

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

COUNTY OF NEVADA, NEVADA
COUNTY SHERIFF'S OFFICE, AND
SHERIFF-CORONER-PUBLIC
ADMINISTRATOR KEITH ROYAL, in
his official capacity,

Petitioners,

vs.

SUPERIOR COURT OF NEVADA
COUNTY

Respondent

JACOB MICHAEL SEGFRIED,

Real Party in Interest.

RAYMOND LEE DUZAN,

Real Party in Interest.

JONATHAN SCOTT FOOTE,

Real Party in Interest.

JOSE EDUARDO HENRIQUEZ,

Real Party in Interest.

CASE NO. C074504

Case No. F11-00317

Case No. F12-000450

Case No. F13-000059

Case No. F12-000376, M12-001672a,
M12-001123, M13-000093, M12-
001776, M12-001105, and M12-
001618b

CESAR SANTIAGO,

Real Party in Interest.

Case No. F13-000175

BRENT RAYMOND WILKINS,

Real Party in Interest.

Case No. F12-000175

Nevada County Superior Court
Honorable Thomas M. Anderson, Judge

**ANSWER TO BRIEF OF AMICI CURIAE BY
REAL PARTIES IN INTEREST**

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**BRIEF IN ANSWER TO AMICI CURAE CALIFORNIA STATE
SHERIFFS' ASSOCIATION, CALIFORNIA POLICE CHIEFS
ASSOCIATION, AND CALIFORNIA PEACE OFFICERS'
ASSOCIATION BY REAL PARTIES IN INTEREST**

I.

**PRISONERS HAVE A RIGHT TO CONTACT VISITS WITH
ATTORNEY ABSENT A LEGITIMATE PENOLOGICAL
REASON**

The Sixth Amendment guarantees a constitutional right to effective assistance of counsel. Although the Sixth Amendment right includes a right to private communication between client and counsel, it does not include in all instances, full and unfettered contact between an incarcerated inmate and counsel. In that respect, Real Parties in Interest (hereafter 'Real Parties') agree with Petitioner that there is no *absolute* right of prison inmates to have contact visits with their counsel. (*Small v. Superior Court* (2000) 79 Cal. App. 1000, 1013.) However, Petitioner's reliance on *Small* is misplaced.

Neither the reasoning nor the holding in *Small* support amicus argument that "there is no right to contact visits between attorney and client." To the contrary, the court in *Small* assumed there was such a right, but held that it must be balanced against security needs in exceptional cases. Hence the right is not absolute.

In *Small*, the Appellate Court issued a writ directing the trial court to vacate its orders finding the trial court had abused its discretion when it ordered the prison warden to replace a glass barrier with wire mesh in order to facilitate better communication between inmate-client and attorney. As such, the warden had modified an attorney-client visitation room to include a glass barrier so that the specific inmate could not pass any contraband to his attorney. The room was designed to prevent no-contact but provided for confidential meetings with his counsel. The prison authorities argued against the removal of the glass barrier and presented extensive evidence that the glass barrier was necessary to control this particular, dangerous inmate. The evidence consisted of prisoner Barrett's "extensive history of nonconforming conduct and violence in prison. In the previous 10 years, Barrett committed 64 rule violations, 54 of which were classified as serious. These included stabbing or slashing assaults on fellow inmates, battery with a weapon on another inmate, battery on an inmate resulting in serious bodily injury, and the manufacture and possession of dangerous weapons." *Small* at 1007. Defense counsel argued, in sum, that the plexiglass barrier, and other modifications impeded effective communication with the prisoner.

The trial court ruled that the warden must replace the plexiglass barrier with wire mesh because the glass impeded the effective communication between client and counsel. The Appellate Court vacated the court's order finding that prison authorities can implement reasonable restrictions on visits between an inmate and his or her attorney *if necessary for prison security*. (*Small* at 1010, citing *People v. Torres* (1990) 218 Cal. App. 3d 700, 706, emphasis added.) As modified, the no contact attorney room in *Small* was appropriate because it was implemented to address the specific security needs of a particularly dangerous inmate who had a documented history of violent rule violations.

Therefore, in *Small*, the Appellate Court explained that prisoners do not have an absolute right to contact visits pursuant to their Sixth Amendment Right to Counsel. That right must be balanced against the penal institutions need to ensure prison security. The prison authorities must present substantial evidence of a particular inmates acts of violence that justifies implementation of specific safety measures to prevent further dangerous incidents of that particular prisoner.

In the Nevada County jail case, there was no evidence

presented to document specific instances of violent or dangerous inmate security breaches that warranted the complete ban on all attorney client visits. Real Parties are in accord with amici that if a particular inmate poses a documented security threat, then jail staff can modify attorney-client visits so that they are non-contact as they relate to that particular inmate. The legal principles that *Small v. Superior Court* analyzed make clear that the court is to weigh an inmate's constitutional right to effective assistance of counsel, with the prison authorities need to place reasonable restrictions on visits between an inmate and is attorney if necessary for prison security.

II.

INMATES DO NOT FORFEIT THEIR CONSTITUTIONAL RIGHTS BY VIRTUE OF THEIR INCARCERATION

In cases involving security measures affecting prisoner rights, the starting point is Penal Code §2600, which provides in relevant part "[a] person sentenced to imprisonment in a state prison may during that period of confinement be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests." *Small* at 1010.

The principle that restriction of an inmate's constitutional rights

may not extend beyond that which is reasonably necessary for prison security concerns has been embraced repeatedly by the nation's highest court. (See *Pell v. Procunier* (1974) 417 U.S. 817; *Bell v. Wolfish* (1979) 441 U.S. 520; *Block v. Rutherford* (1984) 468 U.S. 576; *Turner v. Safley* (1987) 482 U.S. 78.) *Small* at 1011.

In determining whether a prison restriction is reasonable, the relevant factors are: (1) whether there is a " 'valid, rational connection' between the prison [restriction] and the legitimate governmental interest put forward to justify it"; (2) whether there are alternative means of exercising the right; (3) how the accommodation of the asserted right will impact guards, other inmates and the allocation of prison resources; and (4) whether the restriction is an " 'exaggerated response' " to prison concerns. (*Turner v. Safley*, supra, 482 U.S. at pp. 89-91) *Small* at 1012.

Bell v. Wolfish 441 U.S. 520 instructs a reviewing court to accord deference to prison officials in determining the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security. *Id.* at 547. However, the court must implement the *Turner* four part test to determine whether a security measure is warranted -

in other words, has the prison official presented evidence to support the implementation of a security measure that is necessary to provide adequate security.

The Nevada County jail authorities failed to present any evidence to establish a need to prohibit contact visits between attorneys and client-inmates. In the *Turner* context, the Petitioners have failed to provide “an explanation why they have singled out attorneys for the restricted contact.” *Mann v. Reynolds* (10th Cir. 1995) 46 F. 3d 1055, 1061. Therefore, although courts defer to prison officials expertise in security matters, the court must weigh prison officials security concerns with inmates rights. In other words, *Turner* instructs that any limitation placed on contacts between lawyers and clients must be related to a legitimate penological interest.

Real Parties argue that Petitioners failure to provide any rational basis for its non-contact policy aligns this case with *Ching v. Lewis*, 895 F.2d 608 (9th Cir.1990), in which the Ninth Circuit reversed summary judgment granted in favor of prison officials because “defendants failed to give any justification to support their decision to deny contact visits to [the inmate].” *Id.* at 610. The Ninth

Circuit premised this conclusion on the analysis in *Dreher v. Sielaff*, 636 F.2d 1141 (7th Cir.1980), which recognized that while prison administrators are given deference in developing policies to preserve internal order, these policies will not be upheld if they unnecessarily abridge the defendant's meaningful access to his attorney and the courts. The opportunity to communicate privately with an attorney is an important part of that meaningful access. *Ching*, 895 F.2d at 609 (citations omitted). Thus, the Ninth Circuit held "a prisoner's right of access to the courts includes contact visitation with his counsel." 895 F.2d at 610.

Finally, Amici Curiae believe that trial "courts are ill equipped to deal with the increasingly urgent problems of [jail] administration and reform." Amici at 30, citing *Procunier v. Martinez* at 405. Real Parties strenuously disagree with that assertion. Amici Curiae ignore the reality that only the Court is in a position to ensure that inmates constitutional rights are protected. If we wish to maintain the principle that "all persons are equal under the law" we cannot erode inmates rights in the name of "institutional security" unless there is a valid penological reason to do so.

On May 23, 2011, the U.S. Supreme Court issued a ruling in a

lawsuit against our state involving prison overcrowding. Specifically, the court upheld the ruling of a federal three-judge panel requiring the state to reduce overcrowding in its prisons. With that ruling, came Realignment which shifted low-level offenders from incarceration in the California prison system, to incarceration in the county jails. While Real Parties recognize that jail officials are striving to provide institutional security in light of Realignment, it is critical that reviewing courts examine new security measures so that their implementation does not place an undue burden upon prisoner's constitutional rights.

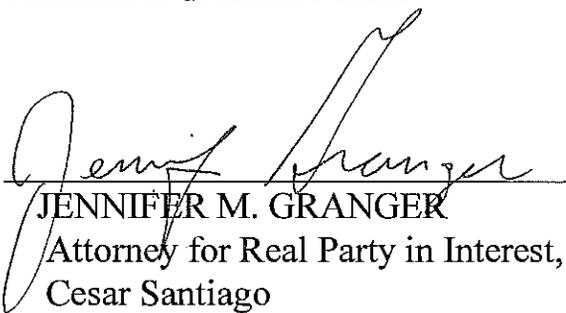
As recently as December 9, 2013, eighteen L.A. County Sheriff's officials were indicted and accused of obstruction of justice and abusing inmates and visitors in the L.A. County jails. The courts must remain vigilant to ensure prisoner's rights are protected. Only a reviewing court can protect the rights of inmates who are locked away from the rest of society for months and years at a time.

III.

CONCLUSION

For all the foregoing reasons, Real Parties respectfully ask that the Petition for Writ be denied. The courts have a duty to scrutinize the reasons to justify impairment of inmate rights in order to ensure that only legitimate and substantial needs of the institution are being served. That scrutiny is informed by respect for the expertise of corrections officials, but is not limited to deference alone.

Dated: December 10, 2013

By: 
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