

Entered 5-9-95

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

MAY - 4 1995

COLUMBIA DIVISION

LARRY W. PROPPES, CLERK
FLORENCE, S. C.

HARRY PLYLER, et al.,)
)
Plaintiffs,)
)
vs.)
)
MICHAEL W. MOORE,)
Director, South Carolina)
Department of Corrections,)
)
Defendant.)

Civil Action No.:82-876-2

ORDER

This matter comes before the court on defendant's petition filed May 13, 1994, for a ruling that the South Carolina Department of Corrections' (hereinafter "SCDC") policies and practices regarding four-point restraints are consistent with the 1985 Consent Decree (hereinafter "Nelson Decree" or "Decree"); and for a modification of the Decree to allow SCDC the discretion to use four-point restraints for inmate control, so long as no unconstitutional use of the device is made.

It appears to the court the parties have resolved this matter by "Memorandum Agreement To Modify Decree," dated May 1, 1995. (See attached). The parties wish to add paragraphs (A) - (E) to section III, P(4) of the Nelson Decree and incorporate same into the Decree by reference.

The proposed addition is:

(A) Subject to the conditions listed below in paragraphs, P(4)(B-E), and the determination that use of Four-point-restraints will not threaten the health of the inmate, four-point-restraints may be used in the

#1
COH,



event that an inmate throws urine or feces at correctional staff. In any instance in which four-point-restraint is used, the substance thrown by the inmate must be reasonably determined to contain urine or feces by the unit supervisor, or by a deputy warden or higher official if the unit supervisor was the victim of the assault.

(B) In every instance in which an inmate throws human waste and is subject to sanction under this Modification Agreement, the inmate must be offered social work counseling to determine the reason for the inmate's actions. If, in the opinion of the social worker, the actions of the inmate were occasioned by misconduct of the correctional staff, an investigation by the Ombudsman or Internal Affairs will be initiated into the staff conduct and appropriate disciplinary action taken by the agency. The results of such investigation, whether founded or unfounded, shall be reduced to writing and provided to Plaintiffs' counsel.

(C) On the first occasion in which an individual inmate throws human waste, the security staff will use less intrusive punishment measures such as window flap closure and cup restrictions.

(D) In the event that the staff has complied with A-C above, four point restraints may be used in the following manner:

Second event	Four point restraints authorized for 2 hours immediately following the throwing of human waste
Third and subsequent events	Four point restraints authorized for up to four hours immediately following the throwing of human waste

(E) In the event that nursing staff is not on duty to observe and evaluate the restrained inmate at fifteen (15) minute intervals as required, and the lack of such staff does not violate the other terms of the Consent Decree, correctional staff with written certification of training by the medical staff in performing this function will be responsible for such observation and evaluation.

The General Principles section of the Nelson Decree allow for modification of the decree on petition of any party with court approval. Nelson Decree §(II B). Furthermore, Federal Rule

#2
CWH.

of Civil Procedure 23 (e) requires notice of the proposed compromise to be given to all members of the class in such manner as the court directs as well as court approval.

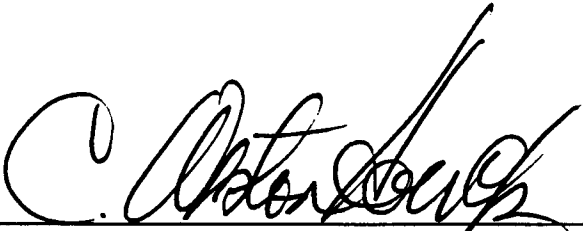
Therefore, notice shall be given to the members of the plaintiff class in the following particulars to wit:

(1) The "Memorandum Agreement To Modify Decree" shall be prominently posted in all institutions of the South Carolina Department of Corrections in areas which the inmates have access.

(2) The "Memorandum Agreement To Modify Decree" shall be published in The State Newspaper at least once a week for three consecutive weeks, commencing on or about May 15, 1995.

(3) The defendant shall bear the costs associated with providing notice to the plaintiff class.

AND IT IS SO ORDERED.



C. WESTON HOUCK
CHIEF UNITED STATES DISTRICT JUDGE

May 4, 1995
Florence, South Carolina

#3
COH

worker, the actions of the inmate were occasioned by misconduct of the correctional staff, an investigation by the Ombudsman or Internal Affairs will be initiated into the staff conduct and appropriate disciplinary action taken by the agency. The results of such investigation, whether founded or unfounded, shall be reduced to writing and provided to Plaintiffs' counsel.

(C) On the first occasion in which an individual inmate throws human waste, the security staff will use less intrusive punishment measures such as window flap closure and cup restrictions.

(D) In the event that the staff has complied with A-C above, four point restraints may be used in the following manner:

Second event	Four point restraints authorized for 2 hours immediately following the throwing of human waste
Third and subsequent events	Four point restraints authorized for up to four hours immediately following the throwing of human waste

(E) In the event that nursing staff is not on duty to observe and evaluate the restrained inmate at fifteen (15) minute intervals as required, and the lack of such staff does not violate the other terms of the Consent Decree, correctional staff with written certification of training by the medical staff in performing this function will be responsible for such observation and evaluation.

(F) The parties agree that this is the full extent of the modification of Section III, P and that the Defendant shall, in all instances other than the throwing of feces and

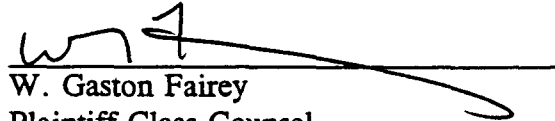
#5
COH

urine, vigorously enforce the original provisions of P(4) to ensure that four-point-restraint is only used for medical purposes, and not for punishment of inmate misconduct.

Signed this the 1st day of May, 1995, in Columbia, South Carolina.

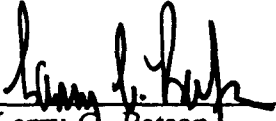


Michael W. Moore
Director, South Carolina
Department of Corrections

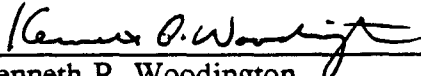


W. Gaston Fairey
Plaintiff Class Counsel

FOR THE PLAINTIFF CLASS



Larry C. Batson
General Counsel, South Carolina
Department of Corrections



Kenneth P. Woodington
Senior Assistant Attorney General

FOR THE DEFENDANT

