

FILED

Newman v. Graddick



PC-AL-017-003

DEC 28 1988

THOMAS C. CAVER, C
BY _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

N. H. NEWMAN; ET AL,)	
)	
Plaintiffs,)	
)	
UNITED STATES OF AMERICA; ET AL,)	
)	CIVIL ACTION NO. 3501-N
Amici Curiae,)	
)	
VS.)	
)	
STATE OF ALABAMA; ET AL,)	
)	
Defendants.)	

MEMORANDUM OPINION

This cause is submitted on the record, on the Motion to Dismiss filed herein December 20, 1988, by the Alabama Department of Corrections [DOC], on the Final Report of Implementation Committee filed herein December 14, 1988, and the attachments to all of the same.

On August 15, 1988, the Court extended the existence and duties of the Prison Implementation Committee until December 31, 1988. Under the terms of the November 27, 1984, Consent Order, the jurisdiction of this Court could be reactivated or extended on the recommendation and petition of a majority of the Prison Implementation Committee. On two previous occasions, the Committee has petitioned the Court to extend, and the Court

has extended, the Committee's jurisdiction to monitor the prison system^{1/} beyond previously set dates for the end of this litigation.

The Newman case began in 1971 and resulted in a comprehensive Order in 1972 relating to medical and psychological care of prisoners. On January 13, 1976, the Court consolidated the Newman case with the Pugh and James cases and entered a comprehensive Order relating to almost all conditions of confinement in the Alabama Prison System. Thus, this Court has exercised jurisdiction over medical and psychological care for over 16 years and over virtually all aspects of the prison system for nearly 13 years. That jurisdiction has necessarily been active during those years with extensive litigation over compliance with the Court's Orders, especially up to the time of the establishment of the Prison Implementation Committee on January 5, 1983. Thereafter, the Committee has saved the State and federal governments litigation expenses in untold amounts while facilitating settlement of hundreds of complaints.

^{1/} In that Order, the Court found, and the parties agreed, that "[e]xisting conditions in the Alabama Prison System *** are in sufficient compliance with the requirements of the Constitution of the United States *** to permit all the parties to recommend dismissal of this action subject to the conditions contained in this Order." The Order thereafter continued the existence of the Prison Implementation Committee for the sole purpose of conducting monitoring activities "as it deems appropriate ***". By its express terms, the November 27, 1984, Order relinquished the exercise of jurisdiction in this case as of December 3, 1984.

All of the members of the Prison Implementation Committee had previous involvement in this and other cases as lawyers, the Chairman of the original Human Rights Committee, and expert witnesses. As Committee members, they have monitored conditions in the Alabama Prison System for almost six years on a constant and regular basis.

There can be no doubt that the conditions which existed in the Alabama Prison System in 1972 and 1976 do not exist today. In previous reports, this Committee and the Court have commended certain public officials in Alabama for their commitment to creating and maintaining a constitutional prison system in the State. Governor Hunt and his staff, Mr. Holman Head, the Commissioner of Corrections and his staff and the Parole Board have assured the Committee of the State's intention to continue and expand the progress in the system. Moreover, the Committee and this Court have been impressed with the work of the Judicial Study Commission and its Prison Task Force established pursuant to the efforts of this Committee and Chief Justice C. C. Torbert and effectively led by Allen Tapley. The Committee and this Court expect these efforts to continue under incoming Chief Justice E. C. Hornsby. As will be elaborated, notwithstanding these accomplishments, if these and other relevant State Officials are to operate the Alabama Prison System in a constitutional manner and in accordance with professional standards, they must

devote continuing and immediate attention to existing problems and those which may be expected to occur in the future.

Although vast sums of taxpayers' dollars have been spent in efforts to rehabilitate law violators, the Alabama Prison System has not been able to maintain desired accommodations for the numbers of prisoners sentenced to it. In its report dated July 6, 1988, the Committee noted that, because of increased activity by the Parole Board subsequent to the Court's Order of December 30, 1987, the prison population had dropped from 12,807 to 12,183 as of July 4, 1988. Moreover, the number of State inmates in county jails dropped during this period from 800 to 385, and of this 385, only 119 were eligible for transfer to State institutions.

Although the parties hoped that this laudable trend would continue, it has not. The most current statistics show that the prison population has risen from the July, 1988, figure of 12,183 to 12,440, and, in contrast to the decreases in the prison population from February, 1988, through August, 1988, there have been net increases in the months of September, October and November of 1988. The DOC's Motion to Dismiss this proceeding proposed that the 1988 increase in prison population is a nonpermanent fluctuation rather than a trend and that recent appropriations have provided substantially more prison space.

Hopefully, we have not reached the end of diminishing prison population. Several factors co-exist to end the decrease temporarily. There is a leveling point after accelerated activity of the Parole Board following extended inactivity. Most judges for years sentenced with the thought that such sentences would probably be reduced to one-third of the time of sentence for good behavior or other indicia of rehabilitation. Yet, for an extended period of time, the number of monthly paroles was far less than the numbers entering institutions. State laws have been amended to provide more severe punishments. The burden on the Department of Corrections is heavy. The increased population has resulted from a combination of increased sentences to prisons and a decreased parole rate. There has been a concomitant and unfortunate decrease in the number of inmates assigned to work release and the SIR Program.

These statistics are ominous. If these trends continue, even anticipated new and expanded prisons will ultimately be unable to avoid the constitutional violations which will surely follow from overcrowding. Hopefully, all officials involved in the criminal justice system will strive diligently and imaginatively to avoid this result. The Committee convinces this Court that overcrowding inevitably causes and exacerbates other impermissible prison conditions.

On November 21, 1983, the Commissioner of Corrections and others filed a motion to modify the prior injunctive orders of this Court. The specific tenor of the motion was directed toward the Court's prior injunctive orders dealing with food, clothing, shelter, sanitation, medical care, personal safety and numerous other conditions of confinement, much of which was entered by consent without specific reference to the Constitution. The motion for modification requested that this Court "modify its prior orders *** to reflect standards no stricter than those required by the Eighth and Fourteenth Amendments to the United States Constitution and to acknowledge compliance by all Defendants wherein there has been substantial compliance." On December 5, 1983, the United States filed a memorandum in support of the Commissioner's motion to modify. This was later supplemented on January 26, 1984, by a more extensive argument. The Commissioner and the United States argued that modification was warranted on the basis of changed circumstances and changes in decisional law. See, e.g., Rhodes v. Chapman, 452 U.S. 337 (1981)[60-square-foot requirement]. Thereafter, this Court issued various orders which, *inter alia*, had the effect of denying the motions for modification. An appeal was taken.

On September 10, 1984, the United States Court of Appeals for the Eleventh Circuit [Newman v. Graddick, 740 F.2d 1513 (11th

Cir. 1984)] remanded the case to this Court for further proceedings. In its decision, the Court of Appeals stated:

"There is significant evidence to show that Commissioner Smith [former Commissioner of the DOC] has done and is doing all that he can to achieve these objectives. Although significant monetary gains have been made and significant physical plant improvements have been instituted, the defendants have not been able to comply with the 60-square foot requirement for multiple occupancy areas and have not been able to remove all state prisoners from county jails. Moreover, since the October 1980 consent order was entered, the Supreme Court has had occasion to clarify Eighth Amendment analysis in the prison context. See Rhodes v. Chapman, 452 U.S. 337 (1981). These factors justify a consideration of modification by the Court ***. [parenthetical expression added].

"Upon remand the court should hold a hearing to consider the present condition in Alabama prisons to determine the extent to which they have been brought into constitutional alignment. The consent decrees provide a proper framework and a means for reaching constitutionality in the prisons of Alabama. These constitutional standards are provided for by the Eighth Amendment. The Supreme Court and this Court have delineated the conditions to be met to reach constitutionality as to conditions of confinement. These tests are to be followed in considering modification of the consent decrees." Newman v. Graddick, supra, at 1520-21 [citations omitted].

In short, the Court of Appeals found that not all the requirements of Newman were constitutionally supported.

Following the issuance of the Court of Appeals' mandate, the parties, rather than pursuing the motions for modification, agreed upon the dismissal of the cases as reflected in the Consent Order of substantial dismissal dated November 27, 1984. At that

time, this Court, approving the settlement, did not determine whether the objectives of the decrees of this Court had been met or what modifications to the decrees should be made in an effort to make the decrees conform to the requirements of the Eighth Amendment.

Since that time, the Implementation Committee, in fulfillment of its responsibilities, filed a report and a petition with the Court on December 29, 1987. In that report, the Committee stated that it had "carried out its duties with the fervent hope that these cases could be ended and the Alabama prison system returned full to the State on January 1, 1988." However, the Committee found that, as of the date of its report, overcrowding in the prison system continued.

"11. Despite impressive efforts--rare if not unique in the country--Alabama's prisons are nevertheless overcrowded. There were about 4500 inmates when Judge Johnson's Order of 1976 came down; there are presently 12,807. As the attached graphs dramatically reflect, during most of this period, from 1980 to the present, the parole rate has been relatively flat. The obvious corollary is that the parole rate has come down during this period while the population has grown.

"Reputable statistics from the Criminal Justice Institute show that at the end of 1986 Alabama's prisons housed 283 inmates per 100,000 general population, while the neighboring state of Tennessee housed 149 inmates per 100,000. Even more dramatic, the state of Minnesota, with a population about the size of Alabama's, housed 58 inmates per 100,000 general population.

"There are more than 5500 inmates currently classified as 'minimum custody' or less. There are currently 1207 inmates on work release and 639 in SIR

[Supervised Intensive Restitution Program].
Approximately one-half of all inmates have been
incarcerated for property offenses." [parenthetical
expression added].

Thereafter, the Committee informed the Court that the Board of Pardons and Paroles had informed the Committee that the Board intended to take immediate action to address the current problem of overcrowding. On that basis and that basis alone, the Committee petitioned this Court to reactivate this case on a limited basis and "in the posture which has existed since the November 27, 1984 Order, and for no other purpose and on no other basis."

On December 30, 1987, this Court entered an Order which adopted the recommendation of the Committee and reactivated this case on the basis of and only to the extent of "monitoring" as recommended in the Committee's report. On December 14, 1988, the Implementation Committee filed with this Court its final report, which stated in part:

**** In previous reports, this Committee and the Court have commended certain public officials in Alabama for their commitment to creating and maintaining a constitutional prison system in the state. The Governor and his staff, the Commissioner of Corrections and his staff, and the Parole Board have assured the Committee that they intend to continue and expand the progress in the system. Moreover, the Committee has been impressed with the work of the Judicial Study Commission and its Prison Task Force established pursuant to the efforts of this Committee and Chief Justice C. C. Torbert and effectively led by Allen Tapley. We expect these efforts to continue under incoming Chief Justice E. C. Hornsby. As will be elaborated,

notwithstanding these accomplishments, if these and other relevant State officials are to operate the Alabama prison system in a constitutional manner, and in accordance with professional standards, they must devote continuing and immediate attention to existing problems and those which may be expected to occur in the future."

Nonetheless, the Committee expressed concern about overcrowding, insufficient staffing, inadequate sanitation and maintenance in older facilities, housing and treatment of the mentally ill inmates, idleness of inmates at some facilities and inadequate housing and activity for many prisoners in long-term administrative segregation. The Court shares in the concerns identified by the Committee. However, even in light of these legitimate concerns, the Committee recommended that this case not be reactivated and that this Court's jurisdiction not be extended beyond December 31, 1988. The Committee stated:

"All of the Committee members are seriously concerned about the prison system, and notably the prospect of continued overcrowding. But we are constrained to conclude that present or future claims of constitutional violations should be resolved in other litigation properly presented to the courts."

Now pending before this Court is the issue of whether this Court should enter in this case a final order of dismissal with prejudice. Necessarily encompassed within this question is the question of the continuing effect, if any, of the prior injunctive orders of this Court. This Court must consider the purposes

which the parties had in agreeing to the November 27, 1984, Consent Order of dismissal. In this Consent Order, this Court "relinquished jurisdiction". This terminology was agreed upon by the parties and accepted by this Court. In United States v. Armour & Co., 402 U.S. 673 (1971), the Court noted the appropriate view which a court must take of a consent agreement embodied in an order:

"Consent decrees are entered into by parties to a case after careful negotiation has produced agreement on their precise terms. The parties waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with the litigation. Thus the decree itself cannot be said to have a purpose; rather the parties have purposes, generally opposed to each other, and the resultant decree embodies as much of those opposing purposes as the respective parties have the bargaining power and skill to achieve. For these reasons, the scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it. Because the defendant has, by the decree, waived his right to litigate the issues raised, a right guaranteed to him by the Due Process Clause, the conditions upon which he has given that waiver must be respected, and the instrument must be construed as it is written, and not as it might have been written had the plaintiff established his factual claims and legal theories in litigation." 402 U.S. at 681-82 [footnotes omitted].

In Spangler v. Pasadena City Bd. of Ed., 611 F.2d 1239 (9th Cir. 1979), the Court considered whether it should retain jurisdiction or dissolve the injunction in a school desegregation

case. Writing for the Court, Judge (now Justice) Kennedy stated:

"Retention of jurisdiction when there is no longer a demonstrated need to monitor compliance may defeat important governmental and personal interests. Legitimate changes in educational policy are more difficult to implement. Where the court retains jurisdiction, a board may feel obligated to take racial factors into account in each of its decisions so that it can justify its actions to the supervising court. This may make it more, rather than less, difficult to determine whether race impermissibly influences board decisions, for the subject is injected artificially into the decision process, and the weight that racial considerations might otherwise have had is more difficult to determine." 611 F.2d at 1247.

Although much of what is said above related to cases involving racial discrimination, the general question raised by Justice Kennedy has been more sharply drawn into focus since the decrees of the 1970s were entered in this case. This question is the proper extent to which, considering the history of this litigation, it is necessary for the Court to continue to inject its supervisory power into the administration of Alabama's prisons. In Hewitt v. Helms, 459 U.S. 460 (1983), the Court stated:

"[P]rison officials have broad administrative and discretionary authority over the institutions they manage and *** lawfully incarcerated persons retain only a narrow range of protected liberty interest ***. [B]road discretionary authority is necessary because the administration of a prison is 'at best an extraordinarily difficult undertaking,' *** and *** 'to hold *** that any substantial deprivation imposed by prison authorities triggers the procedural protections of the Due Process Clause would subject to judicial review a wide spectrum of discretionary actions that

traditionally have been the business of prison administrators rather than of the federal courts." 459 U.S. at 467 [citations omitted].

It is not inappropriate to turn to the purposes which the parties must have had as expressed in the Consent Order of November 27, 1984. That Order stated that the Court "relinquishes jurisdiction" in this case as of December 3, 1984. The Consent Order of November 27, 1984, aside from relinquishing jurisdiction, reads:

"Existing conditions in the Alabama Prison System *** are in sufficient compliance with the requirements of the Constitution *** to permit all parties to recommend dismissal of this action ***."

Thus, it seems without doubt that the parties to the Consent Decree intended by the natural meaning of the language of the Consent Order that, as of December 3, 1984, the Court would no longer exercise any power to determine compliance. But a question must be asked - Compliance with what? Obviously, this Court may not "relinquish jurisdiction" to consider compliance with the Constitution itself. Thus, the parties must have intended a more restrictive meaning. At the time of their entry, the decrees were designed to remedy the existing unconstitutional conditions in Alabama's prisons. Those decrees, as a matter of law, could not, except by consent, have required actions by the Defendants which exceeded actions necessary to remedy

constitutional violations. See Milliken v. Bradley, 433 U.S. 267, 280-81 (1977)[federal court must tailor scope of remedy to the nature of the constitutional violation].

The basis of the motions for modification was changed circumstances or changes in law. Therefore, the only reasonable interpretation which may be placed on the Consent Order is that, following their agreement that the prison system of Alabama was in sufficient compliance with the Constitution, the parties intended that the Court relinquish its power to determine whether the prison system was in compliance with the prior decrees of the Court. It follows that the parties must necessarily have intended that the Consent Order dissolved the prior injunctions pending before the Court. Any other construction would make the agreement of the parties meaningless.

This conclusion is not weakened by the fact that the Consent Order continued the Implementation Committee in existence. Again, reference to the precise language of the Order is necessary:

"The Committee will continue in existence until January 1, 1988, to conduct such monitoring activities as it deems appropriate in accordance with the fulfillment of its role in these cases."

The Committee was to "conduct monitoring activities as it deems appropriate ***". It is plain from this language that the Committee was given unrestricted discretion to monitor the prison

system. That discretion was not constrained by reference to any prior decree or to any other standard, constitutional or otherwise. Indeed, the report of the Committee filed in this Court on December 29, 1987, which addresses the issue of overcrowding, makes no reference to the prior Orders of this Court as the basis for the Committee's recommendation that limited reactivation of the case be ordered. Moreover, the Committee found in this report that the overcrowding problem still existing in the prison system was a direct consequence of actions or omissions of the Board of Pardons and Paroles which was not, is not and has never been a Defendant in this case. It is plain, therefore, that the Committee itself did not see its role as confined to the compliance question embodied in the prior decrees of the Court. Otherwise, the Committee could not have dealt with the problem from the perspective that it did. In accordance with the foregoing, this Court, thus, concludes that the parties intended in the Consent Order of dismissal that the prior injunctive orders of this Court be dissolved and of no more effect.

Having determined the proper scope and purpose of the Consent Order of dismissal, this Court must now determine whether it is appropriate to adopt the recommendation of the Committee and dismiss this case with prejudice. The Committee, while expressing its serious concerns about the prison system, feels that full

dismissal is appropriate and that present or future claims of unconstitutional conditions should be resolved in other litigation.

There are pending cases in this Court, and presumably in the other district courts in this State, which allege claims directly premised upon violations of the injunctive orders of this Court in this case based on the failure of prison officials to comply with the precise and specific remedial requirements of these orders even if said orders required action which exceeds the requirements of the Constitution.^{2/} At the risk of closing the barn gate after the horse is out, it is the opinion of this Court that such cases, to the extent they were filed on or after December 3, 1984, and seek damages based solely upon violations of this Court's orders, are without merit because as of December 3, 1984, the prior injunctions were no longer in effect. To the extent that such cases allege a present violation of the Constitution, they may and should proceed to final adjudication on the basis of the requirements of the Constitution.

^{2/} For example, a prior injunctive order requires the prison system to provide three meals per day to inmates. Newman v. Alabama, 466 F.Supp. 628 (MD Ala. 1979). It is now clear that the Constitution does not require three meals per day; rather, the Constitution requires that inmates receive a nutritionally adequate diet. Hamm v. DeKalb County, 774 F.2d 1567, 1575 (11th Cir. 1985), cert.den. 475 U.S. 1096 (1986).

CONCLUSION

At the time of the original decrees of this Court, the conditions of confinement in the Alabama prisons clearly constituted an Eighth Amendment violation. The remedial objective of the sweeping structural and remedial decrees of this Court was to bring the conditions of confinement in the prisons into alignment with the requirements of the Constitution. The scope and extent of and the means used in the decrees of this Court to achieve compliance with the Constitution were at the time what this Court, and to some extent the parties, deemed constitutionally necessary. Later events and decisions of the Supreme Court and of the United States Court of Appeals for the Eleventh Circuit have demonstrated that, in some instances, the specific remedial requirements are no longer necessary. Nonetheless, what is important for present purposes is recognition that as of 1984, whatever was the extent and scope of the original violation, the parties and the Court agreed that the remedial objectives of this Court's prior decrees had been achieved. The victims of the Eighth Amendment violation had been restored as nearly as possible to the position they would have occupied had the violation never occurred. It is likewise plain that State officials have a significant and commendable interest in being allowed to now manage their own affairs consistent with the requirements of the Constitution. See Hewitt v. Helms, supra.

The parties recognized that in 1984, and the Implementation Committee recognizes this in 1988. The Committee has filed its final report in which it finds that control of Alabama's prisons should now be returned to the officials of the State. This Court agrees.

The willingness in recent years of State officials to tackle the difficult, often intractable, problems of administering a prison system in a manner consistent with the Constitution and the degree of constitutional compliance which has been achieved convince the Court that it is no longer necessary for the federal courts, through the vehicle of this action, to intervene in the day-to-day affairs of the State in managing its prisons. This Court is convinced of the good faith of many concerned officials, including Governor Guy Hunt, Chief Justice C. C. Torbert, Allen Tapley, Holman Head, Ralph Knowles, George Beto, John Conrad, Roland Nachman and many others. The outstanding work of these leaders, coupled with the cooperation of the DOC and Commissioner Morris Thigpen (as well as former Commissioner Freddie Smith), convince this Court that the State of Alabama is ready to undertake the herculean task of administering its prison system within constitutional limitations.

The action which the Court takes today must not be understood by anyone to mean that continuing attention to the remaining problems as identified by the Implementation Committee must not

proceed apace. The Court's action today does not mean that it believes all problems, constitutional or otherwise, have been forever remedied. A review of this Court's docket shows that a large percent of the civil cases filed in this Court are pro se prisoner complaints alleging constitutional violations by prison authorities. While many of these cases lack merit, some do not. Where a prisoner demonstrates constitutional entitlement to relief, courts will not hesitate to grant the relief necessary to maintain continued compliance with the Constitution.

Thus, the Court's action today merely stands for the proposition that the broad, remedial objectives of this Court's prior decrees have been met and that any remaining "fine-tuning" should be accomplished in separate actions. This Court fervently hopes that the officials of the State of Alabama will continue to discharge their responsibilities for administering Alabama's prisons as the Constitution and laws of the United States require.


"[I]n an ideal society, all of these judgments and decisions should be made, in the first instance, by those to whom we have entrusted these responsibilities. It must be emphasized, however, that when governmental institutions fail to make these judgments and decisions in a manner which comports with the Constitution, the federal courts have a duty to remedy the violation." Johnson, Frank M., The Role of the Judiciary With Respect to the Other Branches of Government, 11 Ga.L.Rev. 455 (1977).

Officials of the State of Alabama must not now ignore or shirk their responsibility to the Constitution. Indeed, release from

the continued supervision of this Court means that the public officials of the State must accept more, not less, responsibility for their actions or omissions. This Court recognizes the propensity of settling rehabilitation differences at State levels in the judicial field as well as in the administrative and legislative fields. Imprisonment and rehabilitation for State crimes is a State function, and State courts have the duty and the jurisdiction to enforce federal constitutional rights. Federal courts have only a secondary duty to insure that the prisons of Alabama operate in a constitutionally appropriate manner. Dismissal of this case vests responsibility where it should be and serves the strong public policy requiring a finality to litigation. Tanner v. United States, 107 S.Ct. 2739 (1987).

An Order of dismissal will be entered accordingly.

DONE this 28th day of December, 1988.


UNITED STATES DISTRICT JUDGE