

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WOMEN PRISONERS OF THE DISTRICT OF)
COLUMBIA DEPARTMENT OF CORRECTIONS,)
et al.,)
)
Plaintiffs,)
)
v.)
)
DISTRICT OF COLUMBIA,)
et al.,)
)
Defendants.)

Civil Action
No. 93-2052 (JLG)

FILED

DEC 18 1996

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

STATUS REPORT

by TT's

On December 4, 1996, the United States Court of Appeals for the District of Columbia issued the mandate for its decision announced August 30, 1996. The Court of Appeals left intact substantial portions of this Court's injunctive relief ordered on December 13, 1994, and August 24, 1995, vacated some specific portions of the relief, and remanded other portions of the Court's Order for further proceedings. Specifically, the Court of Appeals (1) did not disturb this Court's Order as it affected shackling, sexual misconduct (except for provisions regarding the special monitor), education and vocation, environmental conditions, and fire safety at the Annex, and remanded the provisions to this Court to provide the District of Columbia with an opportunity to challenge those provisions under the Prison Litigation Reform Act (PLRA), if it so chooses; (2) reversed this Court's decision under local D.C. law related to the Plaintiffs' medical and fire safety claims at the Correctional Treatment Facility (CTF); (3) reversed this

Court's decision on the Plaintiffs' equality challenge to work, recreation, and religious programs; and (4) vacated a few specific provisions regarding the special monitor and population cap. The following status report details how Plaintiffs intend to proceed in light of the Court of Appeals' decision.

A. Local Law Claims--Obstetrical/Gynecological Care and Fire Safety at CTF

The Court of Appeals vacated the provisions of this Court's Order premised on D.C. Code § 24-442 related to medical care and fire safety at CTF.^{1/} The Court of Appeals held that this Court should not exercise supplemental jurisdiction over these local law claims because they presented "novel" questions of law that should first be decided by the local D.C. courts. Women Prisoners v. District of Columbia, 93 F.3d 910, 922-23 (D.C. Cir. 1996).

Accordingly, Plaintiffs will voluntarily dismiss without prejudice their claims based on D.C. Code § 24-442 and § 24-425, including those claims arising out of OB/GYN care and fire safety at CTF. In addition, Plaintiffs will dismiss voluntarily without prejudice their claims under the Eighth Amendment related to OB/GYN care and fire safety at CTF, with the exception of the Eighth Amendment claim regarding the

^{1/} Order ¶¶ 20-34, 36-62, 131-132 (as they relate to CTF), and 133-136.

shackling of pregnant prisoners.^{2/} Plaintiffs have prepared a stipulated Motion for Voluntary Dismissal to file with the Court. Following dismissal of these claims without prejudice, Plaintiffs intend to refile the local law claims as to medical care and fire safety at CTF in D.C. Superior Court, as suggested by the Court of Appeals.

*Was
this
done?*

B. Programs -- Equal Protection and Title IX

The District appealed the Court's Order regarding recreation, work, and religious programs for women prisoners. The Court of Appeals reversed, holding that women prisoners and men prisoners are not similarly situated for purposes of equal protection or Title IX comparison. Accordingly, the Court of Appeals vacated ¶¶ 83-92 and 94-101 in their entirety and portions of ¶¶ 63-67, and ¶ 93.^{3/} Plaintiffs intend to file a petition for certiorari to the United States Supreme Court from the decision of the Court of Appeals by the deadline of February 12, 1997.

*✓
cert
denied*

C. Specific Provisions

1. Sexual Misconduct

The Court of Appeals expressly upheld paragraphs 7(c) and 9 of this Court's Order imposing remedies for sexual

^{2/} Paragraph 35 regarding shackling of pregnant prisoners was not vacated by the Court of Appeals, and remains in effect.

^{3/} The provisions regarding education and vocation, ¶¶ 68-72 and 75-82 of the Order, remain in effect in their entirety, and ¶¶ 63-67, and 93 of the Order remain in effect as they relate to education and vocation.

misconduct. The Court of Appeals vacated the provisions of the Court's Order related to the appointment and functions of a special officer to monitor and investigate allegations of sexual misconduct brought by women prisoners.^{4/} The Special Officer, Grace Lopes, ceased her duties on December 4, 1996, upon the issuance of the mandate from the Court of Appeals. The Corporation Counsel has indicated that a private contractor, Delany, Siegel, Zorn & Assoc., will resume responsibility for investigating complaints. See Exhibit A, Letter from Charles Ruff, Corporation Counsel, to Grace M. Lopes (Dec. 5, 1996).^{5/}

2. Environmental

The Court of Appeals vacated ¶ 102 imposing a population cap at the Annex. Plaintiffs do not intend to pursue this relief on appeal or on remand.

D. Other Relief

The District did not appeal from the Court's legal or factual findings regarding sexual misconduct, environmental conditions, fire safety at the Annex, or education and vocation programs for women prisoners. The District merely argued in

^{4/} Paragraphs 5, 6, 13 are vacated in their entirety. Paragraphs 8, 12, 14, and 15 are vacated in part as they relate to the special monitor, but otherwise remain in full effect. The other provisions of the Order related to sexual misconduct, ¶¶ 3-4, 7-11, 16-19, also remain in effect.

^{5/} The Special Officer indicated that a complaint alleging sexual misconduct was received by her office on December 4, 1996. The Special Officer referred the complaint to Rick Love of the Corporation Counsel's office.

its opening appellate brief that the relief granted in light of these findings was "too broad," and in a supplemental brief filed after the case was argued in the Court of Appeals, "directed the attention" of the Court of Appeals to the recently-enacted Prison Litigation Reform Act (PLRA). See Def. Supp. Brief (D.C. Cir. filed May 1996); Def. Reply Supp. Brief (D.C. Cir. filed June 1996). The Court of Appeals did not disturb the relief ordered by this Court related to these findings, but remanded the provisions to this Court to provide the District an opportunity to raise the PLRA arguments to this Court, if it so chooses. Women Prisoners, 93 F.3d at 932. Currently, all relief ordered by this Court remains in effect, with the exception of those provisions vacated by the Court of Appeals based on local law or regarding work, recreation, religion, or the population cap.^{6/}

Way that done?

If the District makes a motion pursuant to the PLRA to terminate the provisions of the Court's original injunctive order that remain in effect, Plaintiffs will oppose that motion. There is no ground for termination of relief under the PLRA here because the findings made by this Court following

^{6/} The effective provisions are: General (¶¶ 1-2, 137-138); Sexual Misconduct (¶¶ 3-4, 7-12, 14-19); Education and Vocation Programs (¶¶ 63-72, 75-82, 93); Environmental (¶¶ 103-124); and Fire ¶¶ (125-132). The Court of Appeals did not grant the District's request to stay this ordered relief during the pendency of remand proceedings. See Def. Reply Supp. Brief at 2. The Court of Appeals and this Court have denied the District's previous requests to stay the ordered relief pending appeal. Order (D.D.C. Feb. 9, 1995); Order (D.C. Cir. April 4, 1995).

trial in this case provide ample support for the relief ordered, and satisfy the standards of the PLRA. Compare PLRA, 18 U.S.C. § 803(a)(1), § 803(b)(3) and Women Prisoners v. District of Columbia, 899 F. Supp. 659, 672-77 (D.D.C. 1995) (evaluating remedial relief in context of limiting principles of Occoquan v. Barry). Indeed, this Court previously rejected Defendants' claims that the ordered relief was overbroad, not related to specific legal violations, and that other alternative remedies were available. Women Prisoners, 899 F. Supp. at 672-677.

Moreover, the PLRA prohibits termination of prospective relief if the Court makes "written findings based on the record that prospective relief remains necessary to correct a current or ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation." 18 U.S.C. § 803(b)(3). This Court can make such written findings at this time based on the existing record in this case.

If the District files a motion under the PLRA, it must demonstrate that factual changes have occurred such that the ordered relief is no longer necessary to correct a current or ongoing problem. Similar to a motion to vacate relief pursuant to Federal Rule of Civil Procedure 60, Defendants must demonstrate that the ordered relief should be vacated or

modified. Cf. Women Prisoners, 899 F. Supp. at 675 (Defendants must present evidence of changed circumstances or viable alternative remedial plans to seek modification of Order).

If Defendants satisfy the Court that they have made a facial showing that the ordered relief is no longer necessary to cure a violation, it will be necessary for the Court to conduct hearings. In connection with those hearings, Plaintiffs request that the Court appoint an expert under Federal Rule of Evidence 706 to gather evidence and make factual findings with the assistance of the parties regarding the current situation of women prisoners at CTF, the Annex, and the Jail. Plaintiffs will meet whatever schedule is set by such court-appointed expert. Alternatively, the Court could order that the parties engage in limited, expedited discovery to determine the current situation.

Any motion filed by the District to vacate relief under the PLRA would not stay the ordered relief. Although the PLRA purports to automatically stay any prospective relief 30 days after a motion to terminate the relief is filed, 18 U.S.C. § 803(e)(2), virtually every court which has addressed this provision has declared it unconstitutional or refused to enforce it.^{2/}

^{2/} United States v. Michigan, No. 1:84 CV 63, Opinion (W.D. Mich. July 3, 1996), stay denied, (6th Cir. Sept. 17, 1996); Hadix v. Johnson, No. 4:92 CV 110, Opinion and Order Denying Stay (W.D. Mich. July 3, 1996), stay denied, (6th Cir. Sept. 19, 1996); Gavin v. Ray, No. 4-78-70062, Ruling and Order Staying Automatic Stay Provision (S.D. Iowa Aug. 9, 1996);

(continued...)

Plaintiffs are prepared to challenge the constitutionality of the PLRA's application to this case, if necessary. However, Plaintiffs believe that a determination of the constitutionality of the statute is unnecessary here since the necessary findings have been made, or could easily be made either on the existing record or after an appropriate hearing.

E. Attorneys' Fees

This Court previously stayed Plaintiffs' motion for attorneys' fees pending appeal. Plaintiffs are now entitled to attorneys' fees as prevailing plaintiffs on a substantial majority of their claims. The PLRA's provisions for attorneys' fees do not apply retroactively where plaintiffs prevailed or attorney work was performed prior to the passage of the Act.^{8/} Moreover, any work performed after the passage of the Act is directly and reasonably incurred in enforcing the relief ordered for the violations previously proven at trial. See

^{7/} (...continued)

Ruiz v. Scott, No. H-78-987 (S.D. Tex. Sept. 25, 1996); McClendon v. City of Albuquerque, No. 95-24, Memorandum Opinion and Order (D.N.Mex. Oct. 29, 1996).

^{8/} Jensen v. Clarke, 1996 WL 498960, 1996 U.S. App. LEXIS 23219 (8th Cir. Sept. 5, 1996); Cooper v. Casey, 1996 U.S. App. LEXIS 26009 (7th Cir. Oct. 2, 1996); Alexander S. v. Boyd, No. 3:90-3062-17, Order Awarding Attorneys Fees (D.S.C. May 29, 1996); Hadix v. Johnson, No. 80-73581, Opinion and Order Regarding Plaintiffs' Motion for Attorneys Fees (E.D. Mich. May 30, 1996); Weaver v. Clarke, 1996 U.S. Dist. LEXIS 9682 (D. Neb. June 18, 1996); Chappell v. Gomez, No. C 93-4421 (N.D. Cal. Aug. 8, 1996); Miller-Bey v. Stiller, No. 93-CV-72111-DT (E.D. Mich. Aug. 20, 1996); Anderson v. Kern, No. F-90-0205, Order (E.D. Cal. Sept. 30, 1996); Webb v. Ada County, No. 91-0204 (D. Idaho Sept. 30, 1996); Browning v. Vernon, 91-0409, Report and Recommendation (D. Idaho Oct. 2, 1996).

PLRA Sec. 803(d) (amending 42 U.S.C. § 1997e). Plaintiffs' counsel have filed applications for attorneys' fees for work performed through June 1995, and will promptly update those fees through supplemental applications.

F. Summary

Based on the decision and mandate of the Court of Appeals, this Court should vacate the following provisions of the Order:

¶¶ 5, 6, 13; ¶¶ 8, 12, 14, 15 in part only as they relate to the special monitor's role; ¶¶ 20-34, 36-62, 131-132 only as they relate to CTF; ¶¶ 133-136; ¶¶ 83-92, 94-101; ¶¶ 63-67 and 93 in part to the extent they do not relate to education or vocation programs; ¶ 102.

The remaining relief ordered by this Court remains in effect:

General: ¶¶ 1-2, 137-138

Sexual Misconduct: ¶¶ 3-4, 7-12, 14-19

Education and Vocation: ¶¶ 63-67 (education and vocation only); 68-72, 75-82, 93

Environmental: ¶¶ 103-124

Fire: ¶¶ 125-130, 131-132 (Annex only)

Accordingly, the District must comply with this ordered relief. If and when the District chooses to challenge all or part of the Order under the PLRA, pursuant to the Court of Appeals' invitation, Plaintiffs will vigorously oppose any termination or modification of the relief, as set forth above.

Plaintiffs request that the Court enter the attached order detailing the status of this case as outlined in the foregoing status report.

Respectfully submitted,

COVINGTON & BURLING

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Attorneys for Plaintiffs

Dated: December 17, 1996

CERTIFICATE OF SERVICE

I hereby certify that on December 17, 1996, I caused
a copy of the foregoing Status Report to be hand-delivered to:

Richard S. Love Esq.
Maria Amato, Esq.
Office of the Corporation Counsel
441 4th Street NW
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Washington, DC 20001



Tracy A. Thomas

DEC 05 '96

13:25 No. 014 P.02

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL
 JUDICIARY SQUARE
 441 FOURTH ST., N.W.
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IN REPLY REFER TO

FILED

December 5, 1996

DEC 18 1996

Grace M. Lopes
 Special Officer of the U.S.
 District Court for the District of Columbia
 1130 17th Street, N.W., Suite 400
 Washington, D.C. 20036

CLERK, U.S. DISTRICT COURT
 DISTRICT OF COLUMBIA

Re: Women Prisoners v. D.C.

Dear Grace:

I am in receipt of your letter dated December 3, 1996 concerning your role in investigating and monitoring sexual misconduct complaints made by female inmates. Given the Circuit Court of Appeals' decision denying plaintiffs' suggestion for rehearing In Banc and the imminent issuance of the Court's mandate, any such complaints and/or referrals you may receive should be re-routed to the institutional warden, with notice also provided to Ms. Amato or me. The Department has arranged for Delany, Siegel, Zorn & Assoc. to investigate these complaints and a purchase order submitted for this purpose has recently been approved.¹ As soon as the approved purchase order is returned to the Department, which is expected to occur tomorrow, a copy will be faxed to Delany, Siegel, Zorn & Assoc. who will then be authorized to investigate sexual misconduct matters which are referred to them.

Sincerely,

Charles F. C. Ruff
 Corporation Counsel, D.C.

By:

[Signature]
 Richard S. Love
 Special Assistant to
 the Corporation Counsel

cc: Maria Amato, Esq.
 Tracy Thomas, Esq.
 Regina Gilmore

¹ Purchase order(s) will be used as an interim measure until a longer term contract for these services is approved.

Women Prisoners/DC v. DC



PC-DC-011-013