

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JOHN RHODES, individually and on behalf)	)	
of himself and all others similarly situated,	)	
	)	Civil Action No.
Plaintiffs,	)	1:91-CV-2908-ODE
v.	)	
	)	
JOHN SEAY, individually and in his official)	)	
capacity as Sheriff of Cherokee County,	)	
Georgia and Cherokee County,	)	
	)	
Defendants.	)	

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO TERMINATE
CONSENT ORDER**

Defendants Cherokee County, Georgia and Cherokee County Sheriff Roger Garrison in his official capacity¹, bring this motion pursuant to the Prison Litigation Reform Act, 18 U.S.C. § 3626(b)(1)(B) to terminate the Consent Order entered in this matter which orders prospective relief to be taken with respect to conditions at the former Cherokee County Jail, and to terminate the underlying lawsuit.

¹ A Motion for Substitution pursuant to FED. R. CIV. P. 25(d) seeking the substitution of John Seay (the former sheriff of Cherokee County) in his official capacity with Roger Garrison (the current sheriff of Cherokee County) in his official capacity has been filed contemporaneously with this Memorandum of Law.

I.
INTRODUCTION AND PROCEDURAL HISTORY

This action was filed on November 25, 1991 on behalf of inmates at the former Cherokee County Jail (“Old Jail”) challenging certain conditions at that facility. On December 7, 1992, this Court entered a Consent Order directing that certain prospective relief be taken with respect to then existing conditions at the Old Jail. (Exhibit 1, Declaration of Sheriff Roger Garrison, attachment A). The Consent Order touched upon all matters of inmate housing and inmate life.

Significantly, the Consent Order contains no finding that the relief ordered is narrowly drawn, the relief extends no further than necessary to correct the violation of a Federal right, or that the relief is the least intrusive means necessary to correct the violation of the federal right.

II.
FACTS

Since the entry of the Consent Order, a new jail facility has been constructed in Cherokee County (“New Jail”), which was opened for operation in October 2002. (Exhibit 1). The New Jail was constructed in accordance with the standards created by the American Correctional Association. (Exhibit 1). The New Jail is also accredited by the National Commission on Correctional Health Care. (Exhibit 1).

The building of the New Jail has ameliorated the problems giving rise to the Consent Order. (Exhibit 1). The Old Jail is currently being utilized only for the purpose of providing sleeping quarters for inmate workers. (Exhibit 1). The New Jail complies with the Consent Order in all material respects. (Exhibit 1). For example, the New Jail is designed to house 512 inmates, with an additional 27 beds available in the medical unit. (Exhibit 1). As of February 20, 2007, the population at the New Jail was 492. Each inmate is provided his or her own bed or cot. (Exhibit 1).

In the New Jail, female inmates are assigned to separate cell blocks. (Exhibit 1). The female inmates are separated by sight and sound from male inmates. (Exhibit 1). The physical lay-out of the New Jail prohibits intrusive views into the female cell blocks, thereby protecting the privacy interests of female inmates. (Exhibit 1). In addition, the scheduling of inmate programs and services is done in such a manner as to prevent contact between male and female inmates. (Exhibit 1).

Staffing at the New Jail exceeds the minimum number of 8 jailers per shift. In addition, at least 1 jailer is stationed in each Control Center, and at least 2 jailers are designated rovers. (Exhibit 1).

At the time of book-in, all inmates undergo a medical screening that is performed by a Licensed Practicing Nurse or Certified Medical Assistant and information regarding the inmate's medical condition is obtained. (Exhibit 1). Inmates are informed at that time how to access medical services and the grievance system. (Exhibit 1).

Upon in-take, each inmate is issued a mattress with integrated pillow, one clean mattress cover or fitted sheet, one clean blanket, one clean sheet, one clean towel, and one clean wash cloth, a clean pair of pants and shirt, shoes, white undergarments, soap, toothbrush, toothpaste, and comb. (Exhibit 1). Additional hygiene items are available for purchase from the inmate commissary. (Exhibit 1). Indigent inmates receive, at no cost, an indigent package that contains additional hygiene products. (Exhibit 1). To allow for proper grooming, inmates are afforded the opportunity to use razor blades. (Exhibit 1).

Restraints are used on inmates only as a last resort and only in those cases in which the inmate presents a danger to self or others, or when the inmate physically resists an officer's attempts to subdue him or her. (Exhibit 1). Restraints are also used when an inmate is transferred out of the facility. (Exhibit 1). Use of restraints as a disciplinary measure or as a convenience to staff is prohibited. (Exhibit 1).

The use of restraints must be approved by a physician, psychologist and/or the duty Watch Commander or designee. (Exhibit 1). All restrained inmates will be placed in a designated area that permits the observation by staff. (Exhibit 1). Staff is required to physically inspect restrained inmates every fifteen inmates. (Exhibit 1). In addition, a digital recording is made of the inmate's behavior. (Exhibit 1).

All meal services are prepared under the direct supervision of the food Service Director. (Exhibit 1). A registered dietician approves the menu to insure that the meals are nutritionally adequate. (Exhibit 1). Inmate meals are served at regularly scheduled times and are served at the appropriate temperature. (Exhibit 1). A beverage is provided with each meal. (Exhibit 1). In addition, a commissary is available to inmates from which food and snack items may be purchased. (Exhibit 1).

Inmates are encouraged to visit with family and friends, and inmates who are not receiving a disciplinary sanction are permitted to have visitors in accordance with an established visitation schedule. (Exhibit 1). Inmates are permitted visitors for one hour intervals, twice a day, three times per week. (Exhibit 1). For good cause, special visits may be scheduled at times other than the established visitation schedule. (Exhibit 1).

Attorneys may meet with inmate clients at any time and attorney visits are not restricted. (Exhibit 1). Attorney visits are conducted in a booth designated for professional visitation to insure privacy. (Exhibit 1). While staff may visually observe the conduct of the attorney visit, the audio conversation is not monitored or recorded. (Exhibit 1).

Each inmate has access to a telephone during the intake process, and inmates may use the telephones to contact family, friends, attorneys, bonding companies, or others to arrange for their release from jail. (Exhibit 1). Inmates in the Housing Units generally have access to telephones from 6:00 a.m. to 10:00 p.m. (Exhibit 1).

Inmates have access to a wide variety of educational, recreational, and leisure reading materials. (Exhibit 1). A qualified staff member coordinates and supervises library services. (Exhibit 1). Library carts are used to deliver a selection of leisure reading materials to each Housing Unit and inmates may check out selected leisure reading materials of their choice. (Exhibit 1). Reading materials are regularly replenished in order to maintain a variety of selections. (Exhibit 1).

Inmates have access to board games (chess, checkers, etc.) for recreational and leisure activities. (Exhibit 1). In addition, all Housing Units are equipped with

televisions for use by the inmates. (Exhibit 1). Inmates are permitted a minimum of one hour each day of physical exercise in the recreation area. (Exhibit 1).

Stamps, envelopes, paper, and pencils are available for purchase from the commissary, but these items are provided free of charge to indigent inmates. (Exhibit 1). Outgoing mail may be inspected for unauthorized items and contraband in the presence of the inmate. The mail itself is not read. (Exhibit 1). Incoming mail may be inspected for unauthorized items and contraband in front of the inmate. The mail itself is not read. (Exhibit 1).

Incoming mail that contains unauthorized items or contraband is rejected and is not delivered to the inmate. (Exhibit 1). In addition, mail that is determined to be detrimental to the security, good order, or discipline of the facility, and mail that may facilitate criminal activity, may be rejected. (Exhibit 1). When mail is rejected, the inmate is informed in writing and the inmate is permitted to appeal this action through the Inmate Grievance Procedures. (Exhibit 1).

Incoming mail is delivered to inmates the same day as received, excluding weekends and holidays. (Exhibit 1). The volume of mail sent and received by inmates is not limited, except by overriding security needs. (Exhibit 1). Mail from other jails, prisons, boot camps, or any detention facility, however, will not be accepted. (Exhibit 1).

Each inmate is permitted to access to the courts through personal contact with attorneys, and by sending and receiving unrestricted and uncensored legal mail. (Exhibit 1). The New Jail has a Law Library to assist inmates in the preparation of documents. (Exhibit 1). The Law Library is available Monday through Friday, six hours per day, excluding holidays, during which time inmates may request to use the facility. (Exhibit 1).

Permanent logs are maintained by the Sheriff's Office. (Exhibit 1). Log entries are routinely made by the Master Control officers, Housing Unit officers, Control Room officers, and Book-in officer. (Exhibit 1). The information recorded in the logs include, but is not limited to, medical complaints, inmate complaints and grievances, routine activities, unusual incidents, inmate refusal of meals or medication. (Exhibit 1). In addition, book-in records and documents are maintained. (Exhibit 1).

A housekeeping program is implemented for each housing unit. (Exhibit 1). Inmates are assigned sanitation details within the Housing Unit on a rotating basis. Inmates are provided cleaning materials and specific instructions for the cleaning of floors, doors sleeping areas, walls, windows, toilets, sinks, showers, furniture, and equipment. (Exhibit 1). Inmates are required to maintain sanitary living conditions and are responsible for the cleanliness of their assigned living area,

including the walls, floors, sink, toilet, windows, and other fixtures and furniture within the living area. Beds are required to be kept neatly when not occupied. (Exhibit 1).

A sanitation inspection is performed by Housing Unit staff during each shift. (Exhibit 1). Supervisory staff conducts a daily patrol of all areas occupied by inmates, and inspects unoccupied areas once per week. (Exhibit 1). In addition, floors, bathrooms, walls, vents, and other areas are cleaned and sanitized on an as needed basis. (Exhibit 1). The entire facility is inspected monthly by the safety and sanitation officer, and annual inspections are conducted by Federal, State, and/or local health officials. (Exhibit 1). Inmate clothing and linens are exchanged on a regular basis for laundering. (Exhibit 1).

Inmate health care is provided by contracted service providers who are credentialed by the state of Georgia. (Exhibit 1). Medical professionals are within the facility twenty-four hours per day, seven days per week. (Exhibit 1). Emergency medical and dental care is available for inmates twenty-four hours per day, seven days per week, and a physician is on call at all times. (Exhibit 1).

Every inmate placed in the population is scheduled for a health appraisal. (Exhibit 1). Inmates may receive medical and routine dental services by completing an Inmate Medical Request Form. (Exhibit 1). Nursing personnel

review and respond to all medical requests on a daily basis. (Exhibit 1). In addition, a comprehensive sick call with a physician is held on a weekly basis. (Exhibit 1). Inmates requiring constant supervision by medical staff are housed in the medical housing unit. (Exhibit 1).

All medication is stored and locked in the pharmacy at all times, except when being distributed. (Exhibit 1). Only authorized staff is permitted in the pharmacy. (Exhibit 1). Medication is dispensed to inmates by properly trained medical staff in the presence of an officer. (Exhibit 1). Medication is dispensed to inmates in a timely manner, according to the physician's and/or dentist's order. (Exhibit 1). If an inmate refuses medication, the medication is returned to the pharmacy along with a signed medication refusal form to be placed in the inmate's medical file. (Exhibit 1).

Inmates who suffer from medical conditions that have caused deterioration of the inmate's physical condition to an extent that the inmate requires closer medical supervision may be moved from general population to the medical unit for observation. (Exhibit 1).

All inmates are assigned to Housing Units according to the classification status assigned during the classification process. (Exhibit 1, attachment B). Classification status is assigned by a classifying officer based on criteria set by the

Jail Administrator and set forth in a Classification Plan. (Exhibit 1). In addition, inmate disciplinary and grievance procedures have been enacted. (Exhibit 1, attachment C).

Each Housing Unit has a Multi-Purpose Room that provides space and equipment for religious services. (Exhibit 1). Arrangements for such services are made with local ministers by the facility chaplain. (Exhibit 1).

Inmates are provided the opportunity to participate in various programs and services. (Exhibit 1). These programs and services include substance and alcohol programs such as Alcoholic Anonymous meetings. (Exhibit 1). These programs are conducted in a secure area of the New Jail.

All physical facilities of the New Jail, including toilets, sinks, showers, furniture, ventilation, and heating and air conditioning systems are maintained in an operable condition. (Exhibit 1). Any necessary repairs are completed in a timely manner. (Exhibit 1).

The Consent Order should be terminated because it was entered before the enactment of the Prison Litigation Reform Act, 18 U.S.C. § 3626 (“PLRA”), and more than two years have passed since the enactment of the PLRA. Moreover, the Consent Order fails to make the findings required by the PLRA to substantiate the grant of prospective relief. Finally, there is no current and ongoing violation of

federal rights occurring at the New Jail. With the termination of the Consent Order, the underlying lawsuit should be terminated as well.

III. ARGUMENT AND CITATIONS TO AUTHORITY

In 1996, Congress enacted the PLRA which dramatically altered prison litigation reform in many areas. 18 U.S.C. § 3626. The PLRA is consistent with the Supreme Court's view that Federal Courts should have reduced involvement in the state prison systems. Parrish v. Alabama Dept. of Corrections, 156 F.3d 1128, 1129 fn2 (11th Cir. 1998).

Relevant to this motion are the provisions of the PLRA relating to prospective relief.² The PLRA limits the scope of prospective relief that a court has the authority to enter, and limits a court's authority to continue to enforce previously entered prospective relief in prison litigation reform cases. 18 U.S.C. § 3626(a)(1), § 3626(b)(1)(A) and (b)(2). Upon motion by a party, previously entered prospective relief should be terminated unless the court determines that the relief remains necessary to correct a current and ongoing violation of federal rights. 18 U.S.C. § 3626(b)(3); Cason v. Seckinger, 231 F.3d 777, 780 (11th Cir. 2000).

² The PLRA defines prospective relief as all relief other than compensatory monetary damages. 18 U.S.C. § 3626 (g).

These provisions of the PLRA mandate that the Consent Order entered in this case be terminated.

A. This Motion to Terminate the Consent Order is Timely Under the PLRA

18 U.S.C. 3626(b)(1)(A) provides that in 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 at the following times: (i) 2 years after the date the court granted or approved the prospective relief; (ii) 1 year after the date the court has entered an order denying termination of prospective relief under this paragraph; or (iii) in the case of an order issued on or before the date of enactment of the Prison Litigation Reform Act, two years after such date of enactment.

The Consent Order was entered in this matter fourteen years ago, in 1992. The PLRA was enacted four years later, in 1996. More than 2 years has passed since the enactment of the PLRA and as a result, the PLRA authorizes the termination of the Consent Order. See 18 U.S.C. 3626(b)(1)(A)(iii).

B. The Consent Order is Immediately Terminable Because it Was Entered Without the Required Findings

A defendant is entitled to immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the

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 (hereinafter “need-narrowness-intrusiveness findings”). 18 U.S.C. § 3626(b)(2).

In this case, the prospective relief approved in the Consent Order was granted in the absence of the required need-narrowness-intrusiveness findings. Indeed, the Consent Order is silent as to all of the need-narrowness-intrusiveness provisions. Because the Consent Order fails to set forth these required findings, defendants are entitled to the immediate termination of all prospective relief ordered.

C. There is no Current and Ongoing Violation of Federal Rights Occurring at the New Jail

The Consent Order entered in this case must be terminated unless the limiting provisions of 18 § 3626(b)(3) prohibit its termination. Cason, 231 F.3d at 781. Under this section, prospective relief shall not terminate if the court makes written findings on the record that: (1) prospective relief remains necessary to correct a current and ongoing violation of the Federal right; (2) the relief extends no further than necessary to correct the violation of the Federal right; (3) the relief is narrowly drawn; and (4) the relief is the least intrusive means to correct the violation. 18 U.S.C. § 3626(b)(3).

In this context, “current and ongoing” means a presently existing violation, not a potential or likely future violation. Cason, 231 F.3d at 783. Accordingly, a current and ongoing violation is a violation that is occurring at the time the termination is sought. Id. at 784. If a current violation is found, a court must make new findings about whether the relief currently complies with the need-narrowness-intrusiveness requirements, given the nature of the current violations and based upon a record reflecting the conditions that currently exist. Id.; Benjamin v. Jacobson, 172 F.3d 144, 166 (11th Cir. 1999). Moreover, the new findings must be particularized on a provision-by-provision basis, with analysis and explanations concerning each criteria as it relates to each item of prospective relief ordered. Cason, 231 F.3d at 785.

Section 3626(b)(3) does not prohibit the termination of the Consent Order entered in this case. There are no existing violations of Federal rights occurring in the New Jail. The New Jail was constructed in accordance with the standards created by the American Correctional Association. Moreover, the New Jail is accredited by the National Commission on Correctional Health Care. As set forth in the Declaration of Sheriff Roger Garrison, the construction of the New Jail and implementation of jail policies has ameliorated the problems giving rise to the Consent Order.

In sum, based upon the conditions as they exist today, there are no current and ongoing violations of Federal rights occurring at the New Jail and the Consent Order should be terminated.

IV. CONCLUSION

Fourteen years have passed since the entry of the Consent Order. The PLRA mandates that the Consent Order entered in this matter be terminated. The Consent Order was entered before enactment of the PLRA, and more than two years have passed since the enactment of the statute. Moreover, the Consent Order does not make the required need-narrowness-intrusiveness findings. Finally, there are no current and ongoing violations occurring at the New Jail which would prohibit the termination of the Consent Order. For these reasons, defendants respectfully request that the Consent Order, and the underlying lawsuit, be terminated.

Respectfully submitted,

FREEMAN MATHIS & GARY

/s/ Michelle J. Hirsch

Dana K. Maine

Georgia Bar No. 466580

Michelle J. Hirsch

Georgia Bar No. 357198

Attorneys for Roger Garrison in his
official capacity as Sheriff of
Cherokee County and Cherokee
County, Georgia

100 Galleria Parkway
Suite 1600
Atlanta GA 30339
(770) 818-0000 (telephone)
(770) 937-9960 (facsimile)

MJH1873/5409-41864

CERTIFICATE OF FONT SIZE

Pursuant to Local Rule 7.1(D), I hereby certify that the foregoing has been prepared in compliance with Local Rule 5.1(B) in Times New Roman 14 point type face.

This the 22nd day of February, 2007.

/s/ Michelle J. Hirsch

Michelle J. Hirsch

Georgia Bar No. 357198

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing **MEMORANDUM OF LAW IN SUPPORT OF MOTION TO TERMINATE CONSENT ORDER** with the clerk of the court using the CM/ECF system and by United States Postal Service, first-class postage prepaid, and have served said document via United States Postal Service, first-class postage prepaid, to the following:

Ralph Goldberg, Esq.
755 Commerce Drive
Suite 600
Decatur, Georgia 30030

M. Linda Mabry
Mabry & Steele
692 Clifton Road, NW
Atlanta, Georgia 30307

This 22nd day of February, 2007.

/s/ Michelle J. Hirsch

Michelle J. Hirsch
Georgia Bar No. 357198

FREEMAN MATHIS & GARY, LLP
100 Galleria Parkway
Suite 1600
Atlanta, Georgia 30339-5948
Tel: (770) 818-0000
Fax: (770) 937-9960