

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**James Ward, Plaintiff Below,
Petitioner**

vs.) No. 101571 (Gilmer County 10-C-18)

**United States of America, Federal Bureau
of Prisons, Defendant Below, Respondent**

FILED

March 12, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner James Ward, a federal inmate, appeals the circuit court’s order dismissing without prejudice his civil action against Respondent Federal Bureau of Prisons (“the Bureau”), in which he sought over \$27 million in damages for alleged discrimination against him as a disabled individual. The instant appeal was timely filed by the pro se petitioner with the entire record being designated on appeal. The Court has carefully reviewed the written arguments contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. Upon consideration of the standard of review, the petition, and the record presented, the Court determines that the decisional process would not be significantly aided by oral argument and that a memorandum decision is appropriate under Rule 21 of the Revised Rules.

Petitioner is a federal inmate incarcerated at Federal Correctional Institution – Gilmer (“the Correctional Institution”) in Gilmer County, West Virginia. Pursuant to an internal policy effective October 26, 2009, access to a certain walkway within the Correctional Institution has been restricted as follows:

Effective immediately, the inner circle will only be utilized by inmates with wheelchairs, crutches, inmates with visits, and inmates called to the Lieutenants’ office. The inner circle will be closely monitored for the adherence of the above restrictions. Any inmate caught without authorization will be subject to disciplinary action.

Petitioner asserts that he is a disabled individual, having trouble with his lower extremities,

but does not use a wheelchair.¹ He objects to disabled inmates in wheelchairs being allowed to utilize the restricted walkway. Maintaining that he is disabled as well, petitioner filed the instant civil action against the Bureau under both the Americans with Disabilities Act and the West Virginia Human Rights Act seeking over \$27 million in damages from the Bureau.

When the Bureau did not file an Answer to his Complaint, petitioner filed a Motion for Default Judgment. Instead of granting petitioner's motion, the circuit court entered an order dismissing his civil action without prejudice, noting, *inter alia*, that the Correctional Institution "is a federal institution operated by the United States of America, through its Federal Bureau of Prisons" and that "[t]he Circuit Court of Gilmer County, West Virginia is a state court of the State of West Virginia." On appeal, petitioner argues that the circuit court has jurisdiction to hear his civil action against the Bureau because he alleges a violation of the West Virginia Human Rights Act.

STANDARD OF REVIEW

The circuit court's dismissal of petitioner's civil action is reviewed *de novo*. See Syl. Pt. 2, *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.*, 194 W.Va. 770, 461 S.E.2d 516 (1995) ("Appellate review of a circuit court's order granting a motion to dismiss a complaint is *de novo*.").

DISCUSSION

State courts, as well as federal courts, give deference to internal prison regulations because of the well-established principle that "evaluation of penological objectives is committed to the considered judgment of prison administrators." *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349, 107 S.Ct. 2400, 2404, 96 L.Ed.2d 282, 290 (1987). This deferential approach is necessary because it is prison administrators who have to "anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration." *Id.* (Internal quotations and citations omitted.). In the case sub judice, the internal prison policy petitioner objects to is clearly geared toward penological objectives because it does more than say which disabled inmates may utilize the restricted walkway. Under the policy, disabled inmates who use either wheelchairs or crutches may utilize the walkway, as may "inmates with visits, and inmates called to the Lieutenants' office." Allowing inmates who are called to the Lieutenant's Office to utilize the walkway implicates security concerns at the Correctional Institution because an inmate called to the office might have something important to tell the lieutenant. Similarly, allowing inmates with visitors to

¹ Petitioner does not allege that he uses crutches.

utilize the walkway likely makes the Correctional Institution much easier, and safer, to administer on those days when several inmates have visitors coming to see them. Given these considerations, the proper court to evaluate whether the restricted walkway policy at the Correctional Institution goes beyond the scope of the deference appropriately afforded to the Bureau, a federal agency, is the United States District Court for the Northern District of West Virginia. Therefore, after careful consideration, this Court concludes that the circuit court did not err in dismissing petitioner's civil action without prejudice.

For the foregoing reasons, we find no error in the decision of the Circuit Court of Gilmer County and its dismissal of petitioner's civil action is affirmed.

Affirmed.

ISSUED: March 12, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh