

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DARRIN E. MORRIS, ✓
P.O. Box 45699
Lucasville, OH 45669

and

EUGENE ADAMS ✓
P.O. Box 45699
Lucasville, OH 45699

On behalf of themselves and
all other similarly
situated,

Plaintiffs,

vs.

GEORGE VOINOVICH ✓
77 S. High Street
Columbus, OH 43266

Individually and in his
official capacity as the
Governor of the State of Ohio

and

REGINALD WILKINSON ✓
1050 Freeway Drive, North
Suite 403
Columbus, OH 43229

Individually and in his
official capacity as an
employee of the State of Ohio,
Department of Rehabilitation
and Correction

and

Civil Action No. C-1-93-463
(Spiegel, J.)
(Steinberg, M.)

93-436

SECOND AMENDED
CLASS ACTION
COMPLAINT

Judge	4812
Mag.	4880
Journal	
Issue	
Docketed	JP

ARTHUR TATE, JR. ✓ :
ERIC G. DAHLBERG :
BEN BOWER :

1050 Freeway Drive, North :
Suite 403 :
Columbus, OH 43229 :

Individually and in their :
official capacity as :
employees of the State of :
Ohio Department of :
Rehabilitation and Correction :

and :

TERRY COLLINS ✓ :
P.O. Box 45699 :
Lucasville, OH 45699 :

Individually and in his :
official capacity as an :
employee of State of Ohio, :
Department of Rehabilitation :
and Correction, :

and :

ROGER RODDY ✓ :
DAVID SEE ✓ :
ROGER CRABTREE ✓ :
JOHN NEWSOME ✓ :
OSCAR MCGRAW ✓ :
JERRY WILLIAMS ✓ :
JAMES SWANN ✓ :
LARRY NEFF ✓ :
CHARLES BELL ✓ :
RICHARD BROWN ✓ :
RONALD BAILEY ✓ :
MICHAEL TURNER ✓ :
PATRICK BURNETT ✓ :
GERALD E. WEBB ✓ :
ROBERT FINLEY ✓ :
DAVID EARL BRADLEY ✓ :
RANDY L. STOUT ✓ :
WILBUR K. HARRIS ✓ :
E. BENNER ✓ :
KEVIN CLARKSON ✓ :
JEFFERSON ROY LEWIS: ✓

P.O. Box 45699 :
Lucasville, OH 45699 :

Defendants. :

I. PRELIMINARY STATEMENT

1. This is a civil rights class action for injunctive relief and damages for deprivations of rights based on events related to the April, 1993 disturbance at the Southern Ohio Correctional Facility (SOCF) in Lucasville, Ohio. This lawsuit is brought by, and on behalf of, only those SOCF inmates who did not commit, and are thus not subject to criminal prosecution for, any illegal acts during the April, 1993 disturbance. The plaintiffs' class claims include, but are not limited to, a challenge to the extended lock down of the inmate population which has resulted in the denial of out-of-cell time, access to education and job programs, access to medical care, access to courts and the law library and denial of First Amendment rights to Free Exercise of religion. Plaintiffs further challenge the vague and arbitrary application of an administrative rule prohibiting "gang or disruptive group activity" which has been applied to punish peaceful communications and religious activity. Finally, plaintiffs seek damages for injuries suffered due to defendants' failure to protect the inmates and defendants' use of excessive force against members of the plaintiffs' class during and after the disturbance. Plaintiffs seek to certify this action as a class action and seek relief including a preliminary and permanent injunction prohibiting continued unconstitutional practices and conditions of confinement, as well as damages for injuries sustained through the deliberate and reckless actions and inactions of the defendants, attorney fees and costs.

II. JURISDICTION

2. Jurisdiction over claims brought under the Civil Rights Act of 1871 is conferred on this Court by 28 U.S.C. §§ 1331, 1343 (3) and (4).

III. PARTIES

3. Plaintiff Darrin Morris is a citizen of the United States who at all times relevant to this action has been a resident at SOCF.

4. Plaintiff Eugene Adams is a citizen of the United States who at all times relevant to this action has been a resident at SOCF.

5. Defendant George Voinovich has at all times been Governor of the State of Ohio. He is sued for injunctive relief in his official capacity and damages in his individual capacity.

6. Defendant Reginald Wilkinson has at all times relevant to this action been the Director of the Ohio Department of Rehabilitation and Correction. He is sued for injunctive relief in his official capacity and damages in his individual capacity.

7. Defendant Arthur Tate was the warden at the Southern Ohio Correctional Facility from 1990 until December, 1993. Upon information and belief he continues to have authority with respect to some matters at SOCF. He is sued for injunctive relief in his official capacity and damages in his individual capacity.

8. Defendant Terry Collins has been the warden at the Southern Ohio Correctional Facility since January, 1994. He is sued for injunctive relief in his official capacity and damages

in his individual capacity.

9. Defendant Eric Dahlberg was at all times relevant to this action, a supervisor of the warden at SOCF, responsible for approving policies and actions that affect the safety and security of the inmates and staff. He is sued in his individual capacity.

10. Defendant Ben Bower was, during a substantial portion of the 1993 disturbance at SOCF, the acting warden responsible for management of those portions of the facility that were not under the control of the inmates. He is sued in his individual capacity.

11. Defendants, Roger Roddy, David See, Roger Crabtree, John Newsome, Oscar McGraw, Jerry Williams, James Swann, Larry Neff, Charles Bell, Richard Brown, Ronald Bailey, Michael Turner, Patrick Burnett, Gerald E. Webb, Robert Finley, David Earl Bradley, Randy L. Stout, Wilbur K. Harris, E. Benner, Kevin Clarkson, Jefferson Roy Lewis, were employees of the state of Ohio assigned to SOCF during the period relevant to the allegations in this case. They are sued in their individual capacity.

IV. CLASS ACTION ALLEGATIONS

12. This action is brought, and may be properly maintained, as a class action under the provisions of Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure. Plaintiffs bring this class action on behalf of themselves and all others similarly situated. The members of the class as certified by the Court (Doc. 65) are as follows:

All inmates, living or deceased, who meet the following criteria: (1) the inmate has been incarcerated at the Southern Ohio Correctional Facility (SOCF) on or since April 11, 1993; and (2) the inmate has been classified as a general population inmate during some or all of that time period. This class definition includes two subclasses:

SUBCLASS1

All members of the class who were housed or present in K-8 on or about April 13, 1993.

SUBCLASS 2

All members of the class who have been, or subsequently are, indicted for an alleged felony committed during and as part of the April 11-22, 1993 disturbance at SOCF. Any member of this Subclass who ultimately is not convicted of a felony committed during and as part of the April 11-22, 1993 disturbance at SOCF shall cease to be a member of this Subclass and shall be included in the Class. Any member of this Subclass who ultimately is convicted of a felony committed during and as part of the April 11-22, 1993 disturbance at SOCF shall cease to be a member of this Subclass and shall be excluded from the Class.

Defendants may request exclusion of any individual from the Class for "good cause," meaning serious wrongdoing committed during and as part of the disturbance. Class counsel or the individual involved may contest such exclusion. The Court would resolve any disputes as to whether or not such an individual should be excluded from the class.

13. The class is so numerous that joinder of all members is impracticable. While the exact number of class members is unknown at this time, plaintiff believes that the class consists of in excess of one thousand (1,000) persons.

14. The claims of the named individual and representative plaintiffs are typical of the claims of the class, for plaintiffs and all class members sustained and continue to suffer injury arising from defendants' wrongful conduct as alleged herein.

15. The named individuals and representative plaintiffs will fairly and adequately protect the interests of the members

of the class. Proposed class counsel are experienced in the prosecution of class actions, including cases arising from the deprivation of civil rights and complex litigation.

16. Defendants have acted, or refused to act, on grounds generally applicable to the class, thereby making final injunctive and corresponding declaratory relief appropriate with respect to the class.

17. A class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual joinder of all members of the class is impracticable. Even if any group of class members themselves could afford individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties and the court systems of resolving controversies surrounding defendants' acts. By contrast, the class action device presents far fewer management difficulties and provides the benefits of unitary adjudication, economies of scale, and comprehensive supervision by a single court.

V. FACTS

A. History of Overcrowding and Violence at SOCF

18. The Southern Ohio Correctional Facility is a maximum security prison located in Lucasville, Ohio.

19. Inmate-on-inmate violence has been a recurring problem at SOCF since it opened in 1972.

20. In 1990, following an investigation at SOCF, a State Senate Select Committee determined that the security policy and

procedures at the institution were "woefully inadequate," and recommended various reforms, including reform of the system of for placing inmates in positions of trust. A similar recommendation was included in a 1990 Highway Patrol report regarding SOCF.

21. Also in 1990, in order to rectify overcrowded conditions and to maintain proper security within SOCF, defendants Tate and Wilkinson announced the implementation of "Operation Shakedown" pursuant to which the entire population of the prison was to be single-celled.

B. Security Problems Known But Ignored in April, 1993

22. As of April 11, 1993, single celling had not yet been instituted at SOCF; one thousand eight hundred twenty (1,820) inmates were still housed in the prison (a number far in excess of the institution's design capacity), and inmates were still assigned to jobs where they had access to confidential information.

23. In early April, 1993, defendant Tate was attempting to complete tuberculosis (TB) testing of the entire prison population. Approximately one hundred sixty inmates had refused to submit to tests, many citing religious objections.

24. On or about April 8 and 9, 1993, defendant Tate announced to his staff an intention to lock down the entire prison effective April 12, 1993, in order to force untested inmates to submit to TB testing, which information was in turn discussed in the presence of inmate clerks. Additional measures taken on or about April 8, 1993, included ordering a large amount of lunch

bags and condiments from the warehouse. Inmate clerks who processed that order and inmate kitchen workers thereby became aware of the plans for the lockdown.

25. After announcing the lockdown, and despite the obvious risk of known security problems at SOCF, no precautionary or additional security measures were undertaken to assure a lockdown without incident or threat to the safety of the inmates.

Defendants, including See, McGraw, Crabtree, Tate, Dahlberg and Roddy, knew of but were recklessly indifferent to the obvious risk of violence by inmates who were scheduled to be locked down.

26. Defendant Webb worked as a security officer for the chapel on April 10, 1993. At that time several inmates engaged in threatening, dangerous conduct toward the chaplain. Rather than report the misconduct, defendant Webb deliberately ignored it, demonstrating complete indifference to the known security risks of permitting these inmates to go unpunished.

27. On April 11, 1993, a small number of inmates attacked correction officers in the L Block corridor and caused a major disturbance in which the gained control of L Block itself and control of inmate class members within that block.

C. Violence Against Inmates in K-2

28. Inmates present in the L Block recreation yard at the commencement of the riot were cleared from the area on the evening of April 11, 1993 and a large number were locked in cells in K Block.

29. Defendants including but not limited to defendants John Newsome, Roger Roddy, Arthur Tate, James Swann, Robert Finley,

David Earl Bradley, Randy L. Stout, E Benner, Kevin Clarkson, Jefferson Roy Lewis and Wilbur K. Harris assigned, placed and maintained as many as ten inmates to a cell in K Block. During that period of severe overcrowding in K Block, defendants failed to protect the class members from violence who were locked in these cells.

30. Inmate class member Dennis Weaver was murdered in K-2-36 while locked in an overcrowded cell. Inmate Dye was severely beaten while similarly locked in K-2-35 with nine other inmates. Other class members were also injured and suffered emotional distress during this period in K-2.

31. Many inmates in K-Block lost their personal property as a result of the actions of the defendants.

D. Violence Against Inmates in K-8

32. On or about April 11, 1993, defendant See ordered the supervisor of maintenance, Norman McGinnis, to shut the water supply off to all cells in K-8. See gave this order with the approval of Tate. Shortly thereafter, McGinnis shut the water supply off to all cells in K-8.

33. From April 11 to approximately 11:00 p.m. on April 13, 1993, the inmates in K-8 went without water. For two days, inmates in K-8 were locked in their cells and were not able to flush their toilets. For two days, inmates in K-8 were forced to live in cells with exposed urine and feces. Some inmates defecated in cups or bags and threw their waste out of windows. For two days, inmates in K-8 were unable to brush their teeth, wash or perform basic hygienic functions.

34. Despite repeated pleas and requests from the inmates, Bailey, Swann and Williams refused to turn the water back on in K-8 or transfer inmates to cells with water.

35. At approximately 4:00 p.m. on the afternoon of April 13, 1993, inmates in no more than 12 cells in K-8 began breaking their sinks and/or toilets. These inmates hoped that by engaging in this activity, SOCF personnel would transfer them to cells with water.

36. Shortly thereafter, Swann and Turner ordered Brown to shoot tear gas into K-8. Swann, Turner and Brown caused the gassing of the entire K-8 cell block consisting of 80 cells and approximately 150 men, despite the fact that, at most, only 24 men in 12 cells had broken their toilets and/or sinks.

37. When the tear gas dissipated, Turner, with the approval of Swann, Bell and Neff, ordered Disturbance Control Team (DCT) and Tactical Response Team (TRT) personnel to force the inmates to strip naked and submit to being handcuffed through the bars of each cell. Then, each inmate was forced to kneel, while naked and handcuffed, on the floor of his cell for approximately 30 minutes.

38. When all inmates in K-8 had been handcuffed, Bell and Neff, on the order of Crabtree, directed DCT and TRT members to remove the inmates from their cells and make them kneel down on the floor outside their cells ("the range"). The inmates were still naked at this time. As the inmates were removed from their cells, DCT and TRT members kicked, pushed, struck and assaulted the inmates. DCT and TRT members pointed guns at the inmates,

shouted obscenities and racial slurs and threatened their lives.

39. Defendants Crabtree, Bell and Neff directed DCT and TRT members to remove all property from the cells, including personal effects, legal papers, family photographs, personal correspondence, TVs, radios, soap, toothbrushes, blankets, pillows, medication and clothing. The DCT and TRT members carried out these orders.

40. Once all personal property was removed from each cell, the DCT and TRT members ordered the inmates back into their cells. The inmates were still naked. The water supply to K-8 was still shut off at this time.

41. The inmates remained naked in their cells for at least a day. The inmates were forced to sleep naked without any covering. Neither Crabtree, Williams, Bell, Turner, Swann, Neff nor Bailey made arrangements to procure clothing for the inmates before the gassing or within 24 hours after the gassing.

42. Since the water supply in K-8 was not immediately restored, the inmates in K-8 were unable to flush their eyes with water or wash their faces in the aftermath of the gassing.

43. Despite repeated requests, several inmates were denied medical attention after the gassing. Bailey, Swann, Williams, Bell, Neff and Turner denied medical care to the inmates in K-8 after the gassing.

44. With approval from Crabtree, Bell and Neff, the DCT and TRT members threw the inmates' property onto the range and collected it in piles. The DCT and TRT members removed the property of the inmates from K-8. The inmates in K-8 never saw their property again.

45. As a result of the actions of Crabtree, Bailey, Swann, Williams, Bell, Neff, Turner and Brown, the inmates in K-8 sustained temporary and permanent physical injuries and emotional distress.

46. As a result of the actions of Crabtree, Bailey, Swann, Williams, Bell, Neff, Turner and Brown, the inmates were deprived of their personal property without due process of law.

E. Retaliatory Lockdown

47. For many months after the riot, defendants, including Voinovich, Wilkinson, Dahlberg, Tate and Collins, locked down all of the general population prisoners at SOCF including many, such as plaintiffs Eugene Adams and Darrin Morris, who were not present in L Block during the April, 1993 disturbance and others included in this class who were present in L Block but who were not involved in instigating or maintaining the disturbance. The wholesale nature of the lockdown has deprived inmates, at the direction of defendants, including Patrick Burnett, Art Tate and Terry Collins, of access to the law library and courts, all educational programming, all employment opportunities, weekend visiting, chapel and other means to observe their religions, meaningful recreation, and adequate medical care, all in retaliation for the April disturbance, all in violation of state administrative regulations and all without a legitimate penological purpose.

48. During the lockdown following the disturbance, inmates assigned to general population status at SOCF have had dramatically fewer rights and privileges than inmates assigned to

general population status at other institutions for maximum and close security inmates within Ohio. Defendants had no rational basis or compelling state interest in continuing this difference in treatment.

49. At all times relevant to this action defendants have failed to establish and maintain a classification system that protects inmates from violence by other inmates.

50. At all times relevant to this action defendants have failed to implement a grievance system that ensures that inmate complaints will be fairly, timely and thoroughly reviewed.

51. At all times relevant to this action, defendants have delayed medical care and exhibited deliberate indifference to the serious medical needs of the plaintiff class.

52. For many months following the disturbance many class members were locked down in security control investigation status at SOCF and at Mansfield Correctional Institution without charges being pressed and without a hearing to determine the validity of their detention. Their lockdown constituted a grievous loss of personal liberty.

53. Many class members lost personal property due to the retaliatory and arbitrary conduct of the defendants.

F. Arbitrary Enforcement of Gang Activity Regulation

54. At all times relevant to this action, defendants have punished inmates for violating Ohio Administrative Code § 5120-9-31(E)(31) which proscribes "gang or disruptive group activity" but have failed to inform inmates at SOCF or staff as to what constitutes such gang activity. As a consequence,

members of the plaintiff class continue to face a very real threat of prosecution and punishment for behavior that is peaceful and not otherwise unlawful.

55. At all times relevant to this action the law was clearly established that if the conduct of an inmate is not inherently unlawful, and if the inmate has not received fair warning that the conduct is illegal, punishment violates an inmates' due process rights because he could not have anticipated that his action was against prison regulations.

G. Harm to Members of the Class

56. At all times relevant to this action, defendants have acted with deliberate indifference to the known and recognized constitutional and legal rights of the members of the plaintiff class. Defendants have permitted the deprivations to continue, participated in said deprivations, or knowingly acquiesced in said deprivations of rights.

57. As a result of defendants' actions and inactions described above, members of the plaintiff class have suffered and continue to suffer deprivations of basic constitutional rights.

58. Members of the plaintiff class have suffered and are suffering irreparable harm for which they have no adequate remedy at law.

59. Members of the plaintiff class have suffered physical and emotional injury, property loss, pain and suffering, lost pay, lost good time, lost opportunities to work on personal rehabilitation in a way recognizable by the Ohio Parole Board, lost opportunities for parole, and other injuries and damages.

VI. FIRST CLAIM - 42 U.S.C. § 1983

60. Defendants have, under color of state law, deprived plaintiffs of rights, privileges and immunities secured by the First, Eighth and Fourteenth Amendments to the U.S. Constitution including but not limited to the right to be free of deprivations of liberty without due process, the right to equal protection under the law, the right to be free of cruel and unusual punishment and the right to free exercise of religion.

VII. SECOND CLAIM - RELIGIOUS FREEDOM RESTORATION ACT

61. Defendants have acted in violation of rights secured by the 1993 Religious Freedom Restoration Act.

VIII. PRAYER

WHEREFORE, plaintiffs pray that this Court:

- A. Certify this action as a class action;
- B. Preliminarily and permanently enjoin defendants from continuing the abuses described above and order that defendants;
 1. Immediately provide for access by class members to the law library and to legal materials or to adequately trained legal assistants;
 2. Immediately restore to plaintiffs basic rights to free exercise of religion;
 3. Immediately cease enforcement of OAC § 5120-9-06(E)(31) against class members who engage in conduct which has not been fairly described to inmates as violations of said rule and immediately train the staff in the proper enforcement of said rule;

4. Expunge from class members' records all references to improper discipline;

5. Provide plaintiffs with programming that will enable them to make up the months of lost work, social and educational programs that have not been available at SOCF since the April, 1993 disturbance;

6. Restore to class members weekend visits, out of cell time, recreation, chapel, and all levels of programming to a level equal to that provided other general population Close, Max IV and Max III inmates at other facilities in the State of Ohio;

7. Develop and establish appropriate policies and programs and appropriate staff training and supervision of staff to avoid continued deprivations of any constitutional rights;

8. Establish an effective inmate grievance system;

C. Award members of the plaintiff class compensatory and punitive damages in an amount to be shown at trial;

D. Award members of the plaintiff class reasonable attorneys fees;

G. Order such further relief as this Court may deem just and proper.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed to
all counsel of record this 19 day of July, 1996.

a a Gerhardtstein