

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

JEFFERY PRESLEY, et al.,

Plaintiffs,

v.

No. 4:05-CV-00148 M-D

CHRISTOPHER EPPS, et al.,

Defendants.

**ORDER ON JOINT MOTION OF THE PARTIES
FOR PRELIMINARY APPROVAL OF PROPOSED CONSENT DECREE**

Background

The Parties, through their counsel, have jointly moved the Court for preliminary approval of a proposed consent decree settling this litigation. The Parties stipulate, and the Court upon review of the record finds, as follows:

Plaintiffs are members of a class consisting of approximately one thousand prisoners who are confined in Unit 32 of Mississippi State Penitentiary (MSP), Parchman, Mississippi. On June 22, 2005, through their counsel the National Prison Project of the American Civil Liberties Union, the Mississippi ACLU, and Holland & Knight, LLP, they filed suit under 42 U.S.C. §1983, requesting injunctive relief under the Eighth Amendment with respect to the conditions of their confinement in Unit 32, and under the due process guarantees of the Fourteenth Amendment to the United States Constitution, and they moved for class certification. The case was assigned to U.S. Magistrate Judge Jerry A. Davis.

Defendants answered the Complaint on August 19, 2005, with general denials of every substantive allegation in the Complaint. They sought and were granted an extension of time in which to respond to the Motion for Class Certification, to November 1, 2005. Meanwhile, Plaintiffs' counsel obtained discovery regarding certain key issues in the case, through tours and record reviews at Unit 32 by their medical and psychiatric experts. The Parties' counsel were otherwise familiar with the facts underlying the Complaint through several years' litigation, discovery, and ongoing monitoring of the injunction in *Russell v. Johnson*, Civil No. 1:02CV261-D-D (N.D. Miss.), which concerns conditions of confinement and medical and mental health treatment for the subclass of death row prisoners confined to Unit 32.

On October 12, 2005, Judge Davis suggested that the parties meet to discuss settlement of the issues raised in the Complaint. Beginning on November 21, 2005 and continuing to the present, the Parties engaged in a number of lengthy discussions for the purpose of attempting to settle their disputes underlying this action. The Parties began negotiations at the Federal Courthouse in Aberdeen, Mississippi, at the urging and under the aegis of Judge Davis, and then continued negotiations on their own throughout December 2005 and January-February 2006.

Those negotiations resulted in a proposed Consent Decree on February 15, 2005, which is attached to this Order as Attachment 1. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Plaintiffs and Defendants jointly move the Court to preliminarily approve the terms of the proposed Consent Decree and to enter the following Order, which incorporates the proposed Consent Decree:

BASED ON THE PARTIES' PROPOSED CONSENT DECREE AND THE ENTIRE RECORD BEFORE THE COURT, THE COURT FINDS:

The proposed Consent Decree is the result of extensive arms-length negotiations between the Parties after very substantial exchanges of information. After reviewing the terms of the proposed Consent Decree in the context of the record in this action and controlling legal authority, the Court finds the proposed Consent Decree is sufficiently reasonable, adequate, fair, and consistent with relevant federal law to warrant preliminary approval and provision of notice to interested parties of a Fairness Hearing.

IT IS THEREFORE ORDERED THAT:

1. The proposed Consent Decree that appears as Attachment 1 to this Order is PRELIMINARILY APPROVED and incorporated into this Order. Final approval and entry of the Decree is subject to a hearing where the Court will hear objections to the proposed Consent Decree by interested parties.

2. For purposes of settlement, this case shall proceed as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. The class represented by Plaintiffs (the "Settlement Class") is defined as: "All prisoners who are now or will in the future be confined in Unit 32 of Mississippi State Penitentiary in Parchman, Mississippi."

Notice Procedures

3. Within ten days of the date of this Order, notice shall be hand delivered, by appropriate representatives of the Defendants, to each of the prisoners assigned to Unit 32. The manner of Notice described above, and the form of Notice attached here as Attachment 2, are hereby found to constitute the most effective and practicable notice under the circumstances, and to constitute due and sufficient notice for all other purposes to all persons entitled to receive notice required by due process and Rule 23 of the Federal Rules of Civil Procedure.

Fairness Hearing

4. The Court will hold a Fairness Hearing on April 28, 2006, at 9:30 AM, at the United States Courthouse, Aberdeen, Mississippi, at which time the Court shall consider the fairness of the proposed Consent Decree and whether the Court should approve it.

5. Any interested party may object to the proposed Consent Decree by filing an objection and, if he so desires, and in the discretion of the Court, by appearing at the Fairness Hearing. To be considered by the Court, any objections to final approval of the proposed Consent Decree must state the basis for the objection and must be filed in writing, along with all other papers the objector wishes the Court to consider, not later than April 10, 2006. Objections are filed by mailing them to the Clerk of the United States District Court, P.O. Box 190, Greenville, Mississippi, 38701-0190, and mailing a copy to Counsel for Plaintiffs, National Prison Project of the ACLU, 915 15th Street, N.W., Seventh Floor, Washington, D.C., 20005, and a copy to Counsel for Defendants, Leonard Vincent and Jim Norris, Mississippi State Penitentiary, P.O. Box 38, Parchman, Mississippi 38738. In order for any attorney representing an objector to be heard at the Fairness Hearing, he or she must file a Notice of Appearance with the Court and serve counsel for all Parties by April 10, 2006. The Court will not permit anyone who fails to timely file and serve a written objection to raise such objection at the Fairness Hearing, except for good cause shown. Anyone who fails to object in the manner prescribed herein shall be deemed to have waived any such objection.

6. If objections are filed, the Parties' counsel may engage in discovery concerning the objections prior to the Fairness Hearing. The Parties' counsel shall serve on each other and file with the Court, at least three calendar days prior to the Fairness Hearing, any further documents in support of the proposed Consent Decree, including responses to any papers filed by interested Parties.

SO ORDERED in Aberdeen, Mississippi this 6th day of March, 2006.

/s/ JERRY A. DAVIS
UNITED STATES MAGISTRATE JUDGE