

No. 32769 - Dwight L. Mathena, Roger Sullivan, Patrick W. Few, Jack Grimes, Jr., Kenneth Bennett, Jeffrey L. Wolfe, Kenneth Powell, Steven Cogar, Jason Lawson, and Eugene Blake, Petitioners Below, Jason Lawson and Eugene Blake, Appellants v. William S. Haines, Respondent Below, Appellee

FILED

June 28, 2006

released at 3:00 p.m.

**RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

Maynard, Justice, dissenting, in part, and concurring, in part:

I dissent to the majority's finding that the circuit court erred by entering an order enjoining appellant Eugene Blake from filing any motions, letters, or other communication with the circuit clerk or the circuit court in the underlying action unless such documents were signed by an attorney licensed to practice law in the State of West Virginia. It is clear to me, as it was the circuit court, that appellant Blake was threatening to flood the court with additional motions and paperwork concerning the underlying case which had been dismissed years ago. While Article III, Section 17 of the West Virginia Constitution provides that, "[t]he courts of this State shall be open, and every person, for an injury done to him, in his person, property or reputation, shall have remedy by due course of law; and justice shall be administered without sale, denial or delay," the "right of meaningful access to the courts is not completely unfettered." *State ex rel. James v. Hun*, 201 W.Va. 139, 141, 494 S.E.2d 503, 505 (1997). Specifically, it has been recognized that, "an indigent person has no constitutional right of access to the courts to prosecute an action that is frivolous or malicious." *Phillips v. Carey*, 638 F.2d 207, 208 (10th Cir. 1981).

The threat made by the appellant in this case was a clear abuse of the legal process, and I believe the circuit court was justified in entering orders prohibiting the appellant from filing any additional paperwork in the case without legal representation. Circuit judges have the authority to control and manage their dockets. To do so effectively, judges must have wide discretion to place reasonable restrictions and limitations upon litigants who file non-meritorious claims for malicious reasons, or otherwise abuse the judicial process.

The majority has ignored the reality of frivolous litigation that is constantly being filed by prisoners across this State. In this instance, the appellant was so bold as to actually put his threat to flood the court with paperwork in writing. Instead of allowing circuit judges to curtail what are obviously frivolous filings, the majority has created an open invitation for more abuse of the legal process by jailhouse lawyers who have nothing better to do.

Finally, while I dissent from the majority's decision that the circuit court erred by limiting the appellant's right to self-representation, I concur with the majority's conclusion that the issues in the underlying case concerning the conditions of confinement and medical care were dismissed by the circuit court earlier and that the dismissal became final upon this Court's refusal to hear the appeal in 2003. Clearly, those issues could not be raised again in this appeal.

Therefore, for the reasons set forth above, I dissent, in part, and concur, in part, to the majority's decision in this case.