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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

EDDIW WILLIE TAYLOR, et al.,)		
)		
Plaintiffs,)	✓ No. Civ. 72-21 Phx.	WPC
)		
vs.)		
)		
STATE OF ARIZONA, et al.,)		
)		
Defendants.)		
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GEORGE YANICH, JR., et al.,)		
)		
Plaintiffs,)	No. Civ. 72-58 Phx.	WPC
)		
vs.)		
)		
STATE OF ARIZONA, et al.,)		
)		
Defendants.)		
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MEMORANDUM AND ORDER

These two class action cases were originally consolidated for trial and counsel was appointed to represent plaintiffs. Twice evidentiary hearings were commenced. Each time the hearings were adjourned prior to completion due to compromise, agreement or stipulation of counsel making further testimony unnecessary. Because of agreements of counsel which prevented a full trial of all issues, findings of fact and conclusions of law are not appropriate.

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IT IS ORDERED:

1. Count 1 (Taylor damage claims) having been dismissed by compromise, the motion to set the dismissal aside is denied.

2. Count 4 is dismissed for failure to state a claim.

Count 2 (Yanich damage claim) has heretofore been severed and assigned to another judge for trial.

The following order is in the form stipulated to by counsel for both sides and approved by the Court to dispose of Count 3, the class action attacking the constitutionality of the prison's disciplinary rules, regulations and conditions of special confinement. All the provisions of the following order were agreed upon by counsel for both sides in consultation with their named clients, except the provisions as to exercise and segregation pending investigation for possible charges triable under Arizona criminal laws. In these two instances each counsel submitted a proposal for consideration by the Court as reflected in the proposed form of stipulated "Judgment and Order" lodged herein. Because of the excellent and voluminous memoranda filed by counsel herein and lengthy arguments heretofore heard, no further argument on these issues is desired at this time. In view of the manner in which the case has arrived at this stage, the Court, at this time, indicates no opinion as to the constitutionality of the prior rules and regulations either as written or as applied.

Pursuant to the stipulation and request of counsel,

IT IS FURTHER ORDERED:

I. The Substantive Rules of the Prison, for Violation of Which Discipline May be Imposed.

1 1. The defendants, in consultation with counsel for
2 the plaintiffs, shall prepare and submit revised rules.

3 2. This submission shall be made within ninety (90)
4 days of this order.

5 3. The plaintiffs shall present exceptions, if any
6 there be, to the proposed rules within thirty (30) days there-
7 after, or shall waive exceptions.

8 4. This Court will then adjudicate any appropriate
9 issues, and will declare the resultant rules as generally
10 suitable for use and application until changed.

11
12 II. Procedural Rules For the Administration of
13 Discipline Within the Prison.

14 A. General Provisions.

15 1. Definition: Disciplinary proceedings may involve
16 matters of two types: first, those which may result in a loss
17 of good time by virtue of possible penalty by being placed in
18 segregation; and, second, those which may result in a reprimand
19 or other discipline such as minor loss of privilege but not a
20 loss of good time.

21 2. Application: These rules apply only to the first
22 category.

23 3. Definition: Segregation is defined as isolation,
24 adjustment center or administrative segregation confinement.

25 4. Application: These rules, except as otherwise
26 noted, apply only to the first two categories of segretaion.
27 However, scrupulous care is to be taken to insure that
28 administrative segregation does not become disciplinary
29 segregation.

30 5. Library privileges shall be allowed to all in-
31 mates except those in strict disciplinary isolation, a minimum

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1 of two times each week for a minimum of two hours at a time.
2 Provided, that these privileges shall not be construed to
3 require that the prison authorities provide a guard for any
4 inmate who may be in segregation for his own protection.

5 B. Disciplinary Committee.

6 1. Disciplinary charges shall be heard in the first
7 instance by a disciplinary board, which shall be of a balanced
8 composition. It shall consist of three members. One of the
9 members shall be from the staff of Custody, and one from the
10 staff of Care and Treatment. Where possible, the third member
11 shall be an employee not subject to the jurisdiction of Custody.

12 2. No person shall serve on the board who has been
13 involved in the making or investigation of the charge.

14 C. Notice.

15 1. Any inmate who is charged with an offense which
16 may result in discipline shall be given within five days of
17 the offense a written notice thereof describing with reasonable
18 precision the offense and the manner of its commission.

19 D. Hearing, Counsel, Confrontation.

20 1. The hearing under such a charge shall be held
21 within five (5) working days after the notice has been re-
22 ceived, and for this purpose a working day is defined as the
23 days Monday through Friday, excluding state or national
24 holidays.

25 2. Any inmate charged with a disciplinary offense
26 shall be entitled to have private counsel, if he is able to
27 obtain it, or to designate an inmate or member of the staff
28 willing to serve in this capacity as counsel. For purposes of
29 preparation, the inmate shall be given reasonable opportunity
30 to consult with a person named as his counsel.

1 3. At a hearing involving a disciplinary penalty,
2 an inmate is entitled to hear the witnesses against him.

3 4. The inmate's private counsel or staff member
4 counsel will be entitled to examine such witnesses.

5 5. If the inmate is either representing himself
6 or is represented by a fellow inmate, he shall present his
7 questions through an officer designated by the defendants,
8 who will have the duty of asking them. The Court retains
9 jurisdiction to review this procedure within six (6) months
10 to determine that it is operating properly.

11 6. Inmates in disciplinary proceedings will have
12 the right to call as witnesses either other inmates or em-
13 ployees who may be supposed to have knowledge of the matter
14 under consideration. This shall be subject to the power of
15 the disciplinary board to make appropriate orders to prevent
16 cumulative or irrelevant testimony. Such witnesses shall be
17 examined in the same manner as witnesses on cross-examination.

18 E. Decision.

19 The board may:

20 1. Conclude that the inmate is not found guilty of
21 the offense, in which case no record of the matters shall be
22 retained in his file.

23 2. Conclude, whether the inmate is found guilty or
24 not, to refer him for treatment.

25 3. Conclude that the inmate is guilty and impose
26 a penalty not to exceed 15 days disciplinary segregation.

27 4. Conclude that the inmate is guilty and either
28 reprimand him or impose some loss of privilege or other
29 penalty which does not involve loss of good time; provided,
30 that no such penalty shall deprive the inmate of food or
31 exercise.

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F. Appeal.

1. Each disciplinary hearing shall be recorded by a mechanical transcription device.

2. The inmate may request an appeal at any time from the end of his hearing to 48 hours thereafter, and shall be given an appropriate form for this purpose.

3. Appeal shall be to an officer designated for this purpose by the Department of Corrections. Minutes of the hearing shall be transmitted to the officer, who shall also have access to the recording.

4. Unless the board suspends execution of the penalty pending appeal, the inmate may be kept in disciplinary segregation pending the outcome of the appeal, if he takes one, but for not longer than the period of his disciplinary sentence.

5. The Court retains jurisdiction for six (6) months to review the operation of the appeal system.

G. Disciplinary Segregation.

1. No inmate will be held in segregation pending a disciplinary trial for more than five (5) working days after notice.

2. No person shall be given a penalty of segregation for disciplinary purposes exceeding 15 days.

3. It is recognized that the adjustment center may be used for purposes of care and treatment as distinguished from discipline. If this is done, the inmate is to be given a clear written statement of when his disciplinary penalty terminates and when his care and treatment begins. All persons receiving adjustment center care for purposes of care and not for purposes of discipline are to have treatment on a

1 regular basis. All persons in any form of confinement
2 shall receive medical care as needed.

3 4. All inmates in segregation, whether isolation or
4 the adjustment center, shall receive three meals a day.

5 5. All persons in the adjustment center shall have
6 showers available a minimum of three times a week, and showers
7 shall be made available to persons in isolation as facilities
8 are available with due regard to the determination of the
9 prison administration as to security.

10 6. All inmates in segregation shall be offered a
11 one-hour exercise period outside his cell a minimum of three
12 (3) times weekly on different days.

13 7. To insure that disciplinary segregation is not
14 continued beyond the time limits set herein classification of
15 the inmate to a new duty or status must be completed within
16 15 days or less from the institution of the disciplinary
17 penalty.

18
19 III. Past and Existing Imposition of Discipline.

20 1. The principles of Part II of this order shall be
21 applied within 15 days to all inmates experiencing discipline
22 at the time of this order and thereafter. Specifically, any
23 persons held in segregation pending charges will be charged
24 within that time; and pending reclassification will be reclassi-
25 fied; any existing disciplinary penalties involving disciplin-
26 ary segregation and loss of good time will expire within that
27 time.

28 2. All inmates who have lost accrued good time by
29 virtue of disciplinary proceedings other than that forfeited
30 by the Board of Pardons and Paroles within the past 30 months
31 shall have such forfeited good time restored.

32 3. To carry this order out, each side is instructed

1 to name one person to form an audit committee and the two
2 persons thus named may name a third person. This committee
3 shall review all disciplinary records of the state prison
4 and shall report to the Court in the form of an order adjusting
5 good time. The order adjusting good time shall become an
6 appendage to and a part of this judgment when approved by the
7 Court. The order as made shall be res judicata as to the
8 rights of the parties.

9 4. As an exception to this order, the Court ex-
10 cludes such disciplinary penalties as have been given for
11 refusal to work, and good time shall not be generally re-
12 stored in those instances, except where the committee finds
13 extenuating circumstances.

14 5. As a further clarification, this restoration
15 shall apply only to those inmates who were on two-for-one
16 time at the time the penalty was imposed.

17 6. As a practical matter, the Court cannot elimin-
18 ate from the records all traces of the episodes as to which
19 good time is restored under this order, but all persons
20 dealing with the records for any purpose are admonished not
21 to take these episodes into account for any purpose whatsoever.

22 IV. Segregation Pending Criminal Charge.

23 1. When an inmate is suspected by the prison
24 officials of an offense which is also triable under the
25 criminal laws of the State of Arizona, the officials may place
26 the suspected inmate in segregation while investigating the
27 details of the such suspected offense for a period not to
28 exceed sixty (60) days, during which time they must complete
29 their investigation and refer the matter to the local county
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1 attorney, failing which the prisoner must be returned to
2 his original assignment and placed in the population. If,
3 after having referred the matter to the local county attorney
4 for criminal prosecution, a criminal charge has not been filed
5 by the local county attorney within a period of thirty (30)
6 days from the date of referral then the prison officials must
7 at the end of said thirty-day period return said inmate to
8 his original position in the prison population. If a charge
9 has been filed by the county attorney within said thirty-day
10 period, the prison officials may detain the suspected inmate
11 in segregation until the conclusion of the criminal proceedings
12 in the local Superior Court.

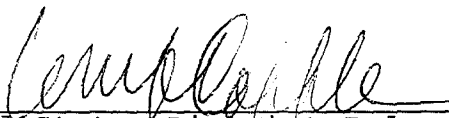
13 The defendants shall appropriately advise all members
14 of the class of the contents of this order.

15 DATED AND FILED this 22 day of December, 1972.

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United States District Judge

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