

1979 WL 42755 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 12, 1979

*1 Mr. William D. Leeke
Commissioner
South Carolina Department of Corrections
P. O. Box 21787
Columbia, South Carolina 29221

Dear Mr. Leeke:

You have requested the opinion of this Office with respect to what action the Department of Corrections must take relative to providing inmates in its custody access to a magistrate in light of the United States District Court's recent decision in Timmerman v. Leeke, Civil Action No. 74-452.

As you are aware the Defendants in that case have moved the Court to set aside its Order and are seeking a new trial. In any event, in order to respond to your inquiry we will assume that the Order of Judge Chapman correctly sets forth the law and facts relative to the situation which you present. Frequently the Department authorities receive requests from inmates seeking to be transported to a magistrate in order to swear out a warrant. It appears that since Judge Chapman's decision these requests have increased. You point out the potential burden this would present to the Department to transport prisoners at the whim of an inmate.

In its Order of September 28, 1978, the District Court recognized a constitutional right of prisoners to have access to the courts. The Court also held that although no citizen has a constitutional right to have an arrest warrant issued, a citizen does have the constitutional right 'to set in motion the governmental machinery which redresses violations of municipal ordinances; i.e., the right to seek an arrest warrant.' The Court then found that the Plaintiffs did not have a 'meaningful ability to set in motion the governmental machinery' because of the activities of some of the Defendants.

The Order does not appear to require the Department of Corrections to take any action to bring the prisoners to the courts, nor was the Court condemning the present method by which the prisoners acquire access to the courts. The Court appeared to be condemning specific activities which were intended to prevent the inmates from taking their complaints to the magistrate and courts. The Order stated:

This Court believes that the present plaintiffs did not have a meaningful ability to set in motion the governmental machinery because the above described activities stopped the machinery unlawfully, not in a proper way, as for example, upon a valid determination of lack of probable cause. It seems clear that for many years, it has been unlawful and indeed unconstitutional, for state officials to actively interfere with a prisoner's access to the court.

The Order, therefore, apparently speaks to the specific activities described in the Order and to other similar activities where the intent is to block a prisoner's attempts to bring certain matters before the courts.

It is therefore the opinion of this Office that the District Court's Order in Timmerman v. Leeke, does not necessarily require the Department of Corrections to take affirmative steps to provide the inmates access to a magistrate; however, the Department of Corrections cannot 'actively interfere' with a prisoner's right of access to the courts. It would appear entirely reasonable that the Department could require that the inmate contact the magistrate in writing and apprise the magistrate of his situation and then have the magistrate initiate the request for the inmate to be brought before him.

*2 I hope this answers your question and if there is anything further, please do not hesitate to let us know.

With kindest regards.

Very truly yours,

Emmet H. Clair
Deputy Attorney General

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