

1991 WL 284141

Only the Westlaw citation is currently available.
United States District Court, D. Kansas.

Thomas PORTER, et al., Plaintiffs,
v.
Governor Joan FINNEY, et al., Defendants.

No. 77-3045-R. | Dec. 9, 1991.

Attorneys and Law Firms

Jouett Edgar Arney, pro se.

Roger M. Theis, Wichita, Kan., William J. Rich, Stephen W. Kessler, Topeka, Kan., Dwight A. Corrin, Wichita, Kan., for plaintiffs.

Randall William Murphy, pro. se.

Carol R. Bonebrake, Charles E. Simmons, Timothy G. Madden, Topeka, Kan., for defendants.

Opinion

MEMORANDUM AND ORDER

ROGERS, District Judge.

*1 This case is now before the court upon plaintiff's application for a temporary restraining order restraining defendants from disposing of the legal or educational materials of special management inmates or forcing those inmates to dispose of those materials prior to either agreed acceptance or court approval of defendants' long-term plans for protective custody or other segregated inmates.

This is a long-pending class action regarding the conditions of confinement in certain Kansas penal institutions. As part of the relief ordered in this case, defendants have been directed to develop long-term plans for the incarceration of protective custody inmates and other inmates in administrative segregation. In general, the long-term plan is supposed to make the services for and privileges of protective custody inmates substantially comparable to those provided to general population inmates.

Part of defendants' long-term plan for handling protective custody inmates and for meeting other orders, such as population caps, has been the construction of the El Dorado Correctional Facility. Work on this new prison is

virtually complete. The transfer of inmates, including protective custody inmates, to this prison is imminent.

Pursuant to a policy of defendants labeled IMPP # 12-120, inmates transferred to the new prison will be limited as to the volume of property and legal materials they can take with them (or have the Department of Corrections take for them) when they are transferred. Two boxes are provided for the transportation of personal property and legal materials. The personal property box is 15 1/2" long, 13 3/4" wide, and 21 1/2" deep. The legal materials box is 16" long, 12" wide, and 6" deep. Stereos, televisions, fans and typewriters may be stored in different boxes. If the legal materials an inmate wishes to transport are more than what can be held in the legal materials box, they can be stored in the personal property box, if there is room.

Property and materials in excess of the volume held by the two boxes must be disposed of, according to defendants' policy. Apparently, inmates are permitted to mail the excess property and materials, at State expense, to any address of the inmate's choosing. If this option is not selected, we presume the property is destroyed.

Plaintiffs contend the policy is unreasonable because the boxes are not large enough to accommodate necessary legal materials and desirable educational materials for the inmates about to be transferred to the El Dorado prison. Plaintiffs also assert that the policy has not been applied consistently. Defendants contend that the policy has been in effect since April 1991 and that it has been applied consistently to thousands of inmate transfers since that time. Defendants further assert that the policy is directed toward legitimate penological interests. These interests include: limiting opportunities for theft and for hiding contraband; easing shakedown procedures; and discouraging unauthorized trading and dealing of materials.

*2 In order to obtain a temporary restraining order, plaintiffs must demonstrate: 1) irreparable injury unless the injunction issues; 2) a substantial likelihood of success on the merits; 3) proof that the threatened injury outweighs whatever damage the proposed injunction may cause the opposing party; and 4) a showing that the injunction, if issued, would not be adverse to the public interest. See *Lundgrin v. Claytor*, 619 F.2d 61, 63 (10th Cir.1980). We wish to focus on the second factor—the probability of success on the merits.

In this case, plaintiffs are making a modest request. They ask that no property or materials be destroyed pending further study and possible negotiation concerning the regulations in question. Plaintiffs have noted correctly that under this court's order regarding the development of

Porter v. Finney, Not Reported in F.Supp. (1991)

a long-term plan for administrative segregation inmates, plaintiffs are entitled to examine defendants' proposals in advance of implementation and to submit disputes regarding the proposals to this court. However, we conclude that the regulation in question, IMPP # 12-120, should not be considered part of defendants' long-term plan for protective custody and administrative segregation inmates any more than other regulations that are applied to inmates as a whole. It appears that this regulation is being consistently applied to all inmates as they are transferred from one facility to another within the system. It does not have unique application to the inmates at the Lansing and Hutchison facilities which have been the focus of this litigation. Nor does it impact upon the Eighth Amendment questions which have been the focus of this litigation. We are further convinced the regulation will not affect plaintiffs' access to this court in this litigation. In sum, although the regulation will affect protective custody inmates transferred to the El Dorado prison, we do not believe the regulation should be considered part of defendants' long term plan for protective custody inmates. Therefore, plaintiffs may not apply to the court in this case to consider their disagreement with the regulation.

Furthermore, we do not believe the regulation should be

considered "punishment" for plaintiffs' participation in this case any more than one might consider other regulations governing inmate transfers or the transfer itself as punishment. Other inmates are transferred and subject to the same limits on property regardless of whether they participated in this case.

In conclusion, for the above-stated reasons, we do not believe plaintiffs can show that IMPP # 12-120 is related to the issues of this case, and the court is unwilling to amend the complaint or take other formal action to expand the issues in this case. If plaintiffs wish to pursue a challenge to this regulation, it should be done in separate litigation. Plaintiffs' motion is denied because at this point plaintiffs have failed to demonstrate that the issues raised in their motion are within the scope of this litigation; in this way plaintiffs have failed to show a likelihood of succeeding in their challenge to IMPP # 12-120 in this litigation.

***3 IT IS SO ORDERED.**