UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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Ronald W. Harvey and
Raymond White, on their
Own Behalf and on Behalf
of others Similarly Situated,

Plaintiff,

ORDER

vs.

Kenneth Schoen, Commissioner
of Corrections, Llewellyn H.
Linde, Chairman of Adult
Corrections Commission,
Wilfred Antell, Benjamin N.
Berger, Charles W. Poe, Mrs.
William R. Whiting, Members of
the Adult Corrections Commission,
Bruce McManus, as Warden of the
State Prison; and their agents
and Employees,

Defendants. Civ. No. 3-72-73 (JMR/RLE)

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At Duluth, in the District of Minnesota, this 1st day of September, 2000.

I. Introduction

This matter came before the undersigned United States Magistrate Judge pursuant to a general assignment, made in accordance with the provisions of Title 28 U.S.C. §636(b)(1)(A), upon a review of the pending Motions, by various class members, that have been filed with the Clerk of Court. As we find that this action has been stayed, pending a disposition of the Plaintiffs' current

the United States Court of Appeals for the Eighth Circuit, we are obligated to deny the Motions as moot.

II. Discussion

On January 28, 1999, this Court issued a Report and Recommendation to the District Court, the Honorable James M. Rosenbaum presiding, in which we recommended that the Defendants' Motion to Terminate the Consent Decree, which was then in force at the Minnesota Correctional Facilities at Stillwater, and at St. Cloud -- commonly referred to as the "Schoen Decree" -- be granted, pursuant to the provisions of the Prisoner Litigation Reform Act, Title 18 U.S.C. §3626(b) ("PLRA"). See, Harvey v. Schoen, 51 F. Supp.2d 1001 (D. Minn. 1999). Thereafter, on April 7, 1999, the District Court issued an Order adopting our Report and Recommendation, thereby terminating the Schoen Decree. See, Order dated April 7, 1999.

Subsequently, on July 16, 1999, the District Court issued an Order granting the Plaintiffs' Motion for an Injunction Pending Appeal to the Eighth Circuit Court of Appeals. [Docket No. 230]. In granting the Plaintiffs' Motion, the Court enjoined the Defendants from acting in derogation of the rights and procedures provided to the Plaintiff class under the Schoen Decree, until such time as the Court of Appeals ruled on the Defendants' Appeal. Id. As such, so as not to impair the directive of the District Court,

we rescinded our Order of April 15, 1999, in order to allow members of the Plaintiff class to pursue those rights and procedures, which were established by the Schoen Decree, pending the outcome of their Appeal of the District Court's Order dated July 16, 1999.

Unbeknownst to us, as the Order was neither lodged nor filed with this Court, the United States Court of Appeals, by Order dated August 19, 1999, vacated the District Court's Order of July 16, 1999, and reinstated this Court's Order of April 7, 1999, with full force and effect pending the disposition of the Plaintiffs' Appeal. See, Harvey v. Schoen, Docket No. 99-2774 (8th Cir.). As a consequence of this Order, since August 19, 1999, the Clerk of Court should not have been accepting Motions filed pursuant to the Schoen Decree, and any Motions so accepted, were improvidently filed. While the Court of Appeals' Order disposes of the issue before us, we would merely note that the Order is fully consistent with the subsequent ruling of the United States Supreme Court on this precise issue.

As we explained in our Report and Recommendation:

> [T]he PLRA provides that a Motion to terminate prospective relief, which is filed pursuant to Section 3626(b)(1) or (b)(2) "shall operate as a stay during the period beginning on the 30th day after such motion is filed." Title 18 U.S.C. §3626(e)(2)(A)(i). A Court may post-

> pone the effective date of the stay, in its discretion, for a period of 60 days. See, Title 18 U.S.C. §3626(e)(3).

Harvey v. Schoen, supra at 1005.

In Miller v. French, --- U.S. ---, 120 S.Ct. 2246 (2000), the Court determined that the Courts are without authority to extend, or alter, the stay, which is automatically imposed by the PLRA, except as permitted by the provisions of that Act.

In Miller, the Supreme Court was confronted with a dispute between prison inmates who, in 1975, brought a class action to remedy asserted violations of the Eighth Amendment as to conditions of their confinement. See, Miller v. French, supra at 2248. Following the filing of the action, the District Court issued an injunction, which remained in effect for over 20 years, so as to remedy those prison conditions. Id. Subsequently, in 1997, the prison officials filed a Motion to Terminate that injunction as allowed by Section 3626(b) of the PLRA. Id. In response, the prisoners moved to enjoin the operation of the automatic stay provisions of the PLRA, and argued that Section 3626(e)(2) violated their right to due process, and as well as the separation of powers doctrine. Id. Thereafter, the District Court enjoined the stay, and the prison officials appealed. The Court of Appeals for the Seventh Circuit affirmed the District Court's decision, and held that, although Section 3636(e)(2) precluded Courts from exercising their equitable

powers to enjoin a PLRA mandated stay, that portion of the Act was unconstitutional on separation of powers grounds.

On appeal from the Seventh Circuit, the Supreme Court reversed and held that a stay is automatic once a State Defendant has filed a Section 3626(b) Motion, and such a stay does not violate the separation of powers clause. Id. at 2249. As explained by the Court:

> The text of §3626(e)(2) provides that "[a]ny motion to * * * terminate prospective relief under subsection (b) shall operate as a stay" during a fixed period of time, i.e., from 30 (or 90) days after the motion is filed until the court enters a final order ruling on the motion. 18 U.S.C. § 3626(e)(2) (1994 ed., Supp. IV) (emphasis added). The stay is "automatic" once a state defendant has filed a §3626(b) motion, and the statutory command that such a motion "shall operate as a stay during the [specified time] period" indicates that the stay is mandatory throughout that period of time. See, Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26, 35, 118 S.Ct. 956, 140 L.Ed.2d 62 (1998)("[T]he mandatory 'shall' * * * normally creates an obligation impervious to judicial discretion").
>
> Nonetheless, the Government contends that reading the statute to preserve courts' traditional equitable powers to enter appropriate injunctive relief is consistent with this text because, in its view, §3626(e)(2) is simply a burden-shifting mechanism. That is, the purpose of the automatic stay provision is merely to relieve defendants of the burden of establishing the prerequisites for a stay and to eliminate courts' discretion to deny a stay, even if those prerequisites are established,

> based on the public interest or hardship to the plaintiffs. Thus, under this reading, nothing in §3626(e)(2) prevents courts from subsequently suspending the automatic stay by applying the traditional standards for injunctive relief.
>
> Such an interpretation, however, would subvert the plain meaning of the statute, making its mandatory language merely permissive. Section 3626(e)(2) states that a motion to terminate prospective relief "shall operate as a stay during" the specified time period from 30 (or 90) days after the filing of the §3626(b) motion until the court rules on that motion. (Emphasis added.) Thus, not only does the statute employ the mandatory term "shall," but it also specifies the points at which the operation of the stay is to begin and end. In other words, * * * §3626(e)(2) unequivocally mandates that the stay "shall operate during" this specific interval. To allow courts to exercise their equitable discretion to prevent the stay from "operating" during this statutorily prescribed period would be to contradict §3626(e)(2)'s plain terms.

Id. at 2253.

Consequently, the stay of these proceedings is mandated, not only by the Court of Appeals Order of August 19, 1999, but also by the express provisions of the PLRA, and we are without discretion to alter that stay other than as provided in the PLRA itself. As a consequence, all pending Motions in this matter must be denied as moot.[1]

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[1]As we explained in our Report and Recommendation, a stay of these proceedings does not deprive prisoners of access to the Courts for they "may commence a new action to vindicate any post-
(continued...)

NOW, THEREFORE, It is --

ORDERED:

1. That the Movant's (Riley's) Motion to Proceed In Forma Pauperis [Docket No. 245] is denied as moot.

2. That the Movant's (Hendrickson's) Motion to Proceed In Forma Pauperis on Appeal [Docket No. 248] is denied as moot.

3. That the Movant's (Butler's) Motion for Leave to File an Amended Motion for Civil Contempt of the U.S. District Court Consent Decree [Docket No. 253] be denied as moot.

BY THE COURT:

Raymond L. Erickson
UNITED STATES MAGISTRATE JUDGE

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[1](...continued)
termination infringement of those rights." Harvey v. Schoen, 51 F. Supp.2d 1001, 1007 (D. Minn. 1999). Moreover, prison conditions remain open to challenge under Habeas Corpus.