

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

<b>MICHAEL W. OWENS,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil Action No. 7:00-CV-00376</b>
	)	
<b>v.</b>	)	<b><u>MEMORANDUM OPINION</u></b>
	)	
<b>JAMES L. JENKINS, et al.,</b>	)	<b>By: Samuel G. Wilson,</b>
	)	<b>Chief United States District Judge</b>
<b>Defendants.</b>	)	

This is a suit for declaratory and monetary relief brought by the plaintiff, Michael W. Owens, against the defendants, James L. Jenkins, Chairman, Virginia Parole Board; Larry Huffman, Regional Director, Northern Region, Virginia Department of Corrections; D.A. Braxton, Warden, Buckingham Correctional Center; Barbara Wheeler, Assistant Warden of Operations, Buckingham Correctional Center; B.M. Booker, Operations Officer, Buckingham Correctional Center; and M. Johnson and L. Brown, Mailroom Officers, Buckingham Correctional Center (collectively, the “defendants”); under 42 U.S.C. § 1983, alleging violations of his constitutional rights due to parole-review and mailroom procedures. This court has jurisdiction pursuant to 28 U.S.C. § 1331. This action is before the court on the defendants’ motion to dismiss/motion for summary judgment. Finding that there are no genuine issues of material fact and that the defendants are entitled to judgment as a matter of law, the court will grant the defendants’ motion for summary judgment.

**I.**

Plaintiff Michael W. Owens is a Virginia Department of Corrections (“VDOC”) inmate who alleges that his constitutional rights were violated due to various parole-review and mailroom procedures at Buckingham Correctional Center, where he is incarcerated. In Claim 1, Owens

alleges that he did not receive an answer at his August 9, 1998, parole board interview as to whether he would be granted parole and that he “does not know” whether he had been given a written notice of the decision and next consideration date. In Claim 2, Owens complains that he has been denied parole repeatedly for the same reason—the serious nature and circumstances of his offense. He also asserts that he did not receive a notice of deferral following the parole board’s decisions in 1996, 1997, and, as noted in Claim 1, 1998. In Claims 3, 4, 5, and 6, he alleges that the defendants censored his incoming correspondence by refusing to deliver, respectively, (1) Christmas stickers on December 16, 1999; (2) a bookmark on January 26, 2000; (3) a drawing on January 21, 2000; and (4) stickers and labels on September 24, 1999.

After exhausting his administrative remedies, Owens filed suit in this court on May 16, 2000, against the defendants under 42 U.S.C. § 1983. The court has jurisdiction pursuant to 28 U.S.C. § 1331. This action is now before the court on the defendants’ motion to dismiss/motion for summary judgment.<sup>1</sup>

## **II.**

### **A. Parole Claims**

An inmate has no independent constitutional right to be paroled before the expiration of his valid criminal sentence, and states have no constitutional obligation to establish a parole system. See Greenholtz v. Inmates of Neb. Penal & Correctional Complex, 442 U.S. 1, 7 (1979). Virginia parole statutes create for prisoners a liberty interest not in being released on parole, but rather in being considered for discretionary parole once they meet certain eligibility requirements.

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<sup>1</sup> Because matters outside the pleadings have been presented to and reviewed by the court, the court will treat the defendants’ motion as a motion for summary judgment. See Fed. R. Civ. P. 12(b).

See Gaston v. Taylor, 946 F.2d 340 (4th Cir. 1991) (en banc). Accordingly, Virginia inmates cannot be deprived of consideration for discretionary parole without due process. See Franklin v. Shields, 569 F.2d 784 (4th Cir. 1977), aff'd in part and rev'd in part, 569 F.2d 800 (4th Cir. 1978) (en banc), cert. denied, 435 U.S. 1003 (1978).

Under Virginia parole statutes, the Parole Board has broad discretion to balance the interests of the Commonwealth and the rights of each individual inmate in determining whether parole should be granted to that inmate at a given time, once the inmate is eligible for discretionary parole. Id. at 791. Procedural due process requirements for a Virginia inmate are satisfied if the Parole Board furnishes the prisoner with a statement of its reason or reasons for denying parole. Id. at 797. The seriousness of an inmate's offense is a constitutionally sufficient reason for denying that inmate discretionary parole release, see Bloodgood v. Garraghty, 783 F.2d 470 (4th Cir. 1986); Smith v. Hambrick, 637 F.2d 211 (4th Cir. 1980); and when the Parole Board gives a valid reason for its decision, courts may not assume that the Board relied on possibly invalid factors, see Bloodgood, 783 F.2d at 475.

In 1993, 1996, 1997, and 1998, the Parole Board considered Owens for parole and, as it is required to do, gave him a written statement listing its reason for denial of parole on each occasion: "The serious nature and circumstances of [his] offense." (Jenkins Aff., Encl. B.) The law clearly indicates that this is a constitutionally-legitimate reason for denying parole.

Owens also complains that, although he received letters denying parole in 1996 and 1997, he did not receive a notice of deferral those years concerning his annual parole review. In 1996 and 1997, his annual parole review was not deferred; in each case, he was considered for parole again the following year: after his 1996 review, he was considered for parole again in 1997; and

after his 1997 review, he was considered for parole again in 1998. Thus, because his annual parole review was not deferred after review in either 1996 or 1997, he would not have been entitled to a notice of deferral for those years.

He also complains that he “does not know” whether he received a notice of deferral or a notice that his parole was denied in 1998. (Compl.) In 1998, his annual parole consideration was denied and the next parole review deferred for two years. Owens was notified of this denial and deferral in a letter dated September 4, 1998. Defendant Jenkins, Chairman of the Virginia Parole Board, has supplied an affidavit and a copy of the letter, both of which indicate that the Parole Board sent the letter to Owens in 1998. Owens merely states that he “does not know whether or not he had been given a written notice.” (Compl.) Without evidence or even allegation to the contrary, the court finds that Owens has failed to marshal evidence showing that he did not receive notice of the Board’s denial of parole and deferral of the annual parole review and that there is no genuine issue as to this fact. In drawing this conclusion, the court need not decide whether he was entitled to be informed of the deferral of his annual parole review because he was informed on the two occasions (in 1993 and 1998) that he did, in fact, receive deferrals.

### **B. Mail Claims**

Owens also maintains that the defendants interfered with his mail on four occasions in violation of the First Amendment. As relief for those alleged violations, Owens seeks monetary relief and an order from the court that has the effect of preventing mailroom officers from “censoring and destroying” his mail where the items do not constitute a security threat. Although a prisoner enjoys a First Amendment right to receive and send mail, see Thornburgh v. Abbott, 490 U.S. 401 (1989), prison officials may adopt regulations that impinge on a prisoner’s

constitutional rights if those regulations are “reasonably related to legitimate penological interests.” Turner v. Safley, 482 U.S. 78, 89 (1987). Legitimate penological interests include preserving prison security and maintaining order and discipline. Moreover, in noting the delicate nature of prison management, the Supreme Court has “afforded considerable deference to the determinations of prison administrators who, in the interest of security, regulate the relations between prisoners and the outside world.” Thornburgh, 490 U.S. at 408. Thus, a prisoner’s First Amendment right to receive mail is subject “to the right of prison officials to open a prisoner’s incoming mail in accordance with uniformly applied policies deemed appropriate to maintain prison security.”<sup>2</sup> See Kensu v. Haigh, 87 F.3d 172, 174 (6th Cir. 1996); see also Gaines v. Lane, 790 F.2d 1299, 1304 (7th Cir.1986) (upholding against First Amendment challenges regulations that authorize prison officials to inspect incoming or outgoing non-legal mail for contraband).

In accordance with Department of Corrections Policies (“DOP”) 856 and 851, the defendants inspected Owens’ incoming mail for contraband. DOP 851 states that inmates may receive only “correspondence” through the mail. Correspondence includes letters, greeting cards, personal photographs, and money orders. Whenever an inmate receives mail that contains unauthorized items, all of the contents, including any correspondence, are returned to the sender.

Here, Owens complains that the defendants denied him mail on four occasions. On all

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<sup>2</sup> In addition, the Supreme Court has established that when a prison official withholds or censors mail, “minimum procedural safeguards” must exist to protect the inmate’s constitutional rights. See Ballance v. Young, 2000 WL 33150598 (W.D. Va. Oct. 12, 2000) (citing Procunier v. Martinez, 416 U.S. 396, 417 (1974)). The Fourth Circuit, following the Martinez Court, reaffirmed the requirements of notice of confiscation, avenues for protest, and review of the alleged constitutional violation by someone not involved with the initial decision. See Montcalm Publ’g Corp. v. Beck, 80 F.3d 105, 108 (4th Cir. 1996). Here, the defendants afforded Owens all of those procedural safeguards, and Owens utilized the avenues of appeal.

four occasions, the defendants' interpretation of the applicable operating procedure, DOP 851, concluded that the items contained in Owens' incoming mail—stickers and labels, a bookmark, and a drawing—were not approved correspondence.<sup>3</sup> Likewise, because the mail contained personal property that had not been approved previously for receipt and that had not come from an approved vendor, the defendants considered the mail contraband. Consequently, the defendants denied Owens his mail on those four occasions.

The court concludes that the defendants' confiscation of the personal property items contained in Owens' mail was reasonably related to legitimate penological interests; namely, maintaining security and preventing contraband from entering the prison. The defendants followed their standard policies in reviewing Owens' mail and denied him mail on four occasions because the mail failed to satisfy those policies. The courts afford prison officials great discretion in executing policies designed to preserve order and maintain security, including the regulation of prisoners' receipt and possession of personal property. This ensures that prison officials “and not the courts, . . . make the difficult judgments concerning institutional operations.” Turner, 482 U.S. at 89 (quoting Jones v. North Carolina Prisoners' Labor Union, 433 U.S. 119, 128 (1977)). Here, the defendants are entitled to that same deference. Accordingly, the court finds that, in denying Owens his mail on the four occasions of which he complains, the defendants did not violate Owens' First Amendment rights.

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<sup>3</sup> The defendants admit that Owens' claim concerning the drawing may stand on different footing than his claims concerning the stickers and labels and the bookmark. Assuming without deciding that the drawing constituted a correspondence under DOP 851 and had some First Amendment protection, the general rule is that an isolated incident of interference with mail, absent evidence of improper motive, does not give rise to a constitutional violation. See Gardner v. Howard, 109 F.3d 427, 431 (8th Cir. 1997) (involving interference with legal mail); Smith v. Maschner, 899 F.2d 940, 944 (10th Cir. 1990) (same).

**III.**

For the reasons stated above, the court grants the defendants' motion for summary judgment. The court will issue an appropriate order on this day.

**ENTER:** This \_\_\_\_ day of March, 2001.

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CHIEF UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

<b>MICHAEL W. OWENS,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil Action No. 7:00-CV-00376</b>
	)	
<b>v.</b>	)	<b><u>FINAL ORDER</u></b>
	)	
<b>JAMES L. JENKINS, et al.,</b>	)	<b>By: Samuel G. Wilson,</b>
	)	<b>Chief United States District Judge</b>
<b>Defendants.</b>	)	

In accordance with the Memorandum Opinion entered this day, it is **ORDERED and ADJUDGED** that Defendants’ motion to dismiss/motion for summary judgment is **GRANTED**. It is further **ORDERED** that this action be stricken from the docket of the court.

Owens is advised that he may appeal this decision pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure by filing a notice of appeal with this court within sixty (60) days of the date of entry of this Order, or within such extended period as the court may grant pursuant to Rule 4(a)(5).

**ENTER:** This \_\_\_\_ day of March, 2001.

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CHIEF UNITED STATES DISTRICT JUDGE