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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Filed October 28, 2003

No. 01-5387

BRETT C. KIMBERLIN AND DARRELL RICE,
APPELLANTS

v.

UNITED STATES DEPARTMENT OF JUSTICE
AND BUREAU OF PRISONS,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 97cv02633)

On Appellants' Petition for Rehearing

Before: SENTELLE, HENDERSON, and TATEL,* *Circuit Judges*.

O R D E R

Upon consideration of the appellants' petition for panel rehearing, filed on March 28, 2003, and the appellees' response thereto, it is

ORDERED that the petition be denied. Our panel disposition of this case remains unchanged after the United States Supreme Court's opinion in *Overton v. Bazzetta*, 123 S. Ct.

* Judge Tatel would grant the petition for panel rehearing.

2162 (2003). To the extent that *Overton* may affect our determination that we “need not invoke the four factor analysis the United States Supreme Court established in *Turner v. Safley*, 482 U.S. 78, 89, 107 S.Ct. 2254, 2261–62, 96 L.Ed.2d 64 (1987),” *Kimberlin v. United States Dep’t of Justice*, 318 F.3d 228, 232 (D.C. Cir. 2003), our alternative disposition, that the prison regulations banning electric and electronic musical instruments satisfy *Safley*’s test, remains intact, *see id.* at 233–34.

Per Curiam

For the Court:

Mark J. Langer

Clerk