U.S. COURT OF APPEALS
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98- 6189

APPEAL NO: 98-6189

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
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UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

JEFFREY LOYD, et al.,

Appellants,

vs.

JOE HOPPER, et al.,

Appellees,

ON APPEAL FROM

THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ALABAMA

CV-92-N-58-NE

BRIEF OF APPELLEES

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Attorneys for Defendants-Appellees

CLOSED

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Appellees,

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for the State Defendants-Appellees certifies that the following listed persons and parties have an interest in the outcome of this case. These representations are made so the Judges of this Court may evaluate possible disqualification or recusal pursuant to the local rules of this Court.

1. Alabama Department of Corrections

   Defendant/Appellee.

2. Herbert Bradford, Defendant-Jackson County commissioner.

3. Ozelle F. Brown, Defendant-Chief Jailer of Jackson County Jail.

4. Gary Bryant, Plaintiff-Appellant.

5. Joe Buttram, Defendant-Jackson County commissioner.

6. Alice Ann Byrne, Attorney for Defendants.

7. Bruce Capshaw, Plaintiff-Appellant.

8. Hoyt Carrol, Defendant-Jackson County commissioner.

9. Phillip Clanton, Plaintiff-Appellant.

10. Undral Davis, Plaintiff-Appellant.

11. Larry Dempsey, Plaintiff-Appellant.

12. Perry Esslinger, Plaintiff-Appellant.

13. Calvin Evans, Plaintiff-Appellant.

14. Jesse Grider, Plaintiff-Appellant.

15. Lyle Haas, Defendant-Administrator of Jackson County Department of Health.

16. Ashley Hamlett, Attorney for Department of Public Health.

17. Joe S. Hopper, Defendant-Appellee Commissioner of Department of Corrections.

18. Christopher M. Johnson, Attorney for Plaintiffs.

19. Gary Lackey, Attorney for Jackson County Defendants.

20. Ellen Leonard, Attorney for Defendant Department of Corrections.

21. Jeffrey Loyd, Plaintiff-Appellant.

22. Joseph Marsh, Plaintiff-Appellant.

23. Daryl Masters, Attorney for Jackson County Defendants.

24. Joey Miller, Plaintiff-Appellant.

25. Hon. Edwin L. Nelson, United States District Judge

26. Thomas Paschal, Plaintiff-Appellant.

27. Bill Pryor, Attorney General of Alabama, Attorney for Defendants.

28. Kim Thomas, Attorney for Defendant Department of Corrections.

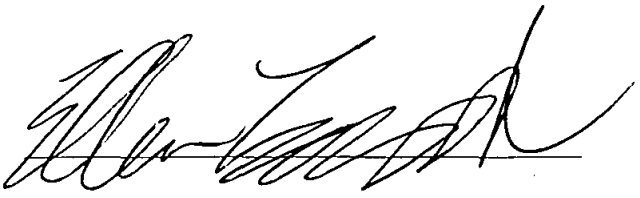
29. Robert E. Toone, Attorney for Plaintiffs.

30. Ed Tubas, Defendant-Jackson County commissioner.

31. Brad Waldrop, Plaintiff- Appellant.

32. Jake Wallingsford, Defendant-Jackson County commissioner.

33. Mike Wells, Sheriff of Jackson County.



ELLEN LEONARD

ATTORNEY FOR DEFENDANTS

DEFENDANTS/APPELLEES

STATEMENT REGARDING ORAL ARGUMENT

This case does not present complex factual matters. The Appellees believe that this case can adequately be addressed by the briefs.

CERTIFICATE REGARDING TYPE SIZE AND STYLE

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STATUTES

STATEMENT OF JURISDICTION

The jurisdiction of the district court in this civil action was invoked under 28 U.S.C. § 1343 (3) and (4). The jurisdiction of this court is invoked under 28 U.S.C. § 1291.

STATEMENT REGARDING PREFERENCE

This case not entitled to preference in processing or position.

STATEMENT OF THE ISSUES

I. DID THE DISTRICT JUDGE ERR IN FINDING THAT THE ATTORNEY GENERAL HAD STANDING TO SEEK TO TERMINATE A CONSENT DECREE TO WHICH NEITHER THE STATE OF ALABAMA NOR ANY STATE AGENCY WAS A PARTY, WHEN THE ATTORNEY GENERAL DID NOT EVEN FILES A MOTION TO INTERVENE?

II. DID THE DISTRICT JUDGE ERR IN REFUSING TO ALLOW THE PRESENTATION OF EVIDENCE IN SUPPORT OF THE PLAINTIFFS CONTENTION THAT THE *CONSENT DECREE* WAS NECESSARY AND NARROWLY DRAWN TO CORRECT A CURRENT OF ONGOING VIOLATION OF THEIR FEDERAL RIGHTS?

III. DID THE DISTRICT JUDGE ERR IN TERMINATING THE *PERMANENT INJUNCTION*?

IV. DID THE DISTRICT JUDGE ERR IN HOLDING THE TERMINATION PROVISION OF THE PRISON LITIGATION REFORM ACT ("PLRA") CONSTITUTIONAL, AND IN APPLYING IT SO AS TO VACATE THE *CONSENT DECREES* AGREED UPON BY THE PARTIES AND APPROVED BY THE DISTRICT COURT FOR THE PROTECTION OF INMATES AT THE JACKSON COUNTY JAIL?

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition Below

On January 9, 1992, a class action lawsuit was transferred from the Middle District of Alabama to the Northern District of Alabama. The complaint filed claimed that inmates at the Jackson County Jail were being subjected to unconstitutional conditions (R.1-1). On March 5, 1992, Defendants Nevels, Wells, Jackson County, Kennemer, Durham, Payne and Wells filed answers (R. 1-5 & 6). On March 12, 1992, Defendants Morris Thigpen, then Commissioner of the Alabama Department of Corrections and Alabama Department of Corrections filed an answer (R. 1-10). On March 16, 1992, an answer was filed by Defendant Haas and an amended answer on March 17, 1992 (R. 1-14 & 17).

After much discovery a consent decree was entered into between the parties.

On July 2, 1997, the Attorney General and the Commissioner of the Alabama Department of Corrections filed a motion to terminate and brief in support pursuant to the Prison Litigation Reform Act (R. 5-117). Pursuant to the Court's order, a supplemental motion was filed on July 23, 1997 (R. 119). On August 1, 1997, Plaintiffs' counsel filed a brief in opposition to the motion (R. 5-120). On January 27, 1998, the District Court granted the motion to terminate the consent decree (R. 5-127). On February 26, 1998, Plaintiffs filed notice of appeal (R. 5-128).

B. Statement of the Facts

A class comprised of all inmates who were incarcerated in or in the future would be incarcerated in the Jackson County Jail was certified on July 6, 1992, in the Northern District of Alabama, Northeastern Division. The Plaintiffs alleged that the conditions of confinement in the Jackson County, Alabama, Jail violated their civil rights.

On November 7, 1994, the District Court entered an order approving and adopting a Consent Decree entered into between the Plaintiffs and the Defendants, Jackson County, the Jackson County Commission, individual commission members, the Sheriff of Jackson County, Alabama, and the Jackson County Jail Administrator.

On January 12, 1995, the United States District Court for the Northern District of Alabama ordered prospective relief by issuing a Permanent Injunction. Subsequently, another Consent Decree was approved and adopted by the District Court on March 17, 1995.

No finding was ever made by this Court that the policies and practices complained of were unconstitutional. Further, no findings have been made that the relief ordered in the consent decrees or the permanent injunction were narrowly drawn or that it was the least intrusive means to correct the violation of a federal right.

C. **Statement of the Standard of Review**

The proper standard of review in a case for interpretation of statutory law is *de novo*. Hughey v. JMS Development Corp., 78 F.3d 1523, 1529 (11th Cir. 1996).

SUMMARY OF THE ARGUMENT

The District Judge did not err in finding that the Alabama Attorney General had standing to seek to terminate the consent decree as the consent decree affected state interests.

The District Judge did not err in refusing to allow evidence. The proper method of determining the continued viability of the consent decree was based on the record.

The District Judge did not err in terminating the permanent injunction as it was not necessary or narrowly drawn to correct a constitutional violation.

The Prisoner Litigation Reform Act (PLRA) termination clause is constitutional. The PLRA does not violate separation-of-powers doctrine by either requiring federal courts to reopen judgments or prescribe rules of decision for the courts. The PLRA does not violate the Due Process Clause of the Fourteenth Amendment on the basis of due process or equal protection.

ARGUMENT AND AUTHORITIES

I. THE DISTRICT JUDGE DID NOT ERR IN FINDING THAT THE ATTORNEY GENERAL HAD STANDING TO SEEK TO TERMINATE THE CONSENT DECREE.

The Attorney General represents all state defendants including the Alabama Department of Public Health and the Alabama Department of Corrections. The Attorney General has standing under the PLRA. This case concerns state interests which require an appearance by the Attorney General. As set forth by state law:

"He [Attorney General] . . . shall appear in the courts . . . of the United States, in any case in which the state may be interested in the result." Ala. Code § 36-15-1(2).

This case concerns the management of a facility that houses state criminals. It would be specious to argue that state interests are not involved.

The Attorney General is in charge of all litigation for the state including state agencies. The Attorney General represents the Alabama Department of Corrections and Department of Public Health who are defendants in the above-styled cause. Ala. Code § 36-15-1; Ex parte Weaver, 570 So.2d 675 (Ala. 1990). The Attorney General has authority under the Prison Litigation Reform Act. 18 U.S.C. § 3626(b)(2) (West Supp. 1996), *amended by* Pub. L. No. 104-134, § 802(a), 110 Stat. 1321, 1321-68 (1996) to file a motion seeking termination. Under § 3626(b)(1) the law states as follows:

[i]n any civil action with respect to prison conditions in which prospective relief is ordered, such relief shall be terminable upon the motion of any party or intervener." It is clear on the face of the statute that the Attorney General has the right to seek termination of all prospective relief. The Argument that the Attorney General failed to intervene is waived.

Apparently, belatedly, the Petitioners seek to argue that the Consent Decrees should not have been terminated as the Attorney General never filed a motion to intervene. However, in the Attorney General's Response, the Attorney General was stated to be an intervenor pursuant to the Prison Litigation Reform Act, 18 U.S.C. 3626(b)(2) (R5-119). The Petitioners, in their response, failed to address or otherwise respond to the intervenor position. In fact, the first time the argument is made that the Attorney General did not intervene is in their brief to this Court. As noted, "An argument not made is waived . . . . " Continental Technical Serv. V. Rockwell Intern Corp, 927 F.2d 1198, 1199 (11th Cir. 1991).

II. THE DISTRICT JUDGE DID NOT ERR IN REFUSING TO ALLOW THE PRESENTATION OF EVIDENCE PRIOR TO TERMINATING THE CONSENT DECREE. The Petitioner states that the District Judge erred in not allowing evidence to be presented that the consent decree was needed to correct a current or ongoing violation of the plaintiffs' federal rights, and that it was the least intrusive means of correcting the

violation. Apparently, the Petitioner is referring to his request ". . .to present Dr. Osterhoff's [court appointed monitor] testimony, because I think the picture isn't unfortunately, quite as rosy; particularly with respect to the availability of operating funds to operate this new jail. I think there is a real danger that if this consent decree is lifted that things will deteriorate that there will be - issues will become unconsitutional" (R17-129-10-11). In fact, a search of the record fails to uncover anywhere that the Petitioners represented that there were current and on-going violations of the constition. The Petitioner's entire argument below is based on the unconstitutionality of the PLRA and its interference with final judgments, etc. There is no indication that there is a current and ongoing violation. For the first time, on appeal, the Petitioner represents that he was denied the opportunity to present evidence that there is a current and ongoing violation. The record is absent of any such representation.

Furthermore, the Respondents state that it is evident from the record that the Court was aware of the conditions that existed in the Jackson County jail as Dr. Osterhoff was the court-appointed monitor and continually filed reports to the courts. In fact, less than three months prior to the filing of the Motion to Terminate, the Court had received the report from the Court monitor and likewise received a report a month and a half after the motion to terminate was filed (R13-116; R14-121). Moreover, on November 19,

1997, another report was filed with the Court by Dr. Osterhoff. This report was filed approximately two months prior to the termination of the consent decree. In fact, the Court had before it not less than eleven reports detailing the conditions at the Jackson County jail when the consent decree was terminated (R4-85; R6-101; R7-104; R8-105; R9-106; R10-107; R11-108; R12-115; R13-116; R14-121; R15-123). Any argument that the Court dismissed the consent decree without being aware of the current conditions is without merit.

The Petitioner cites to several cases in which courts have held that it is necessary to hear evidence relating to the current conditions in determing whether to terminate an existing consent decree. However, as pointed out, the trial judge was intimately familiar with the facts of this case and the current status of the conditions existing at the present time. It was represented by counsel for the county commission that the new jail was complete and that inmates would be moving into the new jail within the month. If, in fact, there were conditions exisitng which were unconsitituionl, the court-appointed monitor, making $95.00 an hour was under a duty to point this out to the Court in the quarterly reports which were being filed. No such problem was pointed out either in the reports or in open court. Under Benjamin v. Jacobson, 124 F.3d 162 (2nd Cir. 1997), a case relied upon the Appellants, it was clearly stated that if the "court determines that additional

evidence is necessary for it to decide whether to terminate [federal] relief, the record may include supplemental informatin that is presented to the court." This was based on the premise that a pre-existing record will rarely contain information on the "current" state of affairs. In this case, however, the premise fails as the court had current, ongoing information about the conditions existing in the county jail when it entered its order to terminate. The Petitioners state that the argument of presenting evidence to point out ongoing and current violations has been waived as it was not presented in the court below. Continental Technical Serv. V. Rockwell Intern Corp., 927 F.2d 1109, 1199 (11th Cir. 1991).

III. THE DISTRICT JUDGE DID NOT ERR IN TERMINATING THE *PERMANENT INJUNCTION*.

The Appellants arguument is that the PLRA only applies to consent decrees and not injunctions. This argument is premised upon the injunction in this case being entered by the District Court "upon due consideration, the court being fully informed in the premises." (Appellant's Brief, p. 20) The Appellants did in fact raise this argument at the hearing and it was summarily dismissed by the Court. The Appellants are unaware of any limitation of the PLRA to consent decrees. In Tyler v. Murphy, 135 F.3d 594, (8th Cir. 1998), the Court issued various injunctions which the city defendants moved to terminate. The

Court summarily denied this request. The court found that the motion sought to dissolve an injunction granting "prospective relief" defined by the PLRA to include "all relief other than compensatory monetary damges." 3626(g)(7). Therefore the motion to terminate the injunction was specifically authorityed by 3263(b). Congress intended for the federal courts to leave the running of the prisons to the states unless there was a constituional violation. Obviously, whether the federal court issues an injunction or there is a consent decree entered into and approved by the Court is not material.

IV. THE DISTRICT JUDGE DID NOT ERR IN HOLDING THE TERMINATION PROVISION OF THE PRISON LITIGATION REFORM ACT ("PLRA") CONSTITUTIONAL, AND IN APPLYING IT SO AS TO VACATE THE *CONSENT DECREES* AGREED UPON BY THE PARTIES AND APPROVED BY THE DISTRICT COURT FOR THE PROTECTION OF INMATES AT THE JAKCSON COUNTY JAIL

Congress's purpose in enacting the PLRA was to relieve states of the onerous burdens of complying with consent decrees that often reach far beyond the dictates of federal law. See H.R. Rep. No. 21, at 8-9. The law minimizes prison operation by judges. Dougan v. Singletary, 129 F.3d 1424, 1427 (11th Cir. 1997) The responsibility of running state prisons belongs to the State of Alabama. This laudable goal was duly explained in Benjamin v. Jacobson, 935 F. Supp. 332 (S.D.N.Y. 1996), rev'd on

other grounds, 124 F.3d 162 (2nd Cir. 1997), as follows:

> The thrust of the criticism which prompted the legislation was that the federal courts had overstepped their authority and were mollycoddling the prisoners in state and local jails. In short, the time had come to let the responsible entities, the municipal and state legislatures, take care of their own correctional facilities.

When, as in this case, the Court enters a consent decree without finding that the relief is narrowly drawn, extends no further than necessary to protect a federal right, and with a record absent of evidence to satisfy the requirements of 18 U.S.C. § 3626(b)(2), the Court must immediately terminate the consent decree. Plyler v. Moore, 100 F.3d 365, 372 (4th Cir. 1996); James v. Lash, 949 F. Supp. 619, 693 (N.D. 1996). The Loyd consent decrees contains none of the necessary findings that would support the maintenance of the decree. Accordingly, the district court properly granted the motion to terminate.

A. THE PLRA'S PROVISION FOR TERMINATION OF FINAL JUDGMENTS ENTERED BY CONSENT VIOLATED ARTICLE III AND THE PRINCIPLES OF SEPARATION OF POWERS.

Separation-of-powers principle prohibits legislation that requires federal courts to reopen judgments that are already final. In addressing this claim of violation separation-of-powers

doctrine of Article III, the Eleventh Circuit held that "PLRA does not run afoul of the prohibition." Dougan 129 F.3d at 1426, See, Hadix v. Johnson, 133 F.3d 940, 942-43(6th Cir. 1998); Inmates of Suffolk County Jail, v. Rouse, 129 F.3d 649, 656-58; Gavin v. Branstad, 122 F.3d 1081, 1085-87(8th Cir. 1997); Benjamin v. Jacobson, 124 F.3d 162(2d Cir. 1997); Plyler v. Moore, 100 F.3d 365, 370-72(4th Cir. 1996), cert. denied, ___ U.S. ___, 117 S.Ct. 2460, 138 L.Ed. 2d 217(1997) In the instant case, the separation-of-powers doctrine was not violated by the termination of the consent decree.

The Appellants contend that the termination provision of the PLRA violates the principles set forth in United States v. Klein, 80 U.S.(13 Wall.)128(1872). This principle is that a law cannot prescribe "rules of decisions" to courts in cases pending before them without violating the separation-of-powers doctrine. Id at 146. While it is true that Dougan did not address this issue, it was stated in a footnote, that two other circuit courts had addressed this issue and rejected this proposition. Dougan at 1426 fn 10.

> While § 3626(b)(2) requires a district court to terminate prospective relief that was approved in the absence of a finding that the relief is no greater than necessary to correct the violation of a federal right, it does not purport to state how much relief is more

than necessary. In short, § 3626(b)(2) provides only the standard to which district courts must adhere, not the result they must reach. Accordingly, because § 3626 (b)(2) amends the applicable law and does not dictate a rule of decision, we conclude that it is not unconstitutional under Klein.

Plyler, 100 F.3d at 372., See, Gavin, 122 F.3d at 1089. The PLRA does not violate the principles of Klein because "courts remain free to interpret and apply to law to the facts as they discern them." Inmates of Suffolk County, 129 F.3d at 658; See, Hadix, 133 F.3d at 943. The PLRA does not breach the separation-of-powers standard of Klein and should be held to be constitutional on this ground in this case.

B. RETROACTIVE APPLICATION OF THE PLRA'S PROVISION FOR TERMINATION OF THE RELIEF DOES NOT DENY DUE PROCESS.

This Court addressed the issue of violation of the Due Process Clause of the Fourteenth Amendment holding as follows:

> [T]his due process argument fails because a consent decree, unlike other final judgments, does not give rise to any vested rights.[1] The reason is that a decree, unlike a money judgment, is subject to later adaptation to changing conditions. Legislative

[1]Gavin, 122 F.3d at 1091; Plyler, 100 F.3d at 374-75.

modification of the law governing the decree thus does not impermissibly divest the inmates of any vested rights.

Dougan, 129 F.3d at 1426-27. Thus, the PLRA does not deny the Appellants due process because they have no vested right.

C. THE PLRA'S PROVISION FOR TERMINATION OF FINAL JUDGMENTS ENTERED BY CONSENT DOES NOT DENY EQUAL PROTECTION.

As in Dougan, the Appellees contend in this case that the entire PLRA statute is not before the Court only the termination clause. The only action taken by the district court was to terminate the consent decree pursuant to § 3626(b)(2). Consequently, the entire PLRA statute is not before the Court. Dougan, 129 F.3d at 1427.

This Court also addressed the issue of violation of equal protection pursuant to the Due Process Clause of the Fourteenth Amendment holding as follows:

> [T]he inmates assert that the termination provision violates the equal protection dimension of the Fifth Amendment's Due Process Clause. . . . The termination provision, considered alone, does not deny inmates 'a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts.' Rather, it restricts the relief that an inmate may receive once he gets to court. Because

§ 3626(b)(2) does not infringe any identified fundamental right, equal protection analysis requires only rational basis review. Here the inmates raise their second argument: the PLRA discriminates against prisoners and is not rationally related to a legitimate government interest. Not so. The PLRA's termination provision does discriminate against prisoners (because other litigants need not relitigate consent decrees), but by restricting judicial discretion to remedy constitutional violations it could reasonably be said to advance the unquestionably legitimate end of minimizing prison operation by judges. The provision therefore satisfies the demands of the Fifth Amendment's equal protection doctrine. The inmates have thus pointed to no constitutional provision that the PLRA's termination provision violates. We accordingly conclude that § 3626(b)(2) is constitutional.

Dougan, 129 F.3d at 1427. See, Plyler 100 F.3d at 373-74. The PLRA termination clause does not violate equal protection.

CONCLUSION

For the foregoing reasons, the Defendant/Appellees respectfully request that this Court find that the District Court properly granted the Motion to Terminate and affirm the lower court's decision.

Respectfully submitted,

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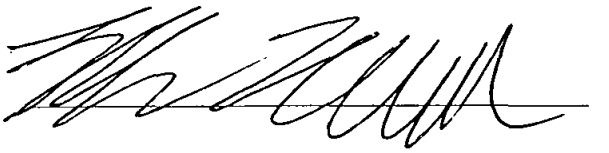

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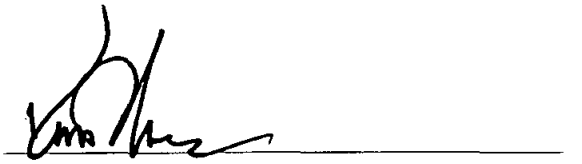

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I hereby certify that I have served a copy of the foregoing documents upon

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by placing a copy of said documents in the U.S. Mail, postage prepaid on this the 16th day of July, 1998.

Ellen Leonard
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