

FILED

1993

ANN A BIRCH, CLERK  
CHARLESTON SC

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

HARRY PLYLER, ET AL.,

PLAINTIFFS,

-VS-

PARKER EVATT, COMMISSIONER,  
SOUTH CAROLINA DEPARTMENT OF  
CORRECTIONS, AND MEMBERS OF THE  
SOUTH CAROLINA BOARD OF CORRECTIONS,

DEFENDANTS.

CIVIL ACTION NO. 82-876-2

COMPROMISE AGREEMENT

TO

MODIFY THE DECREE

Nelson v. Leeke



PC-SC-002-014

NOW COME the parties to this case and enter into a compromise agreement to modify the Decree (Consent Decree, Dated January 8, 1985) in the areas of classification and programming. This agreement comes as a resolution to the Pending Motion for Modification, filed by the Defendants in August of 1992. The terms of the agreement are as follows:

1. All plaintiffs sentenced to life imprisonment with parole eligibility in 30 years or without eligibility for parole shall be eligible for AL3 custody with all privileges of that custody level after service of 10 years. These plaintiffs will remain in AL3 custody until they are within 5 years of parole eligibility.

2. All plaintiffs sentenced to life imprisonment with parole eligibility in 20 years shall be eligible for AL3 custody with all privileges of that custody level after service of 7½ years. These plaintiffs will remain in AL3 custody until they are within 5 years of parole eligibility.

3. All plaintiffs sentenced to life imprisonment or to sentences in excess of 30 years with parole eligibility in 10 years shall be eligible for AL3 custody with all privileges of the custody level after service of 3 years. These plaintiffs will remain in AL3 custody until they are within 5 years of parole eligibility.

4. All plaintiffs sentenced to non-parolable sentences of 25 years or more shall be eligible for AL3 custody with all privileges of that custody level after service of 4 years and shall remain in AL3 custody until they are within 5 years of max-out of the sentence.

5. When the plaintiffs meet their minimum time for advancement, pursuant to paragraphs 1 through 4 above, he/she may request that a classification review be conducted at that time even if the six month review is not due at that time. The defendants agree to conduct the early review on this one occasion. The defendants may exercise discretionary overrides to advance a plaintiff's custody level earlier than the time periods as set forth in paragraphs 1 through 4 above so long as the overrides are exercised in a non-discriminatory fashion and based upon the good behavior of the individual plaintiff.

The parties agree that at the present time there is insufficient bedspace at AL3 institutions to provide sufficient beds to place qualifying inmates into A custody. These qualifying inmates will be placed in "restricted A" custody and shall be given priority in awaiting bedspace at AL3 institutions. While awaiting AL3 bedspace those inmates in "restricted A" custody shall not be entitled to the additional privileges of A custody, but the Defendants shall notify the parole board of such custody change. The Defendants shall make a good faith effort to provide qualifying inmates with bedspace in AL3 institutions as soon as such bedspace becomes available.

6. Disciplinary convictions shall not serve as a policy override reason under the classification system except as follows: The defendants may override an advancement to A custody if the individual plaintiff has been convicted of a major disciplinary infraction, if the said infraction occurred within 12 months of the date of classification review. Additionally, the defendants may override advancement to A custody if the plaintiff has been convicted of disrespect or failure to obey an order in connection with some other disciplinary infraction, if the said infractions occurred within 12 months of the classification review. The parties agree that disciplinary convictions may serve as a reason to reduce custody level for any plaintiff if the conviction causes plaintiff's score on the re-classification to fall below the level of the plaintiff's existing custody level. If a plaintiff is the subject of an Adjustment Committee adjudication which includes a recommendation of a reduction in custody level and the plaintiff's classification score would not indicate the need to reduce custody level then a discretionary override may be used if such override is approved by the deputy regional administrator and provides articulable and reasonable reasons for the override. Similarly, if the Classification Division determines that a discretionary override is appropriate because of a disciplinary conviction this override shall include a statement setting forth articulable and reasonable reasons for such override. Any discretionary overrides based upon disciplinary conviction by either the Adjustment Committee action or

the Classification Division shall be immediately provided to plaintiffs' counsel.

Should the defendants wish to change the scoring level for disciplinary convictions at any point in the future, such change must be based upon appropriate validation principles generally acknowledged in the field of internal classification system, and such change must be provided to plaintiffs' counsel for comment or objection prior to the implementation of such changes. If the plaintiffs' counsel objects to the change in scoring the parties agree that the issue would be submitted to an agreed upon 3rd party to determine the issue. In this regard it is specifically agreed that any changes in scoring for disciplinary convictions shall not be based upon any data other than the success/failure rates of the scoring system for disciplinary convictions presently being used by the defendants. The defendants further agree that under no circumstance shall the scoring of disciplinary convictions ever be such that the fact of the conviction alone would serve to reduce the custody level of a plaintiff.

7. The defendants shall amend the present policy override as to escape history to provide for the following: Any plaintiff who escapes from a fenced institution shall not be eligible for A custody during the remainder of the sentence being served at the time of the escape. Any plaintiff with a history of escape from a fenced institution in a prior conviction and incarceration shall be eligible for placement in an AL3 institution pursuant to the scoring instruments (initial and reclassification). Escapes and out-of-place convictions, other than those listed above, shall not automatically preclude an inmate from being assigned to an AL3 institution, however, inmates may be reviewed and may be denied on a case-by-case basis as a discretionary override. The defendants may make use of discretionary overrides to place plaintiffs in less secure facilities than called for in this paragraph so long as the overrides are exercised in a non-discriminatory manner and relate to the good behavior and adjustment of the individual plaintiff.

8. Other than that which is set forth below, the defendants agree that no disciplinary action of any nature shall be used against any plaintiff for refusal to cooperate in any program offered by the defendants other than job assignments. The parties agree, however, that for the first 120 days of a plaintiff's confinement in the Department of Corrections after completion of the Reception and Evaluation process, if the plaintiff does not meet the educational requirements set forth below, the plaintiff may be compelled to attend educational programming as a job assignment. For this 120 days, the plaintiff will qualify for earned work credits and pay. If the plaintiff refuses to cooperate for this 120 days, the plaintiff may be disciplined for refusal to comply with an order to attend to his/her job assignment. Additionally, except for participation in the c-STAR program for sex offenders and the educational programming as set out below, the failure to participate in recommended programming shall not be an override reason in the classification process. Specifically, except as set forth above, the education program shall not be compelled through the disciplinary process.

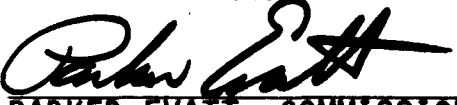
Upon entry into SCDC, every plaintiff shall be tested for educational level to determine if the plaintiff can read and write at the 8th grade level. If the plaintiff is unable to function at this educational level, the defendants will determine if this condition is caused by lack of educational training or some learning disability. Upon determining the cause of the educational dysfunction of the plaintiff, the defendants shall develop a plan for the individual inmate to correct the deficiency. The plaintiff will be informed of the plan and that he/she will not be advanced in custody level above the custody level determined by the initial classification review and the plaintiff may be denied certain other benefits if he/she refuses to participate in the educational plan. The educational plan shall take into consideration the work schedule of the individual plaintiff


and shall only require sufficient improvement to meet the 8th grade level goal. Those plaintiffs with learning disabilities which would prevent achievement of this goal shall only be required to participate in appropriate learning programs for a period of 18 months. If the plaintiff is participating and making a good faith effort to progress in the educational program, he/she qualifies for advancement in custody level. Additionally, the defendants agree to provide additional positive points to any plaintiff in each classification review for his/her educational progress made in the program.

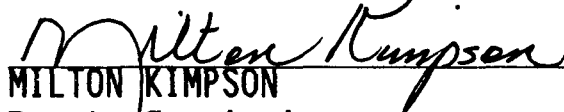
9. Every plaintiff shall have a classification review every 6 months regardless of the time he/she has been in the institution. If the defendants have had insufficient time to gather information for classification review due to the short time the plaintiff has been at the institution, the defendants agree to communicate with classification workers at the plaintiff's last institutional placement for this information. The defendants agree to cease using the override reason of "Insufficient Time in Institution for Accurate Evaluation" (#8).

MADE this the 23<sup>rd</sup> day of August, 1993, in Columbia, South Carolina.

FOR THE DEFENDANTS:

  
PARKER EVATT, COMMISSIONER  
South Carolina Department  
of Corrections

  
WILLIAM D. CATOE  
Deputy Commissioner for Operations  
South Carolina Department  
of Corrections

  
MILTON KIMPSON  
Deputy Commissioner  
for Program Services  
South Carolina Department  
of Corrections

FOR THE PLAINTIFFS

  
W. GASTON FAIREY  
Attorney for the Plaintiff Class