

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket No. 619-11-19 Wncv

BRIAN BUTLER,
Plaintiff

v.

JAMES BAKER, Interim Commissioner,
Vermont Department of Corrections,
Defendant¹

FILED

JAN 24 2022

VERMONT SUPERIOR COURT
WASHINGTON CIVIL

DECISION ON THE MERITS

In this civil proceeding, Brian Butler, a Vermont inmate currently incarcerated at the Tallachatchie County Correctional Facility in Tutwiler, Mississippi, asks this Court to order the Vermont Commissioner of Corrections to allow him to possess and use his JPay electronic tablet at the Mississippi correctional facility, despite that warden's denial of his request to possess or use his tablet there. Butler contends that he is entitled to this relief under the "Common Benefits" clause of the Vermont Constitution. A hearing on the merits was held in this matter on January 20, 2022. Plaintiff appeared, testified and was represented by Annemarie Manhardt, Esq. Defendant was represented by Robert C. Menzel, Esq. For the reasons explained below, Butler's request for injunctive relief must be *denied* and his suit must be *dismissed with prejudice*.

Factual Findings

Brian Butler is a sentenced prisoner who is currently committed to the care and custody of James Baker, Interim Commissioner of the Vermont Department of Corrections ("DOC"). Butler is 64 years of age and is serving a long-term sentence, with a minimum release date in 2044. Butler is presently incarcerated at the Tallachatchie County Correctional Facility ("TCCF") in Tutwiler, Mississippi. He is one of approximately 224 Vermont prisoners held at TCCF pursuant to a contract between DOC and CoreCivic, the entity that owns and operates TCCF.

Prior to his transfer to TCCF, Butler had been incarcerated at the Southern State Correctional Facility in Springfield, Vermont, from January 1, 2016, until April 29, 2019. During that period of time DOC had allowed prisoners in Vermont facilities to purchase

¹ This suit was originally brought against Michael Touchette in his official capacity as the then Commissioner of the Department of Corrections. Subsequently, however, Commissioner Touchette was replaced by Interim Commissioner Baker. Pursuant to V.R.C.P. 25(d), therefore, Commissioner Baker is hereby substituted as the named defendant in his official capacity as the Interim Commissioner.

JPay electronic tablets through Vermont's prison phone provider, Global Tel link ("GTL"). Prisoners in Vermont facilities could download games, music and photographs onto their JPay tables, and they could also use their tablets to send and receive emails and to make and receive phone and video calls.

In July of 2016, while incarcerated at the Southern State Correctional Center, Butler purchased a JPay electronic tablet with a seven-inch screen through Vermont's prison phone provider for \$126.00. Over the course of his time at the Southern State Correctional Center, Butler purchased and downloaded 54 games, 254 songs, and some 70 digital photos of his grandchildren onto his tablet. The games and songs cost him over \$1,000.00 to purchase from Vermont's phone provider, and many of the photos no longer exist anywhere else than on his tablet.

Butler used his JPay tablet every day while he was at the Southern State Correctional Center. The tablet was important to him because it enabled him to communicate with members of his family by email, phone or video calls, and to pass the time playing games or listening to music or enjoying the photographs of his grandchildren. Access to the prison's WiFi and Internet connections was necessary in order to send or receive emails or to make or receive calls on his tablet, but he did not need WiFi or the Internet access to enjoy the games, music or photographs that he had downloaded on his JPay tablet.

Upon learning that he was going to be transferred to TCCF, Butler inquired whether he could bring his JPay tablet with him to Mississippi. DOC staff replied that Vermont inmates who were being transferred to Mississippi could not take their JPay tablets to TCCF and that he could either send his tablet to someone outside the prison or it would be destroyed. Butler sent his tablet to his ex-wife in Georgia, where it remains to this day in a box in her basement.

Upon his arrival at TCCF, Butler discovered that one Vermont inmate had smuggled his JPay tablet into TCCF, and that a number of other Vermont inmates had arranged to have their JPay tablets mailed to them at TCCF. Butler asked the officials there for permission to have his ex-wife send him his JPay tablet, but his request was denied, apparently on the grounds that the prison's WiFi and Internet providers service only GPL tablets. Therefore, JPay tablets do not work there. Throughout 2019, Butler grieved the denial all the way up to the warden, saying that he intended to use his tablet only to play the games and music that he had downloaded on the device, but the warden denied his request, saying "not at this time." Butler has never renewed his request to the warden.

Presently, inmates from Vermont are not permitted to have JPay tablets at the TCCF facility in Mississippi. The warden at TCCF ordered the JPay tablets that had been mailed to the inmates from Vermont to be returned to the senders. For some unexplained reason, however, the warden did allow the one prisoner from Vermont who had smuggled his JPay tablet into TCCF to keep his tablet there.

DOC no longer sells JPay tablets to inmates through its prison phone provider. Instead, all electronic tablets are now owned by the correctional facilities themselves. Thus, upon arrival at a Vermont correctional facility, an inmate is now provided with a State-owned GPL tablet which the inmate may then use so long as he or she remains at

that facility. Upon transfer to another Vermont correctional facility, the inmate must return the tablet to the first facility and get a new one at the next facility. This new policy was adopted by DOC in 2018. At the outset of that new policy, if a prisoner in a Vermont facility owned his or her own JPay tablet, and wished to use it solely to access games, music or photos that had been downloaded onto the device, DOC permitted the inmate to keep the device and to bring it with him or her from one Vermont facility to another Vermont facility (see Exhibit 1, dated December 5, 2018). It is unclear from the record whether that exception is still in place at this time.

Butler had no say in the decision to transfer him to Mississippi. That decision was made solely by the Commissioner pursuant to 28 V.S.A. § 102(b)(5).

Discussion and Analysis

Butler contends that DOC violated his rights under the “Common Benefits” clause of the Vermont Constitution by requiring him to relinquish his JPay electronic tablet when he was transferred to Mississippi. According to Butler, DOC’s decision denied him a common benefit because his in-state counterparts are not required to give up their JPay tablets when transferring from one Vermont facility to another Vermont facility. In addition, Butler contends that his loss is significant because he invested a substantial amount of money in the games and music that he downloaded onto his tablet, and because his tablet contains photographs of his grandchildren that are available nowhere else. DOC denies any violation of Butler’s constitutional rights.

The Vermont Constitution provides that “government is, or ought to be, instituted for the common benefit, protection, and security of the people ... and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community....” Vt. Const. Ch. 1, Art. 7. The clause “guarantees the right of the people to a government that does not favor any one person or family over another.” In re Town Highway No. 20, 2012 VT 17, ¶32, 191 Vt. 231. As the Vermont Supreme Court has explained:

To determine whether a legal requirement violates the Common Benefits Clause, we consider the following questions: (1) what part of the community is disadvantaged by the legal requirement; (2) what is the governmental purpose in drawing the classification; and (3) does the omission of part of the community from the benefit of the challenged law bear a reasonable and just relation to the governmental purpose?

Quinlan v. Five-Town Health Alliance, Inc., 2018 VT 53, ¶ 23, 207 Vt. 503 (citations and internal quotation marks omitted).

Here, Butler cannot demonstrate that DOC has arbitrarily denied him a benefit that is granted to others similarly situated to him. While it is true that for a while, at least, DOC allowed Vermont inmates to keep their JPay tablets when transferring from one Vermont correctional facility to another Vermont correctional facility, Butler’s situation was different from theirs. He was transferred from a Vermont facility to a facility in Mississippi owned and operated by CoreCivic, an entity separate and distinct from the Vermont DOC. The facility in Mississippi had its own policies with respect to JPay tablets,

namely, that they were not allowed there.

Moreover, it was the warden of the facility in Mississippi who denied Butler's request for permission to have his JPay device at TCCF, not DOC. This Court has no jurisdiction over TCCF or its warden, and, although DOC has a contract with CoreCivic, there is no evidence in the record that DOC or the Commissioner has the power under the contract to overrule the warden's decision denying Butler the right to have his JPay tablet at TCCF.

Lastly, the warden's decision on Butler's request appears to have been provisional in nature (i.e., the warden said "not at this time"), yet Butler has made no effort since then to renew his request for the warden's permission to use his JPay device at TCCF.

For all the foregoing reasons, the Court concludes that Butler has failed to prove that DOC or its Commissioner has violated his rights under the Common Benefits Clause of the Vermont Constitution. Because this is the only legal claim asserted by Butler in this matter, this matter is *dismissed with prejudice*.

SO ORDERED this 24th day of January, 2022.

A handwritten signature in black ink, appearing to read "Robert A. Mello", is written over a horizontal line.

Robert A. Mello
Superior Judge