

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

NAZARETH GATES, ET AL., PLAINTIFFS

VS. NO. 4:71CV6-JAD

HALEY BARBOUR, ET AL., DEFENDANTS

LEAD CASE,
CONSOLIDATED WITH

WILLIE STEVENSON, ET AL., PLAINTIFFS

VS. NO. 4:73CV76-JAD

JACK REED, ET AL., DEFENDANTS

KEITH GIVHAN, ET AL., PLAINTIFFS

VS. NO. 4:82CV64-JAD

STEVE PUCKETT, ET AL., DEFENDANTS

2011 ORDER FINALLY DISMISSING STATE CORRECTIONS FACILITIES
PORTION OF GATES V. BARBOUR AND CONSOLIDATED CASES

Following a recent Status Conference, and subsequent conference call with all parties represented, this cause comes presently before the Court on motion *ore tenus* of State Defendants finally to dismiss with prejudice the entirety of that portion of the above Gates case applicable to state owned, state-operated, and private company contractor facilities housing state prisoners, and the entirety of the above consolidated, Stevenson and Givhan cases. The lead Gates case was first filed in 1971.

Defendants' motion does not include, and this order specifically does not address, the related, but separate case of Jeffery Presley, et al, v. Christopher Epps, et al., 4:05cv00148 (Greenville Division).

Based on the Court's extensive knowledge of the record of this case, on applicable, PRLA federal law, and on the arguments of counsel at the recent Status Conference, the

Court finds that Defendants' motion is well taken and should be granted.

Provision for the final dismissal of the remaining portion of the Gates case dealing with County Jails is provided below.

IT IS THEREFORE ORDERED:

1. The entirety of that portion of the above styled and numbered Gates v. Barbour case applicable to state owned, state-operated, and private contractor facilities housing state prisoners, and the entirety of the above consolidated, Stevenson and Givhan cases are hereby finally dismissed with prejudice. This state facility dismissal with prejudice specifically applies to the following:

A. All 3 major State prisons.

B. All 17 Community Work Centers (CWC's).

C. All 4 Restitution Centers.

D. The Governor's Mansion.

E. The 13 and 2 being built Regional Correctional Facilities, except for the county jails and county work centers in same which shall be governed by the county jail dismissal portion of this Order below.

F. The 5 current private prisons.

2. This final dismissal does not apply to the remaining portion of the Gates case and orders therein dealing with County Jails and county work centers housing state prisoners, including related county jail attorney's fees orders, which portion shall be carried forward until finally dismissed:

A. When the State defendants have continuously removed all state prisoners from the county jails for a period of two years, as required previously in the Court's ORDER dated 11/7/90, par. 4 at page 3; or

B. On July 1, 2015, whichever comes first.

3. For settlement purposes, this final dismissal also does not immediately apply to existing Gates v. Barbour orders concerning state payment of attorney's fees, costs, and expenses, which shall continue in effect for one year from the date of this Order, whereupon said orders shall also be finally dismissed with prejudice.

4. Effective immediately upon the retirement of the undersigned, and in accordance with applicable federal law and the stipulation and consent of the parties on record in this case, the remaining county jails portion of this case shall be and the same IS HEREBY REFERENCED, TO THE HONORABLE DAVID A. SANDERS, UNITED STATES MAGISTRATE JUDGE, for all post-judgment proceedings of any kind.

Finally, the court wishes to comment on the historical significance of this case. This litigation was begun by Nazareth Gates on behalf of the inmates at the Mississippi State Penitentiary at Parchman to address systemic problems that resulted in inmates being subjected to cruel and unusual punishment. United States District Judge William Keady tackled this unpopular case and built a foundation and structure to correct the constitutional problems he found to exist. United States District Judge L. T. Senter, Jr., took over the case from Judge Keady and continued the oversight of the prison system but with more negotiation between the parties rather than litigation. The undersigned has worked on this case since 1984, first as the magistrate judge assigned to assist Judge Senter and then as the presiding judge with the consent of the parties.

The public understandably must wonder why this litigation has been on the docket of this court for 40 years and is believed to be the oldest case on any district court

docket in the United States. While historians will probably point to a myriad of reasons, this court believes that the answer is relatively simple. Mississippi, while very rich in many areas of life, has limited resources to spend on matters the public deem important, such as education, health care, roads, public safety, and the like. Prisons, unfortunately, do not rank high on the priority list for funding. This court has recognized that the changes required could not be accomplished overnight, but it also did not think it would take 40 years. The days of armed trustees and "black Betty" have long disappeared from the prison system. However, they were replaced with an ever growing population, longer sentences, HIV/AIDs, and other serious constitutional matters.

Mississippi is now one of only a few states that has received the accreditation of the American Correctional Association for all of its state facilities and the president of that organization is Christopher Epps, the Commissioner of the Mississippi Department of Corrections. We would have never gotten to this point without the tireless work of many people, some who have spent most of their careers working on this case. The court especially commends Ron Welch, class counsel, and the National Prison Project of the American Civil Liberties Union for their tireless work on behalf of the inmates. Leonard Vincent and Jim Norris, attorneys for MDOC, have also been tireless and diligent in their representation of the state's interest. Finally, Commissioner Epps and Deputy Commissioner Emmitt Sparkman have tackled and finished the job started 40 years ago.

The people of Mississippi should not think that their prisons have been converted to "country clubs." They are prisons where no citizen wishes to be incarcerated. However, they are humane and do not systemically subject the inmates to

"cruel and inhuman punishment." That is the mandate of the Constitution and why this court has been involved for all these years. Except as noted above, this case is closed. Individual complaints, as always, may be filed, but not in this case. Class counsel, except as noted above, is relieved of further duties.

SO ORDERED, this 10th day of March, 2011.

/s/ JERRY A. DAVIS

UNITED STATES MAGISTRATE JUDGE