

380/134/20/30

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

NICHOLAS A. PALMIGIANO, et al.,)	
)	
v.)	C.A. No. 74-172 P
)	
EDWARD DiPRETE, et al.,)	
)	
THOMAS R. ROSS, et al.,)	
)	
v.)	C.A. No. 75-0032 P
)	
EDWARD DiPRETE, et al.,)	

ORDER

On Thursday, June 21, 1990, the Court conducted a chambers conference to review the Defendants' progress and compliance with the Court's Memorandum and Order of May 22, 1990. The following were present: J. Michael Keating, Jr., Esquire, Special Master; for the Defendants, James E. O'Neil, Attorney General of the State of Rhode Island, Walter Gorman, Deputy Attorney General, State of Rhode Island, David W. Dugan, Assistant Attorney General of the State of Rhode Island, Peter Palombo, Esquire, Executive Counsel for the Governor, State of Rhode Island, John Biafore, Esquire, Assistant Executive Counsel to the Governor, State of Rhode Island, John M. Marks, Esquire, Vetter and White, John J. Moran, Director, Department of Corrections, George M. Cappello, Esquire, Associate Director, Legal Services, Department of Corrections; for the Plaintiffs, Alvin J. Bronstein, Esquire, Executive Director, The National Prison Project, Mark J. Lopez, Esquire, The National Prison Project.

Palmigiano v. Trivisono



PC-RI-001-011

This conference was convened pursuant to decretal paragraph number 4 of the May 22, 1990 Memorandum and Order. The Court cited the Special Master's Interim Findings of Facts dated June 13, 1990, reviewed the Defendants' progress report dated June 21, 1990 and discussed a number of issues that had arisen involving the interpretation of the May 22, 1990 Order. At the conclusion of the conference, the Court froze the population of the Intake Services Center (ISC) and the Pinel Annex at their then current level of 403 and 162, respectively, pending a view by the Court of these pre-trial facilities.

On June 28, 1990, the Court conducted a view of the ISC and the Pinel Annex and, in addition, toured the new Dorothea Dix facility for women scheduled to open on July 1, 1990 and the old Maximum Security facility, from whose ruins this suit sprang nearly a decade and a half ago.

In the ISC, the Court found that the double-celling of the conventionally constructed modules, while straining the physical capacity of facilities and the nerves of inmates and staff, was tolerable for the few months that remain before completion of the addition to the ISC, promised for November, 1990. Even here, however, the pervasive idleness that leaves inmates scant choice between television and sleeping is deeply disturbing. There is little or no work. Posted schedules indicate that the limited outdoor recreational area is reserved for specific modules for only 6.5 hours a week, weather

permitting, while each tiny yard must be shared with inmates from three other modules (with a combined population of c. 192) on the four evenings a week prisoners have access to it from 5:00 to 8:00 p.m. There are no vocational programs. Prisoners may receive three half-hour visits a week, two of which are provided in the middle of work-days. Educational programs are extremely limited, available for only a handful of prisoners and occupying a couple of hours a week. Even ^{if} ^{we} prisoners were to avail themselves of every possible hour of recreation, weather and staff permitting, get all allowable visits and participate in educational programming, all of which few prisoners can do, less than 15 percent of that prisoner's time would be occupied, leaving little else except television and sleep. No one suggests that prisoners have an inherent right to entertainment, but when 40 to 50 young men, generally between the ages of 18 and 30, with limited intellectual resources and often troubled by emotional problems or asocial behavior, complicated not infrequently by withdrawal from drugs or alcohol, are crowded into a small, densely populated space and are not provided adequate outlet for their mounting, repressed energies, the result inevitably is an unsafe and insecure situation. Nonetheless, the Court will permit full double-celling in those modules of the ISC with 24 cells except, of course, for those modules set aside for administrative and punitive segregation, which require single-celling.

The two, new dormitories in the ISC, the so-called L and M modules, which were recently converted from administrative office space, currently house 45 to 50 and 25 to 30 prisoners, respectively. Here all of the infirmities recited in relation to idleness are exacerbated immeasurably by the lack of space. In these so-called dormitories, double-bunked beds occupy almost all of the floor space in each dorm; inmates must spend the bulk of their 20 hours a day of inactive confinement on their bunks. They eat, they sleep, they recreate on their beds. They must shower, wash and defecate in view of their fellows. There is not a shred of privacy, or quiet. In the conventional modules, prisoners can retire at night to their two-man cells, and they may elect to remain in their cells during the day when the dayroom is open, thus securing for themselves some small measure of relatively quiet solitude. Life in L or M modules, however, is the equivalent of life on a subway or a bus from which one may not exit. These modules contravene the proscription of this Court against the use of dormitories, violate the Court's prescriptions for space, and arguably violate the Constitution.

Given the present population pressures and the short-term nature of the overcrowding crisis, the Court is loath to ban entirely the use of these dormitories. While their continued utilization will be tolerated, more stringent limits on population are clearly necessary to mitigate their degrading impact.

In the Pinel Annex, population reductions have substantially improved conditions and permitted the defendants to abandon use of those sunporches at the end of each wing for the housing of inmates that so offended the Court's expert witness, Mr. Nathan, in April and May. More needs to be done, however. When the Court conducted its view of the Pinel Annex, a count was underway, and all prisoners were confined to their rooms. This permitted the Court to glimpse what life is like during the ten to 12 hours detainees are locked in their rooms. Ten people were confined in these approximately 18' x 20' rooms, meaning that the defendants have cut court-ordered space requirements in half. On the pleasant summer day the Court's view was conducted, temperatures in these rooms were well up into the 80's, and ventilation was extremely poor. Locked doors closed off all cross-ventilation, and one can only guess the impact of the combination of these unsatisfactory conditions and body heat on inmates in these rooms in July and August.

The defendants responded to the Court expert's critique of the Pinel Annex sunporches by removing all prisoners from those areas. The bunks of removed prisoners remain behind and limit any recreational use of these sunporches, which constitute, probably, the best ventilated rooms in the whole facility. This Court has not banned the use of these sunporches as housing areas and, indeed, they would

seem to be ideal housing areas during the summer months, provided the number of occupants is limited. Accordingly, the population limits on rooms in the Pinel Annex set forth below also apply to the sunporches.

After consideration of the parties' arguments and positions and in the aftermath of the Court's own tour of the ISC and the Pinel Annex, the Court directs that the following be Ordered, Adjudged and Decreed:

1. The Court's Order of May 22, 1990 shall remain in full force and effect except that decretal paragraph number 4 thereof is modified to allow no more than 380 prisoners to be housed at the ISC, with no more than 30 prisoners to be housed in L module and no more than 20 prisoners in M module; and no more than 134 prisoners to be housed at the Pinel Annex, with no more than six prisoners to be housed in any one room of the Pinel Annex.

2. Decretal paragraph number 3 of the May 22, 1990 Order shall be suspended when, and as long as, the number of prisoners housed at the ISC and the Pinel Annex remains below 380 and 134, respectively. Decretal paragraph number 3 of the May 22, 1990 Order, which provides for the expedited award of good time shall be operative, without further order of the Court, whenever the number of prisoners at the ISC exceeds 380 or the number of prisoners at the Pinel Annex exceeds 134.

Awards of good time shall be granted to prisoners in the ISC and the Pinel Annex to the extent necessary to reduce the number of prisoners to 380 and 134, respectively, when releases on bail under the Emergency Overcrowding Relief Fund (EORF) have not sufficed to meet the population caps set for these facilities. Awards of good time to each prisoner shall not exceed the number of days required to reduce the population of the ISC and the Pinel Annex to 380 and 134, respectively. For example, if the population exceeds the cap on a specific day by ten prisoners, then sufficient good time shall be awarded to effect the release of the ten prisoners then closest to their date of release.

3. This case shall be continued thirty (30) days from the date of entry of this Order, at which time the parties shall meet with the Court in chambers to review the status of the defendants' compliance with the Order.

4. The second paragraph of decretal paragraph 14 of the May 22, 1990 Order shall be amended as follows:

a. Decretal paragraphs 1, 2 and 3 of the May 22, 1990 Order, as modified by this Order, shall not apply to prisoners charged with assault with intent to commit violent felonies (RIGL 11-5-1); assault with a dangerous weapon (11-5-2); first degree child abuse (11-9-5.3(a)); murder, all degrees (11-23-1); kidnapping (11-26-1); first and second-degree sexual assault (11-37-2 and 11-37-4); first

degree child molestation (11-37-8.1); armed robbery (11-39-1); carrying a dangerous weapon when committing a crime of violence (11-47-3); domestic violence (12-29-2); and any prisoner charged with a crime of violence while bailed either privately or under the EORF.

b. Prisoners convicted of driving under the influence of liquor or drugs (RIGL 31-27-2(c)(2)) shall not be eligible for awards of expedited good time pursuant to decretal paragraphs 2 and 3 of the May 22, 1990 Order until they have served a minimum sentence of sixty (60) days. Prisoners convicted under this law and sentenced to less than sixty (60) days shall be ineligible for the award of expedited good time under this Court's orders.

c. Any sentenced prisoner released as a result of an award of expedited good time shall not be eligible for bail under the EORF, if subsequently arrested for a crime of violence.

ENTER:

PER ORDER: *Cassette* *Deputy Clerk*

Raymond J. [Signature]
Date *July 3, 1990*

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