

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF SOUTH CAROLINA
 COLUMBIA DIVISION

GARY WAYNE NELSON, et al.,)	
)	
Plaintiffs,)	. Civil Action No. 82-876
)	
vs.)	
)	<u>JOINT MOTION TO ENTER</u>
WILLIAM D. LEEKE, et al.,)	<u>CONSENT DECREE</u>
)	
Defendants.)	
)	

Come the Plaintiffs and Defendants, by counsel and pursuant to Federal Rule of Civil Procedure 23(e), and move this Court to enter the attached Consent Decree, as an Order of this Court in compromise and settlement of this action. In support of this Motion, the parties state as follows:

1. This action was filed pro se as a class action in June 1982, by a prisoner in the custody of the Defendants; the initial Complaint sought remedies for the entire class of South Carolina prisoners for overcrowding and a totality of conditions alleged to constitute violation of the Eighth Amendment of the United States Constitution.

2. Following the initial filing of this action, Defendants filed a motion to dismiss, Plaintiffs filed pro se motions for appointment of counsel and to certify the class and to amend the complaint, and numerous additional Plaintiffs filed petitions to intervene; although these motions have not been decided, the

Plyler v. Leeke



parties have subsequently filed a joint motion to certify this action as a class action.

3. In late 1982, Plaintiffs obtained volunteer counsel and, with Plaintiffs' permission, these counsel entered into discussions of possible compromise with counsel for the Defendants.

4. The Consent Decree submitted with this Motion is the result of over twenty separate compromise discussions, which were conducted over a twenty-month period in consultation with Plaintiffs and individual Defendants and which covered over fifteen different aspects of prison over-crowding, including the following: crowded cells and wards, time-spent-in-cell, use of alternatives to cells and wards, construction and renovation of additional housing space, determination of total capacity of each institution, assignment of security staff, provision of health services, provision of meaningful activity, fire safety, time-spent-in-lock-up, classification of prisoners to housing and programs, differentiation between men and women's institutions, maintenance of family ties, use of physical restraints during transport, provision of food services, environmental sanitation, and out-moded facilities.

5. Each of the above-listed aspects of prison over-crowding is addressed in the submitted Consent Decree, with remedies which the Parties believe to present fair, adequate and reasonable compromises of the important constitutional claims addressed in the Complaint, Amended Complaint and petitions to intervene filed in this action; moreover, the Consent Decree, by (a) identifying

specific standards, (b) requiring periodic submissions to all parties and to this Court, and (c) requiring approval of specific portions of these future remedies, sets forth measureable guidelines for both compliance with these remedies and continued supervision of compliance by this Court.

WHEREFORE, the parties respectfully request the following:

1. That the Consent Decree be deemed submitted as a proposed compromise of this action;
2. That the Notice to the Class required by F.R.C.P. 23(e) be given, per the attached proposed Notice and Order; and
3. That, following the appropriate comment period and this Court's consideration of all submitted comments and the Consent Decree, the Consent Decree be entered as an Order of this Court in compromise and resolution of this action.

Respectfully submitted this ___ day of February, 1985.

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BY: _____

BY: _____

COUNSEL FOR PLAINTIFFS

COUNSEL FOR DEFENDANTS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

GARY WAYNE NELSON, et al.,)	
)	
Plaintiffs,)	Civil Action No. 82-876
)	
vs.)	<u>MEMORANDUM IN SUPPORT</u>
)	<u>OF JOINT MOTION TO</u>
WILLIAM D. LEEKE, et al.,)	<u>ENTER CONSENT DECREE</u>
)	
Defendants.)	
)	

INTRODUCTION

This is a class action, brought under 42 U.S.C. Sec.1983, challenging alleged violations of the Eighth Amendment of the United States Constitution by various conditions caused by overcrowding throughout the prison facilities of the South Carolina Department of Corrections.

Plaintiffs and Defendants to this action, by counsel, have submitted a joint motion, asking this Court to give notice to the class regarding, and to enter as an Order of this Court, a Consent Decree proposed as a compromise of the claims raised in this action. This Memorandum is submitted in support of that joint motion.

This case centers on a claim that the overcrowding of South Carolina's state prison facilities has fostered a variety of problems which, when viewed in their totality, render conditions

in the state prisons unconstitutional, in violation of the Eighth Amendment's prohibition against cruel and arbitrary punishment. The United States Supreme Court has approved this approach to constitutional review of prison overcrowding and has held the totality of conditions created by overcrowding to be an appropriate subject for relief. Rhodes v. Chapman, 452 U.S. 337, 101 S.Ct. 2392, 2399, 2408.

PROPOSED COMPROMISE

The Consent Decree submitted by joint motion proposes to address the problems of overcrowding by addressing approximately fifteen different aspects of overcrowding, including cell and ward space, temporary housing, construction and renovation, population caps for each institution, security staffing, health services, programs for prisoners, fire safety, time spent on lock-down, classification, racial and sexual discrimination in institutions and programs, family and community ties, physical restraints, food service, and environmental sanitation. Each of these areas are generally linked to the dangers to safety and health posed by severe overcrowding.

Each of these aspects has also individually been held to present an appropriate subject for relief by the courts. See, e.g., Hendrix v. Faulkner, 525 F.Supp. 435 (N.D. Ind. 1981) (thirty-seven-foot cells unacceptable for prisoners locked in twenty-three-and-one-half hours per day); Finney v. Mabry, 534 F.Supp. 1026 (E.D. Ark. 1982) (overcrowding in barracks unconstitutional because prevented security surveillance);

Ruiz v. Estelle, 679 F.2d 1115, 1140-41 (5th Cir. 1982) (deficiencies in staffing may contribute to unconstitutional violence); LaReau v. Manson, 651 F.2d 96, 109 (2d Cir. 1981) (medical examinations required on intake); Bowring v. Godwin, 551 F.2d 44 (4th Cir. 1977) (reasonable psychiatric care may be required); Newman v. Alabama, 559 F.2d 283, 291 (5th Cir. 1977) (rehabilitative programs required as part of remedy for overall unconstitutional conditions); French v. Owens, 538 F.Supp. 910 (S.D. Ind. 1982) (inadequate fire protection violates Eighth Amendment); Hutto v. Finney, 437 U.S. 678 (1978) (limit on time spent in isolation upheld because of poor conditions of confinement); Withers v. Levine, 449 F.Supp. 473, 477 (D.Md. 1978), aff'd 615 F.2d 158 (4th Cir. 1980) (improvements in inadequate classification system required); Spain v. Procunier, 600 F.2d 189 (9th Cir. 1979) (limits on physical restraints).

STANDARD FOR REVIEW

This Court's primary task, in determining whether or not to enter a proposed compromise of a class action, is to determine whether or not the proposed settlement is fair, adequate and reasonable, in light of the respective parties' probabilities of success in a trial on the merits of the claims in the action. Flinn v. FMC Corporation, 528 F.2d 1169, 1172 (4th Cir. 1975), cert. den. 96 S.Ct. 1462 (1976). Where the litigation involves important constitutional rights, this Court must also ensure that the proposed compromise does not "undercut" those rights.

Flinn v. FMC Corporation, 528 F.2d at 1174; Armstrong v. Board of School Directors, 616 F.2d 305, 319 (7th Cir. 1980). If appropriate, the Court may propose modification of the proposed compromise. Cotton v. Hinton, 559 F.2d 1326 (5th Cir. 1983).

DISCUSSION

The parties are confident that the standards and procedures proposed for these problems fall well within the remedies which could reasonably be ordered by a court following a trial on the merits of these claims. Furthermore, a raft of guidelines and "checks and balances" included in the Decree ensure that compliance may be closely monitored both for accuracy and for effectiveness. These safety measures include specific standards, a series of time limits, regular reports to the parties and the courts, continuing discovery power throughout enforcement, use of review and recommendations of various experts, and separate approval of many of the individual compliance plans by the parties and the Court.

NOTICE TO THE CLASS

The joint motion also asks this Court to issue the attached notice of the proposed compromise to the class members in this action. Generally, the notice of a proposed settlement of a class action must be reasonably calculated to inform interested parties of the pendency of the action, the general contents of the proposal, and class members' opportunity to present objections. Mendoza v. Tucson School District No. 1, 623 F.2d

1338 (10th Cir. 1980), cert. den. 450 U.S. 912 (198);
Grunin v. International House of Pancakes, 513 F.2d 114 (7th Cir.
1975), cert. den. 423 U.S. 864 (197). The notice proposed in
this action meets these criteria: it gives an accurate general
summary of this litigation and the proposed compromise, specific
details to how members of the class may easily obtain the
proposal itself, and specific details as to how members may
submit their comments and objections.

On the basis of the foregoing, and the grounds stated in the
parties' joint motion, the parties respectfully request that
their joint motion be granted.

Respectfully submitted this ____ day of February, 1985.

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BY: _____
FOR THE PLAINTIFFS

FOR THE DEFENDANTS

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FOR THE DISTRICT OF SOUTH CAROLINA
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GARY WAYNE NELSON, et al.,)
) Civil Action No. 82-876
 Plaintiffs,)
))
vs.))
))
WILLIAM D. LEEKE, et al.,) ORDER
))
 Defendants.)
_____)

The parties to this action having, by counsel, submitted joint motions to certify this action as a class action and to enter a Consent Decree in compromise of this class action, and this Court having considered the Motions and being sufficiently advised,

IT IS HEREBY ORDERED:

1. That this action be and hereby is certified as a class action, with the class of Plaintiffs to consist of all persons sentenced or confined at present or in the future in the custody of the South Carolina Department of Corrections;
2. That notice of the proposed compromise Consent Decree be shall given to members of the class, including all persons presently confined in institutions of the South Carolina Department of Corrections;
3. That said notice shall consist of the attached document, "Notice of Consent Decree", and the following procedures:

a. Prominent posting and display of the "Notice of Consent Decree" and the Consent Decree itself, in all living areas and institutional libraries of each institution of the South Carolina Department of Corrections, beginning on the following date: _____ and continuing for at least forty days thereafter;

b. Publication of the "Notice of Consent Decree" in The State Newspaper and Intercom, at least once each week for four weeks, commencing on the following date: _____;

c. Provision of a copy of the Consent Decree to any prisoner/member of the class who submits, to a Warden of the South Carolina Department of Corrections or to Richard Stroker, a written request for a copy;

d. Payment by the Defendants of all costs associated with the foregoing notice procedures.

4. That a hearing shall be held before this Court, for the review of all comments submitted pursuant to the foregoing Notice and for the determination of whether or not the Consent Decree provides a fair, adequate and reasonable compromise of the contested claims of this action and should be entered as an Order of this Court.

5. That said hearing shall be held before this Court on the ___ day of _____, 1985 at the hour of __:__, in Courtroom __, United States Courthouse, Assembly Street, Columbia, South Carolina.

IT IS SO ORDERED this ___ day of _____, 1985.

United States District Court Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

GARY WAYNE NELSON, et al.,)
) Civil Action No. 82-876
 Plaintiffs,)
))
vs.))
) NOTICE OF
WILLIAM D. LEEKE, et al.,) CONSENT DECREE
))
 Defendants.)
))

TO: ALL PERSONS NOW OR IN THE FUTURE SENTENCED OR CONFINED IN THE CUSTODY OF THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS OR IMPRISONED IN THE INSTITUTIONS OF THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS.

PLEASE TAKE NOTICE OF THE FOLLOWING:

Proposed Compromise

A Consent Decree has been proposed as a compromise of the claims raised in the class action lawsuit Nelson v. Leeke (Civil Action No. 82-876, filed in the United States District Court for the District of South Carolina, Columbia Division).

By an Order of the United States District Court, Hon. Judge C. Weston Houck, the Court has directed that notice of the Consent Decree proposed as resolution of this action be given to all members of the class potentially affected by this lawsuit,

including all persons now imprisoned in institutions of the South Carolina Department of Corrections.

Description of this case

This lawsuit was filed in 1982 by prisoners at the Central Correctional Institution in Columbia, South Carolina. The Complaint filed in this action alleged that the South Carolina Department of Corrections as a whole is overcrowded, that this overcrowding exists to such an extent that the conditions in the Department of Corrections violate the Eighth Amendment to the United States Constitution, and that the Plaintiff was subject to this overcrowding at Central Correctional Institution and-- through possible transfer-- at other institutions as well.

An Amended Complaint submitted in this action alleged that the action was brought pursuant to 42 U.S.C. 1983 and that the overcrowding in the prisons of the South Carolina Department of Corrections results in cruel and unusual conditions. The Amended Complaint listed sixty different examples of the allegedly unconstitutional conditions resulting from overcrowding. These sixty examples are generally listed below:

(1) Failure to provide the basic necessities for personal hygiene, (2) failure to provide adequate clothing, (3) failure to provide adequate laundry services, (4) failure to provide necessary cleaning supplies, (5) failure to provide adequate medical services, (6) failure to provide certain medicinal items, (7) forcing prisoners to engage in illicit acts in order to obtain funds to purchase said items, (8) housing of prisoners

with infectious diseases within the general population, (9) reigns of terror due to inadequate staff and security, (10) inadequate classification systems, (11) denial of equal protection, (12) control of prisoners by other prisoners, (13) housing prisoners in institutions with unsafe buildings.

(14) Insufficient living space, (15) insufficient personal storage space, (16) insufficient ventilation and heat, (17) insufficient treatment for psychologically ill prisoners, (18) housing of psychologically ill prisoners within general population, (19) failure to protect other prisoners from violence by psychologically ill prisoners, (20) lack of meaningful jobs, (21) lack of meaningful vocational programs, (22) unsafe prisons.

(23) Inadequate law library facilities, (24) lack of assistance in the preparation and filing of legal documents, (25) failure to provide legal supplies, (26) inadequate hours of operation of law libraries, (27) ineffective rodent and pest control, (28) inadequate lighting, (29) inadequate accommodations for handicapped prisoners, (30) inadequate mail delivery, (31) insufficient security for property.

(32) Unhealthy food preparation environment, (33) inadequate food preparation training, (34) inadequate medical screening of food preparation workers, (35) unwholesome and unappetizing food, (36) overburdened physical plants, (37) forcing prisoners to pay for maintenance services and repairs, (38) unclean environment for meals, (39) unclean food utensils, (40) unclean drinking cups, (41) inadequate foods and liquids, (42) inadequate

counseling programs, (43) ineffective grievance mechanism, (44) retaliation against prisoners who file grievances.

Finally, the following are the remaining examples of allegedly unconstitutional conditions identified in the Amended Complaint as being caused by overcrowding: (45) - (48) promotion of homosexual aggression, (49) inadequate noise control, (50) - (52) operation of exploitive canteens, (53) prisoners in authority over other prisoners, (54) denial of access to knowledge of the rules and policies governing prisoners' activities, (55) insufficient incentive pay, (56) racial segregation and violation of equal protection, (57) lack of dental care, (58) infliction of unnecessary and wanton pain, (59) deprivations of basic human needs, and (60) overcrowding in violation of the Eighth Amendment.

The Amended Complaint asked the Court to issue injunctions and temporary restraining orders against the abuses identified above and also asked "that this Court grant the necessary short-term and long-term relief it deems proper and necessary".

The course of the lawsuit

The Plaintiffs filed motions for appointment of counsel, certification of the case as a class action, temporary restraining orders, and to amend the complaint (as described above). The Defendants filed a motion to dismiss the case. None of these motions have been decided by this Court, except that the Court has granted a recent joint motion by the parties to certify

this case as a class action.

In the beginning of 1983, volunteer attorneys for the Plaintiffs, with the direction and permission of the named Plaintiffs and with direction and consultation of other members of the Plaintiff class, began to meet with attorneys for the Defendants, to discuss possible compromise and resolution of the claims raised in this action. Over a period of twenty months and in over twenty separate meetings, counsel for the parties discussed all aspects of prison over-crowding and possible remedies for these problems.

Description of the Consent Decree

On January 8, 1985, the parties signed a one-hundred-sixty-nine-page Consent Decree which proposes remedies for over fifteen aspects of the problems of over-crowding, including: crowded cells and wards, time-spent-in-cell, use of alternatives to cells and wards, construction and renovation of additional housing space, determination of total capacity of each institution, assignment of security staff, provision of clothes and supplies, provision of medical-mental-and-dental health services, provision of meaningful activity, access to the courts and to policies and procedures, grievance procedure, fire safety, time-spent-in-lock-up, classification of prisoners to housing and programs, discrimination, differentiation between men and women's institutions, maintenance of family ties, use of physical restraints during transport, provision of food services, environmental sanitation, environmental and physical conditions

and inspection and repair of living space, and out-moded facilities.

The remedies contained in the Consent Decree each involve separate time limits, varying from thirty days to five years.

The Consent Decree (a) identifies specific standards for regulating each of these areas, including various standards adopted by the American Correctional Association and National Fire Protection Code, (b) requires periodic submissions to all parties and to this Court regarding progress toward the timetables set out in the Decree, and (c) requires approval of specific plans to be submitted for portions of these future remedies.

Effect on other lawsuits

The Consent Decree would not foreclose any individual member of the class from bringing an action for money damages relating to injuries experienced by that individual. The Consent Decree would preclude members of the class from bringing different class actions seeking injunctions concerning any of the conditions specifically identified and addressed in the Consent Decree. Items not identified or addressed in the Consent Decree may be the subject of other class actions. The Consent Decree also does not resolve any issues concerning use of long-term segregation, inmate pay in the future, or increases in costs of hygiene supplies.

Obtaining copies of the Consent Decree

Copies of the Consent Decree are to be posted and displayed in all living areas and institutional libraries in institutions of the South Carolina Department of Corrections. In addition, any prisoner in the South Carolina Department of Corrections may obtain an individual copy of the Consent Decree by submitting a written request to any Warden or to Richard Stroker, P.O. Box 21787, Columbia, S.C. 29211-1787.

Comments on or objections to the Consent Decree

Any member of the class may submit written comments or objections to the Consent Decree proposed as compromise of this action. All comments or objections must be supported by specific facts, for the Court cannot evaluate and will not consider either general, unsupported objections or conclusory statements objecting to the entirety of the Consent Decree.

All comments or objections should be mailed to John W. Williams, Clerk, United States District Court, P.O. Box 867, Columbia, South Carolina 29202 no later than the following date:

_____ . Any comments received by that date, which contain the specific details required, will be considered by the Court. Comments received after that date will not be considered by the Court. All comments received will be available in the Clerk's office, for review by all counsel and the public.

Review by the Court

The Court, in its discretion, may decide later to receive testimony from persons who have submitted written comments which

are legible and specific enough to be meaningful to the Court.

If the Court determines, after reviewing the Consent Decree and all comments and objections submitted, that the Consent Decree constitutes a fair, adequate and reasonable compromise of the claims set forth in this action, the Consent Decree shall be approved and adopted as an Order of this Court. All class members will be bound by the judgment in this action.

Attorneys for the Plaintiff Class

In addition, any member of the Plaintiff/prisoner class may contact the attorneys for the Plaintiffs by writing or calling them at the following addresses and phone numbers:

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This Notice has been issued by this Court pursuant to F.R.C.P. 23(3) and the Joint Motion to Enter Consent Decree,

filed by the parties to this action.

This ___ day of _____, 1985.

United States District Judge