

Jones v. County Comm'n
Supreme Court of Appeals of West Virginia
December 18, 1986, Filed
No. 17096

Reporter: 1986 W. Va. LEXIS 585

Danny Jones, Sheriff v. The County Commission of Kanawha County, et al, etc.

Disposition: [*1] It is, therefore, Adjudged, Ordered and Decreed that a peremptory writ of mandamus issue, directing the respondents to provide the petitioner with inmate clothing, bed clothing, sanitary and hygienic equipment and all of the necessary roll-and-fold dining tables, all of which the respondents agreed to supply under the terms of the settlement agreement.

Service of an attested copy of this order upon the respondents shall have the same force and effect as service of a formal writ.

Writ granted as moulded.

Opinion

This is an original proceeding in mandamus. A rule to show cause was issued by this Court on July 18, 1986 and made returnable on September 9, 1986. The matter now comes on for hearing upon the petitioner's petition and supplemental memorandum, upon the respondents' answer, together with all of the exhibits submitted by the respective parties.

After considering these matters, the Court finds as follows:

On March 14, 1986, William F. Sneed and other inmates of the Kanawha County jail instituted proceedings in this Court seeking a writ of mandamus to compel the Kanawha County Commission and Danny Jones, Sheriff of Kanawha County, to improve the conditions at the jail. Prior [*2] to hearing on the matter, the parties reached a settlement and presented to this Court an agreement outlining the minimum acceptable improvements to be made at the jail. This agreement was approved and ratified by this Court and incorporated by reference in an order issued May 7, 1986, dismissing the case from the docket of the Court as fully compromised and settled. A similar agreement was reached in proceedings filed by other jail inmates in the United States District Court for the Southern District of West Virginia on May 21, 1986.

On June 15, 1986, Sheriff Jones submitted to the county commission a requisition for equipment and supplies which he deemed necessary to bring the jail into

compliance with the settlement. Among the items requested were roll-and-fold dining tables, washing machines, a copying machine, floor buffers, a vacuum cleaner, inmate clothing, linens and toilet articles. The sheriff also requested a number of items needed for security reasons, such as additional locks and keys, cameras and monitors and security doors.

On July 8, 1986, Sheriff Jones requested that action be taken on his previous application and filed a supplemental requisition for additional uniforms [*3] for correctional officers. The county commission apparently did not respond to these requests, and, on July 17, 1986, Sheriff Jones instituted these proceedings in mandamus to compel.

In their answer, the respondents assert that they subsequently authorized orders for the purchase of the washing machines, the copying machine, the floor buffers, the vacuum cleaner, 5 of the 11 roll-and-fold tables and most of the linens and toilet articles requested, and spent over \$4,000 on uniforms for correctional officers. The respondents also contend that they have made other efforts at compliance with this Court's order, including increasing the jail staff, hiring a doctor to provide inmate medical care, constructing an outdoor recreation area, purchasing a van to transport mentally ill inmates, increasing the budget of the sheriff's department and cooperating in planning further improvements. These allegations have not been denied and must, therefore, be taken as true. *State ex rel. Wiley v. State Road Comm'n*, 148 W. Va. 76, 133 S.E.2d 113 (1963).

The respondents argue that since they have substantially fulfilled their obligations under the agreement, the writ of mandamus should not issue. [*4] We do not believe that substantial compliance is a defense to this action. The respondents' responsibility under the agreement is not ended until they provide the sheriff with *all* supplies and equipment necessary to upgrade the jail in accordance with the terms of the settlement order. The record indicates that the respondents have not yet supplied certain items clearly contemplated under the terms of the order, including inmate clothing, sheets and disposable razors. In addition, the respondents authorized the purchase of only 5 of the 11 roll-and-fold tables requested by Sheriff Jones. Since the respondents do not contest that these items are necessary to bring the jail up to the standards

contemplated by the settlement order, they are obligated to provide them upon request.

The respondents do contest the need for the additional security equipment. These items are not specifically mentioned in the settlement order, nor do they appear to be related to the purpose for which it was designed. The action giving rise to this proceeding was brought to improve the living conditions of the inmates of the Kanawha County Jail, and was not intended as a means of enforcing the county commission's [*5] statutory duty to provide a secure jail. W. Va. Code § 7-3-2 (1984 Replacement Vol.). The latter obligation is not within the scope of this proceeding, which is limited to consideration of what is required of the respondents under the terms of the settlement order.

We conclude, then, that the respondents have a nondiscretionary duty to provide the sheriff with all equipment and supplies necessary to bring the jail into compliance with the consent order of May 7, 1986. "A peremptory writ of mandamus will issue to require the discharge by a public official of a non-discretionary duty.' Syl. pt. 4, *Glover v. Sims*, 121 W. Va. 407, 3 S.E.2d 612 (1939)." Syllabus point 3, *Allen v. State Human Rights Comm'n*, W. Va. , 324 S.E.2d 99 (1984); Syllabus point 2, *Reed v. Hansbarger*, W. Va. , 314 S.E.2d 616 (1984). The petitioner has shown a clear legal right, at least in part, to the relief sought. For that reason a moulded writ will issue directing the respondents to provide so much of the equipment and supplies requested by the sheriff as is necessary to fulfill the terms and [*6] conditions of the settlement order.