

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

FILED

March 10, 1975

William J. Srstka,  
Clerk

By DeAnn Noteboom,  
Deputy

Bernard Crowe, et al., ) CIV72-4101

) Plaintiffs )

vs. )

) FINDINGS OF FACT AND  
) CONCLUSIONS OF LAW  
) AND ORDER

Don R. Erickson, et al., )

) Defendants )

*Page 33*

Plaintiffs' Application for an Order to Show Cause Why Defendants Should Not be Held in Contempt, dated December 19, 1974, having come on for hearing pursuant to notice on the 29th day of January, 1975, at 9:30 AM, and the Court having listened to testimony in support of the Application and upon Plaintiffs' Motion for Reconsideration, and having considered all of the documents on file herein, including the parties' Stipulation of Facts, and having heard and considered argument of counsel, the Court directed counsel for plaintiffs and defendants to attempt to agree on a proposed order. Counsel failed to agree on such an order and both submitted proposed orders. Having rejected both proposed orders, the Court makes the following findings of fact, conclusions of law and order:

1. This Court's Supplemental Order of November 23, 1973, provided for a prehearing detention procedure to be utilized by the defendants, prior to an inmate's disciplinary hearing, whenever there exists certain specific circumstances which constitute a

which sets forth the specific circumstances of inmate conduct which constitute threats to security or discipline, and which forms the basis for holding inmates in prehearing detention, prior to their disciplinary hearings.

3. On December 8, 1974, Warden Parkinson charged inmates Haggy, Bennett, Catlette, and Bagley with violating certain prison disciplinary regulations. Rather than permitting those inmates to remain at their existing status prior to their disciplinary hearings, each inmate was removed from his cell and placed in prehearing detention in the Adjustment Center. The official reason given on the defendants' DETENTION ORDER AND REVIEW forms for each inmate's placement in prehearing detention was "The inmate is violent, struggling or creating sufficient disturbance to indicate he is not in control of himself."

Pursuant to the procedures provided for in the November 23, 1973, Supplemental Order, Warden Parkinson conducted a 24-hour review on each inmate and ordered their continued detention until the date of their disciplinary hearings.

4. At the hearing of January 29, 1975, on this matter, plaintiffs introduced into evidence a Stipulation of Facts entered into by the parties. The stipulation indicates that at none of the times in question from December 8 to January 17 were any of the above inmates "violent, struggling or creating sufficient disturbance to indicate he is not in control of himself".

5. The Detention Order and Review Form requires that the appropriate penitentiary official give one of four possible reasons for ordering prehearing detention. None of the four possible reasons was strictly applicable to the inmates involved

require, a recitation of the true and precise reason for holding inmates in prehearing detention.

7. The inmates' conduct constituted a threat to prison discipline which is a valid reason under this Court's order of November 23, 1973, for holding the inmates in prehearing detention.

8. The defendants have complied with the provisions of the Supplemental Order filed November 23, 1973, concerning prehearing detention procedures, including a review of the report resulting in a prehearing detention, within twenty-four hours of an inmate's detention.

9. On occasion the disciplinary board's hearing is continued to extend beyond four days from the date of the alleged rule infraction or violation, either at the request of the inmate or his counsellor, in which case the prehearing detention has been extended without a further review.

NOW, THEREFORE, it is hereby

ORDERED that Paragraph 3 of the Supplemental Order of November 23, 1973, is hereby amended and modified as follows:

Within twenty-four hours of an inmate's detention, the Warden or his designee must review the Rule Infraction Report resulting in the inmate's detention and the inmate's conduct while confined in the Adjustment Center and make a determination as to whether continued detention is required until a disciplinary board hearing. Where continued detention is ordered, such order must be recorded in writing and a copy delivered to the inmate within the twenty-four hour period. Failure to review the temporary prehearing detention or to deliver a Notice of Violation within twenty-four hours shall automatically return the inmate to his prior status with the reinstatement of all prior privileges.

If, due to a request by the inmate for a continuance, his disciplinary board hearing is not held on the scheduled day, which shall be no sooner than four days nor later than seven days, exclusive of weekends and holidays, after the service of the Notice of Violation, then the Warden or his designee must conduct a Follow-Up Review on the

of the first Follow-Up Review, unless specifically requested by the inmate. If such a continuance is requested, the Warden or his designee must conduct a Follow-Up Review every third day, exclusive of week-ends and holidays, until the disciplinary hearing is held. Where continued detention is ordered, such order must be recorded in writing stating the reason for such follow-up detention and a copy thereof delivered to the inmate within twenty-four hours.

All Follow-Up Reviews shall be of the Rule Infraction Report and the inmate's conduct while confined to the Adjustment Center.

It is further

ORDERED that the Detention Order and Review Form be revised to provide a space for a recitation of the true and precise reason or reasons for holding inmates in prehearing detention, and that other administrative forms be developed as necessary to implement the procedures set forth in Paragraph 3 of the Supplemental Order of November 23, 1973, as amended and modified above.

It is further

ORDERED that the Application for Order to Show Cause Why Defendants Should Not Be Held In Contempt is in all respects denied, and the same is hereby dismissed.

Dated this 10th day of March, 1975.

BY THE COURT:

FRED J. RICHOL  
Chief Judge

ATTEST:

WILLIAM J. SRSTKA  
Clerk

By DEANN NOTEBOOM, Deputy (SEAL OF COURT)