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United States District Court,
E.D. Pennsylvania.

Martin HARRIS, et al,
v.
The CITY of Philadelphia, et al.

NO. 82-1847. | May 22, 1995.

Opinion

MEMORANDUM AND ORDER

NORMA L. SHAPIRO, J.

INTRODUCTION

***1** Paragraph 16 of the 1991 Stipulation and Agreement ("1991 Consent Decree") states, in relevant part:

> Not later than April 3, 1991, defendants shall contract for and provide a minimum of 250 beds in a program or programs that provide alcohol and substance abuse rehabilitation, training and other support services.... The beds and services provided pursuant to this paragraph 16 shall be reserved for persons who would otherwise be committed to or retained in the custody of the Philadelphia Prisons. Defendants shall have discretion in selecting the program provider(s), but may not reduce or discontinue the provision of such programs without Court approval.

On April 1, 1994, the court ordered the parties to "submit on or before April 11, 1994 suggested dates for filling the 250 slots available in the Forensic Intensive Recovery Program (FIR), in compliance with ¶ 16 of the 1991 Consent Decree." Amended Order of April 1, 1994, ¶ 4. FIR is a program substituted by the City for the Greater Philadelphia Center for Community Corrections (GPCCC) after the City terminated its contract with GPCCC.

On April 11, 1994, defendants filed a Motion for Acceptance of Submission Pursuant to Paragraph 4 of Amended Order Dated April 1, 1994 and Alternative Motion to Reconsider and Vacate Paragraph 4 of Amended Order ("Motion"). Defendants contended:" [P]aragraph 16 of the Consent Decree requires only, and could only require, that Defendants make 250 program slots *available;* Defendants cannot be required to fill those slots as they have no power to sentence or parole inmates 'who would otherwise be committed to or retained in the custody of the Philadelphia Prisons.' " Motion, p. 2 n. 1.

Defendants also contended, "it is not possible for [them] to suggest a binding schedule for filling available slots in [FIR] ... [b]ecause the placement of an inmate in the FIR program is ultimately a sentencing or parole decision of state trial judges, upon the petition of the Public Defender and with the input of the District Attorney, all non-parties to this proceeding;" therefore, "compliance with any schedule the Court should decree will be beyond the Defendants' control regardless of any coercive measures that may be imposed upon them." Motion, pp. 1-2.

Defendants contended that "a Court-ordered schedule, even if it could have its intended effect of expediting placements, is neither needed nor advisable." Motion, p. 2. Therefore, they requested that: the court accept their Submission "in response to paragraph 4 of the April 1 Amended Order," or, alternatively, that the court "reconsider and vacate ... paragraph [4 of the Amended Order], which was entered *sua sponte,*" and that the court hold "a hearing [so they can] place the facts set forth [in the Motion] upon the record." Motion, p. 2.

The Motion will be granted in part and denied in part for the reasons discussed below.

DISCUSSION

In rejecting defendants' challenge to a July 2, 1991 Order, to comply with ¶ 16 of the 1991 Consent Decree, by maintaining 90% occupancy of 250 beds at GPCCC, this court stated:

> ***2** It is ludicrous for the defendants to suggest that the March 11, 1991 Consent Order required only that the City provide 250 treatment beds but that they need not be filled. This is a prison overcrowding case and all of the provisions within the Consent Order were directed at

> either reducing the prison population or providing adequate beds for those incarcerated. To argue that the Consent Order intended only for the City to pay for 250 treatment beds but not necessarily use them strains credulity.

Harris v. City of Philadelphia, 1994 WL 47752, *1 (E.D.Pa.1994), *aff'd,* 47 F.3d 1333 (3d Cir.1995).

The court has held, at least since the July 2, 1991 Order, that ¶ 16 of the 1991 Consent Decree requires defendants not only to "make available" 250 beds referred to in ¶ 16, but also to "make use" of those beds. As stated in the February 16, 1994 Memorandum:

> [E]ven if the July 2, 1991 Order exceeded the court's authority to enforce the terms of the Consent Order, the defendants' argument is not timely. At no previous time during the more than two years prior to the defendants' instant motion did the City move for reconsideration of the Order; nor did it seek certification of the Order for appeal. The defendants never sought a modification of Paragraph 16 to clarify whether the City's obligation was only to provide the 250 beds, or also to have them occupied.... The City is now estopped from moving for ... reconsideration [of the July 2, 1991 Order].

Id. at *1-2.

Accordingly, this court denied reconsideration of a $125,000 contempt fine, imposed by Order dated June 16, 1993 on defendants, for failing to comply with the court's July 2, 1991 Order to maintain 90% occupancy of the beds at GPCCC. *See id.* at *1-3.

The Court of Appeals affirmed this court's Order of February 16, 1994. *See Harris,* 47 F.3d 1333 (3d Cir.1995). In so doing, it stated it did not "have ... occasion ... to decide whether the July 2, 1991 Order exceeded the scope of the 1991 Consent Decree, because the validity of that order [was] not open to collateral attack in a contempt proceeding for violating it." *Harris,* 47 F.3d at 1337. However, it prefaced its extensive review of the evidence from which this court concluded defendants were estopped from challenging the July 2, 1991 Order with the word "significantly." *See id.* at 1335. Defendants are also estopped here from collaterally challenging the validity of the underlying order to use the 250 beds referred to in ¶ 16, in complying with an order to submit suggested dates for filling the 250 slots in the FIR program substituted by defendants.

Defendants' argument that they should not be ordered to suggest a "binding schedule" because "placement of an inmate in the FIR program is ultimately a sentencing or parole decision of state trial judges, upon the petition of the Public Defender and with the input of the District Attorney, all non-parties to this proceeding," Motion, p. 1, is rejected.

***3** In previously rejecting defendants' argument that a contempt sanction should not be imposed for noncompliance with the court's July 2, 1991 Order, this court stated:

> [D]efendants argue an impossibility defense because the contractor did not provide an adequate facility and the state court judges did not grant early parole to the program. However, the defendants did not employ all reasonable efforts to comply with the court's [July 2, 1991 Order].

Harris, 1994 WL 47752, *2 (internal quotations omitted).

In affirming, the Court of Appeals stated:

> Of course, the City cannot directly compel state courts to assign inmates to a treatment facility. But the City's undertaking to establish a treatment facility pursuant to the 1991 Consent Decree imposed on it an obligation to use all reasonable efforts to provide a treatment facility to which state courts could be expected to assign inmates.... This obligation includes contracting with an appropriate facility, funding it at the level necessary to provide adequate security and treatment, and closely monitoring performance under the contract.

Harris, 47 F.3d at 1341.

We do not agree with defendants' contention that "a Court-ordered schedule, even if it could have its intended effect of expediting placements, is neither needed nor advisable." Motion, p. 2. When the court's Amended

Order of April 1, 1994 issued, it had been over three (3) years since defendants agreed to make available and fill the 250 beds referred to in ¶ 16 of the 1991 Consent Decree and defendants had not yet reached this goal. *See* Defendants' Offer of Proof Sur Motion for Acceptance of Submission Pursuant to Paragraph 4 of Amended Order Dated April 1, 1994 and Alternative Motion to Reconsider and Vacate Paragraph 4 of Amended Order, p. 3. Now, it seems clear, in light of the Court of Appeals' affirmance of the related GPCCC order, *see Harris,* 1994 WL 47752, that this court had the authority to impose compliance with ¶ 16 of the Consent Decree by its Amended Order of April 1, 1994. In the unfortunate and hopefully unlikely circumstance that the City does not comply, a finding of contempt would depend on whether the City meets its obligation to use all reasonable efforts to provide 250 treatment slots to which state courts will assign inmates.

But defendants' motion has remained dormant in view of the appeal by the City from the court's Order of February 16, 1994, reaffirming imposition of fines for failure to populate GPCCC. In the intervening time, the City has made some progress with FIR under the leadership of Deputy Managing Director Dianne Granlund.[1] Therefore, the court will seek the parties' participation in setting a new schedule for compliance with ¶ 16 of the 1991 Consent Decree. We will order the parties to submit suggested dates for filling 250 FIR slots to bring defendants into compliance with ¶ 16. A further evidentiary hearing would add "nothing of consequence to the [current] record." *Harris,* 47 F.3d at 1339.

***4** An appropriate order follows.

AND NOW, this day of May 1995, following consideration of Defendants' Motion for Acceptance of Submission Pursuant to Paragraph 4 of Amended Order Dated April 1, 1994 and Alternative Motion to Reconsider and Vacate Paragraph 4 of Amended Order ("Motion"), Plaintiffs' Opposition to Defendants' Motion for Acceptance of Submission Pursuant to Paragraph 4 of Amended Order Dated April 1, 1994 and Alternative Motion to Reconsider and Vacate Paragraph 4 of Amended Order, it is ORDERED that, for the reasons stated in the accompanying memorandum, the Motion is GRANTED IN PART and DENIED IN PART as follows:

1. Paragraph 4 of the Amended Order Dated April 1, 1994 is VACATED;

2. On or before June 30, 1995, the parties shall submit suggested dates for filling 250 slots available in the Forensic Intensive Recovery Program (FIR), in compliance with ¶ 16 of the 1991 Consent Decree.

Footnotes

1 According to Ms. Granlund's report of April 17, 1995, FIR had 144 active participants as of March 31, 1995, and another 66 participants had successfully completed their treatment requirements. The active participants are divided almost evenly between residential FIR programs and internal outpatient FIR programs.