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Court of Appeals
Division II
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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

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A. ARGUMENT

1. The DOC violated the State created liberty interest doctrine and Mr. Campbell's procedural due process rights denying Mr. Campbell's visitation.

Due process protects against the deprivation of life, liberty or property. U.S. Const. amend. 14, § 1.1 The threshold question in any due process challenge is whether the challenger has been deprived of a protected interest in life, liberty or property. *See In re J.H.*, 117 Wn.2d 460, 472–73, 815 P.2d 1380 (1991). Liberty interests may arise from either of two sources, the due process clause and state laws. *Matter of Cashaw*, 123 Wn.2d 138, 146, 866 P.2d 8 (1994); *Hewitt v. Helms*, 459 U.S. 460, 466, 103 S.Ct. 864, 868, 74 L.Ed.2d 675 (1983); *Toussaint v. McCarthy*, 801 F.2d 1080, 1089 (9th Cir.1986), cert. denied, 481 U.S. 1069, 107 S.Ct. 2462, 95 L.Ed.2d 871 (1987).

State statutes or regulations can create due process liberty interests where none would have otherwise existed. *See Hewitt*, 459 U.S. at 469; *Toussaint*, 801 F.2d at 1089; *In re Powell*, 117 Wn.2d 175, 202-03, 814 P.2d 635 (1991). By enacting a law that

places substantive limits on official decision making, the State can create an expectation that the law will be followed, and this expectation can rise to the level of a protected liberty interest. *See Toussaint*, 801 F.2d at 1094.

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”. *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 463, 109 S.Ct. 1904, 1910, 104 L.Ed.2d 506 (1989); *Swenson v. Trickey*, 995 F.2d 132, 134 (8th Cir.), cert. denied, 510 U.S. 999, 114 S.Ct. 568, 126 L.Ed.2d 468 (1993). Thus, laws that dictate particular decisions given particular facts can create liberty interests, but laws granting a significant degree of discretion cannot. The bottom line is whether the state law contains “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”. *Thompson*, 490 U.S. at 463, 109 S.Ct. at 1910; Swenson, 995 F.2d at 134.

Liberty interests may arise from either of two sources: the due process clause and state laws. *Cashaw*, 123 Wn.2d at 146; *Hewitt v. Helms*, 459 U.S. 460, 466, 103 S.Ct. 864, 868, 74 L.Ed.2d 675 (1983). State statutes or regulations can create due process liberty interests where none would have otherwise existed. *See Hewitt*, 459 U.S. at 469.

A reasonable understanding and therefore a reliance upon the wording of DOC policies and state statute amounts to a state created liberty interest. This finding is controlled by *Carlo v. City of Chino*, 105 F.3d 493, 495 (9th Cir. 1997). In *Carlo*, the Ninth Circuit found a liberty interest when a controlling regulation stated that all arrestees “shall” be given three calls upon intake. Use of this mandatory language was held to create a Fourteenth Amendment protected right to those calls. *Id.*

Department Policy 450.300 states, “A victim of the incarcerated individual’s current offense(s) or any

previous adjudicated offense” is not eligible for visitation. This policy was enacted pursuant to RCW 72.01.090, which was a delegation of legislative authority. “To have the force of law, an administrative regulation must be properly promulgated pursuant to a legislative delegation.” *Mills v. W. Washington Univ.*, 170 Wn.2d 903, 911, 246 P.3d 1254 (2011). Policy 450.300 therefore has the force of law.

In the instant case, Krystle Vian was not the adjudicated victim of an offense by Mr. Campbell. *See* Clark County District Court documents (attached as “Appendix A”). The court documents indicate that the court never made a finding that Ms. Vian was a victim and the defense provided information that the actual victim of the malicious mischief third degree was Mr. Campbell’s father. DOC’s records indicating that Ms. Vian is a victim in that case are erroneous and misinformed.

2. Any material factual disputes must be resolved with a fact-finding reference hearing.

In order to define disputed questions of fact, the State must

meet the petitioner's evidence with its own competent evidence. *In re Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992). If a petitioner makes at least a *prima facie* showing of actual prejudice, but the merits of the contentions cannot be determined solely on the record, the court should remand the petition for a full hearing on the merits or for a reference hearing pursuant to RAP 16.11(a) and RAP 16.12. *Rice*, 118 Wn.2d at 884. If there are disputed factual issues for this court to determine, the Petitioner requests that this court order a reference hearing.

B. CONCLUSION

Given the foregoing, the petitioner respectfully requests that this court find that DOC violated Mr. Campbell's liberty interest in denying visitation and accordingly order DOC to correct its records regarding Ms. Vian being a named victim of Mr. Campbell.

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DATED this 1st day of May, 2023

Respectfully submitted,

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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 May 1, 2023 I electronically filed the PETITIONER'S SUPPLEMENTAL BRIEF with the clerk of the court using the electronic filing system, which will send a copy to the following electronic participants: Tim Lang <tim.lang@atg.wa.gov> and Vanessa James <vanessa.james@atg.wa.gov>, attorneys for Respondent.

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