

1991 WL 218361

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United States District Court, E.D. Pennsylvania.

Martin HARRIS, Jesse Kithcart, Roy Cold, Delores Brown, Robert Spruill, George Mitchell, Russell Thomas, and Michael Mobely

v.

Joan REEVES, in her official capacity as Commissioner of the Department of Human Services of the City of Philadelphia, Rev. Albert F. Campbell, Labora M. Bennett, James D. Barber, Allen M. Hornblum, M. Mark Mendel, Donald J. Padova, each in his or her official capacity as a member of the Board of Trustees of the Philadelphia Prison System, J. Patrick Gallagher, in his official capacity as Superintendent of the Philadelphia Prison System, HARRY E. MOORE, in his official capacity as Warden for Holmesburg Prison, Wilhelmina Speach, in her official capacity as Warden of the Detention Center Elsa Y.

Legesse, in her official capacity as Warden of the House of Corrections, David Pingree, in his official capacity as Managing Director in the City of Philadelphia, HON. WILSON GOODE, in his official capacity as Mayor of the City of Philadelphia, and the City of Philadelphia

Civ. A. No. 82-1847. | Oct. 21, 1991.

## Opinion

### MEMORANDUM

SHAPIRO, District Judge.

\*1 Before the court is the District Attorney's Objections in the Nature of a Motion for Clarification and/or Reconsideration of the court's Order of October 11, 1991. Because the District Attorney is correct that the Order did not reflect what the court actually said at the hearing on October 10, 1991, even though it clearly reflected what the court meant at the time, the court's Order of October 11, 1991 will be amended to reflect the court's intention, *i.e.*, to deny a stay of implementation of paragraphs 17 and 18 of the March 11, 1991 Consent Decree but to allow the District Attorney to seek such a stay from the Court of Appeals or Supreme Court.

At the outset of the October 10, 1991 hearing in the above matter, the court sought clarification of the status of the District Attorney's appeal from the denial of its motion to

intervene. The Court of Appeals for the Third Circuit had approved this court's Order of January 14, 1991, dismissed the District Attorney's appeal and vacated its Order of partial stay on Friday, October 4, 1991. The news media had widely reported the District Attorney's stated intention to take the matter before the Supreme Court on Monday, October 7, 1991.

However, at the October 10 hearing, counsel for the District Attorney stated that this had not been done because the District Attorney intended first to seek reargument by the panel or rehearing *en banc* by the Court of Appeals. At this time, no such petition has yet been filed to the knowledge of the court.

In that procedural position, the District Attorney requested the court to exercise its discretion to grant a stay pending rehearing and/or certiorari to the United States Supreme Court. Having refused the District Attorney's initial request for a stay pending appeal for reasons stated at length in a Memorandum filed August 7, 1991, the court stated that nothing about the recent action of the Court of Appeals persuaded me to exercise my discretion to grant a stay at this juncture. This court stated clearly that if the District Attorney wished a stay, it would have to be obtained from an appellate court.

Mindful of the pressures on a busy Court of Appeals and seeking to avoid the need for what would likely be characterized as an emergency motion, the court agreed to stay the release mechanism under the Stipulation and Agreement for a limited time to allow the District Attorney to petition for rehearing and seek a stay from the Court of Appeals if reargument or rehearing *en banc* is granted. This court inadvertently stated it would "wait until the time to permit rehearing by the Court of Appeals out of respect for the Court of Appeals." But it would have been presumptuous for this court to assume that the Court of Appeals would or should grant rehearing. It is perfectly clear in context, especially in view of the time allowed to petition for a grant of certiorari by the Supreme Court and the disruptive nature of a stay of the release mechanism to the ongoing administration of the Stipulation and Agreement, including the construction of the prison and the courthouse, that this court intended to grant a stay only for the time necessary to permit a petition for rehearing to be filed with the Court of Appeals.

\*2 The court's Order of October 11th did nothing more than articulate the court's actual intention stated imprecisely on October 11, 1991; the court believed there was no modification and therefore no consultation with the parties or the objector was required. However, the District Attorney claims it did not file a stay request in the Court of Appeals as a result of the court's oral statement.

**Harris v. Reeves, Not Reported in F.Supp. (1991)**

The District Attorney also represents it would be substantially handicapped in preparing a stay request for filing on or before October 18, 1991, since counsel is presently preparing the petition for rehearing *en banc*.

For this reason, the court has amended its Order of October 11th to stay implementation of paragraphs 17 and 18 of the Stipulation and Agreement until October 31, 1991 to allow the District Attorney to petition for reargument and/or rehearing in the Court of Appeals and a stay should its petition be granted.

An appropriate Order will be filed.

AND NOW, this 18th day of October, 1991, upon consideration of the oral motion of the District Attorney of Philadelphia for a stay of Paragraph 17 of the Stipulation and Agreement approved by Order of March 11, 1991, IT IS HEREBY ORDERED that said motion is DENIED, and it is nevertheless FURTHER ORDERED that the Court shall delay implementation of the provisions of Paragraph 17 of the Stipulation and Agreement, and shall not impose sanctions upon defendants for failure to comply with the provisions of Paragraph 17, through October 31, 1991, in order to permit the District Attorney to seek a stay of implementation from the Court of Appeals.

***AMENDED ORDER***