



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITOL AVENUE
FRANKFORT, KY 40601
(502) 696-5300
FAX: (502) 564-2894

20-ORD-022

February 12, 2020

In re: Jeff Carpenter/Kentucky State Reformatory

Summary: Kentucky State Reformatory (“KSR”) properly relied on KRS 520.010(1) and KRS 197.025(1) in denying an inmate a copy of a check as contraband and a security risk.

Open Records Decision

The question presented in this appeal is whether KSR violated the Open Records Act (“the Act”) in its disposition of a December 30, 2019, request by inmate Jeff Carpenter (“Appellant”) for a copy of a check “mailed to [him] from Publishers Clearing House ... and supposedly returned to sender on June 4th, 2019.” For the reasons that follow, this Office finds no violation of the Act.

KSR denied Appellant’s request on grounds that “inmates are not allowed to have any type of money in their possession,” citing Corrections Policy and Procedure (“CPP”) 9.6. On appeal, KSR explained that checks are considered “contraband and exempt pursuant to KRS 61.878(1)(l), KRS 520.010(1), [CPP] 9.6, & CPP 16.2.” KSR further asserted that the check was “exempt from disclosure pursuant to KRS 61.878(1)(l) and 197.025(1) as a security risk.”

KRS 520.010(1) defines “contraband” as “any article or thing which a person confined in a detention facility is prohibited from obtaining or possessing by statute, departmental regulation, or posted institutional rule or order.” CPP 9.6 II(B) includes among contraband items “[m]oney, unless authorized in writing by an appropriate institutional staff member for a specific inmate,” as well as

“[a]nything not authorized for retention or receipt by the inmate and not issued to him through regular institutional channels.”¹ Furthermore, CPP 16.2 II(E)(11) includes as “Prohibited Mail” any mail containing checks.²

Regarding prison contraband, the Kentucky Court of Appeals has noted that “[the prison] environment has its own peculiar problems, in that the insignificant and unremarkable can, and do, become magnified in importance.” *Commonwealth v. O’Hara*, 793 S.W.2d 840, 843 (Ky. App. 1990). In this context, “[t]his Office is not in a position to second guess the Department [of Corrections] regarding its policy and regulation as to what constitutes contraband.” 16-ORD-196. *See, e.g.*, 07-ORD-252 (love letters from inmate to correctional officer properly denied as contraband); 18-ORD-049 (photographs depicting nudity properly denied as contraband). KSR has shown that the check in question here meets the statutory and policy definitions of “contraband.”

As to the security risk posed by Appellant’s possession of the check, KRS 197.025(1) provides:

KRS 61.884 and 61.878 to the contrary notwithstanding, no person, including any inmate confined in a jail or any facility or any individual on active supervision under the jurisdiction of the department, shall have access to any records if the disclosure is deemed by the commissioner of the department or his designee to constitute a threat to the security of the inmate, any other inmate, correctional staff, the institution, or any other person.

In a memorandum attached to KSR’s response to this appeal, a KSR representative stated that “[a] check can be used to make counterfeit checks and scam others as well, which is a security risk for staff, inmates, and the public.” Furthermore, KSR advised that agency counsel had contacted Publishers Clearing House and was

¹ See 501 KAR 6:020 § 1, incorporating by reference Kentucky Corrections Policies and Procedures 9.6, available at <https://corrections.ky.gov/About/cpp/Documents/09/ CPP%209.6.pdf> (last accessed Feb. 5, 2020).

² See 501 KAR 6:020 § 1, incorporating by reference Kentucky Corrections Policies and Procedures 16.2, available at <https://corrections.ky.gov/About/cpp/Documents/16/ CPP%2016.2%20Inmate%20Mail%2001-09-20.pdf> (last accessed Feb. 5, 2020).

informed that the check and accompanying letter were “a scam and ... not a legitimate letter from PCH.” KSR asserted that a further security risk would be created by “[a]llowing documents involving a scam to circulate in a prison.”

KRS 197.025(1) affords the Commissioner of the Department of Corrections or his designee “broad, although not unfettered, discretion to deny inmates access to records the disclosure of which, in his view, represents a threat to institutional security.” 96-ORD-179. Under the facts presented, KSR has articulated a credible basis for denying Appellant a copy of the check in the interest of security. Accordingly, this Office declines to substitute its judgment for that of the Department of Corrections. 04-ORD-017. KSR properly withheld the record on the basis of KRS 520.010(1) and KRS 197.025(1).

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882. Pursuant to KRS 61.880(3), the Attorney General should be notified of any action in circuit court, but should not be named as a party in that action or in any subsequent proceeding.

Daniel Cameron
Attorney General

/s/ James M. Herrick

James M. Herrick
Assistant Attorney General

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Distributed to:

Jeff Carpenter, #095017
Amy V. Barker, Esq.
Ms. Whitney Williams