

State v. Sells
ID No: 1108023648, 1108023723, 1109005261
March 20, 2013

SUMMARY

William Sells (“Sells”) is a criminal defendant in three sets of cases, involving very serious allegations, before the Court. He was unable to post bond. As a result, he is in the custody of the Delaware Department of Corrections (“DOC”), awaiting trial at James T. Vaughn Correctional Center (“JTVCC”). As of this time, he has not been convicted of any of these charges, and is, of course, presumed innocent. Sells is being held in the Secure Housing Unit (“SHU”). The Defendant has filed Motions for Reduction in Bail and Move Out of SHU to General Population in each set of cases before the court, alleging that the policies and rules pertaining to attorney-client visits within the SHU constitute violations of his state and federal constitutional rights. Because the selection of housing by DOC relative to this Defendant has gravely deleterious consequences, it results in a violation of Defendant’s constitutional rights. For those reasons, the Motion to Relocate is **GRANTED**. The Motion for Bail Reduction is **DENIED**, without prejudice to later re-filing, if necessary.

FACTS

Defendant, William Sells was arrested pursuant to the alleged commission of three incidents involving many offenses, including bank robbery, assault, attempted murder, and others. Sells is currently awaiting trial in the Secure Housing Unit at James T. Vaughn Correctional Center. According to the briefs, Sells is so incarcerated merely due to his inability to pay the amount of secured bail necessary to allow his release. The Defendant has been incarcerated for more than a year and a half. Counsel for the Defendant has filed a Motion for Reduction in Bail and Move Out of SHU to

State v. Sells
ID No: 1108023648, 1108023723, 1109005261
March 20, 2013

General Population in each of the three cases before the Court. These Motions are based on Counsel's inability to meet with his client due to the current policies and procedures in the SHU.

In recent months, this Court has become all too familiar with the impact the SHU's policies regarding counsel visits have on criminal defendants confined pending trial.¹ Legal visits in the SHU can be arranged by appointment only, on a space available basis. Apparently, the already difficult process of obtaining such an appointment has become even more arduous. When a visit is actually arranged, it takes place in a room with glass between the attorney and client, preventing clear communication and the passage of documents. If a video or document transfer is required, another special appointment is necessary with additional Department of Corrections personnel to be in attendance. The meeting room is frequently used for multiple meets at a time, compromising the privacy and attorney-client privilege necessary for open discussion with regard to issues of the case. As this Court noted in a previous order, the result of this policy is that, had Defendant been detained on a much less serious charge, such as petty theft, he would have had comparatively unrestricted access to counsel. On the other hand, where this Defendant is facing a lengthy sentence; where he is in dire need of counsel who are informed of all facets of the case; he can barely confer. That is the antithesis of logic.

Defendant's Counsel has suggested relocation from the SHU to the General

¹ See *State v. Gibbs*, 2012 WL 6845687 (Del. Super. Dec. 19, 2012) (discussing a similar motion brought before this Court by a Defendant awaiting trial on capital charges)); *State v. Coleman*, Case No:1203021526 (Del. Super. Sept. 27, 2012) (ORDER).

State v. Sells
ID No: 1108023648, 1108023723, 1109005261
March 20, 2013

Population as a solution to the problem. The State does not oppose Counsel's Motions to the extent they pertain to a possible relocation.

DISCUSSION

The Court acknowledges the deference both state and federal law have for the decisions made by correctional officials as well as the complex responsibilities with which DOC is tasked. However, the constitutional rights of an accused person cannot be overlooked, nor are they lost at the prison gate.² In this situation, the Court must once again take measures to protect the fundamental rights of a pre-trial detainee. Sells contends that the rules and procedures required for access to counsel violate his constitutional rights, more specifically the Sixth Amendment right to counsel and Fourteenth Amendment right to due process. The Court agrees. This decision is made with the same understanding of potential implications and sensitivity to the complex nature of the relationship between the judiciary and DOC as applied in prior orders of this kind.

Case law and statutes make clear that courts should generally defer to the expert judgment of corrections officials³, according them "wide-ranging deference in the adoption and execution of policies and practices."⁴ The supervisory powers of this

² *Johnson v. Anderson*, 370 F.Supp. 1373, 1379 (D.Del. 1974).

³ *Bell v. Wolfish*, 441 U.S. 520, 548 (1979)(quoting *Pell v. Procunier*, 417 U.S. 817, 827 (1974)).

⁴ *Stevenson v. Carroll*, 2011 WL 6842955, at *11 (D.Del. 2011)(citing *Bell v. Wolfish*, 441 U.S. 520, 521 (1979)).

State v. Sells

ID No: 1108023648, 1108023723, 1109005261

March 20, 2013

Court with regard to the administration of Delaware correctional facilities have been specifically discussed by the Superior Court in *State ex rel. Tate v. Cabbage*.⁵ In that case the Court held that “the judiciary is loathe to interfere with” the decisions of other branches of government.⁶ However, the Court will be warranted to act when a strong showing is made that prison authorities have acted in a manner involving “an arbitrary and capricious abuse of discretion...or where it is clearly shown there has been a deprivation or infringement of constitutional rights of inmates.”⁷ Defendant’s situation is definitively within this Court’s jurisdiction, as it involves clear issues of the infringement of his constitutional rights. It should be noted, as it was previously, that this is not intended as any sort of finding that the State’s position on housing is, as a general proposition, open to monitoring.

Delaware Courts have been willing to assume the obligation of regulation to prevent constitutional violations in the past.⁸ For example, in *Bailey v. State*, the

⁵ *State ex rel. Tate v. Cabbage*, 210 A.2d 555 (Del. Super. 1965).

⁶ *Id.* at 564.

⁷ *Id.* at 564-65.

⁸ See e.g., *Biggins v. Dep’t of Corr. of State*, 2000 WL 710093 (Del. Super. 2000)(citing *State v. Stewart*, Cr. A. Nos. N96-12-1395-1398 (Del. Super. Jan. 12, 1998) in support of the proposition that prison inmates have constitutional right to meaningful access to the courts); *Ross v. Dep’t of Corr.*, 722 A.2d 815 (Del. Super. 1998)(holding that inmates were entitled to individual copies of disciplinary rules); *Johnson v. State*, 442 A.2d 1362 (Del. 1982) (holding that a Delaware prisoner transferred to a federal facility outside the state had constitutional right to reasonable access to Delaware legal reference materials or a reasonable alternative thereto); *State ex rel. Tate v. Cabbage*, 210 A.2d 555 (Del. Super. 1965)(holding that prisoners’ constitutionally guaranteed rights, including freedom of religion, must be protected, but balanced against effective prison administration); *Bailey v. State*, 521 A.2d 1069 (Del. 1987)(affirming

State v. Sells

ID No: 1108023648, 1108023723, 1109005261

March 20, 2013

Superior Court used orders and threats of contempt to ensure a particular inmate's right to access his attorney as well as writing and legal supplies.⁹ The Delaware Supreme Court not only upheld the actions of the trial judge in that case, it went on to commend his conduct as both "exemplary and a model for the consideration of similar claims in the future."¹⁰ Recent attempts at using orders similar to that used by the trial judge in *Bailey* met with multiple promises, but have not led to the desired results. Evidently, the system is such that the prison guards who are tasked with meeting requirements are unaware of the order, or are otherwise unable to carry out the required measures.

The current policies in the SHU pertaining to attorney-client visits for this inmate violate his constitutional rights to access to counsel. This Order deals specifically with the denial of fundamental constitutional rights to Sells. As this Court has noted in the past, while it is conceivable that it may be necessary for the DOC to make systematic changes to the applicable policies, particularly as a pattern of similar issues for pretrial detainees is emerging, that is not the scope of this order. Instead, the Court is engaging in a consideration of the specific facts and circumstances of the particular inmate at issue.

The Sixth Amendment guarantees that: "In all criminal prosecutions, the

the trial court's handling of inmate's Sixth Amendment right to the assistance of counsel)).

⁹ *Bailey v. State*, 521 A.2d 1069 (Del. 1987).

¹⁰ *Id.* at 1085.

State v. Sells
ID No: 1108023648, 1108023723, 1109005261
March 20, 2013

accused shall enjoy the right...to have the Assistance of Counsel for his defence.”¹¹ Delaware Courts have held that this right is “fundamental to our system of justice and is meant to assure fairness in the adversary criminal process.”¹² Denying a criminal defendant the effective assistance of counsel “is a denial of due process of law, under both the federal and Delaware Constitution.”¹³ The rules imposed upon Defendant Sells have prevented him from meaningfully meeting with his counsel. In fact, Counsel has informed the Court that even scheduling and obtaining such an appointment to meet with his client have become increasingly difficult. Sells is facing multiple very serious charges in the three sets of cases, including five counts of Attempted First Degree Murder. He has been almost completely prevented from meeting with his attorney at all, let alone given ready access to counsel with the opportunity to pass and review documents. Attempting to resolve this situation by fashioning an order addressing the various restrictions, particularly knowing that such orders have yielded limited success in the past, would be a time consuming, inefficient manner of handling this case. As the Court understands the situation, the Defendant has not been placed in the SHU as a result of any disciplinary issues. He is held there as a result of a general DOC policy which places certain pre-trial detainees in the SHU based on the accusation or bail amount. Thus, the indictment (which, juries are instructed, have no significance other than to bring a charge) and

¹¹ U.S. Const. amend. VI.

¹² *Bailey v. State*, 521 A.2d 1069, 1083 (Del. 1987).

¹³ *Id.* (citing *Merritt v. State*, 219 A.2d 258 (Del. 1966)).

State v. Sells
ID No: 1108023648, 1108023723, 1109005261
March 20, 2013

the bail decision (which is designed merely to prevent flight and protect the community) appear to be controlling a defendant's constitutional right to counsel.

That is not a tolerable formula. This necessary circumstance does not, in any way, address the housing of an individual who is placed under high security as a result of his own improper activities within the institution.

Hopefully, the Court and DOC will be able to reconcile the competing purposes of regulating prison administration and assuring constitutional rights to criminal defendants. However, “[t]here must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application.”¹⁴ To provide for such a balance in this case, the Defendant must be relocated from the SHU to a location affording reasonably facile access to counsel. It has been suggested by Defendant’s Counsel that Defendant could be relocated to the general detainee population at the facility currently housing him, or moved to the Sussex Correctional Institution which apparently provides easier attorney-client meeting access. An additional option might be relocating the Defendant from the SHU to the Medium Housing Unit. An appropriate relocation option providing the Defendant the access to counsel, which evidently is unavailable in the SHU, is acceptable, but the end result must afford constitutionally reasonable access to counsel.

CONCLUSION

Therefore, Defendant Sells is to be relocated from detention in the SHU at

¹⁴ *Wolff v. McDonnell*, 418 U.S. 539, 556 (1975).

