

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FT. WAYNE DIVISION

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STEPHEN J. HARRIS, CLERK
FOR THE UNITED STATES DISTRICT
COURT OF INDIANA

RICHARD TYSON, on his own behalf, and)
on behalf of a class of those similarly situated,)

Plaintiff,)

v.)

No. **1107CV0010RL**

GRANT COUNTY SHERIFF, in his official)
capacity;)

GRANT COUNTY COMMISSIONERS,)
in their official capacities,)

Defendants.)

COMPLAINT/CLASS ACTION

CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. This is a complaint seeking declaratory and injunctive relief challenging the unconstitutional and unlawful conditions of confinement at the Grant County Jail in Marion, Indiana.

Jurisdiction

2. This Court has jurisdiction of this cause pursuant to 28 U.S.C. §§ 1331 and 1343.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.

4. Declaratory relief is authorized by 28 U.S.C. §§ 2201, 2203 and by Rule 57 of the Federal Rules of Civil Procedure.

5. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.

6. This Court has jurisdiction of the supplemental state law claims pursuant to 28 U.S.C. §

Parties

7. Richard Tyson is an adult resident of Grant County, Indiana.
8. The office of the Grant County Sheriff is sued pursuant to Rule 25(d)(2) of the Federal Rules of Civil Procedure.
9. The office of the Grant County Commissioner is sued pursuant to Rule 25(d)(2) of the Federal Rules of Civil Procedure.

Class action allegations

10. This action is brought by plaintiff on his own behalf and on behalf of a class of those similarly situated pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure.
11. The class is defined as:

any and all persons currently confined, or who will in the future be confined, in the Grant County Jail.
12. All the requirements of Rule 23(a) are met with regard to the class. Specifically:
 - a. The class is so numerous that joinder of all members is impractical. Although the capacity of the Grant County Jail is reported to be 274, the population exceeds that amount.
 - b. There are questions of law or fact common to the class: whether conditions in the Grant County Jail violated the United States Constitution and Indiana law.
 - c. The claims of the representative party is typical of those of the class.
 - d. The representative party will fairly and adequately represent the class.
13. The further requirements of Rule 23(b)(2) are met in that defendants, at all times, have acted and/or have refused to act in a manner generally applicable to the class, thereby making final injunctive and declaratory relief appropriate with respect to the class as a whole.

Legal Background

14. Indiana law provides that the sheriff of a county must “[t]ake care of the county jail and the prisoners there” Ind. Code § 36-2-13-5(a)(7).

15. The county commissioner of each Indiana county, as the county’s executive, have the statutory duty to “establish and maintain a . . . county jail” Ind. Code § 36-2-2-34. This includes providing a jail and keeping it in good repair. *Weatherholt v. Spencer County*, 639 N.E.2d 354 (Ind.Ct.App. 1994).

Factual allegations

16. The Grant County Jail has a rated capacity of 274 prisoners. However, there are only 258 beds in general population with there being also 14 medical isolation cell beds and 2 beds in temporary holding cells.

17. However, the Jail operates over this capacity virtually 100% of the time.

18. At the current time the population is above 290. However, in September of this year it averaged 340 prisoners.

19. At the time of the last inspection of the Jail by the Indiana Department of Correction, in November of 2006, the Jail had a population of 336 and was listed as being overcrowded 100% of the time.

20. Because of overcrowding, three prisoners are forced to sleep in two-prisoner cells. This means that there are prisoner who must sleep on the floors of cells in plastic tubs called “stack a bunks.”

21. There are day areas outside of the cells and most prisoners are released to the day area during parts of the day, although during parts of the day the prisoners must be confined to their

cells.

22. The Jail has a recreation area featuring both inside and outside recreation. However, recreation in these areas is infrequent.

23. Because of overcrowding, there is generally inadequate room in the day areas outside of the cells within which to engage in vigorous physical exercise.

24. The overcrowding increases tension and this in turn causes violence and fights between the prisoners.

25. Richard Tyson has been confined in the Grant County Jail for 16 months.

26. While in the Jail he has been in a number of cell blocks. At times all the two-person cells where he has been confined had three prisoners in them.

27. At the current time he is in Cellblock 2-A. This is a block with 12 beds that is confining, as of January 15, 2007, 14 prisoners.

28. Mr. Tyson is offered recreation in the Jail's formal recreation areas only one time each week.

29. There is not room to exercise in Mr. Tyson's cell block because of the overcrowded conditions.

30. Because of the overcrowding and tensions caused by it, there are violent fights and confrontations between prisoners in the cell block.

31. There is only one correctional officer on Mr. Tyson's floor of the Jail. The floor contains four cell blocks.

32. At the time of the last inspection of the Jail by the Indiana Department of Correction, in November of 2006, the inspector noted that there was not sufficient staffing for operation of the Jail.

33. At times fights occur and correctional officers are unaware of them. There is only one camera in the cell block.

34. The overcrowding causes Mr. Tyson tension. He has difficulty in sleeping and has gained 25 pounds. He has been involved in fights in the Jail

35. Mr. Tyson believes the Jail has had, in the past, a five step grievance procedure, now four steps. Beginning early in 2006 Mr. Tyson filed his grievances and progressive appeals concerning overcrowding to all levels, ending with the Sheriff. A number of the grievances and appeals were not returned to him. Attached to this Complaint are his appeals to the second level (Lt. Lee) and third level (Captain Pauley). His appeals to the fourth level (Captain Himelick) and the fifth level to the Sheriff were not returned to him. Mr. Tyson went to the fifth level after not hearing from Captain Himelick.

36. On January 15, 2007, Mr. Tyson resubmitted the final appeal concerning overcrowding to the Sheriff inasmuch as the former fourth level grievance no longer exists. On January 17, 2007, the grievance was returned, marked "already answered."

37. There are no further grievance appeals that can be taken and therefore Mr. Tyson has exhausted all grievance procedures concerning overcrowding available to him prior to filing this complaint.

38. The conditions in the Grant County Jail result in the denial of basic human needs and the minimal civilized measures of life's necessities and amount to punishment.

39. Defendants have been on notice for some time concerning the deficiencies in the Jail but have failed to take the necessary steps to resolve the overcrowding and other problems. At all times defendants have acted in a deliberate and purposeful manner.

40. At all times the defendants have known of the risk of serious harm faced by plaintiff and

the class and have failed to take reasonable measures to abate the risk.

41. The defendant County Commissioners have failed in their mandatory, non-discretionary duty to establish and maintain the county jail.

42. Defendant Sheriff has failed in his mandatory, non-discretionary duty, to take care of the Grant County Jail and the prisoners and detainees housed there.

43. The actions and inactions of the defendants are causing the plaintiff and the class irreparable harm for which there is no adequate remedy at law.

44. At all times defendants have acted under color of state law.

Claims for Relief

45. The conditions at the Grant County Jail violate the 14th Amendment to the United States Constitution as applied to pre-trial detainees and the 8th Amendment to the United States Constitution as applied to convicted prisoners.

46. Defendant County Commissioners of Grant County, Indiana, have failed to maintain a county jail as required by Ind. Code § 36-2-2-24.

47. Defendant Sheriff has failed in his duty to care for prisoners confined to the Grant County Jail as required by Ind. Code § 36-2-13-5.

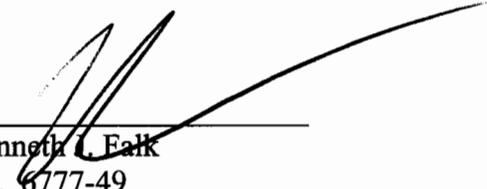
48. The overcrowding and other conditions at the Grant County Jail violate the Indiana County Jail standards, 210 IAC 3-1-1, *et seq.* Specifically, the Jail is deficient because:

- a. There is not one bed for each prisoner as required by 210 IAC 3-1-7(g).
- b. The jail is not maintained in a safe and sanitary condition as required by 210 IAC 3-1-9.
- c. Inmates are denied the reasonable opportunity for physical exercise and recreation as required by 210 IAC 3-1-15(e).

Request for Relief

WHEREFORE, plaintiff requests that this Court:

1. Certify this cause as a class action with the class as defined above.
2. Declare that the actions and the inactions of the defendants violate the United States Constitution and Indiana law for the reasons specified above.
3. Enter a preliminary injunction, later to be made permanent, requiring defendants to take all steps necessary to operate the Jail in a manner free of constitutional infirmity.
4. Enter a preliminary injunction, later to be made permanent, requiring defendants to take all steps necessary to comply with all of the duties owed to plaintiff and the class under Indiana law.
5. Award plaintiffs costs and reasonable attorney's fees pursuant to 42 U.S.C. § 1988.
6. Award all other just and proper relief.



Kenneth C. Falk
No. 6777-49
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202
317/635-4059 ext. 229
fax: 317/635-4105
kfalk@aclu-in.org

Attorney for Plaintiff and Putative
Class

3 - 462

UNIT # - 392

GRANT COUNTY SECURITY COMPLEX
INMATE GRIEVANCE FORM

INMATE NAME: R. Tyson

DATE: 2/16/2006

CELLBLOCK: 310

GRIEVANCE: Would you please do something about the over crowding in the jail. There's too many people in these cell blocks. It's causing too much stress and tension between inmates. The lock down causes more stress, especially when there's 3 to a cell. It's affecting our food rations also. It seems like there's not enough money in the county to properly house all these inmates. Sometimes there's not even enough room for every one to sit down and eat.

Thank you

INMATE SIGNATURE: Rickel Tyson
Rinker

RESPONSE: We are trying to solve the over crowding, but

we cannot control what people do on the streets, that get them brought to jail.

We will continue with the lockdown

47th Lee

3 - 307
Unit # 333

Grant County Security Complex
Inmate Grievance Form

Name: R. Tyson
Date: Feb 2nd
Cell Block: 3D

Grievance: We are overcrowded and have been since
my arrival at this facility. I've had sewage on my
floor for over 2 months up until Feb 2nd. There are too
many people in this block and the overcrowding is causing
tension between the inmates. Also the lockdown from 12-3:30
is causing tension in the block. People locked in cell during
the middle of the day practically on top of one another.

Inmate Signature: Richard Tyson

Reviewed By:

Response: I can not help the jail overcrowding.

The lockdown will continue until further
notice
Blue 2/2/07