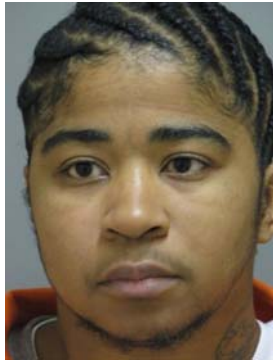


Transgender inmate fights for name change

SEAN O'SULLIVAN, THE NEWS JOURNAL 11:15 p.m. EDT October 23, 2014



(Photo: Delaware Department of Corrections)

Lakisha Lavette Short, a transgender Delaware inmate serving a 55-year sentence, is trying to get a name change to "Kai," but two courts have denied the request.

Now the ACLU is helping Short take the matter to the Delaware Supreme Court.

Short, 34, is transgender and self-identifies as male, according to court papers. Short wants to be known by the more masculine name of Kai, as a "first step."

While Short is only seeking a name change, a transgender inmate in Massachusetts recently won a landmark victory in federal court there requiring the state to pay for gender reassignment surgery.

State law allows an inmate to change their name only if the request is related to a "sincerely held religious belief," not for gender identification reasons. The Delaware Department of Correction has opposed the name change because of that law and two judges have agreed.

STORY: [Local Liberians rally to send food, supplies overseas \(/story/news/local/2014/10/23/local-liberians-rally-send-food-supplies-overseas/17807169/\)](/story/news/local/2014/10/23/local-liberians-rally-send-food-supplies-overseas/17807169/)

Short is housed at Baylor Women's Correctional Institution and is not seeking to be moved to a men's prison at this time.

"The ACLU is involved because the case raises issues relating to discrimination against transgender individuals," said Richard Morse, legal director for the Delaware American Civil Liberties Union.

Short was convicted in 2004 in Sussex County Superior Court of first-degree robbery, two weapons counts and aggravated menacing. Short was sentenced as a habitual offender to 55 years in prison. Short has a previous conviction in 1998 for second-degree assault.

Short first sought a name change without the help of an attorney in April 2013 and failed in both the New Castle County Court of Common Pleas and in Superior Court.

[Poll: Should inmates be allowed to change their names for gender reaso... \(http://archive.delawareonline.com/poll/2014-10-24/8397008\)](http://archive.delawareonline.com/poll/2014-10-24/8397008)

According to court papers, Short is physically female but identifies as male and told a judge "that (he) wanted to, as a first step, change (his) name to Kai, to reflect (his) male identity."

Court papers consistently refer to Short as "she," while papers filed on Short's behalf use male pronouns.

The Delaware ACLU joined the case, attempted to re-argue the Superior Court case, and is now taking Short's appeal to the Delaware Supreme Court.

In its 35-page opening brief, attorneys for Short charge the Delaware law is unconstitutional because it violates the Constitution's Equal Protection Clause by treating transgender individuals differently than those who pursue a name change for religious reasons. It further violates Short's First Amendment right to freedom of expression, the ACLU contends.

"The statutory ban permits religiously motivated speech, but not secular speech concerning other constitutionally protected messages," wrote attorneys for Short.

The brief also argues that the court's refusal to allow the name change violates Delaware's Gender Identity Nondiscrimination Act, which was passed in 2013.

Attorneys also claim the state's action violates the Eighth Amendment's ban on cruel and unusual punishment. The ACLU argues that Short suffers from "gender dysphoria," a serious medical condition and the name change, according to experts, is a necessary part of treatment and to deny that medical necessity is cruel and unusual.

The Delaware Attorney General's Office, which is representing the Department of Correction, declined comment on the case. But Superior Court Judge M. Jane Brady, who denied Short's request, wrote in August that "the medical necessity is suspect" and there is no fundamental right to change one's

name.

Brady also ruled that the state has a legitimate interest in limiting an inmate's right to change their name "because the state needs the ability to quickly and accurately identify people in prison and on parole." Brady ruled that denying the name change did not violate the Gender Identity Act because that law only related to businesses, not prisons.

Morse said the lawsuit is "only about the name," but the state might be worried about the precedent if Short wins the name change.

The ACLU also is involved in the Massachusetts case and, as in Short's case, civil rights attorneys cited the Eighth Amendment and the medical necessity of the procedure.

The plaintiff, Michelle Kosilek, [born as Robert] was convicted of the 1990 of murder of his wife, Cherly McCaul, and was sentenced to life in prison. Prior to trial, Kosilek had been taking female hormones and once in prison legally changed her name to Michelle.

A panel of judges from the U.S. First Circuit Court of Appeals, in a 2-1 decision, upheld Kosilek's right to have the prison pay for gender reassignment surgery in January. But the state of Massachusetts has appealed to the full court. The case is expected to go the U.S. Supreme Court.

Attorneys are still filing legal papers in Short's case in Delaware and a ruling from the Delaware Supreme Court is not expected until 2015. Delaware justices may decide the case on briefing papers or the court could order oral arguments.

Contact Sean O'Sullivan at 302 324-2777 or sosullivan@delawareonline.com (<http://mailto:%20sosullivan@delawareonline.com>) or on Twitter @SeanGOSullivan



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