

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

**FILED**

NOV 21 2007

  
CLERK

Civ. No. 07-3040

JAMIE LAMBERTZ-BRINKMAN, MARY )  
PETERSON, LAURA RIVERA, and Jane )  
Does 3 through 10, on behalf of )  
themselves and all others similarly )  
situated. )

Plaintiffs, )

vs. )

TIM REISCH, Secretary of the S.D. )  
Department of Corrections, DUANE )  
RUSSELL, Warden of the S.D. Women's )  
Prison, JUDITH STOUT, Head Nurse of )  
Health Services Department at the S.D. )  
Women's Prison, and John Doe )  
Defendants. )

Defendants.

**CLASS ACTION COMPLAINT**

Plaintiffs, Jamie Lambertz-Brinkman, Mary Peterson and Laura Rivera bring this class action on their own behalf and on behalf of a class of similarly situated inmates incarcerated at the South Dakota Women's Prison in Pierre, South Dakota. Plaintiffs on information and belief allege:

**INTRODUCTION:**

1. This class action for injunctive and declaratory relief is brought pursuant to 42 U.S.C. §1983 to preserve the rights of the plaintiffs and the plaintiff class under the Eighth and Fourteenth Amendments of the United States Constitution.

2. The named plaintiffs and the plaintiff class are all subject to the actions, omissions and deliberate indifference of the defendants described herein. The named

plaintiffs and the plaintiff class suffer from serious mental health or medical problems, and the deliberate indifference of the defendants to these problems exposes each of them to conditions that constitute cruel and unusual punishment in violation of the Eighth Amendment and deprivation of liberty in violation of the Fourteenth Amendment. As a result of the defendants' action and omissions, the named plaintiffs and plaintiff class face continued and further degradation of their mental and medical health.

3. The needs of mentally ill and medically ill prisoners at issue in this action includes timely provision of proper treatment and medication by competent staff and protection from the ignorance or indifference to the prisoner's mental or medical health state.

**JURISDICTION:**

4. This court has jurisdiction over the proceedings in this case pursuant to 28 U.S.C. §1331 because this action arises under the Constitution and the laws of the United States and pursuant to 28 U.S.C. §1343(a)(3) because this action seeks to redress the deprivation, under color of state law, of plaintiffs' constitutional rights. Venue is proper here under 28 U.S.C. §1391 because the events and omissions giving rise to plaintiffs' claims occurred in this district and because at least one defendant can be found within this district.

**PARTIES:**

5. The Plaintiffs are state prison inmates who currently reside at the South Dakota Women's Prison in Pierre, South Dakota and have serious mental health or medical needs.

6. The Defendant Tim Reisch is sued in his official capacity as the Secretary of the State of South Dakota Department of Corrections and Defendant Duane Russell is sued in his official capacity as the Warden of the South Dakota Women's Prison in Pierre. Each Defendant is ultimately responsible for the conduct of the employees of the South Dakota Women's Prison as well as for the amount and nature of the mental and medical health services provided, as well as the policies implemented at the prison.

7. Defendant Judith Stout, is sued in her official capacity as the head of the Health Services Department of the South Dakota Women's Prison. John and Jane Doe defendants who are nursing supervisors or nurses in the Health Services Department of the South Dakota Women's Prison. Each Defendant is responsible for withholding medications and treatment from the Plaintiffs and putative class members.

8. With regard to all actions and omissions alleged herein, the defendants have acted and continue to act under color of state law.

**MEMBERS OF THE CLASS:**

9. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated pursuant to F.R.C.P. Rule 23(a) and (b)(2). The class, as proposed by plaintiffs, consists of the following class of persons:

All individuals who are now or who will be in the future incarcerated at the South Women's Prison and who are denied or delayed access to medication or medical treatment, that has been prescribed by a treating physician, based on decisions made by persons who are not themselves qualified to prescribe medications or medical treatment.

10. The requirements of Rule 23(a) and (b) have been met as show in the following paragraphs.

11. The class is so numerous, and the class so fluid, that joinder of all

members is impracticable. There are approximately 350 inmates housed at the South Dakota Women's Prison in Pierre. New prisoners and class members enter the Prison, and others are transferred or released, every day. The disposition of their claims in a class action will provide substantial benefit to both the parties and the court.

12. There are numerous questions of law and fact common to the class, including the scope and interpretation of the Eighth and Fourteenth Amendment in the prison setting; the lawfulness of the policies, practices and omissions of the defendants in the provision of access to prescription medication; and the effect of the defendants' deliberate indifference.

13. All class members are equally subject to the conditions of confinement and the systemic deficiencies described in this Complaint, including lack of an adequate system for medication.

15. The named plaintiffs have each been affected by these constitutionally deficient conditions of confinement and face a substantial risk of being adversely affected by them in the future.

16. The claims of the class representatives are typical of those of the class and the class representatives will fairly and adequately protect the interests of the class.

17. The parties opposing the class have acted upon grounds generally applicable to the class, thereby making appropriate final injunctive and corresponding declaratory relief with respect to the class as a whole.

**STATEMENT OF FACTS COMMON TO PLAINTIFFS**

**AND THE CLASS:**

18. The South Dakota Women's Prison ("SDWP") in Pierre, South Dakota houses all females in the State of South Dakota who have been convicted and sentenced to a term in the state penitentiary.

19. SDWP houses approximately 350 female inmates, according to the latest statistics provided by the State of South Dakota.

20. Approximately one-third of the prisoners suffer from mental disorders of one type or another that require psychiatric medications.

21. Many prisoners depend on medications to help them maintain mental stability. When they are deprived of their necessary medications, and faced with the added stresses of incarceration, prisoners are at risk of mental destabilization.

22. Many class members depend on medications to treat and maintain their physical health. When they are deprived of their necessary medications, prisoners are at high risk of increased sickness, physical instability with their health and in some cases a high risk of serious physical injury.

23. Many prisoners are in the need of pain medications to alleviate physical pain as the result of surgery, physical injury and/or physical disease. When they are deprived of this medication, prisoners are at high risk of experiencing high levels of physical pain compounded with conditions of confinement.

24. Sudden or prolonged discontinuation of prescribed medications can have disastrous results.

25. Some prisoners, upon arrival at SDWP, have medications or prescriptions in their possession prescribed by outside treating physicians to treat medical and/or mental illness.

26. These medications are often confiscated and discarded by prison employees who are themselves not qualified to prescribe medications.

27. Sometimes these medications are later reinstated, but only after prolonged periods of time have passed, putting the prisoners at risk of mental destabilization as well as a risk of physical illness, or risk of serious physical injury.

28. Some prisoners have had prescription medications prescribed by a treating physician during their incarceration.

29. These medications were either not given or discontinued based on decisions made by prison employees not qualified to prescribe medication.

30. SDWP maintains an approved list of medications called a formulary.

31. Much of the criteria for whether a particular medication is provided to prisoners or not is based on the cost of the medication.

32. At times, a specific medication that a prisoner was being treated with successfully outside of the Prison is not available on the Prison's formulary. In that event, defendants force prisoners to accept alternative medication that may not work for them.

33. These decisions are routinely made by individuals not qualified or licensed to make competent decisions concerning medications.

34. The Prison's screening system for those in need of medications is inadequate.

35. When any change in medication is made, the prison has an inadequate system for monitoring the therapeutic or toxic effects of the change.

36. The Prison's mental health screening in place and mental health services is inadequate and prevents some prisoners access to the Prison's psychiatrist who can then prescribe the appropriate psychotropic medications.

37. Orders for prescription medication by the Prison's own psychiatrist have been ignored by nursing personnel without any appropriate follow-up or input from the prison psychiatrist.

### **STATEMENT OF FACTS**

#### **Jamie Lambertz**

38. Named Plaintiff Lambertz, is currently incarcerated and began that incarceration at SDWP in December of 2005.

39. Prior to coming to SDWP in 2005, Jamie had been diagnosed with bipolar disorder, mood disorder, anti-social disorder and personality disorder.

40. In 2005, Lambertz' physician prescribed Haldol, a prescription medication.

41. Upon arrival at the South Dakota Women's Prison, the nursing staff confiscated and discarded the remaining Haldol medication without any consultation with the prison psychiatrist or any other medical doctor.

42. It took Jamie almost a year to get permission from the Prison's mental health staff to see the prison psychiatrist and obtain medication for her condition.

**Laura Rivera**

43. Named Plaintiff Laura Rivera is currently incarcerated and began her incarceration term at SDWP in 2002.

44. Prior to her incarceration in 2002, Rivera was diagnosed with bipolar disorder by Dr. Leslie Fiferman, a psychologist from Rapid City, South Dakota.

45. As a result of that diagnosis from Dr. Fiferman, Dr. Fox, a psychiatrist, prescribed medication to treat Rivera's bipolar disorder.

46. Upon her arrival at SDWP, members of the nursing staff confiscated the medications without any involvement of a medical doctor and told Rivera that she could not have any of her medication until she consulted with the prison psychiatrist, but that did not occur for approximately a month after her medications were taken from her.

47. Additionally, Rivera has been refused her current medications by prison guards.

**Mary Peterson**

48. Named Plaintiff Mary Peterson is currently incarcerated and began her incarceration at SDWP in 2005.

49. She had been diagnosed with among other things, post-traumatic stress disorder prior to coming to SDWP.

50. Peterson arrived at SDWP in 2005 from the Minnehaha County Jail.

51. Prior to coming to SDWP and while she was at the Minnehaha County Jail Peterson had been prescribed numerous psychotropic medications by Dr. Rajesh Singh.

52. Dr. Singh is the jail psychiatrist for the Minnehaha County Jail and also the prison psychiatrist for the SDWP.

53. After Mary's arrival at the SDWP, she was taken off all of her medication that had been prescribed by Dr. Singh, without any consultation with Dr. Singh.

54. The changes to Peterson's medications came from prison employees in the Health Services department and from the prison counseling staff.

55. Peterson was informed that some of the medications that had been prescribed by Dr. Singh were not on the Prison formulary and therefore she would not be allowed to take them.

56. It took Peterson a number of months to be allowed to see Dr. Singh again, despite her repeated requests.

57. After Peterson's consultation with Dr. Singh, he placed her back on the same regimen of psychotropic medication that she had at the Minnehaha County Jail.

#### **Similar Experiences Are Reported By Other Putative Class Members**

##### **Jane Doe #1**

58. Jane Doe #1, is an inmate who is diagnosed with HIV, and placed on essential medications.

59. Jane Doe is currently incarcerated and began her incarceration at the SDWP in 2005.

60. She was not allowed to continue her prescription medications that she had been prescribed by a specialist for her HIV.

61. Jane Doe complained to nursing staff that it was dangerous for her not to

be taking her medication.

62. It took approximately four to five months for Jane Doe to receive the necessary medications.

63. By the time Jane Doe has received her medications, her viral load was dangerously deficient.

### **Jane Doe #2**

64. Jane Doe #2, arrived at SDWP in 2005 to commence her prison sentence.

65. Jane Doe had recently been on psychotropic medications prescribed by her physician.

66. She requested consult with the prison psychiatrist in order to start back on her psychotropic medications at the time of her arrival.

67. She was told by prison counseling staff that because her length of prison sentence was only 105 days, she would not be allowed to see the psychiatrist within that time, and there was not way for her to continue her medications during her stay at SDWP.

### **Jane Does #3 - 10**

68. Upon information and belief, there are as many similar instances of deliberate indifference to medical needs that have occurred at SDWP, and it is a pattern and practice of systemic behavior to have medications withheld based on the decision making of individuals who are wholly unqualified to prescribe or withhold prescription medications.

## **INJUNCTIVE AND DECLARATORY RELIEF**

69. The conditions of confinement set forth in this Complaint result in the unnecessary and wanton infliction of pain, physical and psychological injury and imminent risk of seriously injury or of death that is unrelated to any legitimate penological purpose. Defendants have acquiesced and ratified these conditions, which amount to an official custom or policy of the defendants.

70. An actual and immediate controversy exists between the plaintiffs and the defendants. Plaintiffs contend that the conditions of confinement described herein are unconstitutional. Defendants contend that the conditions of confinement described herein are constitutional. Plaintiffs and the class are therefore entitled to a declaration of rights with respect to this controversy.

71. Defendants have acted, and continue to act, under color of state law to deprive plaintiffs of their constitutional rights. Plaintiffs are suffering irreparable injury, and will continue to suffer irreparable injury, as a result of the conditions described in this Complaint, unless those conditions are enjoined by this Court. Plaintiffs have no plain, adequate or speedy remedy at law, and are entitled to injunctive relief against defendants pursuant to 42 U.S.C. §1983.

## **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

72. Named Plaintiffs have either exhausted administrative remedies available to them, or their remedies are futile because by the time administrative remedies are exhausted the damage has already occurred from the withholding of treatment and/or medications.

## **CLAIMS FOR RELIEF**

### **Violation of the Eighth and Fourteenth Amendments**

72. Plaintiffs reallege and incorporate by reference ¶¶ 1 through 68 as if fully set forth herein.

73. By subjecting the named plaintiffs and the class members in their custody to the conditions set forth herein, with full knowledge of those conditions, defendants have acted, and continue to act, with deliberate indifference to their health, safety and serious mental health needs and have subjected them to cruel and unusual punishment, in violation of the Eighth and Fourteenth Amendment to the Constitution.

WHEREFORE, plaintiffs respectfully request that this Court:

74. Certify this action as a class action;

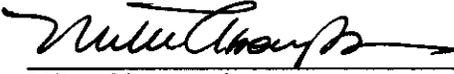
75. Enter a judgment declaring that defendants' actions described herein are unlawful and violate plaintiffs' and the plaintiffs' class constitutional rights;

76. Permanently enjoin defendants, their subordinates, agents, employees, and all others acting in concert with them from subjecting plaintiffs and the plaintiff class to the conditions set forth in this Complaint;

77. Grant plaintiffs their reasonable attorney fees and costs pursuant to 42 U.S.C. §1988 and other applicable law; and

78. Grant such other relief as the Court considers just and proper.

Dated this 21 day of November, 2007.

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