

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

SEP 29 2006

PATRICIA PRESLEY, COURT CLERK
by _____
Deputy

ROBERT R. RAVITZ, PUBLIC DEFENDER)
OF OKLAHOMA COUNTY, ON BEHALF)
OF KEVIN MERRITT, AND ALL SIMILARLY)
SITUATED INMATES INCARCERATED IN)
THE OKLAHOMA COUNTY DETENTION)
CENTER,)

Petitioner,)

v.)

JOHN WHETSEL, OKLAHOMA COUNTY)
SHERIFF and JUSTIN JONES, DIRECTOR,)
OKLAHOMA DEPARTMENT OF)
CORRECTIONS,)

Respondents,)

Case No. CV-06-11

ORDER

This above styled matter came on for hearing before this Court for
hearing on Petitioner's Notification to the District Court and Petition for
Declaratory and Injunctive Relief to Correct Overcrowding in the Oklahoma
County Detention Center.

This Court conducted a hearing on the 23rd and 24th days of August 2006
with witnesses presented by Petitioner and Respondent. This Court received

testimony from five witnesses for Petitioner. Respondent Whetsel called one witness. Respondent Jones called no witnesses.

Petitioner's witnesses testified to the following:

1.) Don Garrison, testified that he is the supervisor for jail inspections for the Oklahoma State Department of Health, and that the county and city jails are inspected by the State Department of Health on a regular basis. (Tr. Pg 16). Mr. Garrison testified that he certifies jail capacity for jails in Oklahoma, and that the standard for determining cell capacity for any jail is a minimum of 40 (forty) square feet of space for the first inmate and 20 (twenty) square feet of space for each additional inmate to be celled therein. (Tr. Pg 16–17) Mr. Garrison testified that the State Department of Health measured the cells at the Oklahoma County Detention Center (hereinafter OCDC) and determined that the maximum capacity for the OCDC was 2,890 inmates. (Tr. Pg 23)

Mr. Garrison further testified that while a jail as a whole might not exceed the maximum capacity, placing too many inmates into a single cell without the appropriate square footage would result in a violation of the Health Department's rules. (Tr. Pg 23)

2.) Ken Klinger testified that he is chief of operational services for the Oklahoma Department of Corrections (hereinafter DOC). Mr. Klinger testified that he is currently responsible for "population management" for the various DOC institutions throughout the State. Mr. Klinger testified that there were, as of the date of his testimony, 1,345 DOC inmates being held in county jail facilities awaiting transportation to a DOC facility. (Tr. Pg 42) Mr. Klinger further testified that one third of the 1,345 "holding" inmates are housed in the OCDC. (Tr. Pg 42) Mr. Klinger testified that DOC does not currently have enough bed space to accommodate all of the inmates that are being held in county jails throughout the State awaiting transport. (Tr. Pg 66)

Mr. Klinger indicated that the fact that DOC has a shortage of beds is no fault of Sheriff Whetsel or the tax paying citizens of Oklahoma County, and that Oklahoma County tax payers should not be responsible for building county jails to house DOC inmates. (Tr. Pg 70)

Mr. Klinger admitted that within the two and a half weeks following the filing of Petitioner's action, based on a request from Sheriff Whetsel, DOC accepted 264 inmates from the OCDC, compared to 38 inmates per week in the months preceding the filing of Petitioner's action. (Tr. Pg 71) Mr. Klinger also

testified that Sheriff Whetsel has made at least 10 similar requests in the past 55 days, none of which resulted in the transportation of 264 inmates to DOC. (Tr. Pg 72)

3.) Jim Rabon testified he is the administrator of sentence and offender records. (Tr. Pg 77) Mr. Rabon testified that inmates are assigned to one of four class levels (designated Levels 1 – 4), and that the inmates receive “earned credits” based on their assignment to one of the four class levels. (Tr. Pg 77–78) Mr. Rabon further testified that for an inmate to be eligible for a promotion to Level 3, the inmate must have been incarcerated for 3 (three) months, and to be eligible for promotion to Level 4 (four) for 8 (eight) months. “Incarceration” begins upon the inmates arrival at the DOC reception center. (Tr. Pg 78)

Mr. Rabon testified that the earlier an inmate gets transported to DOC’s reception center, the earlier the inmate is eligible for promotion to the higher class levels, which ultimately leads to an earlier release than those inmates who are “holding” in some county jail facility awaiting transport to DOC’s reception center. (Tr. Pg 80–82) Mr. Rabon testified that “achievement credits”, which are sentence–reduction credits, are only available to *post-reception* inmates

who successfully participate in DOC programs, such as substance abuse programs and educational programs. (Tr. Pg 83)

4.) Jenny Handy testified that until recently she was the administrator of prisoner classification for DOC. (Tr. Pg 92) Ms. Handy established the schedule for inmate transportation from county jails to the DOC reception center.

Ms. Handy testified that DOC established a system allotting each county a specified number of inmates who would be accepted at DOC's reception center each week. At some point, DOC notified Sheriff Whetsel that DOC was reducing Oklahoma County's allotment of inmates accepted at the reception center due to the failure of Sheriff Whetsel to transport the allowed number of inmates. (Tr.Pg 97-104)

Ms. Handy also testified that inmates who receive shorter sentences are more likely to be accepted at DOC's reception center than those receiving longer sentences. (Tr.Pg 105)

5.) Major Cliff Uranga testified as a witness on behalf of Petitioner and Respondent. He testified that he is jail administrator at the OCDC. Major Uranga testified that in December of 2002 the number of DOC inmates ready

for transport to DOC reception was 151. (Tr. Pg 113) One year later, in December 2003, the number of DOC inmates ready for transport to DOC reception had risen to 716. (Tr. Pg 113) By May of 2004 this number had risen to 808. (Tr. Pg 113)

On August 15, 2006 the number of DOC inmates ready for transport to DOC's reception center was 494. On August 23, 2006 the number had fallen to 311 ready for transportation to DOC. (Tr. Pg 114) Major Uranga testified that between August 1, 2006 and August 22, 2006, DOC accepted 382 inmates from the OCDC. Major Uranga testified that in the two weeks before the hearing on Petitioner's application, 264 inmates were transported to DOC's reception center. (Tr. Pg 116) Major Uranga further testified that the "inmate census count reports" provided to the Presiding Administrative Judge of Oklahoma County by Sheriff Whetsel's office contained incorrect census counts. (Tr. Pg 119)

Major Uranga testified that there are DOC inmates awaiting transportation to DOC's reception center who are triple celled in cells that do not meet the State Department of Health's standards for cell square footage for inmates. (Tr. Pg 129-130)

Major Uranga testified that there are currently 98 DOC “contract” inmates being housed at the OCDC, pursuant to a contract between DOC and the Oklahoma County Board of County Commissioners. (Tr. Pg 131, 184) These DOC “contract” inmates receive more privileges and benefits than those DOC inmates who are “awaiting acceptance” at DOC reception. (Tr. Pg 132–135)

“Contract” inmates many times consist of inmates who were convicted in counties other than Oklahoma county. (Tr. Pg 182) If the Board of County Commissioners declined to enter into this contract for inmates, the OCDC would immediately have 98 beds available to utilize for county inmates. (Tr. Pg 184)

Major Uranga testified that a written policy is in place at the OCDC providing steps to be taken when the jail population approaches capacity. (Tr. Pg 216) This policy includes requesting judges to commute the sentences of county jail inmates in order to reduce population¹. (Tr. Pg 191–192, 238–239) Additionally the policy directs the jail administrator to contact the Oklahoma City Police Department requesting them to make “field arrests” as opposed to

¹ It appears this is done without notice to the State and without an opportunity to be heard regarding these “commutations”.

custodial arrests resulting in incarceration at OCDC. (Tr. Pg 237–238) This is all done to preserve the OCDC's ability to house DOC inmates. (Tr. Pg 240–242)

Major Uranga testified that he is aware that Oklahoma County judges are encouraged not to utilize various statutorily created sanctions that would result in incarceration in the OCDC because of lack of bed space, bed space that is being utilized by DOC inmates. (Tr. Pg 187)

After having reviewed the testimony presented by the parties, and hearing argument of counsel, this Court enters the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1.) The maximum capacity for the OCDC is 2,890 inmates based on the Department of Health's inspection of OCDC. At no time has the population of the OCDC exceeded 2,890 inmates, indicating the OCDC has never been overcrowded.

2.) According to Health Department standards, triple celling can only occur when the cell has at least 80 square feet of space, forty square feet for

the first inmate and 20 square feet for each additional inmate thereafter. If inmates are triple celled in cells of less than 80 square feet, while the jail is not considered overcrowded, the cells are overcrowded and in violation of Health Department rules and regulations.

3.) Department of Correction inmates awaiting acceptance to LARC have been triple celled in the OCDC in cells containing less than 80 square feet. Therefore, these inmates are being held irregularly.

4.) Due to the large number of inmates regularly sentenced to and currently in the state prison system, DOC now permits *only* 38 sentenced inmates from Oklahoma county to be transported to LARC each week. There is no statutory authority for this limitation. The failure to remove these state inmates from the OCDC requires the jail to continually house many inmates three to a cell in cells originally designed for only one inmate.

5.) Conversely, the DOC contract inmates housed in the OCDC are specifically prohibited by contract from being triple celled. DOC inmates awaiting transfer to LARC from the OCDC are denied statutorily mandated opportunities to earn time credits to reduce their state prison sentences at the


same rate as similarly situated inmates who have been processed through LARC and assigned to a particular facility.

6.) DOC contract inmates, pursuant to contract, are allowed *four* sets of underwear, socks and footwear per week. DOC inmates awaiting transfer to LARC are allowed only *one* set of underwear, socks, and footwear per week. Thus, those awaiting transfer are subjected to irregular treatment.

Inmates who are awaiting transfer from OCDC to LARC after the district court has issued a valid judgment and sentence ordering them to DOC custody, are being held in a state of ongoing "irregularity".

IT IS THEREFORE ORDERED that pursuant to his statutory duty, the Oklahoma County Sheriff shall immediately notify and provide DOC with the Judgment and Sentences for all sentenced inmates currently awaiting transfer to the Department of Corrections, and within 30 days of the date of this order, the Sheriff shall transport any such inmate who has no further proceedings pending in Oklahoma County to the Lexington Assessment and Reception Center in Lexington, Oklahoma. The sheriff shall report to this Court upon the completion of these transfers.

IT IS FURTHER ORDERED that all future OCDC inmates sentenced to serve a term of imprisonment in the state prison system and having no pending proceedings in Oklahoma County shall be transported and transferred to the custody of the Department of Corrections no later than 45 days after completion of the Judgment and Sentence(s) by the District Court.



RAY C. ELLIOTT
PRESIDING DISTRICT JUDGE