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United States District Court, D. Connecticut.

Robert JOSLYN and Abdul Haqq, on Behalf of
Themselves and All Others Similarly Situated,
Plaintiffs

v.

John J. ARMSTRONG, Commissioner of the
Connecticut Department of of Corrections,
Defendant

No. 3:01CR198(CFD). | May 16, 2001.

Attorneys and Law Firms

Alan Neigher, Byelas & Neigher, Westport, Toya Alek Graham, Philip D. Tegeler, Connecticut Civil Liberties Union Foundation, Hartford, David C. Fathi, National Prison Project of the American Civil Liberties Union, Washington, DC, for plaintiff.

Steven R. Strom, Assistant Attorney General, Attorney General's Office, Public Safety & Special Revenue, Hartford, for defendant.

Opinion

RULING ON MOTION TO TRANSFER

DRONEY, District J.

*1 The named plaintiffs, Robert Joslyn and Abdul Haqq, bring this putative class action against the defendant, John J. Armstrong, the Commissioner of the Connecticut Department of Corrections ("CDOC"). They bring the action pursuant to 42 U.S.C. § 1983, alleging violations of their rights under the Eighth and Fourteenth Amendments to the U.S. Constitution. Specifically, they contend that the defendant is knowingly subjecting them to prison conditions that constitute cruel and unusual punishment. The plaintiffs seek declaratory and injunctive relief, including reasonable costs and attorneys fees.

The defendant has filed a motion to transfer the case to the Western District of Virginia pursuant to 28 U.S.C. § 1404(a). The motion to transfer [Document # 12] is DENIED for the following reasons.

I. Background

The named plaintiffs are Connecticut citizens, who have

been convicted and sentenced to the custody of the CDOC by Connecticut state courts. Each named plaintiff is housed at the Wallens Ridge State Prison ("WRSP"), a "supermax" prison located in Big Stone Gap, Virginia, pursuant to the Interstate Corrections Compact ("ICC") adopted by the State of Connecticut and the Commonwealth of Virginia.¹ See Va.Code Ann. §§ 53.1-216 to -217; Conn. Gen.Stat. §§ 18-105 to -107. The plaintiffs' claims arise from allegations that the staff at WRSP, which is operated by the Virginia Department of Corrections ("VDOC"), have used excessive force against them, including the use of five-point restraints and electric shock devices as summary punishment for trivial offenses. The plaintiffs allege that such force is endemic at WRSP, and amounts to an official policy that the defendant has implemented or to which he has knowingly acquiesced, in violation of their Eighth and Fourteenth Amendment rights to be free from cruel and unusual punishment. Accordingly, the plaintiffs have filed a motion to certify a plaintiff class consisting of "all Connecticut state prisoners who are now, or who will in the future be, confined at Wallens Ridge State Prison in Big Stone Gap, Virginia, or at Red Onion State Prison in Pound, Virginia." See Pls.' Mot. Class Certification at 1.

The defendant has not yet responded to the plaintiffs' complaint or their class certification motion. However, as indicated, the defendant has filed a motion to transfer the case to the Western District of Virginia pursuant to 28 U.S.C. § 1404(a).²

II. Discussion

Section 1404(a) of Title 28 of the United States Code provides: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

This section is a statutory recognition of the common law doctrine of *forum non conveniens* as a facet of venue in the federal courts. The goal of § 1404(a) is to prevent waste of time, energy and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense.

*2 The district court has broad discretion on a transfer motion according to an individualized, case-by-case consideration of convenience and fairness. The moving party bears the burden of making out a strong case for a transfer, by demonstrating that, under all of the circumstances, the interests of justice and of the parties will be better served by the transfer. However, this burden is less stringent than under the former doctrine of *forum non conveniens* since transfer under § 1404(a) does not result in dismissal.

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The inquiry on a motion to transfer is two-fold. The court must first determine whether the action sought to be transferred is one that might have been brought in the transferee court. Second, the court must determine whether, considering the convenience of parties and witnesses and the interest of justice, a transfer is appropriate.

Wilshire Credit Corp. v. Barrett Capital Mgmt. Corp., 976 F.Supp. 174, 180 (W.D.N.Y.1997) (citations and quotation marks omitted).

A. Where the Action Might Have Been Brought

A district court may only transfer an action to another district court if the transferee court is one in which the plaintiffs might have brought the action originally. See *Hoffman v. Blaski*, 363 U.S. 335, 343–44 (1960). The transferring court must therefore consider whether, at the time the suit commenced, the plaintiffs would have had an absolute right to bring the action in the transferee court, that is, a right to bring the action regardless of the defendant's consent to personal jurisdiction or venue in the transferee court. See *id.*

The defendant in this case contends that venue is proper in the Western District of Virginia because a substantial portion of the events giving rise to this action occurred in that district. See Mem. Supp. Def.'s Mot. Transfer at 2 n. 1. However, the defendant has not sufficiently addressed the issue of whether the plaintiffs could have brought this action originally in the Western District of Virginia. The defendant has not shown that the district court in the Western District of Virginia would have had personal jurisdiction over him, at the time the suit commenced, regardless of whether he consented to such jurisdiction. Although counsel for the defendant argued at the motion hearing that the defendant regularly conducts business in Virginia under the ICC, and thus that Virginia's jurisdiction over him is "obvious," the defendant has not analyzed Virginia's long-arm statute or the due process requirements of personal jurisdiction sufficiently to demonstrate that the plaintiffs had an absolute right to sue him in Virginia.

The defendant further contends that this case should be transferred to the Western District of Virginia because he is already being sued there by other Connecticut prisoners. He indicates that he has accepted service of other complaints and has defended other actions in the Western District of Virginia, and thus he should be permitted to litigate this case in that district. However, it appears that the defendant consented to personal jurisdiction in Virginia in the other cases. The defendant concedes that no court has previously determined he is subject to personal jurisdiction in Virginia, because he never challenged such jurisdiction. And, as indicated, the

defendant's consent to jurisdiction in the other cases, and any agreement by the defendant in this case to waive any service of process or personal jurisdiction defenses to proceeding in the Western District of Virginia, may not be considered by the Court in resolving the motion to transfer. See *Blaski*, 363 U.S. at 343–44.

*3 Accordingly, although the defendant may ultimately be subject to personal jurisdiction in the Western District of Virginia, he has failed to establish such jurisdiction sufficiently to satisfy the first requirement for transfer under § 1404(a). The motion to transfer is therefore denied.

B. Convenience and Interest of Justice

The motion to transfer is also denied for failure of the defendant to satisfy his burden of making out a strong case for a transfer under the second requirement of § 1404(a).

In determining whether transfer is warranted for the convenience of the parties and witnesses and in the interest of justice, courts generally consider several factors including the convenience of the witnesses, the location of relevant documents and the relative ease of access to sources of proof, the convenience of the parties, the locus of the operative facts, the availability of process to compel the attendance of unwilling witnesses, the relative means of the parties, the forum's familiarity with the governing law, the weight accorded the plaintiff's choice of forum, and trial efficiency and the interest of justice, based on the totality of the circumstances.

Wilshire Credit Corp., 976 F.Supp. at 181 (citations and quotation marks omitted). "However, it is almost a truism that a plaintiff's choice of a forum will rarely be disturbed unless the balance of convenience is strongly in favor of the defendant." *Jackson v. District of Columbia*, 89 F.Supp.2d 48, 52–53 (D.D.C.2000) (internal quotation marks and alterations omitted). This is particularly so where a plaintiff is a resident of his or her chosen forum. See *Wilshire Credit Corp.*, 976 F.Supp. at 182; see also *Red Bull Assocs. v. Best Western Int'l, Inc.*, 862 F.2d 963, 966–67 (2d Cir.1988) (involving civil rights).

The defendant contends that the following factors clearly favor transfer of this case to the Western District of Virginia: (1) the allegedly unlawful events giving rise to

this case occurred in that district and involved VDOC staff; (2) most if not all of the putative class members are located in Virginia; (3) transferring prisoners between Virginia and Connecticut for the purpose of trial would create significant staffing and security problems for the VDOC; (4) the geographic distance between Virginia and Connecticut is vast; (5) the VDOC has video-conferencing capabilities to facilitate a trial in Virginia; (6) the defendant and other CDOC officials are willing to travel to Virginia for trial; (7) most if not all other witnesses, including other inmates and corrections officials, are located in Virginia; (8) non-party witnesses in Virginia would not be subject to service of process in Connecticut; (9) all documentary evidence, including incident reports, logbooks, and medical reports, are located in Virginia; (10) the plaintiffs' choice of forum in Connecticut bears no material relationship to the alleged constitutional violations; (11) the plaintiffs are represented, in part, by the ACLU's National Prison Project in Washington, D.C., which is closer to Virginia than Connecticut; (12) plaintiffs' counsel may be admitted *pro hac vice* to practice law in the Western District of Virginia; (13) the ICC requires that all disputes between Virginia and Connecticut be litigated in Virginia courts under Virginia law; and (14) federal constitutional standards of cruel and unusual punishment are necessarily the same in all federal district courts.³ Thus, the defendant contends, permitting this action to proceed in Connecticut would be unnecessary and inconvenient for the Court and the parties, including many of the parties' witnesses, and generally unfair to the defendant who would be forced to defend the action in his home state but far from the locus of events or evidence relating to the action.

*4 The Court must grant significant deference to the plaintiffs' chosen forum, however. This deference is heightened because the plaintiffs are Connecticut citizens and were convicted, sentenced, and initially incarcerated in Connecticut. There are also several factors indicating this case should proceed in the District of Connecticut, including the following: (1) many of the putative class members have been, and continue to be, transferred back to Connecticut; (2) the transfer of prisoners between Virginia and Connecticut is routine under the ICC, and therefore not unduly burdensome to the CDOC or the VDOC; (3) defendant's counsel and most of plaintiffs' counsel are located in Connecticut; (4) plaintiffs' counsel, who are litigating this case *pro bono*, would not be able to

pursue this case in the Western District of Virginia because of increased costs; (5) the plaintiffs may not be able to retain alternate counsel given their indigent status; (6) the plaintiffs have alleged ongoing harms, which must be addressed without the delay that a transfer to Virginia would create; (7) the ICC requires Virginia and Connecticut to cooperate, thereby reducing any risk that non-party witnesses in Virginia would be unavailable for trial in Connecticut; (8) even if witnesses were unavailable, they could be deposed or testify by video; (9) all documentary evidence will have to be produced to plaintiffs' counsel in Connecticut during discovery, regardless of where the case is tried; and (10) there is no evidence that a trial in Connecticut would otherwise be any more or less convenient than a trial in Virginia.

Having considered the totality of these factors, the Court concludes that this case should proceed in Connecticut rather than in Virginia. Although a Connecticut trial may be inconvenient for the defendant and some of the parties' witnesses, the defendant has failed to satisfy his heavy burden of establishing that the convenience of the parties and witnesses tip decidedly in his favor. *See Jackson*, 89 F.Supp.2d at 52–54 (involving District of Columbia prisoners housed in Virginia pursuant to a contract between the two forums). In addition, because this case alleges serious constitutional violations by the Commissioner of the CDOC against Connecticut citizens in his custody, the interest of justice also requires that this case proceed in Connecticut. *See id*; *Red Bull Assocs.*, 862 F.2d at 966–67. The motion to transfer is therefore denied on these bases as well.⁴

III. Conclusion

For the preceding reasons, the defendant's motion to transfer [Document # 12] is DENIED.

The parties are directed to submit a joint proposed planning report within two weeks. *See Fed.R.Civ.P.* 16(b), 26(f); D. Conn. L Civ. R. 38. The defendant is also directed to respond to the plaintiffs' complaint and class certification motion within thirty days.

Footnotes

- ¹ The plaintiffs' First Amended Complaint also references Red Onion State Prison, a "supermax" prison located in Pound, Virginia. However, no Connecticut prisoners are currently housed at that facility.
- ² The Court held a hearing on the motion to transfer on May 9, 2001.
- ³ Notwithstanding these allegations, the Court notes that the defendant has failed to provide sufficient evidence to support many of these purported factors favoring transfer. For example, the defendant has not presented any evidence that transferring prisoners

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between Virginia and Connecticut for the purpose of trial would create significant staffing and security problems for the VDOC.

- 4 Any argument by the defendant that the plaintiffs have sued him improperly, and that they should have sued the VDOC officials who allegedly applied excessive force against them, may still be raised in a motion to dismiss or a motion for summary judgment. VDOC officials may also move to join or intervene in this action.