

FILED

MAY 21 2003

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

ARLEN B. COYLE, CLERK
By _____ Deputy

WILLIE RUSSELL, ET AL

PLAINTIFFS

V.

NO. 1:02CV261-JAD

ROBERT L. JOHNSON, ET AL

DEFENDANTS

MEMORANDUM OPINION

This case was filed by plaintiffs complaining of a myriad of problems at Unit 32-C, Mississippi State Penitentiary, which houses the prisoners sentenced to death under Mississippi law. A non-jury trial in this case was held before the undersigned United States Magistrate Judge with consent of the parties pursuant to 28 U.S.C. §636(c) on February 13-15, 2003, in Oxford, Mississippi. Having considered the evidence submitted at that trial and the arguments of counsel, the court is now prepared to issue its findings of fact and conclusions of law. In those areas where a finding of fact is made, the court has determined that the evidence presented by the party supporting that finding is more persuasive.

I. Background

This suit was filed in July 2002 alleging that inmates housed on Parchman's Death Row were knowingly and deliberately subjected by the defendants to profound isolation, lack of exercise, intolerable stench and filth, malfunctioning plumbing, constant exposure to human excrement, dangerously high temperatures and humidity, uncontrolled mosquitoes and insect infestations, deprivation of basic mental health care, and constant exposure to

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severely psychotic inmates in adjoining cells. Plaintiffs also contended that the exposure to these conditions caused death row inmates intense physical and emotional pain and suffering which was likely to cause serious mental illness in previously healthy prisoners and mental breakdown or psychosis in less healthy prisoners, placing the plaintiffs at high risk of premature death while they appealed their sentences.

The defendants have asserted that the complaint in this case should be dismissed for failure of the plaintiffs to comply with the administrative remedy program implemented by the Mississippi Department of Corrections (MDOC) and approved by this court in Gates, et al v. Collier, et al, Civil Action No. 4:71CV6-JAD, the ongoing Mississippi prisoner class action lawsuit. The defendants have also asserted that the plaintiffs have failed to demonstrate an entitlement to class action status.

This case was originally assigned to Chief Judge Glen H. Davidson who referred this matter for inclusion in the ongoing prison case in this district, Gates v. Collier. The Gates case was assigned to the undersigned pursuant to the consent of the parties when former Chief Judge L. T. Senter, Jr., took senior status. After the inclusion of this case in Gates, the parties consented to trial before the undersigned. The undersigned certified a subclass in Gates of the death row inmates housed in Unit 32-C at Parchman. The court finds that this case is properly certified as

a sub-class in Gates since the conditions of confinement on Death Row are unique to the inmates housed there. However, findings by this court on the conditions at Unit 32-C could impact the entire prison population. The court finds that the class in this case is properly certified pursuant to Rule 23(b)(2), since it is clear that any appropriate final injunctive or declaratory relief should be with respect to the class as a whole, as the allegations against the defendants are applicable to all inmates on Death Row, and, to some extent, all inmates at Unit 32 and Parchman generally. Inclusion of this sub-class in the general class action case is appropriate and promotes judicial economy and consistent results.

The court further finds that the requirement of exhaustion in litigation that has been ongoing since 1971 is a matter of form over substance. The administrative remedy program cannot afford the plaintiffs the relief necessary to remedy the complaints since any relief would necessarily impact previously entered orders of this court. Requiring exhaustion in this instance is futile since the case was properly included in on-going prison conditions litigation.

II. Findings of Fact

During the course of this litigation, the Mississippi State Penitentiary obtained accreditation from the American Correctional Association (ACA). As this court has stated on numerous occasions, the Mississippi Department of Corrections (MDOC) is to be commended

for this important step in assuring that inmates are housed in a humane manner. However, ACA accreditation does not moot the issues in this case and does not automatically insure that the conditions of confinement at Unit 32-C meet constitutional standards.

A. Sanitation

Turning first to the general sanitation conditions, the court finds that ACA accreditation has resulted in an upgrade of Unit 32-C by cleaning and painting. Also, the accreditation resulted in the formation of a general maintenance schedule. It is clear from the evidence, however, that prior to the cleanup for ACA accreditation, inmates on Unit 32-C were subjected to cells that were extremely filthy with chipped, peeling paint, dried fecal matter and food encrusted on the walls, ceilings, and bars, as well as water from flooded toilets and rain leaks. The court also finds that inmates are routinely moved from cell to cell and are forced to clean their new cells that may have been left in horrendous sanitation by the prior occupants, especially if the occupant were mentally ill. Furthermore, adequate cleaning supplies and equipment are not routinely made available for inmates to clean their cells. Several inmates testified they clean their cells with their shower soap, towels and tee shirts. These filthy conditions contribute to the infestation of pests and play a role in the mental well-being of inmates.

B. Heating and Cooling

The next area of general concern is the heating and cooling of the cells. The summer temperatures in the Mississippi Delta average in the nineties with high humidity, and Unit 32, for the most part, is not an air-conditioned facility. By state law, death row inmates must be housed in a maximum security unit, and they are housed together in Unit 32-C as a security measure. There are industrial type fans in the hallways to help with air circulation, and most inmates have smaller fans. Relief from the heat can be obtained by keeping the windows open in the cell using fans. However, keeping the windows open increases the mosquito population in the cells since there are holes in the cell window screens and the screen gauge is not sufficient to keep mosquitoes out. Generally, the ambient temperature in the cells is within reasonable limits except during the summer months. The court finds that the ventilation in Unit 32-C is inadequate to afford prisoners a minimal level of comfort during the summer months. While temperatures obviously run high during the summer months in Mississippi, inmates on lockdown status, such as the inmates on Death Row, must rely on the Mississippi Department of Corrections for minimal relief. The probability of heat-related illness is extreme at Unit 32-C, and is dramatically more so for mentally ill inmates who often do not take appropriate behavioral steps to deal with the heat. Also, the medications commonly given to treat

various medical problems interfere with the body's ability to maintain a normal temperature. The inmates are not afforded extra showers, ice water, or fans if they don't have fans when the heat index is 90 or above. The court finds that the heat problem extends to all of Unit 32 and possibly throughout Parchman.

C. Pest Control

The heat problem also exacerbates the problem of pest control. Mosquitoes in Mississippi and the Delta, in particular, are a problem that cannot be eliminated. The court finds, however, that the problem must be addressed and the impact lessened, especially with the incidence of West Nile virus, a mosquito-borne disease, increasing in Mississippi. The court finds that inadequate screening on the cell windows causes the inmates to choose between suffering from the heat or increasing the mosquitoes in their cells. The problems of heat and mosquitoes must be addressed to provide the plaintiffs with conditions that would meet minimal constitutional standards. The problem of roaches and other vermin will be met by adhering to the ACA standards and by meeting the sanitation goals the court will set.

D. "Ping-Pong" Toilets and Plumbing

The next area of concern is the plumbing at Unit 32, especially the toilets. The problem is described as "ping-pong toilets" which means that fecal and other matter flushed by a toilet in one cell will bubble up in the adjoining cell unless the

toilets are flushed simultaneously. This has been a problem in Unit 32 since the unit opened. Parchman officials have identified the problem as one of calibration, especially if the water is shut off. The toilets must be recalibrated in order to work properly. The court finds that recalibration appears to have helped, but does not eliminate, the problem of ping-pong toilets. No one in a civilized society should be forced to live under conditions that force exposure to another person's bodily wastes. No matter how heinous the crime committed, there is no excuse for such living conditions.

As for the showers, water temperature, and quality of water, the court finds these to be adequate. The Unit 32 water temperature in the showers is within standards and individual cells have lavatories. The plaintiffs are afforded three showers a week on Mondays, Wednesdays and Fridays. The quality of water meets the appropriate health standards.

E. Smoke Detection/Fire Alarms and Food Service

The court also finds that the replacement of the smoke detection/fire alarm system in Unit 32-C is adequate and moots the concerns of the plaintiffs. The court further finds that the meals provided the inmates are brought from a main kitchen facility to a satellite kitchen and then distributed to the various tiers. While the temperature of some of the hot food items may occasionally have

dropped below the optimal temperature of 140 degrees, there is no evidence to establish inadequate food handling or preparation.

F. Lighting

Another area of concern is the lighting at Unit 32. The court finds that the lighting in the cells is grossly inadequate. The maximum foot-candles¹ obtained by the plaintiffs' expert, Mr. Balsamo, was seven or eight foot-candles, with the typical cell being in the 2-4 foot-candle range. The court finds that 20 foot-candles is the appropriate level of lighting for these cells. The defendants stated they changed the lighting because the old lighting was used by inmates to hide contraband. While this may be a legitimate security concern, it does not mean that the MDOC can go below minimum standards.

G. Preventive Maintenance Program

The preventive maintenance program instituted by the MDOC in response to ACA accreditation appears to be adequate, although the court finds that this program should be in writing.

H. Laundry

Deputy Commissioner Sparkman conceded that "there was a problem with some of the laundry" causing the inmates laundry to be returned foul-smelling and necessitating the inmates to wash their

¹A foot-candle is defined by Webster's New Collegiate Dictionary as "a unit of illuminance on a surface that is everywhere one foot from a uniform point source of light of one candle and equal to one lumen per square foot."

clothes in their cells. Mr. Sparkman testified that inmates wash their own clothes because of "prison culture." The court finds that inmates are entitled to laundry that is clean and not foul-smelling. If they then choose to wash their own laundry, that is a reasoned choice, not one brought on by necessity.

I. Mental Health Issues

One of the principal areas of concern for the court is the area of mental health issues for inmates housed on Death Row. At least six severely psychotic prisoners are housed on Death Row and many more are diagnosed with quantifiable mental health problems. The extremely psychotic prisoners scream at night, throw feces, and generally make life miserable for the inmates and guards at Unit 32-C. As Dr. Kupers testified, "it boils down to warehousing people with severe mental illness...some are medicated, but there is essentially no other mental health services." The court finds that the mental health care afforded the inmates on Death Row is grossly inadequate. The isolation of Death Row, along with the inmates' pending sentences of death and the conditions at Unit 32-C, are enough to weaken even the strongest individual. What mental health services are provided generally take place at the inmate's cell within hearing of other inmates and guards. This results in the failure of inmates to tell the mental health specialists anything of substance. Moreover, comprehensive mental health evaluations are consistently inadequate. Inmates are also

prescribed psychotropic drugs with only sporadic monitoring. This can result in life threatening situations due to the toxicity of these drugs. If the state is going to exact the ultimate penalty against these inmates, it must meet the mental health needs of each Death Row inmate and not merely warehouse them. Appropriate treatment of mentally ill inmates will in turn help address the issues of excessive noise and sanitation problems caused by severely psychotic inmates.

J. Exercise

Finally, the court finds that proper exercise is advantageous for mental and health well-being. The exercise facilities provided are adequate. While the court understands the use of "flip-flops" as general footwear as a security measure, such shoes do not allow effective exercise. The inmates should be given access to sneakers rather than "flip-flops" prior to entering the exercise pen and should be given access to water and shade while exercising. To the extent other issues have been raised by the plaintiffs, the court finds that there is inadequate proof to necessitate any remedial action.

III. Conclusions of Law

The plaintiffs in this case have shown that they were incarcerated under conditions posing a substantial risk of harm. Farmer v. Brennan, 511 U.S. 825, 839-840 (1994). It is not necessary for an Eighth Amendment claimant to show that a prison

official acted or failed to act believing that an inmate would actually be harmed; it is enough that the official acted or failed to act despite knowledge of a substantial risk of serious harm. Id. at 842. The court finds that the conditions identified in the court's Findings of Fact are conditions that the prison officials knew posed substantial risk since the risks are obvious. Id. Correctional officials' treatment of prisoners violates the Eighth Amendment whenever it "offend[s] contemporary concepts of decency, human dignity, and precepts of civilization which we profess to possess." Hope v. Pelzer, 536 U.S. 730, 737, N.6 (2002), quoting Gates v. Collier, 501 F.2d 1291, 1306 (5th Cir. 1974). Moreover, it is not necessary that damage has yet to occur if the unsafe conditions "pose an unreasonable risk of serious damage to [a prisoner's] future health. Helling v. McKinney, 509 U.S. 25, 33 (1993). Under these standards, the conditions identified previously in the court's Findings of Fact constitute cruel and unusual punishment and violate the Eighth Amendment.

Prison officials also violate the Eighth Amendment when they act with deliberate indifference to a prisoner's serious medical needs. Estelle v. Gamble, 429 U.S. 997, 105-106 (1976). Mental health needs are no less serious than physical needs. See, Partridge v. Two Unknown Police Officers of City of Houston, Texas, 791 F.2d 1182, 1187 (5th Cir. 1986). The evidence clearly establishes that defendants have been deliberately indifferent to

the Death Row inmates' serious mental health needs by the conditions and practices identified in the court's Findings of Fact.

Finally, the fact that MDOC has attained ACA accreditation for the Mississippi State Penitentiary does not moot the claims of plaintiffs. See, Friends of the Earth, Inc. v. Lordlaw Environmental Services (TOC), Inc., 528 U.S. 167, 190 (2002).

IV. Remedial Actions

Having found that defendants' have violated plaintiffs' Eighth Amendment rights in numerous ways, the court directs the following remedial action:


- (1) If defendants wish to continue the practice of moving inmates from cell-to-cell in Unit 32-C, they will insure that the cell to which an inmate is moved is clean prior to the move. While an inmate should be required to keep his own cell clean, he should not be required to clean the cell of another inmate in order to inhabit it.
- (2) Adequate cleaning supplies and equipment shall be provided inmates in order that they may clean their cells at least weekly.
- (3) A general preventive maintenance schedule and program shall be reduced to writing within 60 days of this order.
- (4) Defendants shall take the necessary measurements in the unit in order to determine the heat index on the individual tiers. These measurements shall be taken daily at 10:00 a.m., 1:00 p.m., 4:00 p.m., and 7:00 p.m. during the months of May through September and at 1:00 p.m. in all other months. If the heat index reaches 90 degrees or above, the defendants will insure that each cell is equipped with a fan, that ice water is available to each inmate, and that each inmate may take one shower during each day when the heat index is 90 degrees or above. As an alternative, the defendants may provide fans, ice water, and daily showers during the months of

May through September. This remedy shall apply to all of Unit 32.

- (5) The defendants shall continue their efforts at mosquito eradication and pest control. The defendants shall also insure that all cell windows are repaired and screened with 18 gauge window screen or better. This remedy shall apply to all of Unit 32.
- (6) The defendants shall insure that the problem of "ping-pong" toilets in Unit 32 as a whole is addressed. The defendants shall provide to the court within 60 days the details of a plan to eradicate this problem. The court is not convinced that recalibration is sufficient, but will await the defendants' report on their plan.
- (7) The defendants shall also upgrade the lighting in Unit 32 as a whole to provide lighting in each cell equal to 20 foot-candles.
- (8) The defendants shall insure that the proper chemical agents are used at the laundry so that inmates' laundry is returned clean and without a foul smell.
- (9) The defendants shall insure that the new vendor for medical services complies with the ACA and the National Commission on Correctional Healthcare medical and mental health standards. Each inmate on Death Row shall be given a comprehensive mental health examination in private. These comprehensive examinations shall be conducted on a yearly basis. Those inmates diagnosed with psychosis and severe mental health illnesses shall be housed separately and apart from all other inmates. The medication levels of all inmates receiving psychotropic medications shall be monitored and assessed in accordance with appropriate medical standards. All inmates receiving mental health counseling or evaluation shall meet with the mental health professionals in a private setting.
- (10) The inmates on Unit 32-C shall continue to receive the opportunity to exercise as currently available. However, the inmates shall be given the opportunity to wear sneakers while exercising if they prefer rather than "flip-flops." A shaded area for exercise shall be provided with access to water.

By July 7, 2003, the defendants shall report their progress in meeting the remedial actions ordered by the court. The defendants shall also advise the court of any security problems raised by the remedial actions that the court may not have anticipated. The defendants are advised that monetary considerations will not be considered by the court as a legitimate reason for non-compliance. It is the duty of the State of Mississippi to meet these minimal standards of decency, health and well-being. The plaintiffs are granted until July 17, 2003, to respond to any matters raised by the defendants. The plaintiffs are awarded their reasonable attorneys' fees and expenses. The attorneys for plaintiff shall file their request for fees in accordance with the local rules.

This 21st day of May, 2003.



JERRY A. DAVIS
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
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WILLIE RUSSELL, ET AL

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FINAL JUDGMENT

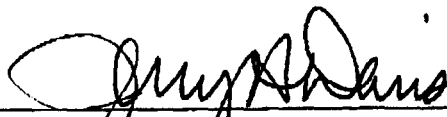
In accordance with the Memorandum Opinion entered this date, the court orders and adjudges the following remedial action by the defendants to correct the Eighth Amendment violations identified in the court's opinion.

- (1) If defendants wish to continue the practice of moving inmates from cell-to-cell in Unit 32-C, they will insure that the cell to which an inmate is moved is clean prior to the move. While an inmate should be required to keep his own cell clean, he should not be required to clean the cell of another inmate in order to inhabit it.
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This 21st day of May, 2003.



JERRY A. DAVIS
UNITED STATES MAGISTRATE JUDGE