UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 76-6086-CIV-MIDDLEBROOKS

GEORGE S. JONAS, *et al*.

Plaintiffs,

vs.

EDWARD J. STACK, et al.,

Defendants.
_____/

BROWARD COUNTY'S RESPONSE TO ORDER TO SHOW CAUSE [DE 894]

Broward County (the "County") responds to this Court's Order to Show Cause dated August 5, 2015 [DE 894], by stating that it has fully met its obligations under the Consent Decree [DE 654] and that the County, therefore, should no longer be subject to the decree.

INTRODUCTION

Broward County does not operate jails or employ corrections officers. The County cannot dictate how money appropriated for jails will be spent, nor can it set correctional policies. Rather, those decisions are made by the Broward Sheriff's Office ("Sheriff"), an independent, directly elected state constitutional office that operates all jails within Broward County.

The County is a party to this case because, under state law, the County *owns and pays for* jail facilities, and at the time the lawsuit was filed – nearly four decades ago – the jail facilities were inadequate. Since that time, the County has spent more than $100 million to provide jail facilities that meet constitutional requirements. This is confirmed by the most recent report of the expert appointed by the Court at the request of the Plaintiffs, which expresses that there is no

current need for additional jail beds. The report further suggests that, to the extent problems remain, they rest with the state judiciary.

The County has fully complied with its obligations under the Consent Decree, but its taxpayers continue to bear the burden for thousands of dollars each month in monitoring costs paid to Plaintiffs' attorneys. The County respectfully suggests that it is time for the County's involvement in this case to end.

FACTS AND PROCEDURAL HISTORY

In 1976, Plaintiffs filed a class action lawsuit on behalf of past, present and future detainees in what was then known as the Broward County Jail, alleging constitutional violations resulting from overcrowding, safety and comfort issues, a lack of medical care, and a failure to provide opportunities for religious services or counseling.[1] 2d Am. Compl. ¶¶ 15-21.[2] Plaintiffs sought declarative and injunctive relief, damages, and attorneys' fees. *Id.* At the time this lawsuit was filed, Broward County operated three jail facilities: one at the Broward County Courthouse near downtown Fort Lauderdale, one in Pompano Beach, and a third, known as the Stockade, in north Fort Lauderdale.

In 1979, this Court, Judge Hoeveler presiding, certified the class action. Order dated Nov. 9, 1979. In 1982, the Court found the conditions of confinement to be unconstitutional, and placed population caps on the jail system which, when exceeded, resulted in fines of $1,000 a

[1] The suit named then-Sheriff Edward J. Stack, the then chief of the Sheriff's detention division, and the seven members of the Broward County Commission at that time – all in their official capacities. As a result, various parties have used various styles naming current or former incumbents at various times. However, the real defendants in interest were and are: (1) The Broward Sheriff's Office; and (2) Broward County as a corporate body, which is presided over by the County Commission.

[2] The docket entry numbers start on December 9, 1994, so there is no DE number for this pleading (or for any other pre-December 9, 1994 pleading).

day being assessed against Broward County. Order dated March 12, 1982; Consent Decree [DE 653], ¶¶ 3 - 4.

In 1979, Broward County opened a North Broward Bureau jail facility in Pompano to replace the older Pompano facility. Affidavit of Assistant County Administrator Alphonso Jefferson ("Jefferson Affidavit"), attached as Exhibit 1, ¶ 5. In 1985, at a cost of $41.6 million, Broward County constructed what is now known as the Main Jail near the Broward County Courthouse in Fort Lauderdale (replacing the courthouse jail referenced above). *Id*. at ¶ 6.

Broward County relinquished operation and maintenance of the jail facilities to the Sheriff in 1987. Broward County Code of Ordinances, § 18-01 (adopted Dec. 8, 1987). However, the County retained responsibility to fund construction of required new jail facilities. § 30.49(2)(d), Fla. Stat. (2015) ("The sheriff shall submit to the board of county commissioners for consideration and inclusion in the county budget, as deemed appropriate by the county, requests for construction, repair, or capital improvement of county buildings operated or occupied by the sheriff.").

In 1988, Broward County expanded the capacity of the Main Jail, and in 1992 further expanded it. Jefferson Affidavit, ¶ 7. As a result, by 1992, twenty-three (23) years ago, the Court stopped assessing fines against the County for exceeding the Court-imposed population caps. *Id*.; Consent Decree [DE 653], ¶ 4. Thus, since 1992, Broward County's jail system has consistently met the constitutional (and Consent Decree) requirements as to jail capacity.

On or about July 27, 1994, the parties executed a Stipulation for the Entry of a Consent Decree, which contained provisions to settle the claims of the Plaintiff Class. On September 2,

1994, Broward County filed a motion seeking Court approval of the settlement.[3] On January 31, 1995, this Court entered its Order Approving Settlement Agreement and Dismissing the Case [DE 654] (the "Order"). In the Order, the Court retained jurisdiction pursuant to the terms of the Consent Decree for a "reasonable period of time" for implementation and enforcement of the Decree and such other matters as may be germane to the effective administration of the Consent Decree. Order [DE 654] at 2.

"The [C]onsent [D]ecree provided for broad prospective relief with respect to conditions of confinement within the Broward County jail system." *Carruthers v. Jenne,* 209 F. Supp. 2d 1294, 1295 (S.D. Fla. 2002). Most of the provisions of the Consent Decree address operational issues controlled by the Sheriff. These include inmate classification, inmate religious practices, use of force, recreation, visitation, community programs, and health-related expenses. Consent Decree [DE 653], ¶¶ 10, 13A-D, 13F, and 22. "Additionally, the [Consent Decree] provided for monthly payment of Plaintiffs' attorney fees, and compliance monitoring, which would be completed by Plaintiffs' counsel." *Id*. From December 2004 through July 2015, Broward County has paid Plaintiffs' counsel $1,368,454.91, half of which is reimbursed to the County from the Sheriff's budget. Jefferson Affidavit, ¶ 9.

Aside from its obligation to pay for compliance monitoring, the County's only direct responsibility under the Consent Decree was to eliminate overcrowding. The Consent Decree

[3] On February 6, 1995, Plaintiffs filed a Motion to Correct or Amend the Order Approving the Settlement [DE 656] to correct what Plaintiffs' contended were clerical errors; this Motion was unopposed. On June 8, 1995, this Court issued an Order Granting Plaintiffs' Motion to Amend and Vacating the Order Approving the Settlement Agreement [DE 665]. In this Order, the Court found the Order Approving the Settlement Agreement should be amended and corrected by the entry of a "consent judgment" incorporating the Settlement Agreement. There is no record of a consent judgment being filed and Broward County does not have any copy of a consent judgment. Nonetheless, the Court and the parties have consistently referred to the Settlement Agreement approved by the Court as the "Consent Decree" that is binding on the parties.

specifically required Broward County to develop a Capital Projects Management Plan to provide funding for the renovation of existing facilities and the construction of proposed facilities in conformity with the Decree's intent. Consent Decree [DE 653], ¶ 13.E.

The Consent Decree contained specific standards regarding jail population. It stated that each inmate is entitled to a bed and that the authorized capacity of the jails is determined by the number of available beds. Consent Decree [DE 653], ¶ 14. At the time of the Consent Decree, the authorized capacity of the jails was 3,656 inmates. *Id*. The Consent Decree provides that if the jail population reaches 88 percent of its authorized capacity, the Sheriff and the County would exercise every internal mechanism or option within their legal authority to speed administrative decisions and actions to control the growth of the inmate population. *Id*. It further provides that if the population reaches 95 percent of authorized capacity, the Sheriff would request the Public Safety Coordinating Council and its representative justice agencies to carry out available mechanisms to control inmate population pursuant to Section 951.26 of the Florida Statutes.[4]

After entry of the Consent Decree, Broward County spent $62.1 million to construct and open two new jail facilities: the Joseph V. Conte Facility ("Conte"), which opened in 1999, and the Paul Rein Detention Facility ("Rein"), which opened in 2004. Jefferson Affidavit, ¶ 8. When combined with the construction of the Main Jail, which occurred prior to entry of the Consent Decree, Broward County has spent $103.7 million to expand its jail capacity since the onset of this lawsuit. Even when subtracting the capacity lost from the closing of the Stockade in

[4] Pursuant to the mandate of Section 951.26 of the Florida Statutes, the Broward County Commission created the Public Safety Coordinating Council for the purpose of assessing the population status of all of its detention or correctional facilities and formulating recommendations to ensure that the capacities of such facilities are not exceeded; the Council consists of members of law enforcement, elected officials, and judges.

2009, the current authorized capacity of the jail system is 5,144 available beds, an increase of 1,488 beds or 40 percent over the authorized capacity at the time of the Consent Decree.[5]

In 2004, the parties entered into two Stipulations for Settlement [DE 887-1, DE 887-2] concerning conditions of confinement as determined by the former Court-appointed expert, Steven Martin. In October of 2010, the Court appointed Dr. James Austin as its Population Management Expert pursuant to Rule 706 of the Federal Rules of Evidence [DE 875]. Dr. Austin's most recent Report, dated June 11, 2014 (the "Report") is attached hereto as Exhibit 2. In the Report, Dr. Austin, after conducting an exhaustive and thorough investigation, praised Broward County and the Sheriff (collectively referred to in the Report as Broward County) for their efforts in reducing the jail population, stating: "Broward County has made exceptional progress in reducing its jail population crowding problem. Since 2006, it has successfully implemented a number of reforms that have lowered jail population and in turn eliminated the need for future jail bed capacity." Report at 24 (emphasis supplied).

Dr. Austin also made "Major Findings" that support his conclusion that there is no need for additional future bed capacity, that is, future capital improvements. Specifically, Dr. Austin found the jail population had declined by about 1,100 inmates between 2006 and 2010. *Id*. at 23. He states: "About half of this reduction is due to a declining crime and arrest rate that have reduced jail bookings by nine percent." *Id*. Dr. Austin did, however, note that between 2010 and the close of 2013, the jail population slightly increased, because of the lengthier processing of criminal cases by the courts. *Id*. Dr. Austin observes this "may be due to the election of new judges who are unfamiliar with court processes…" *Id*. In other words, the increase in the

[5] The current available beds at the jail facilities in operation are as follows: Conte, 1,328; Main Jail, 1,542; North Broward Bureau, 1,206; and Rein, 1,068. Jefferson Affidavit, ¶ 8.

lengths of stay causing a slight uptick in the jail population is due to the judicial system and not the actions of Broward County or its Sheriff.

Dr. Austin's report provides an in-depth discussion of how the jails' population could be further reduced by shortening the average stay. He said the jails were housing more than 1,000 inmates in minimum custody while they await trial. *Id*. at 15. He said this number suggests that many of these people could be released under supervision or assigned to alternative housing. *Id.* He also notes that hundreds of inmates remain incarcerated on bond of $100 or less because they are indigent. *Id*. at 14. Each year, another 1,300 inmates are released after a judge finds no probable cause for their arrest – after an average stay of 71 days. *Id*. at 17. Dr. Austin calculates that these inmates occupy about 265 beds on any given day. *Id*.

Dr. Austin also cites problems in bond court that lead to inmates remaining in jail needlessly. For example, although the Sheriff's Pretrial Service Agency ("PSA") staff evaluates each defendant for risk and provides this information to the bond court judge, the report indicates that that judge has chosen not to use this information until changes are made in the PSA's evaluation procedures. *Id*. at 19 – 22.

Rule 3.134 of Florida's Rules of Criminal Procedure provides procedures intended to ensure that no defendant remains incarcerated without charges for more than 40 days. Dr. Austin suggests that this rule is not always observed, *id*. at 16-17, and predicts that strict adherence to the rule could cut the prison's average daily population by 100, *id*. at 26.

In fact, Dr. Austin lays out a list of ways the jails' population could be reduced by at least 875 inmates per day. *Id*. at 26-30. His 10 suggestions include ensuring that defendants are either charged or released within the state-mandated 40-day period, facilitating pretrial release for

defendants charged with petty crimes and bond amounts below $500, and expanding efforts to identify low-risk inmates for supervised released under a program called "Second Look." *Id*.

None of Dr. Austin's recommendations call for building new cells or other jail facilities as a means to prevent crowding. In fact, if some or all of the recommendations were followed, the currently sufficient jail facilities would become even less populated.

ARGUMENT

I. Standard of Review

As the Court stated in its Order to Show Cause, consent decrees are not intended to operate in perpetuity. *Board of Education v. Dowell*, 498 U.S. 237, 248 (1991); Order to Show Cause [DE 894] at 2, n.1. Rather, as this Court recognized by quoting *Allen v. Alabama State Board of Education*, 164 F.3d 1347, 1350 (11th Cir. 1999), a consent decree should be dissolved or amended if the party seeking such relief shows that the basic purposes of the decree have been fully achieved and that there is no significant likelihood of recurring violations of federal law once the decree has been lifted. *Id*.

II. Broward County does not control the Sheriff's operation of the jails or the processing of criminal cases by the state courts, and therefore lacks authority to affect jail population or conditions.

In Florida, a sheriff is an independent constitutional officer. Art. VIII, § 1(d), Fla. Const. State law authorizes county commissions to designate the county sheriff as chief correctional officer. § 951.061, Fla. Stat. (2015). The Broward County Commission so designated the Sheriff in 1987. Broward County Code of Ordinances, § 18-01 (2015).

When a county commission funds a sheriff's office, it can only assign monies to broad statutory categories such as "salaries" or "equipment," but cannot otherwise tell the sheriff how to spend the money. § 30.49, Fla Stat. (2015); *Weitzenfeld v. Dierks*, 312 So. 2d. 194, 196 (Fla.

1975) (holding that county commission could not stop sheriff from buying helicopter). "Corrections" is a broad budgetary category established in Section 30.49 of the Florida Statutes, and, under *Weitzenfeld*, the County Commission cannot micromanage expenditures within that category.

This budgetary principle has found its way into the law of constitutional torts. The Supreme Court has ruled that Alabama counties, which have a very similar relationship with their sheriffs, cannot be held liable under 42 U.S.C. § 1983 for the sheriff's law-enforcement activities because the counties have no control over those activities. *McMillian v. Monroe County, Ala.*, 520 U.S. 781, 793 (1997). *See also Turquitt v. Jefferson County, Ala.*, 137 F.3d 1285, 1292 (11th Cr. 1998) *(en banc*) (holding that Alabama counties also are not responsible under § 1983 for sheriff's negligent management of a jail*); Grech v. Clayton County, Ga.*, 335 F.3d 1326, 1340 n.25 (11th Cir. 2003) (stating that Georgia county commissions cannot be held liable for sheriff's operations merely because the commissions provide the sheriff's budget); *Jones ex rel. Albert v. Lamberti*, 2008 WL 4070293 at *5 (S.D. Fla. 2008) (granting summary judgment to Broward County for inmate's injuries because sheriff controls jail and County does not).[6]

In *Jones*, the court specifically examined Broward County's role under the Consent Decree at issue here, concluding that "[t]he consent decree places on the County the

[6] As in Alabama and Georgia, county commissions in Florida have a duty to fund the sheriff's office but lack the power to direct the sheriff's operations. One Florida distinction is that Florida law gives county commissions a choice of whether to run jails directly or delegate that job to the sheriff. § 951.061, Fla. Stat. (2015). However, once a county names a sheriff as chief correctional officer, the sheriff retains his broad discretion to run the jails as he sees fit. *E.g.*, *McRae v. Douglas*, 644 So. 2d 1368, 1373 (Fla. 5th DCA 1994) (stating that sheriff has "absolute control" of hiring and firing of deputies and corrections officers); Op. Att'y Gen. Fla. 77-55 (1977) (stating that internal operation of county jail is responsibility of sheriff, subject to state regulations).

responsibility for building new detention facilities and it places on the Sheriff the responsibility for operating the detention facilities." *Jones* at *4.

Broward County is legally distinct from the Sheriff for all remaining purposes relevant to this litigation. The Sheriff manages the jails, while the County Commission funds the Sheriff and provides buildings for the jails. This case does not raise allegations of underfunding, and the record shows that the County has built constitutionally sufficient jail facilities.

III. Broward County has fully met its obligations under the Consent Decree.

Consent decrees are not intended to operate in perpetuity. *Dowell,* 498 U.S. at 248. The Consent Decree here has already been in place for over twenty (20) years.[7] The basic purpose of the Consent Decree as to Broward County has been fully achieved, so discharging the decree as to Broward County is appropriate under *Allen*. 164 F.3d at 1350. The decree required Broward County to make capital improvements. Broward County responded by spending more than $100 million to expand jail capacity. This increased authorized capacity by 40 percent. Accordingly, this Court's own expert, Dr. Austin, specifically found there is no remaining demonstrated need for increased capacity. Because the County has fully met its obligations, and because there is no

[7] Dowell is not the only case in which the Supreme Court has expressed concern about the long-term involvement of the federal courts in managing state institutions. In *Horne v. Flores*, 557 U.S. 433, 448-449 (2009), the Court observed that in institutional-reform cases, defendants may consent for their own reasons to conditions that go beyond constitutional requirements. For example, the Court cited law review articles and judicial decisions suggesting that some local officials may see consent decrees as opportunities to augment their budgets or gain an advantage in local policy debates or interagency rivalries. *Id*. (citing Donald L. Horowitz, *Decreeing Organizational Change: Judicial Supervision of Public Institutions*, 1983 Duke L.J. 1265, 1294 (1983); *Ragsdale v. Turnock*, 941 F.2d 501, 517 (7th Cir. 1991) (Flaum, J., concurring in part and dissenting in part)). In the instant case, the Sheriff has expressed a longstanding interest in reopening the Stockade. Jefferson Affidavit, ¶ 10. While this may or may not eventually happen, the County respectfully submits that the question is one for local policymakers, not a constitutional issue for the federal courts.

significant likelihood of recurring violations of federal law as to jail capacity, the Consent Decree should be dissolved as to Broward County. *Id.*[8]

CONCLUSION

Broward County respectfully requests that this Court enter an Order dissolving the Consent Decree as to Broward County, with Broward County to bear its own costs and attorneys' fees, and to grant any other relief this Court deems provident.

REQUEST FOR HEARING

Pursuant to Local Rule 7.1(b), the County hereby requests a hearing before this Court to argue this Response to the Court's Order to Show Cause. The County believes a hearing would be helpful to the Court because of the age of this matter. The County believes that a hearing of 30 minutes should suffice.

[8] Because it is indisputable that the County has fully met its obligation regarding jail capacity, the County anticipates that any opposition to dissolution of the Consent Decree would be based on assertions that continued operational compliance by the Sheriff is dependent on the continued appropriation of sufficient budgetary amounts by the County Commission (given that the County funds the Sheriff's budget). Such assertions would not, however, justify continuing to subject the County to the Consent Decree. The Prison Litigation Reform Act ("PLRA") was enacted by Congress in 1996, after entry of the Consent Decree. 18 U.S.C. § 3626 (2015). The PLRA limits a court's power to continue "certain forward looking relief" in civil actions challenging prison conditions. *Carruthers*, 209 F. Supp. 2d at 1296. "The PLRA teaches that a court shall not approve any prospective relief unless the court finds that such relief is: (1) narrowly drawn; (2) extends no further than necessary to correct the violation of the involved federal right; and (3) is the least intrusive means necessary to correct the violation of that federal right." *Id.* (citing 18 U.S.C. § 3626(a)(1)). The PLRA does not permit the imposition of relief based on theoretical issues that may develop at some unspecified time in the future.

Respectfully Submitted,

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Certificate of Service

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, and that the foregoing document is being served on this 31st day of August, 2015, on all counsel of record identified in the attached Service List in the manner specified via transmission of Notices or Electronic Filing generated by CM/ECF.

/s/ David Arthur

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