

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

THIRD LEVEL APPEAL DECISION

Date: JAN 11 2013

In re: [REDACTED]

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

PELICAN BAY STATE PRISON
SECURITY HOUSING UNIT
UNIT D-3

TLR Case No.: 1206270

Local Log No.: PBSP-12-02868

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

I APPELLANT'S ARGUMENT: It is the appellant's position that the disallowance of his Maoist Internationalist Movement (MIM) Newsletter because it allegedly contained a "call for solidarity and threatens the security of the institution," is a violation of his First Amendment Right. The appellant contends solidarity is not a violation of any rule and requests to be provided his disallowed newsletter.

II SECOND LEVEL'S DECISION: The reviewer found the July/August 2012 MIM Newsletter, Number 27, received by Pelican Bay State Prison (PBSP) and disallowed by Captain (A) Olsen on August 3, 2012, contained information which violates California Code of Regulations, Title 15, (CCR) Section 3006. The MIM issue under appeal contained an article on page three, which called for a solidarity demonstration and participation in a work stoppage violating CCR 3006. The CDC Form 1819, Notification of Disapproval-Mail/Packages/Publications, was completed and the newsletter's publisher was notified of the decision to disallow the issue and process for appeal, in accordance with CCR 3134.1. The appellant's request for the return of the disallowed issue of MIM Newsletter was denied at the Second Level of Review (SLR).

III THIRD LEVEL DECISION: Appeal is denied.

A. FINDINGS: At the Third Level of Review (TLR), this examiner finds the institution's actions are supported and required by the Department's policies and procedures. The PBSP administration thoroughly and completely reviewed the matter under appeal and acted appropriately. The MIM Newsletter contained information in clear violation of CCR 3006 and was appropriately disallowed. The appellant's statement the date of the alleged "solidarity demonstration," had passed, was considered and is of no consequence. The contents of the newsletter article within were in violation of the rule, regardless of the date indicated.

It is noted within the SLR, the PBSP Department Operations Manual (DOM) Supplement 54010.14 is referenced and incorrectly states, if a publication is denied, "...designated staff at, or above, the staff level of a Correctional/Facility Captain, will authorize a CDCR 1819, or a CDCR 128B." This is incorrect. The PBSP DOM Supplement was revised in November 2012 to reflect the following: "... will authorize a CDCR 1819, and a CDCR 128, if additional information is necessary." Additionally, the CDC 1819 incorrectly states the publication is in violation of "CCR 3006(d)(5);" however, the correct section is CCR 3006(c)(5).

This examiner finds the institution followed departmental policies and procedures; thus, ensuring the safety and security of the institution. No relief is warranted or shall be afforded to the appellant at the TLR.

B. BASIS FOR THE DECISION:

CCR: 3006, 3130, 3131, 3132, 3134.1, 3135, 3136

CDCR Operations Manual, Section: 54010.1, 54010.2, 54010.8, 54010.9, 54010.14, 54010.16, 54010.21.1, 54010.21.2, 54010.21.3

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

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



C. ZUNIGA, Appeals Examiner
Office of Appeals

cc: Warden, PBSP
Appeals Coordinator, PBSP

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J. D. LOZANO, Chief
Office of Appeals