

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
1846 ASSEMBLY STREET
COLUMBIA 29202

POST OFFICE BOX 867

(803) 765-5816
(FTS) 677-5816

Gary wayne Nelson

Civil Action No. 3:82-0876-2K

-vs-

Columbia Division

William D. Leeke Commissioner S. C.
Department of Corrections and Members
of the S. C. Board of Corrections

NOTICE OF FILING

Please take notice that I have this date filed the Order of the
Honorable C. Weston Houck that action be certified as
a class action. Certified copies of Order enclosed.

JOHN W. WILLIAMS, CLERK

By: Lori F. Goldie
LORI F. GOLDIE
Deputy Clerk

DATE: February 8, 1985

TO: W. Gaston Fairey, Esquire
Steven Ney, Esquire
Christine Freeman, Esquire
Larry C. Batson, Esquire
Kenneth P. Woodington, Esquire
Gary Nelson

Plyler v. Leeke



PC-SC-002-006

ENTERED
2-8-85

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

FILED

FEB 8 - 1985

COLUMBIA DIVISION

GARY WAYNE NELSON, et al.,
Plaintiffs,
vs.
WILLIAM D. LEEKE, et al.
Defendants.

82-CA-876-2

JOHN W. WILLIAMS, CLERK
COLUMBIA, S. C.

ORDER CERTIFYING CLASS

This is an order certifying the members of a class in this action, a civil rights action seeking, inter alia, declaratory injunctive relief against officials at the South Carolina Department of Corrections.

Class relief is based only on claims for declaratory and injunctive relief, as this action does not seek individual monetary relief.

The parties to this action have informed this Court that they have arrived at a proposed settlement which would dispose of the declaratory and injunctive relief, in this action.

As an element of the settlement agreement, the parties have agreed upon certification of the class and its membership. The parties agree, and this Court finds, that the requisite elements of certification as a class are present, based upon the following considerations.

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1. Numerosity: The class is comprised of all adults who are presently or may be confined in the Department of Corrections. Though no numerical formula is required for class certification, it is clear that the number of adult citizens who potentially face confinement to the Department of Corrections' facilities under such circumstances is considerable.

Moreover, adults involved with the Department of Corrections are transitory for the most part; they move in and out of custody of the Department of Corrections and in and out of the facilities of the Department. Such rotation of the class membership makes joinder so impractical as to require certification as a class. See, e.g., Santiago v. City of Philadelphia, 72 F.R.D. 619, (E.D.Pa. 1976).

2. Commonality of claims: Rule 23(a)(2) of the Federal Court Rules of Civil Procedure requires common questions of law or fact for certification of the class. Milonas v. Williams, 691 F.2d 931 (10th Cir. 1982); Taliaferro v. State Council of Higher Education, 372 F.Supp. 1378 (E.D.Va. 1974).

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The Plaintiffs allege that as a group, identified as adult offenders incarcerated in the Department of Corrections, they were treated differently from other adult citizens in the State of South Carolina and subjected to a course of conduct common to them as members of that group;

claiming their confinement under such circumstances as alleged in their Complaint was legally and constitutionally improper. Thus there are questions of law and fact common to the group, represented by these named Plaintiffs. The fact that individual differences may exist between individual class members is not controlling. Martarella v. Kelley, 349 F.Supp. 575 (S.D.N.Y. 1972).

3. Typical claims: Rule 23(a)(3) requires as an element of class certification that the claims of the named plaintiffs be typical of the class. This requirement is met if the claims of the class representatives and class members are based on the same legal theory. 7 Wright and Miller, Federal Practice and Procedure, §1764 at 90 (Supp. 1975).

It is apparent that the complaints alleged against the Department of Corrections have as their nexus the Department's treatment of citizens convicted of criminal conduct. It is therefore likely that any alleged improper policies or practices, if the evidence supports a finding that the Department's policies or practices were improper, or any remedial measures undertaken as a result of this suit, will typically affect adult citizens adjudicated guilty of criminal conduct and confined within the Department. Thus the requirements of Rule 23(a)(3) are satisfied. See, e.g. Santiago v. City of Philadelphia, supra, 72 F.R.D. at 625.

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4. Representative protection of the interests of the class: Rule 23(a)(4) requires as an element of class certification that the representative parties demonstrate their ability to fairly and adequately protect the interests of the class.

The purpose of the rule is to insure that the scope of the interests of the representatives of the class are as broad as the interests of the class as a whole, and that they will vigorously pursue the litigation. There are principally two considerations in making such a determination: first, the qualifications, experience, and ability of the plaintiffs' attorneys to conduct the litigation; and second, whether the named plaintiffs' interests are antagonistic to the interests of other members of the class. Barrett v. W. T. Grant Company, 518 F.2d 543, 548 (4th Cir. 1975).

The Plaintiffs' attorneys are experienced in litigating such matters. The American Civil Liberties Union National Prison Project is a non-profit organization devoted to representation of individuals in civil rights actions dealing with the rights of confined citizens. The Southern Prisoner's Defense Committee is a public interest law firm specializing in litigation on behalf of incarcerated adults. The American Civil Liberties Union of South Carolina is also a non-profit organization devoted to representation of

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individuals in civil rights actions. All these organizations have adequate resources available to pursue this action on behalf of the named Plaintiffs and the class, especially in the aggregate.

The interests of the named Plaintiffs are not antagonistic to the interests of the other members of the class, for the reasons stated above. The named Plaintiffs allege that they have been subjected to the same practices, policies, acts and omissions of the Defendants as the other members of the class.

5. Appropriateness of declaratory and injunctive relief in relation to the parties opposite the class: Rule 23(b)(2) requires as an element of class certification a demonstration that the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

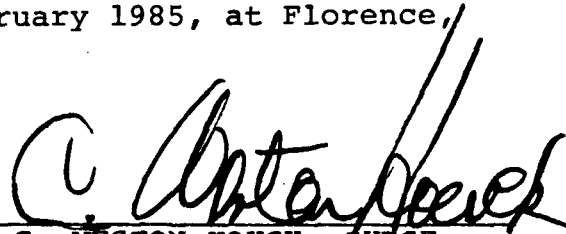
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This rule provides a vehicle for members of a class to obtain declaratory and injunctive relief from violations of civil and constitutional rights resulting from action or inaction affecting the class. See, Chisholm v. United States Postal Service, 665 F.2d 482, 492 (4th Cir. 1981). Its primary focus is whether the actions of the opposing party are "generally applicable" to the class. 3B Moore's

Federal Practice, §23.40 at 23-651 (1969).

Here, the Complaint alleges that the Plaintiffs have been injured by the practices, policies, acts and omissions of the Defendants. All class members were potentially exposed to these conditions, patterns and practices. Therefore, the requirements of Rule 23(b)(2) have been met.

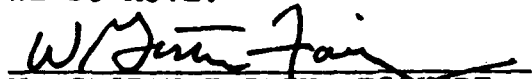
IT IS THEREFORE ORDERED that this action be certified as a class action under Rule 23 of the Federal Rules of Civil Procedure. The class shall be comprised of adult prisoners committed to the South Carolina Department of Corrections, those who are presently committed to the Department, or those who would be committed to the Department in the future.

This the 7th day of February 1985, at Florence, South Carolina.


C. WESTON HOUCK, JUDGE
United States District Court
For the ~~State~~ District of South Carolina


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WE SO MOVE:

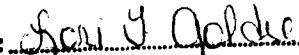

W. GASTON FAIREY, ESQUIRE
For American Civil Liberties
Union of South Carolina
Post Office Box 8443
Columbia, SC 29202

STEVEN NEY, ESQUIRE
Chief Staff Counsel
National Prison Project

WE CONSENT:


LARRY C. BATSON, ESQUIRE
Chief Legal Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, SC 29221


KENNETH P. WOODINGTON, ESQUIRE
Senior Assistant Attorney General
Attorney General's Office for
Attest: John W. Williams, Clerk

6 By: 
Deputy Clerk

1346 Connecticut Avenue, NW
Suite 1031
Washington, D.C. 20036

the State of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211

CHRISTINE FREEMAN, ESQUIRE
Southern Prisoner's Defense Committee
Suite 600, Healey Building
57 Forsyth Street, NW
Atlanta, GA 30303

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P.H.