

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001018-MR

TEDDY ALLMAN

APPELLANT

v. APPEAL FROM MORGAN CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
ACTION NO. 05-CI-00315

JOHN MOTLEY, WARDEN;
AND JOHN REES

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: THOMPSON AND VANMETER, JUDGES; PAISLEY,¹ SENIOR JUDGE.

VANMETER, JUDGE: Kentucky's Corrections Policy and Procedure (CPP) 14.3 governs the marriage of inmates confined in state correctional institutions. The issues on appeal relate to whether appellant Teddy Allman's constitutional rights were violated when appellees denied his request to marry his non-inmate fiancée. For the reasons stated, we affirm.

¹ Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

In 2004, Allman was convicted of first-degree sodomy, and he was sentenced to ten years' imprisonment. In 2005, he requested but was denied permission to marry his fiancée, who is the mother of his child victim. On review of Allman's grievance, the Commissioner of Adult Institutions stated in part:

Because of the relationship of your fiancée to the victim of your crime, I cannot approve your request to marry at this time. Allowing such a marriage while you are still incarcerated could be seen as contrary to the penological and rehabilitative goals of the prison system. The victim will be an adult when you are released from prison and therefore no impediment to a marriage. No further response necessary at this time.

Allman then filed a petition seeking a declaration of rights in the Morgan Circuit Court. The court denied the petition and dismissed the action. This *pro se* appeal followed.

Allman's first claim, that his first and ninth amendment rights were violated, was not raised below and therefore will not be addressed on appeal. Further, we are not persuaded by his remaining claim that his due process rights were violated by the denial of his request to marry.

As stated in *Turner v. Safley*, 482 U.S. 78, 89, 107 S.Ct. 2254, 2261, 96 L.Ed.2d 64 (1987), “when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.” Thus, “legitimate security concerns may require placing reasonable restrictions upon an inmate's right to marry, and may justify requiring approval of the superintendent.” *Id.*, 482 U.S. at 97, 107 S.Ct. at 2266. The court indicated that a reasonable restriction might be one such as that provided by 28 CFR § 551.10 (1986), which the court described as

generally permitting inmate marriage unless the “warden finds that it presents a threat to security or order of institution, or to public safety.” *Id.* 482 U.S. at 98, 107 S.Ct. at 2266.

The matter before us turns on CPP 14.3, which permits an inmate of a Kentucky correctional institution to marry after receiving permission from the institution's warden. However, CPP 14.3(V)(B) compels a warden to disapprove an inmate's marriage for any of five enumerated reasons, including that “[t]he proposed marriage threatens the security of the institution or the public.” Given the similarity between that language and the federal regulatory language cited with approval in *Turner* and quoted above, we conclude that the CPP 14.3(V)(B) provision in issue is constitutional. Moreover, we do not disagree with the warden that it would be “contrary to the penological and rehabilitative goals of the prison system,” as well as violative of institutional or public security, to permit Allman, while serving his sentence, to marry the mother of his child victim regardless of whether the child now resides with someone other than the mother.

Finally, we are not persuaded by Allman's repeated references to *Procunier v. Martinez*, 416 U.S. 396, 94 S.Ct. 1800, 40 L.Ed.2d 224 (1974), *overruled by Thornburgh v. Abbott*, 490 U.S. 401, 109 S.Ct. 1874, 104 L.Ed.2d 459 (1989), and to an unidentified case which he cites as “586 F.Supp., 594.” The latter case in fact is *Safley v. Turner*, 596 F.Supp. 1989 (D.C. Mo. 1984), which was affirmed on appeal but then was reversed in part by the United States Supreme Court in *Turner*. Neither case supports Allman's claims or justifies the results he seeks on appeal.

The circuit court's order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Teddy Allman, *Pro se*
West Liberty, Kentucky

BRIEF FOR APPELLEES:

Karen S. Howard
Justice & Public Safety Cabinet
Office of Legal Services
Frankfort, Kentucky