

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-535

MARCH TERM, 2006

Kirk Wool	}	APPEALED FROM:
	}	
	}	
v.	}	Washington Superior Court
	}	
John Gorczyk, Commissioner of	}	
Department of Corrections	}	DOCKET NO. 731-11-02 Wncv

Trial Judge: Alan W. Cook

In the above-entitled cause, the Clerk will enter:

Plaintiff Kirk Wool, a prisoner, appeals an order of the district court granting judgment on the pleadings to the Commissioner of the Department of Corrections (DOC) on plaintiff=s claim that a surcharge imposed by the DOC on plaintiff=s telephone calls was unlawful. We affirm.

Plaintiff filed a complaint alleging that the \$1.75 surcharge imposed by the DOC between 1993 and 1996 on each telephone call made by an inmate (1) violated the Vermont Administrative Procedures Act (VAPA) and

(2) exceeded the DOC's authority. The Commissioner moved for judgment on the pleadings, arguing that plaintiff could not challenge the surcharge under VAPA because the surcharge was not a fee to which VAPA's requirements applied and the surcharge fell within the statutory authority granted the DOC. The trial court granted the motion, relying on King v. Gorczyk, 2003 VT 34, 175 Vt. 220, to conclude that the surcharge was not a fee for purposes of VAPA because it did not alter or affect plaintiff's substantive legal rights. Id. ¶ 24. The court also concluded that the DOC had statutory authority to impose the surcharge under 28 V.S.A. ¶ 102(b)(1) & (2).

On appeal, plaintiff does not directly engage the basis for the trial court's ruling. Rather, plaintiff argues that 28 V.S.A. ¶ 802a(d) mandates that the DOC strive for the lowest cost possible for inmate phone calls. Section 802a(d) requires that any contract negotiated by the DOC for telephone services provide the lowest costs to inmates and their families. As acknowledged by plaintiff, however, the surcharge is not a creature of the telephone contract, but a fee imposed separately by the DOC. Thus, the statute does not apply to the surcharge, and its goal of assuring low costs is not relevant to this appeal.

Plaintiff also asserts that our decision in State v. Handson, 166 Vt. 85 (1996), holds that the DOC may not pass on this type of surcharge to inmates. Plaintiff's reliance on Handson is misplaced, as that case addressed the question of whether the DOC could impose such a surcharge on the Defender General's Office, which was responsible for the expenses involved with an inmate's self-representation. Id. at 91.

Finally, plaintiff argues, in passing, that the DOC's authority to impose fees is limited to contracts with collection agencies under 28 V.S.A. 102(b)(12), and room and board under 28 V.S.A. 102(c)(14). Plaintiff does not offer support, however, for his contention that the DOC requires specific legislative authorization for decisions that implement the DOC's mandate to establish and administer programs and policies for the operation of the correctional facilities of the department. ¶ 28 V.S.A. ¶ 102(b)(2).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice