1997 WL 466542
Only the Westlaw citation is currently available.
United States District Court, S.D. New York.

James GILES, Plaintiff,
v.
Thomas COUGHLIN, et al., Defendants.

No. 95 Civ. 3033(JFK). | Aug. 13, 1997.

Opinion

MEMORANDUM OPINION AND ORDER

KEENAN, Senior District Judge.

***1** Before the Court is Plaintiff's motion for reconsideration of this Court's August 1, 1997 Opinion and Order terminating the prospective relief of the March 1, 1996 consent decree pursuant to 18 U.S.C. § 3626(b)(2) of the Prison Litigation Reform Act ("PLRA"), and Plaintiff's application for a stay of the August 1, 1997 Order pending an appeal. For the reasons stated below, the Court denies both the motion for reconsideration and the application for a stay.

The standards controlling a motion for reconsideration are set forth in Local Civil Rule 6.3 and Fed.R.Civ.P. 59(e). *See Fulani v.. Brady,* 149 F.R.D. 501, 503 (S.D.N.Y.1993), *aff'd,* 35 F.3d 49 (2d Cir.1994); *Morser v. AT & T Information Sys.,* 715 F.Supp. 516, 517 (S.D.N.Y.1989). Reargument is appropriate only where the court has "overlooked controlling decisions or factual matters put before it on the underlying motion," *In re New York Asbestos Litigation,* 847 F.Supp. 1086, 1141 (S.D.N.Y.1994), and which, had they been considered, "might reasonably have altered the result before the court." *Consolidated Gold Fields v. Anglo American Corp.,* 713 F.Supp. 1457, 1476 (S.D.N.Y.1989).

Plaintiff offers three arguments in support of the instant motion for reconsideration: (1) the specific findings necessary under § 3626(b)(2) for prospective relief were made by the District Court and Second Circuit in *Jolly v. Coughlin,* 894 F.Supp. 734 (S.D.N.Y.1995), *aff'd,* 76 F.3d 468 (2d Cir.1996); (2) PLRA § 3626(b)(2) violates the separation of powers doctrine; and (3) the Court's conclusion that Plaintiff's confinement to TB hold did not violate the Eighth Amendment was erroneous in light of *Jolly v. Coughlin,* 76 F.3d 468 (2d Cir.1996). The Court addresses only the first and second arguments because the third argument merely rehashes arguments that the Court considered and declined to adopt in the August 1, 1997 Opinion and Order.

Section 3626(b)(2)–(3) provides,

> **(2) Immediate termination of prospective relief.**—In any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right and is the least intrusive means necessary to correct the violation of the Federal right.
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> **(3) Limitation.**—Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current or ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation.

***2** Because this Court did not make the required findings under § 3626(b)(2) when it approved the March 1, 1996 consent decree, in the August 1, 1997 Opinion and Order the Court concluded that § 3626(b)(2) required termination of the prospective relief granted pursuant to that decree unless the requirements of § 3626(b)(3) were met. Plaintiff now argues that the Court should not have reached § 3626(b)(3) because the findings necessary under § 3626(b)(2) were made by the District Court and Second Circuit in *Jolly.*

The Court is very much aware of the findings in *Jolly* and recognizes that the Circuit's *Jolly* decision was the impetus for the March 1, 1996 consent decree. While the facts of *Jolly* have many overlapping issues and facts with the instant case, and the Court has made this observation on many occasions, the Court concludes that for purposes of § 3626(b)(2) the factual findings with regard to Plaintiff Jolly cannot be imputed to a different case, with a different plaintiff, and a different consent decree affecting that one particular plaintiff. Section 3626(b)(2) contemplates that the findings necessary for prospective relief must be made with regard to the specific case and specific prospective relief at issue. Additionally, even if the factual findings in the *Jolly* case were transferred to this case, the Court concludes that the *Jolly* findings did not address whether the March 1, 1996 prospective relief pertaining to Giles was narrowly drawn, extended no further than necessary to correct the Eighth Amendment violation, and was the least intrusive means necessary to correct to Eighth Amendment violation. The findings in the *Jolly* decisions support the conclusion that the March

1, 1996 consent decree remedied an Eighth Amendment violation by mandating Plaintiff's release from medical keeplock under the old policy. Yet, the Court concludes that the *Jolly* findings are insufficient to determine whether the March 1, 1996 consent decree's requirement that Defendants may not place Giles in keeplock, "or otherwise change his status for the remainder of his sentence for his refusal to take a PPD ... test" extended beyond what was necessary to correct the Eighth Amendment violation.

With regard to Plaintiff's argument that § 3626(b)(2) of the PLRA is unconstitutional because it violates the separation of powers doctrine, the Court observes that Plaintiff made no such argument on the underlying motion despite clear notice that Defendants were moving for relief under both Fed.R.Civ.Pro. 60(b) and PLRA § 3626(b)(2). Plaintiff devoted a mere two paragraphs in its opposition brief to the issue of the Defendants' PLRA application and essentially ignored the merits of Defendants' PLRA application. Nevertheless, as can be inferred from page 13 of the Court's August 1, 1997 Opinion and Order, the Court agrees with the reasoning of the court in *Benjamin v. Jacobson,* 935 F.Supp. 332, 343–49 (S.D.N.Y.1996) (HJB), with regard to the constitutionality of § 3626(b)(2) and the Court concludes that PLRA § 3626(b)(2) does not violate the separation of powers doctrine. *See Plyler v. Moore,* 100 F.3d 365, 370–72 (4th Cir.1996), *cert. denied,* 520 U.S. 1277, 117 S.Ct. 2460, 138 L.Ed.2d 217 (1997); *Gavin Branstad,* 1997 WL 434633, at *2–7 (8th Cir. Aug.5, 1997). Accordingly, the Court denies Plaintiff's motion for reconsideration.

***3** Plaintiff also makes an application for a stay of this Court's August 1, 1997 Order, pursuant to Fed.R.Civ.Pro. 62(c), on the grounds that Plaintiff is likely to succeed on his appeal of that Order and that Plaintiff will suffer irreparable harm by his continued confinement in TB hold if the stay is not granted. Under Rule 62(c), such a stay is fully within the discretion of the court. The Court concludes that (1) Plaintiff has not made the required "strong showing" that he is likely to succeed on the merits at the appellate level, *see Hilton v. Braunskill,* 481 U.S. 770, 107 S.Ct. 2113, 2119, 95 L.Ed.2d 724 (1987), and (2) Plaintiff's continued confinement to TB hold, in light of the Court's conclusions in the August 1, 1997 Order, will not cause him irreparable injury pending an appeal. The Court further concludes that under the facts of this case the public interest is better served by denying the stay and permitting Plaintiff's confinement in TB hold under the New York State Department of Correctional Services' May 20, 1996 TB policy. Accordingly, the Court denies Plaintiff's application for a stay of the August 1, 1997 Order pending an appeal.

SO ORDERED.