IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

HARRY PLYLER, et al.,

Plaintiffs,

vs.

MICHAEL W. MOORE, Director, South Carolina Department of Corrections,

Defendant.

CIVIL ACTION NO. 82-876-2

ORDER

Post-it® Fax Note 7671	Date 6/27/96	# of pages ▶ 9
To John Boston	From Gaston Fairey	
Co./Dept.	Co.	
Phone #	Phone # (803) 252-7666	
Fax # (212) 732-6003	Fax # (803) 254-5759	

This is a class action lawsuit instituted by inmates held in the prisons maintained by the South Carolina Department of Corrections to challenge the conditions existing in said institutions as constituting cruel and inhuman punishment in violation of the Eighth Amendment to the Constitution of the United States. On January 8, 1985, the parties signed a consent decree settling virtually all of the issues raised in the case. On March 26, 1986, this court entered an order approving said consent decree, and the prisons of this state have operated thereunder since that time.

On April 26, 1996, the President of the United States signed into effect P.L. 104-134, and the defendant on May 8, 1996, moved pursuant thereto for the court to terminate the consent decree approved by this court on March 26, 1986. The plaintiffs oppose that motion. After receiving memoranda from all parties supporting their positions and hearing oral arguments, on June 4, 1996, the

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137

court granted the defendant's motion and ordered that the consent decree in this case be immediately terminated. The plaintiffs have appealed that order to the Fourth Circuit Court of Appeals and now move, pursuant to Rule 62(c) of the Federal Rules of Civil Procedure, for an order staying the effect thereof pending a decision on said appeal. The defendant has filed his opposition to the stay, and the court has given careful consideration to the position of both parties. The matter is ripe for decision.

Rule 62(c) provides in pertinent part that:

> When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party...

The case of Virginia Petroleum Job. Ass'n v. Federal Power Com'n., 259 F.2d 921 (D.C. Cir. 1958), is recognized as the leading authority on the application of Rule 62 (c), and the Fourth Circuit Court of Appeals adopted the legal principles espoused therein as the law of this circuit. Long v. Robinson, 432 F.2d 977 (1970). In doing so the court said that a party seeking a stay under said rule must show the following:

> (1) that he will likely prevail on the merits of the appeal
>
> (2) that he will suffer irreparable injury if the stay is denied,
>
> (3) that other parties will not be substantially harmed by the stay, and

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(4) that the public interest will be served by granting the stay.

Id. at 979.

Despite the clarity with which the rule is stated there has been confusion as to its application. Both Long and Virginia Petroleum have been interpreted as requiring a party seeking a stay under Rule 62(c) to first make a strong showing of probable success on appeal. It now seems clear, however, that said "strong showing" rule is the appellate rule and not the one to be applied by this court. The Fourth Circuit Court of Appeals case of Blackwelder Furniture Co. v. Seilig Manufacturing Co., 550 F.2d 189 (4th Cir. 1977), involved an appeal from a district court order refusing to grant a preliminary injunction under Rule 65(a) of the Federal Rules of Civil Procedure. It reversed because the district court in applying the four prong test quoted hereinabove "reasoned that a single adverse determination on any of the four questions would be fatal to the movant." Id. at 193. In its opinion the court referred to Long as setting forth an appellate rule to be applied on appeal of a district court ruling on a motion to stay pending appeal. It then enunciated the proper district court test for consideration of a Rule 65(a) motion for preliminary injunction. The strong, if not inescapable, inference therefrom is that the Fourth Circuit held not only that Long sets forth an appellate rule but that the proper district court standard for deciding a motion to stay pending appeal is the balance-of-hardship test outlined in Blackwelder. The court appeared to reaffirm that position in Ft. Sumter Tours, Inc., v. Andrus, 564 F.2d 1119 (4th Cir. 1977),

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where it made the following statement:

> Blackwelder also holds that the test is different when a reviewing court is asked to stay a decision of a district court ... pending review on the merits. The principal difference is the need of the applicant to make a strong showing that he is likely to prevail on the merits.

Id. at 1124 N. 7.

The rule applicable to the inquiry now before this court applies the same four factors as Long but shifts the initial focus from "likelihood of success" to a comparison of the likelihood of irreparable harm to the plaintiff if the stay is denied and the likelihood of harm to the defendant if the stay is granted. Next, the court considers as the third factor the likelihood that the plaintiff will succeed on the merits with the importance given to that consideration being directly related to the amount of irreparable harm to be suffered by the plaintiff. Lastly, the court weighs the public interest.

Likelihood of Irreparable Harm to the Plaintiff If The Stay is Denied

When the settlement embodied in the consent decree was agreed upon, the plaintiff class and representatives of the State of South Carolina both expressed their opinion that the agreement was fair. As the years have passed, however, it has become more and more evident that the defendant thinks it made a bad deal. In addition, the court has become convinced that the benefits obtained by the plaintiffs in the consent decree probably exceed what the Constitution guarantees.

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The consent decree has now been terminated, and the protection it has provided plaintiffs for more than ten years are, at least for the time being, gone. The defendant is free to roll back all of the beneficial improvements that plaintiffs have received as a result of the decree. No one but defendant knows exactly what his plans are, but it is very unlikely that conditions at the prisons will remain the same. It seems almost inevitable that change will be made and that the same will in many instances worsen the living conditions now endured by plaintiffs. For every such change many of the plaintiffs will be irreparably harmed. It is true that they can sue, but that itself is less desirable than simply receiving the benefits provided by the consent decree without having to bring another lawsuit. In addition, it would take years to obtain injunctive relief, and, to the extent that the consent decree provides greater benefits than the Constitution, the difference is irreparably lost to plaintiffs. As for money damages, the chances of the plaintiffs' recovery of the same at some later date is very questionable. The State of South Carolina is immune from the same, and any individual defendants sued would probably be successful in asserting a defense of qualified immunity. Under the circumstances, therefore, this court is clearly convinced that its failure to grant the plaintiffs' motion for a stay will cause many of the plaintiffs to suffer irreparable harm.

Likelihood of Harm to the Defendant if the Stay is Granted

The defendant asserts that he has a strong desire to have the prisons of the State of South Carolina accredited by the American

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Correctional Association and plans to make a number of improvements to the operations and administration of the prison system. He claims that a stay will postpone said actions and cause him substantial harm. The nature and extent of that harm is not described, but it is clear to the court that any harm suffered by the defendant because of the type delay envisioned here, is, at best, minimal. When balanced against the likelihood of irreparable harm to be suffered by the plaintiffs if the stay is denied a decided imbalance of hardship in favor of the plaintiffs exists.

Likelihood that the Plaintiff Will Succeed on the Merits

If the court applies this prong of the test literally, it must be decided against the plaintiffs. The court remains convinced that its June 4, 1996, decision to terminate the consent decree was a sound one that will not be overturned on appeal. Under existing case law, however, the court is not required to apply a literal test. Instead, the rule as stated by the Fourth Circuit on page 195 of Blackwelder is as follows:

> ...if a decided imbalance of hardship should appear in plaintiff's favor, then the likelihood-of-success test is displaced by Judge Jerome Frank's famous formulation:
>
> [I]t will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them fair ground for litigation and thus for more deliberate investigation.

Though the court is of the opinion that the plaintiffs will

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probably not prevail on appeal, they have raised questions therein sufficient to meet the likelihood of success test applicable in this case.

The Public Interest

It is very difficult to clearly define what is in the public interest in this case. The argument made by the defendant in his memorandum appears at first blush to be very sensible. He asserts that, because of its representative capacity, when Congress speaks it expresses the public interest. In passing the law pursuant to which this court terminated the consent decree Congress, therefore, expressed the public's desire to do away with such consent decrees as expeditiously as possible.

There can be no question but that Congress has expressed the desire to do away with consent decrees in cases such as this, but that is not the only time Congress has spoken to this court. Its passage of the Speedy Trial Act and its adoption of the United States Sentencing Guidelines and almost all of the procedural rules of this court are just three examples of the clear expression of Congress' desire for the fair and expeditious administration of justice within the federal court system. In determining what the public interest is in this matter we must be sure to listen to Congress' expression of the same, but we must be certain that we not listen to one of Congress' statements to the detriment of other statements of equal importance.

In considering this prong of the test it appears to the court that the best approach is to look at the matter from a practical

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standpoint and examine what the real impact of the termination of the consent decree is outside the walls of South Carolina's prisons. When we do that, we see clearly that the major impact is on the courts of this state.

Overcrowding has received most of the media attention, but the consent decree deals with many other important areas of confinement such as, health services, visitation, physical restraints, libraries, fire safety and classification. It determines the rights of some 17,000 inmates within the categories covered by its terms. It has caused systems to develop to process complaints and to monitor compliance. It requires inmates to pursue their complaints within the framework of the consent decree and carries a strong prohibition against instituting suits for injunctive relief independent of the plaintiff class. In effect, it relieves this court of being burdened by many claims that inmates assert that their constitutional rights, as covered by the consent decree, are being violated.

When the consent decree is terminated, the structure that it has given in the areas that it covers will no longer exist. Each inmate will then have the right to sue separately for any constitutional violation he claims the State of South Carolina is guilty of. The effect of that change on our federal court system in South Carolina will in all probability be monumental.[1] It could

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[1]When the defendant recently changed the hair policy in the South Carolina prisons, 104 inmates belonging to various religious sects sued in this court claiming their Constitutional rights were being violated by the new clean shaven, short hair policy.

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drastically affect our ability to properly process other cases, criminal and civil, within our jurisdiction, and thereby undermine the public's concern for the fair and expeditious disposition of litigation. It, therefore, appears to this court that it is in the public interest to delay the effect of this court's termination of the consent decree until the Fourth Circuit Court of Appeals and, possibly, the United States Supreme Court have an opportunity to rule on the issues raised by the appeal of the plaintiffs from the court's order of June 4, 1996, and determine with a greater degree of finality the ultimate fate of the consent decree.

Having applied the Blackwelder balance-of-hardship test to the facts of this case, the court concludes that the motion of the plaintiffs to stay its order of June 4, 1996, should be granted.

AND IT IS SO ORDERED.

C. WESTON HOUCK
UNITED STATES DISTRICT JUDGE

June 19, 1996
Florence, South Carolina

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