

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Charles Sisney v. Denny Kaemingk

No. 20-2460, United States Court of Appeals for the Eighth Circuit (October 15, 2021)

SUMMARY

The Eighth Circuit held that a prison policy banning pornography was constitutional as applied to erotic novels under the *Turner v. Safley* test, but unconstitutional as applied to art books and Renaissance artwork lacking a rational connection to penological interests. The court dismissed as moot the inmate's facial overbreadth challenge to the nudity prohibition because the district court's unappealed remedy did not redress his remaining injuries, and rejected the overbreadth challenge to the sexually explicit content prohibition after applying constitutional avoidance to narrowly construe the policy. The opinion addresses First Amendment prison mail restrictions, as-applied versus facial challenges, mootness, severability, and the doctrine of constitutional avoidance in overbreadth analysis.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	Gruender; Benton; Stras
JURISDICTION	Federal
DECIDED	October 15, 2021
DOCKET	20-2460
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from the United States District Court for the District of South Dakota - Southern, from a grant of partial summary judgment.
STANDARD OF REVIEW	De novo review of summary judgment.
PRECEDENTIAL VALUE	published
PARTIES	Denny Kaemingk, in his official capacity as the South Dakota Secretary of Corrections; Darrin Young, in his official capacity as the Warden of the South Dakota State Penitentiary; Sharon Reimann, in her official capacity as an SDSP designated Mailroom Officer; Craig Mousel, in his official capacity as an SDSP designated Property Officer v. Charles E. Sisney

TOPICS

first amendment

prisoners rights

civil rights

appellate procedure

mootness

standing

standard of review

summary judgment

subject matter jurisdiction

PRACTICE AREAS

Civil Rights

First Amendment

Prisoners' Rights

QUESTIONS PRESENTED

1. Whether the prison's pornography policy is unconstitutional as applied to the erotic novels, the art book, and the Renaissance pictures.
2. Whether the policy is facially overbroad under the First Amendment.
3. Whether the overbreadth claim regarding the prohibition on nudity is moot.
4. Whether the overbreadth claim regarding the prohibition on sexually explicit content fails on the merits.
5. Whether sanctions are appropriate for alleged noncompliance with court orders.

HOLDINGS

1. The policy is constitutional as applied to these novels because they contain graphic descriptions of sexual acts whose primary purpose is sexual arousal, and the censorship is reasonably related to legitimate penological interests under *Turner v. Safley*.
2. The policy is unconstitutional as applied to these items because there is no rational connection between banning pictures of artwork such as Michelangelo's 'David' and legitimate governmental interests like security and rehabilitation.
3. The claim is moot because a favorable decision would not redress Sisney's remaining injuries (the Coppertone advertisement and Pretty Face comics) due to the district court's remedy, which was not appealed.
4. The claim fails on the merits because Sisney failed to show that the policy is substantially overbroad when construed in light of the doctrine of constitutional avoidance.

KEY QUOTATIONS

"The Policy defines 'pornographic material' as follows: 'Includes books, articles, pamphlets, magazines, periodicals, or any other publications or materials that feature nudity or "sexually explicit" conduct. Pornographic material may also include books, pamphlets, magazines, periodicals or other publications or material that features, or includes photographs, drawings, etchings, paintings, or other graphic depictions of nudity or sexually explicit material. "Nudity" means a pictorial or other graphic depiction where male or female genitalia, pubic area, buttocks or female breasts are exposed. Published material containing nudity illustrative of medical, educational or anthropological content may be excluded from this definition. "Sexually Explicit" includes written and/or pictorial, graphic depiction of actual or simulated sexual acts, including but not limited to sexual intercourse, oral sex or masturbation. Sexually explicit material also includes individual pictures, photographs, drawings, etchings, writings or paintings of nudity or sexually explicit conduct that are not part of a book, pamphlet, magazine, periodical or other publication.'" (Section I)

“When a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests. The Supreme Court has articulated a two-step, four-factor test to determine when a regulation that impinges on inmates' constitutional rights is 'reasonably related to legitimate penological interests.’” (Section II)

“The Amazon.com advertisement for Pride and Prejudice: The Wild and Wanton Edition, which is in the record, describes the book as follows: '[W]e've never been able to see Elizabeth and Fitzwilliam in flagrante delicto—until now. In this deliciously naughty updating of the beloved classic, you can peek behind the closed doors of Pemberley's sexiest master bedroom—and revel in the sexual delights of your favorite couple. From first kiss to orgasmic finish, this book is every Austen fan's dream come true—the story you love, with the heat turned up to high. It will come as no surprise that the dashing Mr. Darcy is as passionate and intense with his knickers off as he is with them on.’” (Section III.A)

“Common sense does not suggest, and the defendants have offered no evidence to prove, a rational connection between banning pictures of artwork such as Michelangelo's 'David' and legitimate government interests such as security and rehabilitation.” (Section III.B)

FACTUAL BACKGROUND

Charles Sisney, an inmate at the South Dakota State Penitentiary, had several items of incoming mail rejected in 2015 based on the prison's pornography policy. The rejected items included four issues of the comic book 'Pretty Face,' a Coppertone advertisement, two erotic novels ('Thrones of Desire' and 'Pride and Prejudice: The Wild and Wanton Edition'), a fine-art book ('Matisse, Picasso and Modern Art in Paris'), and nine pictures of Renaissance artwork, including Michelangelo's 'David' and the Sistine Chapel. The policy defines 'pornographic material' as materials that feature nudity or sexually explicit conduct, with exceptions for medical, educational, or anthropological content.

PROCEDURAL HISTORY

The district court initially granted in part and denied in part the parties' motions for summary judgment. The Eighth Circuit vacated and remanded, instructing the district court to resolve as-applied challenges before addressing the facial overbreadth challenge. On remand, the district court rejected as-applied challenges to the Coppertone advertisement and Pretty Face comics, sustained as-applied challenges to the erotic novels, art book, and Renaissance pictures, and then held the policy overbroad and crafted a remedy. The defendants appealed.

DISPOSITION

other

REMAND INSTRUCTIONS

Remand with instructions: (1) enter summary judgment for defendants on the as-applied challenge to the erotic novels; (2) dismiss as moot the overbreadth challenge to the prohibition on nudity; (3) enter summary judgment for defendants on the overbreadth challenge to the prohibition on sexually explicit content; (4) deny the motions

for sanctions for violations of the Eighth Circuit's order and the district court's orders, but without prejudice to Sisney seeking sanctions in the district court for violations of its injunction.

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