

U.S. v. Virgin Islands



PC-VI-002-012

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE VIRGIN ISLANDS, DIVISION OF ST. CROIX

UNITED STATES OF AMERICA,
Plaintiff,
v.
VIRGIN ISLANDS: ALEXANDER FARRELLY, GOVERNOR, U.S. Virgin Islands; JAMES E. AIKEN, Director, Bureau of Corrections; KURT WALCOTT, Warden, Golden Grove Adult Correctional Facility;
Defendants.

Civil Action No. 86-265
Honorable Thomas K. Moore

MEMORANDUM IN SUPPORT OF UNITED STATES' MOTION TO LIFT LOCK-DOWN

INTRODUCTION

On December 1, 1986, this Court entered a Consent Decree designed to remedy unconstitutional conditions at the Golden Grove Adult Correctional Facility (hereinafter "Golden Grove") and to ensure that conditions and practices at the facility comply with constitutional standards. Exhibit A. By virtue of a protracted, unlawful lock-down initially imposed on Golden Grove inmates on September 18, 1992, and maintained to date, Defendants are violating the constitutional rights of all inmates incarcerated there. Specifically, Defendants' lock-down subjects inmates to cruel and unusual punishment, violates the Consent Decree because the lock-down is an illegal means of ensuring reasonable security, and violates constitutionally protected rights of inmates to reasonable visitation, meaningful access to

the courts, and exercise of religion. To remedy these constitutional violations, the United States seeks an immediate Order lifting the Golden Grove lock-down.

FACTS

On September 18, 1992, Defendants imposed a lock-down at the Golden Grove prison. This lock-down applies to all prisoners regardless of security risk, and some lock-down restrictions have been in effect for more than one year. While prison officials finally granted inmates one hour of out-of-cell time per day last May, inmates continue to be confined to their cells 23 hours a day. As a result, a blanket denial of inmate visitation rights continues into its second year. Additionally, under the lock-down, prisoners can only get legal materials by requesting that specific titles be sent to their cells. The prison administration has imposed a limit of one book per inmate, and often fails to provide even that in any reasonably timely manner. Finally, there are no religious programs allowed under the lock-down other than occasional visits by a single Pentecostal nun.¹ Despite repeated requests by the United States, the Defendants have failed to provide a specific timetable for lifting these

¹ The United States' most recent information is based in part on a telephone conversation of October 20, 1993 with attorneys of the ACLU National Prison Project. Attorneys visited Golden Grove on October 13 and 14, 1993, and although denied access to the prison (i.e. the inmate housing areas) by Territorial officials, they did conduct private interviews of 28 inmates in a prison administration office. See also, Tyler Treadway and Kay Johnson, V.I. bars ACLU from Golden Grove, The Virgin Islands Daily News, October 14, 1993, p.1.

restrictions. This failure denies inmates their constitutional rights and warrants immediate judicial relief.

ARGUMENT

Generally, the decision to lock down a facility falls within the prison administrators' discretion, but it is equally true that such a decision must bear some rational relationship to a legitimate objective. O'Lone v. Estate of Shabazz, 482 U.S. 342 (1987); Saunders v. Packel, 436 F.Supp. 618 (E.D.Pa. 1977). The United States contends that the continued prisoner lock-down at Golden Grove is illegal and undermines and frustrates the purpose of the consent decree without rationally serving any legitimate goal.

I. The consent decree protects inmates' constitutional rights.

A consent decree should be read in light of its overall purpose. United States v. Reader's Digest Ass'n, Inc., 662 F.2d 955 (3rd Cir. 1981), cert. denied, 455 U.S. 908 (1982). The consent decree at hand is intended to "... ensure that both pretrial detainees and convicted inmates at the [Golden Grove] facility are not being deprived of rights, privileges or immunities secured to them by the Constitution of the United States." See, Exhibit A, p. 3. When Defendants signed the consent decree, they agreed "... that the confinement of inmates at Golden Grove implicate[s] rights, privileges, or immunities of these inmates which are secured and protected by the Constitution of the United States". Id. at 2.

The consent decree also states: "Defendants shall provide such security and staff supervision to protect inmates from wanton and reckless physical violence by other inmates or staff." Id. at 3. Given the overall objective of the consent decree, this provision implicitly must mean that Defendants have to improve security conditions by constitutional means. Yet, Defendants have instead imposed a draconian lock-down in violation of several constitutional standards.

II. Defendants are violating the consent decree and inmates' constitutional rights.

Under the Constitution, inmates have a right to be free from cruel and unusual punishment, to reasonable visitation, to access to legal materials, and the right to practice their religion. The Defendants have maintained the Golden Grove facility in the highly restricted status of "lock-down" for more than one year, and in the process, have violated all of these constitutional guarantees and have engaged in unlawful conduct in an effort to achieve security and safety at Golden Grove in violation of the Consent Decree.

A. The confinement of inmates to their cells for nearly 24 hours per day in grossly inadequate conditions of confinement in violation of their fundamental rights constitutes cruel and unusual punishment.

Housing inmates in their cells nearly continuously in inadequate conditions of confinement such as exist at Golden Grove violates the constitutional rights of prisoners and subjects them to cruel and unusual punishment. The "sound discretion" of prison administrators does not justify the

imposition of restrictive measures disproportionate to the legitimate objective of ensuring safety and security, Rhodes v. Chapman, 452 U.S. 337 (1981), or justify their imposition longer than necessary to ensure security. Saunders v. Packel, 436 F.Supp. 618 (E.D. Pa. 1977) (noting that a lock-down can extend beyond the time of crisis as a precautionary measure, but only for a reasonable period); see also, Jefferson v. Southworth, 447 F.Supp. 179 (D.R.I. 1978).

The facts in Jefferson v. Southworth bear an uncanny resemblance to the situation at hand, and that Court's decision presents guidelines applicable here. Jefferson v. Southworth, 447 F.Supp. 179 (D.R.I. 1978). In Jefferson, prison officials imposed a lock-down at a maximum security facility within sixteen days after a federal court issued an order addressing longstanding problems with conditions at the prison. Id. at 181. This lock-down resulted in the denial of inmate visitation and recreation for more than six months. Id. As is the case at Golden Grove, the prison administration alleged that the lock-down was required to maintain security. Id. at 181-182. The court saw through the administration's obfuscation, and noted that there was no imminent emergency, and the lock-down was "...a classic example of 'overkill'" if it was being used merely to ensure general security. Id. To placate the court, the Jefferson officials also claimed they would end the lock-down as soon as it was possible to do so in an orderly way. Id. However the court found this promise to be meaningless, since the

administration, when pressed, admitted they had no definite plans or deadlines by which they could be counted on to end the lock-down. Id. at 186-187. The Golden Grove prison has been in lock-down for twice the length of time as the lock-down in Jefferson. Moreover, the restrictions at Golden Grove are even broader than the ones in Jefferson, since in Jefferson, at least some inmates were allowed up to eight hours out of their cells. An overextended lock-down devastates the inmates' psychological health, and creates a volatile environment as it leads to "growing 'feelings of anger and hostility on the side of the inmates as well as the guards'". Id. at 185. The expert penologist of the United States who inspected the Golden Grove facility in February, 1993, asserts that the lock-down should have been completely lifted by May 1, 1993. See Declaration of Mr. John Dahm, attached. Defendants have been aware since April 1993 that this has been the United States' position. Yet, six months later Golden Grove officials continue to impose the lock-down on an indefinite basis. This Court should not tolerate such blatant disregard of the Constitution.² More than a decade ago,

² The restrictions at Golden Grove are also more severe than the ones in Bruscino v. Carlson, 854 F.2d 162 (7th Cir. 1988), cert. denied, 491 U.S. 907 (1989). As discussed in Bruscino, The United States Penitentiary in Marion, Illinois is a modern "Alcatraz", and remains in permanent lock-down. Id. at 162-164. Yet even Marion prisoners get seven to eleven hours a week of recreation and time to visit a law library. Id. There is also no suggestion in Bruscino that inmates are generally denied visitation privileges. Even though the Bruscino inmates are the most incorrigible and most dangerous criminals in America, the Marion prison officials recognized that there are differences even among such hardened inmates and gave some more
(continued...)

the Jefferson court spoke to the present when it ordered the lifting of lock-down restrictions and ruled:

The Court cannot permit the defendants to inflict unconstitutional hardships on the great majority of inmates, because they, the defendants, are incapable of remedying the conditions they rely upon to justify their actions. The prisoners cannot be made to suffer unconstitutional deprivations because of the lack of management capability found in the Department of Corrections.

Id. at 187.

In sum, the duration of the lock-down at Golden Grove, together with the continuous denial of fundamental constitutional rights as argued below, subjects inmates to cruel and unusual punishment.

B. The long, protracted unlawful lock-down is an illegal means of complying with the consent decree requirement to provide reasonable safety.

The Defendants claim the lock-down helps protect constitutional rights by protecting inmate safety and ensuring institutional security. However, when the Defendants agreed to "...provide such security and staff supervision to protect inmates from wanton and reckless physical violence..." and "...eliminate conditions which pose an immediate threat to life, health and safety of inmates at Golden Grove...",³ no license was granted to permit the Defendants to achieve compliance with its

²(...continued)
privileges than others. Id. at 166-167. Golden Grove on the other hand locks down everyone from pretrial detainees to misdemeanants to murderers, as though they are all of equal security risk and of equal culpability.

³ December 1, 1986 Consent Decree, I.2. & II.

terms by unlawful methods or by simply obliterating the inmates' other constitutional rights with a year-long lock-down.

Ironically, denying inmate rights for such a long period of time may actually jeopardize prison security. For example, federal courts have recognized that visitation plays a critical role in ensuring a humane psychological atmosphere within a prison. See, e.g., Barnes, 415 F.Supp. at 1228-1229 (noting that the difference between a smoothly run institution and one bordering on the edge of riot may depend on small details). By denying visitation and other fundamental rights, the defendants may actually increase emotional tension within the facility and increase the possibility of violence. Id.; see also, Young, 960 F.2d at 363-364 (prolonged, inhumane conditions may jeopardize inmates' physical and mental health); Jefferson v. Southworth, 447 F.Supp. 179 (D.R.I. 1978) (extended lock-down creates psychological problems including dangerous levels of anger and hostility). Visitation from family and loved ones helps inmates adjust to life within a prison and also lets the inmates retain a link to the outside world which will make their transition back to the community easier. Barnes, 415 F.Supp. at 1228-1229. The Defendants have severed such links, depriving inmates of an important pressure valve, their family's emotional support, exercise of religious beliefs -- and violated their constitutional rights.

In sum, the lock-down appears to be Defendants' easy solution to difficult constitutional deficiencies which require a

more serious effort to permanently solve. Yet, rather than being a temporary measure, the lock-down enters its second year. Other Third Circuit courts have admonished defendants who tried to evade their obligations under a consent decree with unconstitutional stop-gap measures, and so should the present court. Inmates of Allegheny County Jail, 612 F.Supp. at 884 (use of city lockup to house female inmates for significant periods of time violated court order that county officials find adequate alternate jail facilities).

C. Defendants are violating the inmates' constitutional right to visitation.

The United States asserts that when Defendants agreed to respect inmates' constitutional rights, they implicitly agreed to retain preexisting inmate visitation. Instead, while still bound by their obligations under the consent decree, the Defendants imposed a lock-down upon the entire Golden Grove facility. As part of this lock-down, Defendants have prohibited visitation for Golden Grove inmates for over a year.

The Constitution guarantees an inmate's right to visitation subject only to reasonable limitations. Thomas v. Brierley, 481 F.2d 660 (3rd Cir. 1973) (denial of visitation may be cruel and unusual punishment); Ali v. Gibson, 483 F.Supp. 1102 (D.V.I. 1979) (asserts in dicta that prisoners have a right to visitation) rev'd. on grounds unrelated to visitation, 631 F.2d 1126 (3rd Cir. 1980), cert. denied, 449 U.S. 1129 (1981); Valentine v. Englehardt, 474 F.Supp. 294 (D.N.J. 1979) (total ban on visitation by children is unconstitutional); Owens-El v.

Robinson, 442 F.Supp. 1368 (W.D.Pa. 1978) (as long as reasonable visitation allowed, form is within province of jail administrators); Tunnell v. Robinson, 486 F.Supp. 1265 (W.D.Pa. 980) (arbitrary denial of visitation is unconstitutional).⁴

Defendants' blanket ban on visitation is arbitrary, and bears no reasonable or rational relationship to legitimate institutional concerns. The courts recognize that denials of inmate rights which are permissible in limited circumstances often become impermissible if imposed for extended periods of time. See e.g., Young v. Quinlan, 960 F.2d 351 (3rd Cir. 1992); Inmates of Allegheny County Jail v. Wecht, 612 F.Supp. 874 (W.D.Pa. 1985); see also, Bell v. Wolfish, 441 U.S. 520, 542 (1979) (overcrowding for extended periods of time may raise Due Process problem). Whatever emergency may have justified the initial lock-down, it cannot possibly justify maintaining the lock-down for more than one year, long after the initial crisis

⁴ Two Supreme Court cases indirectly address the issue as well. In Pell v. Procunier, the Supreme Court upheld limits on visitation by the press. Pell v. Procunier, 417 U.S. 817 (1974); In the process, the Court reasoned that some limitations on visitation are acceptable provided the inmates have adequate alternative channels for communicating with outsiders. Id. at 823-827. The Court specifically pointed to the ameliorating fact that the prison allowed inmates to have personal contact with family, clergy, and attorneys. Id. The Court also noted that the need for security "... would not permit prison officials to prohibit all expression or communication by prison inmates ...", although it might "... justify the imposition of some restrictions on the entry of outsiders for face-to-face contact with inmates". Id. at 827. See also, Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454 (1989) (Kennedy, J., concurring) (noting that a regulation which permanently forecloses visits to some or all prisoners may implicate the Due Process Clause).

should have been solved. Promptly lifting the ban on visitation after addressing the initial crisis and gaining reasonable control of the facility should not have been difficult. As this court once noted, "Prison officials should take advantage of reforms such as increased visitation which constitute good therapy but do not require an undue amount of effort on their part." Barnes v. Government of Virgin Islands, 415 F.Supp. 1218 (D.V.I. 1976). Yet amazingly, Golden Grove claims to be incapable of providing such a basic right. It is probably impossible to find any other example where a facility's entire inmate population has been denied all visitation (excepting with attorneys), whether contact or non-contact, for no specific reason, and for such a long period of time. Such a blanket ban is patently unconstitutional.

Moreover, visitation by itself surely cannot pose such a grave security threat so as to warrant a one-year prohibition, or there would be such prohibitions constantly imposed by virtually every prison in the United States.

D. Defendants are violating the inmates' constitutional right of access to legal materials.

The Supreme Court has held that prison inmates have a right to adequate law libraries or assistance from persons trained in the law. Bounds v. Smith, 430 U.S. 817 (1977). Since initiation of the lock-down, Golden Grove inmates have had virtually no access to legal materials, and consequently, have been denied meaningful access to the courts. The prison's current lock-down policy does apparently allow for provision of one law book at a

time to any inmate who requests a specific title. Evidence indicates that even this policy -- however inadequate -- is not being consistently implemented. In addition, those books actually produced by Defendants are not provided until several weeks after they were requested.

E. Defendants are violating the inmates' constitutional right to practice religion.

Religious programs at Golden Grove are constitutionally inadequate. The prison's only religious program apparently is an occasional visit by a Pentecostal nun. The rest of the time, the lock-down and ban on visitation means prisoners must stay within their cells, where there is no opportunity to practice their religion with other members of their faith, including clergy.

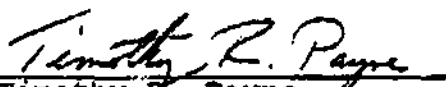
The Constitution protects inmates' right to the free exercise of religion, subject only to the prison's legitimate penological interests. O'Long v. Estate of Shabazz, 482 U.S. 342 (1986); see also, Pell, 417 U.S. at 824-825 (visitation from clergy constitutes significant channel of communication). The Defendants cannot offer a legitimate reason for depriving Golden Grove inmates of all religious programs for more than one year. As already discussed, the need to ensure institutional security cannot justify arbitrary and prolonged violation of constitutional rights. See, Young, 960 F.2d 351. The Pentecostal nun has apparently tended to some of the inmates' religious needs without creating any significant problems, and there is no reason to believe other clergy cannot do the same.

CONCLUSION

Therefore, the United States Government, Plaintiff in this case, requests that the court enforce the December 1, 1986 consent decree by - (1) lifting the lock-down at the Golden Grove Adult Correctional Facility, (2) order the Defendants to provide meaningful visitation, access to legal materials, and religious programs, and (3) grant any necessary additional relief.

Hugh P. Mabe III
United States Attorney
District of the Virgin Islands

James P. Turner, Acting
Assistant Attorney General
Civil Rights Division


Timothy R. Payne
Senior Trial Attorney
Special Litigation Section
Civil Rights Division
P.O. Box 66400
Washington, D.C. 20532
202/514- 6441

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF THE VIRGIN ISLANDS; DIVISION OF ST. CROIX

UNITED STATES OF AMERICA,

Plaintiff,

v.

VIRGIN ISLANDS: ALEXANDER
FARRELLY, GOVERNOR, U.S. Virgin
Islands; JAMES E. AIKEN,
Director, Bureau of Corrections;
KURT WALCOTT, Warden, Golden
Grove Adult Correctional Facility;

Defendants.

Civil Action No. 86-265

Honorable Thomas K. Moore

ORDER

This Court has reviewed the United States' Motion to Lift Lock-down, and the materials filed in support thereof, namely the Memorandum in Support of United States' Motion to Lift Lockdown, and the affidavit of John J. Dahm, exhibits, and being fully advised of the premises, including oral argument presented by both parties, and the Defendants' response to the motion.

Accordingly,

Defendants are ORDERED to lift the lock-down at Golden Grove Adult Correctional Facility and:

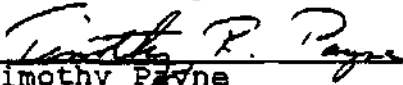
- 1) Provide inmates with meaningful opportunities for visitation.
- 2) Provide inmates with meaningful access to legal materials.
- 3) Provide inmates with meaningful opportunity to practice their religion.

4) Provide reasonable safety and security to all inmates.
Defendants shall fully comply with this order within 10
days.

Done and Ordered this ____ day of December, 1993, at St.
Croix, Virgin Islands.

United States District Judge

Presented by:


Timothy Payne
Attorney for Plaintiff
U.S. Dept. of Justice
Civil Rights Division
Special Litigation Section

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF THE VIRGIN ISLANDS, DIVISION OF ST. CROIX

UNITED STATES OF AMERICA,

Plaintiff,

v.

VIRGIN ISLANDS: ALEXANDER
FARRELLY, GOVERNOR, U.S. Virgin
Islands; JAMES E. AIKEN,
Director, Bureau of Corrections;
KURT WALCOTT, Warden, Golden
Grove Adult Correctional Facility;

Defendants.

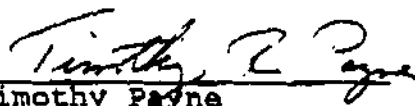
Civil Action No. 86-265

Honorable Thomas K. Moore

CERTIFICATE OF SERVICE

I hereby certify that the foregoing United States' Motion to Lift Lock-down, Memorandum in support of United States' Motion to Lift Lock-down, Order, and supporting documents were mailed by regular mail, postage prepaid, this 7th day of December, 1993 to the following counsel of record.

Darlene Grant, Esquire
Department of Justice
U.S. Virgin Islands
488-50C Kronprindsens Gade
GERS Complex, 2nd Floor
Charlotte Amalie
St. Thomas, Virgin Islands 00802


Timothy Payne
Attorney for Plaintiff
U.S. Dept. of Justice
Civil Rights Division
Spec. Litigation Section
P.O. Box 66400
Washington D.C. 20035