

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION
OFFICE OF APPEALS
P. O. BOX 942883
SACRAMENTO, CA 94283-0001

THIRD LEVEL APPEAL DECISION

MAR 14 2012

Date:

In re:

Pelican Bay State Prison
P.O. Box 7000
Crescent City, CA 95531-7000

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

TLR Case No.: 1107741

Local Log No.: PBSP-11-02467

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner C. Tileston, Facility Captain. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: It is the appellant's position that his incoming mail was inappropriately stopped. He claims that the stopped mail is a violation of his rights. He claims this is an attempt by the Institution Gang Investigator (IGI) to over censor the mail due to the hunger strike. He claims that there is no form of coded messages in the letter, it is simply a political publication that believes in prisoner's rights; therefore, the CDCR is attempting to ban these types of pro prisoner rights publications. He is requesting to be given his stopped mail and for the IGI/Investigative Services Unit/Pelican Bay State Prison (PBSP) administration to stop retaliating against hunger striking inmates.

II SECOND LEVEL'S DECISION: The reviewer found that there was no basis to grant the grievance; therefore, the Second Level of Review (SLR) denied the appeal. The appellant was informed that this appeal was responded to as a multiple appeal issue pursuant to the California Code of Regulations, Title 15, Section (CCR) "3084.2(g)(1)(2) and (3)." On November 10, 2011, Correctional Lieutenant Ferguson conducted an interview with the inmate of the controlling appeal. The appellant was informed of the rules and regulations that apply to his appeal. The SLR reviewed the disallowed mail. The mailing contains eight double sided pages of computer generated writing. 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 that is being planned for the future, as well as how the current hunger strike is progressing at both the 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 Security Housing Unit 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, than I am sure they can enforce upon their member population to enter the struggle."

The SLR notes that a mass disturbance (hunger strike) occurred at the PBSP from July 1, 2011, through 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 custody staff and medical staff as well as administrative staff. A second mass disturbance (hunger strike) occurred from September 26, 2011, through 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.

The IGI continues to conduct investigations into the scope of inmate activity and illicit communications. As such, this letter is part of ongoing investigations and will be retained by the IGI for the purpose of these investigations.

III THIRD LEVEL DECISION: Appeal is denied.

A. FINDINGS: The Third Level Review (TLR) finds the documentation and arguments presented are persuasive that the appellant has not supported his appeal issue with sufficient evidence or facts to warrant a modification of the SLR.

In the appellant's case, he claims that his incoming letter was stopped inappropriately. His mail was disallowed due to it violating the CCR 3006(c)(7), 3023(a), and PBSP CDC Operations Manual,

Supplement Section (DOM) 54010. The appellant's mail was reviewed by the SLR and the appellant was informed of the gang related material that was contained in the letter. The mailing contained information from multiple other inmates using Monikers to conceal their identities. The mail contained information regarding the hunger strike that occurred twice in 2011, which was a statewide mass disturbance lead by inmates in multiple different institutions across the State.

The CCR 3132(a) states in part, "Correspondents are personally responsible for the content of each item of mail they send into or out of a correctional facility. All persons corresponding with inmates must comply with existing laws, regulations and local rules." It is the correspondents' responsibility to ensure that they comply with Department policy when they send mail. The PBSP staff are in compliance with Department policy in denying the appellant's incoming mail. The mail was reviewed by staff and a captain deemed the mail to be in violation of established policies. Therefore, the mail was disallowed and the CCR 3136 was complied with.

The CCR 3131 states in part, "Each warden or head of a correctional facility shall prepare and maintain a plan of operation for the sending and receiving of mail for all inmates housed in the facility." The CCR 3380 provides the wardens of each institution the authority to establish local operating procedures. The CCR 3001 provides that inmates are subject to the rules and regulation of the institution in which they reside.

The appellant has not provided any evidence or information to indicate that his mail should not have been disallowed. The IGI will maintain control of the mail as it pertains to an active investigation into the ongoing operation of gang activity at the PBSP, which is consistent with the CCR 3191(c).

In Section "F" of the appeal, the appellant contends that he was not interviewed. This is correct; however, he was informed at the SLR that his appeal was being answered as a multiple appeal. Therefore, staff processed the appeal pursuant to the CCR 3084.2(i)(1) and (2). Since the original inmate of the controlling appeal was interviewed, additional interviews of all other multiple appeals are not required. Therefore, based upon the available information, no further relief for the appellant is warranted at the TLR.

The appellant has added new issues and requests to his appeal. The additional requested action is not addressed herein as it is not appropriate to expand the appeal beyond the initial problem and the initially requested action (CDC Form 602, Inmate/Parolee Appeal Form, Sections A and B).

B. BASIS FOR THE DECISION:


California Penal Code Sections: 2086, 2600, 2601, 5058

CCR: 3000, 3001, 3006, 3023, 3084.1, 3130, 3131, 3132, 3133, 3134, 3135, 3136, 3137, 3139, 3191, 3270, 3380


DOM: 52070.1, 52070.2, 52070.3, 52070.6.1, 52070.6.2, 52070.6.4, 52070.15.1, 52070.15.5, 54010.1, 54010.2, 54010.3, 54010.4, 54010.6, 54010.8, 54010.8.1, 54010.9, 54010.10, 54010.13, 54010.14, 54010.15, 54010.16, 54010.22.2, 72010.7.2

C. ORDER: No changes or modifications are required by the Institution.

This decision exhausts the administrative remedy available to the appellant within CDCR.


C. TILESTON, Appeals Examiner
Office of Appeals

cc: Warden, PBSP
Appeals Coordinator, PBSP


D. FOSTON, Chief
Office of Appeals