IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jamaican National: Marlon Mullings, Petitioner	:	
	:	No. 145 M.D. 2010
v.	:	
Pennsylvania Department of Corrections and Teresa Snyder, Academic Counselor SCI-Graterford Education Department, Respondents	:	Submitted: September 3, 2010

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH FILED: January 27, 2011

Presently before this Court are the preliminary objections in the nature of a demurrer filed by the Pennsylvania Department of Corrections (DOC) and Teresa Snyder, Academic Counselor in the Education Department at SCI-Graterford (collectively Respondents) to a pro se petition for review filed by Marlon Mullings. For the reasons that follow, we sustain DOC's preliminary objections and dismiss Mullings' petition for review.

Mullings is a life-sentence inmate currently incarcerated at SCI-Graterford. Mullings asserts that he is illiterate, has an IQ of 54, and has the mental functioning of a four to six year old child.[1] (Petition for Review at 2.) In 2005, a

[1] In his brief to this Court, Mullings indicates that he had assistance from a jailhouse lawyer and former literacy tutor throughout the course of these proceedings.

former academic counselor at SCI-Graterford enrolled Mullings, who was twenty-seven years old at the time, in the Graterford Literacy Council school program.[2] Id. In his first four years in the program, a tutor provided Mullings with individualized instruction and his reading level rose from zero to grade three. Id. On November 6, 2009, Respondent Snyder removed Mullings and all other prisoners serving a life sentence from the school program. Id. Mullings filed an official inmate grievance challenging this removal, but a grievance officer denied the same. (Petition for Review at 3.) The grievance officer noted that while DOC Policy 7.6.1 provides that the school program is mandated for inmates committed to the education department after July 1, 2004, who do not have a verified GED, including inmates within three years of their minimum/release date, the policy also provides that an inmate serving a life sentence is removed from mandatory status upon turning twenty-two years of age. (Petition for Review, Exhibit B.)

Specifically, Section 1(H) of DOC Policy 7.6.1, entitled "GED Mandate," provides, in pertinent part, as follows:

> 1. An inmate committed to the Department on or after July 1, 2004, who does not have a verified GED, HSD or CSD, will be considered a mandated GED (MGED) student. Every inmate within three years of his/her minimum/release date, who does not have a GED/HSD/CSD, will be designated as a mandated GED (MGED) student. Once identified, he/she should be enrolled in an appropriate academic education program or placed on a waiting list.
> 2. An inmate in this group should be identified and designated according to one of the following categories

[2] The school program was started by DOC in 2001 to assist those inmates whose reading, writing, and spelling abilities were below a fifth grade level. After achieving a fifth grade level, the inmates are transferred to an adult basic education or pre-GED class. (Petition for Review at 6.)

> and the specific designation should appear on rosters and waiting lists maintained in the Education Department.
>
> > a. An inmate 21 years of age will be designated as MGED.
> >
> > b. An inmate under 21 years of age will be considered a 'Youthful Student,' designated as MGED-YS. A Special Education student in this age group will be enrolled per current State and Federal Regulations and also designated as MGED-YS.
> >
> > c. ***An inmate serving a 'LIFE' sentence will be removed from the mandatory status upon turning 22 years old.***

(Emphasis in original.) (Petitioner's Brief, Exhibit B.)[3] The stated purpose of DOC Policy 7.6.1 is to provide comprehensive educational programming to an inmate that will assist with his/her re-integration into society as a responsible and productive citizen. Id.

Mullings appealed the grievance officer's denial to the superintendent at SCI-Graterford, who upheld the grievance officer's denial as proper under DOC Policy 7.6.1. (Petition for Review at 3-4.) The superintendent further noted that the increased prison population has resulted in an increase in inmates with enrollment priority and an increase in program waiting lists. (Petition for Review, Exhibit D.) Mullings then appealed the superintendent's decision to the Secretary's Office of Inmate Grievances & Appeals, which denied Mullings' appeal again citing DOC Policy 7.6.1. (Petition for Review at 4.) The decision from the Secretary's Office

[3] A copy of this policy is available on DOC's official website at http://www.cor.state.pa.us/portal/server.pt/community/department_of_corrections/4604/doc_policies/612830.

indicated that Mullings would be placed on a waiting list and encouraged Mullings to continue his studies independently. (Petition for Review, Exhibit F.)

Mullings subsequently filed a petition for review addressed to this Court's original jurisdiction, alleging that Respondents had violated his rights to due process and equal protection under the 14th Amendment to the United States Constitution by removing him and other inmates serving life sentences from the school program.[4] (Petition for Review at 5.) Petitioner seeks an order declaring DOC Policy 7.6.1 unconstitutional, enjoining DOC from enforcing said policy, awarding him school pay from November 6, 2009, to the present, and awarding him reasonable fees incurred in initiating this action. (Petition for Review at 9.)

Respondents have filed preliminary objections in the nature of a demurrer.[5] Respondents assert that Mullings has not been deprived of any due process right because he had no right to participate in the program from which he was

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[4] Mullings also alleged that DOC's prior actions in 2004 and earlier violated the due process and equal protections rights of himself and other inmates serving life sentences by removing these inmates from vocational training, certain prison jobs and outside housing. (Petition for Review at 7.) However, Mullings fails to offer any authority to support these allegations. Moreover, this Court has previously held that an inmate has no protected liberty interest in a specific prison job or in outside housing. Bush v. Veach, 1 A.3d 981 (Pa. Cmwlth. 2010); Logan v. Horn, 692 A.2d 1157 (Pa. Cmwlth. 1997).

[5] In considering preliminary objections, a court must consider as true all well-pleaded material facts set forth in the petition and all reasonable inferences that may be drawn from those facts. Richardson v. Beard, 942 A.2d 911 (Pa. Cmwlth.), affirmed, 600 Pa. 102, 963 A.2d 904 (2008). Preliminary objections will be sustained only where it is clear and free from doubt that the facts pleaded are legally insufficient to establish a right to relief. Id. A court need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. Id. Moreover, the question presented by a demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible, and any doubt should be resolved in favor of overruling the demurrer. Chester Community Charter School v. Department of Education, 996 A.2d 68 (Pa. Cmwlth. 2010).

removed. Respondents argue that DOC Policy 7.6.1 does not create rights in any person, specifically states as much, and also states that its underlying purpose is to provide comprehensive educational programming to an inmate that will assist with his/her re-integration into society as a responsible and productive citizen. Respondents also note that the policy expressly removes an inmate serving a life sentence from mandatory status upon turning twenty-two years old. Additionally, Respondents point out that Mullings fails to cite any statute, contract, or regulation that bestows upon him any right to continue in his academic programming.

Respondents also assert that Mullings has not been the subject of an equal protection violation. Respondents note that incarceration does not render an individual a member of a suspect class and, therefore, DOC's education policy must only bear a rational relationship to some legitimate state interest in order to overcome an equal protection challenge. Given DOC's limited funds and resources, and the underlying goal of DOC Policy 7.6.1 to rehabilitate those inmates who will be re-entering society, Respondents assert that the policy satisfies the rational relationship test.

Section 1 of the Fourteenth Amendment to the United States Constitution provides as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

We begin with Mullings' alleged due process violation. In considering whether a due process violation has occurred, a determination must initially be made that a protected liberty interest exists and, if so, what process is due. Wei Chem v. Horn, 725 A.2d 226 (Pa. Cmwlth. 1999); Wilder v. Department of Corrections, 673 A.2d 30 (Pa. Cmwlth.), appeal denied, 545 Pa. 673, 681 A.2d 1344 (1996). In other words, procedural due process rights are triggered by the deprivation of a legally cognizable liberty interest. Brown v. Blaine, 833 A.2d 1166 (Pa. Cmwlth. 2003). For an inmate, such a deprivation occurs when the prison imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life. Sandin v. Conner, 515 U.S. 472 (1995); Brown. Lesser restraints on an inmate's freedom are deemed to fall within the expected perimeters of the sentence imposed by a court of law. Brown.

Indeed, our United States Supreme Court has indicated that the Due Process Clause does not protect every change in the conditions of confinement having a substantial adverse impact on a prisoner. Sandin; Meachum v. Fano, 427 U.S. 215 (1976). Federal and state courts have refused to find a protected liberty interest in various actions, regulations, or policies instituted by prison officials. See, e.g., Sandin (disciplinary confinement); Kentucky Department of Corrections v. Thompson, 490 U.S. 454 (1989) (visiting privileges); Meachum (intrastate transfers); Bush v. Veach, 1 A.3d 981 (Pa. Cmwlth. 2010) (prison employment); Wei Chem (general inmate population); Myers v. Ridge, 712 A.2d 791 (Pa. Cmwlth. 1998), appeal denied, 560 Pa. 677, 742 A.2d 173 (1999) (parole); Wilder (pre-release status).

In accord with these decisions, we conclude that neither DOC Policy 7.6.1 nor the Due Process Clause itself affords Mullings a protected liberty interest in continued participation in the school program, and further that Mullings' removal

from the school program does not impose atypical and significant hardship on him in relation to the ordinary incidents of prison life. Thus, we sustain Respondents' preliminary objections to Mullings' due process claim.

We next address Mullings' alleged equal protection violation. The constitutional guarantee of equal protection of the laws does not obligate the government to treat all persons alike; rather it assures that all similarly situated persons are treated alike. Small v. Horn, 554 Pa. 600, 722 A.2d 664 (1998); Bell v. Horn, 762 A.2d 776 (Pa. Cmwlth. 2000), appeal denied, 567 Pa. 716, 785 A.2d 91 (2001). Where the challenged government action does not burden fundamental or important rights and does not create a suspect or quasi-suspect classification, a rational basis test applies, which requires a determination of whether the challenged action is rationally related to a legitimate government purpose.[6] Id. Since Mullings does not fall within a suspect or quasi-suspect classification and is not alleging a violation of a fundamental right, the rational basis test is applicable herein.[7]

In applying the rational basis test, the court must determine first whether the challenged statute, regulation, or policy seeks to promote any legitimate state interest and, second, whether the statute, regulation, or policy is reasonably related to accomplishing that articulated state interest. Jae v. Good, 946 A.2d 802 (Pa.

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[6] A classification that implicates a suspect class, such as race or national origin, or implicates a fundamental right, such as freedom of religion, is subject to strict scrutiny. Small; Meggett v. Department of Corrections, 892 A.2d 872 (Pa. Cmwlth. 2006). Where the classification implicates a quasi-suspect class, i.e., an important but not fundamental right such as gender or legitimacy, a heightened standard of review is applied. Id.

[7] In Meggett, we indicated that the standard of review of an equal protection claim is reduced where the governmental policy under challenge relates to the operation of a prison. Furthermore, we note that the courts accord great deference to the professional judgment of prison administrators in these types of cases. Overton v. Bazzetta, 539 U.S. 126 (2003); Brittain v. Beard, 601 Pa. 409, 974 A.2d 479 (2009).

Cmwlth.), appeal denied, 598 Pa. 790, 959 A.2d 930 (2008); Meggett. Further, a reviewing court is not limited to considering only those justifications offered by a governmental body to support the challenged statute, regulation, or policy, but is free to hypothesize its own reasons supporting the same. Id.

In the present case, the stated purpose of DOC Policy 7.6.1 is to provide comprehensive educational programming to an inmate that will assist with his/her re-integration into society as a responsible and productive citizen. The preparation of inmates for reintegration into society through participation in the school program certainly advances a legitimate state interest. However, while an inmate serving a life sentence may seek commutation of sentence and pardon pursuant to Article IV, section 9 of the Pennsylvania Constitution, these are only granted upon the unanimous recommendation in writing of the Board of Pardons after full hearing, as opposed to only a majority of the Board required for other criminal cases.[8] Based on this constitutional mandate, the reasonable expectation of release or reintegration into society for inmates serving life sentences is generally less than that of other inmates not serving life sentences. Moreover, we note that inmates serving life sentences are

[8] Article 4, section 9(a) of the Pennsylvania Constitution provides as follows:

> In all criminal cases except impeachment, the Governor shall have power to remit fines and forfeitures, to grant reprieves, commutation of sentences and pardons; but no pardon shall be granted, nor sentence commuted, except on the recommendation in writing of a majority of the Board of Pardons, and in the case of a sentence of death or life imprisonment, on the unanimous recommendation in writing of the Board of Pardons, after full hearing in open session, upon due public notice. The recommendation, with the reasons therefor at length, shall be delivered to the Governor and a copy thereof shall be kept on file in the office of the Lieutenant Governor in a docket kept for that purpose.

not completely excluded from participation in the school program, as Mullings' petition for review reflects that his name will be placed on a waiting list should space become available. (Petition for Review, Exhibit F.) Certainly, even though sentenced to a life sentence, a person should be able to learn to read. In fact, Mullings was a participant in the program for four years and achieved positive results. Nevertheless, he was already twenty-seven years old when he was enrolled in the program.

As Respondents correctly note, opportunities for inmates to acquire the skills and values necessary to become productive law-abiding citizens include education programs. However, the Pennsylvania Constitution imposes stricter standards for commutation of sentences upon those serving life sentences, and the increased prison population has resulted in an increase in inmates with enrollment priority and program waiting lists. In light of this, the policy's removal of inmates serving life sentences from the mandatory participation requirement upon turning twenty-two years of age conserves DOC's limited resources and is reasonably related to accomplishing the aforementioned state interest. Neither the Policy itself nor Mullings' removal from the school program infringed upon his equal protection rights. Thus, we also sustain Respondents' preliminary objections to Mullings' equal protection claim.

Accordingly, Mullings' petition for review is dismissed.

PATRICIA A. McCULLOUGH, Judge

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ORDER

AND NOW, this 27th day of January, 2011, the preliminary objections of the Pennsylvania Department of Corrections and Teresa Snyder are hereby sustained, and the petition for review filed by Jamaican National Marlon Mullings is dismissed.

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PATRICIA A. McCULLOUGH, Judge