

*File
Complaint*

FILE

STATES DISTRICT COURT
EASTERN DISTRICT OF OHIO
WESTERN DIVISION

JUAN DUNN, JEFFREY D. HARTWELL,	::	
MARIO HENDERSON, DONALD J. HALL,	::	CASE NO. C1-93-0166
EUGENE T. LEMMONS, DONALD M. GLENN,	::	
LEWIS WILLIAMS, JR., JOSE H. MACHIN,	::	(Judge Spiegel)
JOHN THOMAS MAYHER, II, and	::	
THOMAS RUFFING,	::	
	::	<u>AMENDED COMPLAINT</u>
ON BEHALF OF THEMSELVES AND A CLASS	::	
OF SIMILARLY SITUATED INDIVIDUALS	::	<u>CLASS ACTION</u>

Plaintiffs ::

vs. ::

GOVERNOR GEORGE V. VOINOVICH,	::
OHIO DEPARTMENT OF REHABILITATION	::
AND CORRECTION,	::
REGINALD A. WILKINSON, DIRECTOR	::
OF THE OHIO DEPARTMENT OF	::
REHABILITATION AND CORRECTION,	::
DEPARTMENT OF MENTAL HEALTH, and	::
MICHAEL F. HOGAN, DIRECTOR OF	::
THE DEPARTMENT OF MENTAL HEALTH,	::

Defendants ::

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On behalf of themselves and the class alleged herein, Plaintiffs state the following for their complaint against Defendants:

I. PRELIMINARY STATEMENT

1. This is a class action brought by plaintiffs on behalf of all psychiatrically impaired inmates who are or will be confined in one of the State of Ohio's prison system facilities.

2. Plaintiffs seek declaratory and injunctive relief for deprivations under color of state law of the rights, privileges

and immunities secured by the Constitution of the United States, and, in particular, those rights secured by the Eighth and Fourteenth Amendments.

3. Specifically, Plaintiffs seek relief from the diminished or non-existent psychiatric coverage that exists in Ohio's prison system. The psychiatrically impaired inmates are denied adequate access to the psychiatric care they need in their ongoing treatment and care.

4. The result of the inadequate or non-existent psychiatric coverage is that psychiatrically impaired inmates are subjected to conditions that fall below standards of human decency, to needless suffering, and to an environment that threatens not only the mental and physical well-being of the psychiatrically impaired inmate, but all other inmates within Ohio's prison system as well.

5. The State of Ohio's prison system includes three adult female institutions and nineteen adult male facilities.

6. The three female institutions are: Franklin Pre-Release Center, Columbus, Ohio; Northeast Pre-Release Center, Cleveland, Ohio; and Ohio Reformatory for Women, Marysville, Ohio.

The nineteen adult male facilities are: Allen Correctional Institution, Lima, Ohio; Chillicothe Correctional Institute, Chillicothe, Ohio; Correctional Reception Center, Orient, Ohio; Dayton Correctional Institution, Dayton, Ohio; Grafton Correctional Institution, Grafton, Ohio; Hocking Correctional Facility, Nelsonville, Ohio; Lebanon Correctional

Institution, Lebanon, Ohio; Lima Correctional Institution, Lima, Ohio; London Correctional Institution, London, Ohio; Lorain Correctional Institution, Grafton, Ohio; Madison Correctional Institution, London, Ohio; Mansfield Correctional Institution, Mansfield, Ohio; Marion Correctional Institution, Marion, Ohio; Orient Correctional Institution, Columbus, Ohio; Pickaway Correctional Institution, Orient, Ohio; Ross Correctional Institution, Chillicothe, Ohio; Southeastern Correctional Institution, Lancaster, Ohio; Southern Ohio Correctional Facility, Lucasville, Ohio; Warren Correctional Institution, Lebanon, Ohio.

II. JURISDICTION AND VENUE

8. This action is filed under 42 U.S.C. § 1983 to redress injuries suffered by Plaintiffs and the class they represent for deprivation under color of state law of rights secured by the Eighth and Fourteenth Amendments to the United States Constitution. This court has jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3).

9. Venue in the United States District Court, Southern District of Ohio, Western Division, is proper pursuant to 28 U.S.C. § 1392.

III. PARTIES

10. Each of the named Plaintiffs is currently an inmate confined by the State of Ohio at, or subject to return to, one of

the state prison facilities listed in paragraphs 6-7 of this complaint.

11. Each of the named Plaintiffs is psychiatrically impaired and each are denied adequate psychiatric care. Each would benefit from adequate access to psychiatrists who can assist them in their ongoing treatment and care.

12. Plaintiff Juan Dunn (#192-543) is in the psychiatric unit at Lucasville. Plaintiff Dunn has been variously diagnosed at different times by prison psychiatrists as suffering from schizophrenia, paranoid chronic atypical psychosis, intermittent explosive disorder and other forms of mental illness. While at Lebanon and Lucasville, Plaintiff Dunn has received inadequate care for his psychiatric condition and as a result was involved in encounters with corrections staff that have resulted in serious injuries to both Plaintiff and the corrections staff. In addition, Plaintiff Dunn's psychiatric disorders pose a continuing danger to himself. For example, in an attempt to silence auditory hallucinations, Plaintiff Dunn injured himself by driving a pencil into his right ear canal. Plaintiff Dunn has been repeatedly sent to the Oakwood Forensic Center for treatment. His most recent admission was on July 19, 1993. Although Plaintiff Dunn received appropriate treatment at Oakwood and is responsive to treatment, upon his return to a prison facility, Plaintiff Dunn decompensates because of the lack of psychiatric care in the prison facility. Plaintiff Dunn is

presently at Lucasville and is presently suffering a lack of adequate psychiatric care.

13. Plaintiff Jeffrey D. Hartwell (#206-421) was first institutionalized at Longview State Hospital at the age of eight. Plaintiff Hartwell was most recently incarcerated in 1988 and transferred to Lucasville in 1991. Continuously throughout Plaintiff Hartwell's incarceration, he has been in need of psychiatric treatment. For lack of such treatment, his condition has worsened and as a result, he has injured himself physically by repeatedly beating his head against his cell door. Other inmates not tolerating Plaintiff Hartwell's actions have beaten him and on one occasion, poured bleach on his open wounds. After the prison riot at Lucasville earlier this year, Plaintiff Hartwell was temporarily transferred to Lima. Prior to his transfer, Plaintiff Hartwell was a psychiatric patient at the Southern Ohio Correctional Facility and was part of the approximately 300 inmates that make up the Office of Psychiatric Services to Corrections' (OPSC) caseload. There was available to those 300 inmates only sixteen hours per week during which a psychiatrist or psychiatrists were available to provide care and treatment. As a result of this limited availability of psychiatric care, Plaintiffs, including Plaintiff Hartwell, do not have their serious medical/psychiatric needs addressed and some psychiatric patients receive essentially no care or treatment. In March of 1993 as a direct result of the lack of staffing, over seventy-five psychiatrically impaired inmates.

including Plaintiff Hartwell, were in lockdown status due to their inability to function in general population. In addition, two inmate psychiatric patients committed suicide immediately prior to the Lucasville riot.

14. Plaintiff Mario Henderson (#160-380) is a psychiatric patient presently at Lima having been transferred from Lucasville after the riot. Plaintiff Henderson is thirty-five years old and has been in prison for sixteen years. Prior to his imprisonment, Plaintiff Henderson was in three mental institutions. Plaintiff Henderson has been denied necessary psychiatric care and as a result psychiatric attendants have, on occasion, had to use force against him and, on occasion, Plaintiff Henderson has had all four limbs shackled to a bed. Upon his transfer to Lima, Plaintiff Henderson and other psychiatric inmates were put in lockdown in poorly ventilated cells where temperatures remained in the 90's around the clock. The danger in this type of confinement is apparent: it was in one of these cells that James Atchison died on August 30, 1993. On information and belief, Atchison's death was caused by heat stroke.

15. Plaintiff Donald J. Hall (#165-725) is both severely mentally retarded and seriously mentally ill. Prior to his imprisonment, Plaintiff Hall spent several years at Longview State Hospital. Because of his retardation and mental illness and the lack of effective treatment, Plaintiff Hall is taken advantage of by other inmates. In addition, Plaintiff Hall is unable to act appropriately and corrections staff, on a number of

occasions, have had to use force. Plaintiff Hall had been an inmate at Lucasville until the riot and is now at Lima.

16. Plaintiff Eugenc T. Lemmons (#A190-813) spent his childhood at the Longview State Hospital. He was there for 12 1/2 years. Plaintiff Lemmons is presently at Lima and is unable to manage even simple personal needs. Plaintiff Lemmons is in a state of near total incoherence. Plaintiff Lemmons has not been provided necessary psychiatric care.

17. Plaintiff Donald M. Glenn (#187-673) was transferred in April of 1993 after the riots to Lima from Lucasville where he has been in lockdown for the entire time. Plaintiff Glenn has requested psychiatric treatment on a number of occasions and none has been available. Plaintiff Glenn has been diagnosed by at least five evaluators as a paranoid schizophrenic. Plaintiff Glenn has been transferred three times to Orient and to Lima and Oakwood Forensic Center. At the later institution, he has received treatment but when transferred back to Lucasville, he is not provided appropriate treatment. Plaintiff Glenn has had several severe psychiatric episodes as a result of inadequate psychiatric care.

18. Plaintiff Lewis Williams Jr. (#175-623) is a psychiatrically impaired inmate currently on death row. Plaintiff Williams is housed with other psychiatric inmates who reportedly hear voices, and as a result, these inmates have become assaultive.

19. Plaintiff Jose H. Machin (#180-462) is a psychiatric inmate from Lucasville who has been temporarily transferred to Lima. As a result of the lack of care and treatment, corrections staff have had to use force on Plaintiff Machin which has resulted in injuries to Plaintiff Machin and the loss of teeth. Plaintiff Machin continuously suffers from the lack of necessary psychiatric care.

20. Plaintiff John Thomas Mayher II (#175-141) has been incarcerated in the prison system since 1983 and is a psychiatric patient. Plaintiff Mayher has been in lockdown because of the lack of adequate psychiatric care.

21. Plaintiff Thomas Ruffing (#198-786) is in the psychiatric unit at Lucasville and is presently at Lima on a temporary basis. Because of Plaintiff Ruffing's psychiatric condition and lack of treatment, he has repeatedly been put in lockdown.

22. Defendant George V. Voinovich is the Governor of the State of Ohio. As Chief Executive Officer of the State of Ohio, he has ultimate responsibility for the policies, practices, procedures, acts and omissions of the Department of Rehabilitation and Correction and the Department of Mental Health. Defendant Voinovich appoints and has the authority to remove the Director of Ohio Rehabilitation and Correction pursuant to R.C. § 121.03(S). Defendant Voinovich appoints and has the authority to remove the Director of the Department of

Mental Health pursuant to R.C. §121.03(O). Defendant Voinovich is sued in both his individual and official capacities.

23. Defendant Ohio Department of Rehabilitation and Correction, pursuant to R.C. § 5120.05, is responsible for maintaining, controlling, training, and rehabilitating persons convicted of crime and sentenced to an Ohio penal institution. Individuals sentenced to an Ohio penal institution are committed to the control, care and custody of the Department of Rehabilitation and Correction pursuant to R.C. § 5120.16. The Department of Rehabilitation and Correction is authorized to make rules to properly execute its powers pursuant to R.C. § 5120.42. Additionally, the Department of Rehabilitation and Correction is given all the power and authority necessary for the full and efficient exercise of the executive, administrative, and fiscal supervision over the state institutions under its jurisdiction pursuant to R.C. § 5120.36. Finally, mentally ill prisoners requiring hospitalization are subject to the exclusive means provided by R.C. § 5120.17, i.e., the transfer determination process must be begun by the managing officer of the institution under the control of the Department of Rehabilitation and Correction.

24. Defendant Reginald A. Wilkinson is the Director of the Ohio Department of Rehabilitation and Correction. Defendant Wilkinson is the executive head of the Department and all duties conferred on the various divisions and institutions of the Department by order of the Director are to be performed under

such rules as he prescribes, and are under his control, pursuant to R.C. § 5120.01. Defendant Wilkinson supervises the work of each division and is responsible for the determination of general policies pursuant to R.C. § 5120.07. Furthermore, Defendant Wilkinson, pursuant to R.C. § 5120.10 is responsible for establishing the minimum standards for jails in Ohio. Defendant Wilkinson is sued in both his individual and official capacities.

25. Defendant Department of Mental Health is responsible for providing and designating facilities for the custody, care and special treatment of inmates in Ohio's prison system pursuant to R.C. § 5119.02(E)(1). Defendant Department of Mental Health provides mental health services to Ohio's prison facilities.

26. Defendant Michael F. Hogan is the Director of the Department of Mental Health. Pursuant to R.C. § 5119.01, Defendant Hogan is the chief executive and administrative officer of the department. As such, he has authority to establish procedures for the governance of the department and appoint employees, including the medical director. Defendant Hogan is sued in both his individual and official capacities.

IV. CLASS ACTION ALLEGATIONS

27. This is a class action under Rules 23(a) and 23(b) 1 and 2 of the Federal Rules of Civil Procedure.

28. Plaintiffs are representative parties of a class of all psychiatrically impaired inmates who are or will be confined in one of the State of Ohio's prison system facilities. Plaintiffs

Juan Dunn, Jeffrey D. Hartwell, Mario Henderson, Donald J. Hall, Eugene T. Lemmons, Donald M. Glenn, Lewis Williams, Jr., Jose H. Machin, John Thomas Mayher, II, and Thomas Ruffing bring this action on behalf of themselves and on behalf of a class of similarly situated individuals.

29. Plaintiffs are members of the class and their claims are typical of all class members. Plaintiffs are represented by competent counsel and will fairly and adequately protect the interests of the class.

30. The class is so numerous that joinder of the numbers is impracticable. On information and believe, current members of the class number approximately 12,000 inmates or roughly 30% of the current prison population. At the Southern Ohio Correctional Facility alone approximately 301 of the 1820 maximum security prisoners are currently on the Office of Psychiatric Services to Corrections' active caseload with the numbers continuing to increase. Joinder of the numbers is made particularly impracticable because the class also includes future inmates and because there is a rapid turnover of inmates in the current estimated class.

31. The lawsuit challenges various conditions of confinement at the State of Ohio's prison system facilities including the adequacy of psychiatric care provided to psychiatrically impaired prisoners. Questions of law and fact are common to the class.

32. The defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class.

V. FACTUAL ALLEGATIONS

33. Psychiatrically impaired inmates in the care and custody of the Ohio prison system are unable to seek their own psychiatric care. The state, therefore, is under a duty to provide these inmates with adequate psychiatric care. Defendants Voinovich, the Ohio Department of Rehabilitation and Correction, Wilkinson, the Department of Mental Health, and Hogan are responsible for providing psychiatric care to the psychiatrically impaired inmates in their care and custody.

34. In the general population, psychiatrically impaired individuals number approximately 15%. In the prison population, psychiatrically impaired inmates account for approximately twice the community rate of the general population during any six month period.

35. Psychiatrically impaired inmates who do not receive adequate psychiatric care pose serious problems for prison staff, other inmates, and themselves.

36. A key component in the treatment of psychiatrically impaired inmates is adequate access to ongoing psychiatric care and treatment. Ohio's prison system suffers from systemic problems in staffing, facilities, and medical procedures that

make adequate access to ongoing psychiatric care and treatment impossible.

37. The psychiatric care and treatment received by psychiatrically impaired inmates in the State of Ohio's prison system facilities is grossly inadequate and constitutes deliberate indifference to these prisoners' serious medical needs.

VI. CLAIMS FOR RELIEF

38. Plaintiffs reallege and incorporate by reference paragraphs 1-37.

39. Defendants, acting under color of state law, fail to provide Plaintiffs with basic psychiatric medical care. The resulting conditions in the Ohio prison system are incompatible with contemporary standards of decency and cause unnecessary and wanton infliction of pain as well as genuine privation, and are not reasonably related to any legitimate governmental objectives. Psychiatrically impaired inmates are thereby subjected to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution.

VII. NO ADEQUATE REMEDY AT LAW

40. As a proximate result of the Defendants' policies, practices, procedures, acts and omissions, Plaintiffs have suffered, do suffer, and will continue to suffer immediate and irreparable injury, including physical, psychological and

emotional injury. Plaintiffs' physical and psychological health and well-being will continue to deteriorate during the course of their confinement under the conditions described in this complaint. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs described herein. Plaintiffs will continue to be irreparable injured by the policies, practices, procedures, acts and omissions of the Defendants unless this court grants the injunctive relief that Plaintiffs seek.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the class they represent pray this court:

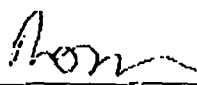
A. Determine by order pursuant to Rule 23, Federal Rules of Civil Procedure, that this action may be maintained as a class action;

B. Issue a declaratory judgment stating the Defendants' policies, practices, acts and omissions described in this complaint violate Plaintiffs' rights guaranteed to them by the Eighth and Fourteenth Amendments to the United States Constitution;

C. Permanently enjoin Defendants, their officers, agents, employees and successors in office, as well as those acting in concert and participating with them, from engaging in the unlawful practices described in this complaint;

D. Retain jurisdiction of this matter until this court's order has been carried out;

- E. Award Plaintiffs their reasonable costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and
- F. Grant such other relief as may be just and equitable.



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon Donald A. Cataldi, Assistant Attorney General, Criminal Justice Section, 30 E. Broad Street, 26th Floor, Columbus, Ohio 43266-0410 by regular U.S. mail this 24 day of October, 1993.



ROBERT B. NEWMAN