

Eastern District of Kentucky
FILED

AUG 3 - 2005

AT COVINGTON
LESLIE G. WHITMER
CLERK U.S. DISTRICT COURT

Eastern District of Kentucky
TENDERED

Date: 7-1-05
LESLIE G. WHITMER
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
COVINGTON DIVISION

James Hollingsworth, et al., :: Case No. 2005-79

Plaintiffs, :: Judge Bertelsman

-vs- ::

John D. Rees, et al. ::

Defendants ::

FIRST AMENDED COMPLAINT

I. INTRODUCTION

1. Plaintiffs currently are or have been incarcerated or will be incarcerated in the future at the Campbell County Detention Center (the Jail) at 601 Central Avenue, Newport Kentucky. Plaintiffs bring this class action complaint for injunctive and declaratory relief and nominal damages alleging that their rights under the Eighth and Fourteenth Amendments to the United States Constitution are being violated by reason of the overcrowding at the Jail.

filed

II. JURISDICTION, VENUE
AND EXHAUSTION OF ADMINISTRATIVE REMEDIES

2. This action is filed pursuant to 42 U.S.C. § 1983. Jurisdiction is conferred on this Court by 28 U.S.C. 1331 and 1343. This court has supplemental jurisdiction of Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this district under 28 U.S.C. 1391(b) since the incidents giving rise to the cause of action alleged herein are taking place in the district and some of the Defendants may be found in or reside in this district.

4. All representative plaintiffs have fully exhausted the administrative grievance process at the Campbell County Jail through all levels of administrative appeal. A copy of each representative plaintiff's grievance was attached to the original complaint and is incorporated by reference in the First Amended Complaint. The response of Defendant Buckler was attached to the original complaint and is incorporated by reference in the First Amended Complaint.

III. PARTIES

5. Plaintiffs are current, former or future incarcerants in the Jail. Plaintiffs are both pre-trial and sentenced persons.

6. John D. Rees is the Commissioner of the Kentucky Department of Corrections. The Department of Corrections is obligated under the laws of Kentucky to house persons who are convicted of violations of the laws of the Commonwealth. § KRS 196.030, § 532.100. Defendant Rees is sued in his official

capacity and the complaint seeks only injunctive and declaratory relief against this Defendant.

7. Campbell County is a political subdivision of the Commonwealth of Kentucky. Campbell County, through its policymakers, including the Campbell County Fiscal Court, has the responsibility for providing adequate funding for the Campbell County jail. The Fiscal Court is charged by statute with the duty of providing and maintaining a safe, secure and clean jail in the county, and where necessary contracting with another county or city for the incarceration and care of its prisoners. KRS § 441.025. Furthermore, the jail facilities that are financed and provided for by the Fiscal Court must meet the standards as set by the Kentucky Department of Corrections. KRS § 441.055.

8. Greg Buckler is the Jailer of Campbell County, and is charged by statute with operating the jail and taking care of the custody of those persons committed to the Jail. KRS § 71.020. At all times relevant to this action, Defendant Buckler acted under color of law. Defendant Buckler is sued in his individual capacity.

IV. FACTUAL ALLEGATIONS

9. The Jail was constructed in 1991. Its design capacity, excluding the isolation, holding and segregation cells, is for 135 prisoners. Recently, the Jail has been chronically and continuously overcrowded. The jail population has recently been as high as 276 prisoners, and during the week of April 18, 2005, was 238.

10. Included in the jail population of the week of April 18, 2005, were 16 parole violators and 28 control intakes, all of whom are the responsibility of the Kentucky Department of Corrections which has failed to cause to have these incarcerants transferred to a penal institution operated by the Department of Corrections.

11. The back-up of these incarcerants has been chronic, and has resulted in serious overcrowding at the Jail. This subset of the population at the Jail represents 20% of the population.

12. The response by the Kentucky Department of Corrections to the overcrowding caused by Commonwealth, as opposed to County prisoners in County jails, has merely been to reduce the standards of floor space to be available to each prisoner from 50 square feet to 40 square feet.

13. Additionally, funds that were previously available for the expansion of local detention facilities, a fund of between twelve to fourteen million dollars, was diverted by the Kentucky legislature to other purposes.

14. The prisoner housing at the Jail consists of "dormitories" of 12 person rooms and 8 person rooms. Double bunk beds are provided for the design limits for each room. The 12 person rooms have regularly housed 21 and 22 persons, and the 8 person rooms have regularly housed 14 and 15 persons.

15. The persons in the "dorms" over the design capacity sleep on the floor. "Boats" or plastic-like frames are provided to some of the excess population, and some prisoners are required to sleep on the floor when it is

deemed a security risk to the staff who have to enter the dormitory rooms and be able to walk across the floor.

16. As a result of this level of overcrowding, the persons inhabiting these rooms remain in their bunks, their "boats" or their floor space during the day as well as the night for the reason that there is only a minimal amount of floor space for standing or walking.

17. As a consequence of the literal pressing of bodies on bodies in these "dormitory" rooms, human odors permeate the rooms, the noise level during waking hours is offensive, sleep at night is intermittent, tensions are raised, and violent outbursts are frequent. No other human lives at this level of degradation.

18. On April 19, 2005, Plaintiffs through counsel filed grievances with the Campbell County Jailer and met with his staff to discuss the grievances. A copy of the written grievances are attached hereto. The grievances complained of the overcrowding at the Campbell County Detention Center. In addition, Plaintiffs' counsel provided the Campbell County Jailer with a draft copy of the instant complaint on April 21, 2005. On April 27, 2005 a written response was provided to Plaintiffs' grievances. A copy was attached to Plaintiffs' original complaint and is incorporated by reference in Plaintiffs' First Amended Complaint. The response denies that Constitutional violations are occurring, and details efforts that have been made and future plans to deal with overcrowding issues. Plaintiffs have exhausted the grievance process, and further the

Campbell County Jailer alone does not have the means to redress the grievances and the Constitutional violations alleged herein.

V. CLASS ALLEGATIONS

19. This action is brought as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

20. The Plaintiffs are proper representatives for the class within the meaning of Rules 23 (a) and 23 (b)(2).

21. The class consists of all persons presently incarcerated and all persons incarcerated within the previous one year period and all persons who may be incarcerated in the future in the Jail. The class is sufficiently large so that joinder of all members is impractical.

22. There are common questions of law and fact common to the class because the conduct of the Defendants violate the Constitutional rights of the Plaintiffs and all class members in a similar manner.

23. Plaintiffs will fairly and adequately represent the class since their claims are typical of the claims of the class.

24. Plaintiffs have retained competent counsel who will vigorously pursue this action.

25. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

VI. FIRST CAUSE OF ACTION: 42 U.S.C. § 1983

26. The confinement of the pretrial Plaintiffs in the overcrowded conditions of the Campbell County Detention facility by the Defendants as described herein violate these Plaintiffs' rights under the Fourteenth Amendment to the United States Constitution.

VII. SECOND CAUSE OF ACTION: 42 U.S.C. § 1983

27. The confinement of the post-trial Plaintiffs in the overcrowded conditions of the Campbell County Detention facility by the Defendants as described herein violate these Plaintiffs' rights under the Eighth Amendment to the United States Constitution.

VIII. THIRD CAUSE OF ACTION: KRS § 441.025 and 441.055

28. The confinement of all Plaintiffs in the overcrowded conditions of the Campbell County Detention facility as described herein violate Plaintiffs' rights under KRS §441.025, and KRS § 441.055.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

- a. Assume jurisdiction of this action;
- b. Certify this lawsuit as a class action on behalf of the Class pursuant to Fed. R. Civ. P. 23(a) and (b)(2);
- c. Declare that Defendants' conduct violates Plaintiffs' rights under the United States Constitution;
- d. Grant appropriate injunctive relief to reduce overcrowding;

e. Award each Plaintiff nominal damages;

f. Award Plaintiffs' counsel reasonable attorneys fees pursuant to 42

U.S.C. § 1988;

g. Order such other relief as this Court deems just and proper.

Respectfully submitted



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