

FILED

SEP 4 - 1996

AT COVINGTON
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURTUNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
AT COVINGTON

CIVIL ACTION NO. 91-187

JOHN DOE, ET AL

PLAINTIFFS

VS.

OPINION AND ORDER

DON YOUNGER, ET AL

DEFENDANTS

This matter is before the court on defendant Kenton County's motion to alter, amend and vacate this court's July 26, 1996 judgment and to stay the execution of that judgment (doc. #450), the motion of defendants Paul Patton and Doug Sapp to alter or amend the court's July 26, 1996 judgment (doc. #459), and the stipulated motion for an extension of time to file a petition for attorneys' fees (doc. #459). A telephonic hearing was held on these motions on August 29, 1996. For the reasons set forth below, Kenton County's motion to alter or amend is granted as to which juveniles are exempt from the 15 day limitation on length of stay, but the remainder of Kenton County's motion is denied. The motion of defendants Governor Paul Patton and Doug Sapp is denied in its entirety, and the stipulated motion for an extension of time to file a petition for attorneys' fees is granted.

Plaintiffs initiated this civil rights class action pursuant to 42 U.S.C. §1983. They challenge the constitutionality of the conditions of their confinement at the Kenton County Detention Center (KCDC) in Covington, Kentucky. After considering all

evidence presented during a three day trial to the bench and considering all arguments made in post-trial briefs filed by the parties, the court entered its findings of fact and conclusions of law as well as an amended judgment on July 26, 1996. The parties seek alteration of portions of these documents.

**THE FINDINGS OF FACT AND CONCLUSIONS OF LAW WILL BE AMENDED
CONCERNING THE EXEMPTION FROM THE 15 DAY
LIMITATION ON LENGTH OF STAY**

This case requires the court to balance significant conflicting interests -- the due process rights of incarcerated juveniles, the public's right to have juvenile crime and misbehavior addressed, and the separation of federal and state powers. As explained in the court's findings of fact and conclusions of law, the Kenton County Detention Center is clearly substandard in many respects. However, in the view of the court the conditions at the KCDC become unconstitutional and thus justify court intervention only when a juvenile is subjected to those substandard conditions for an extended period of time. To that end, the court imposed a time limit on the length of incarceration in this facility for juveniles who do not have the benefit of adult procedural protections, stating:

Plaintiffs ask the court to close this institution. After careful reflection, the court has concluded that such an extreme act would violate the principles of judicial restraint and federalism. But the court has also concluded that confining a juvenile there for an extended period -- more than fifteen (15) days, unless there is probable cause to believe that the juvenile can be treated as an adult charged with a crime -- is punishment without due process of the law. What one can

bear for a short period can be intolerable if prolonged.

Doc. #447 at 2. The court's amended judgment provides, "That, effective **August 15, 1996**, no juvenile not indicted for or convicted of a crime as an adult shall be held in the present Kenton County Detention Center for more than **fifteen (15) days.**"

Doc. #449 at 1.

In its motion to alter or amend the judgment, Kenton County states, for the first time, that, given the procedures prescribed by the Kentucky Revised Code concerning youthful offenders, it is impossible to judicially determine whether a juvenile will be treated as an adult charged with a crime within fifteen days of the juvenile's initial incarceration at the KCDC. For this reason, Kenton County asks the court to revise its language concerning which juveniles are exempt from the fifteen day limit on length of incarceration at the KCDC.

In making its motion, Kenton County repeatedly sarcastically states that the court was "simply wrong" in concluding that juveniles who have not been charged with a crime and who have not been afforded the rights of those who are so charged are being held for lengthy periods in the KCDC. This statement is itself not only "simply wrong" but demonstrates a profound ignorance of the law of this case.¹

It is fundamental that proceedings against juveniles, even

¹ The court suggests that if one is going to be disrespectful, one ought to at least do his homework.

juveniles who have allegedly been in contempt of court, are not criminal proceedings. See, e.g., In re Gault, 387 U.S. 1 (1967); Kent v. United States, 383 U.S. 541 (1966); Young v. Knight, 329 S.W.2d 195 (Ky. 1959); Alexander S. v. Boyd, 876 F. Supp. 773 (D.S.C. 1995). As the Supreme Court explained:

The theory of the District's Juvenile Court Act, like that of other jurisdictions, is rooted in social welfare philosophy rather than in the corpus juris. Its proceedings are designated as civil rather than criminal. The Juvenile Court is theoretically engaged in determining the needs of the child and of society rather than adjudicating criminal conduct. The objectives are to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment.

Kent, 383 U.S. at 544 (emphasis added). More recently, the Kentucky Supreme Court has echoed those views, stating:

It has been a principle theory of juvenile law that an individual should not be stigmatized with a criminal record for acts committed during minority. By providing young people with treatment oriented facilities rather than simple punishment, antisocial behavior can be modified and the offenders will develop as law abiding citizens. However, such treatment does limit the constitutional rights that are traditionally provided for adult offenders. Juvenile offenders are not afforded all the constitutional rights that adult offenders receive. They are afforded only the right to fair treatment. . . . The Kentucky juvenile justice system reflects this philosophy.

Jefferson County Department for Human Services v. Carter, 795 S.W.2d 59, 61 (Ky. 1990) (footnote and citations omitted) (emphasis added).

Even so basic a work as American Jurisprudence 2d, a primer of

American law, in the very first section of its article on Juvenile Courts notes the following basic principles:

The purpose of juvenile court legislation is to provide for the disposition of delinquent, dependent, neglected, and abandoned children by providing a complete scheme for treatment thereof including the creation of a juvenile court which will investigate and try to rehabilitate minors.

With respect to the delinquent child, the philosophy of juvenile court laws is that the juvenile is to be considered and treated not as a criminal, but as a person requiring care, education, and protection. A fundamental aim of juvenile court laws is the prevention of delinquency of children. Consequently, such laws are not punitive, but are corrective and protective in that their purpose is to make good citizens of potentially bad ones. In other words, the welfare of the child lies at the very foundation of the statutory scheme.

47 Am. Jur. 2d Juvenile Courts and Delinquent and Dependent Children § 1 (1995) (emphasis added).

As the above authorities and many others make abundantly clear, it is a trade-off. Juveniles may be deprived of some constitutional rights, such as the right to a jury trial and a speedy and public trial, because they are not being punished but treated. Therefore, all juveniles, except those being proceeded against as adults, have not even been accused of crimes. Again, this is so basic that one doubts if contrary assertions are made in good faith.²

² Certainly, denial of these basics would not be "warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law." Fed. R. Civ. P. 11(b)(2).

The gravamen of this court's opinion is that detention at the KCDC for more than fifteen (15) days is punishment. Therefore, no juvenile may be so punished except those being proceeded against as adults.

Thus, in determining whether juveniles could constitutionally be housed in the substandard KCDC facility, the court protected those children who are not afforded the additional procedural rights available to adults. In keeping with the notion that federal courts have the authority only to require the constitutional minimum--not to impose their views of an ideal facility, the court elected to limit the length that any juvenile not ultimately protected by adult procedural rules may be incarcerated in the KCDC.

In Kentucky, a juvenile is protected by adult procedural requirements only if he is proceeded against as a "youthful offender." A "youthful offender" is a person who is transferred to Circuit Court to be indicted, tried and sentenced as an adult pursuant to KRS Chapter 640 and who is subsequently convicted in Circuit Court. KRS 600.020(52). To be eligible for treatment as a youthful offender, a juvenile must be accused of committing certain serious crimes.³

³Those eligible to proceed as youthful offenders under KRS Chapter 640 include:

- (a) a child charged with a capital offense, Class A felony or Class B felony who was at least fourteen years old at the time of the alleged commission of the offense (KRS 635.020(2));
- (b) a child charged with a Class C or Class D felony who was at least sixteen years old at the time of the alleged commission of the offense and who previously had been found to have committed

The procedures by which it is determined that a child will be proceeded against as a youthful offender are contained in the Kentucky Unified Juvenile Code. To initiate these procedures, the county attorney must make a motion before the District Court to transfer the child to Circuit Court for treatment as a youthful offender. KRS 635.020 and KRS 640.010(2).⁴ The District Court then conducts a transfer hearing pursuant to KRS 640.010. At that hearing, the District Court determines whether there is probable cause to believe that the child committed an offense and whether all age or other requirements for treatment as a youthful offender have been satisfied. KRS 640.010(2)(a). The District Court then considers a number of other factors concerning the circumstances surrounding the offense, the child, and the public and determines whether the child should be transferred to Circuit Court for treatment as a youthful offender. KRS 640.010(2)(b).

felony offenses on two separate occasions (KRS 635.020(3));

(c) a child charged with a felony in which a firearm was used in the commission of the offense who was at least fourteen years old at the time of the alleged commission of the offense (KRS 635.020(4));

(d) a child charged with a felony who previously had been convicted as a youthful offender (KRS 635.020(5)); and

(e) a person who is at least eighteen years old and is charged with a felony that occurred prior to his eighteenth birthday (KRS 635.020(7)).

⁴In the case of a child charged with a felony in which a firearm was used and who is at least fourteen years old at the time of the alleged offense, KRS 635.020(4) provides for automatic treatment as a youthful offender. However, it appears from the language of KRS 640.010(1) and (2) that the county attorney must file a motion to transfer the child to Circuit Court in order to trigger the hearing that results in the automatic transfer.

Due to the serious consequences associated with treatment as a youthful offender, it is common for the child's attorney to seek additional time for investigation and preparation prior to the transfer hearing. At the telephonic hearing, the County Attorney, Garry Edmondson, personally orally certified to this court that all motions for transfer to the Circuit Court for treatment as a youthful offender are and will be made in the good faith belief that the facts support such a transfer. He also said he could make the necessary good faith determination within the 15 days.

Based upon the County Attorney's representation and the fact that it is impossible to ensure that a transfer hearing will commence within 15 days of incarceration without infringing the juvenile's right to adequate preparation and investigation, the court concludes that its July 26, 1996 findings of fact and conclusions of law and amended judgment should be modified to state:

Confining a juvenile in the Kenton County Detention Center for an extended period of time -- more than fifteen (15) days unless the prosecutor has, in good faith, filed a motion to transfer the juvenile to Circuit Court for treatment as a youthful offender -- is punishment without due process of law.

Any statements contained in the court's July 26, 1996 findings of fact and conclusions of law or in the court's amended judgment filed that same day that are inconsistent with this statement shall be vacated.

THE FINDINGS OF FACT AND CONCLUSIONS OF LAW WILL
BE AMENDED TO TRACK LANGUAGE REQUIRED BY THE
PRISON LITIGATION REFORM ACT OF 1995

In its motion to alter or amend, Kenton County contends that the court did not make specific findings required by the recently enacted Prison Litigation Reform Act of 1995, and, therefore, Kenton County is entitled to immediate release from the prospective relief provided by this court's July 26, 1996 amended judgment. Kenton County's argument is without merit.

The Prison Litigation Reform Act of 1995 provides, in part:

The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

18 U.S.C.A. §3626(a)(1)(A) (1996). The Act further provides for termination of prospective relief if the court fails to make such findings. 18 U.S.C. §3626(b)(2).

The court fully complied with the PLRA in its July 26, 1996 findings of fact and conclusions of law by paraphrasing the required findings. However, in an abundance of caution and in an effort to avoid any misunderstanding, the court hereby amends its July 26, 1996 findings of fact and conclusions of law to specifically state:

This court finds that the prospective relief ordered in this case is narrowly drawn, extends no further than necessary to correct the current and ongoing violation of the plaintiffs' Federal constitutional right to the due process of law, and is the least intrusive means necessary to correct the violation of that Federal right. The court has given substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by this relief. This finding is made in accordance with the

Prison Litigation Reform Act of 1995, 18
U.S.C. §3626(a)(1).

**THE COURT'S AMENDED JUDGMENT IS NOT A "PRISONER RELEASE
ORDER" WITHIN THE MEANING OF THE PLRA**

Kenton County's final contention is that the court's July 26, 1996 amended judgment constitutes a "prisoner release order" as used in the PLRA, 18 U.S.C. §3626(a)(3). Therefore, according to Kenton County, the order in question can be entered only by a three-judge panel and only after a previously entered order for less intrusive relief has failed to remedy the constitutional deprivation. This contention is without merit.

The PLRA defines "prisoner release order" as "any order, including a temporary restraining order or preliminary injunctive relief, that has the purpose or effect of reducing or limiting the prison population, or that directs the release from or nonadmission of prisoners to a prison." 18 U.S.C.A. §3626(g)(4)(1996). This definition must be read in conjunction with the substantive provisions concerning prisoner release orders and in view of the legislative history underlying those provisions.

To enter a prisoner release order, under the PLRA, a three-judge panel must find by clear and convincing evidence that: "(i) crowding is the primary cause of the violation of a Federal right; and (ii) no other relief will remedy the violation of the Federal right." 18 U.S.C.A. §3626(a)(3)(E)(1996). In addition, the House Judiciary Committee's report provides:

Subsection (a)(2): Prison population reduction
relief

This subsection makes prison caps the remedy of last resort, permitting a cap to be imposed only if the prisoner proves: 1) that crowding is the "primary" cause of the federal violation; and 2) that no other remedy will cure the violation. These requirements are imposed in recognition of the severe, adverse effects of prison caps and the accompanying prisoner releases relied on to meet the caps.

* * *

By requiring that a plaintiff inmate prove an actual violation of his constitutional rights based on the alleged overcrowding, this subsection will end the current practice of imposing prison caps when inmates have complained about the prison conditions but the presiding judge has made absolutely no finding of unconstitutionality or even held any trial on the allegations. In ordering or approving these caps, some judges now oversee huge programs of releases to keep the prison population down to whatever that judge considers an appropriate level.

House Committee on the Judiciary, Violent Criminal Incarceration Act of 1995, H.R. Rep. No. 21, 104th Congress, 1st Session, p. 25 (1995) (emphasis added).

After reviewing the substantive provisions concerning prisoner release orders and the legislative history underlying this provision of the PLRA, it is clear that the prisoner release order provisions are directed at prison caps, i.e., orders directing the release of inmates housed in a particular institution once that institution houses more than a specific number of persons. This is not that kind of case.

In the case at bar, the court ordered that children--other than those for whom the county attorney has filed a motion for transfer to Circuit Court as a youthful offender--not be incarcerated in the barren KCDC for more than 15 days. The court's

order does not impose a cap on the number of children incarcerated at the KCDC--it limits only the amount of time in which any particular child may be held under the substandard conditions present in the KCDC.

In addition, the court's order does not direct the release of any child. It is undisputed that counties, including Kenton County, often house juveniles in need of a secure facility in other counties. In fact, such transfers from facilities in one county to facilities in another county or even another state are extremely common. Indeed, the Kentucky Juvenile Code specifically contemplates such transfers. See, e.g., KRS 605.090 and KRS 615.030. Kenton County remains free to transfer juveniles in danger of exceeding the fifteen day limit from the KCDC to any other juvenile facility that is appropriate. Accordingly, the court's order does not come within the prisoner release order provision of the PLRA.

**THE COMMONWEALTH DEFENDANTS' MOTION TO
ALTER OR AMEND JUDGMENT IS DENIED**

Defendants Paul Patton, Governor of the Commonwealth of Kentucky and Doug Sapp, Commissioner of the Kentucky Department of Corrections (collectively "the Commonwealth defendants") raise three contentions in their motion to alter or amend the court's July 26, 1996 findings of fact and conclusions of law.

First, the Commonwealth defendants object to the court's referring to "state" officials, contending that the County officials have primary authority to operate the detention center.

For purposes of clarification, the court notes that "state" is used in the section 1983 sense of officials acting under color of state law and this included the Commonwealth defendants and the County defendants. In addition, the Commonwealth defendants' objection does not affect the court's judgment in this case.

Second, the Commonwealth defendants contend that the Commissioner of the Kentucky Department of Corrections does not "supervise" the KCDC, but they admit that the Commissioner has the authority to "monitor" and "inspect" the KCDC. This objection seems to be a simple matter of semantics and does not require any action on the part of the court. During the telephone conference concerning the motions to alter or amend judgment, counsel for the Commonwealth defendants indicated that she was concerned about the use of the word "supervise" because such supervision may have an effect on liability for the plaintiffs' attorneys' fees. As the court stated during the telephone conference, nothing in the findings of fact and conclusions of law is intended to imply a ruling concerning an attorneys' fee petition.

Finally, the Commonwealth defendants take issue with the court's statement that the defendants have not "produced any documentary evidence that these alternatives [to complete sprinkler suppression] were considered under the Codes FSES system or that they were ever approved by the state fire marshal." See doc. #447 at 28. As the court specifically reserved ruling on the fire safety issue until a court-appointed fire expert could be retained,

there is no need to revisit the evidence surrounding the fire safety issue at this time.

Therefore, the court being advised,

IT IS HEREBY ORDERED as follows:

1. That Kenton County's motion to alter, amend and vacate judgment (doc. #450-1) be, and it is, hereby **granted** as to the determination of what juveniles are exempt from the fifteen day limitation period. The court's July 26, 1996 findings of fact and conclusions of law and amended judgment are hereby modified to state:

Confining a juvenile in the Kenton County Detention Center for an extended period of time -- more than fifteen (15) days unless the prosecutor has, in good faith, filed a motion to transfer the juvenile to Circuit Court for treatment as a youthful offender -- is punishment without due process of law.

Any statements contained in the court's July 26, 1996 findings of fact and conclusions of law or in the court's amended judgment filed that same day that are inconsistent with this statement are hereby vacated;

2. That the court's July 26, 1996 findings of fact and conclusions of law are hereby amended to specifically state:

This court finds that the prospective relief ordered in this case is narrowly drawn, extends no further than necessary to correct the current and ongoing violation of the plaintiffs' Federal constitutional right to the due process of law, and is the least intrusive means necessary to correct the violation of that Federal right. The court has given substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by this relief. This finding is made in accordance with the

Prison Litigation Reform Act of 1995, 18
U.S.C. §3626(a)(1);

3. That the remainder of Kenton County's motion to alter, amend and vacate judgment (doc. #450-1) be, and it is, hereby **denied**;

4. That Kenton County's motion for stay of execution of judgment (doc. #450-2) be, and it is, hereby **denied** as moot;

5. That the motion of defendants Governor Paul Patton and Doug Sapp to alter or amend judgment (doc. #459) be, and it is, hereby **denied**; and

6. That the stipulated motion for an extension of time in which to file a petition for attorneys' fees until October 15, 1996 (doc. #456) be, and it is, hereby **granted**.

This 4th day of September, 1996.

William O. Bertelsman
WILLIAM O. BERTELSMAN, CHIEF JUDGE

F I L E C O P Y

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

September 4, 1996

Case Number: 2:91-cv-00187

Barbara W. Jones

Keith D. Hardison

R. Thaddeus Keal

James M. Burd

Garry L. Edmondson

Shannon Wilber

James Bell

Kimberly A. Brooks

Mark I. Soler

Joseph U. Meyer

John Jay Fossett

E. D. Klatte

Barbara D. Bonar

Certificate of Mailing by JHJ.