

PELICAN BAY STATE PRISON

SECOND LEVEL REVIEW

DATE: **DEC 16 2011**

██████████
Pelican Bay State Prison
Security Housing Unit
Facility ██████████

**PELICAN BAY STATE PRISON
SECURITY HOUSING UNIT
UNIT C-9**

RE: WARDEN'S LEVEL DECISION
APPEAL LOG NO. PBSP-C-11-02467

APPEAL: **PARTIALLY GRANTED**
ISSUE: MAIL

This matter was reviewed by G. D. Lewis, Warden (A), at Pelican Bay State Prison (PBSP). This appeal has been processed via the multiple appeal policy in accordance with the California Code of Regulations (CCR), Title 15, Section 3084.2(g)(1)(2)&(3) and 3084.3(b)(2). On November 10, 2011, Correctional Lieutenant M. Ferguson conducted the interview of the inmate on the Controlling Appeal, Log# PBSP-D11-02438, at the Second Level of Review.

ISSUES

The inmate's request that their copy of the Maoist International Ministry (MIM) mailing dated October 12, 2011, be delivered. They also demand an explanation as to how it was determined to be coded, how it was determined to be third party, how it was deemed gang related and how it involves inmate to inmate communications.

FINDINGS

I

The inmates allege in their Appeal that on or about October 28, 2011, they received one CDC 128-B, Stopped Mail Notification, from the PBSP Institutional Gang Investigations Unit (IGI). These documents were signed by Correctional Officer G. Pimentel and approved by Correctional Captain B. W. Freeland. The reason for the mail stop was the contents of the envelope contained coded information, promotes gang activities, is third party, and contains plans to disrupt the safe and secure order of prisons. The inmates dispute this mail stop and insist the stop is inappropriate, and demand proof that the sender is using codes and promoting gang activity.

II

Correctional Lieutenant M. Ferguson interviewed the original inmate on November 10, 2011 at the Second Level of Review. As this is a multiple appeal response, this inmate was not interviewed. The reviewer insured this inmate did not have a TABE score of 4,0 or less and he does not appear on the Disability and Effective Communications System list.

III

Lieutenant Ferguson reviewed the stopped piece of mail on November 10, 2011. This mailing is dated October 12, 2011, and contains eight double sided pages of computer generated writings. Included are writings from numerous inmates in different prisons in both California and other states. The writings also contained strategies to be utilized in a larger, more organized hunger strike

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that is being planned for the future, as well as how the current hunger strike is progressing at both PBSP and other prisons that are participating. Monikers are utilized by persons who have contributed articles from other prisons, and one inmate from a California prison writes in part; *“Our leaders in the SHU still fly kites to the line. They still have representatives who collect and put out their orders. If they can enforce upon their members to engage in this as well as other activities, then I am sure they can enforce upon their member population to enter the struggle.”*

IV

The Second Level Reviewer notes that a mass disruption (hunger strike) occurred at PBSP and other California Prisons from July 1, 2011 to July 20, 2011. During that time frame numerous extra resources were required to appropriately monitor the health and wellbeing of the participants. These resources included additional Correctional and Medical staff as well as administrative staff. A second mass disruption began statewide on September 26, 2011 and ended on October 14, 2011, resulting in additional resources being expended to ensure the safety and wellbeing of the participants. This mailing is clearly reporting on this disturbance.

DETERMINATION OF ISSUE

The California Code of Regulations (CCR), Title 15, Section 3006, Contraband: *Inmates may possess only the personal property, materials, supplies, items, commodities and substances, up to the maximum amount, received or obtained from authorized sources, as permitted in these regulations. Possession of contraband as defined in section 3000 may result in disciplinary action (c) Except as authorized by the institution head, inmates shall not possess or have under their control any matter which contains or concerns any of the following. (5) Plans to disrupt the order, or breach the security, of any facility. (7) Coded messages.*

The CCR, Title 15, Section, 3023. Gang Activity, states in part; *(a) Inmates and parolees shall not knowingly promote, further or assist any gang as defined in section 3000. (b) Gangs, as defined in section 3000, present a serious threat to the safety and security of California prisons. (c) For the purpose of specific gang participant identification, the department categorizes gangs into prison gangs and disruptive groups.*

The CCR, Title 15, Section, 3139 (10)(f)(1)(3) Correspondence Between Inmates, Parolees, and Probationer's states in part; *when a CDCR inmate requests to correspond with an inmate in a county, state, or federal facility, or if the request is from a county, state, or federal inmate, the CCI shall ensure that a CDC Form 1074 is completed along with a cover letter that thoroughly explains the need for the CDC Form 1074. If the request is denied, the CCI shall ensure that a letter is forwarded to the requesting agency thoroughly explaining the denial.*

The PBSP Department Operation Manual (DOM) Addendum, Section 54010, Attachment #32, unauthorized items via regular mail: *Third party letters, reproduced material from magazines, publications, or materials which cannot be readily traced to a correspondent/sender.*

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In this matter, it is crystal clear that this mailing is a report card of activities occurring statewide regarding the mass disruption that is taking place at the time this letter was generated. It is noted that all of the main organizers of this mass disruption are validated gang members and associates who are housed in the Security Housing Unit (SHU). These individuals utilized their influence and standing within their respective gangs to promote this mass disruption. This is gang activity.

One of the purposes of housing gang members and associates in the SHU is to monitor and intercept their illicit communications that may threaten the safety and security of the public and this and/or other institutions throughout the State. This is one of those communications. It contains writings and information that has been gathered by one person, who types up the newsletter and distributes it to persons who subscribe to it. This is third party mail.

Many of the contributors identify themselves as inmates in various prisons and utilize monikers to identify themselves as they report on activities occurring in their respective locations. This is inmate to inmate correspondences.

Many prison inmates are committed to and promote the activities of inmate terrorist groups sometimes known as prison gangs and sometimes known as disruptive groups. These groups are large, continuing criminal enterprises dedicated to increasing the power of that group by extortion, intimidation, and their abilities to cause a mass disruption of operations inside the prisons walls. It is not possible to promote a conspiracy without contact between conspiracy members. This means that an effective way to control these conspiracies is isolating conspiracy members from contact with other conspiracy members. To allow inmates to receive this particular mailing would in effect be assisting in the promotion of the conspiracy to cause other mass disruptions of prison programs.

Based upon a review of this information, the mailings were appropriately confiscated and accurately documented by the IGI. The IGI continues to conduct investigations into the scope of all inmates' activity and illicit communications.

The inmates request for the stopped mailing to be delivered is **DENIED**. The inmates request to have a detailed explanation as to the many reasons for the stop is **GRANTED**. This Appeal response contains that explanation.

Based upon the above review and findings cited by the Second Level Reviewer, the Appeal is **PARTIALLY GRANTED** at the Second Level of Review.

MODIFICATION ORDER

No modification of this decision or action taken is required.


G. D. LEWIS
Warden (A)