

Taifa v. Bayh

United States District Court for the Northern District of Indiana, South Bend Division

June 28, 1994, Decided ; June 28, 1994, ENTERED

CAUSE No. 3:92-cv-429 AS

Reporter: 1994 U.S. Dist. LEXIS 20514; 1994 WL 821773
KATAZA TAIFA, et al., Plaintiffs, v. EVAN BAYH, et al.,
Defendants.

Counsel: [*1] For KATAZA TAIFA, WILLIAM SAPLEY, MARK S DOUGLAS, KEVIN SANDIFER, JAMES E SHROPSHIRE, JOHN CHARLES COLE, JR, NOLAN MCDANDAL, ROBERT SMITH, ROBERT JENKINS, RICHARD MUMFORD, TILLMAN MORRIS, TERRENCE DRAIN, ERIC MALONE, ALBERT ESTEP, plaintiffs: Richard A Waples, Indiana Civil Liberties Union, 1031 E Washington Street, Indianapolis, IN 46202-3952, (317) 635-4059, FTS 635-4105, Hamid R Kashani, 445 N Pennsylvania Street, Suite 600, Indianapolis, IN 46204-1883, (317) 632-1000. For PAUL KOMYATTI, EDWARD BROADUS, JAMES THOMPSON, MICHAEL HEGWOOD, plaintiffs: Richard A Waples, Indiana Civil Liberties Union, 1031 E Washington Street, Indianapolis, IN 46202-3952, (317) 635-4059, FTS 635-4105, Hamid R Kashani, 445 N Pennsylvania Street, Suite 600, Indianapolis, IN 46204-1883, (317) 632-1000, Franklin A Morse, II, Indiana Civil Liberties Union, PO Box 6787, South Bend, IN 46660, 219-272-3086. For AARON ISBY, plaintiff: Richard A Waples, Indiana Civil Liberties Union, 1031 E Washington Street, Indianapolis, IN 46202-3952, (317) 635-4059, FTS 635-4105, Aaron Isby, 892219, SCC-MAXIMUM, Maximum Control Complex, P.O. Box 557, Westville, IN 46391, Hamid R Kashani, 445 N Pennsylvania Street, Suite 600, [*2] Indianapolis, IN 46204-1883, (317) 632-1000, Franklin A Morse, II, Indiana Civil Liberties Union, PO Box 6787, South Bend, IN 46660, 219-272-3086. For MICHAEL HOLLAND, plaintiff: Richard A Waples, Indiana Civil Liberties Union, 1031 E Washington Street, Indianapolis, IN 46202-3952, (317) 635-4059, FTS 635-4105, Michael Holland, 71940, unknown, Hamid R Kashani, 445 N Pennsylvania Street, Suite 600, Indianapolis, IN 46204-1883, (317) 632-1000. For ROOSEVELT WILLIAMS, plaintiff: Richard A Waples, Indiana Civil Liberties Union, 1031 E Washington Street, Indianapolis, IN 46202-3952, (317) 635-4059, FTS 635-4105, Roosevelt Williams, 4052, SCC-MAXIMUM, Maximum Control Complex, P.O. Box 557, Westville, IN 46391, Hamid R Kashani, 445 N Pennsylvania Street, Suite 600, Indianapolis, IN 46204-1883, (317) 632-1000. For JOSEPH PHILLIPS, plaintiff: Hamid R Kashani, 445 N Pennsylvania Street, Suite 600, Indianapolis, IN 46204-1883, (317) 632-1000. For CARL L JOHNSON, plaintiff: Carl L Johnson, 10039, SCC-MAXIMUM,

Maximum Control Complex, P.O. Box 557, Westville, IN 46391. For DYRONE HENDERSON, plaintiff: Dyrone Henderson, 856509, SCC-MAXIMUM, Maximum Control Complex, P.O. Box 557, Westville, IN 46391. [*3] For JIMMY MOORSON, plaintiff: Jimmy Moorson, DOC unknown, SCC-MAXIMUM, Maximum Control Complex, P.O. Box 557, Westville, IN 46391. For JEBEREKIAH ELEAZAR KELUBAI aka Leroy R Jeffers, plaintiff: Jeberekiah Eleazar Kelubai, #28668, SCU-WESTVILLE, Westville Correctional Center, P.O. Box 473, Westville, IN 46391, (219) 785-2511, Franklin A Morse, II, Indiana Civil Liberties Union, PO Box 6787, South Bend, IN 46660, 219-272-3086. For KENNETH PORTER, plaintiff: Kenneth Porter, #872854, SR-INDIANA-30, Indiana Reformatory, P O Box 30, Pendleton, IN 46064. For TOME L HAILEY, plaintiff: Tome L Hailey, 862512, SR-INDIANA-30, Indiana Reformatory, P O Box 30, Pendleton, IN 46064. For CHRISTOPHER MICHAEL MISER, plaintiff: Christopher Michael Miser, 861863, SPR-INDIANA, Indiana State Prison, P.O. Box 41, Michigan City, IN 46360. For ANDREW BENROY JOHNSON, plaintiff: Andrew Benroy Johnson, 884337, SCC-MAXIMUM, Maximum Control Complex, P.O. Box 557, Westville, IN 46391. For ROOSEVELT WILLIAMS, plaintiff: Roosevelt Williams, 4052, SCC-MAXIMUM, Maximum Control Complex, P.O. Box 557, Westville, IN 46391.

For EVAN BAYH, in his individual and official capacity as Governor of the State of Indiana, [*4] JAMES E AIKEN, in his individual and official capacity as Commissioner of the Indiana Department of Correction, NORMAN G OWENS, in his individual and official capacity as Director of the Classification Division of the Indiana Department of Correction, JOHN NUNN, in his individual and official capacity as Deputy Commissioner of Operations of the Department of Correction, CHARLES E WRIGHT, in his individual and official capacity as Director of the Maximum Control Complex of the Indiana Department of Correction, defendants: Wayne E Uhl, 317-232-6333, Suzann W Lupton, Office of the Indiana Attorney General, IN Government Center S Fifth Floor, 402 W Washington, Indianapolis, IN 46204-2770, 317-232-6195.

Judges: Allen Sharp, Chief Judge, United States District Court

Opinion by: ALLEN SHARP

Opinion

ORDER

This cause is presently before the court on a "Motion to Enter Civil Contempt" filed on June 10, 1994, by Mark Marandola. The court notes that Mr. Marandola is neither a class representative nor counsel.

It is well-established that "individual suits for injunctive and equitable relief from alleged unconstitutional prison conditions cannot be brought where there is an existing class action." [*5] McNeil v. Guthrie, 945 F.2d 1163, 1165 (10th Cir. 1991); Gillespie v. Crawford, 858 F.2d 1101, 1103 (5th Cir. 1988); Groseclose v. Dutton, 829 F.2d 581 (6th Cir. 1987); Green v. McKaskle, 770 F.2d 445 (5th Cir. 1985); Goff v. Menke, 672 F.2d 702 (8th Cir. 1982); Bryan v. Werner, 516 F.2d 233, 239 (3d Cir. 1975); Tetzlaff v. Swinny, 678 F. Supp. 812, 813 (D. Nev. 1987); Reese v. Chicago Police Dept., 602 F. Supp. 441 (N.D. Ill. 1984). Claims for equitable relief must be made either through the class representative or by intervening in the class action. McNeil, 945 F.2d at 1166; Harper v. Thomas, 988 F.2d 101, 104 (11th Cir. 1993); Ravarde v. State of Mo., 930 F.2d 641, 643 (8th Cir. 1991); Long v. Collins, 917 F.2d 3, 4-5 (5th Cir. 1990); Goff, 672 F.2d at 704; Rivera v. Pelican Bay State Prison, 1993 U.S. Dist. LEXIS 16966 (N.D. Ca. Nov. 16, 1993); Reed v. Richards, 1992 U.S.

Dist. LEXIS 1166 (N.D. Ind. Jan. 30, 1992); Byrd v. O'Grady, 1990 U.S. Dist. LEXIS 9442 (N.D. Ill. July 26, 1990).

In the present case, Mr. Marandola has not sought to intervene and there is nothing to suggest that his interests are not adequately [*6] represented by existing parties and counsel for the class. See Ragsdale v. Turnock, 941 F.2d 501, 5014 (7th Cir. 1991); see also Arney v. Finney, 967 F.2d 418, 421-22 (10th Cir. 1992). Under these circumstances, Mr. Marandola had no right to file and pursue a motion for contempt or otherwise seek enforcement of the Agreed Entry in this case. If Mr. Marandola wishes to seek enforcement of the Agreed Entry, he must proceed through class counsel. Mr. Marandola should be advised, moreover, that class counsel are under a duty to exercise their own professional judgment in representing the interests of the class.

Accordingly, Mr. Marandola's "Motion to Enter Civil Contempt" filed on June 10, 1994, is **DENIED. SO ORDERED.**

Dated this 28th day of June, 1994.

Allen Sharp

CHIEF JUDGE

UNITED STATES DISTRICT COURT