

FILED: December 26, 2013

IN THE COURT OF APPEALS OF THE STATE OF OREGON

JACOB HENRY BARRETT,
Petitioner,

v.

OREGON DEPARTMENT OF CORRECTIONS,
Respondent.

Department of Corrections

A150406

Submitted on December 07, 2012.

Jacob Barrett filed the briefs *pro se*.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Michael A. Casper, Deputy Solicitor General, filed the brief for respondent.

Before Ortega, Presiding Judge, and Wollheim, Judge, and Sercombe, Judge.

PER CURIAM

OAR 291-131-0035 held valid.

1 PER CURIAM

2 Petitioner seeks a determination under ORS 183.400 of the validity of OAR
3 291-131-0035. That rule, promulgated by the Department of Corrections, prohibits
4 inmates from receiving "[s]exually explicit material which by its nature or content poses
5 a threat or is detrimental to the security, good order or discipline of the facility, inmate
6 rehabilitation, or facilitates criminal activity * * *." Petitioner contends that the rule
7 "[v]iolates constitutional provisions," ORS 183.400(4)(a), because it violates his freedom
8 of expression under Article I, section 8, of the Oregon Constitution. Petitioner also
9 asserts that the rule "[w]as adopted without compliance with applicable rulemaking
10 procedures," ORS 183.400(4)(c), because he was not given the notice of rulemaking
11 before the adoption of the rule that was required by Article IV(8) of the Interstate
12 Corrections Compact, ORS 421.245.

13 In *Wilson v. Dept. of Corrections*, 259 Or App 554, ___ P3d ___ (2013),
14 we rejected a challenge to the validity of OAR 291-131-0035 under Article I, section 8.
15 We concluded that the rule specified a variety of harms, prohibited expression only when
16 it would cause a specified harm, and was not overbroad. Accordingly, we determined
17 that the rule was facially constitutional under *State v. Robertson*, 293 Or 402, 417, 649
18 P2d 569 (1982) (law that prohibits the accomplishment of harm and specifies the way
19 that the harm might be caused by expression is presumptively constitutional under Article
20 I, section 8, unless the law is overbroad). Because *Wilson* is dispositive of petitioner's
21 constitutional contentions, we reject them.

1 We also reject petitioner's contentions concerning the insufficiency of
2 rulemaking notice because they are insufficiently developed for review.

3 OAR 291-131-0035 held valid.