

Palmigiano v. Travisono



PC-RI-001-013

UNITED STATES DISTRICT COURT
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., |) | |

MEMORANDUM AND ORDER

On May 22, 1990, this Court entered a far-reaching remedial order designed to effect population reductions in the two facilities of the Rhode Island Adult Correctional Institutions (ACI) that house pre-trial detainees, the Intake Service Center (ISC) and the Pinel Annex. Through the Order's expansion of a pre-existing Emergency Overcrowding Relief Fund (EORF) and award of expedited good time for sentenced offenders in the ACI, the defendants were able to accomplish substantial population reductions from a total population of 776 in the two facilities on May 22, 1990 to 565 on June 20, 1990.

After a chambers conference with the parties on June 21, 1990, and a personal view by the Court of the ISC and the Annex on June 28, 1990, a supplemental remedial order was entered on July 3, 1990, which was further amended or clarified on July 6, 1990. The purpose of these additional orders was to achieve further modest population reductions, while, at the same time, limiting the wide sweep of the original remedial measures. The restrictions on

remedial measures, however, led to a slight rise in population, rather than the desired decelerated contraction. Parties and counsel met again in chambers on July 20, 1990 to report on the status of the population of the two facilities, evaluate current remedial measures and discuss future actions. No clear direction emerged from the conference, and the Court directed the Special Master to assess the various proposals identified and discussed during the conference and to make recommendations to the Court for a new and more effective remedial order within ten days.

The problems involved in articulating a narrow yet effective remedy in this case are legion. While the ISC and the Annex house primarily pre-trial detainees, they also hold a substantial number of sentenced offenders, constituting anywhere from 25 to 40 percent of the population of the two facilities on any given day. The early release program was designed to open up beds in the ACI to which newly sentenced inmates from the ISC could be assigned. However, the impact of the program on the ISC and the Annex populations is indirect. The awards of good time prescribed in the May 22, 1990 Order are given to convicted offenders who are closest to the date of their release. These inmates traditionally reside in those facilities with the lowest level of classification, i.e., Minimum Security and Work Release. The newly sentenced offenders in the ISC, on the other hand, are more likely to be assigned to facilities with higher levels of security, such as Supermax, Maximum Security and Medium Security, where the early release program has considerably less impact. Thus, the early release

program represents a "trickle-down" approach to the population problem at the ISC and the Annex as other prisoners must first be moved from higher security to lower security to make room for the prisoners from the ISC and the Annex.

Another problem is the significant growth in the number of pre-trial detainees. Since the early 1980's, when the pre-trial population of the ACI included about 100 persons, the number of pre-trial detainees had increased five-fold by early May of this year. A significant barrier to controlling the size of the pre-trial detainee population of the ISC and the Annex is the substantial number of criminal defendants who are held without bail. A 1988 change to the Rhode Island constitution and much stricter drug-related penal statutes enacted over the past several years have combined to make virtually every individual in Rhode Island accused of the possession of drugs, as well as their manufacture and sale, ineligible for bail while awaiting trial. While recent Rhode Island case law may end the automatic withholding of bail in these cases, the effect of the State Supreme Court's recent ruling in this regard is, as yet, uncertain. See Witt v. Moran, 572 A.2d 261 (R.I. 1990). In addition, accused individuals with a probation violation are routinely held without bail irrespective of the seriousness of the present charge or past convictions. Regularly, some 75 percent of detainees at the ISC and the Annex are held without bail.

Lost in the furor over recent developments at the ISC and the Annex is the fact that the defendants have agreed (by entering

consent decrees or by failing to appeal orders of this Court) that the maximum number of prisoners that can be housed legally or constitutionally in the ISC is 250 and, in the Annex, 90. In April 1990, the number of prisoners in the ISC regularly exceeded 600, while figures in the Annex regularly exceeded 230. As recently as the hearings on May 10, 11, and 14, 1990, witnesses for the plaintiffs, the defendants and the Court all agreed on the urgent need for immediate judicial action to reduce the population of the ISC and the Annex.

The temporary nature of the Court's intervention has also been overlooked in much of the reaction to the May 22, 1990 Order. Unlike the situation in many other states, the measures enacted here will operate to limit prisoner populations for only the next 90 days, after which the defendants have pledged to provide sufficient physical facilities to house over a thousand more prisoners than they can currently accommodate. That represents a growth of 40 percent over the present population of the ACI.

The following remedial provisions (which incorporate many of the provisions of previous orders) supersede all previous orders of this Court entered since May 22, 1990 to control the size of the population of the ISC and the Annex, including the May 22, 1990 Order, the July 3, 1990 Order, the July 6, 1990 Order and all other oral orders of the Court. It is hereby

1. ORDERED that the defendants shall maintain at all times at least two hundred thousand dollars (\$200,000) or its equivalent, acceptable to the state judiciary, in the Emergency Overcrowding

Relief Fund, which shall provide bail for all indigent detainees with bail set at one hundred thousand dollars (\$100,000) surety or ten thousand dollars (\$10,000) cash or less. It is further

2. ORDERED that no more than 395 prisoners may be housed in the ISC, with no more than 30 prisoners to be housed in L module and no more than 20 prisoners in M module. No more than 150 prisoners may be housed in the Pinel Annex, with no more than six prisoners residing in any one room of the Pinel Annex. It is further

3. ORDERED that the Special Master shall study the feasibility of ordering the release of pre-trial detainees held without bail when the pretrial detainee population at the ISC and the Annex exceeds 395. The results of this study shall be reported to the Court within 30 days. If such releases are feasible, the Special Master shall be empowered to place any suitable pre-trial detainee on the electronically monitored home confinement program of the state of Rhode Island. Any releases made pursuant to this paragraph shall be made in the order of those least likely to create a danger to the community. It is further

4. ORDERED that defendants shall not accept, until November 15, 1990 (the anticipated date of the opening of the new ISC), for incarceration those convicted offenders who are free on personal recognizance or on bail in the community prior to both their conviction or plea and the imposition of sentence, provided, however, that new bail in the same amount and form as previously set by the state court is obtained. Any delay in the beginning of

the service of sentence shall have no impact on the length, or any other term, of the sentence to be served. If the delays in the execution of sentences, described herein, do not keep the sentenced population at the ISC and the Annex (i.e., those sentenced prisoners involved in the admissions and orientation (A&O) process) at or below 150, all sentenced prisoners in the ACI shall immediately be awarded 30 days of expedited good time, which shall be applied against the sentence of each affected prisoner. This award of good time shall, contrary to the terms of R.I.G.L. 42-56-24, be deemed to advance each affected prisoner's eligibility for consideration for parole. It is further

5. ORDERED that all persons committed by family court to the ACI for contempt shall not commence their sentences to purge themselves of contempt until November 15, 1990. It is further

6. ORDERED that the defendants shall take all steps, in addition to those specified above, to accomplish the maximum capacities established in this Order, such as, among others, a review of classification criteria so that the movement of prisoners from higher to lower levels of classification within the ACI may be expedited. It is further

7. ORDERED that the release provisions of this order (paragraphs 1, 3, 4 and 6, above) shall not apply to pre-trial detainees charged with or sentenced offenders convicted of and serving time for assault with intent to commit felonies (R.I.G.L. 11-5-1); assault with a dangerous weapon (R.I.G.L. 11-5-2); first degree child abuse (R.I.G.L. 11-9-503(a)); murder, all degrees

(R.I.G.L. 11-23-1); manslaughter (R.I.G.L. 11-23-3); kidnapping (R.I.G.L. 11-26-1); first and second degree sexual assault (R.I.G.L. 11-37-2 and 11-37-4); first degree child molestation (R.I.G.L. 11-37-8.1); robbery (R.I.G.L. 11-39-1); carrying a dangerous weapon when committing a crime of violence (R.I.G.L. 11-47-3); domestic violence (R.I.G.L. 12-29-2); and any prisoner charged with a crime of violence while bailed either privately or under the EORF and recommitted to the ACI. Prisoners convicted of driving under the influence of liquor or drugs (R.I.G.L. 31-27-2(c)(2)) shall not be eligible for awards of good time pursuant to paragraph 4 of this order until they have served a minimum 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. 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 and recommitted to the ACI for a crime of violence. It is further

8. ORDERED that modules and dormitories in the ISC and the Annex shall be restricted by class of prisoner (sentenced or pre-trial) and, to the greatest extent feasible, by classification. Sentenced prisoners shall be classified within 30 days of their sentencing and removed from the ISC or the Annex as soon as possible after the completion of the classification process. It is further

9. ORDERED that the defendants shall cause intake medical screening of each prisoner assigned to the ISC or the Annex to be

completed within seven days of the prisoner's incarceration. It is further

10. ORDERED that the defendants shall cause the results of tuberculin skin tests to be examined and evaluated by appropriate medical personnel no earlier than 48 and no later than 72 hours following administration of the test. It is further

11. ORDERED that the defendants shall deploy security staff members whose primary duties shall be the monitoring and detection of fires and fire hazards, including but not limited to the presence of excessive quantities of flammable materials, obstructions to fire exists, and inoperative fire alarm and fire suppression equipment. Each such staff member shall be responsible for no more than two housing units in the ISC or one wing in the Pinel Annex. Defendants also shall notify the local fire marshal that the maximum occupancy capacities of the ISC and the Pinel Annex are being exceeded. It is further

12. ORDERED that all fire detection and suppression equipment in the ISC and the Annex shall be maintained in proper working order and shall be inspected regularly and frequently by qualified institutional personnel and representatives of the State Fire Marshal's office. It is further

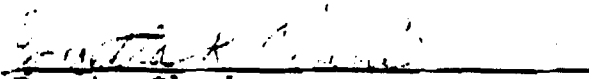
13. ORDERED that the beds located in the dayrooms and dormitories shall be separated by unobstructed corridors at least 36 inches in width. No such corridor shall terminate at either end at a solid wall. Additionally, to assist in the prevention of transmission of disease, beds in dayrooms and dormitories shall be

rearranged to ensure that prisoners sleep head-to-foot. It is further

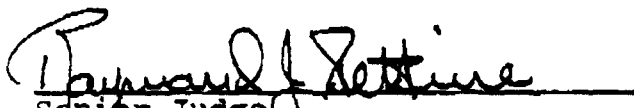
14. ORDERED that the defendants shall balance and repair the ventilation system at the ISC to ensure that the system operates properly and effectively. It is further

15. ORDERED that the defendants shall take all steps necessary to ensure that proper sanitary conditions are maintained in the kitchen of the ISC and the food service areas of the Pinel Annex and that all necessary precautions are taken to ensure that food is prepared and served in a manner that does not endanger the health of prisoners.

Enter:


Deputy Clerk

By Order:


Senior Judge

August 3, 1990