

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF ALABAMA, NORTHERN DIVISION

Washington v. Lee



PC-AL-020-013

CALIPH WASHINGTON, ET AL.,)
)
Plaintiffs,)
)
vs.)
)
FRANK LEE as Commissioner of)
Corrections of Alabama; JOHN)
F. BRITTON, CHARLIE CASHION,)
HERSCHELL LUTTRELL, DR. MAX)
McLAUGHLIN and WILLIAM MITCH,)
as members of the Board of)
Corrections of Alabama; A.)
MELVIN BAILEY, as Sheriff)
of Jefferson County, Alabama)
and all other sheriffs of)
Alabama, jointly and severally,)
who are similarly situated;)
ROBERT K. AUSTIN as Warden of)
the City Jail of Birmingham,)
Alabama and all other wardens)
and jailers of city and town)
jails of Alabama, jointly and)
severally, who are similarly)
situated,)
)
Defendants.)

CIVIL ACTION NO. 2350-N

ORDER ON PRETRIAL HEARING

This cause coming on to be heard on a pretrial hearing on November 21, 1966, and all parties being represented by counsel, the following action was thereupon taken:

I. The following pleadings were allowed:

Complaint and answer of each defendant.

II. It was agreed by all the parties that the following are the issues in controversy to be submitted in the manner indicated below:

A. Preliminary issues to be submitted by deposition and by brief prior to the hearing set for 10 a.m., November 29, 1966:

1. Whether any of the plaintiffs now have standing to attack the constitutionality of the various State statutes set forth in the complaint relating to the segregation, based on race, of the city, county and town penal facilities.

2. Assuming plaintiffs prevail on the above issue, whether plaintiffs may prosecute this action as a class action under Rule 23(a), Federal Rules of Civil Procedure, against all sheriffs and wardens in the State of Alabama, with defendant A. Melvin Bailey, Sheriff of Jefferson County, Alabama,

and Robert K. Austin, Warden of the City Jail of Birmingham, Alabama, as representatives thereof, and if the above defendants are not proper representative parties, whether venue is properly laid as to each.

B. In addition to the preliminary issues as above outlined:

1. Whether the various statutes set out in the complaint relating to the segregation, based on race, of penal facilities throughout the State of Alabama at all levels of government (unless modified by the Court in its determination of the preliminary issues above) are unconstitutional as violative of the Fourteenth Amendment to the Constitution of the United States.

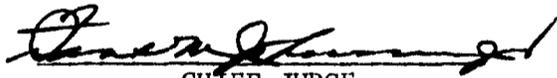
2. Whether such statutes are unconstitutional as violative of the cruel and unusual provision of the Eighth Amendment to the Constitution of the United States.

3. Assuming plaintiffs prevail on either of the above issues, under what circumstances is the segregation of the races in penal facilities justified by considerations of prison security, discipline and safety, or, stated in somewhat different terms, what is the proper scope of a prison official's discretion in determining that the races should be segregated as a matter of prison security, discipline and safety.

III. It was stipulated and agreed by counsel in this cause that plaintiffs' third cause of action, alleging discrimination based on race in the employment practices at penal facilities throughout the State of Alabama, be deleted or struck from the lawsuit.

It is ORDERED that all of the above allowances and agreements be and the same are hereby binding upon all parties in the above-styled cause.

Done, this the 22nd day of November, 1966.


CHIEF JUDGE