

1975 WL 29485 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 7, 1975

\*1 Mr. John A. Brown  
Assistant Director  
Direct Services  
Alston Wilkes Society  
2215 Devine Street  
P. O. Box 363  
Columbia, South Carolina 29202

Dear Mr. Brown:

On January 28, you wrote and asked whether an inmate of a penal institution has the right to marry, and stated that the South Carolina Department of Corrections has developed a marriage policy statement, which requires administrative approval before an inmate is allowed to marry.

I have been unable to find any precedent directly on this point, either in South Carolina or the Federal Courts. However, there have been numerous cases dealing with administrative authority and prisoner's rights. Generally, the courts refuse to reverse prison administrative action unless unusual circumstances exist, such as infringement of fundamental constitutional rights or unreasonable or cruel punishment. Prison officials, however, must not act arbitrarily or discriminate among the prisoners.

The case of [Queen v. S. C. Department of Corrections](#), 307 F. Supp. 841, lends some insight on the scope of administrative authority. This case holds that routine security measures in disciplinary actions rest solely in the discretion of prison officials and that judicial review of them is highly impractical. But fundamental rights do follow a prisoner into confinement. The court includes among these fundamental rights access to the courts, freedom from cruel and unusual punishment, and freedom of religion. Therefore, whether the right to marry would be classified as routine discretionary action or as a fundamental right would determine whether the matter is justiciable.

[Brown v. South Carolina](#), 286 F. Supp. 998 is another case dealing with prison administration. This case holds that prison authorities have wide latitude in promulgating rules and regulations dealing with prisoner conduct and discipline. It goes on to say that the courts are loath to involve themselves in matters of prison management but their unwillingness does not extend to regulations that impair constitutional rights of prisoners, and particular the right of access to courts.

It should be noted that courts have generally given administrators broad authority in such areas as censorship of prisoner's mail and screening visitors. It would seem very likely that the South Carolina Department of Corrections policy on inmate marriages falls within the scope of their discretion.

I am writing this letter on the request of Mr. Emmet Clair. He has said that if you wish to discuss this matter further with him, please feel free to contact him.

Sincerely,

Bob Davis  
Law Clerk

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