpson claims that the purpose of CPP 17.1(8) might be achieved by excluding only role-playing rule books. However, this alternative would require prison officials to fully read every suspect publication arriving through the mail. That would place a tremendous burden on prison resources. Thus, there is an absence of ready alternatives.

We defer to the judgment of the prison officials that fantasy role-playing publications have the potential to threaten prison security. Under the Turner analysis of the relevant factors to be considered in determining the reasonableness of the prison regulation at issue herein, we conclude that the regulation is valid as it is reasonably related to legitimate penological interests. Therefore, the order of the Boyle Circuit Court dismissing Simpson's motion for declaratory relief is affirmed.

ALL CONCUR.

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