

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

ROBERT A. RAVITZ, Public Defender of)
Oklahoma County, on behalf of)
KEVIN MERRITT, and all similarly situated)
inmates incarcerated in the Oklahoma)
County Detention Center,)
)
Petitioner,)
)
vs.)
)
JOHN WHETSEL, Oklahoma County)
Sheriff and JUSTIN JONES, Director,)
Oklahoma Department of Corrections)
)
Respondents.)

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

AUG - 3 2006

PATRICIA PRESLEY, COURT CLERK

By _____
Deputy

No. CV - 2006 - 11

**NOTIFICATION TO THE DISTRICT COURT AND PETITION FOR DECLARATORY
AND INJUNCTIVE RELIEF TO CORRECT OVERCROWDING IN THE OKLAHOMA
COUNTY DETENTION CENTER**

Petitioner Robert A. Ravitz, on behalf of the designated Oklahoma County Detention Center inmates, hereby notifies the Oklahoma County District Court that such inmates are being irregularly held and in overcrowded conditions. Petitioner seeks, for the reasons stated herein, declaratory and injunctive relief and requests that a writ issue to the above named Respondents mandating the immediate transport by the Oklahoma County Sheriff to, and acceptance by, the Oklahoma Department of Corrections Assessment and Reception Center (L.A.R.C.) in Lexington, Oklahoma, of all persons who, pursuant to valid Judgments and Sentences, have been ordered incarcerated in the Department of Corrections (D.O.C.) but who are currently being held in the Oklahoma County Detention Center (county jail) awaiting transfer to D.O.C. In support thereof, Petitioner states the following:

1. Petitioner is the Public Defender of Oklahoma County, whose responsibilities and authority are established by Okla. Stat. tit. 19, § 138.1(a) et seq., including the responsibility to protect “the rights of any defendant to a criminal action.” Ibid. In that capacity, Petitioner is also specifically charged under Rule 34, *Rules of the Seventh Judicial District*, with supervisory responsibility to inquire and report to the District Court on the welfare of Oklahoma County jail inmates.¹

2. Kevin Merritt is currently being held in the Oklahoma County Detention Center (county jail). He was charged and convicted by plea of Attempted Burglary II and sentenced to imprisonment in the custody of the Oklahoma Department of Corrections. A formal Judgment and Sentence was filed on June 19, 2006, however, his custody has not been transferred to D.O.C., he has not been transported to L.A.R.C., and he remains in the county jail, which is operating beyond its inmate capacity. Likewise, approximately 800 other prisoners previously sentenced to D.O.C. custody remain incarcerated in the county jail several weeks or months after entry of formal Judgments and Sentences ordering them into D.O.C. custody.

3. The continued incarceration of these prisoners in the county jail, violates Okla. Stat. tit. 57, § 95, which mandates that any person sentenced to the Department of Corrections **shall** be delivered by the sheriff to the D.O.C. reception center in Lexington.² It also violates Okla. Stat. tit. 57, § 521(A), which provides that when a

¹ Rule 34 provides: “At least one time each month the Public Defender shall examine into the causes for confinement of prisoners in the Oklahoma County Jail. If the fact of confinement of any person does not appear to be regular, the Public Defender shall call the matter to the attention of the Presiding Administrative Judge who shall immediately conduct further inquiry and take action as deemed proper and appropriate.” The specific judicial district rules supplement the Rules for the District Courts, Okla. Stat. tit. 12, Ch. 2, App. (2001)

² See also Okla. Stat. tit. 57, § 530, recognizing legislative intent that all new prisoners be processed through the Lexington Assessment and Reception Center.

person “is sentenced to imprisonment that is not to be served in a county jail, the person **shall** be committed to the custody of the Department of Corrections and shall be classified and assigned to a correctional facility or program designated by the Department and authorized by law.” (emphasis added)

4. Okla. Stat. tit. 57, § 37(C) provides that when a county jail is at capacity, the sheriff **shall** notify D.O.C. and transport the inmates to D.O.C. within 72 hours. The Oklahoma County Detention Center was originally built to house 1200 people on a temporary basis from arrest to disposition of charges. Although it has been modified to a capacity of approximately 2400 by installing additional beds to permit the “double-celling” of inmates, the current jail population regularly exceeds 2900, which necessarily denies beds to some inmates and far exceeds the facility’s statutory capacity.³ Although Okla Stat. tit. 74, § 317 defining capacity permits “double-celling,” there is no provision for “triple-celling” and certainly no provision justifying jail overcrowding which necessarily forces inmates to sleep on the floor.

5. Oklahoma prison inmates have a due process right to the statutory benefits of D.O.C. custody not available to them while incarcerated in the county jail. For example, Okla. Stat. tit. 57, § 138 provides for time credits based upon earned security levels as determined by, *inter alia*, behavior and program participation, and each inmate’s security status must be evaluated every four months by D.O.C. committees. See e.g., Medina v. State, 871 P.2d 1379, 1385 (Okl.1993) (holding state created right to good-time credits is a liberty interest, *relying on* Wolff v. McDonald, 418

³ According to Appendix A, 602 are awaiting transportation to Lexington for reception in the state system.

U.S. 539 (1974)). Also, there are educational and recreational opportunities in D.O.C., not available in the county jail, which contribute to their ability to earn good-time credits.

6. Due process violations are cognizable in mandamus. Canady v. Reynolds, 880 P.2d 391, 393 (Okla. Cr. 1994) (mandamus proper vehicle for inmates to remedy due process violation by D.O.C.). See also Maryland v. Hoffman, 89 P.2d 287, 289 (Okla. 1939) (if, by mistaken view of law or by arbitrary exercise of authority, there has been no actual exercise in good faith of judgment or discretion vested in state officer, mandamus will lie to compel officer to act within law). Cf. Baggett v. State, 248 P. 875 (Okla. Cr. 1926) (judges may use utilize their extra-judicial power to enlist legal assistance for a prisoner with confinement-related claims)⁴

7. Prisoners have a constitutionally protected right of access to the courts. Okla. Const. Art. II § 6. See Bonner v. Brock, District Judge, 610 P.2d 265 (Okla. Cr. 1980) (person seeking relief on basis of alleged violation of right promptly to begin service of sentence must be able to show that reasonable, appropriate, and timely steps were taken to assert right).

8. By virtue of Rule 34, *supra.*, and Okla. Stat. tit. 12 § 1651, the district court, through the Presiding Administrative Judge, has jurisdiction over the subject matter and the parties herein. See also Fields v. Driesel, 941 P.2d 1000, 1005 (Okla. Cr. 1997) (district court retains limited jurisdiction over D.O.C. until agency completes its obligation by receiving an inmate into custody at L.A.R.C.); Tomlin v. State, ex rel. Department of Corrections, 814 P.2d 154, 156 (Okla. Cr. 1991) (“[M]andamus is an adequate remedy to require the Department of Corrections to

⁴ Conditions of confinement claims as a pretrial detainee are analyzed as due process claims and those as a convicted felon are analyzed as Eighth Amendment claims, the same analysis applies to both types of claims. See Lopez v. LeMaster, 172 F.3d 756, 759, n.2 (CA 10 1999)

perform its legal duty.”) In Transportation Information Services, Inc. v. Oklahoma Department of Corrections, 970 P.2d 166 (Okla.1998), the Oklahoma Supreme Court upheld a writ of mandamus by Judge Dixon of this Court ordering D.O.C. to comply with the State open records statute. In so doing, the Court held that requests for statutory compliance did not have to be made on an inmate-by-inmate basis. Likewise, the writ here, should issue to require D.O.C. to immediately receive all inmates currently sentenced to its custody under valid judgments and sentences, and the district court should order, as required by statute, the continued transfer within 72 hours of their sentencing to D.O.C. custody of all individuals incarcerated in the county jail until the overcrowding is alleviated.

9. In Fields, 941 P.2d at 1004-1005, the appellate court interpreted Okla. Stat. tit. 57, § 95 to require D.O.C. to take custody of prisoners:

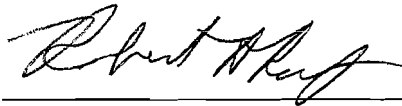
The language of 57 O.S. 1991, § 95 which requires the Department of Corrections to give the sheriff “a receipt” may be construed to require the Department of Corrections to actually receive prisoners. Unlike Colorado, the Department of Corrections’ duty to receive the prisoners stems not from the Judgment and Sentence or mittimus, but rather from state statute. Once the Department, through its officials at L.A.R.C., receives a prisoner in custody, the Department has fulfilled its charge under the Judgment and Sentence issued by the District Court.

Although under Okla. Stat. tit. 57, § 37(D), D.O.C. is permitted to pay a *per diem* subsidy to county jails to its hold prisoners when its facilities reach capacity, this provision cannot constitutionally be applied to county jails that have exceeded their own inmate capacity. To permit D.O.C. to violate its statutory responsibility to its prisoners under such conditions not only creates a financial incentive to violate inmate Due Process rights to the statutory benefits of D.O.C. custody, but also denies to jail

detainees the humane jail conditions to which they are constitutionally entitled. Bell v. Wolfish, 441 U.S. 520 (1979) (pretrial detainees may not subject to punitive measures).

WHEREFORE, Petitioner prays that an Order issue from this Court mandating the immediate orderly transfer of those persons validly sentenced and awaiting transfer to D.O.C. custody and ordering the sheriff to transfer to D.O.C. custody all future prisoners sentenced to D.O.C. in compliance with the law of the State of Oklahoma.

DATED this 3rd day of August, 2006.



ROBERT A. RAVITZ
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405-713-1550

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument was delivered to the Office of the District Attorney, 5th floor County Building, Oklahoma City, Oklahoma, and mailed to the Department of Corrections this 3rd day of August, 2006.



ROBERT A. RAVITZ