

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FREDERICK HARPER, et al., :
individually and on behalf of all :
present and future inmates in the :
Fulton County Jail in Atlanta, :
Georgia, :

Plaintiffs, :

v. :

FULTON COUNTY, GEORGIA, :
et al., :

Defendants. :

MYRON FREEMAN, Fulton :
County Sheriff, in his official :
capacity, :

Defendant and Third-party :
Plaintiff, :

v. :

JIM DONALD, Commissioner, :
Georgia Department of :
Corrections, in his official :
capacity, et al., :

Third-party Defendants. :

CIVIL ACTION

1:04-CV-1416-MHS

ORDER TO SHOW CAUSE

Before the Court is the Seventh Quarterly Report of the Court Monitor. The Report shows that nearly two-and-a-half years after entry of the Consent Order, the Sheriff is still not in compliance with many of its mandates, including requirements in such critical areas as staffing and security, population limits and housing, provision of medical services, and timely release of inmates. The following "highlights" from the Monitor's latest report summarize just some of the Sheriff's continuing violations of the Consent Order:

- Staffing – "Staffing continues to be out of compliance with the Consent Decree mandates, notwithstanding the fact that the Fulton County Jail has more detention officers and deputies than in the past. It is the opinions of both the Monitor and Auditor that this problem is attributed to Fulton County Jail's staffing management and deployment. Staffing problems exist in spite of increased numbers of personnel and tremendous overtime being paid to officers and deputies." (Report at 5.) All three shifts at the jail "continue to operate dangerously understaffed," and "the shortage of supervisory staff continues to be dramatic." (Id. at 26, 34.) "Even as there

have been more than 150 newly hired officers and at least a dozen (12) newly promoted sergeants added to the ranks, none of the shifts consistently meet the staffing mandates agreed upon by all parties to the Consent Decree.” (Id. at 50.) “Even worse is the growing mismanagement of staffing resources that have been provided by Fulton County to the Sheriff.” (Id.) As a result, “the shifts are often flooded with floor officers and supervisors, there is a high number of scheduled off time requests granted, sick time has remained very high, and training requirements remain high as many newly hired officers have not yet attended Jail Officers Certification but have been integrated into the work flow.” (Id.) During the last quarter alone, the Monitor estimates that mismanagement of staffing resources has resulted in excess expenditures of nearly \$268,000. (Id. at 58.)

• Population – During the last quarter, “the Sheriff has not been able to maintain the population CAP of 1,842 in the main jail facility.” (Report at 15.) “As of June 23, 2008, the monthly average population on the Towers was 1,949. This was 107 inmates above the adjusted population CAP of 1,842.” (Id. at 40.) In an effort to control the jail population, “[t]he Court Monitor has repeatedly recommended that the Sheriff bring together a Population Control

Committee (PCC) who will be tasked with [reviewing inmate records for early releases or home arrest] and other release responsibilities.” (Id. at 60.) Nevertheless, “[e]ven as the Monitor has had extensive and numerous discussions regarding the necessity of the PCC with the Sheriff and Chief Jailer, neither has taken any steps towards supporting the appointment of the PCC.” (Id. at 60-61.)

• Housing – “There continue to be routine occasions where inmates who have been outsourced in South Georgia jails are required to sleep on the floor (on plastic bunks) when those facilities become overcrowded.” (Report at 15.) “The South Georgia Outsource Facilities (Pelham City, Cook County and Decatur County Jails) were not advised (by Fulton County) of the Consent Decree mandates as it relates to no inmates sleeping on the floor, or that no more than two inmates being housed in a cell. Thus, each facility typically utilizes triple bunks, plastic single bunks placed on the floor, and on average houses four to six inmates per cell. All of these housing arrangements violate the terms of the Consent Decree.” (Id. at 16.)

- Medical Services – “There continues to be routine occasions where inmates are scheduled for x-ray and dental services but they are not brought to the clinic and/or are released prior to those services being performed. . . . Many, if not most, of the occasions are the result of the ongoing shortage of security staff assigned to do inmate escorts.” (Report at 7.) As a result of this problem, during the reporting period, 22.7% of scheduled dental appointments and 6.8% of scheduled x-rays were missed. (Id. at 10.)

- Inmate Grievances – “The Monitor has made several appeals to the Sheriff’s staff to work out a process through which inmates can be provided grievance forms in a prompt and decisive manner. That process should provide adequate documentation of the issuance of grievance forms so that the requirements of this section can be met. As of this report, no action has been taken by the Sheriff to meet this requirement of the Consent Decree.” (Report at 84-85.)

- Inmate Releases – The Report shows that numerous inmates had their releases delayed beyond the maximum 24 hours permitted in the Consent Order. Among these were 29 inmates outsourced to other jails who

had their releases delayed “simply due to staffing shortages and the inmates not being transported back to the Fulton County Jail”; 202 inmates with holds by other agencies who had their releases delayed because “Fulton County Jail staff did not make the pickup notification within a timely manner”; 6 inmates who had their releases delayed due to “a staffing shortage in the Release Office”; and “at least thirty-eight (38) inmates who were released after the 24 hour period because a single civilian support staff member called in absent.” (Report at 18-25.)

These and the other violations outlined in the Monitor’s report reflect a continuing pattern of neglect and mismanagement by the Sheriff of Fulton County. Nevertheless, in recent public pronouncements, the Sheriff has asserted that all is well at the Fulton County Jail. At best, such assertions are disingenuous; at worst, they are deliberate misrepresentations.

For example, in a letter published just yesterday in the Atlanta Journal-Constitution, the Sheriff cites the Monitor’s reports as evidence that, “[u]nder my leadership, the Fulton County Jail is constantly improving.” Myron E. Freeman, Letter to the Editor, Atl. J. Const., July 9, 2008, at A14.

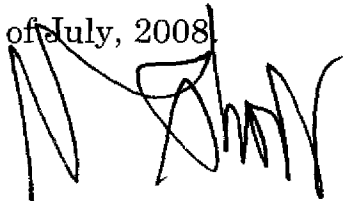
In fact, the Monitor's recent reports, including the latest report, identify many of the same violations of the Consent Order and thus clearly belie this assertion. In the same letter, the Sheriff claims that "[o]ur agency has been incident free since March 11, 2005." Id. The Sheriff has apparently forgotten about the suspicious death of inmate Richard Glasco in his cell on March 19, 2008, which is currently being investigated by the FBI and the U.S. Attorney. (Report at 10-11.) Finally, the Sheriff claims that Brian Nichols was moved to the DeKalb County Jail as part of a general transfer of inmates to accommodate renovations at the jail. Id. This is not true, and the Sheriff knows it. In fact, the Court was personally asked by the Fulton County District Attorney to remove Nichols from the Fulton County Jail because it had been discovered that Nichols had managed to obtain a cell phone and was plotting an escape. The Court personally attempted to have Nichols moved to a federal facility and, when that proved impossible, arranged for his transfer to the DeKalb County Jail.

The Court cannot control the Sheriff's public pronouncements about the jail, which appear to the Court to be motivated by purely political

considerations. However, the Court will not tolerate the Sheriff's continued refusal to live up to his obligations under the Consent Order.

Accordingly, it is hereby ORDERED that the Sheriff appear in Courtroom 1707 at 11:00 a.m. on Friday, July 25, 2008, and show cause why he should not be held in contempt.

IT IS SO ORDERED, this 10th day of July, 2008.



Marvin H. Shoob, Senior Judge
United States District Court
Northern District of Georgia