

LAKISHA LAVETTE SHORT

V.

Appellee.

C.A. No. N13A-08-006 MJB

Decided: August 5, 2014

*Upon The Appellant's Motion For Reargument, **DENIED.***

OPINION

Jason W. Staib, Esq., Deputy Attorney General, *Attorney for the Appellee.*

Brady, J.

I. INTRODUCTION

This is a Motion For Reargument (the “Motion”) filed by Lakisha Lavette Short (the “Appellant”) pertaining to an Order of this Court issued on April 17, 2014, affirming the decision of the Court of Common Pleas. The Court determined 10 *Del. C.* § 5901(c)(2) barred the Appellant from changing her legal name, because she is incarcerated in the State of Delaware. While her initial appeal was *pro se*, the Appellant has retained counsel, who filed this Motion. For the reasons discussed below, the Appellant’s Motion is **DENIED**.

II. BACKGROUND

Facts and Procedural History

The Appellant is currently incarcerated at the Baylor Women’s Correctional Institution, serving a sentence as the result of robbery and weapons convictions.¹ The Appellant has almost forty years of her sentence remaining, and is currently scheduled for release in 2053.²

While incarcerated, on April 22, 2013, the Appellant filed a Name Change Petition with the New Castle Court of Common Pleas, seeking to change her name to Kai Short. The Appellant seeks to change her name as a result of being transgendered, stating that she wishes to be called Kai to “reflect the male identity” with which she associates.³

The New Castle Court of Common Pleas held a hearing on the Appellant’s Petition on June 10, 2013. The presiding judge asked the Appellant if “the factual basis in [her] petition is transgender,” and the Appellant answered in the affirmative.⁴ The Appellant explained that,

¹ Tr. of Name Change Petition, *In re Short* (No. N13A-08-006), at 5 (June 10, 2013).

² *Id.*

³ *Id.* at 4.

⁴ *Id.*

upon being released in 2053, she intends to become a man and she seeks to change her name to Kai as the first step of “the transgender application and process.”⁵

At the hearing in front of the Court of Common Pleas, the State opposed the Appellant’s Petition, asserting that 10 *Del. C.* § 5901(c) only permits inmates of the Delaware Department of Corrections to change their name for religious reasons.⁶ Since the Appellant did not offer any religious reason for her Petition, the State contended the Petition must be denied.⁷

The Court of Common Pleas explained to the Appellant that the controlling statute abrogates the right of any person to change his or her name if that “individual[] is subject to the supervision of the State of Delaware Department of Corrections,” unless Subsection (2) is met.⁸ Subsection (2) provides that the Court may grant an inmate’s name change petition “[w]hen, based upon testimony or sworn affidavits, the court finds that a petition for name change . . . is motivated by a sincerely held religious belief.”⁹

The Appellant’s Petition and testimony at the hearing did not indicate that her basis for the requested name change was motivated by a sincerely-held religious belief. Therefore, the Court of Common Pleas denied the Appellant’s Petition from the bench at the June 10 hearing.¹⁰ The Appellant filed an appeal with this Court on August 13, 2013.¹¹ The Court received the transcript of the Court of Common Pleas proceeding on December 27, 2013. Oral argument was held and on April 17, 2014, this Court issued an order affirming the decision of the Court of Common Pleas.¹²

⁵ *Id.*

⁶ *Id.* at 6.

⁷ Tr. of Name Change Petition, *In re Short* (No. N13A-08-006), at 6 (June 10, 2013).

⁸ 10 *Del. C.* § 5901(c).

⁹ 10 *Del. C.* § 5901(c)(2).

¹⁰ Tr. of Name Change Petition, *In re Short* (No. N13A-08-006), at 8-9 (June 10, 2013).

¹¹ Notice of Appeal, N13A-08-006 (Aug. 13, 2013).

¹² *Short v. State of Delaware*, (C.A. No. N13-08-006) at*2 (Del. Super. Apr. 17, 2014) (ORDER).

Upon consideration of the Appellant's appeal, this Court concluded that § 5901(c)(2) unambiguously provides that a name change petition brought by an inmate of the Department of Corrections can only be granted if the Court determines the petition is "motivated by a sincerely held religious belief."¹³ The Court reviewed the transcript of the hearing in question. The Appellant, when questioned, stated multiple times that she wished to change her name as a result of being transgendered.¹⁴ Further, although the Court of Common Pleas explained to the Appellant that she must have a religious basis, the Appellant did not offer any.¹⁵ In her appeal, the Appellant did not assert any strongly-held religious belief and this Court affirmed the findings of the Court of Common Pleas.

On April 24, 2014, the Appellant retained counsel and filed this Motion. The Appellant claims that she did not have the required education to properly argue her position, and reargument would avoid an injustice. Specifically, the Appellant asserts that § 5901 has been preempted by recently-enacted legislation and the Court of Common Pleas decision violates the Appellant's Due Process, Equal Protection, and Eighth Amendment right against cruel and unusual punishment.

Appellant's Contentions For Reargument

The Appellant raises several new arguments in her Motion that were not previously heard by this Court. First, the Appellant contends that 10 *Del. C.* § 5901(c)(2), which was passed in 1996, conflicts with an amendment to 6 *Del. C.* § 4504, which was passed in 2013. Section 5901 states that "[i]ndividuals subject to the supervision of the Department of Corrections shall be prohibited from adopting any names other than their legal names" except when that person is

¹³ 10 *Del. C.* § 5901(c)(2).

¹⁴ Tr. of Name Change Petition, *In re Short* (No. N13A-08-006), at 5 (June 10, 2013). (providing two instances where the Appellant acknowledged the basis of her Petition arises from her transgender status).

¹⁵ *Id.* at 6-8.

able to make a showing that the name-change request is “motivated by a sincerely held religious belief.”¹⁶ Section 4504 prohibits any “place of public accommodation” from discriminating on the basis of gender identity.¹⁷ The Appellant asserts that the principals of statutory construction require that where two statutes are directly opposed to each other, the later-enacted statute is controlling.¹⁸

The Appellant also asserts that her Fourteenth-Amendment right of Due Process is violated, because the right to changes one’s name is a fundamental right—because one’s name is a crucial aspect of identity as well as a deeply-rooted tradition in our culture.¹⁹ The Appellant contends that the State lacks any compelling interest in preventing a transgendered inmate from legally changing her name. Therefore, absent any penological need for preventing the Appellant from changing her name to Kai, the denial of the Appellant’s petition is a violation of substantive due process.

The Appellant further asserts that denying her the ability to change her name simply because she is an inmate of the State of Delaware violates the Equal Protection clause of the Fourteenth Amendment. The Appellant states that legislation that differentiates between similarly-situated people can only be upheld when the State can show that “the classification drawn by the statute is rationally related to a legitimate state interest” or, in cases concerning fundamental rights, is “suitably tailored to serve a compelling state interest.”²⁰ The Appellant states that allowing name changes for people who have a sincerely-held religious belief, but not one for those who have a sincerely-held belief about her gender identity treats similarly-situated

¹⁶ 10 *Del. C.* § 5901(c).

¹⁷ 6 *Del. C.* § 4504.

¹⁸ *State v. Cook*, 600 A.2d 352, 355 n.6 (Del. 1991).

¹⁹ See *Henne v. Wright*, 904 F.2d 1208, 1218 (8th Cir. 1990) (Arnold, J., concurring in part and dissenting in part); *Jech v. Burch*, 466 F. Supp. 714, 719 (D. Haw. 1979).

²⁰ *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985) (internal citation omitted).

people differently. As stated previously, the Appellant contends that State has failed to provide any basis for this distinction.

Finally, the Appellant asserts that refusing to allow her to change her name violates her Eighth Amendment right against cruel and unusual punishment. A state is obligated “to provide medical care for those whom it is punishing by incarceration.”²¹ The Appellant claims to have gender dysphoria disorder and states that courts have held that the treatment of gender dysphoria may present a “serious medical need” for treatment under the Eighth Amendment.²² The Appellant argues that changing one’s name to a more masculine one is fundamental for the treatment of transgendered people.²³ Therefore, the Appellant is denied a traditional treatment option for a recognized psychiatric disorder.

Appellee’s Contentions Against Reargument

The Appellee contends that § 5901 does not conflict with, and therefore is not superseded by § 4504. The Appellee states that 10 *Del. C.* § 5901 is legislation that was passed in 1996 that expressly abrogated the rights of individuals under the supervision of the State of Delaware Department of Corrections to change their name.²⁴ In 2013, 6 *Del. C.* § 4504 was enacted for the purpose of prohibiting a “place of public accommodation” from discriminating on the basis of gender identity.²⁵

²¹ *Estelle v. Gamble*, 429 U.S. 97, 103-04 (1976).

²² *See I Kothmann v. Rosario*, __ F. App’x __, 2014 WL 889638, at *3-5 (11th Cir. Mar. 7, 2014).

²³ World Professional Assoc. for Transgender Health, *WPATH Clarification on Medical Necessity of Treatment, Sex Reassignment, and Insurance Coverage in the U.S.A.*, at 2 (Jun. 17, 2008) (available at http://www.wpath.org/uploaded_files/140/files/Med%20Nec%20on%202008%20Letterhead.pdf) (“Sex reassignment plays an undisputed role in contributing toward favorable outcomes, and comprises Real Life Experience, legal name and sex change on identity documents”); World Professional Assoc. for Transgender Health, *Standards of Care*, at 171-72 (7th Ed.) (available at http://www.wpath.org/uploaded_files/140/files/IJT%20SOC,%20V7.pdf) (listing treatment options for gender dysphoria, including, “Changes in name and gender marker on identity documents.”).

²⁴ 10 *Del. C.* § 5901.

²⁵ 6 *Del. C.* § 4504

The Appellee asserts that the two statutes are not in direct conflict with one another, because § 5901 appears in Title 10 of the Delaware Code. Title 10 deals with courts and judicial procedure.²⁶ Section 5901 deals specifically with Delaware’s name-change procedure and simply codified a common-law rule that states have a legitimate interest in the ability to identify inmates by their present names.²⁷ The one exception to this prohibition—for sincerely-held religious purposes—is because inmates have a First Amendment right to freedom of religion.²⁸

However, § 4504 is found in Title 6 of the Delaware Code. Title 6 deals with commerce and trade.²⁹ Section 4504 prohibits places of public accommodation from discriminating behavior based on, *inter alia*, gender identity. The Appellee asserts that a place of public accommodation is defined as an “establishment [that] caters to or offers goods or services or faculties to, or solicits patronage from, the general public.”³⁰ Therefore, the Appellee states, the two statutes deal with completely different subject matter and are not in conflict.

The Appellee also contends that the Appellant bases her constitutional arguments on rights that have yet to be recognized. The Appellee asserts that there is no fundamental right to change one’s name.³¹ Since there is no fundamental right, the Appellee contends this Court must evaluate § 5901 under rational basis review—which the Appellee contends it passes because the state has a “rational and legitimate interest in restricting the ability of persons convicted of serious crimes to obtain court-approved names changes.”³²

²⁶ See generally 10 Del. C. §§ 101-9905.

²⁷ See 65 C.J.S. Names § 28 (“[T]he state has a legitimate interest in being able to quickly identify persons in prison and on parole who have been convicted of serious crimes.”).

²⁸ See *id.* (citing cases stating that denial of petitions filed for religious believes may violate an inmate’s First Amendment rights).

²⁹ See generally 6 Del. C. §§ 1-101-7722.

³⁰ 6 Del. C. § 4502(14).

³¹ See *Brown v. Cooke*, 362 F. App’x 897, 900 (10th Cir. 2010) (“[T]here is [no] fundamental right of citizens to compel the Government to accept a common-law name change.”).

³² Appellee’s Resp. to Appellant’s Mot. for Reargument p. 8 (citing 65 C.J.S. Names § 28).

Further, the Appellee asserts that § 5901 does not discriminate unfairly against transgendered inmates. The Appellee claims that inmates who seek to change their names for sincerely-held religious beliefs are on different footing than other inmates who seek a name change for other reasons. The right of an inmate to change her name, the Appellee contends, is a fundamental right protected by the First Amendment.³³ Therefore, inmates who want to change their name for a religious purpose and inmates who want to change their name for other purposes are not similarly situated people, and the Equal Protection clause is not violated.

The Appellee also claims that the Appellant has failed to establish an Eighth Amendment violation. The Appellee points out that the Appellant has failed to provide any precedent supporting the proposition that denial of a court-approved name change “would amount to ‘deliberate indifference to medical needs,’ as [is] required to establish a violation of the Eighth Amendment’s proscription against cruel and unusual punishment.”³⁴ The Appellee points out the fact that the Appellant does not discuss any treatment options for gender dysphoria other than changing her name. Therefore, since the medical necessity is suspect, there is no factual basis upon which to bring an Eighth Amendment challenge against § 5901.

III. STANDARD OF REVIEW

Plaintiffs’ Motion for Reargument is governed by Superior Court Rule of Civil Procedure 59(c) (“Rule 59(c”). Rule 59(c) provides:

A motion for reargument shall be served and filed within 5 days after the filing of the Court's opinion or decision. The motion shall briefly and distinctly state the grounds therefor. Within 5 days after service of such motion, the opposing party may serve and file a brief answer to each ground asserted in the motion. The Court will determine from the motion and answer whether reargument will be granted. A copy of the motion and

³³ See *Barrett v. Com. of Va.*, 689 F.2d 498, 503 (4th Cir. 1982) (holding Virginia’s refusal to recognize religious names adopted by prisoners violated those prisoners’ First Amendment right to freedom of religion).

³⁴ Appellee’s Mot. in Resp. to Appellant’s Mot. for Reargument p. 9.

answer shall be furnished forthwith by the respective parties serving them to the Judge involved.³⁵

A motion for reargument is the proper device for seeking reconsideration by this Court of its findings of fact and conclusions of law.³⁶ “The manifest purpose of all Rule 59 motions is to afford the . . . Court an opportunity to correct errors prior to an appeal.”³⁷ A motion for reargument will be granted only in the event that “the Court has overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision.”³⁸ A motion for reargument is not an opportunity for a party to re-argue issues already decided by the Court or to present new arguments not previously raised.³⁹ Further, except in extraordinary circumstances, a motion for reargument under Rule 59(e) “properly seeks only a re-examination of the facts in the record at the time of the decision.”⁴⁰

IV. DISCUSSION

Although it is improper to present new arguments not previously raised during the initial proceeding in a motion for reargument, this Court will address the new issues raised by the Appellant. First the Appellant asserts that 10 *Del. C.* § 5901 conflicts with the later-passed 6 *Del. C.* § 4504, and therefore, preempts § 5901. However, this Court does not find that the two

³⁵Super. Ct. Civ. R. 59(e).

³⁶*Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del. 1969).

³⁷*Id.*

³⁸*Id.*

³⁹*Strong v. Wells Fargo Bank*, 2013 WL 1228028, at *1 (Del. Super. Ct. Jan. 3, 2013).

⁴⁰In limited circumstances, a party moving for reargument may introduce new evidence, providing the party seeking to introduce the new evidence demonstrates that the newly discovered evidence could not, in the exercise of reasonable diligence, have been discovered prior to the Court’s decision. See *Shaunttel C.L. Draper v. Med. Ctr. of Delaware, Inc.*, 1999 WL 1441994, *4 (Del. Super. Ct. Oct. 19, 1999) *rev’d sub nom. Draper v. Med. Ctr. of Delaware*, 767 A.2d 796 (Del. 2001) (reversed on other grounds) (“The time for Plaintiff to have made these new assertions was in response (written and oral) to the motion to dismiss, not in a motion for reargument.”); *Reid v. Hindt*, 2008 WL 2943373, *1 (Del. Super. Ct. July 31, 2008) (explaining the movant “has the burden of demonstrating newly discovered evidence, a change in the law or manifest injustice”); see also *Reserves Dev. LLC v. Severn Sav. Bank, FSB*, 2007 WL 4644708, *1 (Del. Ch. Dec. 31, 2007) (explaining “new evidence generally will not be considered” in deciding a motion for reargument, which “is only available to re-examine the existing record”).

statutes are in conflict. The purpose of § 5901(c)(2) was to codify the State's legitimate purpose of restricting name changes by inmates, because the State needs the ability to quickly and accurately identify people in prison and on parole.⁴¹ The one exception to the prohibition on inmate name changes avoids First-Amendment challenges.⁴²

By contrast, § 4504 prohibits "places of public accommodations" from discriminating based on "race, age, marital status, creed, color, sex, disability, sexual orientation, gender identity, or national origin."⁴³ "Places of public accommodation" are defined as "any establishment which caters to or offers goods or services or facilities to, or solicits from, the general public."⁴⁴ A correction facility clearly does not fit within the statutory definition of a place of public accommodation. Correction facilities are designed specifically so that those people housed inside remain inside, and so those people outside of them are unable to gain access. Therefore, the Court rejects the contention that § 4504 preempts § 5901.

Next, the Appellant contends she has a fundamental right to change her name and denying her that right violates her right to Due Process. The Appellant's argument is contingent on the conclusion that changing one's name is a fundamental right. The Appellant has not provided this Court with any binding authority that compels this Court to find that the ability to change one's name is a fundamental right.⁴⁵

⁴¹ 65 C.J.S. Names § 28 ("[T]he state's legitimate need to identify an inmate by his or her present name constitutes sufficient cause to deny an inmate's petition for a change of name.").

⁴² *Barrett v. Com. of Va.*, 689 F.2d 498, 503 (4th Cir. 1982) (holding that Virginia's blanket refusal to recognize inmate name changes due to religious reasons violated those inmates' First-Amendment right to freedom of religion).

⁴³ 6 *Del. C.* § 4504(a); *see also* DE H.R. Amend., 2013 Reg. Sess. S.B. 97 ("This amendment . . . explicitly provides that places of public accommodation may provide reasonable accommodations on the basis of gender identity in areas of facilities where disrobing is likely.").

⁴⁴ 6 *Del. C.* § 4502(14).

⁴⁵ The Appellant cites *Jech v. Burch*, 466 F.Supp. 714 (D. Haw. 1979) to support the proposition that changing one's name is a fundamental right. However, the Court does not find this case analogous. In *Jech*, the parents of a newborn child were attempting to combine parts of their last names to form a new, unique last name for their child. *Jech* deals with the right of parents to change the name of their infant son, not the right of an adult inmate to change her name while in prison.

Since the Appellant has failed to show that the ability to change one's name is a fundamental right, or a right requiring intermediate scrutiny, the Court will review the statute under the rational-basis test.⁴⁶ When applying the rational-basis test, the legislation being reviewed is presumed to be constitutional and can only be overcome with a "clear showing of arbitrariness and irrationality."⁴⁷ The statute will be deemed constitutional if "the legislative means are rationally related to a legitimate governmental objective or purpose."⁴⁸

This Court does find the legislative means are rationally related to a legitimate governmental objective. The Appellee has a strong interest in being able to quickly and accurately identify those inmates whom are under its control. This name-change restriction keeps inmates from frequently changing their names in an effort to gain an advantage over security. Therefore, 10 *Del. C.* § 5901 does not violate the Appellant's Fourteenth-Amendment right to Due Process.

The Appellant also contends that her Fourteenth-Amendment right to Equal Protection under the law is being violated by applying § 5901 to her request. The Appellant states that allowing inmates who have a sincerely-held religious belief to change their names, but not inmates who have a sincerely-held belief about their gender identity creates a situation where similarly-situated people are treated differently. This Court finds otherwise.

The Appellant is not being treated differently than any other inmate in Delaware who desires to change his or her name. As stated above, inmates who seek a name change based on sincerely-held religious beliefs are in a separate classification, because of their First-Amendment right to religious freedom. The Appellant has, again, failed to identify any fundamental right that is being infringed upon by § 5901 and this Court has already ruled that § 5901 is rationally

⁴⁶ *Lowicki v. Unemployment Ins. Appeal Bd.*, 460 A.2d 535, 538 (Del. 1983).

⁴⁷ *Id.* at 539 (citing *Hodel v. Indiana*, 452 U.S. 314 (1981)).

⁴⁸ *Id.* (citing *Schweiker v. Wilson*, 450 U.S. 221 (1981)).

related to a legitimate government interest. Therefore, the Court does not find that applying § 5901 violated the Appellant's right of Equal Protection under the Fourteenth Amendment and there is no need for this Court to hear a reargument on the issue.

Finally, the Appellant asserts that refusing to allow her change her name based on the provisions of § 5901 amounts to a violation of the Eighth-Amendment's prohibition on cruel and unusual punishment. The Appellant states she has a medical condition known as gender dysphoria and the first step in treatment is to allow her to change her name from a traditionally feminine name to a traditionally masculine one. The Appellant cites *Estelle v. Gamble*⁴⁹ which states that the Eighth Amendment requires prisoners receive medical care. However, "because society does not expect that prisoners will have unqualified access to health care, deliberate indifference to medical needs amounts to an Eighth Amendment violation only if those needs are "serious.""⁵⁰ The Appellant plans to seek treatment upon her release, in approximately forty years. Not only is there a significant delay in any relevant medical care, she has presented no information regarding the nature or type of additional treatment she plans on seeking. There is no evidence, how or where this name change request falls within that medical planning. The Court has no basis to determine that gender dysphoria is a *serious* medical condition requiring the attention to which the Appellant contends she is entitled under the Eighth Amendment.

V. CONCLUSION

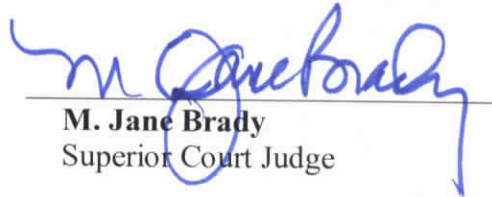
For the reasons stated above, the Court concludes that it did not err in affirming the decision of the Court of Common Pleas denying the Appellant authority to legally change her name. The basis for her name-change request is not rooted in a sincerely-held religious belief.

⁴⁹ 429 U.S. 97

⁵⁰ *Hudson v. McMillian*, 503 U.S. 1, 9 (1992).

Further, the Court finds the Appellant's various, claimed civil rights are not being violated by the denial. The Court has considered the Appellant's Motion for Reargument and it is **DENIED**.

IT IS SO ORDERED.



M. Jane Brady
Superior Court Judge