



PC-VA-005-001

~~CONFIDENTIAL~~

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

EVERETTE SHRADER, ALBERT BOISSEAU,)
KENT EDWIN EVANS, MERLON JOSEPH,)
DENNIS ADAMS, and RUSSELL VINNEDGE,)
on behalf of themselves and all)
others similarly situated,)

Plaintiffs,)

v.)

FRANKLIN WHITE, ROBERT M. LANDON,)
Acting Director, Virginia Department)
of Corrections, A.T. ROBINSON,)
Regional Administrator, Virginia)
Department of Corrections, JAMES P.)
MITCHELL, Superintendent, Virginia)
State Penitentiary, LEFTWICH REYNOLDS)
Assistant Superintendent, Virginia)
State Penitentiary, R.M. MUNCY,)
Institutional Security Chief,)
Virginia State Penitentiary,)

Defendants.)

Civil Action No. 82-0247-R

COMPLAINT

INTRODUCTION

1. This class action is brought by plaintiffs on behalf of those individuals who are or will be incarcerated in the Virginia State Penitentiary in Richmond. Plaintiffs assert that conditions at the penitentiary taken as a whole, inflict cruel and unusual punishment, violate their rights of freedom of speech and association, and deprive them of life and liberty without due process of law. Plaintiffs allege that conditions at the penitentiary are deplorable, unmandated by the people of the Commonwealth, fall beneath minimum standards of human decency, and subject plaintiffs to needless and extreme suffering. Plaintiffs further allege that defendants are aware that plaintiffs are subjected to death, assault, and the unreasonable risk thereof, robbery and the loss of property, woefully substandard living conditions, debilitating idleness, inadequate and unsanitary food service, abuse of institutional punishment, and unwarranted and illegal censorship.

2. Plaintiffs ask the Court for an order declaring that

defendants have subjected plaintiffs to unconstitutional conditions of confinement and enjoining defendants from further violations of plaintiffs' constitutional rights."

CLAIMS

3. Plaintiffs claims are brought pursuant to 42 U.S.C. §1983, and Titles 53-34 and 53-42 of the Code of Virginia.

JURISDICTION

4. Jurisdiction of federal law claims is predicated on 28 U.S.C. §§ 1331, 1343, 2201, and 2202. Jurisdiction of Virginia law claims is pendent.

VENUE

5. Venue in this District is appropriate, as all claims arise in the Eastern District of Virginia.

PARTIES

6. Each of the plaintiffs is currently incarcerated at the Virginia State Penitentiary in Richmond.

7. Plaintiff Everette Shrader is an older inmate who resides in "A" cellhouse at the Penitentiary. On or about November 15, 1981, plaintiff Shrader was robbed at knifepoint, while in his cell, by two other inmates. He lost two rings, a watch, and a commissary ticket.

8. Plaintiff Albert Boisseau was lying in his cell at the Penitentiary on the morning of July 13, 1980. Another inmate padlocked his cell shut, threw a flammable liquid into his cell, and then threw in a lighted match. The liquid ignited and plaintiff Boisseau was severely burned in the conflagration.

9. Plaintiff Merlon Joseph has been periodically incarcerated in "C" cellhouse, that part of the Penitentiary housing inmates in punitive or administrative segregation, and also housing those inmates in protective custody. "C" cellhouse is filthy, roach infested, badly lit, badly ventilated, and structurally deteriorated.

10. Plaintiff Kent Evans is housed in "B" cellhouse at the Penitentiary.

11. Plumbing in the cellhouse is outdated and often floods. Cells do not have hot water, and showers frequently do not have hot water. Lighting is well below that required for reading, attending to personal hygiene, and safety. Windows are not screened, allowing the entrance of insects and birds. Noise is excessive.

12. Plaintiff Dennis Adams is housed in "A" cellhouse at the Penitentiary. Structural deterioration is such that water cascades down the interior walls during rainstorms. The building is roach infested, and the lack of screening allows entry of insects and pigeons. Cells do not have hot water and are badly lit and ventilated. Noise is excessive.

13. Plaintiff Russell Vinnedge is incarcerated at the Penitentiary. On or about July 16, 1981, plaintiff Vinnedge was informed by Penitentiary personnel that he would be required to receive official approval prior to receiving the Richmond Times-Dispatch, a general circulation newspaper.

14. Defendant Franklin White is Secretary of the Department of Public Safety, Commonwealth of Virginia. As such, he exerts general supervisory authority over the Department of Corrections.

15. Defendant Robert M. Landon is Acting Director, Virginia Department of Corrections. He exerts general supervision over the Department, and his responsibilities also include overseeing the enforcement of laws and regulations relating to penal facilities in the Commonwealth, and providing for the custody, correction, treatment, and habilitation of persons committed to the custody of the Department.

16. Defendant Landon has also served as Deputy Director for Adult Institutional Services, Virginia Department of Corrections. His responsibilities included the custody, correction, treatment, and habilitation of persons confined at adult penal institutions in the Commonwealth.

17. Defendant A.T. Robinson is Regional Administrator for the Virginia Department of Corrections. His duties include

general supervisory authority over, among certain institutions, the Virginia State Penitentiary.

18. Defendant James P. Mitchell is the Superintendent, Virginia State Penitentiary. He is directly responsible for the operation of that institution, and for the custody, correction, treatment, and habilitation of persons confined to that institution. He is also responsible for the development and implementation of policies peculiar to that institution.

19. Defendant Leftwich Reynolds is the Assistant Superintendent for Operations at the Penitentiary. His responsibilities include policy development, security, guard assignment and staffing, and other matters concerning security at the institution.

20. Defendant R.M. Muncy is the Institutional Security Chief at the Penitentiary. His responsibilities include policy development, security, guard assignment and staffing, and other matters concerning security at the institution.

CLASS ACTION ALLEGATIONS

21. This matter is brought as a class action pursuant to Rule 23(a)(b)(1)(A), and (b)(2), F.R.Civ.P.

22. The inmate population of the Penitentiary is approximately 900. Additionally, the population changes frequently because of new admissions and transfers or releases. Accordingly, joinder of all members of the class is impracticable.

23. Conditions at the Penitentiary, and the totality of those conditions are facts common to the plaintiff class; cruel and unusual punishment and other constitutional or statutory violations are questions of law common to the class.

24. Claims made by the class representatives involve allegations of denials of constitutional and statutory rights, rights that are generally applicable to the class.

25. The named representatives have retained counsel to represent them who will also protect and argue the interests of

the class. The named representatives are also subjected daily to the same deprivations as the class.

26. Because the class numbers approximately 900, separate actions by individuals would in all likelihood result in inconsistent and varying decisions, resulting in conflicting and incompatible standards of conduct for the defendants.

27. The constitutional and statutory violations are wholesale, affecting the class as a whole. Accordingly, generalized declaratory and injunctive relief is appropriate.

FACT ALLEGATIONS

28. The level and risk of violence at the Penitentiary are excessive. The institution is unsafe for inmates, guards and staff. Due to the number of inmates present and other factors enumerated below, defendants have not provided plaintiffs a reasonably safe environment in which to live. Since 1980, at least 4 inmates at the Penitentiary have been killed on Penitentiary grounds. The killings have occurred in different areas of the Penitentiary, including the ballpark, front yard, and dining room.

29. In addition to the killings, inmates are unreasonably subject to other forms of violence. Since 1980, at least three inmates have been doused with flammable or acidic liquids. Plaintiff Boisseau was severely burned when the flammable liquid was ignited. The other inmates were severely injured in these attacks.

30. Inmates at the Penitentiary, particularly older or weaker inmates, have been robbed, and are unreasonably subject to the threat of such assaults. Plaintiff Everette Shrader was robbed in his cell at knifepoint. Theft is commonplace.

31. One example of the unreasonable level and risk of violence involves the burning of cells. Upon information and belief, plaintiffs believe that at least four cells were burned out during 1981.

32. In addition to those inmates who have been fatally

stabbed, upon information and belief there have also been a number of non-fatal stabbings.

33. Younger inmates are unreasonably subject to sexual assault or the threat thereof.

CLASSIFICATION

34. The Penitentiary lacks an effective internal classification procedure. Because of this fact, and the fact that it operates at or near capacity, weaker and younger inmates are housed in close proximity with more predatory inmates.

35. Classification procedures at the Penitentiary also fail to identify and separate inmates with mental problems at the Penitentiary. Accordingly, many of these inmates remain in the general population, increasing the level of tension within the institution.

PHYSICAL FACILITIES

36. The Penitentiary consists of three housing units. Both "A" and "B" cellhouses house general population inmates, although "A" building basement houses individuals on death row, and "B" building basement houses some individuals with mental problems. "C" building houses inmates on disciplinary and administrative segregation, those on prehearing detention, and those inmates in protective custody.

37. The construction and age of the institution make it unsafe for inmates, guards, and staff. Visibility and surveillance are limited by stairways, obstructions, walls, and hidden areas.

38. Plaintiffs living in "A" building are subjected to serious environmental problems. Because of roof or joist problems, water leaks down interior walls during rainy weather, spilling onto the floor of the unit. The unit is inadequately screened, allowing the entrance of pigeons, who defecate in the building. There is a roach infestation in the unit. Cells do not have hot water, and lighting is beneath the minimum level required for reading, hygiene, and safety purposes.

39. "B" cellhouse is also unscreened or inadequately screened, has no hot water in the cells, is infested with roaches, and is inadequately lit.

40. The isolation unit in the hospital also suffers from lack of screening, ventilation and lighting.

41. Water fountains to provide cool drinking water are either nonexistent or in a state of disrepair.

42. The basement of "C" cellhouse holds inmates on disciplinary segregation. These inmates spend 24 hours a day in their cells, with the exception of twice weekly five minute showers. Ventilation is beneath any known minimum standard. Lighting is also inadequate; however what lights are near the cells are left on 24 hours a day, making sleep difficult.

43. Basic sanitation in "C" cellhouse is poor, as trash and filth frequently cover the floors. Lighting in the cells is inadequate.

44. There is no dayroom space in the living units. What limited indoor recreation exists in "A" and "B" cellhouses takes place on the first floor of the units and consists of television, and, for a few inmates, card playing.

GUARD STAFFING

45. Inmates in the Penitentiary are subject to harm or the unreasonable risk of harm in part because of inadequate guard surveillance in the cellhouses and yards. Although guards are assigned to walk the tiers and yards, adequate surveillance is impossible because of building design and the failure or impossibility of adequate cellhouse patrols.

IDLENESS

46. Contributing to the level of violence and debilitation in the Penitentiary is the level of idleness. Approximately 150 to 200 inmates are in "deadhead" status, meaning that they have no jobs and are not enrolled in any educational programs.

47. Deadheads spend the majority of their time in the cellhouses, and have little opportunity for productive activity.

48. Although other inmates may be assigned to jobs, the majority of these jobs are of the make-work variety, providing little productive activity, contributing to the pervasive idleness, and also contributing to the violence, tension, and debilitation at the Penitentiary.

FOOD SERVICE

49. Meals served in the dining hall do not meet minimum nutritional standards. Although a cycle menu is utilized, changes and deletions of items are so frequent as to defeat the menu's purpose.

50. The food service facility, part of which has served in the past as a gymnasium, does not meet basic public health principles.

51. Temperatures in the dining hall are either too hot or too cold, depending upon the season. Screening is nonexistent, allowing the entry of birds and insects.

52. There is a rodent infestation in the food service area.

53. Food service personnel do not wear appropriate clothing for the serving of food, thus allowing hair and other foreign objects to enter the food.

54. Tables are not properly cleaned; basic sanitation is not maintained throughout the area.

55. Toilet paper, and towels are frequently unavailable in the bathroom areas.

56. Ventilation in the dining room is woefully inadequate, making the area unbearable in the warm months.

57. Inmates frequently dip hands into food and drink.

VISITING

58. The visiting room is operated in an arbitrary fashion.

59. Although the visiting room is scheduled to open at a certain hour, it frequently is not opened on time, causing delays to inmates and their visitors and shortening of visits.

60. Additionally, the visiting room may also be closed prior to the scheduled time, thereby shortening visits.

61. Some guards have abused inmates or their visitors during visits. Upon information and belief, one guard needlessly grabbed an inmate's son who was playing in the visiting room; another guard was reprimanded for addressing an inmate in a profane manner in the visiting room.

62. The visiting room is frequently crowded, and allows for no privacy for an inmate and his visitors.

63. Visits are also shortened because of the practice of holding visiting slips until a significant number have been collected, and only then notifying inmates that their visitors are present..

CORRESPONDENCE

64. Penitentiary officials have as of July 22, 1981, instituted a procedure, formalized in Division Guideline #852, regarding incoming publications.

65. Pursuant to DGL #852, inmates must have the prior approval of Penitentiary officials in order to receive any publication, such as the Richmond Times-Dispatch and News-Leader, daily newspapers of general circulation.

66. Division Guideline #852 constitutes a prior restraint and effectively chills plaintiffs' First Amendment rights.

67. Division Guideline #852 is also applied arbitrarily. For example, Playboy magazine is permitted; Oui and Hustler magazines are not. Approval has been given for the Patriot and Thunderbolt, Ku Klux Klan magazines; The Best of Norman Rockwell and Tutankhamen, Pharoah of Egypt; have been disallowed.

SEGREGATION

68. Inmates confined in "C" building for prehearing investigation are not permitted recreation and such confinement is not limited.

69. Inmates confined in "C" building for protective custody are allowed only two showers a week and must go four days between showers. They are allowed out of cell recreation only 3 times a week for an hour.

70. The night adjustment committee, which adjudicates disciplinary charges, consists only of uniformed personnel, assuring that an inmate will be found guilty as charged, and sentenced to a minimum of fifteen days in isolation.

71. Inmates confined in "C" building are not allowed to visit the law library and have no adequate means of researching legal problems or filing necessary court papers.

CLAIMS FOR RELIEF

The excessive level and unreasonable risk of violence at the Penitentiary subject plaintiffs to cruel and unusual punishment, punishment barred by the Eighth and Fourteenth Amendments to the United States Constitution.

The excessive level and unreasonable risk of violence at the Penitentiary subject plaintiffs to the deprivation of life, liberty, and property without due process of law, which deprivation is barred by the Fourteenth Amendment to the United States Constitution.

The failure to effectively separate younger, weaker inmates from older, more violent inmates is in violation of Title 53-42, Code of Virginia.

Paragraphs 1-71 are incorporated herein by reference.

Taken as a whole, conditions at the Penitentiary reflected by paragraphs 1-71 subject plaintiffs to cruel and unusual punishment and the deprivation of life, liberty and property barred by the Eighth and Fourteenth Amendments to the United States Constitution.

Defendants have also violated plaintiffs' rights to freedom of expression and association, as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

Defendants restrictions on plaintiffs' correspondence rights are a violation of Title 53-34, Code of Virginia.

Unless restrained by order of this Court, defendants will continue to engage in the above described practices.

The relief sought herein is the only adequate or

available remedy for the unconstitutional and unlawful acts, conditions, and practices described above.

PRAYER FOR RELIEF

Plaintiffs pray that the Court grant the following relief:

a. Certify this matter as a class action, pursuant to Rule 23, F.R.Civ.P.;

b. Declare that conditions of confinement at the Penitentiary violate the First, Eighth, and Fourteenth Amendments to the United States Constitution;

c. Enjoin the defendants from housing at the Penitentiary more inmates than whose safety can be reasonably guaranteed;

d. Enjoin the defendants, their officers, agents, employees, subordinates, successors in office, and all those acting in concert or participation with them, from continuing the unconstitutional and unlawful acts, conditions, and practices described above, and from failing to provide constitutional conditions of confinement for persons confined in the Virginia State Penitentiary;

e. Grant any other relief which the Court deems just and proper, including the costs, attorneys fees pursuant to 42 U.S.C. §1988, and other disbursements attendant to this action.