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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4482-15T2

SHAMSIDDIN ABDUR-RAHEEM,

Appellant,

v.

NEW JERSEY DEPARTMENT
OF CORRECTIONS,

Respondent.

Submitted January 30, 2018 – Decided February 12, 2018

Before Judges Reisner and Mayer.

On appeal from the New Jersey Department of
Corrections.

Shamsiddin Abdur-Raheem, appellant pro se.

Gurbir S. Grewal, Attorney General, attorney
for respondent (Melissa Dutton Schaffer,
Assistant Attorney General, of counsel;
Suzanne Davies, Deputy Attorney General, on
the brief).

PER CURIAM

Appellant, an inmate at the New Jersey State Prison, appeals from a March 7, 2016 final decision of the Department of Corrections (DOC or agency) denying his two applications for

permission to add the names of a private investigator and a private detective (collectively, the investigators) to his inmate telephone call list as legal contacts. We remand this matter to the DOC for reconsideration.

Appellant is serving a life sentence for murder, kidnapping, and other offenses. Appellant asserts, as he did before the DOC, that he needs to consult with the investigators in order to pursue criminal and civil matters in which he is representing himself. His requests were denied on the grounds that the individuals were not attorneys, but were "business lines." The agency's decision also cited an unspecified "zero tolerance rule" and an unspecified "policy."

On this appeal, as in his agency grievance, appellant contends that, pursuant to the DOC regulations, N.J.A.C. 10A:18-6.7(b), investigators are legal contacts. The agency's response is that N.J.A.C. 10A:18-6.7 governs contact visits by attorneys and their representatives, including their investigators. The regulation does not pertain to inmate telephone calls. The agency correctly notes that another regulation, N.J.A.C. 10A:18-8.6, governs legal telephone calls. That regulation provides:

Legal telephone calls may be made to the following individuals or agencies for assistance in legal research and/or preparation of legal documents:

1. Office of the Public Defender;
2. Regional Legal Services;
3. Court Clerks;
4. Attorneys; and
5. The Corrections Ombudsperson.

[N.J.A.C. 10A:18-8.6(b).]

Private investigators are not included on the list of approved legal telephone contacts.

On this appeal, appellant contends that in denying him the right to contact investigators, the DOC is unconstitutionally denying him access to the courts. In support of his argument, he cites Feeley v. Sampson, 570 F.2d 364 (1st Cir. 1978), and Johnson v. Galli, 596 F. Supp. 135, 138 (D. Nev. 1984). The DOC responds that these cases are not on point because they address the rights of pre-trial detainees seeking to defend themselves against pending criminal charges. However, convicted persons also have the right to challenge the conviction on appeal or in post-conviction proceedings. R. 2:3-2; R. 3:22-1. They also have the right to represent themselves in those proceedings, as well as at trial. See R. 3:22-6(a); State v. Quixal, 431 N.J. Super. 502, 507-08 (App. Div. 2013).

Moreover, criminal defendants may need the services of a private investigator in some matters. For example, a criminal defendant is not necessarily entitled to representation by the Office of the Public Defender for second or subsequent petitions

for post-conviction relief (PCR). See R. 3:22-6(b). As a result, a defendant may have to proceed pro se on a second or subsequent PCR petition, and may need to use the services of a private investigator to contact witnesses and obtain affidavits. See State v. Porter, 216 N.J. 343, 355 (2013) (explaining the need for legally competent evidence to support a PCR petition) (quoting State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999)). On the other hand, we can appreciate that the DOC may have security concerns about allowing inmates unfettered contact with persons outside the prisons.


Having noted these issues, however, we conclude that the record presented to us is inadequate to enable us to address the inmate's constitutional claims. His administrative application did not specify what criminal matters he allegedly sought to pursue with the assistance of the investigators or why he needed their assistance. Nor did he specify what civil matters he was pursuing. In turn, the DOC response, both to appellant and to this court, relies entirely on its regulations, without explaining the agency's policy concerns and how they apply to appellant's situation. In addition, we cannot ascertain from this record whether denying appellant the right to put investigators on his telephone list as legal contacts will result in his being

completely unable to have telephone contact with them, or whether it will only affect the conditions under which he can call them.

For all of these reasons, we conclude that a remand is required. On remand, the DOC shall give appellant an opportunity to provide a more complete explanation for his requests. If the agency decides to deny the requests, it shall provide a more complete explanation for that decision, addressing the issues we have noted in this opinion.

Remanded. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION