

IN THE
UNITED STATES DISTRICT COURT
NORTHER DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

AUG 15 2001

JUDGE MATTHEW F. KENNELLY
UNITED STATES DISTRICT COURT

MICHAEL WILLARD, WILLIAM)
FRIERSON, DOUGLAS NASH,)
and GARY MOORE,)

Plaintiffs,)

v.)

DONALD SNYDER, Director of)
Illinois Department of)
Corrections, JAMES CERVONE,)
Assistant Deputy Chief, Adult)
Parole/Field Operations, RICHARD)
LAPIDOS, Parole Agent,)

Defendants.)

No. 01 C 1884

Hon. KENNELLY

DOCKETED
AUG 16 2001

JURY DEMANDED

AMENDED CLASS ACTION COMPLAINT FOR
INJUNCTIVE RELIEF AND DAMAGES

Now comes the Plaintiffs, MICHAEL WILLARD, WILLIAM FRIERSON,
DOUGLAS NASH and GARY MOORE, through their attorneys, THOMAS
PETERS, KEVIN PETERS, and ELYSE YOELIN, and states as follows:

COUNT I

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Willard is a citizen of the United States and
an Illinois parolee who currently is in custody at the Big Muddy
Correctional Center.

2. Plaintiff Frierson is a citizen of the United States and an Illinois parolee who currently is in custody at the Big Muddy Correctional Center.

3. Plaintiff Nash is a citizen of the United States and an Illinois parolee who resides in Chicago, Illinois.

4. Plaintiff Moore is a citizen of the United States and an Illinois parolee who is residing in Chicago, Illinois.

5. Defendant Snyder is the Director of the Illinois Department of Corrections. In that capacity, he sets the policies and practices relating to parolees and he is sued in his individual and his official capacities.

6. Defendant Cervone is the Assistant Deputy Chief of Adult Parole/Field Operations for the Illinois Department of Corrections. In that capacity, he implements the policies of Defendant Snyder and trains other IDOC employees in accordance with those policies and practices, and Cervone is sued in his individual and his official capacities.

7. Defendant Lapidos is a parole agent for the Illinois Department of Corrections. In that capacity, he worked at the Cook County Jail and was responsible for scheduling preliminary parole revocation hearings. Lapidos is sued in his individual capacity only.

8. All of the acts and omissions alleged in this complaint were made under color of state law.

9. This action is brought pursuant to 42 U.S.C. §1983 for violations of Plaintiffs' constitutional rights under the Due Process Clause of the Fourteenth Amendment.

10. All of the Defendants maintain offices and do business in or near Chicago, Illinois, and the site for all of the preliminary parole revocation hearings is Chicago, Illinois.

11. This Court has jurisdiction pursuant to 28 U.S.C. §1331, 1334 and 2201.

FACTUAL BACKGROUND

12. Michael Willard (No. B73178) was paroled from the Big Muddy Correctional Center.

13. Following his release on parole, Plaintiff Willard was assigned a parole agent in Cook County, Illinois.

14. In early January, 2001, Plaintiff Willard was arrested in Chicago for an alleged technical (non-criminal) violation of parole.

15. Plaintiff Willard denies that he had committed a parole violation at any time prior to his arrest in January, 2001.

16. Within a few hours of his arrest, Plaintiff Willard was taken to the Cook County Jail.

17. Defendant Lapidos was assigned as a parole agent to the Cook County Jail when Plaintiff Willard was arrested.

18. Defendant Lapidos' duties at that time included serving notice of parole violation charges and scheduling preliminary parole revocation hearings.

19. Defendant Lapidos did not serve Plaintiff Willard with notice of charges of the alleged parole violation.

20. Defendant Lapidos did not schedule a preliminary parole revocation hearing for Plaintiff Willard.

21. Defendant Lapidos did not secure a waiver of preliminary parole revocation hearing from Plaintiff Willard.

22. Instead, acting pursuant to the policies and practices of Defendants Snyder and Cervone, Defendant Lapidos arranged for (or allowed) Plaintiff Willard to be transferred to the Joliet Correctional Center.

23. Plaintiff Willard was transferred to the Joliet Correctional Center within a few days of his arrest.

24. Plaintiff Willard had not waived his right to a preliminary parole revocation hearing, at or near the site of the alleged violation, when he was transferred to the Joliet Correctional Center.

25. It is, and was in January of 2001, the policy and practice of Defendants (Snyder and Cervone) to return alleged parole violators to the institution from which they were paroled.

26. As a direct result of that policy of Defendants Snyder and Cervone, Plaintiff Willard was transferred from the Joliet Correctional Center to the Big Muddy Correctional Center.

27. The Big Muddy Correctional Center is located in Ina, Illinois.

28. Ina is hundreds of miles from Chicago.

29. Plaintiff Willard did not waive his constitutional right to a prompt preliminary parole revocation hearing at any time prior to his transfer from the Joliet Correctional Center to the Big Muddy Correctional Center.

30. Plaintiff Willard has been in custody for more than sixty days and he still has not had a preliminary parole

revocation hearing.

31. Plaintiff Willard has a well-established constitutional right to a prompt preliminary parole revocation hearing.

32. Plaintiff Willard has a well-established constitutional right to a preliminary parole revocation hearing near the site of the alleged parole violation.

33. Plaintiff Willard has a well-established right to counsel, to call witnesses, and to confront and cross examine witnesses at his preliminary parole revocation hearing.

34. Defendants' (Snyder, Cervone, and Lapidos) policies and practices as applied to Plaintiff Willard violated Plaintiff Willard's constitutional rights as identified in paragraph 30-33 above.

35. Defendants' policy, of shipping alleged parole violators out of the Cook County Jail to the Joliet correctional Center and then to the institution from which the parole was granted, creates a system which guarantees that no Cook County parolee will receive a prompt preliminary parole revocation hearing at or near the site of the alleged parole violation.

36. Defendants' policy, of shipping alleged parole violators out of the Cook County Jail to the Joliet correctional Center and then to the institution from which the parole was granted, creates a system which guarantees that Cook County parolees will not have counsel or favorable witnesses present when a preliminary parole revocation hearing finally is held.

37. Absent exigent circumstances, a preliminary parole revocation hearing should be held within ten (10) days of a

parolee's arrest and the hearing should be held at or near the site of the alleged violation.

Wherefore, Plaintiff Willard prays the Court will a) issue a preliminary injunction barring Defendants from continuing their policy of transferring parolees from the Cook County Jail before the parolee has had, or waived, a preliminary parole revocation hearing; b) permanently enjoining Defendants from continuing their policy as alleged herein; (c) award costs and attorney's fees.

COUNT II

1-11. Plaintiff Frierson re-alleges paragraphs 1-11 of Count I as paragraphs 1-11 of Count II.

12. Plaintiff Frierson (No. B31775) was paroled from the Big Muddy Correctional Center.

13. On or about February 11, 2001, Plaintiff Frierson was arrested for a technical (non-criminal) parole violation.

14. At the time of his arrest, Plaintiff Frierson was with his fiancée, Gloria Williams.

15. Plaintiff Frierson denies that he violated any condition of his parole on the day of his arrest or on any other day.

16. Plaintiff Frierson was not served with notice of the parole violation charges, has not waived his right to a prompt preliminary parole revocation hearing, and has not had a parole revocation hearing.

17-37. Plaintiff re-alleges paragraphs 17-37 of Count I as

paragraphs 17-37 of Count II.

Wherefore, Plaintiff Frierson prays the Court will a) issue a preliminary injunction barring Defendants from continuing their policy of transferring parolees from the Cook County Jail before the parolee has had, or waived, a preliminary parole revocation hearing; b) permanently enjoining Defendants from continuing their policy as alleged herein; (c) award costs and attorney's fees.

COUNT III

1-11. Plaintiff Nash re-alleges paragraphs 1-11 of Count I as paragraphs 1-11 of Count III.

12. Plaintiff Nash was paroled from Big Muddy Correctional Center.

13. Following his release on parole, Plaintiff Nash was assigned to a parole agent in Chicago, Illinois.

14. On or about February 23, 2001, Plaintiff Nash was arrested for a technical (non-criminal) parole violation.

15. Plaintiff Nash did not violate any of the terms or conditions of his parole prior to his arrest in Chicago, Illinois.

16. Within a few hours of his arrest, Plaintiff Nash was transferred to the Cook County Jail.

17. Defendant Lavidos was assigned as a parole agent to the Cook County Jail when Plaintiff Nash was arrested.

18. Defendant Lavidos' duties at that time included that he

was to serve notice of parole violation charges and scheduled preliminary parole revocation hearings.

19. Defendant Lapidos did not serve Plaintiff Nash with notice of charges of the alleged parole violators.

20. Defendant Lapidos did not schedule a preliminary parole revocation hearing for Plaintiff Nash.

21. Defendant Lapidos did not secure a waiver of preliminary hearing from Plaintiff Nash.

22. Instead, acting pursuant to the policies and practices of Defendants Snyder and Cervone, Defendant Lapidos arranged for (or allowed) Plaintiff Nash to be transferred to the Joliet Correctional Center.

23-37. Plaintiff Nash re-alleges paragraphs 23-37 of Count I as paragraphs 23-37 of Count III.

Wherefore, Plaintiff Nash prays the Court will a) issue a preliminary injunction barring Defendants from continuing their policy of transferring parolees from the Cook County Jail before the parolee has had, or waived, a preliminary parole revocation hearing; b) permanently enjoining Defendants from continuing their policy as alleged herein; (c) award costs and attorney's fees.

COUNT IV

1-11. Plaintiff Moore re-alleges paragraphs 1-11 of Count I as paragraphs 1-11 of Count IV.

12. Plaintiff Moore was released on parole.

13. On or about January 1, 2001, Plaintiff Moore was

arrested for a technical (non-criminal) parole violation.

14. Plaintiff Moore denies that he violated any of the terms or conditions of his parole.

15. Plaintiff Moore was taken into custody, on the parole violation charge, at the Cook County Jail.

16. He remained at the Cook County Jail for a few days and then was transferred to the Joliet Correctional Center.

17. From the Joliet Correctional Center, he was transferred to the Big Muddy Correctional Center in Ina, Illinois.

18. Plaintiff Moore was not served with notice of the parole violation charges while in the Cook County Jail or while at the Joliet Correction Center.

19. Defendant Lavidos did not serve Plaintiff Moore with notice of charges of the alleged parole violators.

20. Defendant Lavidos did not schedule a preliminary parole revocation hearing for Plaintiff Moore.

21. Defendant Lavidos did not secure a waiver of preliminary hearing from Plaintiff Moore.

22-37. Plaintiff re-alleges paragraphs 22-37 of Count I as paragraphs 22-37 of Count IV.

38. Plaintiff Moore was in custody for approximately sixty (60) days before the Prisoner Review Board held a preliminary parole revocation hearing at Big Muddy Correctional Center and ordered him released.

Wherefore, Plaintiff Moore prays the Court will a) issue a preliminary injunction barring Defendants from continuing their

policy of transferring parolees from the Cook County Jail before the parolee has had, or waived, a preliminary parole revocation hearing; b) permanently enjoining Defendants from continuing their policy as alleged herein; (c) award damages, costs and attorney's fees.

COUNT V

CLASS ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF

1-37. Plaintiffs re-allege paragraphs 1-37 of Count I as paragraphs 1-37 of Count V.

38. Defendants' policies and practices have been in effect for several months.

39. The number of Cook County parolees who have been adversely affected by Defendants' policies exceeds five hundred.

40. Plaintiffs (Willard and Frierson) represent a class of Cook County parolees who have been or will be arrested for technical parole violations in Cook County, Illinois from June 1, 2000 to the present.

41. The class, as so defined, is too numerous to make joinder of all class members practicable.

42. Defendants have established a unified policy that affects all Cook County parolees charged with technical violations in the same way.

43. Plaintiffs' claims are typical of the claims of all class members.

44. Common issues of law and fact predominate over any minor differences in treatment.

45. Plaintiffs' counsel can fairly and adequately represent the class.

46. The constitutional rights of all class members are being violated by Defendants' systematic policies and practices as described herein.

Wherefore, Plaintiffs (Willard and Frierson) prays the Court will a) issue a preliminary injunction barring Defendants from continuing their policy of transferring parolees from the Cook County Jail before the parolee has had, or waived, a preliminary parole revocation hearing; b) permanently enjoining Defendants from continuing their policy as alleged herein; (c) award the Plaintiff class costs and attorney's fees.

COUNT VI

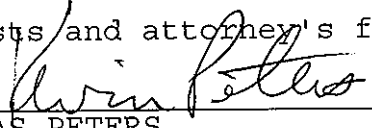
CLASS ACTION FOR DAMAGES

1-37. Plaintiff Moores and Nash re-allege paragraphs 1-37 of Count I as paragraphs 1-37 of Count VI.

38. Plaintiffs Moore and Nash represent a class of Cook Count parolees who were detained without the benefit of a prompt preliminary parole revocation and who have been, or will in the future be, found not to have violated the terms and conditions of their parole.

39-46. Plaintiffs Moore and Nash re-allege paragraphs 39-46 of Count V as paragraphs 39-46 of Count VI.

Wherefore, Plaintiff Moore prays the Court will award him and the class he represents damages, costs and attorney's fees.



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