

# MASSACHUSETTS SUPREME JUDICIAL COURT

## Ciampi v. Commissioner of Correction

452 Mass. 162 (2008) · Decided August 15, 2008

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### SUMMARY

The Massachusetts Supreme Judicial Court considered whether the Department of Correction had statutory authority to impose restitution as a prison disciplinary sanction and to withdraw funds from an inmate's account to satisfy that sanction. The court held that restitution was within the Commissioner of Correction's broad authority to maintain prison discipline and that the withdrawal did not violate the inmate's protected property interest because he received constitutionally adequate notice and process. The court vacated the grant of summary judgment for the inmate and directed that summary judgment enter for the defendants.

### OPINION

IRELAND, J.

Ireland, J. The plaintiff, Dennis A. Ciampi, commenced an action in the nature of certiorari, G. L. c. 249, § 4, against the defendants challenging the validity of the Department of Correction's (department's) regulations and substance abuse policy that allow it to withdraw funds from a prisoner's savings and personal account to satisfy a restitution sanction in a disciplinary action.

In his complaint he alleged, *inter alla*, that the seizure of his account violated his State and Federal constitutional rights, and he sought declaratory relief under G. L. c. 231A and damages under 42 U.S.C. § 1983 (2000). A Superior Court judge granted the plaintiff's motion for summary judgment and denied the defendants' cross motion for summary judgment, concluding, *inter alla*, that the department lacked the statutory authority to promulgate regulations authorizing the withdrawal of money from an inmate's account as restitution.

The defendants appealed, and we transferred the case to this court on our own motion. Because we conclude that restitution as a disciplinary sanction is a part of the Commissioner of Correction's (commissioner's) broad grant of statutory authority to maintain prison discipline and that withdrawing funds from the plaintiff's account to satisfy a restitution sanction did not violate any statutorily protected property interest he may have had, we reverse the order granting the plaintiff's motion for summary judgment and grant summary judgment for the defendants.

Background. The material facts are not in dispute, thus we present them in summary form, reserving certain details for our discussion of the issues. On September 13, 2002, a correction officer searched the plaintiff's cell and found a bottle of "home brew."<sup>2</sup> Consequently, the plaintiff

was served with a disciplinary report and was told that if he was found guilty, he might be given a restitution order in the amount of \$144 to cover the costs of twelve months of mandated testing for controlled substances.

On the same day, a urine test administered to the plaintiff \*164 tested positive for alcohol, resulting in a second disciplinary report. The plaintiff was notified that a disciplinary hearing for the offenses charged in both reports would be held on September 27, 2002, given a copy of the confirmatory screen results from the laboratory, and given two notices regarding restitution to cover the costs of periodic substance abuse testing and of the urine test.<sup>3</sup> After a process consisting of a disciplinary hearing and an appeal, several sanctions were imposed on the plaintiff, including paying \$144 in restitution.

The money was withdrawn from his prison account by the department on October 31, 2003. In granting summary judgment for the plaintiff, the judge found that pursuant to G. L. c. 127, §§ 3 and 48A, the plaintiff had a protected property interest in the monies in his account. Relying on *Welsh vs. Department of Correction*, Middlesex Superior Court, No. 2000-4998F (April 9, 2001), a case concerning a deduction from an inmate's account to cover the cost of a deoxyribonucleic acid assessment, the judge concluded that the department exceeded the statutory authority of G. L. c. 124, § 1, and G. L. c. 127, § 33, in promulgating regulations that allowed the defendants to withdraw money from the plaintiff's account to satisfy a restitution sanction.

Discussion. 1. General Laws c. 124, § 1, states, in relevant part: "In addition to exercising the powers and performing the duties which are otherwise given him by law, the commissioner of correction... shall...(b) maintain security, safety and order at all state correctional facilities... (i) investigate grievances and inquire into alleged misconduct within state correctional facilities;... (q) make and promulgate necessary rules and regulations incident to the exercise of his powers and the performance of his duties including but not limited to rules and regulations regarding... safety, discipline... and custody for all persons committed to correctional facilities" (emphasis added). \*165 General Laws c. 127, § 33, states, in relevant part: "The superintendents of all institutions under the jurisdiction of the department of correction and the superintendents and keepers of jails and houses of correction shall cause all necessary means to be used to maintain order in the institutions under their supervision, [and] enforce obedience..." (emphasis added).

The defendants argue that regulations and policies were properly promulgated pursuant to these statutory provisions. The regulations expressly authorize restitution as a sanction in disciplinary proceedings. 103 Code Mass. Regs. §§ 430.09, 430.25 (1995).<sup>5</sup> In addition, the superintendent is allowed to deduct from or impound an inmate's account to satisfy a restitution sanction imposed by a disciplinary proceeding.<sup>6</sup> 103 Code Mass. Regs. § 405.17 (1999).<sup>7</sup> Moreover, an internal substance \*166 abuse policy establishes guidelines for department staff using restitution as a disciplinary sanction.

103 DOC § 525 (2001).<sup>8</sup> The plaintiff contends that the commissioner exceeded her authority pursuant to G. L. c. 124, § 1 (b), (i), and (q), and G. L. c. 127, § 33, in enacting the regulations authorizing debiting accounts for restitution. “A highly deferential standard of review governs a facial challenge to regulations promulgated by a government agency.” *Massachusetts Fed’n of Teachers v. Board of Educ.*, 436 Mass. 763, 771 (2002). “[A] properly promulgated regulation has the force of law... and must be accorded all the deference due to a statute (citation omitted).” *Borden, Inc. v. Commissioner of Pub.*

*Health*, 388 Mass. 707, 723, cert. denied sub nom. *Formaldehyde Inst., Inc. v. Frechette*, 464 U.S. 936 (1983). Although deference does not mean abdication, *Quincy v. Massachusetts Water Resources Auth.*, 421 Mass. 463, 468 (1995) (“regulation that is irreconcilable with an agency’s enabling legislation cannot stand”), it requires that we “apply all rational presumptions in favor of the validity of the administrative action and not declare it void unless its provisions cannot by any reasonable construction be interpreted in harmony with the legislative mandate.” *Consolidated Cigar Corp. v. Department of Pub.*

*Health*, 372 Mass. 844, 855 (1977). See *Berrios v. Department of Pub. Welfare*, 411 Mass. 587, 596 (1992) (enforcement of regulations should be refused only if they are “plainly in excess of legislative power”). A party challenging a regulation bears the burden of proving that the regulation is “illegal, arbitrary, or capricious.” *Borden, Inc. v. Commissioner of Pub.*

*Health*, supra at 722. \*167The plaintiff acknowledges that G. L. c. 124, § 1 (b), and G. L. c. 127, § 33, “give the [commissioner the power to maintain security, safety and order in jails]”; that G. L. c. 124, § 1 (/), “gives the [c]ommissioner the power to investigate grievances and inquire into alleged misconduct”; and that G. L. c. 124, § 1 (q), “does contain a general provision of authority to the [department.” However, he contends that the “general grant of authority does not give the [c]ommissioner the power to promulgate regulations authorizing [the debiting of] money from inmate accounts as restitution,” because an agency may not use a broad interpretation of a statute where the legislative intent of that statute is clear and unambiguous.

The plaintiff argues that, because the Legislature has specifically enumerated in what circumstances the department is authorized to make deductions from an inmate’s account, the Legislative intent is clear. He cites G. L. c. 124, § 1 (r) (authorizing commissioner to deduct money from inmate’s account for haircuts); G. L. c. 127, § 16A (authorizing commissioner to promulgate rules and regulations for reimbursement of medical expenses by persons in prerelease facilities); G. L. c. 127, § 48 (authorizing commissioner to promulgate rules and regulations for “hours, conditions of employment, wage rates... and deductions from said wages pursuant to the provisions of [G.

L. c. 127, § 86F]”)9; and G. L. c. 127, § 48A (superintendent may expend one-half of money earned by inmate for “articles for the use of the inmate” and may expend on inmate’s written

request “expenses related to family illness or death, legal defense, provision of essential articles of personal use”), to support his argument that because restitution as a disciplinary sanction is not \*168part of this list of deductions it should not be permitted by resorting to “catchall statutes,” citing G. L. c. 124, § 1 (b), (/), and (q), or broad general grants of authority.

We disagree. Each of the challenged regulations and policy is entirely within the commissioner’s broad grant of authority, under G. L. c. 124, § 1 (q), to maintain prison discipline and is consistent with the Legislature’s intent. When the Legislature vests an agency with “broad authority to effectuate the purposes of an act ‘the validity of a regulation promulgated thereunder will be sustained so long as it is “reasonably related to the purposes of the enabling legislation.” ’ ” *Levy v. Board of Registration & Discipline in Med.*, 378 Mass. 519, 524 (1979), quoting *Consolidated Cigar Corp. v. Department of Pub.*

*Health*, 372 Mass. 844, 855 (1977). The commissioner stated in an affidavit that restitution is an “essential disciplinary tool” that serves several penological functions such as protecting the staff, deterring future misconduct, and holding an inmate accountable for his actions.

Because maintaining internal security within a correctional facility is “central to all other corrections goals,” *Blackburn v. Snow*, 771 F.2d 556, 562 (1st Cir. 1985), quoting *Hudson v. Palmer*, 468 U.S. 517, 527 (1984), the challenged policy and regulations that authorize restitution as a disciplinary sanction are reasonably related to the overarching goal of maintaining safety and discipline in prisons.<sup>10</sup> See *Libby v. Commissioner of Correction*, 385 Mass. 421, 434 (1982), quoting *Bell v. Wolfish*, 441 U.S. 520, 547 (1979) (“Prison administrators... should be accorded wide-ranging deference in the adoption... of policies and practices that... are needed to preserve internal order and discipline...”).

Moreover, “[a]n express grant carries with it by implication all incidental authority required for the full and efficient exercise \*169of the power conferred.” *New England Med. Ctr., Inc. v. Rate Setting Comm’n*, 384 Mass. 46, 52-53 (1981), quoting *Scannell v. State Ballot Law Comm’n*, 324 Mass. 494, 501 (1949).

Therefore, a regulation need not be “traced to specific words” in a statute because “an agency’s powers to promulgate regulations ‘are shaped by its organic statute taken as a whole....’ ” *Purity Supreme, Inc. v. Attorney Gen.*, 380 Mass. 762, 770 (1980), quoting *Commonwealth v. Cervený*, 373 Mass. 345, 354 (1977). See *Grocery Mfrs. of Am., Inc. v. Department of Pub.*

*Health*, 379 Mass. 70, 75 (1979) (“regulation may be authorized even where it cannot be traced to specific statutory language”). In any event, the fact that there is nothing in G. L. c. 124, § (1) (q), that specifically authorizes the department to debit money from a prisoner’s account is not dispositive. See *Simmons v. County of Suffolk*, 230 Mass. 236, 237 (1918) (maxim that expression of one thing is implied exclusion of other things “is not conclusive of legislative intent,

but is to be considered with regard to the object sought to be obtained by the entire legislation of which the subject-matter to which it relates is but a part”).

See also *Brady v. Brady*, 380 Mass. 480, 484 (1980) (statutory expression of one thing is implied exclusion of other things omitted from statute not followed where it would frustrate general beneficial purpose of statute); *Forcier v. Hopkins*, 329 Mass. 668, 671 (1953) (same).

Here, the general purpose of G. L. c. 124, § 1 (b), (/), and (q), and G. L. c. 127, § 33, is to maintain safety and discipline in correctional facilities. As discussed *supra*, restitution as a disciplinary sanction is an “essential disciplinary tool” that, if eliminated, would frustrate the commissioner’s ability to carry out the Legislature’s intent.<sup>11 2.</sup>

The plaintiff next argues that “the seizure of funds from \*170[his] inmate account violates his protected property interest.”<sup>12</sup> We disagree. Prison inmates “may not be deprived of life, liberty, or property without due process of law.” *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974).

However, the protections of procedural due process apply only if there is an existing liberty or property interest at stake. *O’Malley v. Sheriff of Worcester County*, 415 Mass. 132, 135 (1993). We assume without deciding that, in the Commonwealth, prisoners have a statutorily protected property interest in the funds in their prison accounts entitling them to due process protection.

See G. L. c. 127, § 3 (“[The department] shall keep a record of all money or other property found in possession of prisoners... and shall be responsible for the safekeeping and delivery [of property when the prisoners are discharged]”). See also *Gillihan v. Shillinger*, 872 F.2d 935, 938-939 (10th Cir. 1989) (statutes that create expectation that money not used will be returned to inmate at end of his incarceration create protected property interest).

At a minimum, the due process clause of the Fourteenth Amendment to the United States Constitution requires that there be notice and an opportunity for a hearing before a person is deprived of a protected property interest. See *Logan v. Zimmerman*, 455 U.S. 422, 428, 434 (1982).

In a disciplinary proceeding where a prisoner’s liberty interest is at stake he must be given “(1) advanced written notice of the disciplinary charges; (2) an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and to present evidence in his defense; and (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action.” \*171*O’Malley v. Sheriff of Worcester County*, *supra* at 138, quoting *Superintendent, Mass. Correctional Inst. at Walpole v. Hill*, 472 U.S. 445, 454 (1985) and citing *Wolff v. McDonnell*, 418 U.S. 439, 563-567 (1974).

Thus, a “properly conducted prison disciplinary hearing generally satisfies due process.” *Jones v. Clark*, 607 F. Supp. 251, 256-257 (E.D. Pa. 1984). See *Ruley v. Prison Comm’rs*, 628 F. Supp.

108, 110 (D. Nev. 1986).

Here, before any deduction was made from the plaintiff's account, he received written advanced notice of the disciplinary hearing. At the disciplinary hearing itself, the plaintiff pleaded not guilty to the charges under the first disciplinary report and guilty to the charges under the second disciplinary report. During the hearing, he was allowed to make a statement, call witnesses, and present evidence in his defense.

When he was found guilty of the charges, he was provided with a written statement from the hearing officer detailing the evidence the officer relied on and stating the reasons for the sanctions. On the first disciplinary report, the plaintiff received (1) loss of visits for one year; (2) loss of canteen privileges for one year; (3) loss of 200 days of statutory good time; and (4) restitution in the amount of \$288.

On the guilty plea on the second disciplinary report, he received thirty-days' isolation and restitution in the amount of \$37.50 for the urine test. The plaintiff appealed from the sanctions he received as a result of both disciplinary reports.

The superintendent denied his appeal from the second disciplinary report, but granted his appeal from the first. As a result, the plaintiff's sanctions under the first disciplinary report were reduced to loss of visits and loss of canteen privileges for six months and \$144 in restitution.

In sum, the plaintiff received due process for the deprivation of his property through the disciplinary hearing and subsequent appeal; nothing more was required. See *O'Malley v. Sheriff of Worcester County*, *supra*. Conclusion.

For the reasons set forth above, the grant of summary judgment is vacated and summary judgment shall enter for the defendants. So ordered. The plaintiff calls the substance "fermented fruit juice." The first notice stated that if he was found guilty at the hearing he might be given a restitution order in the amount of \$288 to cover the cost for two years of periodic substance abuse testing.

The second notice stated that the plaintiff might have to pay \$37.50 to cover the cost of the initial urine test. Title 103 Code Mass. Regs. § 430.09 (1995) states, in pertinent part, that where a disciplinary officer determines that restitution is an appropriate sanction, that officer must provide the inmate with an itemized list of damages or costs associated with the misconduct.

This regulation was amended in January of 2006 and is now codified at 103 Code Mass. Regs. § 430.10 (2006). Title 103 Code Mass. Regs. § 430.25 (1995) stated that restitution was permissible for major and minor sanctions. Effective January 30, 2006, 103 Code Mass. Regs. § 430.25 was revised. Offenses are now divided into categories but restitution remains an authorized sanction under each category.

In addition, the regulation provides that “ [findings requiring the payment of an amount of restitution... shall be supported by a preponderance of the evidence.” 103 Code Mass. Reg. § 430.25(6) (2006). The superintendent is “the Chief Administrative Officer of a correctional facility.” 103 Code Mass. Regs. § 405.06 (1999). One of the superintendent’s responsibilities is to consider inmate appeals regarding findings or sanctions made by a hearing officer.

103 Code Mass. Regs. § 430.18 (1995). Title 103 Code Mass. Regs. § 405.17 (1999) provides in relevant part: “(1) An inmate who has been found guilty through the disciplinary process... and has been ordered to make restitution as a sanction, may consent to having funds debited from his savings and personal accounts....

(3) Should the inmate refuse to consent to voluntary debiting of his account(s)... the Superintendent may order the debiting of the inmate’s... account in an amount up to one-half of the money earned by an inmate while incarcerated provided, however, any or all of the money may be debited if the inmate is a sexually dangerous person or person serving a life sentence....

(4) If the amount debited from an inmate’s account is insufficient to satisfy the restitution order, \*166the Superintendent may order the impoundment of the inmate’s account for the remaining amount of restitution owed.” We note that, effective November 19, 2004, 103 Code Mass. Regs. § 405.17 (2004) was amended. Now when a restitution sanction is imposed on an inmate through a disciplinary process, that inmate’s account will automatically be frozen, and the treasurer may withdraw all funds available until the restitution is paid.

Title 103 DOC § 525.07 (2001) states that if an inmate’s substance abuse screening is positive the following events occur: a disciplinary report is filed, the inmate is informed of the test result, a confirmatory screen is available if the inmate wishes to plead not guilty, and if the confirmatory screen confirms the initial screening the inmate may be responsible for the cost of the confirmatory test.

General Laws c. 127, § 86F, states in relevant part: “The sheriff shall deduct [from an inmate’s earnings] the following: “First, an amount necessary to satisfy the victim and witness assessment ordered by a court pursuant to [G. L. c. 258B, § 8]; second, an amount determined by the sheriff for substantial reimbursement to the county for providing food, lodging and clothing for such inmate; third, the actual and necessary food, travel and other expenses of such inmate when released for employment under the program; fourth, the amount ordered by any court for support of such inmate’s spouse or children; fifth, the amount arrived at with public welfare departments; sixth, sums voluntarily agreed to for family allotments and for personal necessities while confined.” We are unpersuaded by the plaintiff’s argument that the commissioner’s “reliance on restitution as an essential disciplinary tool is misplaced” because there are “far more essential tools affecting the inmates day to day existence than the garnishing of funds.” The mere presence

of more severe disciplinary tools does not render restitution sanctions a less effective method of maintaining order and discipline in prisons.

Moreover, in the *Cepulonis* case, cited by the dissent, post at 176 n.10, the court implicitly approved a restitution order of \$10,774 when it stated that a fine has a remedial and a deterrent aspect. *Cepulonis v. Commonwealth*, 426 Mass. 1010, 1011 (1998) (restitution order did not implicate double jeopardy clause).

The parties devote much time to discussing whether the judge, in granting summary judgment for the plaintiff, properly relied on *Welsh vs. Department of Correction*, Middlesex Superior Court, No. 2000-4998F (April 9, 2001), or whether, as the defendants contend, *Cook vs. Marshall*, Middlesex Superior Court, No. 2000-2830 (Oct. 17, 2001), was more apt.

In the *Welsh* case, the judge concluded that the commissioner's general grant of authority pursuant to G. L. c. 124, § 1 (q), does not encompass the authority to promulgate regulations authorizing deductions for deoxyribonucleic acid assessment fees without an inmate's consent because there is no statute expressly authorizing such a deduction.

In contrast, the judge in the *Cook* case concluded that the department's regulations authorizing an inmate's account to be frozen to satisfy a restitution order was valid. Given our conclusion, we need not address the applicability of these cases, which, in any event, have no precedential value.

The dissent argues that, in concluding that the commissioner has the power to authorize restitution as a sanction pursuant to G. L. c. 124, § (1) (q), our decision leaves the commissioner free to "deduct any amount" from an inmate's account. Post at 175-176.

However, in this appeal, the plaintiff does not challenge the amount of the restitution sanction; therefore, the issue of its reasonableness is not before the court. We also note that, as discussed *infra*, when the plaintiff appealed from the sanctions imposed by the hearing officer, the superintendent reduced the plaintiff's restitution sanction from \$288 to \$144.