LGIT'S COMMANDER'S LOG
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The Fourth Amendment provides inmates little, if any, protection against inspection and seizure of an inmate's non-privileged mail

QUESTION: Does the Fourth Amendment protect an inmate's non-privileged mail from inspection and seizure?

ANSWER: Inmates have extremely limited rights under the Fourth Amendment. The warrantless inspection and seizure of non-privileged mail is valid if it serves a justifiable purpose of imprisonment or prison security.

CASE: *Ronald Sparkman v. State of Maryland*, Court of Special Appeals Decided March 26, 2009

In this recent case, the question before the court was the extent of the protection afforded by the Fourth Amendment to an inmate's non-privileged mail. The case is unique in that most inmate court challenges concerning mail are brought under the First Amendment. This case was not. The facts established that Ronald Sparkman was charged with the murder of Ralph Pritchett in January 2005. Sparkman was incarcerated as a pre-trial detainee at the Baltimore City Detention Center ("the Detention Center"). On June 25, 2006, Corporal Monique Mitchell, a correctional officer in the Intelligence Unit of the Division of Pretrial Detention, Maryland Department of Public Safety and Correctional Services, received an envelope from the mailroom at the Detention Center addressed to Tamira Sparkman. The envelope, which measured 3 ½ by 6 ½ inches, contained a yellow label, apparently applied by the U.S. Postal Service, stating "RETURN TO SENDER," "INSUFFICIENT ADDRESS," AND "UNABLE TO FORWARD." The return address on the letter included Ronald Sparkman's name, his inmate number, and the address of the Detention Center. Corporal Mitchell opened the envelope. It contained two sheets of lined, letter-sized paper, which were folded repeatedly. It also contained a sheet of paper, which was also folded, with a photograph inside of it. The separate sheet appeared to be a copy of an autopsy photograph, which Corporal Mitchell found to be suspicious and not ordinary mail. She then opened the lined sheets and saw a handwritten letter. At the bottom of the second page she saw the following sentence: "1 picture is of my victim & the other 1 is my mother!" The letter also contained the statement: "I went to prison at a young age & back I am." Because Corporal Mitchell thought that the envelope's contents indicated some kind of criminal activity, she did not return it to Sparkman. Instead, she turned it over to the detective in charge of the murder investigation.

Prior to his murder trial, Sparkman moved to suppress the letter, contending that Corporal Mitchell's "search" and "seizure" of it violated his rights under the Fourth Amendment. Corporal Mitchell testified at the suppression hearing that it was the Detention Center's policy

to inspect all incoming mail, including "return to sender" mail, for contraband. She testified that "return to sender" mail is inspected because inmates attempt to circumvent the policy barring inmate-to-inmate correspondence by sending a letter to a bogus address and writing the other inmate's name as the return addressee. She testified further that it was the policy of the Intelligence Unit, of which she was a part, to search an inmate's incoming mail when there is a reasonable suspicion that an inmate is engaged in criminal activity or in any action which may jeopardize public safety. As to this particular letter, Corporal Mitchell testified that it was "suspicious" and that the thickness of the envelope led her to believe that it might contain contraband. The court denied Sparkman's motion to suppress and he was convicted of murder. He then appealed.

On appeal, the Court of Special Appeals affirmed the conviction. It did so on grounds that even if the Fourth Amendment were applicable in a detention setting, an inmate does not have a legitimate expectation of privacy in his non-privileged mail (Privileged mail, *i.e.*, that addressed to or from judges, courts, elected government officials, prison officials, parole board members, or attorneys, obviously presents other issues.) In short, the court agreed with numerous cases from across the county holding that, although the seizure and opening of mail falls within the ambit of the Fourth Amendment, the Fourth Amendment has not played a prominent role in prison mail decisions. Instead, most cases have been decided on First Amendment grounds. In any event, the search and seizure of the letter in this case was deemed reasonable, and, for that reason, Sparkman's conviction was upheld.

NOTE: Concerning an inmate's "privileged" mail, we must turn to the United States Supreme Court's decision in *Wolff v. McDonnell* in 1974. There, the Supreme Court held that mail sent *by an attorney* to an inmate was privileged and could not be read by prison officials. Recognizing the possibility that such legal mail may contain contraband, however, the Court held that a regulation allowing prison officials to open incoming letters in the inmate's presence passes constitutional muster. The decision *Wolff* was driven by the concern over the traditional privacy of the lawyer-client relationship. In light of the vast number of cases concerning inmates' privileged and non-privileged mail, it is important that your detention facility's policies adequately address the constitutional concerns. In this regard, it is reasonable to treat mail as privileged only if the name and official status of the sender appears commercially printed on the envelope. Further, it is not reasonable for incoming privileged mail to be held for a brief period to allow officials to verify the privileged status of the sender. Finally, following an external inspection of privileged mail, it is reasonable for an appropriately designated staff member to open and inspect the mail in the presence of the inmate to whom it is addressed.

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