1992 WL 50987
Only the Westlaw citation is currently available.
United States District Court, N.D. Illinois, Eastern Division.

Terrell WALTERS, Joseph Ganci, and all others similarly situated, Plaintiffs,
v.
Governor James THOMPSON, et al., Defendants.

No. 82 C 1920. | March 5, 1992.

Attorneys and Law Firms

Alan S. Mills, James P. Chapman, James P. Chapman and Associates, Ltd., Chicago, Ill., Margaret Byrne, Chicago, Ill., for plaintiffs.

Cheryl O. Strecker, Carol L. O'Brien, Susan T. O'Leary, Illinois Department of Corrections, Chicago, Ill., Gary M. Griffin, Wallace C. Solberg, Office of the Attorney General, Chicago, Ill., for defendants.

Opinion

MEMORANDUM OPINION

ELAINE E. BUCKLO, United States Magistrate Judge.

***1** This opinion supplements my statements on the record on February 26, 1992, in ordering that one of the named plaintiffs, Terrell Walters, be returned to the institution at which he is presently incarcerated. I previously allowed the two named plaintiffs, Mr. Walters and Joseph Ganci, to attend the trial of this civil rights action. Under *Stone v. Morris,* 546 F.2d 730, 735–36 (7th Cir.1976), and *James v. Hamelman,* 869 F.2d 1023, 1030 (7th Cir.1989), I am required to consider several factors in determining whether an inmate plaintiff will be permitted to attend a trial. They include the costs and inconvenience of transporting the inmate to court; the security risk posed by the presence of the inmate in court; the substantiality of the case; the possibility of delaying trial until the inmate is released;[1] the probability of success on the merits, the integrity of the correctional system, the interests of the inmate in testifying in person; and whether there have been depositions of the trial witnesses.

Plaintiffs have argued that the substantiality of their case, the probability of success on the merits and the fact that no depositions have been taken of any of the defendants' witnesses require the presence of the named plaintiffs. Initially, I agreed with plaintiffs. There is no doubt that the issues presented, involving access to the courts, by a class consisting of all inmates in segregation in all of the five maximum security institutions in Illinois, are substantial. In addition, because discovery closed in 1986, and this case did not go to trial until late 1991, almost none of the discovery is relevant to the injunctive phase of this trial. Chief Judge Moran also determined in *Walters v. Thompson,* 615 F.Supp. 330 (N.D.Ill.1985), that plaintiffs had shown a likelihood of prevailing on the merits.

Despite these considerations, I concluded on February 26, 1992, that the factors weighing against the continued presence of Mr. Walters significantly outweighed any benefit in his continued presence. Initially, named plaintiffs were expected to testify. However, while plaintiffs put on several weeks of testimony, they did not call either Mr. Walters or Mr. Ganci to testify. Plaintiffs' counsel represented that they nevertheless needed the named plaintiffs to help them with their case. Despite the asserted need, Mr. Walters, at one point, chose to return to his institution during a week of testimony because he did not like the conditions under which he was being housed at the Metropolitan Correctional Center ("MCC") in Chicago. This past week he chose to return to court. However, on the second day of his return, he slept in court during much of the day.

At this point, plaintiffs have put on their case-in-chief, and there has been over a month of testimony covering every institution involved in this case. Plaintiffs' counsel have had ample opportunity to discuss this case with their clients, and to anticipate almost any evidence that defendants may introduce. In addition, I have had the opportunity of observing plaintiffs and counsel in court over this period. Plaintiffs are represented by three very competent attorneys in this case (who are also assisted by one or more paralegals). It is clear to me that named plaintiffs, but especially Mr. Walters, have had a very limited role in helping plaintiffs' counsel, at least during the time all parties have been in court (as is clearly reflected in Mr. Walters' decision to return to his institution at one point earlier, and his sleeping in court on February 25, 1992).[2]

***2** The cost of transporting the plaintiffs is substantial. Due to the length of this trial, it has been scheduled in segments of a week or two. Each time the trial resumes, the Department of Corrections must transport the plaintiffs from whatever institution they are at to the

MCC in Chicago. The Department represents that it must transport the plaintiffs separately, with two security personnel accompanying each plaintiff. Under an agreement between the Executive Committee of the district court, the MCC and the Department of Corrections, Department officials must also be present in court for three days each time they bring a prisoner here for trial.

The costs to the U.S. Marshal's Service in having the named plaintiffs present are also great. Each of the named plaintiffs has been for many years an inmate of a maximum security institution in Illinois. By definition, at the time each began this action, as a class representative, he was also in segregation in one of these facilities, which meant that he had been found guilty of an infraction of prison disciplinary rules. (In one of their pretrial submissions, plaintiffs represented that Mr. Walters had been in continuous segregation for ten years in 1987. *See* Plaintiffs' Updated Pretrial Submission, Aug. 13, 1987 at 4. It appears undisputed that such a situation could not occur without repeated violations of prison rules. Mr. Ganci also stated, in an affidavit filed in connection with earlier proceedings in this action, that he had been in segregation for 15 months at the time of filing his affidavit.) Each of the plaintiffs is considered a security risk and the U.S. Marshal's Service has determined that it must assign from three to five security personnel to the courtroom at all times when the plaintiffs are present. This situation has taxed the U.S. Marshal's Service at a time when there are numerous criminal trials taking place elsewhere in this federal courthouse, for which it must also provide security.

I am satisfied that plaintiffs' interests will not be harmed by not having Mr. Walters present during the remainder of the injunctive phase of this trial. In addition, at the time I ordered Mr. Walters returned to prison, I informed plaintiffs that they could telephone Mr. Walters prior to any cross-examination to review any testimony with him. The Department agreed to make a telephone available for his use.

[1] No one has argued that there is any possibility of delaying trial until named plaintiffs are released in this ten-year class action potentially affecting the rights of many persons.

[2] Contrary to plaintiffs' statements in their January 10, 1992 Motion To Permit Class Representatives To Attend Trial, my observation has been that the class representatives and counsel have had little communication during testimony at any time when the communication could affect cross-examination of any of defendants' witnesses and that during the presentation of plaintiffs' case, there was similarly little communication that could have had any effect on the testimony.