

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN KINFORD,
Appellant,
vs.
SOCIAL SECURITY
ADMINISTRATION,
Respondent.

No. 82665

FILED

DEC 20 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER

Appellant has filed a letter inquiring about the status of his appeal. On August 27, 2021, this court entered an order referring this appeal to the court's pro bono appellate program and to the Legal Aid Center of Southern Nevada for evaluation as to whether appellant qualifies for appointment of a pro bono attorney.¹ To date no attorney has filed a notice of appearance on appellant's behalf, nor has the Legal Aid Center otherwise communicated with this court. The Legal Aid Center shall have 14 days from the date of this order to inform this court regarding whether appellant qualifies for the program and its attempts, if any, to locate counsel on behalf of appellant

It is so ORDERED.

[Signature], C.J.

¹A copy of this court's order is attached.

cc: Steven Kinford
Attorney General/Carson City
Attorney General/Las Vegas
McCormick, Barstow, Sheppard, Wayte & Carruth, LLP/Las Vegas
Legal Aid Center of Southern Nevada, Barbara E. Buckley,
Executive Director
Anne R. Traum, Coordinator, Appellate Litigation Section,
Pro Bono Committee, State Bar of Nevada
Kelly Dove

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ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER REGARDING DOCUMENT AND PRO BONO COUNSEL

This is a pro se appeal from an order denying appellant's petition for access to a rehabilitation and education program.¹ On April 12, 2021, appellant filed the docketing statement. Attached to the docketing statement is appellant's informal opening brief. The clerk of this court shall detach the brief from the docketing statement and shall file it separately. Respondent need not file a response to the brief unless directed to do so by this court. NRAP 46A(c).

Having considered the documents transmitted by the district court, the district court record, and appellant's informal opening brief, this court has determined that the appointment of pro bono counsel to represent appellant would assist this court in reviewing this appeal. By this order, the court expresses no opinion as to the merits of this appeal.

Pro bono counsel is an attorney who provides legal services without charge for the benefit of the public good. The appointment of pro bono counsel provides attorneys with an opportunity to volunteer legal

¹A copy of the district court's order is attached.

services in furtherance of their professional responsibility and, at the same time, allows financially eligible litigants access to quality legal representation without cost. Counsel will be appointed for purposes of this appeal only and will participate in oral argument. Currently, the Pro Bono Committee of the Appellate Litigation Section of the State Bar of Nevada (Pro Bono Committee), in conjunction with the Legal Aid Center of Southern Nevada, has developed a pro bono appellate program to assist the public and this court. This case is hereby referred to the program established by the Pro Bono Committee to evaluate whether appellant can benefit from the program.

Accordingly, the clerk of this court shall transmit a copy of this order, the attached district court order, and the attached case summary to the Legal Aid Center of Southern Nevada for financial eligibility screening. If appellant qualifies and does not object to pro bono counsel, the Legal Aid Center in cooperation with the Pro Bono Committee shall locate a volunteer attorney from the program to represent appellant. Once an attorney is located, the attorney shall file a notice of appearance in this court within 60 days from the date of this order. Briefing and oral argument will be scheduled thereafter. Alternatively, if appellant is not financially eligible or objects to pro bono representation, or if a volunteer attorney cannot be located, the Legal Aid Center of Southern Nevada shall notify this court in writing within 60 days from the date of this order. In such case, oral argument will not be held. The briefing schedule in this appeal shall be suspended pending further order of this court.

It is so ORDERED.

Handwritten Signature, C.J.

cc: Steven Kinford
Attorney General/Carson City
Attorney General/Las Vegas
Legal Aid Center of Southern Nevada, Barbara E. Buckley,
Executive Director
Anne R. Traum, Coordinator, Appellate Litigation Section,
Pro Bono Committee, State Bar of Nevada
Kelly Dove

Docket No. 82665

Kinford v. Soc. Sec. Admin.

Appellant is an inmate in the Nevada Department of Corrections in Lovelock. He filed a petition for approval of a college education program to enable him to qualify for federal social security benefits. The district court denied the petition on the ground that appellant was not classified as an eligible inmate, that he failed to identify the institution he proposed to enroll in, and he failed to identify why the educational program would result in his obtaining gainful employment upon his release. Appellant filed a motion for reconsideration providing the additional information, and the district court denied the motion on the ground that appellant failed to demonstrate why the information could not have been provided in the original petition.

1 CASE NO. 27CV-TT12-2019-0178

2 DEPT. NO. 1

3 Affirmation pursuant to NRS 239B.039

4 The undersigned affirms that this
5 document does not contain the
6 personal information of any person

6 **IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR THE COUNTY OF PERSHING**

8
9 STEVEN KINFORD,

10 Petitioner,

11 vs.

12 SOCIAL SECURITY ADMINISTRATION,

13 Respondent.

**ORDER DENYING TORT ACTION FOR
REQUEST OF
REHABILITATION/EDUCATION PROGRAM**

14 This matter having come before the Court, in chambers, on Petitioner Steven Kinford's
15 (Petitioner), pro se, Tort Action Request of Rehabilitation/Education Program. Having reviewed
16 the papers, pleadings on file herein, without any oral argument from the parties, the Court
17 hereby rules as follows:

18 **I. FINDINGS OF FACT**

19 **A. Petitioner's Background**

- 20 1. On March 3, 2008, Petitioner plead guilty to lewdness with a child under the age
21 of fourteen years in violation of NRS 201.230.
- 22 2. This Court sentenced Petitioner to a term of life with the possibility of parole after
23 ten years has been served concurrent to his conviction in Case No. CR6880 and
24 an administrative assessment fee of \$25.00.
- 25 3. Petitioner is currently classified as a Level 2 Inmate, and housed in a general
26 population unit at Lovelock Correctional Center (LCC) in Lovelock, Nevada.
- 27 4. The NDOC employs a classification system that governs inmate housing and
28 activities.

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B. AR 516 – Level System

1. AR 516 governs the classification level of inmates.
2. While AR 516 sets forth the ability for each medium and maximum security system to create up to three different classification levels, §519.01(6), it also explicitly informs inmates that nothing in AR 516 "create[s] any liberty interest, or rights to any classification status, work assignment, or placement."
3. AR 516 also makes clear that no liberty interest shall "be implied from the implementation of the classification "level system."
4. Each level provides the inmate with the ability to have more privileges.. The Medium security institution level system has three levels. Level 1 inmates are permitted the most privileges as they are able to meet six performance/behavioral criteria, including "access to education, law library, gym, chapel, culinary and other such areas as institutional schedules permit."
5. Level 2 inmates- Petitioner's current classification - meet five behavior/performance criteria and are afforded less privileges than Level 1 inmates.
6. Pursuant to LCC Operational Procedure (OP) §516.03(2)(E), Level 2 inmates may not attend college courses with personal instruction conducted on LCC premises.
7. Instead, Level 2 inmates are permitted to participate in college courses through correspondence only.
8. Level 3 inmates either do not qualify for Level 1 or Level 2, have recently been classified from segregation housing or close custody, or have pending disciplinary actions which may result in removal from Level 1 or Level 2.
9. Level 3 inmates have limited access to programs and privileges. *Id.* As with Level 2, Level 3 inmates have not been awarded the privilege of educational opportunities.

C. AR 850 – NDOC Academic Programs

10. AR 850 regulates academic programs offered by NDOC.

1 11. AR §850.01(5) states that "[b]asic literacy and secondary education should be
2 available to inmates at no cost." *Id.* at 2, §850.01(5). Provision (A) further states
3 that "[i]nmates must pay for accredited college or correspondence courses
4 themselves."

5 12. LCC permits inmates to seek college credit from Great Basin Community College
6 (GBCC) in accordance with AR 516 and AR 850. Specifically, an inmate must be
7 of a qualifying classification and the inmate is responsible for the costs associated
8 with the college credit.

9 13. GBCC courses are independent from any official NDOC education program.

10 14. NDOC does not fund the GBCC courses. It has no involvement in determining
11 GBCC enrollment (beyond the criteria set forth in AR 516), the courses offered to
12 NDOC inmates, or completion of the courses.

13 **D. RELEVANT PROCEDURAL HISTORY**

14 15. On June 28, 2019, Petitioner filed a Request for Approval of
15 Rehabilitation/Education Program in the Third Judicial District Court, Lyon
16 County, Nevada.

17 16. On July 22, 2019, Petitioner filed a Second Request for Approval of
18 Rehabilitation/Education Program which was interpreted as a petition for
19 education made pursuant to Nevada Revised Statute (NRS) Chapter 34.

20 17. On July 25, 2019, the Court transferred the matter to the Eighth Judicial District
21 Court, Clark County, Nevada, after finding it did not have jurisdiction to entertain
22 the petition.

23 18. On December 3, 2019, the Eighth Judicial District Court found it did not have
24 jurisdiction to entertain the Petition, and transferred the instant Petition to this
25 Court.

26 19. Petitioner filed a Tort Action for Request of Rehabilitation/Education Program
27 (Petition) requesting the Court to approve a college education program so that he
28 can qualify for Social Security benefits.

1 20. Petitioner did not serve the Petition upon NDOC of the Office of the Attorney
2 General (OAG).

3 21. On July 9, 2020, the Court ordered a response be filed within 45 days.

4 22. On August 20, 2020, the OAG filed a timely Response To Tort Action For Request
5 Of Rehabilitation/Education Program (Response).

6 23. Petitioner filed a Reply To Request Of Rehabilitation/Education Program (Reply).

7 **II. CONCLUSIONS OF LAW**

- 8 1. "The Social Security Act provides in relevant part that an individual cannot receive
9 benefits for a month during which the individual 'is confined in a jail, prison, or other
10 penal institution or correctional facility pursuant to his conviction of a criminal
11 offense." *Modica v. Commissioner of Social Sec.* 2012 5198817 (citing 42 U.S.C. §
12 402(x)(1)(A)(i) and 20 C.F.R. §404.468).
- 13 2. A vocational rehabilitation exception exists "if a prisoner who is entitled to benefits
14 on a the basis of disability is actively and satisfactorily participating in a rehabilitation
15 program which has been specifically approved for the individual by the court of law."
16 20 C.F.R. § 404.468(d).
- 17 3. The Regulation permits only the sentencing court to approve a rehabilitative program.
18 *United States v. Osborne*, 988 F.2d 47, 49 (7th Cir. 1993) ("[A] court of law' must refer
19 to the sentencing court."); *Peeler v. Heckler*, 781 F.2d 649, 652 (8th Cir. 1988).
- 20 4. The program must be "expected to result in the individual being able to do substantial
21 gainful activity upon release and within a reasonable time." 20 C.F.R. § 404.468(d).
22 The program must also "eliminate or even ameliorate the disability for which [p]laintiff
23 receives benefits." *Borchelt v. Apfel*, 25 F.Supp. 2d 1017, 1021 (E.D. Mo. 1998).
- 24 5. Petitioner fails to identify what college education program in which he intends to enroll
25 or participate. *See generally*, Petition. He also does not specify the institution from
26 which he seeks to obtain the credits. Without this information, this Court cannot make
27 an informed ruling on whether the program will "ameliorate" Plaintiff's alleged
28 disability (memory loss). *Borchelt*, 25 F.Supp.2d at 1021.

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- 6. Petitioner fails to provide the Court with the information necessary to determine whether the educational program will result in Petitioner being able to do substantial gainful employment upon release and within a reasonable time. 20 C.F.R. §404.468(d).
- 7. Petitioner is not eligible, pursuant to AR 516, to seek college credit through on-site class instruction given his current Level 2 classification level.
- 8. Petitioner may be eligible to enroll in college classes that are conducted through correspondence only.
- 9. Furthermore, even if Petitioner was currently eligible, or later became eligible, to participate in onsite educational courses, it does not mean that he will remain eligible throughout the pendency of the education course.
- 10. NDOC is not involved in determining Petitioner's enrollment into college courses.
- 11. NDOC is not required to fund any college courses in which Petitioner has enrolled, or may enroll in the future.
- 12. Requiring NDOC to make an exception to its current policies regarding Level 2 inmates and education programs would inappropriately interfere with NDOC's ability to manage its facilities and potentially give right to other litigation regarding equal access.

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III. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Petitioner Steven Kinford's Tort Action For Request Of Rehabilitation/Education Program is DENIED.

IT IS SO ORDERED.

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Respectfully submitted by:

AARON D. FORD
Attorney General

By: /s/ Wade J. VanSickle
Wade J. VanSickle (Bar No. 13604)
Deputy Attorney General
Attorneys for Special Appearing Party