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FILED
8-1-2013
Superior Court of the State of
California, County of Nevada
Deputy Clerk *A. Thomas*

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF NEVADA

THE PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff,
vs.
RAYMOND LEE DUZAN,
Defendants.

CASE NO: F12-000450
RULING AND ORDER
ON MOTION FOR
CONTACT VISITS

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
vs.
JONATHAN SCOTT FOOTE,
Defendants.

CASE NO: F13-000059

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
vs.
JOSE EDUARDO HENRIQUEZ,
Defendants.

CASE NOS: F12-000376,
M13-000093, M12-001776,
M12-001672A, M12-001618B,
M12-001123 & M12-001105

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1 THE PEOPLE OF THE STATE OF CALIFORNIA,
2 *Plaintiff,*
3 v.
4 CESAR SANTIAGO,
5 *Defendant.*

CASE NO: F13-000175

6 THE PEOPLE OF THE STATE OF CALIFORNIA,
7 *Plaintiff,*
8 v.
9 JACOB MICHAEL SIEGFRIED,
10 *Defendant.*

CASE NO: F11-00317

11 THE PEOPLE OF THE STATE OF CALIFORNIA,
12 *Plaintiff,*
13 v.
14 BRENT RAYMOND WILKINS,
15 *Defendant.*

CASE NO: F12-000505B

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In January 2013, the staff at the Nevada County Jail, Wayne Brown Correctional Facility, changed their practice of permitting contact visits between attorneys and clients at the jail.¹ The above-referenced cases were joined for the purpose of addressing the various motions to enforce such visits or to cancel court orders directing such visits. The hearing was conducted on July 23, 2013. After the completion of testimony and argument, the matter was taken under submission.

As a preliminary matter, parties in this action challenged the authority of the court to rule on the issues of contact visits. However, this court has the jurisdiction to address the issues. Deference is given to local jail authorities' operational policies; however, jurisdiction

¹ For the purpose of this ruling, "attorney-client contact visit" is defined as a meeting space without any physical barrier between the attorney and client.

1 lies with the court when an operational practice impacts a constitutional or statutory right.
2 “The courts cannot abdicate their responsibility to protect inmates’ rights to adequate contact
3 with their attorneys...” In re Parker (1984) 151 Cal.App.3d 583, 590. These cases raise the
4 issue of an imprisoned defendant’s constitutional right to effective assistance of counsel
5 guaranteed under the Sixth Amendment to the United States Constitution and Article 1, section
6 15 of the California Constitution. These constitutional guarantees impose a duty on defense
7 attorneys to “investigate carefully all defenses of fact and of law that may be available to the
8 defendant...” (People v. Ibarra (1963) 60 Cal.2d 460, 464.) For defense counsel to perform
9 this duty and for an accused to derive the benefits of his right to counsel, there must be
10 assurances of confidential, private and effective communication. Barber v. Municipal Court
11 (1979) 24 Cal.3d 742; Adams v. Carlson (7th Cir. 1973) 488 F.2d 619; In re Smith (1970) 3
12 Cal.3d 192; In re Jordan (1972) 7 Cal.3d 930; Business and Professions Code section 6068 (e).
13 Thus, because the issue of contact visits and effective assistance of counsel are intertwined and
14 are constitutional guarantees, this court has jurisdiction to address the local jail authorities’
15 operational policies that impact these guarantees.

16 The courts recognize that prison authorities (including local jail facilities) are given
17 deference in developing policies to preserve internal order. Lawful incarceration initiates a
18 necessary limitation of many privileges and rights. However, there must be a mutual
19 accommodation between institutional needs and the objectives and provisions of the
20 Constitution. Prison policies may not be upheld if they unnecessarily abridge a defendant’s
21 meaningful access to his attorney and the courts. See Dreher v. Sielaff (7th Cir. 1980) 636 F.2d
22 1141. Thus, when an institutional restriction infringes on a constitutional right, it must be
23 evaluated in light of the central objective of prison administration, safeguarding institutional
24 security.

25 California Penal Code section 2600 states that a person confined in state prison may
26 “be deprived of such rights, and only such rights as is necessary in order to provide for the
27 reasonable security of the institution ... and for the reasonable protection of the public.” The
28 California Supreme Court has held that statute also protects those merely detained pending

1 trial and is binding on county jail authorities. DeLancie v. Superior Court (1983) 31 Cal.3d
2 865. That court interpreted the “necessary” standard as requiring “that a security measure be
3 the least intrusive possible of inmates’ rights yet flexible enough to satisfy the security need.”
4 In re Arias (1986) 42 Cal.3d 667, 691.

5 California Code of Regulation, Title 15, section 3170 is entitled “General Visiting” and
6 regulates the policies and methods to be used by correctional facilities in conducting inmate
7 visitations. Section 3170 (c) permits an institution to terminate, temporarily suspend or
8 modify visits with inmates in response to an institutional emergency. Section 3170 (d)
9 prohibits barriers to visitation:

10 “Devices that do not allow physical contact between inmates and visitors shall
11 not normally be used, except as provided in section 3170.1 or as necessary in
12 the following circumstances: (1) Physical contact with a visitor(s), or with other
13 inmates, will seriously endanger the safety of person or the security of the
14 institution/facility. (2) As a temporary measure for willful failure or refusal to
15 abide by visiting regulations.”

16 Local facilities are permitted to adopt individual standards “provided, such standards and
17 requirements meet or exceed and do not conflict with these standards and requirements.” 15
18 California Code of Regulations section 1005.

19 Courts have restricted attorney visits to “noncontact” rooms separating attorney and
20 client when the prisoner had a “demonstrated propensity toward violence.” Courts generally
21 require an individualized suspicion to justify limiting a detainee’s right to meet with counsel in
22 a barrier-free room (72 CJS Prisons section 113). State v. Walker (2011) 804 N.W.2d 284;
23 Department of Corrections v. Superior Court (1982) 131 Cal.App.3d 245. Blanket
24 eliminations of significant privileges are rarely addressed. One can surmise from this fact that
25 few institutions seek to severely restrict defendants’ access to counsel. An example of a
26 blanket restriction is Turner v. Safley (1987) 482 U.S. 78. There, the court found that an
27 institutional prohibition against inmates’ right to marry was an unnecessary infringement on a
28 basic right and the institutional regulation has to give-way to fundamental rights of inmates.

Those cases where the court approved of a cancellation of contact visits between
attorney and inmate client are based upon facts specific to a particular inmate. For example, in

1 Small v. Superior Court (2000) 79 Cal.App.4th 1000, a single inmate was denied contact visits
2 with counsel. The warden had denied the contact visits based on the inmate, who was facing
3 charges of murdering a cellmate and who had a history of a propensity of violence. Similarly,
4 in Department of Corrections v. Superior Court (1982) 131 Cal.App.3d 245, the restriction on
5 attorney-client contact visiting for that defendant was based on the facts of violence and
6 evidence of contraband being smuggled into the facility. It is significant that the termination
7 of attorney-client contact visitation in those and other cases is limited to individual inmates
8 who posed a specific and articulable unreasonable risk to institutional safety. As stated in
9 Department of Correction v. Superior Court, *supra*, at pages 299-300:

10 “We emphasize that the uncontroverted facts of Jordan’s [inmate’s] prison
11 history clearly established a sound basis for the necessary restrictions imposed
12 (section 2601, subdivision (d) (citations). Finally, while we recognize that such
13 restriction be the least onerous in view of the end to be achieved (citations)....”

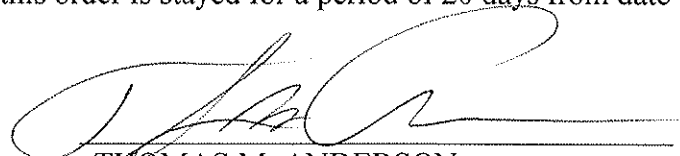
14 When analyzing a claim under Penal Code section 2600 the court has adopted a three
15 step inquiry: (1) Is a fundamental right implicated by a regulation? (2) If a right is implicated,
16 does a reasonable security problem exist which might permit a deprivation of that right? (3)To
17 what extent are the specific deprivations necessary to satisfy reasonable security interests?
18 People v. Aria (1986) 42 Cal.3d 667, 689-90. In the cases before the court, there is a
19 fundamental right at stake – effective assistance of counsel. Ching v. Lewis (9th Cir. 1990) 895
20 F.2d 608. In addition to the clearly established case law, the evidence presented at the hearing
21 supported the importance of unfettered contact between attorney and client. Attorney Thomas
22 Leupp, a criminal defense attorney for 35 years and Dr. Eugene Roeder, a forensic
23 psychologist, testified. Both witnesses were acknowledged as being highly respected
24 professionals in their fields. The essence of their testimony focused on the importance of trust
25 and effective communication between counsel and client. They referenced the difficulties of
26 creating an effective environment in a non-contact visiting setting. Therefore, to justify
27 deprivation of an important right, the facility must demonstrate a reasonable security problem
28 exists to permit such deprivation. In this case, no such evidence was offered. It was
established that the jail population is growing and the staffing of the jail has been reduced.

1 However, the evidence offered was that there have not been any incidents or significant
2 problems connected with permitting and accommodating attorney-client contact visits prior to
3 or since the change in permitting such visits in January of 2013. The remaining analytical step
4 focuses on the reasonableness of the deprivation. Were the court to assume the current staffing
5 issue created a reasonable security problem, we must determine if the deprivational response is
6 necessary. Without any indication that elimination of the attorney-client contact visits has or
7 will significantly improve general security or that a lesser means of increasing security is
8 unavailable, there is no evidence to support a finding of necessity for the deprivational action
9 taken.

10 It is not this court's intention to direct the sheriff's office on how to accommodate
11 attorney-client contact visitation. The sheriff's office and the county jail staff in particular
12 have a long history of cooperating with the court and other county departments. They are in
13 the best position to determine whether to revert to the previous means of providing contact
14 visitation or modify existing facilities and/or procedures to accommodate attorney-client
15 contact visits.

16 Therefore, it is the order of the court that confidential attorney-client contact visits be
17 made available absent those specific circumstances that may arise to justify suspension of such
18 right in an individual case. Execution of this order is stayed for a period of 20 days from date
19 of filing.

20 DATED: August 1, 2013



THOMAS M. ANDERSON
Judge of the Superior Court