

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 07-1465

THOMAS ROBINSON;
LUIS A. RAMIREZ,
Appellants

v.

PENNSYLVANIA DEPARTMENT OF CORRECTION;
DR. JEFFREY A. BEARD; (WARDEN) DONALD T. VAUGHN;
MICHAEL SPENCER; KIMBERLY ULISNY

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 03-cv-05180)
District Judge: Honorable Lawrence F. Stengel

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B)
or Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
April 16, 2009

Before: BARRY, AMBRO and SMITH, Circuit Judges

(Opinion filed: May 13, 2009)

OPINION

PER CURIAM

Appellants Thomas Robinson and Luis A. Ramirez, proceeding pro se, appeal from the District Court's order entering summary judgment in favor of Appellees. For the reasons that follow, we will summarily affirm the judgment of the District Court.

On September 15, 2003, Appellants, both inmates at SCI-Graterford, filed a complaint in the United States District Court for the Eastern District of Pennsylvania challenging the inmate mail handling procedures implemented by the Pennsylvania Department of Corrections ("DOC") in 2002. Appellants claimed that the system for reviewing and distributing their legal mail violated their First Amendment rights. The challenged procedures provide that all mail sent to inmates is opened offsite and screened for contraband before being delivered to the inmate. The procedures provide an exception for privileged correspondence from attorneys or the court to inmates bearing a "control number." To obtain a control number, an attorney must verify that all mail bearing a control number contains only "essential, confidential attorney-client communication" and does not contain any contraband. A court need not make any such verification, but may use the control number only for mail the sender truly deems confidential. All mail bearing a control number is opened by a corrections officer in the presence of the inmate.

Following a period of discovery, the parties cross-moved for summary judgment, which the District Court entered in favor of Appellees. After considering our opinion in

Jones v. Brown, 461 F.3d 353 (3d Cir. 2006), and applying the test set forth in Turner v. Safley, 482 U.S. 78 (1987), the District Court concluded that the Pennsylvania policy was promulgated in response to legitimate security concerns, that it was rationally related to the DOC's interest in preventing contraband from entering the prisons, and that the DOC offered a viable alternative in the form of a "control number." Appellants contested these conclusions, arguing that they have no control over whether courts or government attorneys obtain control numbers, that requiring corrections officers to deliver and open mail in front of them would not impose an additional burden on the state, and that contraband could be easily detected by corrections officers opening mail in front of inmates.

After the District Court entered summary judgment, Judge Savage in the Western District of Pennsylvania issued an opinion holding that the procedures in question were unconstitutional. See Fontroy v. Beard, 485 F. Supp. 2d 592 (E.D. Pa. 2007). Both parties appealed. See C.A. Nos. 07-2446 & 07-2514. We stayed the instant appeal pending the outcome of the appeal in Fontroy. On March 10, 2009, we issued a precedential opinion in Fontroy, reversing the judgment of the District Court and holding that the mail handling procedures promulgated by the DOC did not violate the First Amendment. See 559 F.3d 173 (3d Cir. 2009). After the Fontroy opinion was issued, we lifted the stay in the instant appeal and asked the parties to address the impact of Fontroy on their appeal. Appellants' response essentially seeks to re-litigate the issues we

considered in reaching our decision in Fontroy. Because we have already considered all of the arguments raised by Appellants in their brief and response to our order, we will summarily affirm the judgment of the District Court for all of the reasons given in Fontroy v. Beard. See 3d Cir. LAR 27.4 & I.O.P. 10.6.