RENDERED: December 4, 1998; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-002072-MR

DONALD R. NEWCOMB — APPELLANT

v.

APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE STEPHEN M. SHEWMAKER, JUDGE
ACTION NO. 97-CI-00177

ATTORNEY GENERAL OF KENTUCKY
AND JAMES MORGAN, WARDEN — APPELLEES

OPINION

AFFIRMING

** ** ** ** **

BEFORE: HUDDLESTON, KNOPF, AND MILLER, JUDGES.

MILLER, JUDGE. Donald Newcomb (Newcomb) appeals *pro se* from an order of the Boyle Circuit Court entered on August 4, 1997, denying his "Motion to Compel," which was treated as a Petition for Declaration of Rights under Ky. Rev. Stat. 418.040. We affirm.

Newcomb currently is an inmate at the Northpoint Training Center in Burgin, Kentucky. In April 1997, Newcomb filed a motion entitled Motion to Compel seeking an order from the circuit court preventing the Department of Corrections from implementing a recently modified procedure for visitation of inmates. Under the new procedure, each prison facility compiled for each inmate an approved visitor list based on the names of individuals submitted by the inmate. In order for an individual to be placed on the approved list, the inmate had to provide a completed "Visiting Information Form" containing such information about the visitor as name, address, date of birth, social security number, sex, race, and relationship to the inmate. See Corrections Policies and Procedures (CPP) 16.1. Newcomb objected to providing this information, especially the social security number, for each prospective visitor.

In May 1997, the Department of Corrections filed a response to the motion and requested dismissal for failure to state a claim. Newcomb filed a reply to the response. In July 1997, he filed a motion for summary judgment contending that application of the new visitation procedure, especially the requirement of disclosure of a visitor's social security number, constituted a violation of the *Ex Post Facto* Clause of the United States Constitution, Art. I, Sec. 9 and 10. On August 4, 1997, the trial court issued an order denying the Motion to Compel as treated as a Petition for Declaratory Relief. The trial court held that the visitation procedures were not unreasonable. This

appeal followed.

Newcomb argues on appeal that implementation of the new visitation procedures constitutes a violation of the due process clause, the *ex post facto* clause and the equal protection clause. He asserts that prison officials have no legitimate authority to require inmates to provide confidential information, such as a social security number, about potential visitors. Newcomb contends that he has a liberty interest in being able to visit with his family and the new visitation policy significantly interferes with this interest. We disagree.

It is well-established that inmates do not have a constitutionally-protected liberty interest in visitation under the Due Process Clause. See Kentucky Department of Corrections v. Thompson, 490 U.S. 454, 109 S. Ct. 1904, 104 L. Ed. 2d 506 (1989), and Spear v. Sowders, 71 F.3d 626 (6th Cir. 1995). Similarly, individuals do not have a constitutional right to unrestricted visitation of prison inmates. Id. In addition, Kentucky prison regulations do not create a protected liberty interest for inmates in unfettered visitation. See Kentucky Department of Corrections v. Thompson, 490 U.S. 454. Given the inherent problems and risks associated with operating a prison, prisoners' constitutional rights are significantly constrained in order to further the legitimate objectives of the penal system, and prison officials must be given deference in establishing and carrying out prison regulations. See Hudson v. Palmer, 468 U.S. 517, 104 S. Ct. 3194, 82 L. Ed. 2d 393 (1984), and Sandin v.

Conner, 515 U.S. 472, 481, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995) (holding that courts must "afford appropriate deference and flexibility to state officials trying to manage a volatile environment"). "Limitations upon visitation may be imposed if they are necessary to meet penological objectives such as the rehabilitation and the maintenance of security and order [citation omitted]." Bellamy v. Bradley, 729 F.2d 416, 420 (6th Cir.), cert. denied, 469 U.S. 845, 105 S. Ct. 156, 83 L. Ed. 2d 93 (1984).

In the case at bar, the Department of Corrections stated that the social security numbers of potential visitors are requested for security purposes. Prison officials are better able to cross-check these identification numbers with computerized criminal history records. The Corrections Department also indicated that the social security numbers of visitors are not generally available to prison employees after a particular visitor has been approved for visitation. We note that federal prison officials are allowed, as a legitimate law enforcement function, to obtain the social security numbers of persons who visit federal prison inmates. See generally Kuffel v. United States Bureau of Prisons, 882 F. Supp. 1116 (D.D.C. 1996) (holding that prison officials need not disclose visitors' social security numbers under Freedom of Information Act). We agree with the trial court that these modified visitation procedures are not arbitrary or unreasonable and, therefore, are within the prison officials' legitimate discretionary authority.

Newcomb's second argument, that implementation of the new visitation procedures violated the *ex post facto* clause, is without merit. The *ex post facto* clause protects individuals against increased punishment for a prior act. The proper focus of the *ex post facto* inquiry is whether the change created by the procedures "alters the definition of criminal conduct or increases the penalty by which a crime is punishable," rather than upon any "ambiguous sort of disadvantage" or affect on a prisoner's "opportunity" to take advantage of prior procedures. California Department of Corrections v. Morales, 514 U.S. 499, 115 S. Ct. 1597, 131 L. Ed. 2d 588 (1995). See also Collins v. Youngblood, 497 U.S. 37, 110 S. Ct. 2715, 111 L. Ed. 2d 30 (1990). The *ex post facto* clause does not prevent prison administrators from adopting and enforcing reasonable regulations that are consistent with such legitimate prison objectives as security, safety and efficiency. See Jones v. Murray, 962 F.2d 302 (4th Cir), cert. denied, 506 U.S. 977, 113 S. Ct. 472, 121 L. Ed. 2d 378 (1992), and Ewell v. Murray, 11 F.3d 482 (4th Cir. 1993), cert. denied, 511 U.S. 1111, 114 S. Ct. 2112, 128 L. Ed. 2d 671 (1994). A prisoner is not entitled to have his sentence carried out under identical prison policies and procedures throughout his incarceration. See Morales, 514 U.S. 499. Modification of the prison visitation procedures was reasonable and clearly did not rise to the level of an "increased penalty" for *ex post facto* purposes.

Finally, Newcomb has presented no facts or discussion explaining how the visitation procedures violate equal protection. The regulations apply to all inmates; thus we cannot say they violate equal protection. The trial court did not err in dismissing the action.

For the foregoing reason, the order of the Boyle Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Donald Ray Newcomb, Pro Se
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No Brief for Appellee