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Johnson v. Upchurch

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Jl-AZ-002-003

APR 15 1996

NATIONAL CENTER FOR JUVENILE LAW

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

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MATTHEW DAVEY JOHNSON, et al.,

NO. CIV 86-195 TUC RMB

Plaintiff,

vs.

JAMES R. UPCHURCH, et al.,

Defendants.

ORDER RE: CONSENT DECREE POPULATION LIMITATIONS

On May 6, 1993, the Court approved a Consent Decree which placed population limitations on the number of youths who could be confined at the Arizona Department of Juvenile Corrections ("ADJC"). Specifically, the Consent Decree provided in relevant part:

The Department shall not average more than 110 youth at CMS each month, 240 youth at AMS each month, and 30 youth in the BCS residential program each month, unless additional physical facilities are constructed to house such youths in accordance with the standards set forth in paragraph 2(B).

See *Consent Decree*, III.2.A. at 7. The Decree further requires that ADJC obtain the consent of the Committee of Consultants before increasing the total number of secure beds. *Id.*, III.2.C. at 8.

At no time has ADJC been in compliance with the Consent Decree population limitations.

Subsequent to the Decree, A.R.S. § 8-241 was enacted. That statute confers upon the juvenile courts the authority to not only commit youth to the Department, but to

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1 also designate minimum lengths of stay in secure confinement. A.R.S. § 8-241 in effect,  
2 eliminates the discretion previously held by the Department to regulate its population.

3 To address an increasing population, ADJC sought the approval of the  
4 Committee of Consultants and the Court to increase the number of its secure  
5 residential beds. Based on the recommendations from the Committee of Consultants,  
6 the Court authorized increasing the capacity of AMS from 240 to 312 beds and BCS  
7 from 30 residential beds to 120 beds. See Order of November 27, 1995. Approval was  
8 also given for new construction: a 24-bed boot camp and two 24-bed cottages, subject  
9 to design approval and meeting Consent Decree standards. *Id.* That Order  
10 immediately increased the bed capacity at the three institutions to 542 with an  
11 additional 72 beds made available upon completion. Despite this increased capacity,  
12 demographic factors and significant changes in Arizona law have prevented ADJC from  
13 satisfying the population limits.

14 The Committee of Consultants submitted their Fifth Semi-Annual Report on the  
15 Implementation of the Consent Decree (the "Report") on January 30, 1996. The  
16 Report found that ADJC was violating the population limits by 51 youths. The  
17 Report recommended that ADJC be held accountable to the Consent Decree  
18 population provisions.

19 At hearing held February 9, 1996, ADJC assured the Court that by applying a  
20 variety of program options, it would be at, or under, the population caps within 60  
21 days. Based on those assurances, the Court ordered:

22 that Director Eugene Moore and the Arizona Department of Juvenile  
23 Corrections shall be in compliance with the Consent Decree on or before  
24 5:00 P.M., APRIL 9, 1996. Director Moore shall submit a compliance  
25 report to the Court. . . . If this report does not satisfy the Court, the  
26 Court shall issue an Order at 5:01 P.M., April 9, 1996 which will ensure  
27 DJC complies with the terms of the Consent Decree.

28 See Order of February 21, 1996.

The Department asserts today that it made its assurances to the Court on

1 February 9, 1996 based on juvenile court commitment practices during the period of  
2 October 1995 through December 1995. Unanticipated at the time, was that the number  
3 of youth committed to ADJC with determinate lengths of stay would increase by  
4 14.5%. According to ADJC, despite the Administrative Office of the Courts' promise  
5 that the juvenile courts would endeavor to limit commitments to those youths who  
6 satisfy the commitment guidelines, this has not occurred. Instead, since February 9,  
7 1996, the secure care population has exceeded the requirements set by the Consent  
8 Decree by an average of 78 youths. As of April 9, 1996, ADJC's secure population  
9 exceeded the capacity by 72 youth.

10 As required by the Court's February 9, 1996 Order, Defendants submitted on  
11 March 20, 1996 their Plan for Complying with the population requirements of the  
12 Decree. After reviewing the Plan, the Court finds: (1) the Plan gives no estimate as to  
13 the projected population reductions which would occur as a result of the proposed  
14 programs; (2) the overcrowding has actually increased since the Court's February 9,  
15 1996 Order; and (3) Defendants' proposal that the capacity of Adobe Mountain School  
16 be temporarily increased until the new construction at Black Canyon School is  
17 completed is contrary to Decree requirements. Accordingly, the Court rejects  
18 Defendants' Plan as inadequate and in violation of Decree requirements.

19 This dilemma is the direct result of the Department's ongoing failure to provide  
20 adequate physical facilities and personnel to staff those facilities. The juvenile judges  
21 of this State have been forced into an untenable position: Do they commit youths to  
22 overcrowded state institutions, keep them in overcrowded local institutions (if such  
23 even exists), or release them back to the community? This was to be solved by the  
24 State when it agreed to the Consent Decree. The State has defaulted on its agreement  
25 and this Court has no recourse but to force Defendants to live up to their agreement.



1 | if such placement will exceed the population provisions approved by this Court;

2 | (8) No youth who has been assigned to conditional liberty by ADJC who is  
3 | arrested for a new offense shall be placed in a secure facility operated by ADJC pending  
4 | a probable cause hearing;

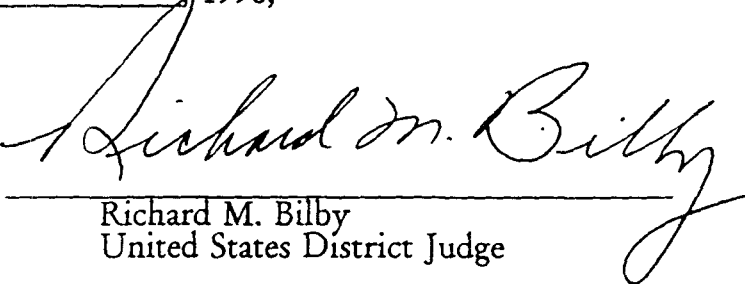
5 | (9) If, following a probable cause hearing, it is determined to prosecute on the  
6 | new offense(s) such youth will not be placed in a secure facility operated by ADJC  
7 | prior to sentencing;

8 | (10) Nothing shall prohibit the Department from petitioning the Committee  
9 | of Consultants for additional beds in accordance with the Consent Decree;

10 | (11) ADJC shall continue to submit reports to the Committee of Consultants  
11 | in accordance with the Court's February 21, 1996 Order;

12 | (12) If ADJC is not in compliance with this Order by 5:00 P.M., May 9, 1996,  
13 | Defendants shall be held in contempt of court.

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15 | DATED this 9 day of April 1996,

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19 | Richard M. Bilby  
20 | United States District Judge  
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