

FILED
Court of Appeals
Division II
State of Washington
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No. 56736-9-II

THE COURT OF APPEALS OF
THE STATE OF WASHINGTON – DIVISION II

IN RE THE PERSON RESTRAINT PETITION OF:

JOSEPH ALLEN CAMPBELL,

Petitioner.

PETITIONER'S PERSONAL RESTRAINT PETITION,
SUPPLEMENTAL BRIEF REPLY

Sean M. Downs
WSBA #39856
Attorney for Petitioner
GRECCO DOWNS, PLLC
701 Columbia St. #109
Vancouver, WA 98660
(360) 707-7040
sean@greccodowns.com

A. ARGUMENT IN REPLY

The Department continues to erroneously indicate that Krystal Vian was an adjudicated victim of Mr. Campbell's. Hainline Dec., ¶ 6; Respondent's 07/15/2023 Response, p. 5. This is incorrect and which forms the basis for Mr. Campbell's petition. This petition was filed well before any subsequent protection order concerning Ms. Vian was placed into effect.¹ Therefore, the facts to be considered by this court are regarding the Department's violations of Mr. Campbell's due process rights well before any protection order was in effect.

The petitioner is not contesting the Department's authority to deny visitation when there is an active protection order in place with the potential visitor. The petitioner is simply

¹ Mr. Campbell's personal restraint petition was filed with this court on 03/09/2022. The Clark County Superior Court protection order regarding Ms. Vian did not go into effect until 10/12/2022.

seeking to remedy the erroneous finding by the Department that Ms. Vian is an adjudicated victim of Mr. Campbell.²

“It is the intent of the legislature to establish a comprehensive system of corrections for convicted law violators within the state of Washington to accomplish the following objectives...” RCW 72.09.010. Washington State enacted a directive that the Department of Corrections is to make its own rules for the proper execution of its power. RCW 72.01.090. “It shall also have the power to adopt rules and regulations for the government of the public institutions placed under its control, and shall therein prescribe, in a manner consistent with the provisions of this title, the duties of the persons connected with the management of such public institutions.” *Id.* The powers and duties vested for the

² That is not to say that the petitioner’s petition is mooted. The issue presented to this court still carries the consequence of affecting Mr. Campbell’s potential visitation in the future when there is no protection order in place. It also has the effect of affecting the conditions of Mr. Campbell’s release in the future.

management of adult correctional facilities was transferred to the secretary of the Department of Corrections. RCW 72.09.040.

Mr. Campbell has been a prisoner of the Department of Corrections throughout the pendency of this case and the applicable facts presented to this court. Although in prison, Mr. Campbell is under the protection of the laws of the State of Washington, pursuant to the mandate of RCW 9.92.110. Mr. Campbell should have been afforded the protection of law as set forth in DOC Policy 450.300. Mr. Campbell and Ms. Vian met the requirements for visitation since January 29, 2021, yet he has inexplicably denied. Ms. Vian was not and is not an adjudicated victim of Mr. Campbell's.

State officials and employees must execute and comply with the Department's policies as stated above and as detailed in previous briefing.³ Here, the Department violated its policy

³ Mr. Campbell has previously detailed that the secretary and superintendent of the Department of Corrections has a duty to Mr. Campbell to be under the protection of the law, pursuant to RCW 9.92.110

in previously denying Mr. Campbell visitation. But even more than that, the Department repeatedly and improperly documented Ms. Vian as being the victim of a domestic violence offense involving Mr. Campbell.⁴ The erroneous documents that have had the deleterious effect on Mr. Campbell were entered into the Department's records and were used to deprive Mr. Campbell of his visitation.⁵ This is a violation of

("[e]very person sentenced to imprisonment in any penal institution shall be under the protection of the law"), 72.09.050 ("[t]he secretary shall manage the department of corrections and shall be responsible for the administration of adult correctional programs"), and 72.02.045(1) ("the superintendent is responsible for the supervision and management of the institution, the grounds and buildings, the subordinate officers and employees, and the prisoners committed, admitted, or transferred to the institution").

⁴ The Department even claimed that Ms. Vian was the named victim in the instant case, which is demonstrably false from simply looking at the court documents that were provided to the Department upon sentencing.

⁵ Mr. Campbell has also noted in previous briefing that a willful violation of RCW 42.20.040 (false reporting), RCW 40.16.030 (offering false instrument for record), or RCW 9A.80.010 (official misconduct) may have occurred due to the prevalent and seemingly knowingly false characterizations of the charged domestic violence offense that have been entered into Mr. Campbell DOC records.

the state created liberty interest doctrine and Mr. Campbell's procedural due process rights.

The respondent cites *In re Dyer*, 143 Wn.2d 384, 20 P.3d 907 (2001) for the proposition that family visitation is a privilege. However, *Dyer* only addressed "extended family visitation" as that term was specifically identified in statute as a "privilege". See RCW 72.09.470; 72.09.015(11) ("Extended family visit" means an authorized visit between an inmate and a member of his or her immediate family that occurs in a private visiting unit located at the correctional facility where the inmate is confined). The privilege of extended family visits is not a normal incident of prison life, as it is a privilege granted only to a few qualified inmates. *Dyer*, 143 Wn.2d at 393. *Dyer* is therefore distinguishable, as non-extended family visitation is part of ordinary prison life. See RCW 72.09.015 (Finding—2020 c 319: "The legislature recognizes the importance of maintaining strong family ties throughout an individual's period of incarceration to help facilitate rehabilitation. Studies have

shown that regular visits from family members can reduce recidivism rates by thirteen percent. The legislature recognizes the importance and value that a strong, connected family network can provide to an individual once he or she is released from incarceration. The legislature further recognizes the financial and emotional toll that incarceration can take on the family of those experiencing incarceration. The legislature resolves to increase family interaction by expanding eligibility for family visitation and by providing transparency and availability of services inside correctional institutions.”).

Given the foregoing, the state statute, DOC policy, and legislative intent indicate an affirmative State-created liberty interest at stake in the instant case. Even applying the standard applied in *Sandin v. Conner*, 515 U.S. 472, 115 S. Ct. 2293, 132 L.Ed.2d 418 (1995), a protected liberty interest is nonetheless identified in the instant case. Regardless, our Washington State Supreme Court has endorsed the language of

*Hewitt*⁶, even after recognizing the rulings in *Sandin* and *Wilkinson*⁷, as cited and relied upon by the respondent. *See In re Lain*, 179 Wn.2d 1, 16–17, 315 P.3d 455 (2013) (“For a state law to create a liberty interest, it must contain ‘substantive predicates’ to the exercise of discretion and ‘specific directives to the decisionmaker that if the regulations’ substantive predicates are present, a particular outcome must follow.’ [Cashaw, 123 Wash.2d at 144, 866 P.2d 8.]. (quoting *Ky. Dep’t of Corr. v. Thompson*, 490 U.S. 454, 463, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989)); *see also Olim v. Wakinekona*, 461 U.S. 238, 103 S.Ct. 1741, 75 L.Ed.2d 813 (1983); *Hewitt*, 459 U.S. 460, 103 S.Ct. 864.”) (internal quotations omitted).

B. CONCLUSION

Given the above, the petitioner respectfully requests that this find that the Department violated Mr. Campbell’s liberty

⁶ *Hewitt v. Helms*, 459 U.S. 460, 103 S. Ct. 864, 74 L. Ed. 2d 675 (1983).

⁷ *Wilkinson v. Austin*, 545 U.S. 209, 222, 125 S. Ct. 2384, 162 L. Ed. 2d 174 (2005).

interest in denying visitation and to be under the protection of the law by virtue of entering false or misleading documents into Mr. Campbell's DOC records. Accordingly, this court should order DOC to correct its records regarding Ms. Vian being a named victim of Mr. Campbell.

There are 1062 words in this document.

DATED this 26th day of July, 2023

Respectfully submitted,

s/ Sean M. Downs
Sean M. Downs, WSBA #39856
Attorney for Petitioner
GRECCO DOWNS, PLLC
701 Columbia St. #109
Vancouver, WA 98660
(360) 707-7040
sean@greccodowns.com

CERTIFICATE OF SERVICE

I, Sean M. Downs, a person over 18 years of age, declare under penalty of perjury under the laws of the State of Washington that on July 26, 2023 I electronically filed the PETITIONER'S SUPPLEMENTAL BRIEF REPLY with the clerk of the court using the electronic filing system, which will send a copy to the following electronic participants: Vanessa James <vanessa.james@atg.wa.gov>, attorney for Respondent.

s/ Sean M. Downs
Sean M. Downs, WSBA #39856
Attorney for Petitioner
GRECCO DOWNS, PLLC
701 Columbia St. #109
Vancouver, WA 98660
(360) 707-7040
sean@greccodowns.com