

Robert Carl CRAIN, et al., Petitioners Below, Appellants,
v.
Donald E. BORDENKIRCHER, Warden, West Virginia Penitentiary, et al., Respondents
Below, Appellees.

No. 16646.

Supreme Court of Appeals of West Virginia.

Submitted March 7, 1995.

Decided March 24, 1995.

James F. Companion, Schrader, Recht, Byrd, Companion & Gurley, Wheeling, Barbara L. Baxter, W. Va. Legal Services Plan, Inc., Wheeling, for appellants.

Rita A. Stuart, Sp. Asst. Atty. Gen., W. Va. Div. of Corrections, Charleston, for appellees.

PER CURIAM:

In our most recent opinion of Crain v. Bordenkircher, 192 W.Va. 416, 452 S.E.2d 732 (1994), we directed the respondents, Donald E. Bordenkircher, Warden, West Virginia Penitentiary, et al., to appear before this Court on March 7, 1995, to present a status report. On March 3, 1995, the respondents filed a status report which sets forth the progress of the relocation of inmates from the West Virginia Penitentiary at Moundsville (WVP) to the new State penitentiary, the Mount Olive Correctional Complex (MOCC). From the time this Court outlined the atrocious conditions at the WVP in Crain v. Bordenkircher, 176 W.Va. 338, 342 S.E.2d 422 (1986), we have monitored the construction *207 of the new penitentiary.^[1] We cite Syllabus Point 2 of Crain v. Bordenkircher, 180 W.Va. 246, 376 S.E.2d 140 (1988), for our ongoing jurisdiction over this case:

"This Court has a duty to take such actions as are necessary to protect and guard the Constitution of the United States and the Constitution of the State of West Virginia."

At the hearing on March 7, 1995, and in the written status report, the respondents advised this Court as follows. The construction of the MOCC is complete, and the transfer of inmates from the WVP began on February 14, 1995. Approximately 215 men, which constitutes half of the inmates, have been transferred to the MOCC and the following sections of the WVP are now closed: "the Protective Custody Unit, the receiving unit, the old man's colony, one-half of new wall and part of North Hall." The respondents assured this Court that the transfer of all inmates should be completed on or before April 3, 1995. This Court was further advised that the Special Master and counsel for both parties met on December 20, 1994, and reached agreement on all remaining operational procedures.

We are pleased to be informed that the MOCC "is open and operating smoothly." The food service and medical service at the MOCC are in operation. Furthermore, inmates at the MOCC are able to take advantage of the "education, counselling, alcohol and drug therapy, religion, recreation, law library and general library programs[.]" However, this case will remain on this Court's docket until we are informed that the WVP is closed.

In the status report, the respondents predict a final closure date for the WVP on or before May 1, 1995. Accordingly, there are certain administrative matters that need to be addressed. We hereby direct the respondents to file a certificate with this Court when the last inmate is transferred from the WVP. At that time, the position of Special Court Monitor for the WVP inmates held by Donald L. Poffenberger will be terminated. We take this opportunity to thank Mr. Poffenberger for his admirable services. The respondents shall also file a certificate of closure of the facility with this Court when the WVP is formally closed.

This Court further orders that all habeas corpus petitions filed by inmates relating to conditions of confinement and administrative policies of the WVP which are pending in the Circuit Court of Marshall County shall be transferred to the county in which the MOCC is situated, Fayette County, when the last inmate is transferred from the WVP.

We, therefore, direct the parties to appear before this Court on October 3, 1995, to present what is expected to be the final status report.

Hearing scheduled.

BROTHERTON, J., did not participate.

FOX, Judge, sitting by temporary assignment.

[1] See *Crain v. Bordenkircher*, 193 W.Va. 63, 454 S.E.2d 108 (1994), wherein we summarized our various opinions relating to the transition from the WVP to the MOCC.

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