



JI-SC-001-001

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

ALEXANDER S., ALFRED S.,)
BENNY B., CHRISTOPHER M.,)
LAFAYETTE M., and RICKY S., by)
and through their Guardian ad)
Litem, INEZ MOORE TENENBAUM,)
individually and as)
representatives of a class of)
juveniles,)

PLAINTIFFS,)

v.)

RICHARD E. MCLAWHORN,)
individually and officially in)
his capacity as Commissioner)
of the Department of Youth)
Services for the State of)
South Carolina; JOHN F. HENRY,)
FRANK MAULDIN, KATHLEEN P.)
JENNINGS, JOSEPH W. HUDGENS,)
KAROLE JENSEN AND J. P. NEAL,)
individually and officially)
in their capacities as BOARD)
MEMBERS FOR THE SOUTH)
CAROLINA DEPARTMENT OF YOUTH)
SERVICES,)

DEFENDANTS.)

C/A No.:

COMPLAINT
(NONJURY)

PREAMBLE

Now come the above-named minor Plaintiffs (hereinafter referred to as the Plaintiff Class), by and through their Guardian ad Litem and attorneys, and seek injunctive and declaratory relief and damages from the above-named Defendants.

The Plaintiff Class seeks this relief on their own behalf and as representatives of a class of similarly situated juveniles who are presently, and/or in the future will be, housed within the various facilities operated by the South Carolina Department of Youth Services. The Plaintiff Class also seeks class certification pursuant to Rule 23 of the Federal Rules of Civil Procedure.

2. The Plaintiff Class in this action is all juveniles housed within the South Carolina Department of Youth Services. The Defendants of this action are the Commissioner of the South Carolina Department of Youth Services and the Board of that agency. These Defendants are sued individually as to any actions for damages and are sued individually and officially for the injunctive declaratory relief sought herein.

STATEMENT OF THE CASE

3. This is a civil rights class action challenging the totality of conditions of confinement of Plaintiff Class juveniles housed in the various facilities operated by the South Carolina Department of Youth Services.

4. Specifically, the Plaintiff Class, by and through their Guardian ad Litem, Inez Moore Tenenbaum, allege that the Defendants, all acting under color of state law as the Commissioner and Board of the Department of Youth Services (hereinafter DYS), have caused the Plaintiff Class and all children which may be placed in the custody of DYS in the

future, to suffer and be subjected to: a) cruel and unusual punishment; b) inhumane treatment; c) denial of due process of law in the manner in which they have been detained; and d) numerous other deprivations of constitutional and statutory rights as set forth in this Complaint.

5. It is the position of the Plaintiff Class that the following unconstitutional conditions presently exist within DYS: a) severe overcrowding; b) lack of adequate staffing; c) inadequate physical facilities; d) unhealthy and unsanitary environmental conditions; e) inadequate fire safety; f) deliberately harsh and arbitrary disciplinary procedures; g) an inadequate internal classification system for separating violent from non-violent juveniles; and h) a physical and mental health system which is deliberately indifferent and inadequate to provide for the physical and emotional health and well-being of the juvenile class.

6. The Plaintiff Class also reserves the opportunity to challenge other conditions, which exist within DYS, until after discovery in this case, as discovery may disclose additional constitutional violations and conditions not now known or alleged in this Complaint.

7. The Plaintiff Class seeks a declaratory judgment, permanent injunctions, damages and other equitable relief against the Defendants under the due process, equal protection, and cruel and unusual punishment amendments to the United States

Constitution and any related Federal and State statutes.

JURISDICTION

8. Jurisdiction to determine the claims of the Plaintiff Class is pursuant to 28 U.S.C. §§1331, 1343, 2201, and 2202; 42 U.S.C. §1983 and the First, Fourth, Eighth and Fourteenth Amendments to the United States Constitution. The Plaintiff Class further invokes 28 U.S.C. §2201 as it relates to any additional Federal statutory rights which the Defendants, by their acts and omissions, may have violated.

9. The Plaintiff Class invokes the pendent jurisdiction of this Court to determine any rights or actions pursuant to state law should it be determined that the actions of the Defendants in this matter also violate state statutory or common law.

PARTIES

10. The Plaintiff Class in this action, and specifically Alexander S., Alfred S., Benny B., Christopher M., Lafayette M. and Ricky S., are all minors and citizens of the United States of America. Each has been committed to the custody of DYS by the Family Courts of the State of South Carolina and are housed within the various living units maintained by DYS. The Plaintiff Class requests that Inez Moore Tenenbaum be appointed as Guardian ad Litem for the Class, pursuant to Rule 17(c) of the South Carolina Rules of Civil Procedure.

11. All members of the Plaintiff Class bring this action in their own behalf and on behalf of all other juveniles presently housed within the confines of those institutions operated by DYS and on behalf of all juveniles who may become confined within such institutions in the future.

12. The Defendants in this action are the Commissioner of the Department of Youth Services and its Board. Each is a citizen of the United States and is a proper Defendant in this action.

13. Defendant McLawhorn and the members of the Board of DYS are directly responsible for the health, therapeutic treatment, protection, rehabilitation, safe-keeping and constitutional treatment of all juveniles housed within DYS. Each Defendant is sued individually as to any damages which may have been sustained by the Plaintiff Class because of the Defendants' deliberate indifference to unconstitutional conditions and each Defendant is sued individually and officially for declaratory and injunctive relief. As the individual Defendants represent an agency of the State of South Carolina, their actions represent the actions of the State and the Plaintiff Class would request that any remedy adopted by the Court in this matter as to injunctive and declaratory relief bind the State of South Carolina to act in good faith in complying with the Order.

CLASS ACTION

14. The named Plaintiff Class juveniles, by and through their Guardian ad Litem and attorneys, bring this action on behalf of themselves and all other similarly situated juveniles housed within DYS. Additionally, this action is brought on behalf of all juveniles who may in the future be placed within the custody of DYS. Class certification of this action is sought pursuant to Rule 23 (a) (b) (2) (3) of the Federal Rules of Civil Procedure. The Plaintiff Class also seeks the certification of a subclass of all juveniles within the jurisdiction of DYS who have mental or physical handicaps, including, but not limited to, mental retardation, mental illness, learning disabilities, or emotional disorders. These juveniles are entitled to a higher level of care, treatment and rehabilitation by virtue of their conditions. In addition, Defendants' grossly inadequate conditions and services have a disproportionately negative effect on these handicapped juveniles. The interests of these juveniles are consistent with the interests of the other members of the Class and they can be adequately represented by the Guardian ad Litem.

15. The Plaintiff Class is informed and believes that the Court should certify this action as a class action, pursuant to Rule 23, F.R.C.P., for the following reasons: a) there are more than eight hundred juveniles presently detained and housed within the facilities operated by the Defendants; b) the

unconstitutional and harsh conditions alleged within this Complaint are imposed upon all Class members involuntarily housed within the confines of DYS institutions and the claims of any individual Plaintiff Class member would be substantially similar and typical of the claims of the Plaintiff Class;

c) the Guardian ad Litem, as representative of the Plaintiff Class, will fairly and adequately protect the interests of all individuals within the Class and the relief sought in this Complaint would be of a benefit to all Plaintiff Class members presently housed and/or in the future to be housed within the confines of these institutions; d) the Plaintiff Class' counsel possess the experience, knowledge and resources to provide effective and prolonged representation of the Class. Counsel for the Plaintiff Class consists of attorneys experienced in trial litigation, civil rights and federal statutory law relating to the physically and emotionally handicapped and complex research. The number of attorneys, in light of their access to adequate financial resources, assures consistent and continued representation; e) the questions of law and fact are common to all members of the Plaintiff Class and their importance would outweigh any individual issues raised by individual Class members; f) a class action is a superior method of adjudicating the issues in this lawsuit and would further fair and efficient administration of justice; and g) a class action would be a benefit to the Defendants in this

matter in that it would relieve them of the obligation of multiple individual actions requesting partial relief from those juveniles housed in the various institutions within DYS and will provide finality to the Defendants as to the issues herein.

STATEMENT OF FACTS

16. DYS is an agency of the State of South Carolina charged with the statutory responsibility of housing, educating, treating and rehabilitation of juveniles committed to its custody by the Family Courts of South Carolina. Additionally, DYS provides for probation and after-care of juveniles which have been committed to its institutions and for those juveniles placed on probation by the Family Court. The Defendants to this action, McLawhorn, Henry, Mauldin, Jennings, Hudgens, Jensen and Neal, are charged with the responsibility of assuring that the conditions and programs present in the institutions operated by DYS are constitutional and comply with state and federal law. DYS and its Board were created pursuant to S. C. Code §20-7-3100 (1981). Appointment to the Board is governed by S. C. Code §20-7-3120 (1981). The Commissioner, McLawhorn, holds his appointment by the Board pursuant to S. C. Code §20-7-3160. The powers and duties of the Board and Commissioner are exclusive as they relate to the housing and care of the juveniles in institutions maintained by DYS pursuant to S. C. Code §§20-7-3170 and 20-7-3230.

17. The South Carolina Legislature, in establishing

the children's code, has set forth the purpose and guidelines for the involuntary commitment of juveniles to institutions maintained by DYS. Statutes establishing such policies and guidelines are set forth in relevant part below:

§ 20-7-20. Children's policy established. . . .

(B) This policy shall be interpreted in conjunction with all relevant laws regulations and shall apply to all children who have need of services including, but not limited to, those mentally, socially, emotionally, physically, developmentally, culturally, educationally or economically disadvantaged or handicapped, those dependent, neglected, abused or exploited and those who by their circumstance or action violate the laws of this State and are found to be in need of treatment or rehabilitation. . . .

D) When children or their families request help For children in need of services, care and guidance the State shall secure those services as are needed to serve the emotional, mental and physical welfare of children and the best interests of the community, preferably in their homes or the least restrictive environment possible. When children must be placed in care away from their homes, the State shall insure that they are protected against any harmful effects resulting from the temporary or permanent inability of parents to provide care and protection for their children.

§ 20-7-470. Construction of Articles.

This article shall be liberally construed to the end that families whose unity or well-being is threatened shall be assisted and protected, and restored if possible a secure units of law abiding members; and that each child coming within the jurisdiction of the Court shall receive, preferably in his own home, the care, guidance and control that

will conduce to his welfare and the best interest of the State, and that when he is removed from the control of his parents the Courts shall secure for him care as near as possible equivalent to that which they should have given him.

§ 20-7-3210. Community services to be provided by Department.

The Department shall provide such community services as the Board shall assign to it...

(c) Serving, advising and counseling of children in the various institutions as may be necessary to the placement of the children in proper environment after release and the placement of children in suitable jobs where necessary and proper.

(g) Providing or arranging for necessary services leading to the rehabilitation of delinquents either within the Department or through cooperative arrangements with other appropriate agencies.

(k) Providing for the development of secure and nonrestrictive alternatives to jail.

§ 20-7-3310. Prohibition on confinement of mentally ill or retarded person; transfer to appropriate institution; commitment standards.

No person shall be committed to an institution under the control of the Board who is seriously handicapped by mental illness or retardation.

18. Pursuant to South Carolina Code §20-7-2170, any juvenile between the ages of twelve (12) and seventeen (17) may be committed to an institution maintained by DYS. When such juvenile is "adjudicated delinquent, convicted of a crime, or has entered a plea of guilty or nolo contendere" the juvenile is "committed for an indeterminate period until he has reached his

twenty-first (21) birthday or until sooner released by the Board of Juvenile Parole."

19. Pursuant to S. C. Code §20-7-755 the juvenile is not accorded a jury trial when accused of a criminal act and is not entitled to a public trial. While accorded the right to be free from self-incrimination and the right to cross-examination, the juvenile's rights during adjudicatory hearings are limited to those "as shall be consistent with the best interest of the child."

20. Due process requires that conditions and programs at institutions for young people be reasonably related to the purpose for which the individual is committed. When the state, acting in the role of parens patriae, imposes detention -- especially detention of indeterminate duration as is the case for most of the youth at DYS -- it can meet constitutional requirements only if its practice conforms to its policy. Pursuant to South Carolina policy, the juveniles should be housed in sanitary facilities which have enough space, have trained staff in adequate numbers, have proper security to ensure the resident's safety, provide therapeutic programming for their emotional illnesses and physical well-being, and in other ways comply with Constitutional mandates. These mandates are met by providing individualized treatment plans, sufficient educational, vocational, and recreational opportunities, a rational method of communicating and enforcing standards of

behavior, and a rational system of evaluation that helps, rather than hinders, a juvenile's progress toward the goal of rehabilitation.

21. Specifically, the Plaintiff Class alleges and would show that the conditions of confinement at the DYS institutions are unconstitutional in the following regards:

a) Overcrowding - As of December 7, 1990, long term institutions (Birchwood, John G. Richards, Willow Lane) housed a total of 635 juveniles. These three institutions have a rated capacity based upon 50 square feet per child of 299. The population of 635 was 212% of its rated capacity. By housing this many juveniles within these facilities the Defendants have caused juveniles to be housed in hallways in violation of state and federal fire codes. These conditions create a complete lack of privacy for all juveniles housed in these facilities. Most of the Plaintiff Class members housed in these institutions are denied any type of storage facility in which to store their personal belongings and are severely restricted in what they are allowed to possess as personal property. The Plaintiff Class is informed and believes that the population as of December 7, 1990, will substantially increase over the next several months and that the overcrowding conditions will worsen.

b) Lack of adequate staffing - The Plaintiff Class is informed and believes at present the staffing provided for juveniles housed within DYS is based upon rated capacity rather

than upon actual population figures. Each institution is provided with one psychologist regardless of the number of juveniles housed within facility. Each facility is provided with a set number of security staff. The severe overcrowding conditions as set forth in "a" above does not allow for adequate staffing to ensure the safety of the Plaintiff Class or of the staff members working in the individual housing units. This condition has caused overly restrictive regulations and rigid behavior guidelines to be adopted which deprive individual Plaintiff Class members of reasonable freedom of movement, privacy and activities which are necessary for their emotional and physical well-being. Members of the Plaintiff Subclass are often unable to comply with these overly restrictive conditions because of their handicapping conditions and, therefore, on information and belief, members of the Subclass are disproportionately punished. Additionally, the lack of education and vocational staffing, commensurate with the level of population within the institutions, deprives the Plaintiff Class of appropriate educational and vocational training and rehabilitation to which they are lawfully entitled and for which they have been committed to DYS.

c) Physical Condition of Facilities. Reasonable conditions of repair are not maintained in the facilities. These deficiencies include: the lack of appropriate doors; lack of appropriate shelving and closet space; the lack of any

appropriate lockers to maintain personal items; insufficient number of toilets/sinks and showers for the number of juvenile class members housed within these facilities; insufficient furniture and other seating and writing surface areas in both the rooms and day room areas of the dormitories; inadequate mattresses, pillows, sheets and blankets; and the general conditions that do not provide the type of living conditions appropriate for the housing of juveniles.

d) Inadequate fire safety - While the Defendants have provided sprinkler systems in the living units within DYS, the manner in which the Plaintiff Class is housed creates dangerous and unnecessary fire hazards. The fire exits in the different dormitories are maintained in a locked condition and cannot be opened except by the juvenile correctional officers with a key. There is no electronic gang lock mechanism by which to release these doors in the case of an emergency. Should a fire occur, the juvenile correctional officers may be unable to unlock the fire doors. The existing housing units do not provide a means of escape except by the fire door exits. As the facilities do not have the gang lock safety mechanism nor smoke evacuation system, should a fire occur there exists an unreasonable risk of loss of human life. These conditions are exacerbated by the overcrowded conditions of the dormitories and by the improper housing of juveniles in the hallways which cause additional fire hazards.

e) **Disciplinary Procedures** - At present, DYS employs a disciplinary procedure which provides for solitary confinement in non-communicative cells for violations of the disciplinary rules of the various institutions. These procedures are used without regard to the psychological effect this isolation may have upon the juvenile involved and the isolation may be for extended periods, i.e. 24 to 72 hours. The procedure is used regardless of any emotional problems the juvenile may have and the Plaintiff Class is informed and believes solitary confinement only exacerbates the emotional problems of the subclass. Upon information and belief the Plaintiff Class alleges that often the punishment imposed is of an arbitrary nature and bears little relationship to the conduct of the individual Plaintiff Class member. The haphazard nature and arbitrariness of the punishment combined with the draconian isolation constitutes cruel and unusual conditions of care for the juvenile Plaintiff Class members. The procedures used to impose punishment violate due process in that they do not allow for adequate notice to the juvenile as to the charges involved, do not allow for the juvenile to confront his accusers nor does it provide for a rational and fair system of imposing punishments.

g) **Classification** - The Class is informed and believes that DYS, at present, classifies juveniles by size and sex only. To a certain extent, there is a separation of violent and

nonviolent offenders by institutions, but within institutions there is no attempt to separate status and nonviolent offenders from those offenders that have been convicted of more serious offenses. Additionally, there has been no internal classification system for each institution to ensure that violent and aggressive juvenile offenders are separated from less aggressive Plaintiff Class members. Failure to have a rational classification system for separation of aggressive and nonaggressive juveniles leads to unnecessary violence and the victimization of a large portion of the Plaintiff Class.

(h) Health Services - Due to the excessive number of Class members housed within each of the long term facilities and in the reception and evaluation unit, there exists inadequate resources and staffing in the medical and mental health staffing at DYS. Although DYS has experienced substantial and continual growth in population at its long term facilities for a number of years (i.e. average population FY '87 '88 - 408; FY '88 '89 - 485; FY '89 '90 - 567; FY '90 '91 to date 635) there has not been a corresponding increase in medical and mental health staffing at the institutions. Additionally, there does not exist in DYS a sufficient individualized therapy plan for each juvenile confined within these institutions. As the Plaintiff Class members are confined within DYS in order to develop sufficient social and emotional skills to better deal with our society, the development of individualized emotional treatment

plans are essential to this rehabilitation. The failure of the DYS to have such a plan in place and to provide individualized psychological and medical care is a violation of the Eighth and Fourteenth Amendments to the United States Constitution.

22. The above listed conditions are a result of an intentional and/or deliberately indifferent policy, custom and usage which have proximately caused and will continue to cause a violation of the Plaintiff's constitutional rights as secured by the First, Fourth, Eighth, and Fourteenth Amendments to the United States Constitution.

23. The failure of DYS and the Defendants to provide the constitutional conditions as set forth above necessitates intervention by the Court to ensure that conditions of confinement for the juvenile Class comply with both state and federal law and constitutional considerations when the purpose of confinement is compared to the conditions suffered by the Plaintiff Class.


WHEREFORE, the Plaintiff Class prays: 1) for a judgment requiring the Defendants to pay actual damages to the Plaintiff Class for the unconstitutional conditions which have existed in the past; 2) for a declaratory judgment and permanent injunction finding that the conditions of confinement are in violation of the United States Constitution and the laws of the United States and the State of South Carolina; 3) ordering the Defendants to provide adequate space, staff

physical facilities, environmental conditions, fire safety, disciplinary procedures, classification, medical and mental health systems and such other necessary remedies which become apparent during discovery which would be in compliance with acceptable norms and the constitutional principles applicable to the housing of juveniles in state facilities; 4) attorneys' fees and costs pursuant to 42 U.S.C. 1988; 5) Guardian ad Litem fees and costs; and 6) for such other and further relief as this Court deems just and proper.

Respectfully submitted, this the 28th day of December,

1990.

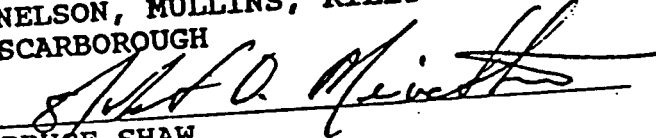
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