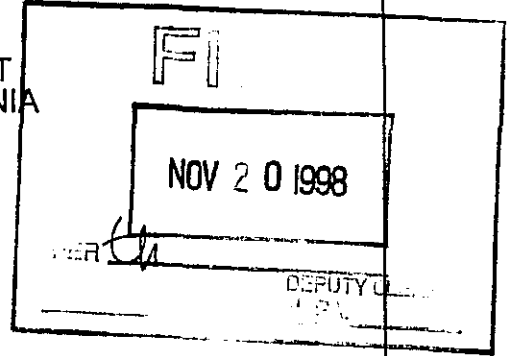


UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA



KAREN PTASCHNIK, individually and
on behalf of all others similarly
situated,

Plaintiff

-vs-

LUZERNE COUNTY PRISON BOARD,
GENE FISCHI, Warden of Luzerne
County Correctional Facility, in his
official capacity,

Defendants

NO. 3:CV-98-1887

(Judge Kosik)

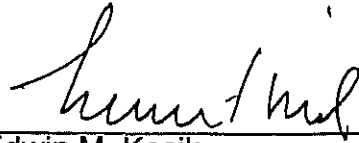
DECREE

Defendants and their agents, employees and successors in office are hereby enjoined from preventing Plaintiff from obtaining an abortion on November 21, 1998. Defendants are ordered to arrange transportation for Plaintiff on November 21, 1998 to Allentown Women's Center at 1810 Steelston Road in Allentown, Pennsylvania, in a manner such that she is able to obtain an abortion on that day at the Plaintiff's expense. The Defendants are prohibited from using Plaintiff's abortion as a basis for terminating her participation in the child care release program.

In the future, a request for an elective abortion, either at the applicant's expense or the expense of the County when applicant demonstrates an inability to assume the costs, will be honored as a necessary medical procedure.

Further, this Decree is based on the authority of *Monmouth County Correctional Institutional Inmates v. Lanzano*, 834 F.2d 326 (3d Cir. 1987), *cert. denied*, 486 U.S. 1006 (1988), a case factually very similar to the above-entitled matter, and a panel decision by Higgenbotham, Rosenn and Mansmann, concurring.

Further, the Clerk of Court is directed to close this case. The parties to assume their own costs.



Edwin M. Kosik
United States District Judge

Date: November 20, 1998

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MEMORANDUM

TO: Interested persons
FROM: Susan Frietsche
DATE: June 28, 2004
RE: Prisons' obligation to provide inmates with abortion services

As set forth in controlling caselaw from the U.S. Court of Appeals for the Third Circuit, the United States Constitution entitles prisoners to abortion services. If the prisoner is unable to pay for the procedure through other means, she is entitled to have the procedure paid for by the county that is incarcerating her. *See Monmouth County Correctional Institutional Inmates v. Lanzaro*, 834 F.2d 326 (3d Cir. 1987), *cert. denied*, 486 U.S. 1006 (1988); *Reynolds v. Wagner*, 128 F.3d 166, 173, 177 (3d Cir. 1997). She is also entitled to be transported by the prison to her medical provider for her abortion procedure. *Monmouth County*, 834 F.2d at 351-52.

Because inmates must rely on prison authorities for their medical care, the prison is constitutionally obligated to provide medical care for those whom it punishes by incarceration. *See Estelle v. Gamble*, 429 U.S. 97, 103-04 (1976). Thus, "deliberate indifference to the serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain . . . proscribed by the Eighth Amendment.'" *Id.* at 104; *see also Langley v. Coughlin*, 888 F.2d 252, 253 (2d Cir. 1989) ("when incarceration deprives a person of reasonably necessary medical care . . . which would be available to him or her if not incarcerated, the prison authorities must provide such surrogate care"). In *Monmouth County*, the court struck down as unconstitutional a prison's refusal to pay for inmates' abortion procedures. In so doing, the court held that:

[Monmouth County] may not condition the provision of services for an elective, nontherapeutic abortion . . . upon the inmates' ability or willingness to pay. Moreover, in the absence of alternative methods of funding, the County must assume the cost of providing inmates with elective, nontherapeutic abortions.

Id. at 351; *see also Reynolds*, 128 F.3d at 177. It is likewise the prison's responsibility to transport the inmate to the medical provider. *Monmouth County*, 834 F.2d at 351-52. Finally, the prison may not require a court order as a prerequisite for providing these services. *Id.*

Under *Monmouth County* and *Reynolds*, if a prison denies an inmate the right to terminate her pregnancy, the prison violates the right of privacy guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. In addition, the Eighth Amendment requires prisons to provide for the serious medical needs of prisoners in its custody. Prisons that refuse to provide prisoners with access to abortion services manifest a deliberate indifference to prisoners' serious medical needs in violation of the Eighth Amendment as applied to the states by the Fourteenth Amendment.

Because delay will effectively preclude a pregnant woman from obtaining an abortion procedure, the prison is required to respond to an inmate's request for abortion services promptly. Should her stage of pregnancy be further advanced than the prison has estimated, the prison will be responsible for locating, transporting her to, and if necessary paying for a provider who can perform the required surgery.