1983 WL 181852 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 19, 1983

***1** 1. The Department of Corrections has an affirmative duty to protect prisoners from self-destruction or self-injury and under certain circumstances has a duty to provide medical treatment in the nature of forced administration of food or medication when a medical need arises over the objection of the prisoner.

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QUESTIONS:

1. Does the Department of Corrections owe a duty to inmates in its charge to prevent them from injuring themselves where there exists reason to believe that they are intentionally denying themselves an adequate diet?

2. If the duty to prevent self-inflicted harm exists, what steps, including the use of force to accomplish the receiving of sustenance, may be undertaken?

DISCUSSION:

Case law is clear that prison officials not only have the authority, but are charged by law with the responsibility to provide for the proper care and treatment of inmates. Article XII, § 2 of the South Carolina Constitution. Lee vs. Downs, 641 F.2d 1117 (4th Cir. 1981). Moreover, prison officials have an affirmative constitutional duty to provide necessary medical treatment regardless of consent because intentional denial of medical treatment or deliberate indifference to an inmates medical needs constitutes cruel and unusual punishment. Estelle vs. Gamble, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976); Loe vs. Armisted, 582 F.2d 1291 (4th Cir. 1978) (delay in treating broke arm), Bowring vs. Godwin, 551 F.2d 44 (4th Cir. 1977) (prisoner under certain limited conditions is entitled to psychiatric or psychological treatment). As Chief Judge Haynesworth stated: '. . . prison officials have a duty to protect prisoners from self-destruction or self-injury.' Lee vs. Downs, 641 F.2d 1117, 1121 (4th Cir. 1981) (inmate sets herself on fire in protest of prison conditions treated as apparent attempt to kill or injure herself). Thus, the administering of medical care over the objections of a prison inmate does not constitute any denial of a constitutional right, nor does disagreement with the type of medical care provided present a constitutional claim. Bowring vs. Godwin, supra. Therefore, it is clear that the forced administration of medication or food to an inmate may be a duty on the part of prison officials under certain circumstances.

Federal Courts, though reluctant to intervene in the daily operation of penal institutions, have required institutions to provide adequate food, clothing and shelter for their charges. The Fourth Circuit has held that failure to provide 'three wholesome and nutritional meals per day' states a claim of constitutional deprivation. Assuming that the meals are provided but rejected by the inmate, the question becomes what duty, if any, arises to the penal authorities. It is clear that prison officials cannot force every inmate to eat every meal every day. Intervention by prison officials should be taken when a medical need arises and the affirmative duty to provide medical treatment arises.

***2** It is the opinion of this Office that prison officials have a duty to provide medical treatment in the nature of forced administration of food and/or drugs or other psychological or psychiatric treatment if a physical or other health care provider, exercising ordinary skill and care at the time of observation concludes with reasonable medical certainty:
1. That the prisoner's symptoms evidence a serious disease or injury;

2. That such disease or injury is curable or may be substantially alleviated; and

3. That the potential for harm to the prisoner by reason by delay or the denial of medical care would be substantial.

The right to treatment is, of course, limited to that which may be provided upon a reasonable cost and time basis and the essential test is one of medical necessity, and not simply that which may be considered merely desirable.

There are, at least, four countervailing State interests that are potentially implicated by a prisoner's rejection of life-saving medical treatment:
1. The prevention of life;

2. The protection of the interests of innocent third parties;

3. The prevention of suicide; and

4. The maintenance of the ethical integrity of the medical profession.

Commissioner of Corrections vs. Myers, 399 N.E.2d 452 (Mass. 1979) (inmate forced medical treatment which he had rejected as a form of protest against his placement in a higher security institution). Although the fact of incarceration does not per se divest an inmate of his right to privacy and interest in bodily integrity, see Coffin vs. Reichard, 143 F.2d 443, 445 (6th Cir. 1944), it does impose limits on those constitutional rights in terms of State interests unique to the prison context. See Jones vs. N. C. Prisoner's Labor Union, 433 U.S. 119, 125 132, 97 S.Ct. 2532, 53 L.Ed.2d 629 (1977); Pell vs. Procunier, 417 U.S. 817, 94 S.Ct. 2800, 41 L.Ed.2d 495 (1974). Among the governmental interest recognized in a prison setting are the preservation of internal order and discipline, the maintenance of institutional security, and the rehabilitation of prisoners. E.g. Procunier vs. Martinez, 416 U.S. 396, 412 94 S.Ct. 1800, 40 L.Ed.2d 224 (1974).

In validating these concerns on the balancing of individual and governmental interests, we acknowledge 'the wide ranging deference to be accorded the decisions of prison administrations.' Jones vs. N.C. Prisoner's Labor Union, supra, 433 U.S. at 126. It should not be gainsaid that correctional needs in a case such as this are urgent and ought to be given considerable weight, especially when a prisoner's refusal of food and life-saving treatment is predicated on an attempt to manipulate his placement within the prison system.

CONCLUSION:

The opinion of this Office that the Department of Corrections possesses the requisite authority and duty to compel an unconsenting, competent adult prisoner to submit to medications when such measures are reasonably necessary to save his life, is founded on a careful balancing of the relevant State and individual interest, the weight of which must be determined by the particular facts of each case.

***3** The Department of Corrections houses a large number of people whose behavior is contrary to the ordinary assumptions about what people will do. If an explicit right to proceed in a hunger strike or refuse life-saving treatment in prison for any or all reasons is recognized, it is the opinion of this Office that the Department will be faced with many cases of inmates mutilating

themselves or otherwise deliberately putting themselves in danger of dying, and then refusing life-saving treatment in order to have demands met. As already mentioned, granting their demands is as unthinkable as letting them die.

Whenever a prisoner refuses treatment in a life-saving situation, the standard procedure for corrections administrators should be a summon every available resource, including family members and the personal intervention of the superintendent or anyone else who has a chance of influencing the inmate, to persuade him to change his mind and take the treatment. For this method to be successful, officials must have available the ultimate possibility of compelling treatment and inmates must understand that they do not have the right to refuse treatment in all situations. Furthermore, these crises situations are less likely to arise if inmates are told that there is no blanket right to refuse life-saving treatment for non-medical reasons.

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