

United States District Court
For the District of Rhode Island

Joseph Morris, et al

v.

Anthony Trivisono, et al

2017 FEB 21 A 11:32

CIV. A. NOS. 4192,
5280.

Richard Paiva, et al

v.

Ashbel Wall, et al

Appeal of Magistrate's Decision

On January 16, 2017, Plaintiff filed a "motion for Further Relief". Magistrate Lincoln D. Almond returned this motion to the plaintiff without filing it and ruling on its merit.

Plaintiff now respectfully appeals magistrate's decision to return said motion and to not rule on its merit.

In Morris v. Trivisono, 373 F.Supp. 177, 185 (1974) D.R.I., Judge Pettine stated " (It is) Ordered that the defendants, their successors, and any person acting under them are enjoined from suspending the 'regulations Governing Disciplinary and Classification Procedures at the Adult Correctional Institutions, State of

Rhode Island' attached to and incorporated in the judgment entered in this matter on April 20, 1972".

And in Morris v. Trivisono, 509 F.2d 1358, 1361 (1st circuit 1975), the First Circuit affirmed this permanent injunction stating "Distaste for the (Morris) Rules did not allow defendants simply to disregard the court's judgment of April 20, 1972, and the fourteenth amendment rights declared under the judgment. See 28 U.S.C. 2201." and "while the consent decree called for enforcement of the Morris Rules under state law, see Palmigiano v. Mullen, 491 F.2d 978, 980 (1st circuit 1974), the contention that the Morris Rules themselves may be eliminated under state law is without merit."

The permanent injunction was issued pursuant to 28 U.S.C. 2202, therefore, the Court has the legal authority and jurisdiction to hear said "motion for further relief" under 28 U.S.C. 2202.

The Morris rules were part of the final judgment and declaratory judgment issued in Morris v. Trivisono, 373 F.Supp. 177 (D.R.I. 1974), as well as a consent decree.

This was also stated in Cugini v. Ventetuolo, 781 F.Supp. 107, 112 (D.R.I. 1992) "The Morris Rules... embodied a binding declaration of constitutional

rights and were part of a judgment; the Court's final decree specifically says as much... Defendants cannot unilaterally order the elimination of rights determined in federal courts simply because the consent decree was to be enforced through state machinery."

See also Doctor v. Wall, 143 F.Supp.2d 203, 208 "Judge Pettine of this Court permanently enjoined the prison from suspending the rules in the future" and "The First Circuit affirmed the Injunction on appeal."

In Doctor, the court ruled that "no contempt action may lie for individual violations of the Morris Rules" id at 209.

The District court and First Circuit have repeatedly stated that the Morris Rules are part of a judgment.

28 U.S.C. 2202 reads "Further necessary or proper relief based on a declaratory judgment or decree may be granted... against any adverse party whose rights have been determined by such judgment."

And 18 U.S.C. 401 reads "A court of the United States shall have power to punish... such contempt of its authority (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command."

The foregoing argument shows that the Morris Rules are part of the judgment issued in *Morris v. Travisono*, and that the court has the authority and jurisdiction to hear this matter and to rule on its merit.

The plaintiff has attached the current D.O.C. mail, discipline, and classification policies, as well as a letter from D.O.C. legal counsel, that definitely proves that the D.O.C. has terminated the Morris Rules. This is in direct violation of the permanent injunction issued in *Morris II*, and affirmed by the 1st Circuit in *Morris III*.

Therefore, the plaintiff respectfully appeals to the court to allow the plaintiff's "motion for further relief" to be filed with the court, and to then rule on its merit.

Respectfully submitted,

Richard Paiva

Richard Paiva, pro se
ACI-Maximum Security
P.O. Box 8273
Cranston, RI

02920

Certification

I hereby certify that I sent a two copy
of the enclosed appeal, on this 14th day
of February, 2017, via interdepartmental
mail, to the following:

Ashbel Wall
40 Howard Avenue
Cranston, RI
02920

Richard Paiva

Richard Paiva, prose

UNITED STATES DISTRICT COURT

DISTRICT OF RHODE ISLAND
JOHN O. PASTORE FEDERAL BUILDING
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LINCOLN D. ALMOND
UNITED STATES
MAGISTRATE JUDGE

January 26, 2017

Mr. Richard Paiva
ID# 86429
P.O. Box 8200
Cranston, RI 02920

Re: "Motion for Further Relief"

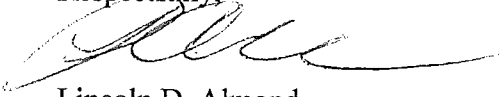
Dear Mr. Paiva:

I am writing in response to your January 15, 2017 letter to Chief Judge Smith requesting that he personally review your Motion for Further Relief, allow the Motion to be filed with the Court and to rule on its merit. During 2016, you submitted similar documents to the Court on three occasions which, after review, were all refused and returned to you. After review, I am again refusing and returning your submissions to you.

First, I understand that you are not claiming any individual violations of the "Morris Rules" presumably because this Court has no jurisdiction over such claims. See Doctor v. Wall, 143 F. Supp. 2d 203, 204-205 (D.R.I. 2001). Second, I understand that you are trying to pursue an argument that the Department of Corrections is in contempt of Court by violating the consent decree and injunction issued over forty years ago in the Morris case. You are seeking to proceed by way of a Motion for Further Relief pursuant to 28 U.S.C. § 2202 and not a new lawsuit presumably because it has been held that an ACI inmate does not have a cause of action in this Court for contempt against the DOC for alleged violations of the Morris Rules. See Cugini v. Ventetuolo, 781 F. Supp. 107 (D.R.I. 1992). Third, I understand your contempt allegation is based on a claim that the Morris Rules have been unlawfully modified and/or terminated by the DOC. However, since this Court has previously held that such rules are not contained in or part of any decree or order issued by this Court, they are State rules "to be enforced, if at all, by state machinery." Doctor v. Wall, 143 F. Supp. 2d at 204. Thus, you have no legal basis to seek such contempt relief by Motion in a closed federal case.

If you believe in good faith that your individual federal rights have been violated in any way, you are well aware from your history of filings in this Court of the proper way to initiate a lawsuit under 42 U.S.C. § 1983.

Respectfully,



Lincoln D. Almond
United States Magistrate Judge

Copies to: The Honorable William E. Smith, Chief Judge