1994 WL 408231
Only the Westlaw citation is currently available.
United States District Court,
E.D. Pennsylvania.

Martin HARRIS, Jesse Kithcart, William Davis, Randall Cummings, Evelyn Lingham, Estrus Fowler, Tyrone Hill and Nathaniel Carter
v.
CITY of Philadelphia, Joan Reeves, in her official capacity as Commissioner of the Department of Human Services of the City of Philadelphia, Albert F. Campbell, Rosita Saez–Achilla, Genece E. Brinkley, Esq., Rev. Paul M. Washington, M. Mark Mendel, Esq., Hon. Stanley Kubacki, Mamie Faines, each in his or her official capacity as a member of the Board of Trustees of the Philadelphia Prison System, J. Patrick Gallagher, in his official capacity as Superintendent of the Philadelphia Prison System, Harry E. Moore, in his official capacity as Warden of Holmesburg Prison, Wilhelmina Speach, in her official capacity as Warden of the Detention Center, Press Grooms, in his official capacity as Warden of the House of Corrections, Raymond E. Shipman, in his official capacity as Managing Director of the City of Philadelphia, Hon. Edward G. Rendell, in his official capacity as Mayor of the City of Philadelphia

No. CIV. A. 82-1847. | June 28, 1994.

Opinion

MEMORANDUM AND ORDER

SHAPIRO.

***1** This class action on behalf of pre-trial and sentenced inmates of the Philadelphia Prison system complains, *inter alia,* of conditions of severe overcrowding. The March 11, 1991 Consent Decree requires the City to build a new prison facility capable of housing 1,000 inmates. In late 1992, after construction had begun on the new facility, the City informed the court that it intended to double the capacity of the new facility to 2,000 inmates; the additional construction required the demolition of Laurel Hall, an existing 175–bed facility. The court refused to allow the planned demolition if it would increase the population of other facilities; in order to demolish Laurel Hall, the City had to provide substitute bed capacity, or alternative release program, for the approximately 175 inmates who would be displaced.

The City planned to complete construction of the Alternative and Special Detention Central Unit ("ASDCU") prior to the demolition of Laurel Hall so that the population of Laurel Hall could be transferred to ASDCU. On September 24, 1993, the court ruled that the planned population of ASDCU exceeded compliance with American Correctional Association ("ACA") standards and that such compliance for new construction was agreed to by the parties to the Consent Decree.[1] After discussions with the parties, the court permitted the occupancy of ASDCU by 168 inmates on certain terms and conditions; the court authorized increasing the population to 192 if the City represented that other conditions designed to mitigate the overcrowding were met. The City concedes that under the terms of the Order it must meet the enumerated criteria to increase the population level to 192. Defendants filed an appeal from the Order of September 24, 1993 on October 27, 1993, but agreed to comply with the Order notwithstanding the pendency of the appeal.

The terms and conditions that must be met in order to house 168 inmates are contained in paragraph G.1. All inmates assigned to ASDCU must be classified minimum or community-security; there must be adequate provision for food service satisfactory to the Philadelphia Health Department; in view of the fact that the building was designed by the architects to be smoke free, there must be adequate ventilation in the two day rooms in which the Commissioner later decided to permit smoking; there must be adequate work tables and seating by the addition of at least three work stations in each housing unit; there must be a minimum of two hours of voluntary outdoor recreation each day after the evening meal; and there must be a position of Job–Coordinator and implementation of the defendants' ASDCU Correctional Officer Posts and Staffing Requirements plan. The Order also required a representation by the defendants that 80% of the inmates would be assigned work or schooling activities ("program activities") 6 hours a day/5 days a week, within 10 days of admission, to relieve overcrowding from failure to comply with ACA space requirements standards.

***2** Paragraph G.2 of the Order provided for an increase in the population limit to 192 inmates when the defendants represent that 85% of the inmates would be assigned program activities 6 hours a day/5 days a week, within 10 days of admission, and that voluntary activities, other than religious programming, would be provided 2 hours each day. On November 23, 1993, pursuant to Paragraph 3 of the court's Order of September 30, 1993, the defendants submitted a report on compliance with the Order of September 24, 1993, and requested leave to increase the population of the ASDCU from 168 to 192 inmates as of

December 23, 1993.

Pursuant to Paragraph 4 of the Order of September 30, 1993, the Special Master issued a report on the defendants' compliance with the Order of September 24, 1994. The Special Master found the defendants in substantial compliance with the following conditions: assignment of inmates to program activities within 10 days; providing 2 hours a day outside recreation; providing work tables and seating; assigning a Job Coordinator; and maintaining the capacity limit of 168 inmates. The Special Master found the defendants in substantial compliance with classification and ventilation requirements subject to specific qualifications. Finally, the Special Master did not find the defendants in compliance with the following conditions: food service, staffing, 2 hours a day of voluntary activities and 6 hours a day/5 days a week of program activities.

Upon the defendants' motion, the hearing in this matter was postponed to February 2, 1994; the court issued an Order the same day denying without prejudice the request to increase the population limit to 192 for failure to show substantial compliance with the Order of September 24, 1993. The Order further provided that the court would reconsider the request in sixty days.

At the direction of the court, on May 24, 1994, the Special Master issued a second compliance report on the ASDCU. The Special Master found the defendants in substantial compliance with all of the conditions in the Order of September 24, 1993, except staffing, program activities 6 hours a day/5 days a week and voluntary activities 2 hours a day.

With respect to staffing, the Special Master observed that this issue was being addressed on a systemwide basis in a separate plan submitted by the defendants pursuant to the Prison Planning Process appended to the March 11, 1991, Consent Order. It was rated non-compliant because it is still unresolved, but the court is satisfied that it will be resolved through the separate staffing plan and the procedures established in the Consent Order.

As to the requirement that the inmates be provided program activities 6 hours a day/5 days a week, the report observed that the primary impediment to achieving compliance was the inability to provide morning and noon meals on time; this delays inmates' arrival at assignments. The Special Master recommended that the level of compliance exhibited be accepted if the defendants can resolve the food service delivery problems. The defendants subsequently have informed the court that they have hired a new food service vendor for the Prison System.

***3** As to the provision of voluntary activities, Paragraph G.2(b) of the Order of September 24, 1993 provided that the court would consider requests for the expenditure of fine monies to support voluntary programs. In response to a request from the defendants, the court issued an Order on June 10, 1994, approving the use of fine monies for the expansion of the Hooked on Phonics program to all institutions in the Prison System, including ASDCU. The Hooked on Phonics program will significantly enhance the availability of voluntary activities at ASDCU.

Finally, at the May 31, 1994, hearing the court observed that the Special Master had not addressed whether the defendants had submitted monthly air quality reports. The defendants conceded that such reports had not been submitted, but on June 6, 1994, the court was provided with an air quality report prepared by the Finance Department, Risk Management Division, Safety & Loss Prevention Unit. The report found that the ASDCU air quality on June 3, 1994, was above recommended standards.

The Order provided that the maximum population of the ASDCU would increase to 192 when defendants represented that it was in compliance with Paragraphs G.1 and G.2 of the Order. Defendants now ask the court to authorize the population increase to 192 and modify reporting requirements because they are in substantial compliance with the criteria enumerated in Paragraphs G.1 and G.2.

The court questioned whether it has jurisdiction to entertain this request while the appeal is pending; the parties have briefed the issue. Defendants recognize that the timely filing of a Notice of Appeal confers jurisdiction on the Court of Appeals and divests the District Court of jurisdiction. However, they argue that the District Court retains jurisdiction to supervise its judgment and enforce its order. Defendants argue that the court has jurisdiction to enforce the Order of September 24, 1993 and raise the population limit to 192. Plaintiffs do not contest this court's jurisdiction to increase the population of the ASDCU pending resolution of defendants' appeal. However, the court is obligated to consider independently whether it has jurisdiction.

Defendants seek more than the mere enforcement of the Order of September 24, 1993. The Order provides that the court would raise the population limit of the ASDCU when the defendants met specified criteria. The Special Master and the court have found the defendants in substantial compliance with the criteria enumerated in the Order of September 24, 1993. But substantial compliance is not total compliance; the defendants are also requesting that the court modify the criteria enumerated in the Order of September 24, 1993, and authorize a population limit of 192 based upon the defendants' satisfaction of the modified criteria. Therefore, the court deems defendants' request a motion under Fed.R.Civ.P. 60(b) to relieve the defendants of certain provisions of the Order of

September 24, 1993.

***4** The procedure in this circuit when a Rule 60(b) motion is filed while an appeal is pending is well established. "When an appellant in a civil case wishes to make a [Rule 60(b)] motion ... while his appeal is still pending, the proper procedure is for him to file his motion in the District Court. If that court indicates that it will grant the motion, the appellant should then make a motion in this court for a remand of the case in order that the District Court may grant the motion ..." *Hancock Industries v. Schaeffer,* 811 F.2d 225, 239 (3d Cir.1987) (quoting *Main Line Federal Savings & Loan Association v. Tri–Kell, Inc.,* 721 F.2d 904 (3d Cir.1983) (citations omitted); *see also U.S. v. Accounts Nos. 303450504 and 144–07143,* 971 F.2d 974 (3d Cir.1992), *cert. denied, Friko Corp. v. U.S.,* 113 S.Ct. 1580 (1993); *Venen v. Sweet,* 758 F.2d 117 (3d Cir.1985).

For the reasons stated in this memorandum, the court is inclined to grant the defendants' motion, and authorize an increase in the population limit of the ASDCU to 192 and a modification of reporting requirements. Unless the Court of Appeals remands so that this court can consider the motion, this court is without jurisdiction to grant the Rule 60(b) motion. The court encourages defendants-appellants to make a motion in the Court of Appeals for a remand of the case in order that the District Court may grant the motion. An appropriate order follows.

ORDER

AND NOW, this day of June, 1994, it is ORDERED that:

1. Defendants' request to increase the population limit for the ASDCU, contained in Defendants' Report and Plan Pursuant to Paragraph 3 of Order Dated September 30, 1993, is DEEMED a motion for relief from a final order under Fed.R.Civ.P. 60(b).

2. This court certifies its intent to grant the Rule 60(b) motion if the case is remanded from the Court of Appeals.

Footnotes

1 Paragraph 11 of the Consent Order requires the defendants to "conduct expeditiously" the Prison Planning Process appended to the Consent Order. Section C of the Prison Planning Process requires the defendants to develop physical and operational standards for the operation of their facilities, and such standards "shall comply with correctional industry standards of the American Correctional Association (ACA)," and other appropriate standards. Subsection 1 reiterates the requirement that the defendants must develop physical standards "for renovation and new construction capital projects undertaken by the defendants."

When the defendants began the construction of the ASDCU, the Consent Order required that the defendants apply their physical standards to the new building design. The physical standards defendants submitted for court approval, pursuant to Section C.1 of the Prison Planning Process, provide the following definition of a "multiple occupancy room": "1 room per 2–50 inmates, and 25 square feet (SF) of unencumbered space per inmate." PPS Physical Standards 14.01. The description of the Standard states clearly that "Multiple occupancy rooms are used for housing no less than two or more than 50 inmates...." *Id.* That is consistent with ACA Standard 3–ALDF–2C–03, establishing minimum square footage requirements for single cells/rooms and multiple occupancy cells/rooms occupied by "2–50" inmates (25 square feet per inmate). 1992 ACA Standards Supplement at 103. Despite the defendants' own Standard limiting multiple occupancy rooms to no more than 50 inmates, (i.e., consistent with the ACA Standard), the ASDCU has three multiple occupancy rooms with 64 beds planned for each room.

The court observed during its site visit that the partitions in the housing wings do not extend from floor to ceiling. The plaintiffs argued that the housing wings fit the ACA definition of multiple occupancy rooms and that ASDCU could not house more than 150 inmates under the ACA. Defendants argued that each of the three ASDCU housing wings was not one 64–bed multiple occupancy room, but rather eight eight-bed multiple occupancy rooms separated by partitions.

Plaintiffs also argued that the physical standards drafted pursuant to the Prison Planning Process are mandatory and any deviation therefrom requires a variance from the court, so that defendants required a court-granted variance from PPS Standard 14.01 to house more than 150 inmates at ASDCU. Defendants argued that the standards were mere guidelines that do not require strict adherence. It was unclear from defendants' argument what role, if any, the Standards would play as "guidelines" when the design of the ASDCU housing wings exceeded the 50–bed maximum of PPS Standard 14.01 by a full 28%.