

11 CIV. 0176

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTHONY MEDINA; PETER LOPEZ;
LING LOET; ~~STAROZZ SEBASTIAN~~
PAUL FORD; KELVIN CORRAN;
JAMES COLANTUONO; DARRIUS
REID; ~~RUFINO SOTO~~; KEVIN JONES;
BEN RAWLS; WARREN DAVIS;
CHRISTOPHER MORRISHAW;
MICHAEL SMITH, and on Behalf of all
Others similarly situated,

Plaintiffs,

Vs.

BRIAN FISCHER, Commissioner;
LESTER L. WRIGHT, MD, Chief
Medical Officer/Deputy commissioner;
CARL J. KOENIGSMANN, MD,
Chief Medical Officer/Deputy
Commissioner; LUCY BUTHER,
American's with Disabilities Act
Coordinator; ROBERT RAYMOND,
American's with Disabilities Act
Coordinator; KENNETH S PERLMAN,
Deputy Commissioner for Programs;
JAMES WALSH, Superintendent;
LESLIE MALIN, Deputy Superintendent
for

Programs; LYNN J. LILLEY, Deputy Superintendent for Administration; LISA CHENEL, Senior Correction Counselor/Sensorial Disabled Program Supervisor; PETER COHEN, Social Studies Teacher/Sensorial Disabled Program Instructor/Teacher; JUNE YVETTE GATEWOOD, Correction Counselor/ Sensorial Disabled Unit Counselor; WLADYSLAW SIDOROWICZ, MD, Facility Health Service Director; BRIAN VILLEGAS, Correction Officer/Law Library Supervisor; NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES; NEW YORK STATE OFFICE OF MENTAL HEALTH; NEW YORK STATE DIVISION OF PAROLE; Individually and in their Official capacities,

Defendants.

JURISDICTION AND VENUE

This is a civil action authorized by 29 U.S.C. §794, 504 of the Rehabilitation Act

of 1973, 42 U.S.C. §§ 1983 and 12131, Title II, American's with Disabilities Act, to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States. This Court has jurisdiction under 28 U.S.C. §§1331 and 1343(a)(3). The plaintiffs seeks declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202. Plaintiffs' claims for injunctive relief are authorized by 28 U.S.C. §2283 and Rule 56 of the Federal Rules of Civil Procedure.

This Court has supplemental jurisdiction over Plaintiffs' state law claims under 28 U.S.C. §1367.

The Southern District of New York is an appropriate venue under 28 U.S.C. §1391(b)(2) because it is where the events giving rise to these claims occurred and continue to occur.

PLAINTIFFS

The plaintiff Anthony Medina (“Medina”) was incarcerated at the Sing Sing and Sullivan Correctional Facilities during the events described in this complaint.

The plaintiff, Peter Lopez (“Lopez”), was incarcerated at the Sullivan Correctional Facility during the events described in this complaint.

The Plaintiff, Ling Loet (“Loet”), was incarcerated at the Sullivan Correctional Facility during the events described in this complaint.

The plaintiff, Sharozz Segrene (“Segrene”), was incarcerated at the Sullivan Correctional Facility during the events described in this complaint.

The plaintiff, Paul Ford (“Ford”), was incarcerated at the Sullivan Correctional Facility during the events described in this complaint.

The plaintiff, Kelvin Curran (“Curran”), was incarcerated at the Sullivan Correctional Facility during the events described in this complaint.

The plaintiff, James Colantuono (“Colantuono”), was incarcerated at the Sullivan Correctional Facility during the events described in this complaint.

The plaintiff, Darrius Reid (“Reid”), was incarcerated at the Sullivan Correctional Facility during the events described in this complaint.

The plaintiff, Rufino Soto (“Soto”), was incarcerated at the Sullivan Correctional

Facility during the events described in this complaint.

The plaintiff, Kevin Jones (“Jones”), was incarcerated at the Sullivan Correctional Facility during the events described in this complaint.

The plaintiff, Ben Rawls (“Rawls”), was incarcerated at the Sullivan Correctional Facility during the events described in this complaint.

The plaintiff, Warren Davis (“Davis”), was incarcerated at the Sullivan Correctional Facility during the events described in this complaint.

The plaintiff, Christopher Morrishaw (“Morrishaw”), was incarcerated at the Sullivan Correctional Facility during the events described in this complaint.

DEFENDANTS

Upon information and belief, Defendant Brian Fischer (“Fischer”) is the current Commissioner of the New York State Department of Correctional Services (“DOCS”), succeeding Glenn S. Goord on or about January 1, 2007. As Commissioner, Fischer oversees and is responsible for all aspects and the overall operation of the Department of Corrections and its employees. This includes the medical departments, Sensorial Disabled Units, and Sensorial Disabled Programs at every DOCS facility, the employees that staff and operate those departments, and the medical and general care those facilities and its staff provide or do not provide to inmates in DOCS custody, and the health and welfare of all the inmates in DOCS custody. Since January 1, 2007, Fischer has been responsible for the Plaintiffs’

overall health, safety and well being and responsible for ensuring the Plaintiffs' received adequate medical care, adequate medical remedies, adequate accommodations, equal protection, and due process of law.

Upon information and belief, Defendant Lester L. Wright, MD, ("Wright") preceded Karl J. Koenigsmann as the Chief Medical Officer of DOCS and served in that capacity prior to and up through April of 2010. At all times mentioned herein when Wright served as Deputy Commissioner and Chief Medical Officer, Wright oversaw and was responsible for all aspects and the overall operation of the medical departments at every DOCS facility, the employees that staff and operate those departments, the medical care those facilities and its staff provide or do not provide to inmates in DOCS custody, and the health and welfare of all the inmates in DOCS custody. At all

times mentioned herein, Wright has been responsible for the Plaintiffs' overall health, safety, and well being and responsible for ensuring the Plaintiffs' received adequate medical care, adequate medical remedies, adequate accommodations, equal protection, and due process of law.

Upon information and belief, Defendant Karl J. Koenigsmann ("Koenigsmann") is the current Chief Medical Officer/Deputy Commissioner for DOCS, succeeding Lester L. Wright on or about April of 2010. As Chief Medical Officer, Koenigsmann oversees and is responsible for all aspects and the overall operation of the medical departments at every DOCS facility, the employees that that staff and operate those departments, the medical care those facilities and its staff provide or do not provide to inmates in DOCS custody, and the health and welfare of all the inmates in DOCS custody. At all times mentioned

herein, Koenigsmann has been responsible for each of the Plaintiff's overall fitness, safety and well being and responsible for ensuring the Plaintiffs' received adequate medical care, adequate medical remedies, adequate accommodations, equal protection, and due process of law.

Upon information and belief, Defendant Lucy Buther ("Buther") is the current American's with Disabilities Act Coordinator ("ADA Coordinator") for DOCS, succeeding Robert Raymond on or about August of 2010. As the ADA Coordinator, Buther oversees and is responsible for the overall operations of DOCS Sensorial Disabled Units and its employees. This includes the Sensorial Disabled Programs at every DOCS facility, the employees that staff and operate those units and programs, the medical and reasonable accommodations those facilities provide or do not provide to the inmates housed in those units and

programs, and the health and welfare of all inmates housed in those Sensorial Disabled Units. At all times mentioned herein, Buther has been responsible for the Plaintiffs' overall health, safety, and well being and responsible for ensuring the Plaintiffs' received adequate medical care, adequate medical remedies, adequate reasonable accommodations, equal protection, and due process of law.

Upon information and belief, Defendant Robert Raymond ("Raymond") preceded Buther as the ADA Coordinator of DOCS and served in that capacity prior to and up through April of 2010. At all times mentioned herein when Raymond served as ADA Coordinator, Raymond oversaw and was responsible for all aspects and the overall operation and management of DOCS Sensorial Disabled Units and Programs at every DOCS facility, the employees that staff and operate those

units and programs, the medical and reasonable accommodations those facilities and its staff provide or do not provide to inmates housed in the Sensorial Disabled Units. At all times mentioned herein, Raymond has been responsible for the Plaintiff's overall health, safety and well being and responsible for ensuring the Plaintiffs received adequate medical care, adequate medical remedies, adequate reasonable accommodations, equal protection, and due process of law.

Upon information and belief, Defendant Kenneth S. Perlman ("Perlman") is and was at all times mentioned in this complaint the Deputy Commissioner of Programs for DOCS. As Deputy Commissioner for Programs, he supervises and manages the overall operations of all DOCS programs, services and activities, including the Sensorial Disabled Programs.

Upon information and belief, Defendant James Walsh (“Walsh”) is and was at all times mentioned in this complaint, the Superintendent of the Sullivan Correctional Facility. As Superintendent, Walsh oversees and is responsible for all aspects and the overall operation of the Sullivan Correctional Facility and its employees. This includes the medical department and Sensorial disabled Unit at Sullivan, the employees that staff and operate that department and unit, and the medical and general care that department and unit and its staff provide or do not provide to inmates at Sullivan, and the health, safety and well being of all inmates in Sullivan custody. Defendant Walsh is responsible for the Plaintiffs’ overall health, safety and well being and responsible for ensuring the Plaintiffs receive adequate care, adequate medical remedies, adequate reasonable accommodations, equal protection, and due process of law.

Upon information and belief, Defendant Leslie Malin (“Malin”) is and was at all times mentioned in this complaint, the Deputy Superintendent of Program Services at the Sullivan Correctional Facility. As Deputy Superintendent for Programs, Malin manages and supervises all the day-to-day operations of the facility’s programs and executes all program policies and has been responsible for the Plaintiff’s overall health, safety and well being and responsible for ensuring the Plaintiffs received adequate medical care, adequate medical remedies, adequate reasonable accommodations, equal protection, and due process of law.

Upon information and belief, Defendant Lynn J. Lilley (“Lilley”) is and was at all times mentioned in this complaint, the Deputy Superintendent of Administration at

the Sullivan Correctional Facility. As Deputy Superintendent for Administration, Lilley manages and supervises all the day-to-day operations of the facility's administration, including the medical department and the employees that staff the medical department and has been responsible for the Plaintiff's overall health, safety and well being and responsible for ensuring the Plaintiffs received adequate medical care, adequate medical remedies, adequate reasonable accommodations, equal protection, and due process of law.

Upon information and belief, Defendant Lisa Chenel ("Chenel") is and was at all times mentioned in this complaint, a Senior Correction Counselor at the Sullivan Correctional Facility. As Senior Counselor, one of Chenel's duties was to manage the overall operations of the Sensorial Disabled Unit and Program, supervise the employees

that staff that Program, and ensure inmates housed in the Sensorial Disabled Unit are provided with adequate medical care and adequate accommodations, equal treatment and due process of law.

Upon information and belief, Defendant Peter Cohen is and was at all times mentioned in this complaint, a social studies teacher, and the de facto Instructor for the Blind and supervisor of the Sensorial Disabled Program at the Sullivan Correction Facility. As the de facto supervisor of the Sensorial Disabled Program, Cohen manages the overall operations of the Sensorial Disabled Program and the reasonable accommodations provided to sensorial disabled inmates, including those accommodations provided or not provided to Plaintiffs.

Upon information and belief, Defendant June Yvette Gatewood is and was at all

times mentioned in this complaint, a Correction Counselor for the Sensorial Disabled Program.

Upon information and belief, Defendant Wladyslaw Sidorwicz is and was at all times mentioned in this complaint, the Facility Health Service Director at the Sullivan Correctional Facility. In that capacity, Sidorwicz was the primary medical care provider for all inmates at the Sullivan Correctional Facility, and is and was responsible for the Plaintiffs' overall health, safety, and well being and responsible for ensuring Plaintiffs received adequate medical care, adequate medical remedies, adequate reasonable accommodations, equal protection, and due process of law.

Upon information and belief, Defendant Brian Villegas is and was at all times mentioned in this complaint, a Correction

Officer at the Sullivan Correctional Facility. In that capacity, Villegas is assigned to supervise the facility's law library and ensure that all sensorial disabled inmates, including the plaintiffs, have equal access to the law library, its materials, and accommodating devices and aids when in the law library.

Upon information and belief, Defendant New York State Department of Correctional Services ("DOCS") is and was at all times mentioned in this complaint, a branch and entity of the State of New York. In that capacity, DOCS is responsible for the overall management and supervision of its facilities and employees who staff those facilities, and the overall care of all inmates in its custody, including the Plaintiffs.

Upon information and belief, Defendant New York State Office of Mental Health ("OMH") is and was at all times mentioned

in this complaint, a branch and entity of the State of New York. OMH is responsible for the overall mental health treatment for all inmates in DOCS custody with mental disease or defects, and the overall management and supervision of its departments in each DOCS facility, and the employees who staff those departments.

Upon information and belief, Defendant New York State Division of Parole (“DOP”) is and was at all times mentioned in this complaint, an executive branch and agency of the State of New York. In that capacity, DOP performs the function ensuring that inmates are properly rehabilitated and equipped to function productively in society, if released, under DOP’s supervision.

The Defendants, New York State Department of Correctional Services, New York State Office of Mental Health, and New York State Division of Parole are all

sued only in their official capacities. All other named defendants are sued in their individual and official capacities.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

The Plaintiffs have exhausted all available administrative remedies. The Plaintiffs disability or the Defendants' failure to accommodate the Plaintiffs is the reason why some of the claims raised herein may not have been exhausted.

PRELIMINARY STATEMENT

This is a civil rights action brought by fourteen visually impaired and blind prisoners under Section 504 of the Rehabilitation Act, 29 U.S.C §794, Title II of the American's with Disabilities Act, 42 U.S.C. §12131, and 42 U.S.C. §1983, and New York's Human Rights Law, Executive Law §§292 et seq., seeking injunctive relief,

declaratory relief, and prospective relief, for the deprivation of the plaintiffs' rights secured by the United States Constitution and federal statutes. Defendants, either individually, in their official capacities, or through their agents, representatives, officers, and/or employees, deprived and continue to deprive the plaintiffs' of their constitutional and statutory rights while acting under color of state law, insomuch as they failed and continue to fail to provide the visually impaired and blind plaintiffs with adequate medical care, reasonable modifications and accommodating aids and devices, in violation of the American's With Disabilities Act, 504 of the Rehabilitation Act and New York's Human Rights Law, which has caused unnecessary pain and suffering in violation of the Eighth Amendment of the United States Constitution, have been and continue to be deliberately indifferent to plaintiffs' health, safety and well being in violation of the

Eighth Amendment of the United States Constitution, infringed on plaintiffs' privacy in violation of the First Amendment of the United States Constitution, and denied plaintiffs equal protection and due process under the laws in violation of the Fourteenth Amendment of the United States Constitution.

PLAINTIFFS' MEDICAL BACKGROUND

Mr. Medina's Disability

Plaintiff Medina has been diagnosed with advanced keratoconus, a degenerative condition, affecting both eyes.

Plaintiff Medina also suffers from photophobia and a topographical stigmatism.

Plaintiff Medina is legally blind.