

BRIEF BANK

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

ALFRED CONGDON, KAREEM)
OLAJUWON, LLOYD WASLOSKI,)
et al., on behalf of)
themselves and all others)
similarly situated,)

PLAINTIFFS,)

v.)

EDWARD MURRAY, Director,)
Virginia Department of)
Corrections and RAYMOND M.)
MUNCY, Warden, Virginia)
State Penitentiary,)

DEFENDANTS.)

Congdon v. Murray



PC-VA-003-001

CLASS ACTION COMPLAINT

PRELIMINARY STATEMENT

1. This class action complaint, filed on behalf of all prisoners who are now or will be incarcerated at the Virginia State Penitentiary, Richmond, alleges that defendants' failure to provide basic fire safety and environmental health and safety measures subjects prisoners to life-threatening conditions resulting in cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments to the Constitution of the United States.

JURISDICTION

2. This civil action seeking declaratory and injunctive relief is brought pursuant to 42 U.S.C. §1983, alleging that plaintiffs have been and continue to be deprived of rights secured by the Eighth and Fourteenth Amendments to the Constitution of the United States.

3. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331, 1343(3), and 2201.

VENUE

4. Venue in this district is proper pursuant to 28 U.S.C. §1391(a), in that defendants reside in this district, and plaintiffs' claims for relief arise in this district.

PARTIES

5. Plaintiffs Al Congdon, Kareem Olajuwon, and Lloyd Wasloski are prisoners currently confined in the Virginia State Penitentiary, Richmond.

6. Defendants are agents, officials, or employees of the Commonwealth of Virginia.

7. Defendant Edward Murray is Director of the Department of Corrections of the Commonwealth of Virginia. As such he is ultimately responsible for the operation of all prisons maintained by the Department of Corrections, including decisions concerning allocation of personnel and resources that directly affect the level of fire safety and environmental health at the Virginia State Penitentiary, Richmond.

8. Defendant R. M. Muncy is Warden of the Virginia State Penitentiary, Richmond. As such he is responsible for the daily operation of that facility, including decisions concerning allocation of personnel and resources that directly affect the level of fire safety and environmental health at that facility.

9. Defendants are sued individually and in their official capacities. At all relevant times, defendants have acted under color of state law.

CLASS ACTION ALLEGATIONS

10. This action is brought as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

11. Plaintiffs are representative members of the class composed of all persons who are now or who will in the future be confined at the Virginia State Penitentiary, Richmond (hereinafter "the Penitentiary").

12. The class is so numerous that joinder of all members of the class is impractical. The class currently comprises approximately 670 prisoners, and the prisoner population of the Penitentiary changes frequently.

13. Plaintiffs allege that conditions described in this complaint are common to all prisoners confined at the Penitentiary. The named plaintiffs are subjected daily to the same deprivations as the class as a whole.

14. Defendants' failure to take basic steps to insure fire safety and environmental health and safety at the Penitentiary presents questions of law common to the class as a whole.

15. Claims made by the class representatives involve allegations of denials of constitutional rights that are generally applicable to the class as a whole.

16. The named plaintiffs are members of the class and their claims are typical of those of all class members. Plaintiffs are represented by competent counsel who have successfully represented other prisoners in class actions in the Commonwealth and who will fairly and adequately represent the interests of the class as a whole.

17. Since the class numbers more than 600 prisoners, separate actions by individuals would in all likelihood result in inconsistent and varying decisions, which would give rise to conflicting and incompatible standards of conduct for the defendants.

18. The defendants have acted or have refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

A. FIRE SAFETY

19. Defendants fail to take basic steps to insure fire safety at the Penitentiary. Conditions at the Penitentiary present a serious danger of multiple loss of life in the event of a fire.

20. Prisoners are locked down 22 1/2 hours a day, six days a week, and 24 hours on the seventh day. Many of the cells house two prisoners.

21. There is an excess of combustible materials in the cells, including polyurethane pillows, which give off highly toxic fumes in the event of a fire.

22. Cells must be individually locked and unlocked. In C-Building, prisoners are individually padlocked into shower cages. Key control is haphazard, and it often takes staff several minutes to locate the key to a given cell.

23. There are no smoke detectors on any of the tiers. Smoke detectors in other areas are not operational.

24. There is a gas leak in the kitchen area of C-Building.

25. All housing areas have only one means of egress in the event of a fire.

26. There are serious electrical system deficiencies which create a threat to the health and welfare of the plaintiffs. Exposed electrical wiring is present throughout the facility, often in close proximity to water, presenting a risk of electrical fire or electrocution.

27. Boilers in the food services building are poorly maintained and are not monitored by qualified personnel, presenting an imminent danger of fire, explosion, and multiple loss of life.

28. The defendants have failed and refused to comply with basic fire code regulations of the Commonwealth of Virginia and with the Life Safety Code of the National Fire Protection Association.

B. ENVIRONMENTAL HEALTH AND SAFETY

29. Ventilation, sanitation, plumbing, and other aspects of the physical environment at the Penitentiary are totally incompatible with basic health and safety, and give rise to an imminent threat to the health and welfare of the plaintiff class.

30. The tier areas are filthy, with garbage and dirt on the floors, walls, and windows. Showers are dirty and mildewed. Prisoners are unable to obtain supplies to clean their cells.

31. Prisoners have difficulty getting toothpaste, underwear, and other personal hygiene items.

32. The Penitentiary, including food storage, preparation areas, and the infirmary, is infested with rats, mice, cockroaches, and other vermin.

33. In the summer, the heat and humidity are unbearable, particularly on the upper tiers. There is no functioning cooling system in place; in fact, the air vents sometimes blow hot air.

34. Mattresses are often dirty and torn, with stuffing leaking out.

35. A large number of window panes, including those in the infirmary wards, are broken or missing completely, making climate control impossible, and allowing the entry of insects and birds.

36. There are serious plumbing problems at the Penitentiary. There is standing water throughout the facility, including cell areas and food preparation areas.

37. Water leaks from the ceiling in several areas of the facility, including the food service building, infirmary, and medical isolation cells. Defendants have known of this problem for at least two years, but have taken no corrective action.

38. Pipe chases contain leaking valves and seals, sometimes in close proximity to exposed wiring. These areas are cluttered with debris and have no ventilation. In the Southeast Wing of B-Building there is a broken water main actively flooding the pipe chase.

39. There is a broken sewer line in a tunnel under the food service building. Sewer gas is present in several areas of the facility.

40. Plumbing is also inadequate in individual cells, with sinks and toilets frequently leaking, overflowing, or completely nonfunctional. Prisoners often must urinate and defecate in plastic bags.

41. Garbage disposal is improperly handled, attracting large numbers of rats and insects.

42. Cells have no ventilation, no hot water, and insufficient lighting. There is no lighting in the isolation cells in C-Building.

43. The lack of adequate ventilation, combined with the other housing conditions, presents a serious threat of the spread of airborne disease and contagion.

CAUSES OF ACTION

44. Defendants' acts and omissions as set forth above subject plaintiffs to life threatening conditions resulting in cruel and unusual punishment, in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States.

PRAYER FOR RELIEF

45. Plaintiffs and the class they represent have no adequate remedy at law to redress the wrongs suffered as set forth in this complaint. Plaintiffs have suffered and will continue to suffer irreparable injury as a result of the unlawful acts, omissions, policies, and practices of the defendants as alleged herein, unless plaintiffs are granted the relief they request. The need for relief is critical because the rights at issue are of paramount importance under the Constitution of the

United States, and because plaintiffs' health, safety, and lives are in imminent danger.

33. WHEREFORE, plaintiffs, on behalf of themselves and the class they represent, request that this Court grant them the following relief:

(a) certify the class of all prisoners who are now or will in the future be confined in the Virginia State Penitentiary, Richmond;

(b) adjudgé and declare that the acts, omissions, policies, and practices of the defendants set forth herein violate the Eighth and Fourteenth Amendments to the Constitution of the United States, which grant protection to the plaintiffs and the class they represent;

(c) order defendants, their agents, officials, employees, and all persons acting in concert with them under color of state law or otherwise, to immediately remove all prisoners from the Penitentiary, and to house them in facilities and under conditions where basic fire safety and environmental health and safety measures are taken;

(d) enjoin defendants, their agents, officials, employees, and all persons acting in concert with them under color of state law or otherwise, from continuing the unconstitutional acts, conditions, and practices set forth in this complaint, and from failing to provide constitutionally adequate fire safety and environmental health and safety measures;

(e) retain jurisdiction of this action until the unconstitutional conditions and practices set forth herein no longer exist and the Court is satisfied that they will no longer occur;

(f) grant plaintiffs the costs and expenses of maintaining this action, including reasonable attorneys' fees pursuant to 42 U.S.C. §1988; and

(g) grant any other relief that the Court deems just and proper.

Respectfully submitted,



Alvin J. Bronstein
Adjoa A. Aiyetoro
David C. Fathi
National Prison Project
of the ACLU Foundation
1875 Connecticut Ave. N.W., #410
Washington, DC 20009
(202) 234-4380

Stephen B. Pershing
ACLU Foundation of Virginia
6 North 6th St., #400
Richmond, VA 23219
(804) 644-8080

Attorneys for Plaintiffs

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