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United States District Court, E.D. Pennsylvania.

Martin HARRIS, et al.,
v.
Joan REEVES, et al.

Civ. A. No. 82–1847. | Dec. 28, 1990.

Opinion

MEMORANDUM AND ORDER

SHAPIRO, District Judge.

***1** This civil rights litigation concerns overcrowded conditions in the Philadelphia County prisons. In 1986, this court denied a motion by the District Attorney to intervene in these proceedings ("Motion I"); now before the court is second motion by the District Attorney to intervene ("Motion II").

This action was brought by inmates at the Holmesburg Prison (subsequently amended to include all Philadelphia County prisoners) against, *inter alia,* the City of Philadelphia and representatives thereof ("City"). This court dismissed the action initially because of the pendency of state court litigation filed in 1971 to challenge the constitutionality of the conditions in the Philadelphia prisons. The Court of Appeals reversed the dismissal and remanded the case.

Following remand, the parties submitted a proposed consent decree on August 15, 1986. On August 19, 1986, the District Attorney filed Motion I to intervene as of right under Fed.R.Civ.P. 24(a) or, in the alternative, to intervene permissibly under Fed.R.Civ.P. 24(b).

The parties then withdrew the proposed consent decree and consulted with the District Attorney's office and others, and submitted a revised proposed consent decree on October 3, 1986. The proposed consent decree established a maximum allowable population limit and intermediate milestones for reaching that limit. The decree also required the City to seek the release of certain prisoners and imposed a moratorium on new admissions of persons charged with and convicted of certain crimes if the maximum allowable population were exceeded.

This court held three days of hearings on the proposed consent decree and on the District Attorney's motion to intervene. The District Attorney presented witnesses and introduced stipulated statements of several other persons. On December 31, 1986, this court denied the District Attorney's motion to intervene, *Harris v. Pernsley,* 113 F.R.D. 615 (E.D.Pa.1986), and entered an order approving the consent decree, *Harris v. Pernsley,* 654 F.Supp. 1042 (E.D.Pa 1987).

The consent decree was stayed for certain periods of time (March 6 to May 15, 1987, June 9 to June 16, 1987, and July 23 to August 13, 1987) while the District Attorney appealed this court's denial of his motion to intervene as of right; on appeal, this court's decision to deny Motion I was affirmed. *Harris v. Pernsley,* 820 F.2d 592 (3rd Cir.), *cert. denied sub nom. Castille v. Harris,* 107 S.Ct. 336 (1987).

In affirming, the Court of Appeals focused on the second requirement of Rule 24(a)(2): whether the proposed intervenor "has a sufficient interest in the litigation." *Id.* at 596. The court noted that a precise definition of the kind of interest justifying intervention remains elusive; courts have concluded that intervention will be allowed when the proposed intervenor's interest is "significantly protectable," *Donaldson v. United States,* 400 U.S. 517, 531 (1970), "legally protectable," *Southern Christian Leadership Conference v. Kelley,* 747 F.2d 777, 779 (D.C.Cir.1984), and "direct," as opposed to contingent or remote. *Restor–A–Dent Dental Laboratories v. Certified Alloy Products, Inc.,* 725 F.2d 871, 874 (2d Cir.1984).

***2** The Court of Appeals examined the District Attorney's rights and duties to determine whether they might be directly affected by this litigation. Finding the District Attorney's statutory power limited to "the responsibility of enforcing the Commonwealth's criminal statutes," 820 F.2d at 598, the court concluded that the District Attorney had no right to intervene to oppose plaintiffs' claims of unconstitutional prison conditions because he "has no legal duties or powers with regard to the conditions in the Philadelphia prison system," *id.* at 600. It further found that the District Attorney had no right to intervene in "the formation of the terms of the settlement agreement in this case" because "none of his enumerated legal duties are taken away by the settlement approved in this case." *Ibid.* "To the extent that the ceiling on the prison population, and any resultant release of inmates, may be required to maintain constitutional conditions in the prisons, the District Attorney has no legally protected interest in causing the constitutionally-imposed maximum to be exceeded." *Id.* at 601. The court concluded:

We must respect the boundaries that the Commonwealth has chosen to draw as to the responsibilities of its public officials. But we decline to equate the District Attorney's function as the spokesperson for Pennsylvania's interest

in criminal prosecutions with the responsibility for policing the entire criminal justice system. Although we agree with the District Attorney that the decree may result in some people not appearing for their scheduled trial dates and some individuals not having to post bond before being released, this by-product of the decree is not sufficient to give the District Attorney the right to become a party to any consent decree entered in this case.

Id. at 602.

The court approved the "objector" status this court granted to the District Attorney:

[A]lthough the District Attorney is not entitled to intervene as of right, we think it was entirely appropriate for the district court to permit the District Attorney to be heard on the terms of the consent decree, however his status may be otherwise legally characterized. Indeed, permitting persons to appear in court, either as friends of the court or as interveners for a limited purpose, may be advisable where third parties can contribute to the court's understanding the consequences of the settlement proposed by the parties.

Id. at 603.

Despite the District Attorney's continued participation in the *Harris* proceedings, he filed a new motion to intervene in the litigation in order to challenge enforcement of any aspect of the Consent Decree relating to the release and non-admission of county prisoners. The basis for Motion II is a statute passed by the Pennsylvania Legislature after the denial of Motion I. This statute states:

The district attorney shall receive written notice of, and shall have automatic standing and a legal interest in, any proceeding which may involve the release or nonadmission of county prisoners, delinquents or detainees due to the fact, duration or other conditions of custody. In addition to the district attorney's rights in such a proceeding, the district attorney may seek any equitable relief necessary to protect the district attorney's interest in the continued institutional custody and admission of county prisoners, delinquents or detainees.

***3** 18 Pa.C.S.A. § 1108. Following the passage of that statute, seven members of the Pennsylvania House of Representatives sought a declaratory judgment that it was unconstitutional. Summary judgment in that case was granted in favor of the Commonwealth, see *Ritter v. Commonwealth,* 548 A.2d 1317 (Pa.Cmwlth.1988), and on May 10, 1989, the Pennsylvania Supreme Court affirmed, 557 A.2d 1064. The statute became effective May 24, 1988.

The plaintiff class opposes intervention of the District Attorney for any purpose. The City would permit the District Attorney to intervene with regard to the release of prisoners, enforcement of the admissions moratorium, or formulation of an alternative mechanism to reduce the prison population to permissible levels, but prohibit him from participating in the administration, management, or operation of the prisons. The District Attorney's position is that he should be permitted to intervene only to "participate in proceedings which may affect the release or nonadmission of Philadelphia prisoners." Reiteration and Clarification of Scope of District Attorney's Pending Motion To Intervene at 3.

In a case presenting the identical issue as that here, Judge Joseph S. Lord, III, denied the District Attorney's motion to intervene. *See Santiago v. City of Philadelphia,* No. 74–2589 (E.D.Pa. April 4, 1990). Plaintiffs in *Santiago* alleged that the conditions of confinement in Philadelphia's Youth Study Center, where allegedly delinquent juveniles are detained, were unconstitutional. As in this case, the defendants, including the City of Philadelphia, entered into a stipulation of settlement that set a maximum allowable population and contemplated release of detainees or a limited admissions moratorium if the maximum population was exceeded. *Id.* at 2. As here, the District Attorney argued that he was permitted to intervene as of right under Fed.R.Civ.P. 24(a)(2) by the authority of 18 Pa.C.S.A. § 1108. Judge Lord held that the District Attorney's argument "[a]lthough superficially appealing, ... lacks merit." *Id.* at 5.

In Judge Lord's opinion,

[s]ection 1108 cannot be said to create any legitimate rights or duties; it simply states in conclusory terms that a district attorney has an interest in litigation that may involve the release or nonadmission of prisoners and then affords him a "right" to enforce this interest by seeking appropriate equitable relief.

Id. at 6.

This judge agrees with Judge Lord. Section 1108 fails to change the role of the District Attorney sufficiently to mandate his intervention. The considerations that were dispositive of the issue in the Court of Appeals remain unchanged: the District Attorney still has no legal duty or power regarding prison conditions or administrative responsibilities over the Philadelphia prisons; the District Attorney does not have the responsibility of overseeing Philadelphia's criminal justice system; and the District Attorney would not be not subject to liability if conditions were found to be unconstitutional in the Philadelphia prisons. Furthermore, Section 1108 does not impose any new legal duties or bestow any new powers on the District Attorney that are affected by the release and non-admission of pre-trial detainees. The statute does not purport to alter the "boundaries that the Commonwealth

has chosen to draw as to the responsibilities of its public officials." *Harris v. Pernsley,* 820 F.2d at 602.

***4** The bill's legislative history suggests that the Commonwealth intended to overturn the decision of the Court of Appeals on the District Attorney's original motion to intervene without substantively altering the District Attorney's responsibilities. During the debate, Representative Wogan, the sponsor of the bill stated:

This is a commonsense [sic] amendment. It is reasonable to assume that our D.A.'s, who, it is already recognized, have the power to advocate criminal sentences, the power to defend convictions in both State court actions and Federal habeas corpus actions and the power to represent the Commonwealth generally in challenges of the constitutionality of the State's penal statutes, should also have the authority to intervene in lawsuits involving the release of county prisoners.

1987 Legislative Journal—House, Vol. III, at 1951.

The legislature could have granted new legal duties or responsibilities to the District Attorney that might be directly affected by the continued application of the release and non-admissions provisions of the decree.[1] However, the court does not believe that the Pennsylvania legislature has in fact changed the District Attorney's responsibilities or given him a "legal interest" in the *Harris* litigation within the meaning of Rule 24 as interpreted by the Court of Appeals.[2]

Judge Lord also found the District Attorney's motion to intervene untimely; the court does not reach the same conclusion. The District Attorney filed this motion promptly after the effective date of Section 1108. Even though that statute failed to give the District Attorney any new legal interest, the District Attorney acted timely in testing the effect of the new statute on his right to intervene in this case.

The statute's effective date was May 24, 1988, and this motion was filed on May 27, 1988. The motion was not ripe for decision while the constitutionality of Section 1108 was the subject of serious challenge in state court. The Pennsylvania Supreme Court affirmed the Commonwealth Court's determination that Section 1108 was constitutional on May 10, 1989. Since that date, the court's failure to decide this motion has deprived the District Attorney of the right to another appellate review. But in no other respect has the District Attorney been prejudiced in this litigation by the court's inaction. The District Attorney has had, and will continue to have, notice and an opportunity to be heard on all matters concerning the release and non-admission of Philadelphia prisoners. Indeed, the court has modified the release mechanism to give the District Attorney the opportunity to submit written objections to the release of specific prisoners to the Special Master and the judge. The District Attorney also has been given full opportunity to participate, through both written and oral submissions to the court, in numerous proceedings concerning the modification of the release mechanism or admissions moratorium in conference with the Special Master and in hearings before the court. Indeed, the admissions moratorium has been modified on four occasions, July 13, 1988, July 29, 1988, September 9, 1988, and November 8, 1988, at the request of the District Attorney.

***5** Under the new Stipulation and Agreement (if it is approved following a hearing at which the District Attorney will have the opportunity to be heard), the District Attorney will continue to be accorded the status of "objector" and in that capacity may continue to provide the court with information on issues he deems relevant to the court's remedial efforts and participate in all proceedings which may affect the release or nonadmission of Philadelphia prisoners as he has requested.

An appropriate Order follows.

ORDER

AND NOW, this 28th day of December, 1990, upon consideration of the District Attorney's motion to intervene, plaintiffs' response, the municipal defendants' response, and the District Attorney's reply and supplemental brief, and following oral argument on the motion, it is ORDERED that the motion is DENIED.

Footnotes

1 The court expresses no opinion at this time as to whether such action by the Legislature would apply retroactively and entitle the District Attorney to intervene in this case.

2 On June 3, 1988, the District Attorney moved to stay the implementation of the qualified admission moratorium. In denying the stay, this court found that "while the state legislature cannot create an interest after the fact, the continuing nature of the equitable relief provided for suggests the likelihood the District Attorney will be successful in some form of limited intervention." Memorandum of June 6, 1988, slip op. at 4. Nothing in today's decision contradicts the court's previous statement. The District

Attorney has, and will continue to enjoy "some form of limited intervention" in his official status as an "objector."