

1997 WL 371144

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United States District Court,
S.D. New York.

Louis MILBURN, et al., Plaintiffs,
v.

Thomas A. COUGHLIN III, et al., Defendants.

No. 79 CIV. 5077(RJW). | July 2, 1997.

Opinion

MEMORANDUM DECISION AND ORDER

ROBERT J. WARD, District Judge.

*1 Juan Candelaria, suing *Pro Se* as a member of the plaintiff class, filed motions on May 22, 1995, June 5, 1995 (together with James Delonch and Robert Simpson) and May 24, 1996 seeking to hold defendants in civil contempt.

Candelaria alleges that his transfer from the Unit for the Physically Disabled (“UPD”) at Green Haven Correctional Facility (“Green Haven”) to Clinton Correctional Facility (“Clinton”) on June 15, 1992 was in violation of the Modified Final Judgment dated September 27, 1991. In addition, he alleges that the conditions at Clinton were and continue to be inadequate to his medical needs.

In opposition to the motions, the Attorney General furnished the following information in a letter dated May 15, 1997:

Mr. Candelaria is a paraplegic, which confines him to a wheelchair. He was transferred to Clinton on January 15, 1992. The purpose of this transfer was due to the fact that he was burned out of his cell at the UPD in Green Haven on December 29, 1991 by an unknown enemy. Because the culprit was not found, a transfer order went through on January 3, 1992 in order to protect Mr. Candelaria’s safety. Mr. Candelaria has remained at Clinton since that transfer. He lives in a hospital which houses nine other wheelchair bound/handicapped inmates. Mr. Candelaria has been recommended for physical therapy, however, he has refused to attend his appointments. He has also refused a neurological consult. Apparently, Mr. Candelaria refuses the outside specialty care because he objects to the van that is used by the facility to transport disabled

inmates. However, this van has routinely been used to safely transport other disabled inmates for outside medical care.

Mr. Candelaria’s room at Clinton has hot water, and a commode. He received a new wheelchair in August of 1996. Moreover, when he was having difficulty showering without a shower chair, one was provided for him. He is regularly seen by the medical staff, and he is provided with medication and supplies as requested by him. Mr. Candelaria is also taken outside for exercise and recreation.

Based upon the foregoing, defendants contend that Candelaria’s claims are without merit, and that there has been no violation of the Modified Final Judgment.

Candelaria has filed a lengthy response in which he details his medical problems and asserts that in January 1991 he was improperly removed from the UPD at Green Haven and transferred to Clinton, a prison without facilities to treat his medical disabilities, in violation of the Modified Final Judgment.

At the Court’s request, Dr. Robert L. Cohen, the Green Haven Medical Auditor, reviewed Candelaria’s medical record. By letter dated April 4, 1997, Dr. Cohen advised the Court in pertinent part as follows:

[M]y review of Mr. Candelaria’s medical record reveals that he was an appropriate resident of the UPD, that he had multiple medical problems, and that he was receiving ongoing medical treatment and diagnostic evaluation for his paraplegia, muscle spasm, and bladder problems. His ENT problem, although still unresolved, was not being actively addressed at the time of his transfer from Green Haven Correctional Facility on January 15, 1992.

*2 The modified judgment prohibits transfers from the UPD when there are active medical problems undergoing diagnosis and treatment. It also requires the preparation of a comprehensive discharge plan which will address all ongoing medical problems and assure that the receiving facility will have appropriately accessible facilities consistent with the prisoner’s disabilities. There was no discharge plan in Mr. Candelaria’s medical record. It is my conclusion that Mr. Candelaria’s transfer from the Green Haven UPD to Clinton Correctional Facility was in violation of the Milburn Modified Consent Agreement.

The Court agrees that Candelaria’s transfer from Green Haven was in violation of the Modified Final Judgment and directs that Candelaria be transferred from Clinton to Green Haven within thirty (30) days of the date of this decision.

Milburn v. Coughlin, Not Reported in F.Supp. (1997)

It is so ordered.