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United States District Court, E.D. Pennsylvania.

IMPRISONED CITIZENS UNION, et al.

v.

Milton SHAPP, et al.

Civ. A. No. 91-3991. | March 13, 1992.

Opinion

MEMORANDUM

DALZELL, District Judge.

*1 This suit was filed by William Stahl and Willard England, two inmates at the State Correctional Institution at Dallas, seeking a declaratory judgment regarding a consent decree entered in *Imprisoned Citizens Union v. Shapp*, Civil Action Nos. 70-3054, 70-2545, 71-513, and 71-1006 (the “related cases”).

With their complaint, Stahl and England (“petitioners”) filed a request for leave to proceed *in forma pauperis*. As it appears they are unable to pay the cost of commencing this action, leave to proceed *in forma pauperis* is granted. Because the petitioners are not authorized to act on behalf of the named plaintiff, however, the complaint will be dismissed as frivolous pursuant to 28 U.S.C. § 1915(d).

In light of the many years that have passed since former Chief Judge Joseph S. Lord approved the entry of the consent decree in the related cases, it may be helpful here to summarize the history and effect of that decree. The related cases, filed in 1970-71, were consolidated into one class action challenging the constitutionality of conditions and policies at the Pennsylvania State Correctional Institutions at Graterford, Dallas, Huntingdon, Muncy, Rockview and Pittsburgh. Those cases were settled by a consent decree approved by Chief Judge Lord on May 22, 1978, and this Court retained

jurisdiction to ensure compliance with that decree.

The consent decree set forth many substantive and procedural rights to be afforded the plaintiff class. In the event of institution-wide or state-wide violations of the consent decree, the plaintiff class (represented by Stefan Presser of the American Civil Liberties Foundation) is authorized to bring a contempt proceeding on behalf of the plaintiff class. The consent decree does not, however, create any individual cause of action for violation of the rights established by the decree.

A prisoner who believes his or her rights have been violated therefore has two options. For system-wide violations of the consent decree, a prisoner can seek to have class counsel file a contempt proceeding on behalf of the plaintiff class should counsel find the claims meritorious. Alternatively, if an individual’s federal constitutional or statutory rights have been violated, that prisoner can seek redress for such individual violations by filing a separate action in federal court in the appropriate district. Again, however, the consent decree does *not* create any individual, as opposed to class, cause of action for the violation of rights the consent decree established.

Petitioners in this action have failed to proceed through either of these two options. Their individual action alleging violations of the consent decree will therefore be dismissed as frivolous pursuant to 28 U.S.C. § 1915(d).

ORDER

AND NOW, this 12th day of March, 1992, in accordance with the Memorandum filed this date, it is ORDERED AS FOLLOWS:

1. Leave to proceed *in forma pauperis* is GRANTED; and

*2 2. This complaint is DISMISSED as frivolous pursuant to 28 U.S.C. § 1915(d).