



PC-PA-005-015

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ICU, et al.
Plaintiffs
v.
SHAPP, et al.
Defendants

:
:
: Civil Action Nos. 70-3054,
70-25457, 71-513, and 71-1006
:
:

STIPULATION FOR DISMISSAL
OF OUTSTANDING ALLEGATIONS
OF CONTEMPT

DEC 30 1990
RECEIVED
FILED
JUL 30 1992
MICHAEL J. KUNZ, C.
By *[Signature]* Dep. C.

Defendants and the Plaintiff-Class hereby agree and stipulate to dispose of outstanding matters of disagreement and to the dismissal with prejudice of all allegations of contempt previously filed with Plaintiffs' motion for Order of Contempt as well as any claims of contempt cited in Plaintiffs' motion by way of Appended Affidavits in which the incident forming the basis for such allegations predates this Stipulation.

The parties are mutually desirous of disposing outstanding claims without further litigation and toward this end and as part of this Stipulation Plaintiffs agree to forego and be forever barred from instituting any and all further legal action for contempt or otherwise involving or relating to any acts or omissions cited in Plaintiffs' motion for Order of Contempt as well as any claims of contempt cited in Plaintiffs' motion by way of Appended Affidavits occurring up to and including the date of this Stipulation.

This Stipulation shall in no way be interpreted as an admission by any of the defendants of any violation of state or federal law.

The specific provisions of agreement, which will affect the operation of the State Correctional Institutions at Dallas, Graterford, Huntingdon, Muncy, Pittsburgh and Rockview will modify the Consent Decree entered by the Court, May 22, 1978 in the above-captioned matter and the Administrative Directives of

8-2-82 Appendix

Excluded List

the Bureau of Correction to the extent necessary to implement the following provisions:

1. The Bureau of Correction shall reorganize the Hearing Committee composition and procedures to replace the existing Hearing Committee.

(a) The Hearing Committee shall be composed of three(3) members, consisting of:

I. A Major or Captain of the Guard

II. A Casework Supervisor

III. A School or Vocational Supervisor

(In the case of the Vocational Supervisor he must be a non-uniformed Supervisor.)

(b) There shall be nine(9) permanent Hearing Committee members at each of the affected institutions except for Graterford which shall have twelve(12) permanent members. In regard to this capacity as permanent Hearing Committee members, they shall prior to assuming their duties receive training in relevant areas of law. This curriculum will be mutually agreed upon by defendants and plaintiff-class counsel.

(c) The position of Chairman of the Hearing Committee is hereafter abolished. In its place shall be established a Hearing Committee Coordinator. The Hearing Committee Coordinator shall be chosen from those permanently assigned Casework Supervisors on the permanent Hearing Committee panel. The duties of the Hearing Committee Coordinator shall include, but not be limited to:

I. Scheduling of hearings,

II. Determination of relevancy of witness and presence of witnesses at the hearing,

III. Extent of direct or cross-examination of any witness.

IV. The reading and explanation of the charges to the charged inmate.

V. Announcing the decision and rationale of the Hearing Committee.

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VI. All other functions previously reserved
to the Chairman of the Hearing Committee.

(d) There shall be no member of a Hearing Committee
who shall have a direct supervisory role over any other
panel member.

(e) The votes of all Hearing Committee members
shall be equal.

(f) To either acquit or convict a charged inmate
two (2) of the three (3) Committee members must agree
upon the verdict. This vote count will be announced to
the charged inmate.

(g) There shall not be permitted on the panel any
member who has approved the charges against the inmate,
or who has conducted the investigation leading up to
the charges against the charged inmate.

(h) There shall be only one (1) uniformed panel
member per three (3) member panel.

(i) There shall only be top-level management
persons chosen to the permanent Hearing Committee panel.
This modified Hearing Committee procedure shall remain
in effect for one (1) year from the effective date of
this Stipulation. If at the end of this one (1) year
period it meets with the satisfaction of Plaintiff-Class
counsel, it shall remain in effect indefinitely or
until the expiration of the Consent Decree. However,
if Plaintiff-Class counsel is dissatisfied with this
modified Hearing Committee, then both parties shall
establish a single-person Hearing Examiner to replace
the modified Hearing Committee. Terms, definitions and
procedures concerning the single-person Hearing Examiner
shall be determined after the one (1) year period above-
mentioned and shall be by mutual agreement of both
parties.

2. Modifications of the Misconduct Hearing Process.

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(a) The inmate shall be permitted to have the witnessing staff member present. If no staff member actually witnessed the misconduct, the inmate shall be permitted to have the charging staff member present. These elections will be made by the inmate prior to the hearing on a witness form to be provided to an inmate charged with the misconduct.

(b) If the inmate has selected another inmate or staff member to assist him at the hearing, the assistant shall have reasonable opportunity to address the Hearing Committee.

(c) The inmate shall have the right to call three witnesses on his own behalf. The Hearing Committee shall determine if the requested witnesses are relevant and if the witnesses are available. The inmate will be requested to make an offer of proof of the requested witnesses' relevancy on the witness form. If the witnesses are relevant, they shall be produced unless the institution can establish to the satisfaction of the Hearing Committee a countervailing security concern. For this purpose a countervailing security concern is established when the Institution presents evidence to show that the requested witness of the charged inmate has a demonstrated history of recent erratic, hostile and disruptive conduct on multiple occasions such that the presence of the witness would unduly disrupt the progress of the hearing. In the event that a witness who has no such history as herein described, exhibits a current state of mind such as would reasonably lead to erratic, hostile and disruptive conduct at the hearing, it shall be the duty of the Hearing Committee Coordinator to personally examine the proposed witness before the hearing, to determine the suitability of presenting the witness in person at the hearing. If the Hearing Committee Coordinator determines that it would be unsuitable to have the witness present, he may at his election either continue the hearing until the witness may safely be produced, or terminate the

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statement of the witness, or hear the testimony of the witness out of the presence of the charged inmate. In the event that a witness has no such history as herein described exhibits erratic, hostile and disruptive behavior at the hearing, such witnesses may be removed from further testimony at the discretion of the Hearing Committee.

(d) Except in the case of testimony heard in camera as provided by section 2(f) below, the inmate shall be permitted to question any witness who has testified against him.

(e) If the inmate requests a staff member or inmate witness who is not available at the time of the hearing, the inmate may elect either to waive the six(6) day hearing requirement to permit the witness to be present or to have the witness execute a written statement under oath which will be presented in lieu of live testimony. The hearing will be rescheduled at the earliest practical time after the witness is available.

(f) When the misconduct is based upon information supplied by an informant whose identity should remain confidential, the following procedure shall be employed:

(1) The information given by the informant, but not the identity of the informant, shall be disclosed to the inmate during the hearing unless the institution has reason to believe that the disclosure of the information itself would disclose the identity of the informant. In the latter instance, the information shall be presented to the Hearing Committee, in camera.

(2) The reliability of the informant will be established to the Hearing Committee in the presence of the inmate, using the following test:

Quoted

(a) That the informant had the ability and was in the position to observe.

(b) That the informant has knowledge of the subject matter of the violation, and

(c) That the informant has given reliable information previously or that other witnesses have corroborated some of the information supplied by the informant.

(3) When the institution reasonably believes that the disclosure of the information describing the reliability of the informant would present a threat to the institution's security, it shall be presented in camera to the Hearing Committee.

(g) If the inmate elects to plead guilty or waive his right to a hearing, no witnesses will be required.

(h) All testimony shall be under oath.

(i) If an inmate is acquitted of the misconduct charge, all records of the misconduct shall be expunged from his institutional record.

3. Procedure for Appeals.

(a) The inmate who has been convicted of a misconduct by the Hearing Committee may appeal to the Program Review Committee. The three bases for an appeal by the inmate are:

(1) The procedures employed were contrary to the directive or to Consent Decree;

(2) That the punishment is disproportionate to the offense; or

(3) That the findings of fact are insufficient to support the verdict.

The Program Review Committee shall have the power to uphold, to remand or to uphold but modify the punishment. The Program Review Committee may not impose a greater punishment than has been designated by the Hearing Committee.

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(b) The next appeal shall be to the Superintendent. His review shall be limited to the three bases for appeal listed in 3(a) above and he may make any disposition permitted by the Program Review Committee.

(c) The final appeal shall be permitted to the attorney assigned as counsel to the Bureau of Correction in Central Office (hereinafter referred to as "Central Office Attorney"). The bases for such an appeal are limited to 3(a)(1) and 3(a)(3) above.

4. Transfer of an Inmate to Administrative Custody.

(a) An inmate who has completed his disciplinary sentence shall be released into general population unless the institution presents evidence to the Hearing Committee that there is a valid security reason, as defined in section 4(c) below, to continue him in administrative custody.

(b) When an inmate is transferred to administrative custody from general population and the basis for the transfer is not an outstanding misconduct charge, a self-committal nor confinement under investigative status, he shall be provided a hearing before the Hearing Committee within six (6) days of his transfer. At this hearing the institution shall present evidence to establish that there is a valid security reason as defined in section 4(c) below, to confine him in administrative custody.

(c) Valid security reasons as used in this Stipulation are: (1) that the inmate is a danger to particular person(s) in the institution who cannot be protected by alternate measures; (2) that the inmate is a danger to himself and cannot be protected by alternate measures; (3) that he is the instigator of a disturbance; (4) that placement in general population would endanger his own safety or welfare provided that it is shown that alternative means of protecting him such as by relocation of other individuals in the institution who are a threat to his are unavailable.

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or (5) that the inmate would likely attempt escape if placed in a less restrictive environment.

(d) The appeal of the decision of the Hearing Committee with regard to placement or denial of placement of any inmate in administrative custody shall be made by the inmate or the Superintendent to the Deputy Commissioner who shall review the record of the hearing and all relevant documents.

(e) If the Superintendent elects to appeal the determination of the Hearing Committee with regard to the administrative custody placement, he must give notice to the inmate, the Hearing Committee and the Deputy Commissioner by the close of the third working day following the hearing. The Deputy Commissioner, or in his absence the individual designated to act in his stead, shall rule on the appeal within two (2) regular working days of receipt of the appeal. The inmate shall remain in administrative custody during this appeal process.

(f) Any inmate in administrative custody at the time of execution of this settlement will be entitled to have a hearing on the fact of his continued confinement and to utilize the appeal procedure provided by this section. Any inmate thereafter committed to continued administrative custody by the Hearing Committee shall be committed for a specified period or sentence after which an additional hearing shall be required for further confinement beyond the original period specified.

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(g) The Program Review Committee shall submit to the Hearing Committee a status report every ninety(90) days detailing the reasons the Program Review Committee feels that continued administrative custody is necessary. The Hearing Committee shall review these documents and determine whether the reasons set forth in the documents submitted are valid and reasonable. If the Hearing Committee determines that the Program Review Committee's findings are valid and reasonable it will so notify the segregated inmate. If, however, the Hearing Committee feels that the reasons set forth in the Program Review Committee report are no longer valid or reasonable, the Hearing Committee may schedule a continuation hearing at which the segregated inmate may present evidence, as well as the Program Review Committee. If after the hearing, the Hearing Committee finds no reason for continued segregation it may order the inmate's release to general population, otherwise the inmate shall remain in segregation to the end of his sentence or until another continuation hearing is deemed necessary by the Hearing Committee. Appeal by the inmate or the Program Review Committee shall be as set forth in 4(d) above.

5. Review of Misconducts issued prior to the implementation of this procedure.

The following procedure shall be available to an inmate who is approaching the expiration of his minimum.

(a) The inmate shall have the right to appeal any misconduct which may affect his chances for parole.

(b) The burden will be on the inmate to identify

those misconducts which he wishes to appeal, as well as the reasons why he believes that the procedure was defective. The only basis for appeal is that the original misconduct hearing was not conducted in accordance with Administrative Directive 801 [effective Oct. 1, 1978] or the Consent Decree and this variance was material to the determination of guilt. Technical errors which could not reasonably have had an effect upon the finding of guilt shall not be appealable.

(c) Those misconducts which have been or are directly the subject of litigation cannot be reviewed.

(d) The inmate's first appeal under this section shall be to the Superintendent of the institution in which the misconduct occurred who shall respond within 10 working days.

(e) If the inmate is dissatisfied with the decision of the Superintendent or if he does not receive a timely response, he may appeal that decision to the Central Office Attorney, who shall respond within fifteen working days of receipt of appeal.

(f) If the Superintendent or the Central Office Attorney determines that the misconduct may affect the inmate's chances for parole and that the misconduct hearing was defectively conducted in a material way, a notation shall be made on the inmate's file that the misconduct finding has been reversed. Any such misconduct record shall not be considered by the institution staff in making the recommendation to the Board of Probation and Parole and shall not be submitted to the Board for their consideration.

6. Medical Care.

(a) The civil service class for corrections infirmary supervisors has been closed. Any civil service

positions which become vacant are being filled by registered nurses.

(b) Within two years there shall be positions established in each institution to have a registered nurse on duty 24 hours a day. The Bureau of Correction shall use its best efforts to fill these positions.

(c) Within one year every corrections infirmary supervisor shall be trained and licensed as either a registered nurse or emergency medical technician.

(d) The Bureau of Correction shall continue to reorganize its system of medical care in an effort to provide the best quality and most cost-effective medical services to the inmate population.

7. Law Libraries.

(a) Inmates in the RHU (Restrictive Housing Unit) shall have access to the following volumes to be used as reference materials:

(1) The volumes of the United States Code Service which contain 42 U.S.C. §1983 and 42 U.S.C. §1997 and all current notations.

(2) Title 18 of Purdons Consolidated Statutes Annotated.

(3) Title 37 of the Pennsylvania Code.

(b) Inmates in the RHU may request copies of cases they wish to review.

(c) The institution shall provide the inmate with copies of requested cases. These copies shall be furnished at no cost to the inmate provided the inmate returns the copy after use in a reusable form. The inmate may keep the copy for up to one month unless:

(1) he is sooner released or transferred; or

(2) the demand for copies of a case exceeds the number available (at least 3 copies).