

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES BENJAMIN, et al.,

Plaintiffs,

PROPOSED ORDER

-against-

Docket Number
75 Civ 3073
Morris E. Lasker, D.J.

BENJAMIN J. MALCOLM, et al.,

Defendants.

Defendants having moved to modify the Court's Order, dated September 3, 1980, limiting the population of the House of Detention for Men ("HDM") to no more than 1200 inmates, and a second Order of the Court, dated June 23, 1981, setting a limit of fifty detainees per dormitory in the Anna M. Kross Center ("AMKC"); and the Court having held a hearing in March and April, 1983 to determine whether permanent modification of its Orders was justified; and the Court having denied defendants' motion, setting forth its findings of fact and conclusions of law in an Opinion dated May 19, 1983; and the Court having issued an Order dated June 16, 1983 which required the defendants to comply with the orders of September 2, 1980 and June 23, 1981 by no later than August 30, 1983, and which provides, inter alia, that, if compliance with the provisions of that Order requires a reduction in the detainee population, the Commissioner of Correction is directed to release in their own recognizance the persons held in default of the lowest amount of bail, and among persons held on the same amount of bail, the ones who have been confined the longest time and the Court, recognizing that it may be necessary to release inmates in order to implement the previous Orders and having concluded that the procedure for the release of inmates contained in the Order of June 16, 1983 is not sufficiently sensitive to the factors which should be considered in establishing such a procedure, requested the parties to make proposals to modify the release procedure, and recognizing that New York Criminal Procedure Law, §510.20 permits bail in the form of a partially secured surety bond or a partially secured appearance bond and after hearing the parties, it is hereby

ORDERED, that 1) defendants shall reduce the population of HDM and AMKC so that by no later than October 31, 1983 they shall be in compliance with the Orders of the Court dated September 3, 1980 and June 23, 1981 and it is further

ORDERED, that 2) if compliance with this order requires a reduction in inmate population, the Commissioner of Correction is directed to accept a partially secured surety bond or a partially secured appearance bond, secured by a deposit of a sum of money equal to ten per cent of the total amount of the bail, from the detainees held in the lowest amount of bail as satisfaction for the posting of such bail. The defendant or the surety posting the partially secured bond shall be required to sign any documents required by the Commissioner in this regard and shall be obligated for the full amount of bail in the event of default. This provision shall not apply to any detainee held in default of cash bail exceeding \$1500.

ORDERED, that 3) if compliance with this order requires a further reduction in inmate population, the Commissioner of Correction is directed to release inmates in the following order of priority:

A. on their own recognizance, persons detained on civil process, detainees accused of traffic infractions, violations, and misdemeanors; with respect to each of these groups the Commissioner is directed to release persons held in default of the lowest amount of bail, and among persons held on the same amount of bail the ones who have been confined for the longest time;

B. all other detainees on their own recognizance held in default of the lowest amount of bail, and among persons held on the same amount of bail the ones who have been confined for the longest time;

C. in making releases under the provisions of subparagraphs A and B above, the Commissioner shall, to the extent practicable, release persons accused of offenses not involving violence or threat of violence to a person before releasing others of equal bail level or held for an equal period of time.

4) Persons released pursuant to this Order on their own recognizance shall receive follow-up services which are currently provided to persons released on their own recognizance by the Criminal Justice Agency.

5) A court of competent jurisdiction may specify a different method of selecting the persons to be released; no person shall be released pursuant to this Order who is subject to a warrant, detainer or other hold from a court or administrative agency.

6) This order creates no right in any person to be released.

7) Nothing contained in this Order shall require the Commissioner of Correction to accept a partially secured bond or to release any detainee who has been accused of attempted manslaughter, manslaughter, attempted murder, murder, attempted rape, rape, attempted sodomy, sodomy, attempted sex abuse in the second and first degrees and sex abuse in the second and first degrees.

8) Any individual who is released pursuant to any paragraph of this order and is rearrested shall not be eligible to again be released pursuant to the provisions of this order.

9) The Commissioner may at any time apply to this court to modify this order so as to provide a different scheme of release which he believes will more effectively preserve the public safety.

Dated: New York, New York
November 4, 1983

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UNITED STATES DISTRICT JUDGE

JAMES BENJAMIN, et al.,
Plaintiffs,

-against-
BENJAMIN J. MALCOLM, et al.,
Defendants.

PROPOSED ORDER

FREDERICK A. O. SCHWARZ, JR.
Corporation Counsel,
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100 Church Street,
New York, N. Y. 10007

Due and timely service of a copy of the
within
is hereby admitted.
New York, 19.....

To
Attorney for
....., Esq.,
Attorney for