

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

FILED

SEP 12 1975

JANE P. GORDON, CLERK
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CALIPH WASHINGTON, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 L. B. SULLIVAN, et al.,)
)
 Defendants.)

CIVIL ACTION NO. 2350-N

Washington v. Lee



PC-AL-020-031

O R D E R

In December, 1966, this Court sitting as a three-judge District Court ordered the defendant state officials in charge of operating the Alabama prison system to desegregate, according to a stipulated schedule, all facilities comprising the Alabama penal system. ^{1/} Defendants' reports to the Court that have been made periodically pursuant to the December, 1966, order reflect that the court order was complied with in good faith and within the time allowed.

On August 13, 1975, plaintiffs filed a motion in this case alleging that the Mount Meigs and the G. K. Fountain penal facilities are presently being operated by defendants on a racially segregated basis in violation of the December, 1966, order. Movants allege that this segregation subjects them and the members of their class to racial treatment and distinctions in confinement in the Alabama penal system in violation of this Court's 1966 order. Plaintiffs ask the Court to order defendants to cease segregating them and the members of their class or otherwise subjecting them to racial treatment and distinctions while they are in confinement in the Alabama penal system. Plaintiffs further ask the Court to issue a show cause order to the Commissioner of the Alabama Correctional System as to why he should not be held in contempt for violating the December, 1966, court order.

Defendants' response to plaintiffs' motion, said response having been filed September 8, 1975, reflects, as the reports heretofore filed with this Court indicate, that defendants have been in complete compliance with each and every requirement of this Court's order entered in this case in December, 1966.

^{1/} Washington v. Lee, 263 F. Supp. 327 (M.D.Ala. 1966); affirmed Lee v. Washington, 390 U.S. 333.

The defendants deny that the penal facilities in the State of Alabama are presently being operated on a racially segregated basis. However, defendants contend that this Court's order entered in this case and its affirmance by the Supreme Court of the United States in Lee v. Washington, supra, allow the defendant prison officials the right, acting in good faith and in particularized circumstances, to take into account tensions in maintaining security, discipline and good order within the Alabama penal system. Defendants say that they have upon two occasions, (1) at the G. K. Fountain facility in August, 1973, and (2) at Mount Meigs Medical and Diagnostic Center in July, 1975, segregated prisoners following serious disturbances which the prison authorities determined to have been caused by racial tension.

There is no question but that this Court's order of December, 1966, and the Supreme Court's affirmance thereof in 1968 did not deprive the Alabama prison officials of taking whatever steps were reasonably necessary, including in exceptional circumstances separation of the prisoners by race, in order to secure and maintain security, discipline and good order in the Alabama prison system. However, it is clear that such action may be taken only as a temporary measure and must be limited to conditions which substantially affect prison discipline and security which cannot otherwise be achieved or maintained through the use of acceptable penalogical procedures. In this connection this Court judicially knows from the evidence recently presented upon the trial of the consolidated cases of Jerry Lee Pugh v. L. B. Sullivan, Civil Action No. 74-57-N, and Worley James v. George C. Wallace, Civil Action No. 74-203-N, that it has been necessary upon two -- and possibly three -- occasions for the defendant prison officials to separate by race prisoners at two of the Alabama penal institutions in order to maintain discipline, security and good order. The evidence in the Pugh and James cases reflects that because of the grossly inadequate funding of the Alabama prison system, resulting in totally inadequate physical facilities and dangerously insufficient custodial personnel, the Alabama prison officials have been required to exercise their judgment and discretion in many areas -- not just in the occasional segregation of the races -- in improvising to meet the emergency situations with which the Alabama prison system is now confronted.

This Court is convinced on the basis of the pleadings now presented and on the basis of the evidence presented over a period of seven trial days in the Pugh and James cases that the defendants in this case have not acted in contempt of the December, 1966, order entered herein and, further, that there has been no segregation of the prisoners on the basis of race except in a few isolated instances when it was considered necessary in order to maintain security and discipline in the prison facility concerned. This temporary, emergency action appears to have been fully justified as far as defendant prison officials are concerned. However, the Alabama prison officials must take notice that this temporary action, such as segregating the prisoners on the basis of race, will not be justified in the future upon the basis that an emergency situation exists or is substantially contributed to by inadequate physical facilities or insufficient custodial personnel. In this connection the parties must be impressed that, if Alabama is going to operate a prison system, it must finance the prison system in such a manner that its operation will not constitute, insofar as those therein confined are concerned, cruel and inhuman treatment within the meaning of the Eighth Amendment to the Constitution of the United States. The operation of the prison system must be in such a manner that it does not violate any constitutional rights, including those dealt with by this Court in this case in its order of December, 1966, affirmed by the Supreme Court of the United States in 1968.

On this point, all concerned are reminded of the recent confession by the Alabama officials made in open court here in Montgomery, Alabama, on the 28th day of August, 1975, in the Pugh and James cases to the effect that the legislative financial support for the Alabama prison system is so penurious, the physical facilities are so grossly inadequate, and the custodial forces within the institutions comprising the Alabama prison system are so insufficient that those presently incarcerated in the system have been and are being subjected to cruel and inhuman treatment to a point that violates the Eighth Amendment to the Constitution of the United States.

In accordance with the foregoing, it is the ORDER, JUDGMENT and DECREE of this Court that plaintiffs' motion filed herein August 13, 1975, be and is

hereby denied. This denial, of course, is without prejudice to the motion's
being renewed at a later date if and when the renewal thereof becomes appropriate.

Done, this the 12th day of September, 1975.


UNITED STATES DISTRICT JUDGE