

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

A. C. GILLES, JR., SHERIFF OF
SHELBY COUNTY (in his official
capacity); AND SHELBY COUNTY
BOARD OF COMMISSIONERS,

Defendants.

Civil Action No.

93-3102 HA

CONSENT DECREE

This action was brought by the United States against A. C. Gilles, Jr., Sheriff of Shelby County, Tennessee, in his official capacity (hereinafter "Sheriff" or "Sheriff's Department") and the Shelby County Board of Commissioners ("Board of Commissioners") to enforce the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq., as amended, ("Title VII"), following receipt by the Department of Justice from the Equal Employment Opportunity Commission ("EEOC") of a charge filed by Joseph Smith, EEOC Charge No. 250-91-0759.

In its complaint, the United States alleges, inter alia, that the Sheriff's Department has violated Title VII by: (1) failing or refusing to promote Mr. Smith into a Deputy Jailor IV position because he filed a charge with the EEOC alleging race discrimination; and (2) failing or refusing to take appropriate action to remedy the effects of the discriminatory treatment.

This document entered on 12-30-83 in compliance with Rule 58 and/or
70 of FRCP on 12-30-83

A copy of the Consent Decree is enclosed. If you have any questions concerning this matter, you may contact A. Marisa Churn, attorney for the United States Department of Justice, at (202) 514-3877.

Sincerely,

G. Hite McLean, Jr., Esq.
Attorney for Defendants

APPENDIX B

RELEASE

United States v. A. C. Gillesse, Jr., Sheriff of Shelby County,
and the Shelby County Board of Commissioners
Civil Action No. _____ (W.D. Tenn.)

STATE OF _____

COUNTY OF _____

For and in consideration for the acceptance of any of the relief offered me by A. C. Gillesse, Jr., Sheriff of Shelby County, and the Shelby County Board of Commissioners pursuant to the provisions of the Consent Decree entered by the Honorable [name], United States District Judge, on [date] in United States v. A. C. Gillesse, Jr., Sheriff of Shelby County (in his official capacity) and the Shelby County Board of Commissioners, Civil Action No. [number] (W.D. Tenn.), I, Joseph Smith, hereby release and forever discharge the defendants A. C. Gillesse, Jr., Sheriff of Shelby County and the Shelby County Board of Commissioners, their officials, agents, and employees, of and from all legal and equitable claims arising out of the Complaint filed in that action and EEOC Charge No. 250-91-3759.

This Release and the accompanying Election of Remedies form constitutes the entire agreement between defendants and myself, without exception or exclusion.

I acknowledge that a copy of the Consent Decree in this action has been made available to me.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF.

AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Signed this ____ day of _____.

Joseph Smith

Social Security Number _____

Other Identification _____

Sworn and subscribed to before me this day of _____, 199_.

NOTARY PUBLIC

My commission expires: _____

SECTION OF REMEDIES

United States v. A. C. Gillies, Jr., Sheriff of Shelby County
and the Shelby County Board of Commissioners
Civil Action No. _____ (W.D. Tenn.)

I, Joseph Smith, accept the following relief offered to me
pursuant to the Consent Decree entered into in the above-
referenced case:

(Check)

_____ Monetary Relief Only

_____ Monetary Relief and Promotion into a Deputy
Jailer IV Position

Date

Joseph Smith

The defendant Board of Commissioners is named as a party pursuant to Rule 19(a) of the Federal Rules of Civil Procedure.

The Sheriff's Department denies that it has discriminated or retaliated against Mr. Smith in violation of Title VII. Nevertheless, the parties, desiring that this action be settled by appropriate Consent Decree and without the burden of protracted litigation, agree to the jurisdiction of this Court over the parties and the subject matter of this action, and hereby waive, for the purposes of this Decree only, service of the complaint, hearings and findings of fact and conclusions of law on all issues, and further agree to the entry of this Order as final and binding among themselves as to the issues raised in the complaint filed in this case.

This Decree, being entered with the consent of the parties, shall in no way constitute an adjudication or finding on the merits of the case, nor be construed as an admission of liability by the defendants or a finding of any wrongdoing or violation of any applicable federal or state law or regulation by the defendants.

It is therefore ORDERED, ADJUDGED AND DECREED as follows:

A. GENERAL

1. The Sheriff, by and through his officials, agents, employees and all persons in active concert or participation with the Sheriff, agrees not to retaliate against or in any respect adversely affect any person because that person has opposed alleged discriminatory policies or practices, has filed an EEOC

charge, or because of that person's participation in or cooperation with the initiation, investigation, litigation or administration of this case or this Decree.

2. The Sheriff shall post notices in conspicuous places at the Shelby County Sheriff's Department advising employees of their rights under Title VII of the Civil Rights Act of 1964, as amended, particularly their right to file a charge under that Act, or a related complaint or grievance, without retaliatory measures being taken against them. The notice shall provide the proper procedure for employees of the Sheriff's Department to report incidents of discrimination or retaliation.

B. SPECIFIC RELIEF

3. The United States alleges that the Sheriff's Department has violated Title VII in the following respects: (a) retaliation against Joseph Smith by failing or refusing to promote Mr. Smith into a Deputy Jailer IV position in the Shelby County Sheriff's Department on or about April 25, 1991, because he filed a charge with the EEOC alleging race discrimination; and (b) failing or refusing to take appropriate action to remedy the effects of the discriminatory treatment of Mr. Smith.

4. Without admitting to the contentions of the United States, and in settlement of the claim of the United States for relief on behalf of Joseph Smith, as well as in settlement of an individual claim of Mr. Smith if he accepts the relief to be offered him under this Decree, the defendants agree, and it is

hereby ordered, that the defendants shall offer to Mr. Smith the following:

a. The defendant Sheriff shall offer to Mr. Smith:

1) Promotion into a Deputy Jailer IV position, with a seniority date of May 1, 1991 in that position for all purposes for which such a seniority date may be used.

b. The defendant Sheriff and the defendant Board of Commissioners shall offer to Mr. Smith:

1) A monetary award in the amount of \$9,974.32, representing retroactive salary increases from Deputy Jailer III to Deputy Jailer IV, with interest, for the period between May 1, 1991 and December 31, 1993.

2) If Mr. Smith accepts the offer of promotion to Deputy Jailer IV, to increase Mr. Smith's monthly salary from \$ 2,449.50 to \$ 2,738.00, effective with that promotion.

5. \$9,121.00 of Mr. Smith's monetary award shall be subject to income tax and FICA withholding and the remainder, or \$853.32, shall be considered interest. The defendants shall pay separately the appropriate employer's contribution to the Social Security Fund due on the \$9,121.00 amount of the monetary award i.e., the employer's contribution shall not be deducted from the monetary award.

6. The defendants shall contribute their full share to a pension plan Mr. Smith would have had if he had been promoted to

a Deputy Jailor TV beginning on May 1, 1991. Mr. Smith's monetary award shall not be reduced by the defendants' pension plan payments; however, any additional contribution Mr. Smith would have made to a pension plan during this period shall be paid into the pension plan from his monetary award.

7. Mr. Smith does not have to accept the job opportunity and remedial seniority relief to be offered him pursuant to ¶ 4 of this Decree in order to be eligible for the monetary relief of \$9,974.32 to be offered him pursuant to ¶ 4(b)(1) of this Decree.

8. The defendants agree to notify Mr. Smith of the terms of this Consent Decree within seven (7) days of its entry by mailing to him, by certified mail, return receipt requested, a copy of the letter in the form set forth in Appendix A and enclosing a copy of this Decree and a copy of the Release and Election of Remedies attached as Appendix B. The letter identified as Appendix A will advise Mr. Smith that in order to accept the relief offered, he must return the executed Appendix Release form and Election of Remedies form to the defendants within thirty (30) days of his receipt of the Appendix A letter.

9. The defendants agree to offer Mr. Smith the relief specified in ¶ 4 of this Decree within thirty (30) days of their receipt of his executed Appendix B Release form and Election of Remedies form.

C. RECORDS AND RECORDKEEPING

10. Within ninety (90) days from the date of entry of this Decree, the defendants shall provide counsel for the United