



PC-SD-001-001

6/7/83

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

ROGER G. FLITTIE and WILLIAM R. *
CODY, individually and on *
behalf of all other persons *
similarly situated, *
Plaintiffs, *

CIV. 80-4039

VS

CAROLE HILLARD, President of *
the Board of Charities and *
Corrections; FRANK BROST, *
Vice President; TED SPAULDING, *
Member; D. A. GEHLHOFF, Member; *
LYLE SWENSON, Member; JAMES *
SMITH, Executive Secretary; *
HERMAN SOLEM, Warden of the *
South Dakota State Penitentiary; *
sued individually and in their *
official capacities, *

SECOND AMENDED COMPLAINT

JURISDICTION

The jurisdiction of this court is evoked pursuant to and in accordance with the provisions of 28 U.S.C. §§ 1343, 2201 and 2202; 42 U.S.C. §§ 1983, 1985, 1988, and the Constitution of the United States, specifically but not limited to the First, Fifth, Sixth, Eighth and Fourteenth Amendments thereto.

PARTIES

The representative plaintiffs are Roger G. Flittie and William R. Cody. These plaintiffs are prisoners housed within the general population of the South Dakota State Penitentiary at Sioux Falls, South Dakota.

The defendants are individuals officially responsible for the administration, supervision and maintenance of the South Dakota State Penitentiary at Sioux Falls, South Dakota.

Defendant Carole Hillard is the President of the Board of Charities and Corrections. The Board of Charities and Corrections is divided into divisions of responsibility, one being the Division of Corrections. The Board of Charities and Corrections is responsible for the administration, control, supervision and maintenance of the South Dakota State Penitentiary at Sioux Falls, South Dakota, and the Women's Correctional Facility at Yankton, South Dakota. Defendant Frank Brost is the Vice President of the Board of Charities and Corrections. Defendant Lyle Swenson is a member of the Board of Charities and Corrections. Defendant Ted Spaulding is a member of the Board of Charities and Corrections. Defendant D. A. Gehlhoff is a member of the Board of Charities and Corrections. Defendant James Smith is the executive secretary of the Board of Charities and Corrections. Defendant Herman Solem is the warden of the South Dakota State Penitentiary, and as such is charged with the responsibility of the day to day operation, safety, custody, care and control of the inmates residing in the South Dakota State Penitentiary.

CLASS ACTION

Claimants bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves and all other persons who are now or will be incarcerated in the South Dakota State Penitentiary at Sioux Falls, South Dakota or the Women's Correctional Facility at Yankton, South Dakota. The persons comprising the class are so numerous that joinder of all members is impractical. There are questions of fact and law common to the class, the claims of the plaintiffs are typical of

the claims of the class and as representatives of the class, these plaintiffs will fairly and adequately protect the interests of the class. Adjudication with respect to the individual members of the class would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication. The parties opposing the class have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief to the class as a whole. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and the class action is superior to other available methods for the fair and efficient adjudication of the controversy. Prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications and would establish incompatible standards for the defendants and their agents; in addition, it would result in multiple litigation which would overburden the judicial system.

FACTS

Defendants, their agents and employees, acting in concert or under color of law as state officers, have conspired and agreed amongst themselves to violate the civil and human rights of the plaintiffs and the class they represent by causing them to be subjected to grievous bodily harm, cruel and unusual punishment, and violations of their rights under the First, Fifth, Sixth, Eighth and Fourteenth Amendments to the United

States Constitution, as more fully set forth in the following statement of facts.

FIRE HAZARD

(1) Prisoners residing in west, east, and federal hall cell blocks at the South Dakota State Penitentiary are in extreme danger of death and serious injury from fire and smoke inhalation. The cell blocks are maintained in violation of state, county and municipal fire ordinances. These named cell blocks are overcrowded and not properly ventilated. The cell blocks are not equipped with sprinkler systems, smoke alarms or any other detection devices. Prisoners commonly possess combustible materials which are frequently used to start fires within the cell block. The danger presented by fire and smoke inhalation is particularly acute between the hours of 9:00 p.m., and 6:30 a.m.

Between the hours of 9:00 p.m., and 6:30 a.m., all prisoners are locked in their cells, located in the cell blocks. Each cell is individually locked and in addition each cell is top-locked with a separate and distinct lock. Between the hours of 9:00 p.m., and 6:30 a.m., staffing is at a minimum. The correctional officers on duty in the individual cell blocks during these hours do not have any keys on their persons. If a major fire occurred in any of the cell blocks during these hours, death and/or serious injury would be suffered by many prisoners.

SAFETY AND HEALTH HAZARDS

(2) Milk fed to prisoners at the Penitentiary at Sioux Falls, South Dakota is pasteurized at the Penitentiary. The pasteurization process used is not safe.

There are numerous safety hazards in the industrial shops which subject prisoners working in these shops to possible serious injury or death.

The ventilation in the welding shop and paint booths is inadequate.

The plumbing system at the Penitentiary is inadequate.

The penitentiary has no written policies for emergencies that might occur except fires.

MEDICAL, DENTAL AND PSYCHOLOGICAL CARE

(3) The existing medical facility (prison hospital) is currently staffed by two (2) physicians and one (1) physician's assistant, each of whom is only available to the inmates one-half day per week. The Prison lacks 24-hour on-site coverage by nurses or other medically trained staff. There are no adequate written protocols and policies. There is no crash cart for medical emergencies. There is inadequate quality control for the infirmary laboratory and for general medical care. Medical records are inadequately maintained. Untrained inmate workers provide medical and dental services, including the taking of x-rays; have access to the medical records of other inmates; provide emergency medical care; and are involved in the scheduling of other inmates for health care. The prison requires payment from inmates for providing necessary medical and dental services, and denies necessary medical and dental services on the

basis of cost. At times inmates experience severe pain and are nonetheless denied medically indicated medication. Inmates with seizure disorders are at times denied necessary anti-convulsive medications.

(4) One psychiatrist is available one day per week. The psychiatrist performs mainly a screening function for serious mental disorders. He does not generally provide on-going therapy aside from medication.

(5) The South Dakota State Penitentiary staffs its guidance unit with (1) psychologist and seven (7) counselors. Most of the psychologist's time is taken in assessing new admissions to the Penitentiary. The counselor load is approximately seventy-five (75) inmates per counselor. Accordingly, there is a lack of necessary treatment available for inmates with serious psychological disorders.

(6) The above conditions, taken together, constitute deliberate indifference to serious medical needs.

PHYSICAL STRUCTURE

(7) Cell blocks known as federal, east and west hall at the South Dakota State Penitentiary are maintained in such a manner as to be unfit for human habitation. The cell blocks are overcrowded and ventilation is poor. Some windows are without screens. In the winter the temperatures in these cell blocks are extreme; some heating units and thermostats are not in working order. There is no hot water in the cell block known as federal hall.

(8) Approximately 100 inmates are double-celled in cells varying from 50 to 60 square feet in size. Among the inmates subjected to double-celling are inmates in protective custody who are required to remain in their cells up to 23 hours a day. Newly admitted inmates who have not been screened for mental or physical health problems or propensity for violence are also subject to double celling.

LAW LIBRARY

(9) The law library at the South Dakota State Penitentiary is in violation of the orders entered in the case of Crow v. Erickson, Civil No. 72-4102, U.S. District Court, South Dakota. Inmates are not provided adequate access to the law library through the assistance of trained inmate personnel. There is no law library at the South Dakota State Women's Corrections Facility at Yankton, South Dakota; women confined at the facility are denied any meaningful access to a law library.

PROTECTIVE CUSTODY

(10) Inmates in protective custody are not allowed adequate exercise or recreation or protection in activities outside their cells. Most inmates in protective custody do not have jobs available, and protective custody inmates are denied access to rehabilitative programs available to other inmates.

(11) No effective administrative remedies are available to the plaintiffs to address these grievances. Defendants have had ample opportunity to institute improvements in these conditions and practices but have failed to do so. Plaintiffs have no plain, adequate, or complete remedy at law to redress

these grievances and plaintiffs and the class they represent will continue to suffer irreparable harm from the conditions and practices alleged herein unless and until the declaratory and injunctive relief sought herein is granted by this court. Defendants past and continuing conduct will irreparably injure plaintiffs' fundamental Constitutional rights.

CAUSES OF ACTION

The confinement of the plaintiffs and the class they represent at the South Dakota State Penitentiary under the conditions alleged in this complaint amounts to the infliction of cruel and unusual punishment and denies them the right of meaningful access to the court in violation of their rights under the First, Fifth, Sixth, Fifth, and Fourteenth Amendments to the United States Constitution. Women prisoners and prisoners in protective custody are also denied the equal protection of the laws guaranteed to them by the Fourteenth Amendment to the United States Constitution.

PRAYER

WHEREFORE, the plaintiffs, on behalf of themselves and the class they represent, pray as follows:

- a. That the Court assume jurisdiction of the matter set forth herein.
- b. That the Court determine by order pursuant to Rule 23 of the Federal Rules of Civil Procedure that this action be maintained as a class action.
- c. That the Court enter a declaratory judgment pursuant to 28 U.S.C. §§ 2201, 2202 and Rule 57 of the Federal

Rules of Civil Procedure, declaring that the acts and omissions of the defendants alleged in this complaint violate the rights of the plaintiffs and the class they represent guaranteed by the First, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

d. That the Court enter an order permanently enjoining the defendants from failing to provide the plaintiffs and the class they represent with adequate medical care and treatment by competent physicians and other medical personnel; and that the Court further order that the defendants prepare a plan to provide adequate medical and dental care, which plan shall provide, at a minimum, for the following:

- i. 24 hour on-site coverage by nurses or other medically trained staff;
- ii. A crash cart for the provision of emergency medical care;
- iii. A system for quality control in the medical laboratory and in the health care delivery system in general;
- iv. A system for the adequate maintenance of medical records;
- v. A prohibition on the use of inmate workers for:
 - 1) the provision of medical or dental services;
 - 2) the scheduling of inmates seeking health care; and
 - 3) the performance of any task that allows inmate workers access to the medical records or related records of any other inmate.

vi. Necessary medical and dental services shall be provided at no cost to inmates and necessary medical and dental services shall not be denied to inmates on the basis of cost;

vii. Medically necessary pain and anti-convulsive medications shall be provided to inmates as such are medically necessary.

viii. Adequate psychological and psychiatric services shall be provided to inmates.

e. That the Court issue an injunction ordering the defendants, their successors in office, agents and employees to install sprinkler systems in each cell of the cell blocks in east hall, west hall and federal hall; to install smoke alarms in each cell of cell blocks in east hall, west hall and federal hall; to install new locking systems in east hall, west hall and federal hall so that prisoners can be evacuated from these cell blocks in case of a fire or other emergency; to construct an additional fire exit for each cell block; and to develop a written evacuation plan that will assure that all prisoners in each cell block can be evacuated from their cells within five minutes; to assign more than two (2) correctional officers to each cell block between the hours of 9:00 p.m. and 6:00 a.m.

f. That the Court issue an injunction ordering the defendants, their successors in office, their employees and agents to repair all windows in the cell blocks so that they can be opened and closed for purposes of ventilation; to place screens on all windows in cell blocks; and to repair all heaters

and thermostats and maintain them in such a manner as to allow for a uniform acceptable temperature throughout each cell block.

g. That the Court issue an injunction ordering the Defendants, their successors in office, their employees and agents to expand and update the law library so that it meets the standards provided for in the orders issued in Crow v. Erickson and to provide more trained inmate personnel to assist inmates in doing legal research and preparing pleadings; and that the defendants, their successors in office, their employees and agents provide substantially equal access to a law library and trained assistance for the women confined at the Women's Correctional Facility at Yankton, South Dakota.

h. That the Court issue an injunction ordering the defendants, their successors in office, their employees and agents to provide adequate programming including jobs, vocational opportunities, recreation, exercise and protection for inmates housed in the protective custody unit.

i. That the Court issue an injunction ordering the defendants, their successors in office, their employees and agents to prepare a plan to end the practice of double-celling inmates at the Penitentiary.

j. That the Court order the defendants to pay the costs, expenses and attorneys fees for this action.

k. That the Court grant such and further relief as this Court deems just and proper.

DATED this 1st day of June, 1982.

Respectfully submitted,

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