NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ESSEX COUNTY INMATES et als., Plaintiffs, v. JOSEPH DIVINCENZO, Essex County Executive, et als., Defendants.	Hon. Harold A. Ackerman Civil Action No. 87-871 (HAA) **OPINION AND ORDER**

ACKERMAN, Senior District Judge:

"Like the legendary Phoenix, this class action litigation involving prison conditions . . . is seemingly incapable of eternal rest." *Morales Feliciano v. Rullan*, 378 F.3d 42, 45 (1st Cir. 2004). But, alas, after more than two decades, this, the oldest open case in the District of New Jersey, will finally be put to eternal rest. That is, for the reasons set forth below, I see no reason why this Court should remain involved in this matter. As a result, I will not approve the proposed Third Consolidated Consent Order, I will dismiss this case, and I will direct the Clerk to close the case.

On December 14, 2006, my Special Masters, Bennet Zurofsky, Esq. and Fred Becker, Esq., filed with this Court their Report and Recommendation ("R&R") along with the proposed Third Consolidated Consent Order ("TCCO"). The proposed TCCO is intended to supersede the Second Consolidated Consent Order ("SCCO"), which was approved and entered by me on August 8, 1995.

Since the SCCO was entered, the landscape that initiated this lawsuit has changed dramatically, in at least two significant ways. First, a year after entry of the SCCO, Congress enacted the Prison Litigation Reform Act of 1996 (the "PLRA") in response "to concerns that similar consent decrees were crippling prison systems throughout the country." *Imprisoned Citizens Union v. Ridge*, 169 F.3d 178, 182 (3d Cir. 1999). Second, Essex County built a new correctional facility at a cost of approximately $416 million. The combination of these two significant developments, after careful analysis, yields the conclusion that this Court no longer needs to be involved.

On March 9, 1987, Plaintiffs filed the Complaint in this case, alleging all manner of deplorable conditions in the Essex County Jail system, which at that time comprised the Essex County Jail in Newark, the Green Street holding facilities, and the Essex County Jail Annex in North Caldwell (collectively the "Jail Facilities").[1] The Complaint alleged that the Jail Facilities' problems included: "sinks and pipes that are rusted and leaking sewage and water; walls and floors that are covered with filth; showers that are encrusted with green and black slime; rampant infestation by insects and rodents; exposed electrical wiring; crumbling ceilings, falling window panes, and rusted and rotted roofing." (Compl. at ¶ 2.) In addition, the Complaint alleged that "the inadequate supply of bunks has forced hundreds of inmates to sleep on stretchers amid litter and puddles of water." (Compl. at ¶ 3.) As noted above, Essex County opened a new corrections facility in early 2004 on Doremus Avenue in Newark, where all County inmates are housed. The Jail Facilities that instigated this litigation are no longer in operation.

[1] I have had litigation involving these facilities going back to 1982, but the earlier cases have since been dismissed, e.g., *Essex County Inmates v. Collier*, Civ. No. 82-1945 (D.N.J. 1982).

On Friday, January 26, 2007, I visited the new 800,000-square-foot Essex County Correctional Facility ("ECCF"), accompanied by my law clerks. Also in attendance were counsel for Plaintiffs and Defendants, as well as my Special Masters and Essex County Executive Joseph Divincenzo. Upon arrival, the Director of the ECCF and his senior level staff provided a formal introduction to the facility and its inner workings. In our visit to the ECCF, I observed virtually all aspects of the facility, namely those parts related to habitation, medication, recreation, sanitation, food service, and access to the courts, including the law library. On each and every element, I found the ECCF to be eminently adequate to the task at hand and run by absolute professionals with considerable experience in the corrections business. All told, I was highly impressed with both the quantitative and qualitative aspects of the facility. Gone completely were the "horrifying, inhumane and utterly intolerable conditions" that plagued the Jail Facilities as alleged in the Complaint filed in 1987. (*See* Compl. at ¶ 2.)

With respect to the proposed TCCO, I am cognizant that it suggests, in effect, a six-month hiatus after which time this case would be formally closed, but would remain subject to reopening for an additional six months. But I believe that the PLRA prevents me from approving the proposed TCCO both in its present constitution and any conceivable future formulation.

The PLRA provides a district court guidance in navigating the labyrinth of managing prison systems. Specifically, 18 U.S.C. § 3626(c)(1) addresses consent decrees, such as the proposed TCCO, by declaring that "[i]n any civil action with respect to prison conditions, the court shall not enter or approve a consent decree unless it complies with the limitations on relief set forth in subsection (a)." 18 U.S.C. § 3626(c)(1). Section 3626(a) provides the requirements for granting prospective relief, namely that "[t]he court shall not grant or approve any prospective

relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. § 3626(a).

The proposed TCCO only addresses the "occasional" overcrowding problem that has recurred from "time to time." (R&R at 2.) The proposed TCCO does not, unlike the SCCO, address anything related to plumbing, bedding, sanitation, recreation, visitation, food service, legal access or safety. Apparently, the parties are in agreement that such violations have not occurred in even an occasional manner sufficient to warrant continued oversight by the Court. I am in full agreement with the parties in this regard.

The proposed TCCO, however, expressly declares that "the parties agree that this modified Order is appropriate as the least intrusive remedy for currently existing conditions and practices affecting the constitutional rights of plaintiffs that warrant continuing injunctive and declaratory relief, specifically to relieve existing or threatened overcrowding at the ECCF [Essex County Correctional Facility]." (TCCO at 1.) Although the proposed TCCO never specifically cites the PLRA, which unequivocally controls my consideration of the proposed TCCO, the quote from the previous sentence appears to be a somewhat oblique reference to the statutory language. Nevertheless, I hasten to note that I have never been provided with any documentation regarding what exactly the "existing or threatened overcrowding" currently is at ECCF. On the contrary, on the day I toured the facility, it was well below its 2,200 person capacity by nearly 90 persons. Moreover, the ECCF's average daily prisoner population for 2006 was 2,081, again well below capacity.

Notably, Congress enacted the PLRA "to end the federal courts' perceived micro-

management of our nation's prisons." *Para-Prof'l Law Clinic at SCI-Graterford v. Beard*, 334 F.3d 301, 303 (3d Cir. 2003). The PLRA specifically instructs a judge in my position to do only what is necessary to correct a violation of a federal right. 18 U.S.C. § 3626(a). But I am unable to perceive of any violation of a federal right to be corrected here. As a result, I cannot see how any proposed consent decree could pass the tripartite requirements of 18 U.S.C. § 3626(a). That is, no consent decree could be sufficiently narrow, extend no further than necessary and be the least intrusive means of correcting a violation of a federal right if there is no federal rights violation in the first place. Therefore, I will not approve the proposed TCCO in this or any other form.

Despite my decision to close this case today, I note that a suit regarding any future violation of a federal right is not foreclosed by the PLRA, as some would argue. Instead, as the Third Circuit noted in *Para-Professional* in interpreting the PLRA, "if a prisoner is in imminent danger of a constitutional violation, the prisoner has prompt and complete remedies through a new action filed in State or Federal court and preliminary injunctive relief." *Para-Prof'l*, 334 F.3d at 304. I am aware that the practical realities–including the state's abolishment of the Inmate Advocacy Unit of the New Jersey Office of the Public Defender–significantly curtails any chances of successful litigation to protect inmate rights such that aggressive future litigation after the closing of this case is less likely. Such a reality, however, is a consequence of policy decisions within the state government, and clearly not within my jurisdiction to affect in any manner. The basis for this Federal Court's involvement in a county jail facility–violations of a Federal Constitutional magnitude–has ceased to exist. Therefore, I must release my grasp because there is no longer anything within it.

I recognize that approval of the proposed TCCO, per all parties' request, would likely result in the closing of this case in approximately six months. Nevertheless, whatever common sense I have says that I should act now. It is my earnest hope that the County Executive and his staff will continue with the progress they have made and maintain the ECCF as a model for the corrections industry. And so it is my fervent hope that the legendary Phoenix that is this case will at last find eternal rest.

Finally, this Court would be extremely remiss if it did not acknowledge the outstanding service of its two Special Masters, Messrs. Bennet Zurofsky and Fred Becker. Mr. Zurofsky has lived with this case and served this Court well since 1982. It is impossible to calculate with exactitude his outstanding service to the Court. Mr. Becker came on board in April 1995. As a lawyer with an outstanding reputation in this State, he has given his time and effort in an exemplary way. The Court is grateful to both of these gentleman.

Conclusion and Order

For the foregoing reasons, the proposed Third Consolidated Consent Order is hereby NOT APPROVED. In addition, this case is hereby DISMISSED and the Clerk shall mark this case CLOSED.

Newark, New Jersey
Dated: February 5, 2007

/s/ Harold A. Ackerman
U.S.D.J.