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FILED
MAY 12 1964
OFFICE OF CLERK
U. S. DIST. COURT
NORTH. DIST. FLA.

May 7, 1964

Honorable G. Harrold Carswell
United States District Judge
Federal Building
Tallahassee, Florida

Re: Willie Carl Singleton, et al. vs. Board of Commissioners of State Institutions, et al. Civil Action No. 963

Dear Judge Carswell:

This will acknowledge our phone conversation of May 6, 1964 during which you granted plaintiff in the above-styled cause an extension of time, until May 14, 1964, to respond to defendants' Petition for Reconsideration.

We pray that we will do the Court no inconvenience if we state our position respecting Oral Argument at the time we file this response.

I am

Very truly yours,

Earl M. Johnson

Earl M. Johnson

EMJ:vm

cc: James W. Kynes, Attorney General
Jack Greenberg

Singleton v. Board of Commissioners

JI-FL-0001-0043

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

FILED

MAY 15 1964

OFFICE OF CLERK
U. S. DIST. COURT
NORTH. DIST. FLA.

WILLIE CARL SINGLETON, a minor, by NEVA SINGLETON, his mother and next friend, et al.,

Plaintiffs,

vs.

BOARD OF COMMISSIONERS OF STATE INSTITUTIONS, et al.,

Defendants.

CIVIL ACTION

NO. 963

PLAINTIFFS MEMORANDUM IN OPPOSITION TO DEFENDANTS PETITION FOR RECONSIDERATION

Defendants have moved to Dismiss plaintiffs suit to enjoin the operation of the State Schools for Boys and Girls on a racially segregated basis on the sole ground that plaintiffs lack standing to maintain said suit because of their release from the State Schools on probation. Defendants having had their Motion to Dismiss denied, now suggest error in the Court's ruling and ask its reconsideration.

A. THE APPROPRIATE "CLASS"

Defendants argue that plaintiffs are not members of the class of "Negro juveniles confined and committed to the Florida State Schools," and that as such they cannot sue on behalf of such persons. Plaintiffs say that the defendants have failed to define the total class on behalf of whom plaintiffs sue. Relief is requested not only for those persons presently incarcerated, but for all Negro juveniles subject to be incarcerated in the State Schools. The class so defined would include all Negro juveniles presently resident in the State of Florida who by virtue of being below age 17 may be committed to the State Schools upon being adjudged delinquent. (or who may be committed for violation of any present probation of conditions). Plaintiffs are members of

the class thus defined. Should plaintiffs prevail in the instant suit, all Negro juveniles subject to be incarcerated in the State Schools would have a presently defined right to unsegregated supervision and training in such State Schools and would be incarcerated in the future on a desegregated basis.

B. PLAINTIFFS STANDING is based on:

1. Past injury
2. Present retention on probation.

Defendant has cited cases giving the general rules of standing to maintain class actions but has given no discussion of the cases in relation to the two factors in the instant case which support plaintiffs' right to maintain this suit.

The case of Bailey v. Patterson, 369 U.S. 31, cited by defendant is in fact in support of the plaintiffs right to maintain the instant suit when related to the facts present in both cases. In Bailey the Court found the plaintiffs had no standing to sue to enjoin State Court prosecutions because none had been prosecuted or threatened with prosecution, thus leaving the clear implication that, had they been subjected to prosecutions prior to suit, they would have had standing to seek an injunction protecting other persons and themselves from the future unconstitutional prosecutions. The plaintiffs in the instant case have been subjected to a deprivation of constitutional rights for a continuous period of six months, and still being juveniles, and more importantly, being still under conditions of probation which they may violate, the imminence and possibility of their re-incarceration is not remote.

One condition of the probation is that the juveniles not participate in civil rights demonstrations. Plaintiffs have already indicated their desire to participate in such demonstrations for such was the basis for their original incarceration. A return to their protest against racial discrimination could cause their immediate reincarceration.

Plaintiffs are still within the authority being exercised over Negro juveniles by defendants after a delinquency adjudication albeit on a different basis than those actually incarcerated in the State School. The defendant Board is in fact the party which set the conditions under which the liberty of plaintiffs is presently controlled. The Juvenile Court of St. Johns County in January, 1964 refused to Order the release of the juveniles from the State Schools under any conditions. The Board of State Commissioners assumed control over the juveniles, over riding the decision of the Juvenile Court, and Ordered their release upon the probationary conditions which the Juvenile Court had previously prescribed and withdrawn. The plaintiffs, therefore, although under the immediate supervision of the Juvenile Court, have their liberty continously and presently controlled under conditions set by the defendant. Jones v. Cunningham, 371 U.S. 236 (1963) holds that persons held under probationary conditions are deemed to be still in custody since probation is merely a curtailed or modified form of imprisonment. While probationary conditions obtain, the plaintiffs have standing to seek correction of those aspects of defendants exercise of authority over them which are claimed to be unconstitutional.

C. ANALOGY TO OTHER SUITS INVOLVING RACIAL DESEGREGATION

Negro plaintiffs have been permitted to maintain suit to desegregate public facilities although they were not users of such facilities at the time of suit. Negro plaintiffs had standing to maintain suit for the desegregation of hospitals, though not present

users of them, in Moses H. Cone Memorial Hospital, et al., vs. G. C. Simkias, 323 F. 2d 959 (4th Cir., 1963) Cert. den. 376 U. S. 938; Rackley v. Board of Trustees Orangeburg Regionional Hospital, 310 F. 2d 141 (4th Cir., 1962) It was sufficient for plaintiffs to allege that they had been serviced in the hospital at sometime in the past and that they might use such hospital in the future. The instant suits are in the same position as the discharged patients in the above hospital cases.

It is no bar to plaintiffs standing that other persons in the class may be more immediately effected by an Order of the Court for nominal plaintiffs in suits to desegregate school systems often do not themselves come under the Order of the Courts permitting Negro students in some grades to transfer to white schools. Daly N. Braxton, et al., v. Board of Public Instruction of Duval County (Civil Action No. 4598 Civ. J. Opinion August 21, 1962 un-reported). Augustus v. Board of Public Instruction of Escambia County, 185 F. Supp. 450, 306 F. 2d 862.

D. SETTLEMENT OF "STANDING" ISSUE IN SUITS FOR RACIAL DESEGREGATION

Defendants has not dealt with most of the major cases dealing with the standing of Negro persons to seek class action against governmentally enforced racial segregation which are Bailey v. Patterson, 369 U. S. 31, Evers v. Dwyer, 358 U.S. 202 and Morrison v. Davis, 252 U.S. 102 (5th Cir., 1958). In the Bailey case although the Court found plaintiffs lacked standing to enjoin prosecutions because none had been prosecuted the plaintiffs were found to have standing to sue to desegregate interstate bus facilities. On remand of the case to the District Court and a subsequent Appeal therefrom to the Fifth Circuit (Bailey v. Patterson, 323 F. 2d, 201), the Court of Appeals stated that the Negro plaintiffs had standing to maintain a class action on the

basis of their being past and potential users of the bus terminal facilities. The plaintiffs here are in an even stronger position to demand an adjudication of their rights because their use of this public institution is not merely voluntary, as was the case in Bailey, but may be required of them by the State upon being adjudged delinquent or in violation of their present probationary conditions.

The Evers and Morrison cases supra stand for the proposition that any Negro person has standing to seek injunctive class relief against racial segregation commanded by a State Statute once they have had any contacttwith the facilities covered by the Statute. The Courts found a sufficient controversy to exist because a segregation Statute stood as a continuing disability on the future use of the facilities involved. Plaintiffs here are challenging the racial segregation of the State training schools mandated by Section 955.12 of the Florida Statutes.

Defendant has cited Anderson v. Kelly U.S.D.C., Ga., 32 FRD 355, (1963), as supporting their position. However the lower court was specifically reversed on appeal on the issue of the standing of Negro citizens to seek an injunction against governmentally enforced racial segregation. Anderson v. City of Albany 321 F.2d 649 (5th Cir., 1963). The Court of Appeals ruled that the named negro plaintiffs had standing to seek injunctive relief from governmentally enforced racial segregation in publicly owned institutions upon a mere showing they had petitioned city officials for desegregation, even though they did not allege or prove that they themselves had been denied access to the facilities or had been required to submit to segregation therein.

The case of Carroll v. Associated Musicians of Greater New York, 316 F.2d 574, (1963), USCA 2d Cir., N.Y., cited by defendant, differs factually from the instant case in that plaintiffs here have a continuing relationship with defendant and have a present right to unsegregated State training schools, which is being abridged.

Respectfully Submitted

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Earl M. Johnson
EARL M. JOHNSON
625 West Union Street
Jacksonville, Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to attorneys for the defendant, James W. Kynes, Attorney General of the State of Florida, and Gerald Mager, Assistant Attorney General of the State of Florida at the Capital Building in Tallahassee, Florida, this 14th day of May, 1964.

Earl M. Johnson
EARL M. JOHNSON