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

AUG 13 1975

CLERK
U. S. DISTRICT COURT,
MIDDLE DIST. OF ALA.
MONTGOMERY, ALA.

CALIPH WASHINGTON, et. al.,]
Plaintiffs,]
v.]
FRANK LEE, et. al.,]
Defendants]

Civil Action No. 2350-N

Washington v. Lee



PC-AL-020-028

MEMORANDUM IN SUPPORT OF MOTION TO IMPLEMENT
DECREE AND FOR ORDER TO SHOW CAUSE WHY DEFENDANT
L. B. SULLIVAN SHOULD NOT BE HELD IN CONTEMPT OF COURT

I. The Court Has Power to Grant the Relief Sought:

The district court specifically retained jurisdiction in this case to monitor and effect compliance. However, even where such jurisdiction is not retained, there is "power inherent in all courts to enforce obedience, something [courts] must possess in order properly to perform their function." Myers v. United States, 264 U.S. 95, 103 (1924); Dixie Highway Express, Inc. v. United States, 268 F.Supp. 239, 240 (S.D. Miss. 1967) ("The universal rule is that every court has inherent power to enforce its judgment and decrees."), Rev'd on other grounds, 389 U.S. 409 (1969), on remand, 287 F.Supp. 473 (S.D. Miss. 1973). Also see Leman v. Krentler-Arnold Co., 284 U.S. 448 (1932); Stiller v. Hardman, 324 F.2d 626, 628 (2nd Cir. 1963); and the Allwrits Statute, 28 U.S.C. §1651. Were the rule otherwise and those subject to court orders free at their will or whim to disobey them, separation of powers and the rule of law could not exist.¹

¹In Scott v. Young, 309 F. Supp. 1005, 1007 (E.D. Va. 1969), the court concluded that even if it had not retained jurisdiction of plaintiff's suit to desegregate a privately owned recreation facility, Rule 60(d)(6), F.R.CiV.P., would permit the court to grant the additional relief requested by plaintiffs upon proper showing.

II. L. B. Sullivan, Commissioner of Corrections, Is Bound By The Court's Order:

The Court's Order of December 12, 1966, was directed to "Frank Lee as Commissioner of the Board of Corrections for the State of Alabama, his successors in office, agents, servants and employees." Washington v. Lee, 263 F. Supp. 327, 1333 (M.D. Ala. 1966), affirmed sub. norm Lee v. Washington, 390 U.S. 333 (1968). All successors to Frank Lee as Commissioner of the Board of Corrections are thus bound by this Court's Order. See Regal Knitwear Co. v. National Labor Relations Board, 324 U.S. 9 (1954); Wright v. County School Board of Greenville County, Va., 309 F.Supp. 671, 677 (E.D. Va. 1970) rev'd on other grounds, 442 F. 2d 570 (4th Cir. 1971), cert. den., 404 U.S. 820 (1971). In the case of Wright v. County School Board of Greenville County, Va., supra, the court resolved the issue whether a school desegregation decree could be enforced against officials who were not original parties in the action, but who had succeeded to the powers of the original parties. Citing Regal Knitwear Co. v. N.L.R.B., supra, the Court stated that "A line of cases has evolved holding that a decree may bind one who succeeds to the power exercised by the officer who was a party to the original suit." 309 F.Supp. at 677.

Also the Rule 25(d)(1), F.R.Civ.P.: "When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party."

III. Defendant Sullivan Is In Civil Contempt of Court:

A contempt of court may generally be defined as a disobedience to the court by acting in opposition to its authority, justice, and dignity. In re Mengel, 201 F.Supp. 687 (W.D. Pa. 1962); also see United States v. Ross, 243 F.Supp. 496

(S.D. N.Y. 1965). Contempts may be civil or criminal. It has been stated that "contempts of court for which punishment is inflicted for the primary purpose of vindicating public authority are denominated criminal, while those in which the enforcement of civil rights and remedies is the ultimate object of the punishment are denominated civil contempts." (See 17 C.J.S. §5(2) p. 12.) However, the distinction is not always precise and courts have concluded that there are contempts which are neither wholly civil nor altogether criminal but which have characteristics of both. See In Re Eskay, 38 F. Supp. 221 (D.N.J. 1941), appeal dismissed, 122 F.2d 819 (3rd Cir. 1941); Backo v. Local 281, United Brothers of Carpenters and Joiners of America, 308 F. Supp. 172 (N.D. N.Y. 1969), 438 F.2d 176 (2d Cir. 1970), cert. den., 404 U.S. 858 (1971). In any case it is generally accepted that "a contempt is civil when the punishment is wholly remedial and serves only the purpose of the complainant, and is criminal when intended as a deterrent to offenses against the public." McCrone v. United States, 307 U.S. 61 (1939); International Business Machines Corp. v. United States, 493 F.2d 112 (2d Cir. 1973). Also, see United States v. United Mine Workers of America, 330 U.S. 258 (1947). Also, see, Farber v. Rizzo, 363 F. Supp. 386 (E.D. Pa. 1973):

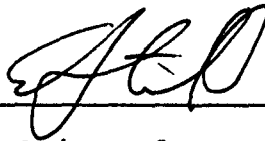
Civil contempt is intended to enforce compliance with a court order or to compensate for losses of damages sustained because of a violation of the order. McComb v. Jacksonville Paper Co., 336 U.S. 187, 191; 69 S. Ct. 497; 93 L.Ed. 599 (1949); United States v. United Mine Workers of America, 330 U.S. 258, 303, 67 S. Ct. 677, 91 L.Ed. 884 (1947). A person is liable for civil contempt when he violates the order, N.L.R.B. v. Crown Laundry and Dry Cleaners, Inc., 437 F.2d 290, 293 (5 Cir. 1971), with knowledge that the order has been issued, United States v. Hall, 472 F. 2d 261 (5 Cir. 1972). 363 F. Supp. P. 394 and 395.

In view of the resegregation of Alabama penal facilities, defendant Sullivan is in civil contempt of court.

IV. Civil Contempt Does Not Depend Upon Proof of Willingness:

Applicable cases hold that willfullness is not an essential element of civil contempt. Phillippe v. Window Glass Cutters League of America, 99 F. Supp. 369 (W.D. Ark 1951); United States v. Greyhound Corp., 363 F.Supp. 525, 1570 (N.D. Ill. 1973), supplemented 370 F. Supp. 881 ("in contrast to criminal contempt, a civil contempt may be predicated on a finding of 'clear and convincing' evidence that there was a lawful order and a violation of that order."); Lardman v. Royster, 354 F. Supp. 1292 (E.D. Va. 1973).

Respectfully submitted,



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