

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

* * * * *

Ronald W. Harvey and
Raymond White, on their
Own Behalf and on Behalf
of others Similarly Situated,

Plaintiff,

ORDER

vs.

Kenneth Schoen, Commissioner
of Correction, Llewellyn H.
Linde, Chairman of Adult
Corrections Commission,
Wilfred Antell, Benjamin N.
Berger, Charles W. Poe, Mrs.
William R. Whiting, Members of
the Adult Corrections Commission,
Bruce McManus, as Warden of the
State Prison; and their agents
and Employees,

Defendants.

Civ. No. 3-72-73 (JMR/RLE)

* * * * *

At Duluth, in the District of Minnesota, this 17th day of
August, 1999.

I. Introduction

This matter came before the undersigned United States Magistrate Judge pursuant to a general assignment, made in accordance with the provisions of Title 28 U.S.C. §636(b)(1)(A), upon the Defendants' Motion to Terminate the Consent Decree that was previously entered in this matter.

FILED AUG 17 1999
FRANCIS E. DOSAL, CLERK
JUDGMENT ENTD _____
DEPUTY CLERK _____

II. Factual and Procedural Background

On January 28, 1999, this Court issued a Report and Recommendation to the District Court, the Honorable James M. Rosenbaum presiding, in which we recommended that the Defendants' Motion to Terminate the Consent Decree, which was then in force at the Minnesota Correctional Facilities at Stillwater, and St. Cloud -- commonly referred to as the "Schoen Decree" -- be granted. See, Report and Recommendation dated January 28, 1999. Thereafter, on April 7, 1999, the District Court issued an Order adopting the Report and Recommendation, thereby terminating the Schoen Decree. See, Order dated April 7, 1999.

In the interim period, between the issuance of our Report and Recommendation, and its adoption by the District Court, several Motions were filed with the Clerk of Court, requesting various forms of relief, and process, under the terms of the Schoen decree. On April 15, 1999, in accordance with the Order of the District Court, we found that the then-pending Motions, premised as they were upon the rights and obligations established under the then-terminated Schoen decree, were rendered moot. We recommended, therefore, that all the Motions, which were then pending before the Court in this matter, should be denied, as moot, and we directed the Clerk of Court to refuse to accept, for filing, any additional Motions in this matter, as the file was closed.

Thereafter, on July 16, 1999, the District Court issued an Order granting the Plaintiffs' Motion for Injunction Pending Appeal to the Eighth Circuit Court of Appeals. [Docket No. 230]. In granting the Plaintiffs' Motion, the Court enjoined the Defendants from acting in derogation of the rights and procedures provided the Plaintiff class under the consent decree, until such time as the Court of Appeals ruled on the Defendants' Appeal. Id. So as not to impair the directive of the District Court, we hereby rescind our Order, and our Report and Recommendation of April 15, 1999, in order to allow members of the Plaintiff class to pursue those rights and procedures, which were established by the Schoen consent decree, pending the outcome of their Appeal of the District Court's Order dated July 16, 1999.

NOW, THEREFORE, It is --

ORDERED:

1. That our Order [Docket No. 226], and our Report and Recommendation of April 15, 1999 [Docket No. 227], are VACATED.

2. That the Clerk of Court is directed to reopen the file in this case, and to again accept filings under terms of the Schoen consent decree.

BY THE COURT:


Raymond L. Erickson
UNITED STATES MAGISTRATE JUDGE