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Supreme Court of the United States.

Charles A. GRADDICK, Attorney General of
Alabama, Applicant,
v.
N.H. NEWMAN et al.

No. A-72. | July 25, 1981.

Opinion

On Application for Stay.

POWELL, J.

*1 Petitioner Charles A. Graddick, the Attorney General of the State of Alabama, has asked me as Circuit Justice to stay an order of the District Court for the Middle District of Alabama, entered July 15. The order directed the release of some 400 inmates in the Alabama prison system at midnight on July 24. The application for a stay was filed here on July 23. I entered a temporary stay and requested responses. Upon consideration, I now deny the application.

The history of this protracted litigation, involving conditions in the Alabama prison system, need not be reviewed here in detail. A brief summary will suffice to place the current issues in proper context. On more than one occasion the District Court has held specifically that the totality of conditions in the Alabama prison system, including but not limited to overcrowding, violates the rights of inmates under the Eighth and Fourteenth Amendments. See *Newman v. Alabama*, 349 F.Supp. 278 (MD Ala.1972); *Pugh v. Locke*, 406 F.Supp. 318 (MD Ala.1976); *James v. Wallace*, 406 F.Supp. 318 (MD Ala.1976). In *Pugh* and *James*, the court ordered far-reaching injunctive relief, and enjoined the defendants from failing fully to implement it. The defendants in those cases were the State of Alabama; the Governor of Alabama, George C. Wallace; the Commissioner of Corrections; the Deputy Commissioner of Corrections; the Members of the Alabama Board of Corrections; the State Board of Corrections; and Wardens at various State Institutions. On consolidated appeal, the Fifth Circuit upheld most of the relief prescribed in the various orders of the District Court. *Newman v. State of Alabama*, 559 F.2d 283 (CA5 1977). But it also held that certain terms of the order in *Pugh* and *James* must be modified, and it ordered dissolution of the injunction entered against

Governor Wallace. This Court granted certiorari on the limited question whether suits against the State of Alabama and the Alabama Board of Corrections were barred by the Eleventh Amendment. We held that they were. *State of Alabama v. Pugh*, 438 U.S. 781 (1978). Our decision therefore restricted the defendant parties to those persons “responsible for the administration of [Alabama] prisons.” *Ibid*.

As a result of the decisions by this Court and by the Court of Appeals, the State of Alabama, the Governor of Alabama, and the Alabama Board of Corrections were dismissed as parties. Nonetheless, the District Court retained jurisdiction, and it continued to enter orders and decrees affecting various areas of compliance.

In February 1979, the District Court entered an order naming Fob James, the Governor of Alabama, as Receiver of the Alabama Prison System. The order provided that all powers, duties, and authority of the Alabama Board of Corrections were transferred to the Receiver. After James’ appointment as Receiver, the Alabama Legislature abolished the Alabama Board of Corrections and transferred its powers, duties, and authority to the Governor of Alabama. See Ala.Code §§ 14-1-15, 14-1-16 (Supp.1980). Thus, both by court order and by Alabama law, responsibility for the maintenance of Alabama prisons rests in Fob James, in his capacity as receiver in one instance and in his capacity as governor in the other.

*2 On October 9, 1980, the District Court found, based on the agreement of the parties, that the Alabama prison system had failed to achieve compliance with standards provided in prior judicial orders. By order of that date, the court established deadlines for the achievement of certain levels of compliance. At a hearing on May 18, 1981, it was stipulated that those deadlines had not been met. On the contrary, it was established that overcrowding had grown more severe. Although the District Court took no immediate remedial action, on May 20 it ordered the Alabama Department of Corrections and the Receiver to submit a list of prisoners “least deserving of further incarceration.” On July 15, it entered the order at issue here, granting a writ of habeas corpus directing the release of some 400 named inmates, all of whom normally were entitled to be released no later than January 8, 1982.

On July 16, the petitioner Charles A. Graddick, the Attorney General of Alabama, made his first appearance in the litigation. He filed papers in the District Court seeking to intervene as of right as a party defendant, and sought a stay of the order granting the writ of habeas corpus. On July 17, Governor Fob James, in his capacity as Receiver, moved to dismiss all motions filed by Attorney General Graddick. The District Court set the Attorney General’s motions for hearing on August 6, but

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declined to stay its order directing release of the 400 inmates on July 24. On July 22, Attorney General Graddick filed a notice of appeal with the Court of Appeals for the Fifth Circuit. He also requested a stay pending appeal. The Court of Appeals denied the stay on July 23. Following this denial, Attorney General Graddick filed his application for a stay with me as Circuit Justice.

The standards governing the grant of this relief are well established. See *Times-Picayune Publishing Corp. v. Schulingkamp*, 419 U.S. 1301, 1305 (1974) (POWELL, J., in chambers). These include a requirement that the applicant show himself to be threatened with irreparable injury if the stay is not granted pending appeal.

In his petition, the Attorney General avers that “the people of the State of Alabama” will incur irreparable injury unless a stay is granted. But he makes no showing that he is the proper official to assert that claim. As indicated above, responsibility for the administration of the Alabama prison system is vested in Fob James, pursuant both to judicial decree and Alabama statute. Governor James affirmatively supports the release order of the District Court and opposes any stay thereof. Attorney General Graddick presents no state-law basis for his attempt to assert the rights of Alabama citizens

generally. See *Baxley v. Rutland*, 409 F.Supp. 1249, 1257 (MD Ala.1976) (three-judge court) (common law powers of Alabama Attorney General insufficient to support standing to represent citizen interests in federal court). Moreover, Attorney General Graddick makes no allegation that he, either as an official or as a citizen of the State of Alabama, will suffer any individualized injury.

*3 Attorney General Graddick has failed to show that he has standing to seek the relief that he requests. In addition, the Governor of Alabama—who has been vested by the State’s legislature with official authority over the State’s prison system—apparently is satisfied that the people of Alabama will suffer no irreparable injury by virtue of the District Court’s order.

Accordingly, the request of the Attorney General for a stay is denied. I therefore do not reach the substantial issues that he seeks to raise on the merits. These include, but are not limited to, the propriety of the District Court’s use of the writ of habeas corpus as a class remedy for prison overcrowding.