

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KEVIN GARNES
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Correctional Treatment Facility
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Washington, D.C., 20003

MICHAEL PENNY
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FREDDIE DAVIS
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CASE NUMBER 1:97CV00240
JUDGE: Paul L. Friedman
DECK TYPE: Civil General
DATE STAMP: 02/04/97

and all others similarly situated

Plaintiffs,

V.

DISTRICT OF COLUMBIA,

Defendant.

CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. NATURE OF THE CLAIM

1. In this class action lawsuit brought by disabled District of Columbia prisoners, on behalf of themselves and all others similarly situated, the plaintiffs seek equitable relief declaring that the defendant's conduct unlawfully discriminates against the plaintiffs in access to various educational, recreational, religious, rehabilitative and visitation programs,

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and injunctive relief to remedy this discrimination. Specifically, the plaintiffs claim that physical barriers and certain practices of the defendant exclude them from participation in programs or from receiving services that are available to non-disabled prisoners. Defendant's conduct violates the Americans with Disabilities Act, 42 U.S.C. §12101 et seq. ("A.D.A.") and the Rehabilitation Act, 29 U.S.C. §701 et seq.

II. JURISDICTION

2. This is a civil action for declaratory and injunctive relief arising under the Americans with Disabilities Act, 42 U.S.C. §12101 et seq. and Section 504 of the Rehabilitation Act, 29 U.S.C. §701 et seq.

3. This court has jurisdiction under 28 U.S.C. §§1331, 1343(3) and 1361. Declaratory relief is sought pursuant to 28 U.S.C. §§2201 and 2202.

III. CLASS ACTION

4. This case is brought pursuant to Fed.R.Civ.P. 23(a) and 23(b)(1)-(3), by the named plaintiffs on behalf of themselves and the class of all disabled prisoners who are mobility impaired and who are now or who will later be incarcerated in the D.C. Department of Corrections and housed at the Correctional Treatment Facility ("C.T.F.").

5. The proposed class is so numerous that joinder of all members is impracticable. Upon information and belief, there are currently approximately 100 disabled prisoners in the Department

of Corrections, and at least 50 are housed at the C.T.F. All disabled prisoners are susceptible to confinement at the C.T.F. at some point during their incarceration because that facility has one of only two handicapped units in the D.C. corrections system. In addition, membership in the class is constantly changing because the class members are perpetually being admitted and discharged from the C.T.F.

6. There are common questions of law and fact affecting the rights of disabled prisoners to receive access to educational, vocational, drug treatment, recreational, religious and visitation programs, including: whether physical barriers obstruct prisoners from participating in drug treatment programs; whether physical barriers obstruct prisoners from participating in educational and vocational programs; and whether disabled prisoners who are pretrial or are misdemeanants should be kept on lockdown solely because of their disabilities.

7. Plaintiffs' claims are typical of the claims of the class, and plaintiffs will fairly and adequately represent and protect the interests of the class. Each plaintiff is a disabled, mobility impaired prisoner who has been denied access to programs that constitute one or more of the claims alleged.

8. Separate actions maintained by individual members of the class would create a risk of varying adjudications with respect to individual members of the class. Inconsistent adjudications could establish incompatible standards of conduct for the defendants, and adjudication regarding individual class members

could, as a practical matter, be dispositive of, or impair the interests of, other class members not parties to the adjudication. For example, adjudication in multiple individual cases regarding access to programs or retrofitting bathrooms and showers could result in inconsistent obligations imposed on the defendants.

9. Defendants have acted and/or refused to act on grounds generally applicable to the class that the plaintiffs represent, thereby making final injunctive and/or corresponding declaratory relief appropriate with respect to the class as a whole. For example, defendants have failed to provide disabled prisoners with a ramp to secure their access to outside recreation, with accessible bathrooms at the Chapel, Mosque and the visitation hall, or with handicapped accessible drug treatment programs.

10. Plaintiffs are represented by counsel experienced in prisoners' rights litigation. D.C. Prisoners' Legal Services Project specializes in civil rights litigation and has litigated a number of class action cases on behalf of prisoners in the United States District Court for the District of Columbia. Counsel are competent to prosecute this case and to protect the interests of the class members.

IV. PARTIES

A. Plaintiffs

11. Plaintiff Kevin Garnes is, and at all times relevant hereto was, a prisoner of the District of Columbia Department of Corrections. Mr. Garnes suffers from multiple sclerosis, has

severe loss of muscle control and is confined to a wheelchair. He is incarcerated in the infirmary unit at the C.T.F. Mr. Garnes is unable to ambulate without the aid of his wheelchair, and is disabled under the definition of the A.D.A. and the Rehabilitation Act.

12. Plaintiff Michael Penny is, and at all times relevant hereto was, a prisoner of the District of Columbia Department of Corrections. Mr. Penny is confined to a wheelchair as a result of an infection to his spinal cord, caused by an untreated puncture wound to his back. He is incarcerated in the infirmary unit at the C.T.F. Mr. Penny is a paraplegic, is unable to ambulate without the aid of his wheelchair, and is disabled under the definition of the A.D.A. and the Rehabilitation Act.

13. Plaintiff Freddie Davis is, and at all times relevant hereto was, a prisoner of the District of Columbia Department of Corrections. Mr. Davis is a paraplegic confined to a wheelchair as a result of a gunshot wound to his back, and is incarcerated in the handicapped unit at the C.T.F. Mr. Davis is disabled under the definition of the A.D.A. and the Rehabilitation Act.

14. Plaintiff James Witherspoon is, and at all times relevant hereto was, a prisoner of the District of Columbia Department of Corrections. Mr. Witherspoon has severe nerve damage as a result of a stab wound to his back and ambulates with the use of a wheelchair. He is incarcerated in the handicapped unit at the C.T.F. Mr. Witherspoon is disabled under the definition of the A.D.A. and the Rehabilitation Act.

B. Defendant

15. Defendant District of Columbia is a municipal corporation that has as one of its agencies the Department of Corrections. The Department of Corrections is responsible, pursuant to D.C. Code §24-442, for the safekeeping, care and protection of all D.C. prisoners.

16. The defendant has negotiated the sale of the C.T.F. to the Corrections Corporation of America ("C.C.A."), which will continue to operate the facility as a District of Columbia prison. C.C.A. is expected to assume responsibility for the operation of the C.T.F. in March, 1997. This transfer will have no effect on the liability of the defendant due to C.C.A.'s agency relationship with the District of Columbia.¹

V. STATEMENT OF THE CLAIM

A. Introduction

17. The members of the plaintiff class are prisoners incarcerated at the C.T.F. Each has a physical disability which interferes with his or her ability to ambulate without the use of a wheelchair or other walking aid. Each class member seeks access to services, programs, facilities and benefits that the defendant provides to similarly situated prisoners who are not disabled and denies to the class members solely because of their disabilities.

¹ The plaintiffs have advised C.C.A. of the substance of their complaints and their intent to file this lawsuit. A courtesy copy of this complaint will be served on C.C.A. and the plaintiffs will determine whether to add it as a party at the appropriate time.

18. Because disabled prisoners are held in a facility which, except for their housing unit, is not handicapped accessible, all of the disabled prisoners at the C.T.F. are denied access to these programs and services.

19. The C.T.F. is the newest prison built by the D.C. Department of Corrections. The C.T.F. is located in the District of Columbia, houses convicted prisoners, was built with federal funds and, upon information and belief, receives federal funds to provide programs. The C.T.F. was built to house certain special populations, and it includes a unit for drug treatment, a unit for prisoners with disabilities, an intake and diagnostic unit and a unit for women prisoners. The C.T.F. also houses the only inpatient infirmary in the Department of Corrections. The C.T.F. began housing prisoners in June, 1992.

20. Most disabled prisoners at the C.T.F. are held on a unit designated for handicapped prisoners. This unit has a number of cells and a room equipped to provide physical therapy.

21. In addition, some prisoners with mobility impairments are housed in the infirmary unit. Disabled prisoners held on the infirmary unit are not allowed to leave the unit to participate in any programs or activities, such as educational or vocational classes or religious programs. They can only leave the unit to go to a medical appointment, social or legal visits, or to court. This restriction applies regardless of the nature of the condition that resulted in their confinement to the infirmary or the length of time they are held on the infirmary unit.

B. Disabled Prisoners are Denied Access to Drug Treatment Programs

22. Although the primary intensive, residential drug treatment program in the Department of Corrections is located at the C.T.F., the drug treatment unit is not handicapped accessible. The toilets and showers are not outfitted for use by handicapped prisoners, and the unit is on three levels with stairs between the floors. Therefore, it is not accessible to any prisoners in wheelchairs or with significant mobility problems.

23. The inability of disabled prisoners to participate in the drug treatment program can have severe consequences. Drug treatment is often a condition of parole or a recommendation of the sentencing judge. Therefore, disabled prisoners are penalized because they cannot get drug treatment, and so stay incarcerated for longer periods of time.

24. For instance, Mr. Penny was told by the Parole Board that he needed to participate in drug treatment in order to be paroled. Mr. Penny tried to enroll in a drug treatment program, but there is no handicapped accessible drug treatment program within the Department of Corrections. But for his disability, Mr. Penny would be eligible to participate in the drug treatment program. In October of 1995 and June of 1996, Mr. Penny was denied parole and each time received a six month set-off because he had not participated in a drug treatment program.

25. Mr. Witherspoon, Mr. Garnes and Mr. Davis also seek to participate in drug treatment, but cannot solely because they are disabled and cannot be housed in the drug treatment unit.

C. Disabled Prisoners are Denied Access to Educational and Vocational Programs Offered at the C.T.F.

26. The C.T.F. offers a variety of programs to prisoners, including: educational programs (e.g., college level courses); vocational programs (e.g., graphic arts, word processing, tailoring and computer literacy); and various work programs.

27. Because there are structural barriers which prevent disabled prisoners from participating in these programs, every disabled inmate at the C.T.F. is denied access to the educational and vocational programs. For example, one vocational program offered is in computer literacy. The plaintiffs cannot participate in the computer courses because they are held in a classroom which is located up a flight of stairs.

28. Mr. Witherspoon, Mr. Penny, Mr. Garnes and Mr. Davis would like to participate in educational and vocational classes, but the classes are not handicapped accessible. But for their disabilities, they are otherwise eligible to participate in these programs. Mr. Garnes and Mr. Penny are further restricted by the policy that all infirmary patients, regardless of their length of stay, cannot participate in programs.

29. Mr. Davis has also sought to participate in the tailoring class because he believes this would be a good trade to learn in order to earn a livelihood when he is released. However, he has not been allowed to participate in the class.

Mr. Davis has also asked to participate in the Life Skills class, but he has not been allowed to do so.

30. The problems that plaintiff class members experience in obtaining access to programs is compounded by the fact that adequate mobility aids are unavailable. For instance, for more than a year, Mr. Witherspoon had a wheelchair that did not function properly. The wheelchair had no leg rest and Mr. Witherspoon had to take parts from other wheelchairs to replace missing parts in the wheelchair he was given. The wheels on his chair were very loose and Mr. Witherspoon was concerned that they would become detached. Mr. Witherspoon made numerous attempts to have his wheelchair repaired or to receive another wheelchair, but he was unsuccessful for more than a year. Having a broken wheelchair limits Mr. Witherspoon's ability to participate in any programs. Other class members have similarly dysfunctional equipment or are denied necessary equipment altogether. Mr. Davis, for example, was given a wheelchair with no arm rests, which makes it much more difficult to get in and out of his wheelchair.

31. There is a severe shortage of wheelchairs for disabled prisoners at the C.T.F. and the facility does not provide regular wheelchair maintenance. Wheelchairs are repaired by the same employees who are responsible for facilities maintenance, who have no experience or expertise in repairing or maintaining wheelchairs. Therefore, wheelchairs provided to disabled prisoners are usually in very poor repair, and may be missing

brakes, footrests, armrests and other critical parts. There are not enough wheelchairs available to provide one for every disabled inmate. Therefore, many disabled prisoners do not have regular access to a wheelchair and are severely limited in their movement and activities.

32. Disabled prisoners who are pretrial or misdemeanants are held on lockdown at the C.T.F. because they can't commingle with convicted prisoners and there is no handicapped accessible facility for pretrial detainees. These handicapped pretrial detainees are locked down 23 hours a day and are denied access to every program offered at the C.T.F. But for their disability, they would be housed on an open population dorm at the D.C. Detention Facility.

33. For example, Kevin Perry is a pretrial inmate who is held on involuntary protective custody at the C.T.F. solely because he is disabled and confined to a wheelchair. If Mr. Perry were not disabled, he would not be locked down 23 hours a day and would be housed on an open population dorm.

D. Disabled Prisoners at C.T.F. are Denied Access to Educational and Vocational Programs provided to non-Disabled Prisoners at other District Prisons.

34. Most disabled prisoners, but for their disabilities, would be housed at one of the Lorton prisons or in the C.T.F. drug treatment unit. Non-disabled prisoners have access to a variety of programs at these institutions which are denied to disabled prisoners, including college courses, industries, drug

and alcohol treatment, anger management and life skills classes, religious programs, group therapy, etc.

35. Mr. Garnes and Mr. Penny would like to participate in college level courses, but, upon information and belief, these programs are not accessible to inmates on the handicapped unit or in the infirmary. If Mr. Garnes and Mr. Penny were not disabled, they could be housed at a facility which provided access to college level programs. Therefore, but for their disabilities, they would otherwise be eligible to participate in these programs.

E. Disabled Prisoners are Denied Access to Recreational Programs

36. At the C.T.F., prisoners who are not disabled are given access to both an outdoor recreation yard and an indoor gymnasium. Disabled prisoners are not allowed to participate in outdoor recreation because there is no ramp which allows them to descend the stairs into the outside recreation yard. Disabled prisoners who are housed in the infirmary unit are denied access to both the outdoor and indoor recreation programs.

37. All of the disabled prisoners at the C.T.F. are unable to go outside for recreation, and the defendant has refused to build a ramp to allow disabled prisoners access to outdoor recreation. As a result, they never leave the building except to go to medical appointments and to court, and are thus severely limited in their access to natural light.

38. Mr. Garnes complained to the administrator of the C.T.F., but he was informed that there was no money available to build a ramp.

F. Disabled Prisoners are Denied Access to Religious Programs

39. Although religious programs are conducted in rooms which are wheelchair accessible, the bathrooms on those floors are not wheelchair accessible. If a handicapped inmate participating in a religious service needs to go to the bathroom, he must be escorted back to his unit. When this occurs, he is rarely able to return to the religious service because the officers will not escort him.²

40. For instance, Mr. Witherspoon and Mr. Davis routinely attend religious services. Both have had to interrupt their attendance because they could not use the bathroom and at times are discouraged from attending because of this problem. Sometimes, Mr. Witherspoon brings a plastic jar with him to relieve himself so that he may participate in religious services, but finds this to be a humiliating accommodation to the lack of available, accessible bathrooms. But for their disabilities, they are otherwise eligible to participate in these religious programs.

41. Prisoners on the infirmary unit are not allowed to leave the unit to participate in religious services, so none of

² As a result of their injuries or maladies, many disabled prisoners have decreased control over their bodily functions and require more frequent access to a bathroom.

the disabled prisoners are allowed to go to worship services. Mr. Garnes and Mr. Penny, for instance, want to participate in religious services. However, the only religious program available on the infirmary unit is an evangelical Christian minister who comes to the infirmary on Sundays to conduct prayer. Mr. Penny participates in these prayers, although he is a Muslim, because he is not allowed to leave the infirmary to go to Muslim services on Friday night.

G. Disabled Prisoners are Denied Access to Visitation

42. The bathrooms in the visiting hall are not handicapped accessible. When handicapped prisoners have visitors, they must terminate the visit if the prisoners need to go to the bathroom because there are no handicapped accessible bathrooms available near the visiting hall. After the disabled prisoners are taken to a handicapped accessible bathroom, the correctional officers will not return them to the visiting hall, so their visit is terminated. For example, both Mr. Garnes and Mr. Witherspoon have had to terminate visits because they needed to use the bathroom.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION: Americans with Disabilities Act

43. By the above stated actions, the defendant has violated the plaintiffs' rights under Title II of the Americans with Disabilities Act, 42 U.S.C. §12132, et seq. to be free from discrimination on the basis of disability.

SECOND CAUSE OF ACTION: Rehabilitation Act

44. By the above stated actions, the defendant has violated the plaintiffs' rights under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §701 et seq. to be free from discrimination on the basis of handicap in programs that receive federal funding.


VII. REQUEST FOR RELIEF

WHEREFORE, plaintiffs request that this Court grant the following relief:

- a. Declare that the actions and inactions of the defendant described herein have violated and continue to violate the plaintiffs' rights under the Americans with Disabilities Act and the Rehabilitation Act;
- b. Enjoin the defendant from engaging in any action or conduct, or from failing to act in any way, that violates the plaintiffs' above-mentioned rights;
- c. Order the defendant to make reasonable modifications to structures and in policies, practices, procedures necessary to remedy the violations of the plaintiffs' above-mentioned rights;
- d. Award plaintiffs the cost of this suit, and reasonable attorneys' fees; and

e. Award plaintiffs all further relief that this Court
deems just and proper.

Respectfully submitted,

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