



LGIT'S COMMANDER'S LOG
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The constitutionality of intercepting an inmate's private mail as part of an ongoing criminal investigation.

QUESTION: **Can a detention facility intercept and open an inmate's incoming and outgoing non-legal mail without violating the Constitution?**

ANSWER: **Yes. Intercepting an inmate's outgoing non-legal mail in accordance with prison regulations and in an effort to ensure that criminal behavior is not continuing does not violate the Constitution.**

CASE: ***Rodney Pitts, Jr., v. Richard Elliott, et al.*, U.S. District Court (Md.)**
Decided November 30, 2011

In this case, the United States District Court for the District of Maryland once again considered the constitutional implications of intercepting and inspecting an inmate's mail. The facts established that Rodney Pitts, Jr., was incarcerated at the Wicomico County Detention Center from September 8, 2009, to April 1, 2010. During that time he was both a pretrial detainee and, after sentencing, a convicted prisoner. Concerning inmate mail, the Wicomico County Detention Center opens and examines inmate mail in accordance with the mail screening policy issued by the United States Postal Service (authorizing the Wicomico County Office of Corrections to inspect inmate mail). Pitts was provided written notice of the mail policy when he first arrived at the Detention Center. On March 5, 2010, Master Correctional Officer Richard Elliot opened and reviewed a letter Pitts sent to his cousin Jordan Criner. He noted the letter's reference to carrying out a "hit" on Pitts's girlfriend, who was scheduled to testify against him as a witness in an upcoming trial on March 16, 2010. The letter asked Criner to threaten, beat, kidnap, or kill Latoya Robinson to prevent her from testifying at Pitts's upcoming trial. Pitts described his girlfriend and her sister and their vehicles in the letter. Pitts also provided their home and work addresses. Correctional Officer Elliott consulted with Detention Center officials and they forwarded the letter to the Maryland State Police. Sergeant Scott Cook was assigned to investigate the matter.

As part of his investigation, Sergeant Cook visited Criner and gave him a copy of the letter. Sergeant Cook asked Criner to write a "controlled letter" responding to Pitts, informing him that Criner would carry out Pitts's requests. As Criner wrote the letter, Sergeant Cook instructed him to ask questions such as how much Pitts was willing to pay for the "hit" and specifically what Pitts wanted done to Ms. Robinson. The sergeant instructed Criner to use the same tone, jargon, and handwriting in the letter and in addressing the envelope that he usually used in letters to Pitts.

On March 8, 2010, Sergeant Cook took Criner's letter and addressed envelope to the Berlin, Maryland, Post Office where he instructed the postal clerk to postmark and return the envelope to

him. On March 9, 2010, Sergeant Cook personally delivered Criner's letter to Detention Center Intelligence Officer Hopkins for delivery to Pitts. Sergeant Cook asked that: 1) all of Pitts's incoming and outgoing non-legal mail be photocopied for his review; 2) no mail addressed to Criner be mailed out; and 3) incoming mail from Criner be intercepted and not delivered to Pitts until Sergeant Cook could review it. Officer Hopkins gave Criner's letter to Mail Clerk Suzette Davis. She logged it on the Detention Center's mail sheet prior to delivering it to Pitts. She then hand-delivered the letter to Pitts and he signed the mail sheet acknowledging receipt of the letter.

On March 12, 2010, Detention Center mail staff intercepted and photocopied an outgoing handwritten letter from Pitts to Criner dated March 11, 2010. The letter was in response to Criner's "controlled letter" to Pitts. In it, Pitts detailed what he wanted done Ms. Robinson and the price he was willing to pay. In the letter, Pitts asked Criner to avoid shooting upstairs where his children would be sleeping. A photocopy of the letter was given to Sergeant Cook. Subsequently, he charged Pitts with solicitation to murder and solicitation to assault.

Sometime after his conviction, Pitts sued a number of correctional officers, including Officer Hopkins, under any number of legal theories ranging from excessive force to denial of religious freedom to illegal tampering with his mail. Concerning the latter, Pitts alleged that the opening of his mail violated his rights under the Fourth Amendment and constituted a denial of due process and equal protection. The United States District Court disagreed. In granting Officer Hopkins summary judgment, the court observed that there was a clear penological interest in insuring that inmates do not continue to commit criminal behavior while incarcerated. Pitts's mail was opened and intercepted consonant with that purpose and stated prison regulations. Further, none of the intercepted and opened mail was marked as confidential legal mail. Accordingly, Pitts was not entitled to be present when it was opened and inspected. Officer Hopkins's actions, and in fact all of the officers's actions, were reasonably related to legitimate penological interests.

NOTE: Pitts also sued for invasion of privacy based upon a search conducted of his cell after he wrote the incriminating letter responding to Criner. The court similarly dismissed this claim, stating that no inmate has a cognizable expectation of privacy in his cell. Special governmental needs justify searches without needs for individualized suspicion, probable cause, and issuance of warrants. In this case, the warrantless search was conducted because there was concern that Pitts might be soliciting other individuals, in addition to Criner, to perform a "hit." The penological interests in this case were clear. Make sure that, in your facilities, similar interests can be pointed to any time an inmate's even limited constitutional protections are overridden.

Prepared by John F. Breads, Jr., Director of Legal Services

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