CLASS CERTIFICATION/OPPOSITION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHARLES RENTSCHLER, et al.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 4:94CV396 GFG
	)	
DORA SCHRIRO, et al.,	)	
	)	
Defendants.	)	

DEFENDANTS' RESPONSE TO PLAINTIFFS' AMENDED MOTION FOR CLASS CERTIFICATION

The named plaintiffs have moved for certification of this cause as a class action pursuant to Federal Rule of Civil Procedure 23. Plaintiffs' motion for class certification should be denied because plaintiffs have not satisfied the class action requirements.

A recently-enacted federal statute virtually precludes class-wide relief. 18 U.S.C. § 3626 (1994). This law prohibits a court from finding that crowding violates the Eighth Amendment except to the extent "an individual plaintiff proves that the crowding causes the infliction of cruel and unusual punishment **of that inmate.**" Even if a violation as to a particular inmate is found, the statute prohibits the court from doing anything more than is necessary to remove the conditions causing cruel and unusual punishment of that particular inmate. As plaintiffs cannot show that crowding is inflicting punishment on any particular identified inmates at PCC, there are no class-wide issues in this case. Regardless of the conditions, relief could be granted as to the entire prison population only if there is evidence that each and every prisoner has been harmed so greatly that he has been subjected to cruel and

unusual punishment. Granting plaintiffs' motion for class certification would effectively convert this case from a six inmate case to a 746 inmate case.

Moreover, the affidavit and deposition testimony establishes that this case is not properly maintained as a class action. *See Defendants' Exhibits A - J, submitted in support of defendants' motion for summary judgment; Defs.' Exhs. N - S, attached to this response.* Defendants are, concurrently herewith, filing a motion for summary judgment that shows that the purported common conditions do not even exist. The Court should not consider converting this case to a class action without first deciding whether all or part of plaintiffs' complaint can survive summary judgment. As detailed in the summary judgment motion and the supporting exhibits, some of the allegations of the complaint were directly refuted by the inmates' deposition testimony. Other allegations were unsupported by their testimony, and other allegations are refuted by the undisputable evidence submitted as to actual conditions. Even if this Court finds that this case should proceed to trial, it should only be as individual claims and not as a class action.

STATEMENT OF THE CASE

Plaintiffs have alleged, in their second amended complaint, that defendants "tripled" the population of PCC "overcrowding" all units except the capital punishment unit. Plaintiffs contend that this created the following alleged conditions: (1) dangerous ventilation; (2) unconscionable exposure to communicable diseases;

(3) inadequate hygienic facilities; (4) inadequate access to legal resources; (5) inadequate psychiatric care; (6) inadequate medical care; (7) insufficient living space; (8) inhumane periods of confinement; (9) inadequate access to recreational areas; (10) unconscionable levels of noise; and (11) increasing fear and violence (hereinafter "alleged conditions").

ARGUMENT

I. PRISON CROWDING STATUTE PRECLUDES CLASS RELIEF

Provisions of the recent "Crime Bill" clearly delineate the Court's role in and method of remedying unconstitutional conditions. The relevant statutory section states:

> **Appropriate remedies with respect to prison crowding**
> (a) Requirement of showing with respect to the plaintiff in particular. --
> (1) Holding. -- A Federal court shall not hold prison or jail crowding unconstitutional under the eighth amendment except to the extent that an **individual** plaintiff inmate proves that the crowding causes the infliction of cruel and unusual punishment of that inmate.
> (2) Relief. -- The relief in a case described in paragraph (1) shall extend no further than necessary to remove the conditions that are causing the cruel and unusual punishment **of that inmate.**
> (b) Inmate population ceilings. --
> (1) Requirement of showing with respect to particular prisoners. -- A Federal court shall not place a ceiling on the inmate population of a Federal, State, or local detention facility as an equitable remedial measure of conditions that violate the eighth amendment unless crowding is inflicting cruel and unusual punishment on particular identified prisoners.
> (2) Rule of construction. -- Paragraph (1) shall not be construed to have any effect on Federal judicial power to issue equitable relief other than that described in paragraph (1), including the requirement of improved medical or health care and the imposition of civil contempt fines or damages, where such relief is appropriate.
> (c) Periodic reopening. -- Each Federal court order or consent decree seeking to remedy an eighth amendment violation shall be reopened at the behest of a defendant for recommended modification at a minimum of 2-year intervals.

18 U.S.C. § 3626 (1994) (emphasis added) (hereinafter "prison crowding statute").

The legislature's prohibition of a finding of unconstitutionality except where individual plaintiffs prove that they are suffering an Eighth Amendment violation militates against class relief and makes class certification futile. The focus is clearly on each individual plaintiff. Because the statute requires the court to hear individualized evidence and make a finding whether particular identified inmates suffered cruel and unusual punishment before it can grant relief, it would be inefficient to certify a class and then also hear evidence and make findings regarding each member of that class.

Statutory requirements also coincide with case law according courts discretion to decline class certification when the individual's relief sought will benefit all members of a proposed class. Ad Hoc Committee to Save Homer G. Phillips Hospital v. City of St. Louis, 143 F.R.D. 216, 221 (E.D.Mo. 1992) (Gunn, J.). The Court can decline certification if removal of any alleged unconstitutional condition would inure to the benefit of all of the members of the proposed class. Id. This reflects the desire to remedy specific identifiable injuries and prevent similar injuries that could result from some specific condition but recognizes the need for independent consideration of each individual's circumstances.

Plaintiffs have specifically identified only one true type of class-wide relief: a population cap. The federal statute

specifically discourages population caps as a remedy, prohibiting them in all cases "unless crowding is inflicting cruel and unusual punishment on particular identified prisoners." Again, the emphasis is entirely on individuals. There is simply no reason to certify a class action here and have evidence adduced on every complaint about conditions from every inmate.[1]

II. PLAINTIFFS' HAVE NOT SATISFIED CLASS ACTION REQUIREMENTS

Plaintiffs bear the burden of proving that they have satisfied the indispensable requirements of Fed.R.Civ.P. 23 in seeking certification as a class action. See Bishop v. Committee on Professional Ethics and Conduct of the Iowa State Bar Assoc., 686 F.2d 1278, 1288 (8th Cir. 1982); Boyd v. Ozark Air Lines, Inc., 568 F.2d 50, 55 (8th Cir. 1977). The district court's decision regarding certification of a class is reviewed only for abuse of discretion. Belles v. Schweiker, 720 F.2d 509, 515 (8th Cir. 1983). Rule 23(a) sets forth the following prerequisites to certification of a class action:

> (1) numerosity -- that is, the class must be so "numerous that joinder of all members is impractical";
>
> (2) commonality -- that is, there must be present "questions of law or fact common to the class";
>
> (3) typicality -- that is, the claims or defenses of the class representative must be "typical of the claims or defenses of the class"; and
>
> (4) adequacy of representation -- that is, the class representative must be in a position to "fairly and

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[1]Plaintiffs' motion even asks that future inmates be included in the class. Obviously persons who are not at the Potosi Correctional Center cannot have been subjected to cruel and unusual punishment there.

adequately protect the interests of the class." Homer G. Phillips, 143 F.R.D. at 219.[2]

A. Plaintiffs have failed to demonstrate any common questions of law or fact.

Plaintiffs contend that a determination of whether "Defendants' conduct throughout the facility falls below the standards of the Sixth and Eighth Amendment" is a question of law common to all inmates. This brief statement is insufficient to show a common question of law. Courts review a defendant's conduct against some standard in all cases; it does not provide a special basis for proceeding as a class action in this case. In light of the statutory emphasis requiring proof of how each individual is affected by defendants' conduct, the individualized questions of law, such as, how a particular inmate is harmed by a condition, predominate over generalized complaints of dissatisfaction. Indeed, individual questions are now the only relevant questions.

The common questions of fact alleged by plaintiffs are either untrue, are unsupported conclusions or are without legal

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[2] Courts have often denied class action certification where the plaintiffs' failed to satisfy the requirements for class action status. Stewart v. Winter, 669 F.2d 328, 335 (5th Cir. 1982) (denying certification of class of former and present inmates of county jails in Mississippi challenging jail conditions); Green v. Carlson, 653 F.2d 1022 (5th Cir. 1981); Jones v. Mason, 393 F.Supp. 1016, 1018 n.2 (D.Conn. 1975) (denying certification of prisoner's civil rights action alleging due process violations as a result of transfer); Johnson v. Long, 67 F.R.D. 416, 418 (M.D. Ala. 1975) (denying certification of class of prison inmates in administrative segregation at prison based on purported incidents of harassment and retaliation by prison officials, where there was no evidence of a campaign or policy on part of prison officials to injure inmates); Berrigan v. Norton, 322 F.Supp. 46, 50 (D.Conn. 1971), aff'd, 451 F.2d 790 (2nd Cir. 1971).

significance. As described in more detail in the summary judgment motion, only 65% of the population now have to share a cell with another inmate. Moreover, the alleged decrease in living space is only during the time inmates are required to be in their cell, approximately nine and a half hours each day. At all other times the inmates can access the 4000 square foot day rooms or enjoy the many other areas of the prison. *See Exh. A at ¶¶ 5-6.*

There is no rising incidence of violence; the number of reported incidents of violence have decreased. *Exh. J at 18.* There is no pervasive presence of tuberculosis; nor has there ever been anyone at PCC identified with symptoms of active tuberculosis. *Exh. E at ¶ 24.* Inmates are not denied meaningful access to legal research materials and space to meet with their attorneys. The library is sizable and is usually open every day of the work week. *Exh. G at ¶ 3.* Regardless, in the absence of any alleged injury to pending cases, Grady v. Wilken, 735 F.2d 303 (8th Cir. 1984), these complaints do not state a sufficiently serious deprivation and cannot be a basis for certifying a class.

The question is whether plaintiffs have suffered a sufficiently serious deprivation caused by the increased population of PCC and defendants' deliberate indifference. Because the determination of whether defendants conduct rises to level of a constitutional violation can only be resolved on a case-by-case basis, there is no common question. Mathis v. Bess, 692 F.Supp. 248, 257 (D.C.N.Y. 1988); Hilgeford v. Peoples Bank, 607 F.Supp. 536 (D.C.Ind. 1985) (no common question where defendants' alleged

application of process depended on individuals' circumstances).

B. Plaintiffs have failed to demonstrate the typicality of their claims.

Typicality requires a demonstration that other members of the class have similar grievances. Belles v. Schweiker, 720 F.2d 509, 515 (8th Cir. 1983); White v. Stone Container Corp., 524 F.2d 1058, 1062 (8th Cir. 1975). The issue is whether plaintiffs suffer the same sort of injuries and possess sufficient similarity of interests to make them proper class representatives. Homer G. Phillips, 143 F.R.D. at 220. Plaintiffs who purport to represent a class must allege and show that they personally have been injured, not that injury has allegedly been suffered by other, unidentified members of the class to which they belong and purport to represent. Id. (quoting Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26, 40 n. 20 (1976).

Plaintiffs' second amended complaint fails to allege and their amended motion for class certification fails to demonstrate that plaintiffs have sustained a sufficiently serious constitutional injury. The alleged, but unsupported, points for typicality are conclusory. Proof of typicality requires more than general conclusory allegations. Belles v. Schweiker, 720 F.2d 509 (8th Cir. 1983).

The exhibits in support of defendants' summary judgment motion and plaintiffs' deposition testimony reveals that none of the purported class representatives have suffered injury of a constitutional magnitude, nor are their claims typically suffered by the entire putative class. Indeed, many of the claims are not

even shared by the class representatives.

Plaintiff Rentschler's allegation that he has been involuntarily double-celled does not state a constitutional claim. The AIMS Classification System is only used to determine cell assignments. *See Exh. J at ¶ 6.* At the time of his deposition, unlike many PCC inmates, Rentschler did not have a cellmate. *Exh. P at 15.* He is classified as an ALPHA and is assigned to Housing Unit 6, an ALPHA unit. *Exh. J at ¶ 21.* Once Rentschler's previous cellmate received an AIMS classification of SIGMA, he was removed from Rentschler's cell. *Exh. P at 20-21.* Rentschler has not demonstrated any injury with regard to his claim that SIGMAS are improperly housed with ALPHAS. He has not been sexually assaulted and has not requested protective custody and claims to have no need for it. *Exh. P at 73, 122.* Moreover, this alleged "improper" housing is not typical of member of the putative class. As of November 4, 1994, only 7 of 386 inmates assigned to the ALPHA housing unit were non-ALPHA inmates and such assignments were made in response to legitimate penological concerns. *Exh. J at ¶ 12.*

Rentschler's alleged decreased access to the law library does not state a constitutional claim because he has not been prejudiced in any action as a result of the alleged access to the library. *Exh. P at 85.* Rentschler is unable to describe any way in which the legal resources are inadequate. *Exh. P at 82.* He has never been refused admission to the library because it is too crowded. *Exh. P at 84.* In fact, he is not a regular user of the library. *Exh. G at ¶ 14.* Moreover, he has no knowledge as to how access to

the library is adequate for administrative segregation inmates. *Exh. P at 86.* Inmates can copy materials and work in their cells at any time. *Exh. G at ¶¶ 5, 8.* Because inmates' use of the library varies any claim regarding such access cannot be typical.

Plaintiff McCall asserts his claims are typical because he tested positive for tuberculosis. After testing positive for tuberculosis (TB) on October 24, 1993, McCall had a negative chest x-ray on November 2, 1993 and received a six month course of prophylactic medication. *Exh. E at ¶ 37.* Every inmate at PCC has been tested for TB. There has never been any case of active TB at PCC. *Exh. E, ¶¶ 24, 26.* Any harm allegedly suffered as a result of a medication delay should be individually reviewed.

Crowded and noisy housing units are not unconstitutional in the absence of any physical or mental harm. McCall has not claimed such an injury. McCall acknowledges that the noise is created by the inmates themselves. *Exh. O at 72.* An individual can exercise some control over the amount of noise he is exposed to by leaving the area, eliminating the source of the noise, closing his door or complaining to staff. Accordingly, the volume of noise experienced cannot be said to be typical to the members of the putative class.

Plaintiff St. Peter's inability to obtain refills of his medications is his own fault. His medication is non-essential. His prescription expired before he requested a refill. He did not allow sufficient time, as directed, to allow the prescription to be filled. *Exh. E at ¶ 35.* To the extent that any other member of the putative class has experienced medication delays, the claims

must be individually examined. To the extent St. Peter claims no knowledge of what the medical problems of other inmates are, he cannot claim typicality. *Exh. N at 63-66, 81.*

St. Peter's claim that TB is spread through the ventilation system is unsupported. Although he tested positive for TB in May, 1992, before double-bunking, he does not know when he was exposed or who he was exposed to. *Exh. N at 48-49.* There are no active cases of TB at PCC. *Exh. E at ¶ 24.* Therefore, this claim is not typical of the putative class.

Plaintiff Long's claim that he is not given the mental health care he needs merely states a disagreement with mental health care professionals and does not state a cognizable claim. Long sees the psychiatrist regularly. *Exh. H at ¶ 10.* Even the other class representatives do not claim to have suffered similar injuries. Neither McCall, St. Peter nor McCarter have requested psychological/psychiatric services. *Exh. H ¶¶ 7-8.* Rentschler has no problem with psychiatric services. *Exh. P at 87.*

Plaintiff Shell's allegations of physical and sexual assaults from other inmates are not typical. None of the other class representatives have expressed fear in any measurable manner. None have requested protective custody or declared enemies at PCC (unless they have been waived). *Exh. J at ¶¶ 21-24.*

Plaintiff McCarter is the only class representative to be assigned to administrative segregation. His claim that it is "likely" that the entire putative class will be assigned to protective custody, administrative segregation or disciplinary

segregation is of no significance. These types of confinement decisions are made in response to the security needs of the institution and the staff, as presented by individual inmates' circumstances. Confinement in either administrative segregation or disciplinary segregation is not per se unconstitutional. The conditions in segregation falls with constitutional parameters.

In Homer G. Phillips, plaintiffs failed to satisfy the typicality requirement when they did not show how any plaintiff had been denied equal access to medical treatment. 143 F.R.D. at 220. Here, plaintiffs have not specifically alleged and cannot show how the alleged conditions at PCC deprived them of their Eighth Amendment right. Because of this failure to demonstrate that they or anyone else at PCC have suffered unconstitutional deprivations caused by PCC's increased population, there can be no typicality. Plaintiffs would not be proper class representatives because they have no cognizable, typical injury.

C. Plaintiffs will not fairly and adequately protect the interests of the class.

Plaintiffs failure to identify any specific injury also precludes class certification under the fourth prerequisite. Before one may successfully institute a class action, it is necessary that he be able to show injury to himself in order to entitle him to seek judicial relief. Kansas City, Mo. v. Williams, 205 F.2d 47, 51 (8th Cir. 1953), cert. denied, 346 U.S. 826 (1953). The lack of any specific injury of constitutional proportion in common with the class prevents named plaintiffs from adequately protecting the interest of the class.

Class action status should also be denied when the representative abused the judicial system and thus would not fairly and adequately represent the interest of the class. Green v. Carlson, 653 F.2d 1022 (5th Cir. 1981). Also, when there is a strong indication that the representatives' testimony might not be credible, class action should be denied. Amswiss Intern. Corp. v. Heublein, Inc., 69 F.R.D. 663, 670 (N.D.Ga. 1975).

Here, there is evidence of such abuse and incredibility. Plaintiff Rentschler was recently sanctioned with dismissal of a lawsuit for making material misrepresentations in his complaint. See Rentschler v. Cayabyab, 4:93CV2553 DJS, slip. op. at 3 (July 18, 1994). *See Exhibit V.* Rentschler lied about medical orders he was under in an attempt to establish liability on the part of defendant prison officials. The pro se plaintiffs also accused this Court of being financially interested in the outcome of this suit; to wit, having a financial interest in the bonds used to build PCC, the banks who put up construction money and the investment firms handling the bond sales.

The named plaintiffs are also unable to establish adequacy, as well as, commonality and typicality because of actual and potential conflicts of interest within the putative class. The plaintiffs have expanded the relief they seek to include changes to unidentified policies and structures to address the conditions about which they complain. So long as plaintiffs persist in seeking policy and structure changes the conflicts are numerous and apparent. Perhaps the starkest conflict stems from the view that

some situations are best addressed by stricter enforcement of policies or permanent segregation of some inmates, while other inmates oppose segregation. *Exh. P at 122-24; Exh. O at 79-81, Exh. S at 38-40.* The alleged "fear" of violence was blamed on newer inmates who have "no morals [and] no scruples" according to Long. *Exh. Q at 53.* These views create a conflict among inmates seeking stricter enforcement of policies with those who would be the subjects of stricter enforcement. There is no common interest or typicality in claims regarding policy changes when the proposed changes have not even been agreed upon by the named plaintiffs.

D. Plaintiffs have failed to demonstrate any of the criteria of Rule 23(b).

Plaintiffs claim they are able to maintain this suit as a class action under Fed. R. Civ. P. 23(b)(2) because the defendants' alleged "systematic deprivation of constitutional rights applies to all individuals at the PCC." This conclusory allegation assumes, without any supporting facts, that some act or omission on the part of defendants **caused** the alleged unconstitutional conditions; and that the alleged unconstitutional conditions **caused** the individual inmates sufficiently serious injury. This is insufficient to demonstrate generally applicable acts or omissions.

Regardless, the prison crowding statute's mandate for individualized proof and limitation on broad-based remedies trumps any attempt to blindly certify inmate conditions of confinement cases as class actions under Fed. R. Civ. P. 23(b)(2). It recognizes that inmates will continue to bring law suits notwithstanding limited time, money and resources and ensures that

relief will be granted upon proof of individual harm. It also addresses plaintiffs' concern about conflicting injunctions by providing a vehicle for periodic reopening of a previously entered order. 18 U.S.C. § 3626(c).

These same considerations apply to plaintiffs' brief argument that the case should proceed as a class action under Fed. R. Civ. P. 23(b)(1). The prison crowding statute requires individualized proof which necessitates varying adjudications. The alleged risk that defendants will be held to incompatible standards of conduct, however, is minimized by requiring relief focused on the individual who has shown that the crowding has caused him cruel and unusual punishment. The relief would, therefore, not be dispositive of the interests of inmates not a party to the suit. Plaintiffs have failed to establish a basis for maintaining this case as a class action under Fed. R. Civ. P. 23(b).

Finally, plaintiffs' plea of fairness, efficiency and justice provides "no other reason" for ignoring the standards laid out in the Federal Rules and in the prison crowding statute. Plaintiffs have not satisfied their burden of demonstrating the requirements for class certification.

CONCLUSION

In light of the statutory mandate, plaintiffs' motion for class certification should be denied. Plaintiffs' inability to comply with the requirement of Fed. R. Civ. P. 23 and their inability to state claims that can survive summary judgment also without denial of their class certification motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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