

MAINE STATE LEGISLATURE

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Allan Robbins, Warden

Maine State Prison

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Inmate Assistance in Preparation of Legal Work.

FACTS:

Inmates at the State Prison are assisting other inmates in the researching and preparation of legal work, mainly post-conviction petitions.

QUESTION:

Whether or not the State may regulate and control such activities?

ANSWER:

Yes.

REASONS:

While there are no opinions on record dealing with this problem in this office, there are regulations dealing with this situation in other states.

One case, Johnson v. Avery, 252 F. Supp. 783 (1966) arose when the petitioner brought what was construed to be a Writ of Habeas Corpus to obtain relief from solitary confinement where he had been placed for violating a prison regulation which prohibited prisoners from helping other prisoners prepare petitions of Habeas Corpus. The regulation of the prison was struck down as violating the first section of 28 U.S.C.A. § 2242 which reads:

"Application for a writ of Habeas Corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf."

(Emphasis supplied.)

The Court said in Johnson v. Avery that there is a constitutional right to petition and the prison cannot abridge the right to have that constitutional right made effective. Prisoners incapable of acting for themselves have the right to have someone act for them. Thus in

preparing the petition for another, the petitioner was, under the circumstances, acting on the other person's behalf. The court further said by way of dicta that a prison might impose reasonable restraints on the "jail-house lawyers" such as restraining the time available for such activities for reasons of prison discipline and morale. The practice might be restricted wholly if a reasonable alternative were available such as an available list of qualified lawyers who would volunteer to do such work.

However, that decision has recently been overruled on appeal by the Sixth Circuit Court of Appeals, 1 Cr. L. 2345. There the Court said:

"There is no reason at all that justifies a state prisoner practicing law on behalf of his fellow inmates."

It further said that such regulations (which so prohibit) are:

". . . matters for the executive branch of Government and one for which the courts, with their limited experience and facilities are ill suited to undertake. . . . Neither the language nor the policy of 28 U.S.C.A. Sec. 2242 justifies such a conclusion (of the lower court). The provision of the law authorizing someone to act on behalf of a prisoner whose release is sought, relates only to the act of signing or verifying the petition, and we do not interpret that authorization to include the preparing of legal papers and serving as an attorney in the violation of state law."

In view of the above, I suggest the following be made a Regulation of the State Prison:

"Inmates shall not be permitted to advise other inmates on legal matters, such as, but not limited to, post-conviction matters."

The above phrasing is not meant to prohibit an inmate from typing or writing on behalf of another, but is meant to limit the giving of legal advice.

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