

A06-2308

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State of Minnesota  
**IN COURT OF APPEALS**

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LILLIAN VIRGINIA SIMMONS,

*Appellant,*

v.

JOAN FABIAN, Commissioner of Corrections,  
in her Official and Individual Capacities*Respondent.*

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**APPELLANT'S REPLY BRIEF**

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Lillian Simmons, the appellant in this matter, brought this civil rights claim against Joan Fabian, the Commissioner of Corrections. The essence of Ms. Simmons' claim was that Fabian violated her constitutional rights by adopting a policy that would not consider inmates for supervised release even though they were eligible for supervised release.

Fabian brought a motion for summary judgment, arguing that she, as the paroling authority, had absolute immunity in making parole decisions. The District Court granted her motion and Simmons brought this appeal.

On appeal, Simmons argued that Fabian was not entitled to absolute immunity. In response, Fabian argued that she is entitled to absolute immunity in her position as a parole official and that under 42 U.S.C. §1983, injunctive and declaratory relief are not available to Simmons. In addition, Fabian argued that

Simmons was not denied Due Process. In this reply, Simmons will only address the Commissioner's Due Process argument.

Simply put, this court should not address the Due Process issue because it was not before the District Court. An appellate court is "limited to reviewing questions presented to and decided by the lower court." *Turner v. Alpha Phi Sorority House*, 276 N.W. 2d 63, 68 (Minn. 1979).

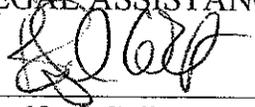
In her complaint, Simmons did assert that Fabian violated her constitutional right to Due Process. Fabian responded with a motion to dismiss, which asserted that she had absolute immunity, and made no mention of Due Process. The supporting memoranda between the parties focused on the issue of immunity.

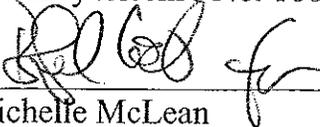
Because it was not raised by the parties, the District Court never addressed the Due Process issue; it merely made a determination on the absolute immunity. See Memorandum and Order, attached to appellant's brief at pages 7-12. As a result, and following from *Turner*, this court should not address the Due Process issue. The only issue on appeal is whether Fabian is entitled to absolute immunity.

Dated: 3/14/07

Respectfully submitted,

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