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In The United States District Court
For The Northern District of California
Southern Division

But Charles Jordan Jr.
Petitioner,

No. 44309

J. Fitzharris, Warden, et al.

Respondent (s)

Petitioner's Traverse return
on Order to Show Cause return of Respondent (s)

The Honorable Judge, Presiding, In The above Entitled Court
and Cause
setings:

Comes now petitioner, Robert Charles Jordan Jr., who; in
pursuance and pursuant to the order to show cause, issued against and
the Respondent upon the day of October 27, 1965 by the Honorable
Judge B. Harris; does hereby and forthwith submit his traverse.
Petitioner received upon the day of October 28, 1965 a copy of
order to show cause issued out of this Honorable Court, the day
of November 3, 1965 for the Respondent to file his return
November 16, 1965 for Respondent's appearance in and before
Honorable Court. Upon the day of November 6, 1965 petitioner
received a copy of an order of Continuance In Re Order to Show Cause
setting the day of Respondent's return (November 3, 1965) to the day of
November 22, 1965 and the appearance of Respondent to November
1965 at 10:00 A.M.

In the original order of October 27, 1965 the Respondent was
ordered to file (serve) a copy of the return upon petitioner prior
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the filing of same before this Honorable Court. The reset date was November 22, 1965. Petitioner has received no such copy of any return and, said day of November being three (3) days past, is of the belief that no such will be afforded him.

Petitioner wherefore submits his traverse against the respondent putting the only possible argument (1) that could be used by said respondent in attempting to justify the complained of acts.

These arguments of respondent being either: (1) That petitioner is lawfully in custody due to a judgment and commitment rendered by the Superior Court of Santa Monica, Los Angeles County, case # 197761 (1958)

(2) That the conditions complained of do not constitute cruel and/or unusual punishment or treatment or were not of the nature alleged.

Petitioner refutes these arguments as unavailing and without any merit whatever.

Petitioner is and has been in custody for the past 7 years 7 months continuously and the original commitment though at first lawful has been violated to such an extent that petitioner is entitled, by some authority of law that empowered his commitment, to his discharge from custody (The California Penal Code).

Petitioner was sentenced to the term prescribed by law. That no law is also most definite of the kind of treatment that may or that may not be given and/or inflicted upon a person so convicted. The Respondent, through the imposition of the conditions (issues complained of, violated the terms of petitioner's confinement & entitled him to his release as such were far in excess of what is empowered by law to impose and in fact that the law forbids. The law did not and does not prescribe such treatment. California Penal Code Section # 1484 Sub. Div. 2 is the law refuting the Respondent's argument in this regard. (Cal P.C. # 1473 and 1487 "Habeas Corpus") (2)

Petitioner contends the arguments advanced by respondent are on their very face superficial, artificial and invalid.

Petitioner was subjected to the same unsanitary conditions and to the same conditions and acts of health injurious nature twice in a period of less than one calendar year. The respondents have, since petitioner's submission of his petition and the resultant actions thereof, made a very superficial improvement, but the majority of the conditions complained of remain, as any inspection by unbiased persons will reveal.

The California Penal Code states, at Pt. 3, Tit. 1, Ch. 2, Art 2, * 2084 that " --- The Department of Corrections shall provide each prisoner with a bed of straw or other suitable material, and sufficient covering blankets, and with garments of coarse, substantial material and of distinctive manufacture --- "

Strip-Cell, disciplinary actions, ect., notwithstanding it is the expressed desire and intent of the people of the state of California that each and every prisoner be provided with bed, blankets and clothing at all times. The Calif. Pen. Code does not make any provision for the Department of Corrections, or any employee thereof, to make any inmate prisoner spend any night in a cold cell without any cloths on. Or for me to discipline any prisoner by stripping him naked and placing him in a cell in that condition with only a stiff canvass mat for covering myself from the biting cold and that mat not being even enough to completely cover himself with. A square mat 5 feet by 3½ feet (5' by 3½ feet wide) obviously is not going to cover a person 6 feet high and the temperatures can easily be obtained from any paper for the days of July 9 to July 16, 1965. Said temperatures being in petitioner's sleep between 40 and 50 degrees above zero.

As for the unsanitary conditions of the stripcells themselves, since petitioner has put in his suit, they have had the walls washed and the floors, but the toilet complained of has not been cleaned or replaced and have any sanitary provisions been installed or made so that the

persons therein confined may be enabled to meet the basic hygienic requirements of good moral and physical health.

The base and linch-pin of petitioner's complaint revolves around the contested point of personal hygienic propriety.

For the period of twelve days, July 9, through July 20, 1965, petitioner was not allowed to, in any way, form, or manner, wash, shower or shave in any other way clean his hands, face, mouth, or body.

Persons in these strip cells are fed three meals a day, said meals being of a heavy starch content and of a heavy bulk nature. By the very nature of the food, it is only natural that a person confined in such a cell and would have regular bowel movements, there being no exercise or activity to hinder the normal and regular digestive processes.

Persons in the American Society of the 19th Century are brought up and raised in clean hygienic concepts and all are taught quite early that hands must be washed after any act of handling of the private parts of the body and particularly after an act of bodily elimination. Persons confined in a so-called strip cell are not allowed to wash or clean their hands in any manner.

Petitioner for twelve days (12) forced to defecate, urinate etc., and to eat his food with no opportunity what ever to wash or clean his hands. He, petitioner, was forced for twelve (12) day to eat his food and go with his teeth unbrushed. Petitioner was forced to eat his food with his filthy hands, in the originally complained of rancid atmosphere of nauseous fumes.

Petitioner complained of all these factors and his complaints were ignored. Petitioner was in the whole period of his confinement in strip-cell allowed out of said cell for any purpose and that one instance was for the purpose of going to a disciplinary committee for imposition of a punitive sentence of further confinement. Records kept of the movements in and/or out of any cell for any purpose and

these records; kept by respondents and employees under respondent, and referred to as C.D. C. form 114^{1/2}; will show that petitioner was at no time allowed out of his cell from the period of July 9, to July 20, 1965 except for one instance recorded before the disciplinary committee.

This factor of hygienic filth, imposed upon petitioner by respondents in itself and cruel and unusual condition, morally, physically, and mentally and violates the moral concepts and legal codes of the people of the United States and the State of California and also their Health Codes.

Calif. Jur., Habeas Corpus, § 6

§ 1 Habeas Corpus - privileges of person rightfully in custody. - a person is unlawfully restrained of his liberty so as to be entitled to writ of habeas Corpus when, though lawfully in custody, he is deprived of some right to which, even in his confinement, he is lawfully entitled under the Constitution or laws, the deprivation whereby serves to make his imprisonment more onerous than the law allows or curtails, to a greater extent than the law permits in his confinement, his freedom to go when and where he likes. Persons and Prisoners § 19; McKin. Dig.

This condition is obviously a violation of the American concept of justice and fairness. Filth is filth, and being forced to undergo the humiliating and disgusting ordeal and unhealthy and unsanitary experience and conditions prevalent and under which petitioner was imprisoned was and is cruel and unusual punishment in every sense and meaning of the term and concept and any person so imprisoned and confined is entitled to habeas as a result. Petitioner is entitled to his release by virtue of the outrage and indignity inflicted upon him by respondents in addition to the fact of the cruel and unusual nature of the conditions and acts themselves. Because the respondent would not care to be placed in this same situation and would be one of the first to protest such filth and

the fact that a prisoner is being "disciplined" does not give respondent unrestricted liberty to impose any such conditions. These conditions are expressly prohibited by the California State Constitution (Art. I, Sec. 6.) and by the U.S. Constitution (U.S. Const. Amdt. 8.) and by the 14th Amendment clause of equal protection of the laws.

The filthy and degrading aspects of being forced to defecate twice more daily and then eat food with unwashed hands for a period of 12 days, added unto the generally filthy conditions enumerated at length in petitioner's petition (original) are and constitute cruel and unusual punishment and the degrading experience of having to undergo some, by respondent power, twice within one calendar year entitles petitioner to his immediate release from prison.

Petitioner is not a lawyer nor well versed at or in law and therefore is not entirely sure whether moral is considered in cases at law. However petitioner wishes to make this point;

A person brought up in present American society is taught from childhood to abhor filth and to keep personal hygiene.

To one who is raised in this concept the act of bodily elimination is followed automatically by cleansing of the hands. The action is so ingrained that the response is almost in the realm of involuntary reflex as with jumping when scared.

The enforced act of eating with hands unwashed or cleansed after an act of defecation is in itself a repellant and repulsive act. And the additional factors of unwashed face, unbrushed teeth, scented and unwashed body, over a period of days, coupled with the defecation and urination and unwashed hands is cruel mental torment and so insistent as to produce physical nausea. Any person subjected to these conditions of the nature complained would have to be a complete physical and moral degenerate not to be revolted and mentally and physically distressed and repelled acutely by them.

(7).

Having been placed in a special report by respondent (summonsment
it) petitioner is severely handicapped in preparing and submitting his
motions and documents. The rules of this Honorable Court requiring
documents submitted therein, or herein, to be notarized, petitioner has
by certain days to have this done. Petitioner's traverse must be in
prior to November 30, 1965. Petitioner therefore must submit his
motion and brief upon this Wednesday November 24, 1965 as the last
day in which it is possible to get same notarized and mailed in time to
meet the deadline of prior to November 30, 1965. Thursday Nov.
5, 1965 is a Holiday and no Notary Public is available. Friday Nov.
6, Saturday Nov. 27, 1965. No notary public is available these days
and Sunday and Sat. > said Notary not being available until Sunday, Nov.
7, 1965. No mail service running the documents would not be mailed
until Monday Nov. 29th 1965 and therefore would not make the deadline
set forth in the Court order. This is the procedure here and the
respondent is aware of it and this factor may be the reason that no copy
has been given me even three (3) days after the deadline for
filing thereof. Any document submitted by myself requiring
notarization Friday or later would not be mail until Monday Nov. 29.
Documents naturally can be submitted upon Thanksgiving.
Therefore petitioner has submitted and drawn up his Traverse with
notice of respondent's arguments, due to respondent's failure to give him
copy of his return of respondent filed one with this Honorable
Court.

Petitioner wherefore begs the Court's indulgence in this matter. The
petitioner's belief is that the above cited arguments (& #1 and #2) are
only ones respondents can present without prejudicing himself and
petitioner in his motion and action refuses same with the foregoing
herein action.

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Petitioner has witnessed to the nature of the conditions existing in so-called strip cells and if the conditions and acts persons confined & imprisoned therein must endure.

Petitioner drew up affidavits and asked employees acting under the respondents orders and authority to present them (affidavits) to persons whose names were listed, along with a copy of petitioners petition so that these persons could, if willing, corroborate petitioners complaints and allegations, these persons being material witnesses.

The Respondents and his employees took the affidavits and the list of names. After a period of 5 days these were returned to petitioner and petitioner, was told that if he, petitioner, wished to obtain the signatures of his witnesses petitioner would have to obtain a Court order commanding such as they, respondent, was not going to allow him to have said signatures.

Petitioner is rigidly separated and segregated from all of his witnesses but two (2) Crosby and Gordon.

Petitioner has been prevented by respondents from obtaining these signatures and continues to do so.

Petitioner therefore has gotten verbal word to these witnesses and was told that they decidedly wished to testify in this matter. Petitioner informed them of the respondents action and was given their express permission to affix their signatures to the affidavit and supplied petitioner with their full names and A numbers (prison numbers).

Petitioner prays that this Honorable Court will accept the herein attached petition as just and valid in view of the above circumstances. Persons whose names appear upon said affidavit desire their names to be placed there and gave petitioner their unreserved permission to enter their names and for same to be entered as valid and in good faith. They were unable to sign only (themselves in person) by virtue of the actions of the respondent in obstructing a good and just cause and action.

STATE OF CALIFORNIA,

County of Monterey

On this 24 day of May

} ss.

in the year one thousand nine hundred and eighty five

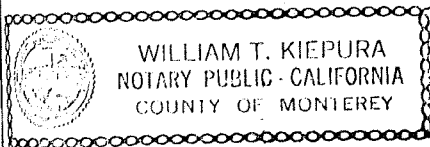
before me, W. T. Kiepora, a Notary Public,

State of California, duly commissioned and sworn, personally appeared

Robert Charles Jackson Jr. A. 46681

known to me to be the person whose name subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the County of Monterey the day and year in this certificate first above written.



W. T. Kiepora

Notary Public, State of California.

W. T. KIEPURA

(9)

Conclusion

Wherefore, in view of the facts and truths set forth in petition, motion and action and petition, and the supporting affidavits and corroborating witnesses affirming same, and establishing of "Prima facie" causes and case for the issuance of the writ and petitioned for writ of Habeas Corpus, and her release thereupon, whereas, the rule in petitioners contentions are true and correct until otherwise proven at a hearing where both oral and written arguments are presented to and before this most Honorable Court.

Prayer of Petitioner

Petitioner wherefore prays that the petitioned for writ of Habeas Corpus will be issued forthwith by this Honorable Court, directed to and against the respondent, commanding that petitioner be released from prison for the reasons and causes set forth in petition, motion and action, said acts and causes being of such nature as to entitle petitioner to his freedom.

Further The Said Prayed

I Certify under penalty of perjury that the foregoing is true and correct.

Dated this 24 Day of November, 1965

Respectfully Submitted by
Robert C. Jordan Jr.
Robert Charles Jordan Jr.
P.O. Box A-46604
Solodad, California
In Propria Persona
In Forma Pauperis

(9)

In the United States District Court
Northern District
Southern Division

The Matter of an Application
for Affidavit of Confirmation
and Corroboration

State of California
County of Monterey

SS: Affidavit of Confirmation and Corroboration in
support of the petition of Robert Charles Jordan # 44367

We, The below signed persons, in confirmation and Corroboration of the
petition of Robert Charles Jordan Jr., and the conditions and causes complained of
do hereby say and state:

That the conditions alleged did and do exist and are of the onerous and
dreadful nature contended. That these conditions have been complained of
and these complaints have been ignored, even by the Chief Medical Officer.
That this statement of Confirmation is given through first hand knowledge
of the affiants having been at some period confined and imprisoned in these
so-called "strip-cells" and the unsanitary conditions alleged and contended in
petition of Robert Charles Jordan Jr., being the same conditions under which
we were imprisoned and confined. These conditions being filthy, causing
a hazard to the physical health of all persons confined therein.

Affiants are willing to appear before this Honorable Court and therein further
authenticate and confirm the charges as set forth in the petition of Robert Charles
Jordan Jr. in re: Jordan vs. Fitzharris, # 44309 Oct. 27, 1965

We declare under penalty of perjury that the foregoing is true and correct
Dated this 24 Day of November, 1965

Respectfully Submitted by
(1) Eddie Lamar Crosby Jr.
A-80603

(1)

(2) Bernard J. M. Hester

A-89462-A

For: (3) Van Trefon

A-87890

For: (4) Ernest Guerrero

A-81340

For: (5) Kenneth Peterson

A-89853

affiants

Correctional Training Facility

Solodad, California, 93960

Respectfully prepared and submitted this 24 Day of November, 1965

Robert Charles Jordan Jr.

Robert Charles Jordan Jr.

P.O. Box A-46604

Correctional Training Facility

Solodad, California, 93960

In Propria Persona

In Forma Pauperis

For: (6) Alphonso Espayra

A-81188

; Solodad, Calif.

For: (7) Warren Wells

YA-44048

; Solodad, Calif.

Solodad, California, 93960

(8) James L. ... A-332,264

and for with affiant's permission due to

inability due to respondent's denial and acts (11)

STATE OF CALIFORNIA,

County of Monterey

} ss.

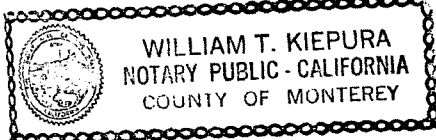
On this 27 day of Nov in the year one thousand nine hundred and sixty six

before me, W. T. Kiepora, a Notary Public,
State of California, duly commissioned and sworn, personally appeared

Robert Charles Jordan Jr. H 46607

known to me to be the person whose name is subscribed to the within instrument
and acknowledged to me that he executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal
in the Monterey County of Monterey the day and year in this
certificate first above written.



W. T. Kiepora

W. T. KIEPURA

Notary Public, State of California.

1 State of California)

2 County of Monterey)

SS:

VERIFICATION

3
4 I, Robert Charles Jordan, Jr., being first duly sworn deposes
5 and say:

6 That he is the petitioner in the above and foregoing entitled
7 matter; that he has prepared and read the foregoing petition and
8 knows the contents thereof; that the same is true of his own knowledge,
9 except as to those matters which are therein stated on his information
10 or belief, and as to those matters that he believes it to be true.

11 I declare under penalty of perjury that the foregoing is true and
12 correct.

13 Dated this 24 day of November, 1965.

14
15 By: Robert Jordan, Petitioner
16 Robert Charles Jordan, Jr.

17 P.O. Box A-46604

18 Soledad, California
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