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Goff v. Harper



PC-IA-001-013

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

FILED

OCT 15 2001

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA**GEORGE GOFF, et al.,****Plaintiffs,****vs.****CHARLES HARPER, et al.,****DEFENDANTS.****No. 4:90-CV-50365****ORDER**

This matter comes before the Court upon remand of the above-captioned case by the Eighth Circuit Court of Appeals directing the district court to properly review the Court's order of June 5, 1997, under the balancing principles of Turner v. Safely, 482 U.S. 78 (1987). After careful consideration of the parties' written and oral arguments this Court states as follows:

I. BACKGROUND

An extensive historical background of this case has been previously set out in prior orders, therefore, the Court will limit its discussion of the history of this case to the present appeal.

In 1996, Iowa State Penitentiary (hereinafter "ISP") Prison Officials brought an appeal based on a preliminary injunction granted by the district court. On September 6, 1996, the Eighth Circuit stayed the appeal pending final adjudication of the merits by the district court. In August 1999, the district court entered a final order on the merits and prison officials subsequently filed a new appeal. This new appeal, based on the merits, was consolidated with the 1996 appeal. It has been conceded by prison officials that the 1996 appeal is now moot.

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In the present appeal, prison officials had two arguments. First, it was argued that this court lacks subject matter jurisdiction because the issues covered in this Court's opinion were previously resolved in consent decrees. The Eighth Circuit held that because the consent decrees at issue were vacated before the district court's opinion on the merits was filed, they cannot serve as res judicata. Goff v. Harper, 235 F.3d 410, 413 (8th Cir. 2000). Therefore, this issue requires no discussion.

Second, prison officials have appealed this Court's findings of constitutional violations at ISP. They argue that the Court's holding on the constitutional issues should be set aside as being clearly erroneous because this Court did not follow any established objective standards in finding such violations. In Goff, the Eighth Circuit set out that:

A discussion of constitutional violations in a prison setting requires a two-step analysis. First, we must determine whether the liberty interest asserted by an inmate is an interest protected by the Constitution. If we find a protected liberty interest exists, we must balance this interest against a State's interest in prison safety and security.

Id. at 413-414.

The Circuit Court held that "[t]he district court applied the appropriate standards for determining if the conditions at ISP were constitutional, but failed to take the analysis one step further and balance the liberty interests of the inmates at ISP with the State's penological interests," as to the constitutional violations it found Id. at 414.

II. TURNER BALANCING TEST

In Turner, the Supreme Court stated that "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." Id. at 89. The Turner Court set out four factors that are relevant in determining the reasonableness of the regulation at issue. In determining whether a

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prison regulation is reasonable, courts should consider (1) whether there is a valid, rational connection between the regulation and the legitimate governmental interest asserted; (2) whether alternative means of exercising the right remain open to the prisoner; (3) the effect or impact the requested accommodation will have on guards, other inmates, and on the allocation of prison resources; and (4) whether there is some alternative which will accommodate the prisoner's needs with de minimis impact on the prison's asserted interests. Id. at 89-90.

The Circuit Court pointed out however, that the Turner factors are not necessarily applicable to every case.

Not all four factors will be relevant to each case....For example, the second Turner factor - availability of other avenues for exercising the right infringed upon - is much more meaningful in the first amendment context than the fourth or eighth, where the right is to be free from a particular wrong.

Goff v. Harper, 235 F.3d 410, 414-415 (8th Cir. 2000), citing Michenfelder v. Sumner, 860 F.2d 328, 331 n. 1 (9th Cir. 1988).

III. APPLICATION OF TURNER

In this Court's Order of June 5, 1997, the Court found four constitutional violations at ISP: (1) violation of the Fourteenth Amendment's substantive due process clause resulting from the extraordinary long lockup sentences; (2) violation of the Eighth Amendment resulting from the inadequate mental health treatment received by mentally ill and mentally disordered inmates; (3) violation of the Eighth Amendment resulting from the deprivation of exercise for inmates in lockup during the winter months; and (4) violation of the Eighth Amendment resulting from the pandemonium and bedlam the mentally stable inmates suffer because they are intermingled with the mentally ill inmates who cannot or do not control

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their behavior. Goff v. Harper, No. 4-90-CV-50365, at 116 (S.D. Iowa June 5, 1997)(findings of fact and conclusions of law). From these four constitutional violations, this Court must identify a regulation in order to apply the Turner factors.

A. Extraordinary Long Lockup Sentences

Presumably, under the first Turner factor, the "regulation" at issue is the disciplinary system at ISP, specifically the extraordinary long lockup sentences that were being imposed. Many inmates were literally buried in lock up with no chance to get out in five or ten years. The system had essentially stopped working. Although this Court would agree that there is clearly a legitimate state interest in maintaining prison safety and security, the Court is persuaded that there is not a valid, rational connection between ISP's regulation of imposing extraordinary long lockup sentences and its interest in maintaining prison safety and security. The penitentiary finally recognized this situation (after hearings in this case) and granted amnesty as to these long lockup sentences, whereby each locked offender had his disciplinary time vacated as of July 1, 1998. Goff v. Harper, 59 F. Supp. 2d 910, 915 (S.D. Iowa, 1999). As will be discussed later herein, the plaintiffs are persuaded that the amnesty was in name only.

Under the second Turner factor, the Court is to consider whether alternative means of exercising the right remain open to the prisoner. This factor does not fit well in this context because it seems to contemplate the inmate exercising a right of expression or religion. It is a stretch to apply this factor to ISP's regulation of extraordinary long lockup sentences. In any event, the inmates that were serving years in lockup had no alternatives and the ISP staff had no alternatives for dealing with the inmates who posed disciplinary problems, especially those who were and are in need of mental health treatment.

Under the third Turner factor, the Court is to consider the impact the accommodating right will have on guards, inmates and the allocation of prison resources. Inmates in lockup

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cannot be used for labor; they require their meals to be delivered; they must be escorted to showers, to visits, to exercise, to medical treatment and to meetings with staff. Thus, the regulation of extraordinary long lockup sentences has a negative effect on guards and prison resources because more guards have to be constantly supervising and escorting these inmates and because fewer inmates are available to hold down any prison jobs that might be available. Furthermore, a disciplinary system with extraordinary long lockup sentences has a negative impact on prisoners because the punishment is excessive and it provides no incentives to rehabilitate the inmate and deter misbehavior. Further, having a disciplinary system that failed to deter misbehavior was a real threat to the guards.

Under the fourth Turner factor, the Court must consider whether there is an alternative which will accommodate the prisoner's needs with little impact on the prison's asserted interests, which in this case would be prison safety and security. The Court in Turner noted that "...[t]he existence of obvious, easy alternatives may be evidence that the regulation is not reasonable, but is an 'exaggerated response' to prison concerns." Turner v. Safely, 482 U.S. 78, 90 (1987). One of the major features of the "plan" is that ISP has adopted a matrix system where disciplinary sanctions are graded by the degree of how serious something is. A "fight" and an "assault", for example, are no longer considered the same. See The Plan, July 1, 1999, Appendix D. The adoption of the matrix system is a clear alternative to the old disciplinary system which was in place, that often gave inmates the same amount of punishment (lockup time) for committing violations that involved widely different degrees of seriousness.

After considering the four Turner factors, the Court is persuaded that the disciplinary system, specifically the long-term lockup, was not a reasonable prison regulation in light of the standard set forth in Turner. See Turner, 482 U.S. at 89-90.

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B. Mental Health Treatment

The Court finds that under the first Turner factor, the regulation at issue as to the mental health treatment at ISP is that ISP did not have a Special Needs mental health unit, or anything close to it, to house and treat said inmates. ISP disciplined mentally ill inmates who had behavioral problems with little or no input from psychiatrists or psychologists by putting them in lockup next to, above and below prisoners without mental problems. This is further discussed in section D page 8.

There is not a rational connection between putting mentally ill inmates into lockup with mentally stable inmates and maintaining prison safety and security. The Court agrees that these inmates need to be housed somewhere, but putting them into lockup with mentally stable inmates is not reasonable.

The Court is not persuaded that the second Turner factor, whether alternative means of exercising the right remain open to the prisoner, is applicable here. The right in question is the right of mentally ill inmates to receive adequate mental health treatment, along with the second question, i.e. the right of sane inmates not to be closely housed with mentally ill inmates. There are no alternative means of implementing these rights. They either receive adequate mental health treatment or they do not. Certainly, putting the mentally ill inmates into lockup is not an alternative means of implementing this right, nor is mixing them in with sane inmates.

Under the third Turner factor, the Court is to consider the impact the accommodating right will have on guards, inmates and the allocation of prison resources. The Court agrees that it costs much less to throw the mentally ill inmates into lockup and not provide them with mental health treatment. However, in the long run, the benefits of separating them will outweigh the costs because there will be fewer problems. The facility will be safer for the mentally ill and mentally stable inmates and the guards because the mentally ill inmates will

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be under better control and will be receiving appropriate care. Most importantly, the Court believes that a prison is required to meet the physical and mental health needs of its inmates, and dealing with the mentally ill by throwing them into lockup with sane inmates is an unacceptable remedy.

Under the fourth Turner factor, the Court must consider whether there is an alternative to the Special Needs Unit which would accommodate the mentally ill prisoner's needs with little impact on the prison's asserted interests of maintaining prison safety and security. The Court is aware that the Iowa prison system has an alternative site at Oakdale, with staff available to treat mentally ill patients. However, the clear testimony over the years has been that only "nice quiet" mentally ill inmates were sent to Oakdale, so it was not an alternative. The number of ISP transfers to Oakdale for "assessment" and or treatment was minuscule. The Court is persuaded that no adequate alternatives exist.

C. Indoor Winter Exercise

The third prison "regulation" that must be looked at is that there was no indoor exercise available to inmates during the long cold winter months. Under the first Turner factor, the Court is persuaded that there is not a valid rational connection between such a regulation and the State's interest in prison safety and security. The Court fails to see how allowing a prisoner to exercise inside a cell with adequate facilities would increase safety and security concerns.

Under the second Turner factor, the only alternative for the inmates is to go outside to exercise. However, due to the cold harsh winter conditions that are prevalent in Iowa, this is not always an acceptable alternative. Furthermore, this Court made a specific finding that inmates cannot productively exercise in their cells. Goff v. Harper, No. 4-90-CV-50365, at 101 (S.D. Iowa June 5, 1997)(findings of fact and conclusions of law). The defendants recognized this situation and put an indoor exercise room in each lock up cell

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house, however said exercise areas are very small, have little equipment in them and are not a viable alternative. The Court is therefore persuaded that without the option of indoor exercise, the inmates do not have any adequate alternatives for exercising during the winter months.

Under the third Turner factor, allowing adequate indoor exercise is an accommodation that does impact the guards by decreasing the number of times they have to escort inmates to the "year round" exercise area which is outside the cellblock. If inmates are given an acceptable choice in the winter time allowing them to exercise year round, it would be a positive benefit to their physical and mental health. As far as the impact that an indoor exercise facility has on prison resources, the Court is not persuaded that the impact is very high since creating such a facility merely requires converting a couple of cells into an indoor exercise area and providing usable equipment to make the room a viable choice. The cost of guards time escorting inmates outside and bringing them back inside would be a whole lot more than the cost to provide adequate inside equipment.

Under the fourth Turner factor, the only exercise alternative available in the winter is to go outside in the cold, however, the facts are that during the cold winter months, November through March, the inmates are left with two poor choices — no exercise or stay out in awful weather for a full hour. Under the regulations they cannot come inside early. Thus, there really is no real alternative to adequate indoor exercise during the winter months, except what the defendants did, i.e. to put an exercise room in each lockup cell house. However, these "exercise" rooms are not adequate but could easily be made so with the addition of two walking machines.

D. Pandemonium and Bedlam in Cell House

For purposes of applying Turner, the Court presumes that the "regulation" at issue here is the mixing of mentally ill inmates with mentally stable inmates in the same cell

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house with a broken disciplinary system and no special needs unit. Under the first Turner factor, the Court is not persuaded there is a valid rational connection between maintaining prison safety and security and mixing the mentally ill with the mentally stable. Putting these two groups of inmates together in the same cell house only hinders safety and security because it forces the mentally stable inmates to live in an environment where there is constant yelling, screaming and banging on the walls. Such an environment increases tension for all the inmates and guards in that cell house thereby inviting outbursts and retaliation and increasing security concerns. As this Court stated before, "it is likely that the many mentally-stable inmates in lockup at the [p]enitentiary who hold a precarious grasp on their own sanity will lose their grip if forced to spend years in close proximity of mentally-ill inmates." Goff v. Harper, No. 4-90-CV-50365, at 109 (S.D. Iowa June 5, 1997)(findings of fact and conclusions of law). Therefore, the policy of mixing the mentally ill inmates with mentally stable inmates in the same cell house is not rational. There is no valid, rational connection between the regulation and any legitimate governmental interest asserted.

Applying the second Turner factor, the Court is not persuaded that the mentally stable inmates have any alternative means of exercising their right to be free from such an environment, other than by being completely separated from the mentally ill inmates.

Under the third Turner factor, the effect of putting the mentally ill inmates into a separate special needs unit will undoubtedly have a positive effect on the mentally stable inmates by allowing them to live in a cell house environment that is relatively peaceful and void of constant uncontrollable noise and turmoil. The effect on the guards working in a relatively peaceful cell house would be less tension for them in a better place to work. There would be no adverse effects on prison resources because they have already agreed to build it.

Under the fourth Turner factor, whether there is some alternative which will

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accommodate the prisoners' needs with de minimus impact on the prison's asserted interests, the Court finds that there is no such alternative. Each factor, discipline, safety and security, would increase, both for the mentally ill and those who are not. The defendants still maintain that there is no "bedlam" or pandemonium in the lockup units and that this Court admitted that he had not toured the cell houses while considering this case. This Judge had been in those lockup cell houses on at least five occasions over the years. In its order of June 5, 1997, on page 110, this Court has set out its experience in those cell houses and the testimony by those who live there was unanimous that those conditions have not improved. There is no reasonable alternative for such a unit.

E. Summary

In summary, the Court is persuaded that after applying the Turner balancing test, there is nothing about what this Court has ordered that in any way affects or detracts from the State's interest in prison safety or security. At the July 2001 hearing in this case, the Court asked Director Kautzky, who runs the entire prison operations for the State of Iowa, "Do you know of anything in what you're doing or what this Court may have ordered you to do or what you would have done anyway if I didn't order you to do it that is going to lessen prison safety and security?" (T.R. 374-75)¹. Director Kautzky replied:

Your Honor, I think in our execution of the plan we have taken into full account improvements to certainly [sic] the safety of staff and improvements in the quality of care that will be available to offenders as a result of executing the plan. So my answer to you would be I don't believe there's any abridgement or any other concerns of either staff or inmate safety that would be involved in the steps we've taken at this point.

Id.

He stated the same thing about lockup and amnesty on pages 375 and 376. The

¹"T.R." refers to the transcript record of the July 25-26, 2001 hearing.

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above statement by Director Kautzky goes to the heart of the Turner balancing test and further persuades this Court that the implementation of the court ordered plan is a positive thing and that no part of the plan jeopardizes prison safety and security.

Therefore, after balancing the liberty interests of the inmates at ISP against the State's interest in prison safety and security under the test as set out in Turner v. Safely, 482 U.S. 78 (1987), this Court holds that there is adequate support for finding a constitutional violation as to lockup time, mental health treatment, winter exercise and the cell house environment at ISP.

V. THE ASSUMPTION BY THE CIRCUIT COURT THAT THE PLAN APPROVED BY THIS COURT HAS BEEN SUBSTANTIALLY IMPLEMENTED IS NOT ACCURATE

The Circuit Court should be apprized of the present situation in relation to implementation of the plan. On page 3 of that Court's opinion, it states:

Prison Officials also appeal the district court's finding of constitutional violations at ISP. After concluding that violations existed, the district court ordered Prison Officials to submit a Plan to correct the violations. The district court approved the fourth Plan submitted by Prison Officials who subsequently implemented their Plan. Despite such implementation, Prison Officials appeal the district court's finding on the ground that it is clearly erroneous and establishes a bad precedent.

The Circuit Court should hereby be advised that it is not accurate to say that prison officials subsequently implemented their fourth plan as of July 30, 2001. There are, admittedly, portions of their fourth plan that have not been fully implemented as will be discussed below.

On page 5 of the Circuit's opinion, it states as follows:

The court directed prison officials to file a plan to remedy the

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constitutional violations at ISP. On August 4, 1999, after consideration of three other Plans, the court approved the fourth Plan filed by Prison Officials.² Major changes were implemented by Prison Officials in response to the constitutional violations found by the court. First, the State of Iowa is building a ten million dollar, 200 bed special needs unit. A second 100 bed unit is to be built in the future. Second, the ISP changed their disciplinary system, redefining the procedures of lockup and releasing prisoners from extraordinarily long sentences. In addition, amnesty was declared for inmates as to disciplinary sentences before July 1, 1998. Finally, accommodations were made to provide inmates with indoor exercise facilities.

The plaintiffs are aware that the Circuit Court has assumed that implementation of the fourth plan was substantially complete. The plaintiffs seriously challenge the claimed degree of implementation. The 200 bed special needs unit that was supposed to have been completed by now is not going to be completed until August of 2002, and instead of it being a 200 bed special needs unit by then, state officials testified that in their best judgment only a 40 bed special needs unit will be completed by then and that it will be sometime later before a 200 bed special needs unit will be completed. (T.R. 33). The sentence in the quote set out above which states that a second 100 bed unit is to be built in the future is iffy at best. It has now been two years since the approval of the fourth plan. Nothing has happened in relation to the 100 bed unit "to be built in the future." Goff v. Harper, 235 F.3d 410, 412 (8th Cir. 2000). Therefore, it should not be concluded that that directive by this Court, in its order of August 4, 1999, that the 100 bed re-integration unit at the Newton Correctional Facility set out on page 19 of the State's Plan, has been in anyway

²The court considered the delay in developing a plan to be almost entirely the fault of prison officials. However, the court credited prison officials with developing a better plan due to the two Iowa legislative sessions which provided money to make the improvements possible.

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implemented. As mentioned in the quote above, ISP did change its disciplinary system and grant amnesty. However, as the testimony pointed out in our July 25-26, 2001 hearing, the plaintiffs contend that all that has been changed is the name for long term incarceration and that the term "mandatory idle" which used to be one of the names for continued long term incarceration has, as plaintiffs contend, merely been changed to "General Population Level 1" and that no real progress has been made in procedures of lockup and releasing prisoners from lockup. (T.R. 104-105, 315).

In the above-mentioned quote from page 5 of the Circuit's opinion, the last sentence states as follows: "Finally accommodations were made to provide inmates with indoor exercise facilities." The evidence shows that under the "accommodations" provided by the institution, the indoor exercise facilities are being used very little. (T.R. 329, 327). What has been provided is a 12 x 12 cell with a bar for chin-ups and a bench for sit-ups. (T.R. 321, 347, 354). The institution requires that there can be no smoking in this area nor can inmates converse with any of the prisoners who are in this area. (T.R. 347). Of course the 12 x 12 cell is way too small to allow for any walking. The bottom line is that it is so unenticing that it is, as mentioned, being used very little. (T.R. 329, 347). Over two years ago Director Kautzky recognized that if a walking unit were to be placed in each of these indoor exercise areas it would make the exercise area much more functional and that he hoped there would be funds available for such walking units. This had not been accomplished as of the date of the hearing. In cold weather, inmates either forego the opportunity for exercise or a few hardy ones go outside even though the rules require that they must stay out for a full hour. (T.R. 313-314).

On page 7 of the Circuit Court's opinion, under the category, "*B-The Merits*," there is a second assumption that prison officials have already implemented a substantial part of the remedies. It states as follows:

The record indicates, at least at the time of submission of this appeal, Prison Officials have already implemented a substantial

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part of the remedies ordered by the district court.³ Nonetheless, Prison Officials appeal the district court's finding of constitutional violations at ISP. Prison Officials do not challenge any of the factual findings of the district court, but instead argue that the court's holding on the various constitutional issues should be set aside as being clearly erroneous. The thrust of defendants' argument is that the district court has not followed any established objective standards in finding constitutional violations.

As mentioned, the testimony at the hearing held in 1999 was to the effect that the 200 bed special needs unit would be completed by "late fall or winter" of 2000. *See* Hearing Transcript, at 11-12, June 15, 1999. As mentioned at the hearing, held at the direction of the Circuit Court in July of 2001, it became clear that they would not have a 200 bed unit for some time and that the best estimate they had was that they would have a 40 bed unit by August of 2002. (T.R. 33). The indoor space for winter exercise, as mentioned, has been used very little because it is inadequate. (T.R. 329, 347). There is a challenge by the plaintiffs as to the new procedures in place for lockup, as it is contended that it is nothing more than the same old thing with a new name. (T.R. 315).

The Circuit Court should be aware that its statement on page 9 of the opinion does not precisely reflect the situation.

On said page, it states as follows:

Hopefully the parties may negotiate their differences during the course of these discussions. We make this observation particularly in light of the fact that Prison Officials have represented to this court during oral argument that they in good faith have implemented the Plan approved by the district court

³ At oral argument (before the Circuit Court), prison officials confirmed that a "hole in the ground" exists for the new special needs unit. In addition, mentally ill patients have access to more psychologists, indoor space has been made for winter exercise, and new procedures are in place for lockup.

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on their own volition and not necessarily in compliance with the court's order.

As set out in this opinion, it is obvious that there are portions of the plan that have not been fully implemented. This Court has not in this order ruled on the implementation or lack of implementation of the approved plan. This Court construed the remand to direct it to apply the balancing principles of Turner to the constitutional violations it found. If this Court's rulings are affirmed by the Circuit Court, this Court will then, if it appears appropriate, take up the issue of implementation, or lack thereof.

VI. CONCLUSION

This Court has already found that there are constitutional violations in the Iowa State Penitentiary. Goff v. Harper, No. 4-90-CV-50365, at 116 (S.D. Iowa June 5, 1997) (findings of fact and conclusions of law). The Court has now applied the balancing principles of Turner. The Court has found that the liberty interests asserted by the inmates are interests protected by the Constitution and has concluded that those protected interests far outweigh any threat of loss in prison safety and security, and that there are no alternatives to this Court's directives which would accommodate the prisoners' needs with de minimus impact on the prisoners' asserted interests.

IT IS SO ORDERED.

DATED this 15 day of October, 2001.



Donald E. O'Brien, Senior Judge
United States District Court
Northern District of Iowa