

1991 WL 16720

Only the Westlaw citation is currently available.
United States District Court, E.D. Pennsylvania.

In re IMPRISONED CITIZENS' UNION, et al.

Donald S. JONES, K-3100

v.

Milton SHAPP, Governor, et al.

Civ. A. No. 91-0217. | Feb. 5, 1991.

Attorneys and Law Firms

Donald S. Jones, pro se.

Opinion

MEMORANDUM

FULLAM, Senior District Judge.

*1 Plaintiff has filed a *pro se* 42 U.S.C. § 1983 civil rights complaint against numerous prison and state officials. Plaintiff is attempting to bring this action as a contempt proceeding pursuant to the consent decree issued in *Imprisoned Citizens' Union v. Shapp*, (C.A. No. 70-3054). Plaintiff alleges he has suffered constitutional violations both at the State Correctional Institution at Huntingdon and the State Correctional Institution at Pittsburgh.

With his complaint, plaintiff filed a request for leave to proceed *in forma pauperis*. As it appears he is unable to pay the cost of commencing this action, leave to proceed *in forma pauperis*.

Plaintiff's complaint concerns particular incidents which happened to him. Plaintiff does not allege that these incidents are pursuant to an ongoing policy or custom at either institution, which was the subject of the class action suit in *Imprisoned Citizens' Union*. Rather it appears the alleged constitutional violations are isolated events and as such they cannot be addressed by a contempt proceeding pursuant to a consent decree issued in *Imprisoned Citizens' Union*. Plaintiff may, however, bring this suit pursuant to 42 U.S.C. § 1983.

Since plaintiff cannot bring this action as a contempt proceeding, but must proceed as a 42 U.S.C. § 1983 action, venue is governed by 28 U.S.C. § 1391(b). Under

that statute, this action "... may be brought only in the judicial district where all defendants reside or in which the claim arose ..."

The allegations of the complaint relate to occurrences which took place at the State Correctional Institution at Huntingdon, which is in the Middle District of Pennsylvania, and at Pittsburgh, which is located in the Western District of Pennsylvania. The defendants are employed at the State Correctional Institution at Huntingdon and Pittsburgh or at the State Capitol in Harrisburg, including Governor Casey and Attorney General Preate. Since the allegations of the complaint relate to occurrences which took place in both State Correctional Institutions, Huntingdon and Pittsburgh, and it does not appear that any of the defendants reside in the Eastern District of Pennsylvania, venue is improper in this court. Venue may be proper, however, in either the Western District or the Middle District of Pennsylvania as provided for by 28 U.S.C. § 1392(a).

The text of 28 U.S.C. § 1392(a) provides:

"Any civil action, not a of a local nature, against defendants residing in different districts in the same state, may be brought in any of such districts."

Under the facts set forth in the complaint, the case could have been brought in either the Middle District or the Western District of Pennsylvania.

For the foregoing reasons, plaintiff's complaint is dismissed for lack of venue, without prejudice, to allow the plaintiff to file this complaint in either the Middle District or the Western District of Pennsylvania.

An appropriate order follows.

ORDER

AND NOW, this 5th day of February, 1991, in accordance with the Memorandum filed this date, it is

ORDERED THAT plaintiff's complaint is DISMISSED for lack of venue, without prejudice, to allow the plaintiff to file this complaint in either the Middle District of Pennsylvania or the Western District of Pennsylvania.

