Lancaster v. Tilton

United States District Court for the Northern District of California
June 21, 2007, Decided; June 21, 2007, Filed
No. C 79-01630 WHA

Reporter: 2007 U.S. Dist. LEXIS 48412

ANDREW LANCASTER, JEFFERY MILLS, DEXTER WILLIAMS, WILLIAM DENNIS, STEVE LIVADITIS, JIMMY VAN PELT, H. LEE HEISHMAN III AND JOHNATON GEORGE, Plaintiffs, v. JAMES E. TILTON, Acting Secretary, California Department of Corrections and Rehabilitation, and ROBERT L. AYERS, JR., Acting Warden, San Quentin State Prison, Defendants.

Subsequent History: Later proceeding at Lancaster v. Tilton, 2007 U.S. Dist. LEXIS 48399 (N.D. Cal., June 21, 2007)

Prior History: Andrew Lancaster v. Tilton, 2007 U.S. Dist. LEXIS 48403 (N.D. Cal., June 21, 2007)

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Judges: WILLIAM ALSUP, UNITED STATES DISTRICT JUDGE.

Opinion by: WILLIAM ALSUP

Opinion

ORDER DENYING INTERVENOR'S MOTION TO ENFORCE THE CONSENT DECREE

INTRODUCTION

In this prison-conditions class action, intervenor Freddy Fuiava, [*2] a prisoner, has filed a motion to enforce the consent decree. Intervenor argues that defendants' disciplinary and classification actions violate the consent decree as well as federal law. This order disagrees. For the below-stated reasons, intervenor's motion for enforcement is **DENIED.**

ANALYSIS

1. WHETHER DEFENDANTS ARE BOUND BY TITLE 15 UNDER THE CONSENT DECREE.

Intervenor contends that a violation of Title 15 of the California Code of Regulations is also a consent decree violation. Among other things, Title 15 deals with disciplinary processes and the classification of inmates in state prisons. This order finds that to the extent Title 15 is incorporated into the consent decree, it is not incorporated as broadly as intervenor claims.

It is true that the consent decree states that "classification and reclassification shall be in accordance with existing Departmental and Institutional Classification procedures" (Br. Exh. D). In 1982, Judge Stanley Weigel ruled that, with respect to this consent decree, "[t]he 'existing' procedures for reclassifications of condemned inmates are set forth in 15 Cal. Adm. Code § 3375." *Thompson v. Enomoto,* 542 F. Supp. 768, 770 (N.D. Cal. 1982). At this point, [*3] no party disputes Judge Weigel's holding that Section 3375, dealing with inmate classification, may be enforced through the consent decree.

Intervenor, however, now seeks a ruling that Title 15 provisions wholly separate from those dealing with classification -- namely, provisions dealing with inmate discipline -- may be enforced through the consent decree. Intervenor's support for this proposition rests with Institutional Procedure No. 608, which governs the operation of the condemned unit at San Quentin. The current version of IP 608 was adopted in 1999. Section 701 of IP 608 specifically recognizes that "[t]he disciplinary procedures and policies used in San Quentin's Condemned Sections will comply with the California Code of Regulations, Title 15" (Br. Exh. C).

This order holds that although IP 608 specifically calls out the disciplinary provisions of Title 15, a violation of those

provisions of Title 15 *is not* a violation of the consent decree. Following the hearing, the Court requested the parties to identify any order adopting IP 608 as a provision of the existing, enforceable consent decree. No party could do so. In the lengthy history of this case, neither the Court nor the [*4] parties could find an order approving or adopting IP 608. IP 608 is not part of the decree. Contrary to intervenor's argument, a violation of IP 608 is not a violation of the consent decree. By the same token, a violation of the disciplinary provisions of Title 15 is not a violation of the consent decree. *

2. ALLEGED VIOLATIONS OF CONSENT DECREE.

Intervenor has not shown that a violation of the disciplinary provisions of Title 15 constitutes a violation of the consent decree. Accordingly, the arguments raised in his motion -- based on violations of Title 15 -- are largely moot. Intervenor has not demonstrated that San Quentin officials' allegedly arbitrary punishment of inmates violates the consent decree.

Intervenor does refer to two specific consent decree provisions in his motion. According [*5] to intervenor, the recently-instituted "property control" policy -- utilized as punishment -- deprives inmates of personal property such as "television, radio, canteen items, newspapers, magazine[s] and other non-legal reading materials" (Br. 8). Intervenor maintains that the property control policy violates parts VI.E.15 and VI.L.3 of the consent decree. Section VI.E.15 of the consent decree lists the items, including clothing, sheets, blanket, toothbrush, etc. that should be given to incoming inmates. Section VI.L.3 provides that incoming inmates will receive a pillow and mattress.

This order finds that the practice of taking property from *current* inmates cannot violate a decree provision regarding property to be provided to *incoming* inmates. Moreover, the property-control policy appears to deprive inmates of items that are not even guaranteed to incoming inmates under the consent decree. The property-control policy does not violate any specific mandates of the consent decree.

This order further notes that intervenor's allegations are not factually supported by sworn, admissible evidence. Intervenor relies largely on an attorney-prepared summary of various inmates comments. The comments [*6] themselves were not signed under penalty of perjury. A violation of the consent decree cannot be found without clear and convincing evidence of contempt. The evidence submitted by intervenor in support of the motion falls far short of establishing most of intervenor's *allegations,* much less any *violations* of the consent decree or the inmates' constitutional rights. This is an independent reason to deny the motion.

CONCLUSION

As stated, San Quentin's alleged discipline policies do not violate the consent decree. Intervenor's motion for enforcement is accordingly **DENIED.** Of course, this ruling does not preclude intervenor or any other inmate from filing a new complaint -- in an action not tethered to this consent decree -- that alleges an independent violation of Title 15.

IT IS SO ORDERED.

Dated: June 21, 2007.

WILLIAM ALSUP

UNITED STATES DISTRICT JUDGE

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* In their response to the request for briefing, plaintiffs pointed out that in the stipulated request to modify the consent decree, the parties requested that defendants be required to implement a "New San Quentin Institutional Procedure 608." The New IP 608 was attached to the proposed consent decree. That proposed consent decree, however, was rejected by this Court by order dated October 4, 2006.