NO. 90488-0

SUPREME COURT OF THE STATE OF WASHINGTON

SHAWN GREENHALGH and JAMES PFAFF,

Petitioners,

v.

DEPARTMENT OF CORRECTIONS, et al.,

Respondents.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

For budgetary reasons the Department of Corrections decided in 2009 to prohibit inmates from receiving or possessing most items of personal clothing. To soften the impact of this decision on inmates, DOC gave inmates several options over many months to have the clothing that was no longer allowed delivered to a person of the inmates' choice at no expense to the inmates. The Petitioners in this case, two Washington State inmates, refused to take advantage of the free clothing disposition options provided by DOC; one Petitioner ultimately sent some of his clothing out at his own expense and the other Petitioner told DOC to discard his clothing, falsely claiming he did not have sufficient funds to pay the $15.00 required to send his clothing out. Petitioners then sued DOC seeking reimbursement for the cost of sending their clothing out and/or the value of clothing that was discarded. The Superior Court granted summary judgment to DOC and dismissed Petitioners' action. The Court of Appeals affirmed in a well-reasoned published decision. *See Greenhalgh v. DOC*, ____ Wn. App. ____, 324 P.3d 771 (2014).

Petitioners now ask this Court to review the Court of Appeals' decision in this case. DOC opposes Petitioners' request for review as the Court of Appeals correctly decided Petitioners' appeal and Petitioners

have not demonstrated that they meet the criteria for review by this Court under RAP 13.4.

II. ISSUE PRESENTED FOR REVIEW

Whether Petitioners have met the criteria for review by this Court under RAP 13.4(b) when they have failed to demonstrate that the Court of Appeals' decision is in conflict with this Court's decision in *Burton v. Lehman*, 153 Wn. 2d 416, 103 P.3d 1230 (2005), that this case involves significant questions of constitutional law, or that this case presents issues of substantial public interest.

III. RESTATEMENT OF THE CASE

A. Procedural History

The Superior Court, after having conducted two separate hearings and considered briefing and evidence from the parties on all Petitioners' claims, granted summary judgment to Respondents and dismissed Petitioners' action with prejudice. The Court of Appeals affirmed the Judgment of the Superior Court in a published opinion. *See Greenhalgh v. DOC*, ____ Wn. App. ____, 324 P.3d 771 (2014).

B. Factual Background

In late 2008, DOC was faced with severe budget problems and was forced to look for ways to reduce its costs. CP 53, Declaration of Dan Pacholke. One of the ways it considered to reduce costs was to eliminate

inmates from possessing most personal clothing items. CP 53. DOC estimated that it would save over $100,000.00 per year by eliminating most inmate personal clothing, savings that would occur due to a decrease in electricity and other costs to wash clothing, and reductions in staff time to handle, process, and document inmates' personal clothing items. CP 53-54.

Inmates were given nearly a year's notice of DOC's plan to eliminate most personal clothing items. CP 54. Inmates were given notice on January 20, 2009, that DOC would be eliminating most personal clothing items beginning on January 1, 2010. CP 54. Inmates were also advised at this time that beginning March 1, 2009, inmates would no longer be authorized to receive personal clothing items from any source. CP 54.

DOC amended its inmate property policy, DOC 440.000, on March 1, 2009, to further notify inmates of the impending changes concerning personal clothing items and to advise them of the various options DOC would make available to them to dispose of their personal clothing items. CP 54. These options included DOC paying the cost of sending out two boxes of personal clothing between July 1, 2009, and September 30, 2009, inmates sending out their personal clothing at their own expense after September 30, 2009, and DOC allowing approved visitors to pick up

inmates' personal clothing until January 1, 2010. CP 54. Inmates were also advised in this policy that beginning January 1, 2010, they would have 30 days to dispose of clothing items identified as excess or unauthorized, and that if an inmate failed to pay the costs of sending out non-allowable property, the property could be donated to a charity or thrown away pursuant to WAC 137-36-040. CP 54.

Inmates Greenhalgh, DOC #701558, and Pfaff, DOC #278724, had personal clothing items after December 31, 2009, that were no longer allowable and were therefore contraband. CP 77 and 151. Inmate Pfaff was notified that he needed to arrange to have the contraband clothing items sent out and inmate Pfaff sent a letter to the MICC property room directing the MICC employees who worked there to dispose of his clothing because he was "without funds to have it sent here." CP 77. Inmate Pfaff's clothing items were apparently disposed of pursuant to his directions to MICC property room staff.

Although inmate Pfaff claimed in his February 8, 2011, letter to the MICC property room that he did not have sufficient funds to mail his personal clothing out of MICC, his DOC inmate account records show that he had sufficient funds in his account during 2010 and 2011 to send his clothing out. CP 81-87. Appellant Pfaff also had $35.00 in his postage subaccount from February 1, 2011, to February 17, 2011, which Pfaff

could have used to pay the $15.00 DOC estimated it would cost to ship Pfaff's contraband clothing out of the institution. CP 88. On February 17, 2011, inmate Pfaff paid UPS postage of $36.86 to ship a different package out of a DOC institution. CP 85.

In response to being advised that he needed to send his contraband clothing items out of prison, inmate Greenhalgh directed MICC property room staff to send his clothing items to Scott Frakes, the Superintendent of the Monroe Correctional Complex (MCC), which is the DOC institution inmate Greenhalgh had been transferred to. CP 151. Inmate Greenhalgh chose to send some of his clothing items out of MCC and apparently chose to have his remaining clothing items disposed of by MCC. CP 151, 153.

Although inmate Greenhalgh claimed that he did not have any non-incarcerated person to send his personal clothing to, he had sent personal clothing items and other personal property to his sister, Nicole Dickmann, in 2005, 2006, 2007, and 2008. CP 55.

IV. ARGUMENTS WHY REVIEW SHOULD NOT BE ACCEPTED

Petitioners argue that review should be accepted under RAP 13.4(b) because the Court of Appeals' decision in this case is in conflict with this Court's decision in *Burton v. Lehman*, 153 Wn.2d 416, 103 P.3d 1230 (2005), because this case involves issues of substantial public

interest, and because this case involves "significant questions of law under the Constitution of the State of Washington and the United States Constitution". Petition for Review at 11. Petitioners' arguments are misplaced and this Court should deny review of the well-reasoned published decision of the Court of Appeals in this case.

A. The Court Of Appeals' Decision Does Not Conflict With *Burton v. Lehman.*

This case concerns only the authority of the Department of Corrections to determine what items are contraband in prisons and its authority to dispose of such contraband. The Court of Appeals correctly decided these issues in the Department's favor and the Court of Appeals' decision does not conflict with this Court's decision in *Burton v. Lehman.*

The issue in *Burton* was whether RCW 72.02.045 prohibited the Department from requiring an inmate to pay the costs of shipping his/her allowable non-contraband personal property whenever the inmate was transferred from one Department facility to another:

> Does DOC Policy 440.000, requiring inmates to either pay the shipping costs for some of their property or lost ownership of that property, violate the requirement in RCW 72.02.045(3) that DOC superintendents shall deliver inmate property upon transfer?

Burton, 153 Wn.2d at 422.

While *Burton* concluded that the Department policy at issue violated RCW 72.02.045(3), *Burton* did not involve the Department's authority to determine what items are contraband in Department facilities or the Department's authority to dispose of contraband. The Court of Appeals was fully cognizant of *Burton* and correctly concluded that it did not apply to this case.

> To support their argument that DOC is required to store their excess personal clothing, Greenhalgh and Pfaff rely on our Supreme Court's holding in *Burton v. Lehman*, 153 Wn.2d 416, 426, 103 P.3d 1230 (2005) (stating that the meanings of "transfer" and "deliver" in RCW 72.02.045(3) required DOC to ship inmate property to their new institution). Unlike *Burton*, where the statute clearly required DOC's action to transfer and deliver personal property, here the definition of "custodian" does not require DOC to "preserve or store" Greenhalgh's and Pfaff's contraband, even if previously authorized.

324 P.3d at 775 - 76.

Petitioners' already tenuous reliance on *Burton* is further undercut by subsequent significant amendments to the statute at issue in *Burton*. RCW 72.02.045(3) was amended by the legislature in 2005 shortly after and in response to the Court's decision in *Burton* and since 2005 reads in relevant part:

> The superintendent, subject to approval by the secretary, has the authority to determine the types and amounts of property that convicted persons may possess in department facilities. This authority includes the authority to determine the types and amounts that the department will transport at

> the department's expense whenever a convicted person is transferred between department institutions or to other jurisdictions. Convicted persons are responsible for the costs of transporting their excess property. If a convicted person fails to pay the costs of transporting any excess property within ninety days from the date of transfer, such property shall be presumed abandoned and may be disposed of in the manner allowed by RCW 63.42.040(1) through (3).

The Court of Appeals' decision in this case is not in conflict with *Burton* which in any event is no longer applicable in light of the 2005 amendments to RCW 72.02.045(3).[1]

Petitioners also argue that the decision by the Court of Appeals in this case conflicts with *Burton's* conclusion that the trial court erred in dismissing the Plaintiffs' non-RCW 72.02.045 claims. Petitioners' reliance on this procedural ruling is equally misplaced. In *Burton* the trial court dismissed all claims based on its conclusion that the Plaintiffs' claim under RCW 72.02.045(3) was not valid as a matter of law. Here, the trial court did not dismiss Petitioners' non-RCW 72.02.045 claims based on its dismissal of Petitioners' RCW 72.02.045 claims but instead dismissed Petitioners' other claims on their merits in the context of a summary

[1] The 2005 amendments to RCW 72.02.045 not only undermine the current viability of *Burton*, but also seriously undermine Petitioners' claims under RCW 72.02.045. If Petitioners' boxes of clothing were not contraband, Petitioners could be required to pay the costs of shipping them when they were transferred out of the McNeil Island Corrections Center in 2010 and if Petitioners did not pay such costs DOC could discard Petitioners' property under the 2005 amendments to RCW 72.02.045. It is unfathomable that the legislature intended to allow DOC to dispose of non-contraband property inmates failed to pay to ship after a transfer but require DOC to store contraband property for years or decades until the inmate owner was released.

judgment motion. Nothing in the record of this case even remotely suggests that the trial court dismissed Petitioners' other claims on any basis other than their lack of merit. The Court of Appeals' decision in this case does not conflict with *Burton* and this Court should therefore deny Petitioners' request for review.

B. Petitioners' Case Does Not Present A Significant Question Of Law Under The State Or Federal Constitutions

Petitioners argue that review is appropriate because Petitioners' due process claims under the Fourteenth Amendment to the U.S. Constitution, their due process claims under Article I, §3 of the Washington State Constitution, and their forfeiture claim under Article I, §15 of the Washington State Constitution present significant questions of law. Petitioners do not argue that the Court of Appeals incorrectly affirmed the grant of summary judgment to Respondents on these claims, but instead argue that the trial court improperly dismissed these claims based on its statutory analysis and without discussion:

> ...due to the lower court's error in dismissing these constitutional claims on the incorrect conclusion that this policy did not violate RCW 72.02.045(3) and without a discussion on the record,...

Petition for Review at 17-18.

Once again, there is no evidence in the record in this case that the trial court dismissed Petitioners' constitutional claims based upon its

determination of Petitioners' claims under RCW 72.02.045(3). To the contrary, the trial court addressed Petitioners' due process claims during the hearing on Respondents' motion for summary judgment:

> THE COURT: Thank you. I guess what strikes me in this case is that the department did not assert ownership over this property until after the inmates had been given an opportunity to direct where it should go and failed to take advantage of that opportunity to direct where it should go and had failed to take advantage of that opportunity. I read with interest the *Searcy* case, and that does appear to me to be... In any event, I believe the case of *Searcy v. Simmons* is instructive.
>
> In that case, as the court says, "The district court reasoned that because under Kansas law Mr. Searcy still retained ownership of the property the requirements of due process were met when the prison authorities provided him the opportunity to dictate where to send the property." As to Mr. Searcy's argument that, in all likelihood, the relatives would not return the property, the district court found it irrelevant because of Mr. Searcy's opportunity to dictate where the prison authority should send the property.
>
> You know, I don't mean to minimize the challenges that persons in custody have maintaining their property while they're in custody. They often are dealing with family members from whom they are estranged, and they have friends and relations who have their own challenges and may have difficulty safeguarding property for the affected individual. And I get that, and I wish that that were not the case, but I don't believe that the challenges that are presented to inmates require the department to become the self-storage unit for inmates.
>
> Whether or not the department has the capacity to do that, I think, is beside the point. That is not the responsibility of the superintendent or the head of the Department of Corrections. And I say that, being aware of

> the requirements and responsibilities set forth under 72.02.045. Certainly, if an individual enters into custody with property on his or her possession, the department has a responsibility to safeguard that property. But whereas here, there's been a change of policy, and the department has determined that certain property, although it previously was not contraband, will now be defined as contraband, provided that the department gives the inmate a reasonable opportunity to direct where that property should go, I think the department has fulfilled its responsibility under the statutory and constitutional law.

See Verbatim Report of Proceedings at 16-18.

Petitioners also argue that review is appropriate because the trial court failed to "state its reasoning for each cause of action presented for summary judgment on the **record**". Petition for Review at 14. (emphasis in original). To support this argument Petitioners cite *Burton, U.S. v. Alanis*, 335 F.3d 965, n.2 (9th Cir. 2003), and *Jordan v. Lefevre*, 206 F.3d 196, 201-02 (2nd Cir. 2000). Petitioners' arguments are misplaced as trial courts are not required to articulate their legal analysis and conclusions when deciding motions for summary judgment as such analysis and conclusions are "superfluous" on appeal. *Duckworth v. Bonney Lake*, 91 Wn.2d 19, 21-22, 586 P.2d 860 (1978).

The cases Petitioners cite on the issue of the trial court's responsibility to articulate its reasons for granting summary judgment do not support their argument. *Burton* did not involve a trial court decision on a motion for summary judgment but instead involved a motion to

dismiss filed by the defendants which the trial court granted based only on its conclusion that the Plaintiffs' claim under RCW 72.02.045(3) was meritless. *Burton* did not suggest, much less hold, that a trial court must state its reasons on the record for granting summary judgment on each and every claim.

Petitioners' reliance on the federal cases above is equally misplaced. Neither of these cases is a civil case and neither case involved a summary judgment motion. Both of these federal cases are criminal in nature; *Alanis* was a criminal appeal and *Jordan* was a federal habeas corpus action. The overarching issue in both these cases was a challenge by defendants under *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712 (1986) to peremptory strikes by prosecutors of potential jurors in defendants' criminal trials. In both *Alanis* and *Jordan* the courts held that a trial court in a criminal case must decide on the record whether a prosecutor's stated reasons for striking potential jurors were a pretext for discrimination:

> We agree with *Alanis* that the court was obliged to proceed to the third step and to announce a deliberate decision accepting or rejecting the claim of purposeful discrimination.

Alanis, 335 F.3d at 967.

The narrow holdings in *Alanis* and *Jordan* do not apply to motions for summary judgment in civil actions in Washington and do not support Petitioners' claims of error by the trial court in this case.

While the trial court did not articulate its reasoning for dismissing each of Petitioners' constitutional claims, the Court of Appeals did so in its published decision. Petitioners have failed to demonstrate, or even attempt to demonstrate, any error in the Court of Appeals' thorough analysis and rejection of those claims. Petitioners' case does not present significant questions of law under the state or federal constitution and review by this Court should be denied.

C. Petitioners' Case Does Not Present Issues Of Substantial Public Interest

In direct conflict with their argument that review should be granted because the Court of Appeals decision in this case conflicts with this Court's decision in *Burton*, Petitioners argue that review should be granted because:

> Resolution of this case also turns upon construction of statutory language that has not been defined by the legislature and that has not been interpreted by this Court.

Petition for Review at 15.

Petitioners also argue that there is a substantial public interest in this Court deciding whether "previously authorized non-contraband

inmate personal property can be reclassified as contraband". Petition for Review at 15. Petitioners' arguments are misplaced.

The public interest is not served by allowing inmates, like Petitioners, who refused to send out their property at state expense when given the opportunity to do so and squandered other opportunities to send their property out at no expense, to secure monetary damages from the state. The public interest is also not served by this Court deciding whether prison officials can reclassify inmate property from non-contraband to contraband and require inmates to send out such property, when that question has long been resolved against Petitioners by both case law and Washington statutes. *See Searcy v. Simmons*, 299 F.3d 1220 (10th Cir. 2002) (prison officials did not violate prisoner's rights by sending inmate property out of institution after prisoner failed to take advantage of opportunity to dictate where property would be sent); *Hatten v. White*, 275 F.3d 1208, 1209 (10th Cir. 2002) ("Hatten was allowed to send the property he could not possess in prison to a place of his choosing and therefore was not deprived of the property."); *Cosco v. Uphoff*, 195 F.3d 1221 (10th Cir. 1999) (prison officials did not violate inmates' due process rights by enforcing new and more restrictive property policy); *Savko v. Rollins*, 749 F. Supp. 1403 (D. Md. 1990) (rejecting claim that inmates are entitled to either the value of property that is confiscated as violative of a

new and more restrictive property policy or the costs of mailing out the non-compliant property). *See also* RCW 72.09.015(5) (contraband is any object or item that inmates may not possess); RCW 63.42.020(3) (same); *See also* WAC 137-36-020(1) (same) and WAC 137-48-020(1) (same).

The Court of Appeals correctly decided this case and the public interest is best served by allowing the Court of Appeals decision to stand.

V. CONCLUSION

For the foregoing reasons, Petitioners' Petition for Review should be denied.

RESPECTFULLY SUBMITTED this 8th day of August, 2014.

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CERTIFICATE OF SERVICE

I certify that on the date below I caused to be electronically filed the foregoing document with the Clerk of the Court using the electronic filing system and I hereby certify that I have mailed by United States Postal Service the document to the following non electronic filing participant:

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I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED this 8th day of August, 2014, at Olympia, WA.

s/ Laura Reeves-Abshire
LAURA REEVES-ABSHIRE
Legal Assistant

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Good afternoon. Please find the attached Answer to Petition for Review for the Respondents, Dep artment of Corrections and Certificate of Service.

Case name – Shawn Greenhalgh/James Pfaff v. DOC, et al.
WSSC Cause No. 90488-0
By Douglas W. Carr, WSBA #17378
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