

## Washington v. Reno

United States District Court for the Eastern District of Kentucky, Lexington Division

January 4, 1996, Decided ; January 4, 1996, Filed

CONSOLIDATED CIVIL ACTION NOS. 93-217 & 93-290

**Reporter:** 1996 U.S. Dist. LEXIS 22622

CONCHITA WASHINGTON, ET AL., PLAINTIFFS, v. JANET RENO, ET AL., DEFENDANTS.

**Counsel:** [\*1] For GLORIA BATTON ROBINSON, ANTOINETTE M. FRINK, CONCHITA WASHINGTON, PATRICIA M. DARKS, NORMA FAY COOK, MARTHA MARIE PRESTON, LOVEN L. LEWIS, LORI SAUNDERS, RESHAWN RICHARDSON, plaintiffs: Douglas L. McSwain, Sturgill, Turner, Barker & Maloney, PLLC, Lexington, KY.

CONCHITA WASHINGTON, plaintiff, Pro se, Ft. Worth, TX.

OZIE B. COLLINS, plaintiff, Pro se, Florence, CO.

For JANE DOE(S), JOHN HOE, JANE ROE, JANE POE, JANE MOE, JANE TOE, JANE ZOE, intervenor plaintiffs: Douglas L. McSwain, Sturgill, Turner, Barker & Maloney, PLLC, Lexington, KY.

For KATHLEEN HAWK, JANET RENO, FEDERAL BUREAU OF PRISONS, DAVID WOODY, MICHAEL A. ATWOOD, USA, ARTHUR F. BEELER, defendants: David L. Bunning, U.S. Attorney's Office, Covington, KY.

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For JANET RENO, defendant: Vincent M. Garvey, Kathleen E. Moriarty, Raphael O. Gomez, U.S. Department of Justice, Washington, DC.

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**Judges:** HENRY R. WILHOIT, JR., JUDGE.

**Opinion by:** HENRY R. WILHOIT, JR.

### Opinion

#### MEMORANDUM OPINION AND ORDER

This matter is before the Court on remand from the Sixth Circuit Court of Appeals following the filing of Notices of Appeal in the above-referenced action. Appeals of the Order entered by this Court on December 1, 1995 finally dismissing this action as settled were filed separately by each [\*3] of the following class members: Melvin P. Deutsch, Keith Maydak, Charlie Powell, Jerry Williamson, Clifton Gibbs, and Paul Lee.

Following its receipt of the timely Notices of Appeal, the United States Court of Appeals for the Sixth Circuit remanded the actions for the purpose of inquiry under 28 U.S.C. § 1915(a) as to whether the appellants should be permitted to proceed on appeal *in forma pauperis*.

The District Court retains the discretion to certify, in its Order disposing of the case on the merits, that an appeal is not taken in good faith and therefore should not be permitted to proceed *in forma pauperis*. 28 U.S.C. § 1915(a). In evaluating whether these appeals are taken in good faith the Court notes that the proposed settlement of this action was approved by this Court only after opportunity for notice of and objection to the settlement

was provided to the entire class of federal inmates of which the appellants are members. At the preliminary fairness hearing held before this Court on August 4, 1995, the Court established a comment period of forty-five (45) days. Despite this opportunity for objection, only three of the [\*4] six appellants named above submitted for the Court's consideration any written objections to the proposed settlement. The objections which were submitted were taken into consideration by the Court in approving the proposed settlement and by hearing of November 3, 1995, the Court expressly set forth the reasons why, despite the objections filed by less than 1% of the class members, the settlement was a fair and reasonable to all members of the class.

In *Tate v. Werner*, 68 F.R.D. 513 (1975), the Court found in the case of an appeal from a consent decrees which settled state prisoners' claims of discrimination in connection with a class action, a motion to proceed *in forma pauperis* on appeal would be denied where "among other things, prisoners' response to proposed settlement

was overwhelmingly positive." *Id.* at 514. As in *Tate* the Court has complied with the procedures necessary for approval of a class action settlement. This in addition to the fact that half of the appellants did not seize the opportunity to object to the proposed settlement at the time its was provided and in view of the fact that the relatively few objections filed the class [\*5] members' response to the settlement indicate an "overwhelming positive" view of the final settlement, the Court finds that an appeal therefrom would be frivolous, vexatious and without merit.

Accordingly, **IT IS HEREBY ORDERED AND ADJUDGED** that the members of the class seeking to appeal may not proceed *in forma pauperis* in accordance with 28 U.S.C. § 1915(a).

This 4 day of January, 1996.

HENRY R. WILHOIT, JR., JUDGE