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United States District Court, District of Columbia.

TWELVE JOHN DOES, et al., Plaintiffs,
v.
DISTRICT OF COLUMBIA, et al., Defendants.

CIV. A. No. 80–2136. | Aug. 1, 1988.

Opinion

MEMORANDUM

JUNE L. GREEN, District Judge.

***1** This matter is before the Court on plaintiffs' motion to enforce the consent decree. A hearing was held on July 6, 1988, followed by the submission of proposed Findings of Fact and Conclusions of Law by both parties. For the reasons stated below, the Court grants plaintiffs' motion in part and denies it in part.

Findings of Fact

On July 6, 1988, a hearing was held on plaintiffs' motion to enforce the consent decree. Testimony was heard from two correctional officers who have worked at the Central Facility at Lorton Reformatory for seven and eight years, respectively. Both testified as to the serious security and safety problems caused by overcrowding.

The Central Facility is made up of 26 dormitories which differ entirely from protected cells. Each dormitory contains beds placed so close together that there is very little space for the resident to place his feet by the side of the bed, with only the bed to sit upon. In 16 of the dormitories there are double bunks. The day room at one end of each dormitory customarily has facilities (four sofas) for the use of the residents for games or television watching; bunks have now been placed in every day room in Central except Dormitory No. 1. *See* Transcript filed July 14, 1988, at 22, 54.

The presence of these residents in the day room causes a dangerous situation for the guards who testified that having residents behind them in the day room could effectively cut off the officer's escape to the outside if it became necessary. *Id.* at 19–20. "Double bunking means poor visibility through the dorm. Usually, we are placed in a situation whereas one officer has to go in a dorm alone, and it's an intimidating type of situation where one officer has to enter a dorm with 75 residents and his visibility is real poor." *Id.* at 23–24.

No additional guards have been hired and the regular complement has been depleted by overwork, exhaustion, and resultant leave taking. This depletion requires the drafting of some officers for a second shift for a total of 16 hours a day. This "burn out" creates a vicious circle. *Id.* at 26.

The excessive number of residents prevents the officers from conducting regular "shake downs" to confiscate homemade weapons and other contraband. This results in more assaults of inmate upon inmate, and inmate upon guard. There were eight assaults in the month of May alone. *Id.* at 94, lines 10–12.

Another serious problem is the inability of Reception and Diagnosis, or Orientation to screen new residents before placing them in the general population as is required by Article V of the Consent Decree. As a result, persons with psychiatric, medical, or other problems are not identified at all.

The guards are frightened to enter overcrowded dormitories on occasion when alone and sense there is a problem. One officer testified that under these conditions, for his own safety, he would "pivot" and not enter. The obvious consequence is that the weak or unarmed resident is left to fend for himself.

More residents than ever before are seeking protective custody. *Id.* at 31. Protective custody is afforded in cells which are presently doubled-bunked with a third person lying on a mattress on the floor. *Id.* at 47.

***2** Defendants called Mr. Hallem Williams Jr., Director of the D.C. Department of Corrections, who conceded that the situation is intolerable, *id.* at 74, and that the overcrowding at Central carries potential for dangerous consequences. *Id.* at 94.

Mr. Williams reaffirmed his previous testimony and his affidavit of a year ago, *see* Plaintiffs' Exhibit # 6, that every facility under the District's jurisdiction is unsafe for additional inmates, "threaten[ing] the District's ability to provide for the safety, care, protection, instruction and discipline of prisoners in those institutions." *Id.* at 3, 5. Mr. Williams, however, did acknowledge that substantial numbers of additional residents have been placed into the institutions from that year to the present. *See* Transcript at 82.

All of the witnesses who testified were credible and the

Court accepts their testimony. The two corrections officers were in an excellent position to see the conditions about which they testified. Senior Correctional Officer Dupree enters and exits each dormitory in each building on a daily basis and has contact with the residents on a daily basis. *Id.* at 16. Correctional Officer Wynne testified that he is stationed at numerous posts from time to time. Among those, he has served at the control cells where he conducted the count every hour. He has also been assigned to the dining hall and he checks the dormitories at night and accompanies ill or injured patients to the hospital when required. *Id.* at 46–49.

Mr. Williams was forthright in his testimony and admitted that conditions in all of the facilities are more overcrowded than in 1987. He has not been able to indicate any lessening of any of the overall problems. He admits that by the end of 1988, it is expected that there will be an increase of residents at Lorton of approximately 2,000. *Id.* at 95. Further, Mr. Williams testified that it was his opinion in July 1987 that it was inappropriate to use these institutions beyond those levels and his judgment continues that "we should not have the numbers of people we have in these institutions." *Id.* at 97. Mr. Williams did indicate that some plans have been made for obtaining additional incarceration or halfway house space as previously proposed in 1987.

At the present, the District of Columbia has begun demolition to prepare for the building of an 800–bed facility at the D.C. Jail. Completion is estimated for late 1990 or early 1991. The 130–bed halfway facility was started two or three weeks prior to this hearing and had been ordered by Judge Bryant in 1985. A 100–bed facility has not been contracted for yet. Forty work-release residents are being housed at the Superior Court Building, B cellblock. A 25–bed facility for females is still in negotiation status. An 800–bed, single-cell medium custody facility at Lorton *was requested* by the Mayor *the day before* the hearing.

The Court can only assume that if hearings were never held, even less progress would be made.

***3** In addition to the testimony of the witnesses for both sides, the Court relies upon the exhibits entered by agreement as follows:

1. Letter from the Mayor signed by Ms. Carol Thompson to the Honorable David Clark, dated July 5, 1988, *re:* suggestions for a new 800–bed facility to be built at Lorton;

2. Letter from Chairman of Fairfax County Board of Supervisors relating to matter of enlarging Lorton;

3. Daily Population Report as of July 2 through July 5, 1988;

4. Population reports for last few months;

5. Court Master Judge Fauntleroy's report of June 17, 1988; and

6. Affidavit submitted by Mr. Hallem Williams, Jr., on July 21, 1987.

It is uncontested that defendants are in violation of the Consent Decree and have been for many months. The overcrowding has resulted in the lack of adequate protection to residents and guards; the failure to screen new residents; the lack of sufficient medical attention; the failure to have regular "shake downs;" and the lack of sanitation.

Conclusions of Law

Defendants' sole position is that this Court lacks jurisdiction to consider this case. After finding the defendants in noncompliance with the population limits set in Article IX of the Consent Decree, this Court imposed sanctions against the defendants as provided for in Article X of the Consent Decree. *See* Order filed July 30, 1987. The defendants appealed the contempt order which is still pending before the Court of Appeals for the District of Columbia Circuit.

Defendants rely upon *Donovan v. Mazzola,* 761 F.2d 1411 (9th Cir.1985), for the proposition that the filing of a notice of appeal divests the district court of jurisdiciton over the matters appealed. In *Donovan,* however, the Ninth Circuit was addressing the district court's ability to alter or amend a previous contempt order, then pending before the court of appeals. The Ninth Circuit concluded that the district court lacked jurisdiction over the contempt order quantifying sanctions. *Id.* at 1415. In the case at bar, the Court is addressing an entirely new motion to enforce the Consent Decree, not to alter or amend its previous order of contempt.

The Court has the power to enforce an unstayed judgment (such as the Consent Decree), notwithstanding the pendency of the appeal dealing with other issues. *See Deering Milliken, Inc. v. FTC,* 647 F.2d 1124, 1129 (D.C.Cir.1978). If it were not so, defendants could totally disable the Court from enforcing its orders by taking an appeal. Further, the Consent Decree provides in Article X, Section 2:

Enforcement

Should counsel for plaintiffs determine that there is imminent danger to the health or safety of the residents,

counsel for plaintiffs may seek assistance from the Court at any time.

Upon application from either party, the Court in its discretion may enforce any provision of this Agreement as a Consent Judgment, may determine that the District of Columbia is in Contempt of Court and impose appropriate sanctions, may appoint a Master to monitor and/or supervise compliance with this Agreement or any of its provisions.

Consent Decree, Article X, Section 2 (emphasis added).

***4** Although the defendants argue that the motion to enforce the Consent Decree is a form of contempt, the Court disagrees. Under the above enforcement provision, contempt is only one form of enforcement. The Court finds that the relief the plaintiffs seek in their motion to enforce the Consent Decree is separate and distinct from the previous entry of contempt.

Defendants argue that compliance is impossible on the basis of politics. This is not a satisfactory excuse. In *Badgley v. Santacroce,* 800 F.2d 33, 37 (2d Cir.1986), *cert. denied,* 107 S.Ct. 955 (1987), the court of appeals pointed out that if a catastrophe, fire, or disease struck, the prison authorities would find some other place to put the inmates.

Some 16 days after the hearing in this case, on July 22, 1988, defendants filed a motion to modify the Consent Decree of April 28, 1982, "to allow an increase in the number of inmates who may be properly housed in the Central Facility within the limits of the consent decree and within the limits of constitutional boundaries. The defendants realize that the Central [F]acility is severely overcrowded and out of compliance with the terms of the consent decree. Defendants submit that efforts are ongoing to reduce the number of inmates at the Central Facility, but that total compliance with the population levels established in the 1982 consent decree will be impossible to meet." Defendants' Motion to Modify the Consent Decree at 1–2.

In other words, because defendants have violated the Consent Decree so badly, they need to violate it more. Defendants rely upon *Plyler v. Evatt,* 846 F.2d 208 (4th Cir.1988). The *Plyler* case is readily distinguishable from the present one. In *Plyler,* the State had spent millions of dollars building new, clean, sanitary, comfortable cells. The sole question was whether or not double-bunking would be permitted. The Fourth Circuit ruled that it should be allowed. Unlike the *Plyler* facilities, the Central Facility is comprised of dormitories, not individual cells. It is not a question of double-bunking in a clean cell, but of piling hundreds of inmates in dormitories.

The District defendants have not pointed to one improvement which has been made to offset the problems of massed humanity in deteriorating buildings with too little correctional help. At an informal meeting with counsel for both sides, the Court gave permission to defendants to file a breakdown of how many additional inmates the defendants were requesting and what offsetting plans with regard to additional security, medical, etc., were proffered. The Court later received a message that nothing would be filed.

The Court finds that the Consent Decree is still in effect; that the present population of Central exceeds not only the 1,166 specified, but is increasing monthly; and that the conditions in the old, unrehabilitated buildings are worse, not better.

Defendants cite *Newman v. Graddick,* 740 F.2d 1513 (11th Cir.1984). The plaintiffs sought a court order for contempt, claiming that (1) the state had failed to adhere to the conditions of a consent decree, and (2) it was appropriate to release several hundred prisoners from custody.

***5** The Eleventh Circuit reversed the release order, stating that "[t]he decision prohibited any consideration of less intrusive measures and eliminated any exploration of alternatives to effecting a prisoner release." *Id.* at 1521.

It is curious that defendants would cite this case since it, in fact, reinforces this Court's recommendations. Attention is invited to the following language taken from *Newman:*

In taking the prisioners from those facilities, the state is free to continue their confinement in any constitutional facility. If indeed the result of such a court order is the release of prisoners from state custody, that result is the fault of the state officers in not providing alternative constitutional housing for its prisoners.

Id.

It is precisely the "consideration of less intrusive measures" and "exploration of alternatives" that the Court is urging upon the defendants.

An appropriate order is attached.

ORDER

Upon consideration of plaintiff's motion to enforce the consent decree; defendants' motion to modify the consent decree; the papers submitted in support of and in opposition to the motions; the record of the hearing on the motion to enforce the consent decree held on July 6, 1988,

and the entire record herein, it is by the Court this 1st day of August 1988,

ORDERED that effective within five days of the date of this Order, defendants shall not cause any further inmates to be transferred to the Lorton Central Facility for housing there, until the population of the Central Facility returns to the levels required by Article IX of the Consent Decree; it is further

ORDERED that defendants shall, within 30 days of the date of this Order, cause the population of the Central Facility to be reduced by at least 150 inmates, and shall cause the population to be reduced by at least 150 inmates every 30 days thereafter, until the population of the Central Facility returns to the levels required by Article IX of the Consent Decree; it is further

ORDERED that if the Director of the District of Columbia Department of Corrections decides to comply with this Order by transferring inmates to any other facility within his jurisdiction, he shall certify to the Court prior to any such transfer that the transfer will not threaten to violate his responsibility to provide for the adequate care, safekeeping, protection, instruction, and discipline of persons housed in the institution to which the Central inmates are transferred; it is further

ORDERED that effective November 1, 1988, defendants shall have achieved full compliance with the population limits established by Article IX of the Consent Decree; it is further

ORDERED that defendants' motion to modify the consent decree is denied, and it is further

***6** ORDERED that all of the terms of the Consent Decree shall remain in effect.