

56

FILED

JAN 16 1973

UNITED STATES DISTRICT COURT  
SOUTHWESTERN DISTRICT OF ARIZONA  
BY: *P. J. Martin*  
DEPUTY CLERK

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

LEWIS AND ROCA  
FIRST NATIONAL BANK PLAZA  
ONE HUNDRED WEST WASHINGTON STREET  
PHOENIX, ARIZONA 85003  
TELEPHONE 602/262-5311

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

EDDIE WILLIE TAYLOR, et al., )  
Plaintiffs, )

No. Civ. 72-21 Phx. WPC ✓

vs. )

STATE OF ARIZONA, et al., )  
Defendants. )

GEORGE YANICH, JR., et al., )  
Plaintiffs, )

No. Civ. 72-58 Phx. WPC

vs. )

STATE OF ARIZONA, et al., )

MOTION TO AMEND MEMORANDUM  
AND ORDER

Plaintiff moves to amend the Memorandum and Order of this Court, dated and filed December 22, 1972, in the following particulars:

1. That paragraph 3 on page 2 of the Memorandum and Order be amended to read as follows:

The following order, disposing of Count 3, the class action attacking the constitutionality of the prison's disciplinary rules, regulations and conditions of special confinement, is in the form stipulated to by counsel for both sides and approved by the Court; it embodies the agreement of the parties and the orders of this Court as to those issues the parties were unable to resolve among themselves.

Counsel, in consulting with their named clients, were unable to agree on provisions relating to: (1) library privileges

1 of inmates held in isolation (II(A)(5), infra); (2) the method  
2 by which inmates with inmate counsel and inmates without counsel  
3 will examine witnesses during disciplinary hearings (II(D)(5),(6),  
4 infra); (3) suspensions of sentence pending appeal of adverse  
5 decisions of the disciplinary committee (II(F)(4), infra);  
6 (4) frequency of showers and exercise for persons in disciplinary  
7 segregation (II(G)(5), (6), infra); (5) the method of immediate  
8 imposition of the procedures detailed in the order (III(1),  
9 infra); (6) the retroactive effect of the order (III(2), infra);  
10 (7) the length of time an inmate may be held in segregation pend-  
11 ing referral of charges against him to the local county attorney  
12 and limitation of the length of time an inmate can be held in  
13 segregation after referral to the county attorney (IV(1), infra).  
14 In these instances, each counsel submitted a proposal for consi-  
15 deration by the Court; the Court's orders thereon appear, inter  
16 alia, in this Memorandum and Order. Because of the excellent and  
17 voluminous memoranda filed by counsel herein and lengthy argu-  
18 ments heretofore heard, no further argument on these issues is  
19 desired at this time. Objections to all other phases of the  
20 order than those here enumerated have been stipulated to be waived.

21 This order is not to be construed as a final order  
22 within Federal Rule of Civil Procedure 54(b); it is an interlocu-  
23 tory order pending this Court's final disposition of the issues  
24 reserved for later review under this Court's continuing jurisdic-  
25 tion. See 28 U.S.C. § 1291.

26 In view of the manner in which the case has arrived at  
27 this stage, the Court, at this time, indicates no opinion as to  
28 the constitutionality of the prior rules and regulations either  
29 as written or as applied.


30  
31 2. That provision III(2) be amended to read as follows:  
32 All inmates who have lost the opportunity to accrue

1 good time by virtue of disciplinary proceedings, other than that  
2 forfeited by the Board of Pardons and Paroles, within the past  
3 30 months shall have such good time restored, the same as if  
4 said inmates had been working on assignments of confidence and  
5 trust.

6  
7 On this basis, plaintiffs' motion for new trial may be  
8 regarded as withdrawn and with rights reserved to the end of the  
9 case.

10 Respectfully submitted,

11 LEWIS AND ROCA

12  
13 By   
14 John P. Frank  
15 Sally S. Neely  
16 Attorneys for Plaintiffs

17 Copy of the foregoing  
18 mailed this 16th day  
19 of January, 1973, to:

20 William P. Dixon, Esq.  
21 Assistant Attorney General  
22 State House  
23 Phoenix, Arizona 85007  
24 Attorneys for Defendants

25 Daniel F. Norton, Esq.  
26 P. O. Box 218  
27 Scottsdale, Arizona 85252  
28 Attorney for Plaintiffs

29  
30  
31  
32   
Sally S. Neely