

Shapley v. O'Callaghan



PC-NV-005-003

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ENTERED

AUG 22 1983

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CLERK, U. S. DISTRICT COURT
DISTRICT OF NEVADA
BY *E. Ann Cash* DEPUTY

BILLY SHAPLEY, et al.,

Plaintiffs, **FILED** CV-R-77-221-ECR

vs.

AUG 22 1983

MICHAEL O'CALLAGHAN,
et al.,

Defendants, **ORDER**
CLERK, U. S. DISTRICT COURT
DISTRICT OF NEVADA
BY *E. Ann Cash* DEPUTY

This is a class action which concerns conditions of confinement at the Nevada State Prison (NSP), a maximum security institution. The parties have presented to the Court for its approval a Stipulated Settlement Agreement (Agreement) to compromise and settle the action. Notice of the proposed settlement has been given to the members of the class in accordance with the applicable rules and the previous orders of the Court. A hearing on the issue of approval of the Agreement was held before the Court on July 25, 1983.

468

1 The attorneys for plaintiffs and defendants were present and
2 presented argument. Two of the individual inmate plaintiffs
3 representing the class, Billy Shapley and Curtis Lang, were
4 also present, as was inmate Bernard Ybarra. Each of the
5 individual plaintiffs present addressed the Court during the
6 course of the hearing, as did Mr. Ybarra.

7 A petition signed by 570 inmates of Nevada State
8 Prison objecting to certain portions of the Agreement was
9 filed with the Court.

10 The standard for approval of the Agreement is,
11 whether it is in the best interests of the class and is a
12 fair settlement of their claims. While individual inmates
13 may have objections to portions of the Stipulated Settlement
14 Agreement, the standard for approval stated must nevertheless
15 be applied. According to this standard the Agreement should
16 be approved. The Agreement is in the best interests of the
17 inmates in that in many respects it provides relief more
18 favorable to them than they would be able to obtain even if
19 they prevailed on their complaint^{1/} at a trial. See Hoptowit
20 v. Ray, 682 F.2d 1237 (9th Cir. 1982); Wright v. Rushen,
21 642 F.2d 1129 (9th Cir. 1981).

22 The Agreement presents a novel and innovative way
23 to settle the claims of the plaintiffs. It contemplates a
24 period of 16 months during which defendants will be obligated
25 to improve certain conditions of confinement of the plaintiff
26 class and will be obligated to undertake good faith efforts

1 to achieve correction of certain deficiencies in such condi-
2 tions. An independent auditor is to be appointed who will
3 monitor conditions at the prison and report as to whether
4 the Agreement is being complied with. During the interim
5 16-month period the Court will continue to have jurisdiction
6 to consider whether the Agreement is being carried out, to
7 enforce it and to consider modifications of it. Jurisdiction
8 of the Court will terminate upon filing of a motion for
9 dismissal by defendants unless any party shows good cause
10 why the Agreement should be modified or the Court's jurisdic-
11 tion continued.

12 The 16-month interim period provides a flexible
13 basis to change and improve conditions at the prison and
14 avoids the limitations which would be found in a more
15 specific agreement or decree requiring more detailed specific
16 action on the part of defendants, with the possibility that
17 the real deficiencies will be overlooked in the Agreement
18 and not corrected.

19 The principal objection of the inmates is that the
20 Agreement purports to settle all of the issues raised in the
21 pleadings, while in fact the Agreement does not cover all
22 of those issues. The inmates also fear that they may be
23 foreclosed by the Agreement from seeking relief as to
24 matters not included in the Agreement. However, as was
25 stipulated by counsel for the parties during the course of
26 the hearing, it is not intended, in spite of the overbroad

1 wording of the Agreement, to settle issues which the Agreement
2 does not address.

3 While the Court finds that the Agreement ought to
4 be approved, the Court further finds that this approval
5 shall not be deemed to settle or adjudicate any issues or
6 claims raised in the pleadings not addressed in the Agreement.
7 It is noted that the Agreement itself provides for severance
8 of portions of it not approved by the Court, so that the
9 remainder of the Agreement not so approved will, nevertheless,
10 remain binding upon the parties.

11 Among the inmates objections to approval of the
12 Agreement are:

13 (a) The inmates object that approval of the
14 Agreement may foreclose claims for monetary damages which
15 inmates may have against defendants. The Agreement does not
16 address itself to monetary damages and, hence, they are not
17 foreclosed by this Court's order approving the Agreement.

18 (b) The inmates object that the Agreement is
19 vague and ambiguous or may have unintended results. The
20 Agreement itself provides for resolution of such claims by
21 the Court.

22 (c) The inmates object that they have been limited
23 to a shower every other day. The Agreement provides that
24 defendants will provide adequate sanitation. While there is
25 no specific reference to showers in the Agreement it must be
26 taken to address itself to that subject. This is the sort

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of matter that may be addressed by the auditor, and, if necessary by the Court, following the procedures outlined in the Agreement for resolution of ambiguous matters.

(d) The inmates object to double bunking. The Agreement, in Appendix IB6 provides that upon its approval double bunked inmates will not be confined to their cells more than 12 hours daily, absent exigent circumstances. Such provision appears on its face to meet constitutional requirements for persons double bunked within a confined space. The inmates fear that one double bunked inmate may be punished for the behavior of his cellmate. However, that is a matter to be addressed in prison disciplinary proceedings and it is not reasonable to anticipate at this time that double bunked inmates will be disciplined on an unfair basis.

(e) The inmates object to wire mesh placed on the outside of the cell block windows, in replacement of lost or damaged window screens. It is difficult to determine where this question fits but it may be included within "adequate shelter", which defendants are required to provide by the Agreement. The Court will have continuing jurisdiction to resolve this question either to find that the Agreement forecloses an independent action as to this complaint or to permit an independent action to be initiated if it is found that the Agreement does not cover this issue and if a legal claim can be plead.

1 (f) The inmates object to removal of certain
2 furniture from their cells and a lack of furniture to store
3 their clothes. The same analysis applies to this question
4 as to the question of the wire mesh.

5 (g) The inmates object to being forbidden from cross-
6 ing red lines which have been painted on the streets and object
7 to having to be escorted in a group to meals at the culinary
8 department. These subjects are not at issue under the pleadings
9 and hence if legal claims for relief can be stated in these
10 respects, such may be made the subject of separate actions not
11 foreclosed by the approval of the Agreement.

12 (h) The inmates contend that they may be fore-
13 closed by approval of the Agreement from objecting to restric-
14 tions on and conditions of visitation. While the 1980
15 Consent Decree entered in Craig v. Hocker, CV-R-2662-BRT,
16 provides for visitation for those in administrative segre-
17 gation or protective custody equivalent to visitation provided
18 for the general population, there are no specific provisions
19 for visitation for the general population in the 1980 decree.
20 Since, except to that limited extent, the question of visita-
21 tion is not addressed in the Agreement, a separate action as
22 to visitation, if a legal claim can be plead, is not fore-
23 closed by approval of the agreement.

24 (i) The inmates object to the Agreement because
25 it makes no provision respecting hobbycraft. The specific
26 complaint is that some inmates are permitted to do hobbycraft

1 and others not. The inmates claim that the administration
2 of the prison will not explain the apparent disparity in
3 treatment of inmates. This is an issue which is not addressed
4 in the pleadings or Agreement. Therefore, if a legal claim
5 for relief can be stated, a separate action is not foreclosed.

6 (j) The inmates have serious complaints about the
7 handling of their mail. They claim that the Department of
8 Prisons mail procedure, No. 333, attached as Exhibit F to
9 the 1980 Consent Decree, is not being followed. The Agreement
10 provides that defendants are required to comply with the
11 1980 Consent Decree and this Court will have jurisdiction at
12 least for the 16-month period to require compliance with the
13 1980 Consent Decree in the within action. This is an issue
14 relative to which other actions by members of the class will
15 be barred by this Court's approval of the Agreement.

16 (k) The inmates complain about food. They contend
17 that those in administrative segregation are not being
18 permitted access to the canteen and that the limitation of
19 such access is in violation of the 1980 Consent Decree.
20 This is a matter which may be addressed by the auditor and
21 which will be subject to resolution during the period of
22 time this Court has jurisdiction to administer the Agreement.

23 (l) The inmates object that those in protective
24 custody or administrative segregation receive their food on
25 a tray pushed under the door and that they must then eat in
26 a room where the toilet is situated. It is indicated that

1 the prison officials are in the process of constructing food
2 slots so that the food trays will not have to be pushed
3 under the door. Under Appendix V of the Agreement defendants
4 are required to provide adequate food and sanitary conditions.
5 This is a matter that may be considered by the auditor and
6 if necessary by the Court.

7 (m) The inmates complain about inadequate heating
8 and water supply at the prison. These two items appear to
9 be covered under Appendix V, Living Conditions, under the
10 topics shelter and sanitation and therefore are addressed by
11 the Agreement and may be made the subject of inquiry by the
12 auditor and possibly intervention by the Court.

13 (n) The inmates complain that the population
14 limits are too high. However, no evidence is offered to
15 support that proposition and the Agreement appears to be
16 reasonable so far as it limits the population at the prison.

17 (o) The inmates complain that certain portions of
18 the Agreement cannot be performed because there is no money
19 available. However, where the defendants have an "out"
20 because of lack of funding, in Appendix IA1 and 3, the
21 population in A & B blocks must be limited. Furthermore,
22 although funding for implementation of an additional "risk
23 assessment" program is a condition to the requirement of the
24 institution of such program, the additional program does not
25 appear to be essential to carrying out the basic intent of
26 the Agreement.

1 (p) The inmates complain that there is no provision
2 in the Agreement for an inmate advisory committee or an
3 inmate grievance committee. The analysis contained in
4 paragraph (i) above is applicable to this complaint.

5 (q) The prisoners complain that there are no
6 standards for handling or terminating lockdowns or the
7 restoration of rights following lockdowns. The subject of
8 lockdowns is included in the pleadings but not addressed in
9 the Agreement. Therefore, if a legal claim for relief can
10 be stated as to such matter, a separate action would not be
11 foreclosed.

12 (r) The inmates complain that there is no alterna-
13 tive presented for educational opportunities if an Agreement
14 cannot be obtained with the Carson City School District.
15 This obviously is a subject addressed in the Agreement. It
16 was indicated at the hearing that an agreement has in fact
17 been reached with the Carson City School District to provide
18 the required high school programs.

19 (s) The inmates complain that the prison canteen
20 is inadequately stocked and that coffee can be obtained only
21 in paper bags. The analysis contained in paragraph (i)
22 applies to this complaint.

23 (t) The inmates complain that the blood plasma
24 program has been eliminated. The analysis contained in
25 paragraph (i) applies to this complaint.

26 (u) The inmates complain in respect to disciplinary

1 hearings and sanctions. The analysis contained in paragraph
2 (i) applies to this complaint.

3 (v) The inmate's complain about cold food. The
4 question of adequate food is addressed in the Agreement and
5 may be considered by the auditor and possibly, if necessary,
6 by the Court.

7 (w) The inmates complain about excessive restraints
8 of prisoners within the units. The analysis contained in
9 paragraph (i) applies to this complaint.

10 (x) The inmates complain about charges for legal
11 copying. This Court has previously ruled that the inmates
12 do not have any constitutional right to free legal copying.
13 This is a matter not addressed in the Agreement.

14 (y) The inmates complain about the charge for
15 each visit to a doctor or dentist. This is a matter covered
16 in Appendix VI of the Agreement in general terms and will be
17 a proper subject for consideration by the auditor and, if
18 necessary, by the Court under the Agreement.

19 (z) The inmates complain that they had certain
20 understandings and agreements with previous administrators
21 as to certain things that they understood would or would not
22 be done. Such understandings and agreements are not properly
23 documented and are not part of this record. Hence, they
24 will not be considered here.

25 (aa) The inmates complain that the Agreement does
26 not address itself to comfortable and healthful temperatures.

1 The 1980 Consent Decree does deal with these topics so far
2 as administrative segregation and protective custody inmates
3 but not as to general population inmates. The Agreement
4 does address itself to "adequate ... shelter" and this
5 reference is sufficient to bring the suggested complaints
6 within the Agreement and they may be addressed by the auditor
7 and possibly, if necessary, by the Court.

8 (bb) The inmates complain that there is no provision
9 to reduce the level of violence within the institution.
10 This topic is addressed in the Agreement and may be considered
11 by the auditor and possibly, if necessary, by the Court
12 under the Agreement.

13 (cc) The inmates complain that no adequate funding
14 has been provided for inmate job assignments. The question
15 of job assignments is covered in the Agreement.

16 (dd) The inmates complain that there is discrimina-
17 tion in pay for similar jobs. The analysis contained in
18 paragraph (i) applies to this complaint.

19 (ee) The inmates complain that the Agreement does
20 not address the questions of clean clothing and bedding,
21 cleaning supplies and inmate counselling. These are issues
22 raised in the pleadings but not addressed in the Agreement.
23 They are not foreclosed by this Court's approval of the
24 Agreement and if a legal claim can be stated, may be the
25 subject of a separate action.

26 (ff) The inmates complain that the Agreement does

1 not address itself to access by the inmates to the law
2 library. This is an issue not addressed in the Agreement.
3 If a legal claim can be pleaded, it may be made the subject
4 of separate proceedings.

5 (gg) The inmates complain that a number of the
6 provisions of the Agreement have not been adequately explained
7 to them so that they will know whether or not to object.
8 The structure of the Agreement contemplates the possibility
9 of objections to and modifications of the Agreement during
10 the 16 month period. The Agreement should be approved at
11 this time but the Court finds that there should be further
12 explanations to the inmates by counsel for plaintiffs of the
13 following items so that the inmates may understand them and
14 may make objections or seek modifications of or enforcement
15 of the Agreement if they wish to do so:

16 (1) What specific remodeling is contemplated by
17 the Agreement.

18 (2) What are the applicable life, fire, safety,
19 sanitation and public health codes with which defendants are
20 required to comply.

21 (3) What is the classification system which is
22 going to be adopted.

23 (4) What is the additional risk assessment program
24 which may be adopted.

25 (5) What revision is to be made to the administra-
26 tive regulations and standards.

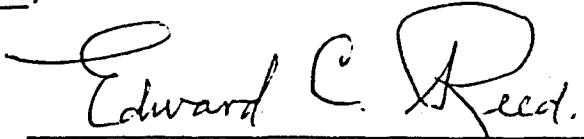
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(6) What is the "Strategic Management Model With Tactical Response System."

An issue developed at the hearing as to whether the representatives of the class would be consulted in respect to this selection of the auditor. It was indicated by counsel for the plaintiffs that the representatives of the class would be so consulted.

IT IS, THEREFORE, HEREBY ORDERED that the Stipulated Settlement Agreement filed with the Court on April 6, 1983, is approved, subject to the findings set forth hereinabove.

DATED: August 19, 1983.


UNITED STATES DISTRICT JUDGE

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1/ Any reference in this Order to pleadings refers only to the pleadings in this action, and not to the pleadings in any other action that may have been consolidated herewith.