

Washington v. Reno

United States District Court for the Eastern District of Kentucky, Lexington Division
July 20, 1998, Decided ; July 22, 1998, Filed
CIVIL ACTION NOS. 93-217 & 93-290

Reporter: 1998 U.S. Dist. LEXIS 23123

CONCHITA WASHINGTON, ET AL., PLAINTIFFS VS:
JANET RENO, ET AL., DEFENDANTS

M. Garvey, Kathleen E. Moriarty, U.S. Department of Justice,
Washington, DC.

Disposition: [*1] Plaintiff's motion for preliminary
injunction DENIED pursuant to [42 U.S.C. § 1997e](#).

PATRICIA M. DARKS, movant, Pro se, Fort Worth, TX.

MELVIN P. DEUTSCH, movant, Pro se, Otisville, NY.

Counsel: 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.

JAMES A. MCKINES, movant, Pro se, Lompoc, CA.

JIMMY G. NIXON, SR., movant, Pro se, Texarkana, TX.

BILLY RAY HASTINGS, movant, Pro se, Marianna, FL.

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

JAMERS A. MCKINES, movant, Pro se, Lompac, CA.

WILLIE BUD REED, JR., movant, Pro se, Miami, FL.

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

MICHAEL JOSEPH KEARNS, movant, Pro se, Texarkana,
TX.

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.

GEORGE D. FARQUHAR, movant, Pro se, Texarkana, TX.

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

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.

Opinion by: HENRY R. WILHOIT, JR.

Opinion

For KATHLEEN HAWK, FEDERAL BUREAU OF
PRISONS, DAVID WOODY, MICHAEL A. ATWOOD,
defendants: Vincent M. Garvey, Kathleen E. Moriarty, U.S.
Department of Justice, Washington, DC.

MEMORANDUM OPINION AND ORDER

This matter is before the Court for consideration of movant
Jimmy G. Nixon, Sr.'s motion to compel the United States
Department of Justice Bureau of Prisons to pay interest and/or
a [*3] fine of \$ 2 million per month until an October 13,
1993, court order apparently issued in the aforecaptioned case
is complied with in all prisons [Record No. 581]. The
plaintiff, in essence, seeks enforcement of a preliminary
injunction [Record No. 80].

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

For USA, defendant: [*2] Vincent M. Garvey, Kathleen E.
Moriarty, Jeff Clair, U.S. Department of Justice, Washington,
DC.

The movant, Jimmy G. Nixon, Sr., seeks on behalf of all
Federal Bureau of Prison inmates that the court order the
Bureau of Prisons to install, within 60 days, pay telephones in
all federal jails, prisons and institutions. The movant asserts
this court issued an order to the United States government on
October 13, 1993, requiring the government to install pay
telephones in all federal facilities throughout the United States
or under the Federal Bureau of Prisons' control. He contends
that to date not one telephone has been installed at any
institution.

For JANET RENO, KATHLEEN HAWK, USA, BUREAU
OF PRISONS, ARTHUR F. BEELER, intervenor defendants:
David L. Bunning, U.S. Attorney's Office, Covington, KY.

For JANET RENO, KATHLEEN HAWK, USA, BUREAU
OF PRISONS, intervenor defendants: Vincent

EXHAUSTION OF ADMINISTRATIVE REMEDIES

The order approving the Settlement Agreement in this class action was filed November 3, 1995. At Section XIV, "Enforcement of the Settlement Agreement," Subsection A, the Settlement Agreement sets forth that:

If any member of the plaintiff class believes that the Defendants have not complied with any term of this Settlement Agreement, [*4] the inmate must first attempt to resolve the dispute by filing a Request for Administrative Remedy (otherwise known as a "BP-9") with the Warden pursuant to the Administrative Remedy Procedure, set forth in 28 C.F.R. part 542, or any modifications thereto. Thereafter, the remainder of that section affords the inmate the opportunity to exhaust additional administrative remedies. The inmate has the option of first exhausting additional administrative remedies beyond the Warden's response, through the Regional Director and through to the General Counsel of the Bureau of Prisons. In other words, under the Settlement Agreement, the inmate was required to file a BP-9 but the filing of the BP-10 or BP-11 was

optional. Subsequently, Congress passed and effectuated 42 U.S.C. § 1997e:

(a) Applicability of Administrative Remedies.--No action shall be brought with respect to prison conditions under Section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), or any other federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted. [*5] 42 U.S.C. § 1997e(a).

In the instant case, the plaintiff has not utilized the multi-step administrative remedy procedure; therefore, his motion is not appropriately before the Court and is dismissible pursuant to 42 U.S.C. § 1997e for failure to exhaust administrative remedies.

CONCLUSION

Accordingly, this motion is DENIED pursuant to 42 U.S.C. § 1997e for failure to exhaust administrative remedies.

This the 20 day of July, 1998.

HENRY R. WILHOIT, JR., JUDGE