

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA

Brian Mast, et. Al., )

CLASS ACTION Plaintiffs, )

V. )

J. David Donahue, et. Al., )

Defendants. )

NO. 2:05-CV-00037-LJM-WGH

MOTION FOR ORDER HOLDING DEFENDANTS IN  
CONTEMPT OF COURT FOR VIOLATING THE  
SETTLEMENT AGREEMENT AND FOR AWARD  
OF PUNITIVE DAMAGES

Comes now the plaintiff, Eric D. Smith,  
in pro se, pursuant to Rule 23(d), Fed.  
R. Civ. P. And Rule 70, Fed. R. Civ. P.,  
moving this court to find defendants in  
contempt of court for violating the settlement  
Agreement and Award Smith punitive damages  
and other relief for the following reasons:

1. Smith has tried to obtain help  
from class counsel, but has received none  
and will receive none (see: Attachment no. 1).

Accordingly, Smith must utilize rule 23 (d), Fed. R. Civ. P., "to intervene and present claims or defenses, or otherwise come into the action."

2. Defendants have arbitrarily and maliciously violated the terms of the settlement agreement in which it was agreed that mentally ill prisoners would not be housed in a Security Housing Unit ("SHU") environment. Smith is a mentally ill prisoner, having been diagnosed with Axis I and II illnesses; however, defendants have continuously confined him in SHU environments. Smith is now being held at New Castle Correctional Facility's "SMHTU". You take out the "M" and the "T", and you get "SHU"!

3. The SMHTU is a SHU-setting

environment. In fact, its staff was trained at the Westville Control Unit supermaximum segregation facility, and its handbook of operations was modeled after the Westville Control Unit. In fact, a lot of the operations and rules are written exactly as the Westville Control Unit's handbook of operations (See: Attachment No. 2).

4. Smith needs this motion granted because the defendants are exacerbating his mental illnesses and Smith has sustained serious physical injuries! For example, because of the conditions, Smith attempted suicide, jumping from an outside recreation cage 25-30 feet in the air and fractured his right ankle. He is being denied medical treatment, and is being denied mental health care. Smith also

had his personal property lost or stolen by staff, resulting in about a \$100 loss.

5. Damages may be awarded in a contempt proceeding. See: e.g., Benjamin v. Sielaff, 752 F. Supp. 140, 148-49 (S.D. N.Y. 1990); Hutto v. Finney, 437 U.S. 678, 691 (1978). But because Smith has suffered injuries, damages are mandatory. See: Morales Feliciano v. Hernandez Colon, 704 F. Supp. 16, 20 (C.D. P.R. 1988) and cases cited.

6. The relief sought is appropriate because the defendants have not been reasonably diligent and energetic in attempting to accomplish what was ordered and have not taken all reasonable steps within their power to ensure compliance with the court's order. to

-4-

uphold the settlement agreement.

Even if they have not acted so, their employees at New Castle have, and can be liable to contempt sanctions for the violations.

Morales Feliciano v.

Herrandez Colon, 704 F. Supp. 16, 19

(D.P.R. 1988), Lardman v. Royster,

354 F. Supp. 1292, 1294, 1301-02

(E.D. Va. 1973).

7. This court has broad discretion to enter orders to make sure a prior order is carried out or its purposes are accomplished. See: e.g., McComb v.

Jacksonville Paper Co., 336 U.S. 187,

193-94 (1949); E.E.O.C. v. Local

International Assn. of Bridge, Structural

And Ornamental Ironworkers, 925 F.2d

588, 595 (2d Cir. 1991).

8. Smith requests \$100,000 in damages  
and an order releasing him to a prisoner  
where he will obtain adequate medical  
and mental health treatment.

WHEREFORE, Smith in pro se,  
prays that this motion be granted.

Respectfully Submitted,




Dated: 9-8-08

Eric D. Smith 112675  
NCCF P.O. BOX E  
New Castle, Pa 47362

CERTIFICATE OF SERVICE

I certify that A copy of the foregoing has been served upon David Arthur and Polly White, DAG; I.G.C. South, 5th Floor; 302 W. Washington St.; Indianapolis, IN 46204, by depositing the same in the U.S. mail, first-class, postage prepaid, on or around the date of filing.

  
Eric D. Smith,  
Certifier