

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON DIVISION

Eastern District of Kentucky
FILED
FEB 7 - 2006

CIVIL ACTION NO. 05-79-WOB

AT COVINGTON
LESLIE G WHITMER
CLERK U S DISTRICT COURT

JAMES HOLLINGSWORTH, ET AL.

PLAINTIFFS

vs.

AGREEMENT AND CONSENT DECREE

CAMPBELL COUNTY, KENTUCKY, ET AL.

DEFENDANTS

I. PRELIMINARY STATEMENT

On April 29, 2005, Plaintiffs, James Hollingsworth, Charles Breckenridge, Khalil Rahim, Thomas Elliott, Tray James, Chance Hall, Jeff Deal, Ron Gregory, Leon Marshall, Danale Sneed, Dennis Marshall, Chris Dale, Walter Long, Keith Lawson, Arthur Singleton, James Davenport, Ed James, Larry Gaines, Rick Steele, Paul Sandman, Anthony Jordan, James Woodruff, Jason Sumpter, Sean Black, Jacob Bowen, James Smith and Dale Myerhoff (hereinafter "Plaintiffs") filed the above-captioned case against Defendants, Campbell County, Greg Buckler, in his official capacity as Campbell County Jailer and in his individual capacity, and John D. Rees, in his official capacity as Commissioner of the Kentucky Department of Correction. Plaintiffs alleged that they were subject to unconstitutional conditions of confinement at the Campbell County Detention Center as a result of the number of inmates housed therein.

In addition, Plaintiffs moved to have this proceeding certified as a class action pursuant to Federal Rule 23. Plaintiffs purported to represent "all persons presently and in the future incarcerated in the Campbell County Detention Center" ("the Class") on their own behalf and on behalf of the Class, Plaintiffs sought preliminary and permanent injunctive relief, as well as

nominal damages. The parties hereby agree that the Class shall consist of all persons presently and in the future incarcerated in the Campbell County Detention Center.

Counsel for all parties represent and warrant that they have the authority to enter into this Agreement and Consent Decree.

Defendants Campbell County and Buckler acknowledge that the Campbell County Detention Center (“Detention Center”) has experienced periods of time in the last year during which it housed more inmates than it was originally designed to accommodate, given regulations that were in effect when the Detention Center was designed. All of the parties acknowledge that a number of factors have contributed to this situation, many of which are beyond Defendants’ control, including but not limited to: stiffer penalties and more aggressive enforcement efforts for certain crimes such as driving under the influence of alcohol, flagrant non-support, and domestic violence; the length of time required for a criminal case to work its way through the state court system; the inability to transfer inmates to correctional facilities in other counties due to the lack of available space in those facilities; the inability to transfer certain convicted inmates to Campbell County’s less-populated Restricted Custody Center until the Kentucky Department of Corrections appropriately classifies an inmate as eligible for such a transfer; and the Detention Center’s dependence on the Kentucky Department of Corrections to promptly remove convicted and finally sentenced inmates from the Detention Center.

However, Defendants deny that the number of inmates housed at the Detention Center has ever caused the conditions of confinement at the Detention Center to fall below the minimal civilized measure of life’s necessities, which all parties concur is the standard for adjudicating Plaintiffs’ claims.

Plaintiffs, on the other hand, assert that the number of inmates housed at the Detention Center violates their rights under the Fourteenth Amendment to the United States Constitution.

This Agreement and Consent Decree represents a mutual effort to resolve Plaintiffs' concerns about the number of inmates housed at the Detention Center and how they perceive that number to affect the conditions of their confinement, within the financial, practical and other constraints facing the Campbell County Fiscal Court, Buckler and the Department of Corrections as they administer criminal justice in their respective jurisdictions.

II. COMMITMENT TO SAFE AND CIVILIZED CONDITIONS OF CONFINEMENT

Campbell County is committed to providing safe and civilized conditions of confinement consistent with the constitutional rights of those incarcerated in its jurisdiction, as it has demonstrated even before this action was initiated. In that respect, the parties recognize that Campbell County and Buckler have taken the following steps to reduce the number of inmates housed at the Detention Center:

- Prior to June 2004, the Detention Center consistently housed between ten and twenty federal prisoners each day, for which Campbell County was paid \$36 per prisoner per day. In June 2004, and in an effort to reduce the population at the Detention Center, Campbell County requested that federal corrections officials immediately remove all federal prisoners who were then housed at the Detention Center. From that point forward, Campbell County has refused to accept federal prisoners for lodging at the Detention Center, resulting in a significant loss of available funding for the operation of the Detention Center.
- Prior to June 2004, the Detention Center consistently housed between 40 and 50 state inmates each month, for which Campbell County was paid \$26.51 per felon per day by the Commonwealth of Kentucky. In June 2004, and in an effort to reduce the population at the Detention Center, Campbell County began removing those inmates from the Detention Center, resulting in a significant loss of available funding for the operation of the Detention Center.
- Since June 2004, Campbell County has been sending inmates to correctional facilities in other counties (as space at such other facilities

allows) in order to reduce the number of inmates at the Detention Center. For each inmate that Campbell County is able to place in another county's correctional facility, Campbell County must pay that county between \$25.00 and \$30.51 per day, plus the cost of any medical treatment provided to that inmate.

- In order to reduce the number of inmates who are lodged at the Detention Center, Campbell County spent more than \$1,000,000 to build a Restricted Custody Center, which opened in April 2005. Once a Detention Center inmate has been convicted of a Class C or D felony and has been appropriately classified by the Kentucky Department of Corrections, the Detention Center is now able to transfer the inmate out of the Detention Center and into the Restricted Custody Center.
- In order to better serve an increased number of inmates, Campbell County committed approximately \$860,000 to building a new kitchen and laundry facility. The facility is currently under construction and is expected to open in December 2005.
- In anticipation of the need for additional inmate capacity in the future, Campbell County is planning a jail expansion project which is expected to provide 256 additional secure beds in a direct supervision setting, subject to available funding. For purposes of this Settlement Agreement/Consent Decree, the "jail expansion project" shall be defined as and limited to the "anticipated construction of a 256 secure bed direct supervision facility." In that regard, Campbell County has hired an architect and developed a design plan for the proposed jail expansion project.
- Campbell County's long range plans include turning the current Campbell County District Court into a second restricted custody center or additional secure beds, subject to available funding. For purposes of this settlement agreement/consent decree, the possible expansion of jail facilities into the current district court building shall not be considered as part of the "jail expansion project."

In addition, the parties recognize that Campbell County and Buckler have undertaken a number of measures to address the security and comfort of inmates at the Detention Center.

Those measures include, but are not limited to, the following:

- Campbell County has ordered twenty-seven (27) traditional bunk beds for the general male population area. These bunk beds are expected to be received from the manufacturer in mid- to late November 2005, and Campbell County will install the bunk beds within two weeks of the date on which it receives the bunk beds from the manufacturer. The installation of these bunk beds will reduce the use of "stack-a-bunks".

- In conjunction with the addition of traditional bunk beds to the male population area, Campbell County will provide additional table space in the dormitories, in accordance with state regulations.
- Campbell County is currently in the process of replacing all of the air conditioning units in the inmate housing area of the Detention Center. To date, eight units have been installed at a cost of \$8,000 each, leaving four more yet to be done.
- Campbell County has remodeled the shower areas of each dormitory and cell in the inmate housing area of the Detention Center. The remodeling was completed in August 2005 and cost approximately \$14,000.
- In the last two years, the Detention Center experienced a leaky roof, which affected some of the dormitories and cells in the inmate housing area. To address the problem, the Detention Center installed a new roof at a cost of approximately \$200,000.
- In order to ensure that the inmate housing area is adequately heated, Campbell County spent \$8,000 to replace a boiler.
- In order to improve inmate safety, Campbell County spent more than \$160,000 to upgrade the security system and replace security cameras and a sally port door.
- In 2005, Buckler created and filled a full-time staff nurse position to supplement the medical care inmates were already receiving from visiting physicians and a staff medical assistant.

III. RESPONSIBILITY OF CAMPBELL COUNTY AND BUCKLER WITH RESPECT TO REDUCING NUMBER OF INMATES HOUSED AT CAMPBELL COUNTY DETENTION CENTER

In addition to the aforementioned measures they have already taken as specified herein, Campbell County and Buckler agree as follows:

1. When the new kitchen and laundry facilities open in December 2005, approximately 800 square feet of floor space in the existing kitchen and laundry facilities will become available. Campbell County and Buckler shall remodel that space so that it may be used as an upgraded medical facility, beds for inmates who require medical isolation or medical supervision and/or secure beds for general population inmates. Campbell County and Buckler

reserve the sole discretion to determine how much of the space to allocate to each purpose, based on inmate needs and space that may become available for such purposes in the future through the jail expansion project or otherwise.

2. Campbell County and Buckler have entered into an agreement with Boone County that will allow the Detention Center to lodge up to thirty inmates in Boone County's new jail. The agreement provides that Campbell County will have priority over other counties in considering requests to transfer inmates to the Boone County Jail. Such priority consideration is limited in that Campbell County shall have priority consideration for no more than thirty beds in the Boone County Jail. Campbell County and Buckler reserve the sole discretion to identify the inmates to be transferred to the Boone County Jail under that agreement and, notwithstanding the agreement, Prindle retains the sole discretion to reject an inmate transfer request from Campbell County if the operational considerations of the Boone County Jail so require. Campbell County and Buckler further reserve the right to provide for the termination of any such agreement upon the completion of the jail expansion project.

3. Campbell County and Buckler agree to exercise best efforts to transfer inmates from the Detention Center to correctional facilities in other counties, to the extent such counties have available space in their correctional facilities and are willing to accept inmates from Campbell County, whenever the inmate population at the Detention Center reaches 220 for a period of seven consecutive days. The numbers specified in this paragraph shall not include any person received in the Campbell County Detention Center and held in the passive booking area. As used herein, the term "passive booking area" shall be defined in accordance with Appendix 2 attached hereto. In addition, Campbell County shall provide Plaintiffs' counsel on a weekly basis with the population reports it sends to the Kentucky Department of Corrections.

4. Campbell County acknowledges that, due to population overflows, new inmates are sometimes required to sleep in "boats" on the floor until bunk space becomes available due to the release or transfer of other inmates. Campbell County agrees to use best efforts to offer bunk spaces to inmates within 10 days of the date on which they are assigned to general population. An inmate who declines the first available bunk space after his initial assignment to general population acknowledges that Campbell County may be required to offer subsequently available bunk spaces to newer inmates in order to comply with this provision, and thus forfeits any right of first refusal he might otherwise expect based on his seniority.

5. Campbell County agrees to use best efforts to ensure that the jail expansion project referenced in Section II (page 4) of this Agreement and Consent Decree is actually undertaken. Toward that end, Campbell County has already hired an architect to work on the jail expansion project and that architect has submitted plans for the design and construction of the jail expansion project. Campbell County agrees that it will undertake best efforts to obtain financing from federal, state, local or other sources so that this project may be undertaken. The County agrees to seek to initiate construction by the spring of 2006 and to complete construction within 18 to 24 months thereafter.

6. Upon the completion of the jail expansion project and the receipt by Campbell County of an occupancy permit that will allow the County to begin housing inmates in the proposed facility, Campbell County agrees to provide inmates who are thereafter housed in the currently existing Detention Center with at least 45 square feet of floor space per inmate. This requirement shall apply only to those cells in the existing Detention Center that are considered under current Department of Corrections regulations adequate in size to accommodate 8 or more inmates. Notwithstanding this provision, however, and after the completion of the proposed

facility, Campbell County may provide less than 45 square feet of floor space per inmate in any cell or dormitory in the existing Detention Center for periods of five or fewer consecutive days due to unanticipated population overflows.

7. Campbell County and Buckler shall continue to decline regular and routine requests from federal correctional authorities to house federal prisoners in the Detention Center until the inmate population at the Detention Center falls below 200 for twenty or more consecutive days or until the jail expansion project is complete, whichever shall occur first.

8. Campbell County and Buckler shall continue working with the Kentucky Department of Corrections for the prompt classification of inmates eligible to be transferred from the Detention Center to the Campbell County Restricted Custody Center. Campbell County and Buckler shall physically move an inmate from the Detention Center to the Restricted Custody Center within twenty-four hours of receiving the appropriate classification from the Kentucky Department of Corrections. Campbell County and Buckler shall have the discretion to determine a particular inmate will be placed into the Campbell County Restricted Custody Center or transferred to another facility.

9. Campbell County further agrees to hold 24 of the 124 available beds in the Campbell County Restricted Custody Center for pretrial detainees who are eligible for school release, work release or participation in community service programs and whom a court authorizes to be released for such purposes.

10. Campbell County and Buckler shall also continue working with the Kentucky Department of Corrections for the prompt transfer of state inmates to state correctional facilities once those inmates have been convicted and finally sentenced.

11. Campbell County and Buckler will appoint a "Population / Pretrial Officer", who will be responsible for the management and control of the number of inmates housed at the Detention Center. The Population/Pretrial Officer will, among other things:

- Monitor the progress of inmates' criminal proceedings;
- Timely identify inmates who are eligible for transfer to state correctional facilities or to the Restricted Custody Center;
- Work directly with representatives of the Kentucky Department of Corrections to facilitate the prompt classification of Class C or D convicts, so as to allow the prompt transfer of such inmates to the Restricted Custody Center;
- Work directly with representatives of the Kentucky Department of Corrections to facilitate the prompt removal of convicted and finally sentenced inmates to state correctional facilities;
- Monitor the availability of bed space in other county correctional facilities and make arrangements to transfer inmates from the Detention Center to those facilities when possible;
- Provide information about inmates to probation, parole, prosecutors, pretrial services personnel, and other officials in the criminal justice system so that those officials may determine whether an inmate is eligible to participate in a pretrial conditional release program or is an eligible candidate for own recognizance release or a bond reduction;
- Undertake other duties consistent with the goal of ensuring that the number of inmates housed at the Detention Center remains reasonable; and
- The Population/Pretrial Officer shall compile monthly reports on his or her activities and efforts to manage jail population. The reports shall be provided to the Fiscal Court and to Plaintiffs' counsel.

Campbell County and Buckler agree to exercise best efforts to hire the Population/Pre-Trial Officer within sixty (60) days of the date on which the Court issues an Order finally approving this Agreement and Consent Decree.

12. Campbell County agrees to work with the Pretrial Services Division of the Administrative Office of the Courts in order to develop a protocol for and implement a Pretrial

Conditional Release Program. The goal of this Program will be to reduce the number of inmates housed at the Detention Center by releasing a significant number of eligible pretrial detainees from the Detention Center subject to conditions appropriate to each individual pretrial detainee's circumstances.

13. Campbell County has created and agrees to continue to regularly convene a Criminal Justice Advisory Committee ("CJAC") comprised of local circuit and district judges; prosecutors; probation and parole officers; representatives of the criminal defense bar in Campbell County; representatives of law enforcement agencies in Campbell County; Buckler and members of Detention Center administration; representatives of the Kentucky Department of Corrections; representatives of the Pretrial Services Division of the state's Administrative Office of the Courts; and representatives of the staff at NorthKey, a local mental health care organization. The overriding purpose of the Campbell County CJAC shall be to foster communication between the various partners in the criminal justice system so that judges, prosecutors, defense attorneys, probation officers and parole officers can make informed recommendations and decisions regarding pleas, pre-trial release, bond, sentencing and other issues that have the potential to reduce the number of inmates housed in the Detention Center.

As part of their participation in Campbell County CJAC, the Campbell County Police Chiefs' Association has agreed to implement a "Process and Release Program." Under that program, the Chiefs have agreed to direct their officers to cite and release misdemeanor offenders who are not charged with crimes of domestic violence or driving under the influence, who do not otherwise pose an imminent danger to the community and who do not present a flight risk. The Police Chiefs have reserved the right for their officers to retain discretion on who will be lodged.

The Campbell County CJAC will also review crime patterns, particularly with respect to repeat offenders and mentally ill offenders; investigate practical means to address crime patterns; and otherwise consider ways to make the criminal justice system in Campbell County more efficient.

14. Campbell County and Buckler shall initiate a system of objective jail classification (“OJC”). This system of classification will provide for classification and housing of inmates based upon criteria that shall include, but not be limited to, an inmate’s charges, conduct during prior periods of incarceration and other behavioral factors. The system will also allow for the reclassification of an inmate based on the inmate’s conduct during the current period of incarceration.

15. This Agreement and Consent Decree and all of the rights and obligations set forth herein shall terminate on completion of the jail expansion project referenced in Section II (page 4) and Section III, paragraph 5. Termination under this paragraph shall also be conditioned on the issuance of an occupancy permit to Campbell County by the Kentucky Department of Corrections for the facility that is built as part of the jail expansion project. Termination under this paragraph shall further be conditioned on satisfaction of the requirement that inmate population at the facility that is part of the jail expansion project not exceed the number specified in the occupancy permit for the remainder of the year in which the jail expansion project is completed. In any event, all rights and obligations set forth herein shall terminate twelve months from the date the Department of Corrections issues a certificate of occupancy for “jail expansion project” as defined herein.

16. None of the aforementioned provisions shall apply to the Campbell County Restricted Custody Center or to the possible expansion of jail facilities into the current district court building, except as specifically set forth therein.

IV. RESPONSIBILITY OF KENTUCKY DEPARTMENT OF CORRECTIONS WITH RESPECT TO REDUCING NUMBER OF INMATES HOUSED AT CAMPBELL COUNTY DETENTION CENTER

1. The Kentucky Department of Corrections shall provide the Detention Center with notice of an inmate's classification within 10 days of the date on which the Department receives the presentence investigation and judgment documents referenced in § 2 of 501 KAR 2:060.

2. Unless a convicted inmate is to be transferred to the Campbell County Restricted Custody Center, the Kentucky Department of Corrections shall remove the inmate from the Detention Center within 45 days of the date on which the inmate receives his final sentence. However, the Department also agrees to use best efforts to remove convicted inmates sooner in the event that Campbell County makes such a request in a particular situation.

3. The Kentucky Department of Corrections agrees that its officials and employees will cooperate with Campbell County, Buckler, and Detention Center staff in communicating about inmates' conviction and sentencing status and about the Department's plans for removing inmates from the Detention Center.

4. The Kentucky Department of Corrections agrees that it will lobby the General Assembly in support of legislation that will provide adequate funding to reimburse county correctional facilities for medical expenses they incur for the medical treatment of convicted felons housed in their facilities. The Department of Corrections agrees to initiate such lobbying efforts no later than the expiration of the 2006 legislative session.

V. SETTLEMENT OF ALL CLAIMS

1. Upon the completion of the jail expansion project referred to herein, Plaintiffs on their own behalf and as representatives of “the class of persons who currently are or who have been incarcerated at the Campbell County Detention Center from April 29, 2004, to the present, and all individuals who will be incarcerated at the Campbell County Detention Center in the future”, hereby completely and unconditionally release Defendants, Campbell County, Jailer Greg Buckler in his official and individual capacities, and Commissioner Rees from any and all liability on account of any and all present and future actions, causes of actions, claims, demands, costs and expenses (including attorneys' fees under 42 U.S.C. § 1988), arising out of the allegations contained in the Complaint filed in *Hollingsworth et al v. Rees et al*, United States District Court for the Eastern District of Kentucky, Case No. 05-79-WOB. The lone inmate to express any dissension to this Consent Decree, Bradley Profit, is hereby excluded from the Plaintiff class.

2. Plaintiffs understand and agree that this settlement is a compromise of a disputed claim and that the Defendants specifically deny that they have violated any of Plaintiffs' constitutional rights.

3. Plaintiffs further acknowledge and agree that no promises, agreements or representations not contained herein have been made to them and that this document contains the full and complete agreement and consent decree.

4. Upon the completion of the jail expansion project referred to herein, Plaintiffs agree to dismiss with prejudice the action styled *Hollingsworth et al v. Rees et al*, United States District Court for the Eastern District of Kentucky, Case No. 05-79-WOB. Plaintiffs further agree to execute or cause their attorneys to execute any and all supplementary documents,

including but not limited to an Agreed Order of Dismissal with prejudice, and to take any and all supplementary steps necessary to give full force and effect to the terms and intent of this Agreement and Consent Decree.

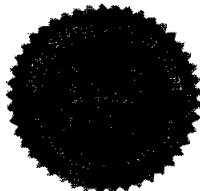
5. Counsel for the Plaintiff Class, Robert B. Newman, has represented to the Court that he has reached an agreement with Defendants with respect to the payment of his fees and costs, and accordingly, those claims are dismissed as settled.

6. This Agreement and Consent Decree may only be enforced in the United States District Court for the Eastern District of Kentucky by Plaintiffs' counsel in the event of any claim of breach by any present or future inmate of the Campbell County Detention Center during the term of this Agreement and Consent Decree. Plaintiffs specifically agree not to employ any attorney other than Robert B. Newman for the purpose of enforcing this Agreement and Consent Decree.

The parties are hereby ordered to abide by the terms of the Agreement and Consent Decree.

IT IS SO ORDERED, this 7th day of February, 2006.

JUDGE WILLIAM O. BERTELSMAN




Signed By:

William O. Bertelsman *WOB*

United States District Judge

AGREED TO BY:



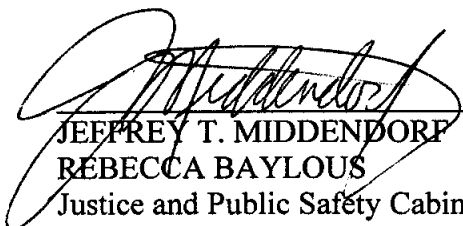
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