Taifa v. Bayh

United States District Court for the Northern District of Indiana, South Bend Division

July 5, 1995, Dated ; July 5, 1995, ENTERED

CAUSE NO. 3:92-cv-429 AS

Reporter: 1995 U.S. Dist. LEXIS 20195

KATAZA TAIFA, et al., Plaintiffs, v. EVAN BAYH, et al., Defendants.

Subsequent History: [*1] Adopting Order of September 26, 1995, Reported at: 1995 U.S. Dist. LEXIS 20194.

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For AARON ISBY, plaintiff, [PRO SE], Westville, IN. Franklin A Morse, II, [COR LD NTC], Indiana Civil Liberties Union, South Bend, IN.

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RICKY OUTLAW, appellant, [PRO SE], Westville, IN.

For EVAN BAYH, in his individual and official capacity as Governor of the State of Indiana, JAMES E AIKEN, in his individual and official capacity as Commissioner of the Indiana Department of Correction, [*2] NORMAN G OWENS, in his individual and official capacity as Director of the Classification Division of the Indiana Department of Correction, JOHN NUNN, in his individual and official capacity as Deputy Commissioner of Operations of the Department of Correction, CHARLES E WRIGHT, in his individual and official capacity as Director of the Maximum Control Complex of the Indiana Department of Correction, defendants: Wayne E Uhl, [COR LD NTC], Suzann W Lupton, Office of Indiana Attorney General, Indianapolis, IN.

Judges: Robin D. Pierce, U.S. Magistrate Judge. Chief Judge Allen Sharp.

Opinion by: Robin D. Pierce

Opinion

REPORT AND RECOMMENDATION

This case is before the court on the plaintiffs' motion for a partial, expedited ruling -- or, alternatively, for preliminary injunction -- on one count of its motion to hold the defendants in contempt for failing to abide by the provisions of an Agreed Entry in a class action suit. The suit challenged the assignment of prisoners to, and the conditions of confinement at, the Maximum Control Complex ("MCC") operated by the Indiana Department of Correction ("DOC") in Westville, Indiana. The MCC is a modern maximum security correctional facility which was [*3] opened by the DOC in the summer of 1991, and has been the source of much litigation since that time. For the reasons which follow, it is recommended that the plaintiffs' motion for the defendants to be held in contempt be denied on the one count identified in their motion for an expedited ruling.

Background

This case was originally filed in the Marion County Superior Court on May 6, 1992, against the Governor of Indiana and various DOC officials. Plaintiffs filed an amended complaint on May 22, 1992. The action was removed, on defendants' motion, to the United States District Court for the Southern District of Indiana on May 29, 1992, and transferred to this court on July 7, 1992. On October 2, 1992, Chief Judge Sharp certified this case as a class action solely for "purposes of injunctive relief," with the class "consisting of all persons who, as of May 4, 1992, and thereafter in the future, are confined or will be confined in the Maximum Control Complex in Westville, Indiana." Plaintiffs' state law claims were remanded to state court on December 4, 1992.

After extensive settlement negotiations and two hearings before the undersigned at the MCC, the parties entered into an [*4] Agreed Entry which was ultimately approved by Chief Judge Sharp on February 15, 1994. On September 13, 1994, the plaintiffs moved to hold the defendants in contempt for failing to comply with certain provisions of the Agreed Entry. The plaintiffs' supporting memorandum identified 23 separate violations. The parties agreed on remedies for several of these alleged violations

prior to a contempt hearing held before the undersigned on April 6, 1995, at the MCC. Several more were remedied before the plaintiffs submitted their post-trial brief. The contempt action is now limited to seven alleged violations of the Agreed Entry, and the plaintiffs have now moved for a partial, expedited ruling -- or, alternatively, for preliminary injunction -- on one of those counts: Whether the defendants have violated P I(A) of the Agreed Entry by holding prisoner Tracy Jones in the MCC. Plaintiffs have asked the court to order Jones' immediate transfer out of the MCC and for sanctions against the defendants for disregarding the Agreed Entry.

Discussion

Paragraph I(A) of the Agreed Entry provides:

> The following criteria are to be applied when considering an individual prisoner for assignment [*5] to the MCC. The prisoner shall be:
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> 1. A committed or court ordered male adult.
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> 2. An individual with a proven and/or documented history of at least one of the following criteria during the current period of incarceration:
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> (a) Escapes with attempts to cause physical harm to staff, other prisoners, and/or the public at large, or to cause serious destruction to the physical plant.
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> (b) Assaultive behavior against staff and/or prisoners causing serious bodily injury and/or death.
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> (c) Rioting or inciting to riot or violence causing the serious disruption of the orderly management of a facility or unit.
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> (d) Intensive involvement in violent gang activities.
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> (e) Aggressive sexual conduct and/or rape.Paragraph II(A) states that within 12 months of a prisoner's confinement at the MCC, the DOC shall reevaluate the appropriateness of the prison's classification and assignment. Under P II(G) this reclassification requirement is retroactive to members of the class. The

plaintiffs allege that Jones, who was transferred to the MCC before the Agreed Entry was signed, does not meet the classification criteria, and should be reclassified and transferred [*6] to another prison.

Dawn MacMillan, a case manager at the MCC, testified that following the approval of the Agreed Entry, she conducted a retroactive review of prisoner classifications. (Tr. 283.) During the course of those reviews, she had doubts about whether some of the prisoners should be at the MCC; Jones was one of those prisoners. (Tr. 284.)

Randall Short, a classification analyst in the DOC central office, also had doubts about Jones placement at the MCC. In a deposition prior to the contempt hearing, he testified that the DOC had determined that because of the Agreed Entry it should review the current population of the MCC to determine whether or not they met the criteria as stated in the Agreed Entry. (Short Dep. at pp. 4-5.) The first review was done by staff at the MCC. *(Id.* at p. 5.) They reviewed the prisoners' packets and then sent a list of approximately 26 offenders "who they were not sure if they met the criteria as stated in the Agreed Entry" to the DOC central office. *(Id.)* Short reviewed those records between July 25, 1994, and August 4, 1994. (*Id.*) After that review and talking to Norman G. Owens (the DOC director of classification) and other staff [*7] at the DOC, it appeared to Short that there were "maybe two offenders that didn't meet particular criteria." *(Id.)* Jones was one of those inmates, and Short wrote a summary about him and the other offender and submitted it to Owens on August 10, 1994. (*Id.* at p. 9.)

Jones was assigned to the MCC on May 4, 1993. (Tr. 112.) Jim Csenar, another classification analyst in the DOC central office, testified at the hearing that Jones was transferred to the MCC because of his gang activities. He referred to memos written by D. Dirkey, a case manager, to the Superintendent of the Westville Correctional Center dated April 21, 1993, which stated that Jones had admitted to being in gangs. (Tr. 181.) This gang affiliation began with the Vice Lords with Jones holding the rank of "super elite." *(Id.)* Jones sports a Vice Lords tatoo on his back, and the WCC gang coordinator considered him an active member of the Vice Lords. (*Id.*) Csenar also referred to a memorandum written by Short to Owens on April 28, 1993, stating that information garnered from confidential investigations showed that eight offenders identified Jones as a separatee, "which in effect had told the department that [*8] these eight individuals feared for their physical safety if they would be placed in close, physical proximity to Mr. Jones at any time." (Tr. 182.)

Under cross-examination from plaintiffs' counsel, Csenar was asked to read from a memorandum dated August 11,

1994, from Owens to John Nunn, then senior deputy commissioner of the DOC. In that memorandum, Owens wrote:

> In my opinion his placement at MCC under the new criteria is questionable. He has a record of gang involvement, but the documentation involves his activities during a prior incarceration and is very limited. There's no such documentation during his current commitment period.(Tr. 205; Plaintiffs' Ex. 20.) Csenar also read from the August 10, 1994, memo from Short to Owens. In that memo, Short stated that Jones had
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> no documented record of aggressive sexual conduct or rape. He does have a record of gang involvement, but the documentation involves his activities during a prior incarceration, not the current commitment period.(Tr. 209; Plaintiffs' Ex. 19.)

Jones' reclassification was ultimately denied by the DOC. According to MacMillan when she spoke to Short about the denial, he told her "Mr. [*9] Jones had serious gang involvement that we didn't show in our packet at MCC, but central office had it in their packet." (Tr. 285.)

The Supreme Court has made it clear that prisoners do not have a liberty interest in remaining in the general prison population. *Hewitt v. Helms,* 459 U.S. 460, 468, 74 L. Ed. 2d 675, 103 S. Ct. 864 (1983). *See also* *Pardo v. Hosier,* 946 F.2d 1278, 1281 (7th Cir. 1991). Therefore, in order to state a due process claim for a transfer into a more restrictive setting, a prisoner must find an enforceable liberty interest in state law. Before a prison regulation can be found to create this liberty interest, it must go beyond mere procedural guidelines and use mandatory language. *Id.* at 471.

According to the Supreme Court,

> Stated simply, 'a State creates a protected liberty interest by placing substantive limitations on official discretion.' . . . Our past decisions suggest . . . that most common manner in which a State creates a liberty interest is by establishing 'substantive predicates' to govern official decision-making, *Hewitt v. Helms,* 459 U.S. at 472, 103 S. Ct. at 871, and, further, by mandating the outcome to be reached upon [*10] a finding that the relevant criteria have been met.*Kentucky Department of Corrections v. Thompson,* 490 U.S. 454, 462, 104 L. Ed. 2d 506, 109 S. Ct. 1904 (1989). The Court has also
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> articulated a requirement . . . that the regulations contain 'explicit mandatory language,' i.e., specific directive to the decisionmaker that if the regulations' substantive predicates are present, a particular outcome must follow in order to create a liberty interest.*Id.* at 463.
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> In sum, the use of 'explicitly mandatory language,' in connection with the establishment of 'specified substantive predicates' to limit discretion forces a conclusion that the State has created a liberty interest.*Id.*

According to the Fourth Circuit

What this all comes to is that constitutionally protected liberty interests are only created by state law regimes which in the end effectively say to inmates: 'If facts A, B, and C are established in an appropriate factfinding process, you are thereupon legally entitled to a more favorable security or custody classification than you presently have,' or, 'Unless facts A, B, and C are so established, you are legally entitled [*11] not to be placed in a less favorable classification than you now have.'

Slezak v. Evatt, 21 F.3d 590, 595 (4th Cir. 1994).

At least two Courts have found that rules governing prisoner classification and transfer made a part of or arising out of consent decrees in class action law suits create state law liberty interests. *Rodi v. Ventetuolo,* 941 F.2d 22, 26-28 (1st Cir. 1991); *Dozier v. Hilton,* 507 F. Supp. 1299, 1310-11 (D.N.J. 1981). *But see* *Beo v. District of Columbia,* 310 U.S. App. D.C. 137, 44 F.3d 1026, 1028-29 (D.C. Cir. 1995) (Holding that settlement agreement between individual inmate and prison officials did not create a liberty interest and distinguishing *Rodi* and *Dozier* because in those cases "individual prisoners had gained a liberty interest in their existing conditions of confinement because restrictions on altering those

conditions had been embodied in a state-wide practice that gave all prisoners a liberty interest."). The question in the present case, then, is whether the Agreed Entry has created a regime where "unless facts A, B, and C are so established, [DOC prisoners] are legally entitled not to be placed in a less favorable classification [*12] than [they] now have." *Slezak,* 21 F.3d at 595. The court concludes that it does.

First, P 1(A) specifies that in order to he assigned to the MCC, a prisoner must be a committed or court-ordered male adult who has a proven and/or documented history of at least one of the listed criteria during the period of incarceration. These specific criteria -- or "specified substantive predicates" -- are accompanied by the explicitly mandatory language required by *Thompson* and *Hewitt.* Paragraph I(A)(4) states that "these are the only criteria the DOC will consider in assigning prisoners to the MCC." And the procedures for referring a prisoner for assignment to the MCC mandate that at least two individuals are required to determine that a prisoner meet these criteria: P I(B)(1) requires that the referring facility head determine that "a prisoner meets the criteria for consideration for assignment to the MCC," and P I(B)(4) states that upon receipt of the referral materials a Classification Analyst will review them "to insure that the prisoner meets the criteria for assignment to the MCC." Given this explicitly mandatory language, the court finds that prisoners under the control of [*13] the DOG have a liberty interest in not being assigned to the MCC.

Concluding that the Agreed Entry gives inmates a liberty interest in not being assigned to the MCC, however, does not end the inquiry into whether Jones must be transferred out of the MCC. The court must turn next to the question of what process was due. In *Hewitt,* the Court held that, at a minimum, an inmate placed in administrative segregation should be provided with

> an informal, nonadversary review of the information supporting [the inmate's] administrative confinement, including whatever statement [the inmate may wish] to submit, within a reasonable time after confining him to administrative segregation.459 U.S. at 476. The Court stressed that the process due in such a situation was not elaborate:
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> An inmate must merely receive some notice of the charges against him and an opportunity to present his views to the prison official charged with deciding whether to transfer him to administrative segregation. Ordinarily a written statement by the inmate would accomplish this purpose, although prison administrators may find it more useful to permit oral presentations in cases where they [*14] believe a written statement would be ineffective. So long as this occurs, and the decisionmaker reviews the charges in that-available evidence against the
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> prisoner, the Due Process Clause is satisfied.*Id. See also* *Smith v. Shettle,* 946 F.2d 1250, 1254 (7th Cir. 1991) ("The barebones constituents of fair procedure and therefore due process are (besides jurisdiction) notice and the opportunity to be heard….").

In the present case, although the question whether Jones fit within the criteria for transfer to the MCC was the subject of debate even within the DOC, there is apparently no question that he received notice of the reasons for his transfer and that a decisionmaker reviewed those reasons and the then-available evidence supporting them. Accordingly, he received all the process he was due under both the constitution and the Agreed Entry, and the court RECOMMENDS that the Plaintiffs' motion for contempt concerning Jones' continued incarceration at the MCC be DENIED.

ANY OBJECTIONS to this report and recommendation must be filed with the Clerk of courts within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the [*15] right to appeal the district court's order. See *Thomas v. Arn,* 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985); *Lockert v. Faulkner,* 843 F.2d 1015 (7th Cir. 1988); *Video Views, Inc. v. Studio 21 Ltd.,* 797 F.2d 538 (7th Cir. 1986).

Dated this 5th day of July, 1995.

Robin D. Pierce, U.S. Magistrate Judge