



PC-VI-002-005

RECEIVED

CLERK OF THE DISTRICT COURT ST. CROIX, VI. DEC 29 10 09 AM '87

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE VIRGIN ISLANDS DIVISION OF ST. CROIX

UNITED STATES OF AMERICA, Plaintiff, v. THE VIRGIN ISLANDS, et al., Defendants. Civil Action No. 86-265

MEMORANDUM IN SUPPORT OF MOTION FOR ORDER TO SHOW CAUSE

Plaintiff, the United States of America, submits this memorandum in support of its motion for order to show cause. The motion seeks an order of the Court to enforce compliance with the Courts "Memorandum of Compliance Conference and Order" entered November 12, 1987. The defendants, the Government of the Virgin Islands and certain government officials ("Virgin Islands"), have failed and refused to comply with this Court's lawful, unambiguous order.

STATEMENT OF FACTS

This action was commenced pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. 1997, and concerns conditions at the Golden Grove Adult Correctional Facility ("Golden Grove"). On December 1, 1986, the District Court entered a Consent Decree which requires the Virgin Islands to maintain certain conditions at Golden Grove and to submit to the Court and the United States plans to ensure compliance with

Handwritten signature or initials

the Consent Decree. Under the terms of a joint stipulation of the parties, the Virgin Islands were to provide plans by February 2, 1987.

The Virgin Islands initially submitted plans which lacked sufficient specificity. In July, 1987, they promised to submit appropriate plans by August 31, 1987. This is reflected in an Order of the Court entered July 31, 1987. When the Virgin Islands failed to provide detailed plans by the August 31, 1987 deadline, the United States agreed to allow additional time for submission of the plans. The Court entered an Order on September 9, 1987, directing the Virgin Islands to submit plans no later than September 18, 1987. The amended plan, filed September 22, 1987, was again insufficient to comply with the Consent Decree.

On October 6, 1987, the Court entered an Order establishing a schedule of deadlines which would have resulted in all plans being submitted by December 1, 1987. By November, 1987, the Virgin Islands had again failed to submit plans and information in accordance with the court ordered schedule. In a telephone conference held November 10, 1987 counsel for the defendants represented that a number of materials were ready to be submitted and that all plans would be submitted by December 15, 1987. The Court entered an Order on November 12, 1987, setting a December 15, 1987 deadline for the submission of all plans and requiring the Virgin Islands to immediately submit the materials already available. The Virgin Islands have failed to submit any materials or any plans by the December 15, 1987 deadline.

ARGUMENT

Disobedience of a Court order unequivocally merits punishment save in instances in which compliance would necessarily result in an irrevocable and permanent surrender of a constitutional right. Kleiner v. First National Bank of Atlanta, 751 F.2d 1193, 1208 (11th Cir. 1985). A court has inherent power to enforce compliance with its lawful orders through civil contempt. Shilletani v. United States, 384 U.S. 364, 370 (1966); United States v. United Mine Workers, 330 U.S. 258 (1947). Indeed, this power has been held to be essential to the judiciary. Young v. United States ex rel. Vuitton et File S.A., ___ U.S. ___, 107 S. Ct. 2124, 2131 (1987).

Where it appears, upon clear and convincing proof, that a party has not complied with a court's order, the court may hold that party in contempt of court. N.A. Sales Co., Inc. v. Chapman Industries Corp., 736 F.2d 854, 857 (2d Cir. 1984). A party may be held in civil contempt for failure to comply with an order of the court if the order being enforced is clear and unambiguous, the proof of noncompliance is clear and convincing, and the party has not been reasonably diligent in attempting to accomplish what was ordered. EEOC v. Local 638...Local 28 of Sheet Metal Workers, 753 F.2d 1172, 1178 (2d Cir. 1985).

A party who disobeys a specific and definite court order may properly be adjudged in contempt regardless of his intent when he disobeyed the order. In re Crystal Gambling Hall, Inc., 817 F.2d

1361, 1365 (9th Cir. 1987). Because intent is not an element of civil contempt, contempt may be established even though the failure to comply is unintentional. McComb v. Jacksonville Paper Co., 336 U.S. 187, 191 (1949); General Signal Corp. v. Donallco, Inc., 787 F.2d 1376, 1379 (9th Cir. 1986).

The failure of the Virgin Island to comply with the Court's order of November 12, 1987 meets the criteria necessary to hold a party in contempt. The order clearly and unambiguously required the defendants to submit plans by a specified date. Counsel for the defendants was given notice of that date, December 15, 1987, in the conference held November 10, 1987, as well as through the order entered November 12, 1987. The failure to file the required plans with the Court by December 15, 1987, is clear and convincing proof of the Virgin Islands' noncompliance with the Court's order.

The pattern of noncompliance with the Consent Decree and the Virgin Islands' continual failure to meet increasingly lenient deadlines is proof of a lack of reasonable diligence in attempting to accomplish what the court has ordered. The mere fact that they may have taken steps toward achieving compliance with the Court's order is not a defense to a charge of contempt. Sizzler Family Steak Houses v. Western Sizzler Steak House, Inc., 793 F.2d 1529, 1534 n.5, 1537, rehearing denied, 797 F.2d 982 (11th Cir. 1986). Although perfect compliance may not be required, the defendant's have failed or refused to exercise reasonable diligence in preparing and submitting plans to ensure

that the inmates at Golden Grove are provided adequate living conditions. The Virgin Islands have neglected to marshal their own resources, assert their authority, and demand the results needed from subordinate persons in order to meet the Court's required deadline. They have allowed deadlines to pass without advance announcements or volunteered explanations, and have displayed an evident sense of nonurgency regarding the need to make plans and to improve conditions at Golden Grove. Accordingly, a finding of contempt is justified and appropriate.

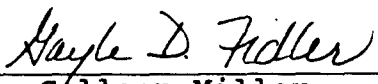
CONCLUSION

For the reasons set forth herein the United States respectfully prays that this Court enter an order directing the Virgin Islands to show cause why it should not be held in contempt.

Respectfully submitted,

Terry M. Halpern
United States Attorney
District of Virgin Islands

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division



V. Colleen Miller
Gayle D. Fidler
Attorneys
U.S. Department of Justice
Civil Rights Division
Special Litigation Section
P.O. Box 37076
Washington, D.C. 20066

CERTIFICATE OF SERVICE

I certify that the foregoing Motion for Order to Show Cause and the accompanying Memorandum in Support of the motion were mailed first class, to the following counsel of record this 23rd day of December, 1987:

Tristan Moore
Virgin Islands Department of Justice
#46 Norre Gade
St. Thomas , VI 00801



V. Colleen Miller
Gayle Fidler
Attorneys
U.S. Department of Justice
Civil Rights Division
P.O. Box 37076
Washington, D.C. 20066