In the Marion Superior Court
Civil Division Room 5

State of Indiana)
)
County of Marion) SS: 2011
)
Bro Khalfani Malik Khaldun)
(Leonard McQuay #874304)
Plaintiff) (Plaintiff's Declaration)
Vs.)
) Civil Action Cause No.
Stanley Knight et al) _____
Defendants) _____
)

Declaration in support of Plaintiff's Motion for a Permanent Restraining Order And Permanent Injunction

1) I am plaintiff in this cause, and I make this declaration in support of my civil complaint against the defendants, and my motion for a permanent restraining order and injunction to ensure that I am no longer subjected to indefinite conditions of confinement on department wide administrative segregation at Wabash Valley Correctional Facility special confinement unit (SCU).
2) As set forth in this complaint in this case, this plaintiff has spent 16 or more years in segregation inside the Indiana Department of Corrections. He has been housed at the WVCF, held on this special confinement unit since January 2003. This confinement has deprived plaintiff of contact visitation with his children, family and friends. The visits went from non-contact behind the glass to monitored visits, an unwarranted hardship on those that love me, and who have committed no crime or vilated prison rules. I am forced to remain in my cell 23-4 hours a day. My food is delivered to me by staff three times a day. I am escorted on a dog leash whenever I leave my cell.
3) Plaintiff has completed all active programs that have been available inside the SCU per executive directive #09-48 policy for the Actions, Consequences, and Treatment Program (ACT). I entered this program by signing the necessary paperwork on June 23, 2009. This is a one-year program whose goal is to promote positive and responsible behavior, and also to re-integrate the prisoners back into general population. The program has five phases. I received 13 certificates for completing: substance abuse education, stress management, anger management, commitment to change, prison life skills, parenting, cage your rage, rage, recidivism, recovery, prison

life skills II, houses of healing, inside/outside dads, and bridging the gap. Once I graduated with honors, I was NOT released to general population. Instead the defendants placed me on department wide administrative segregation, a placement likely to be indefinite.

4) Plaintiff is currently on such confinement per policy 02-01-111: The use and operation of adult offender administrative segregation. This policy is very detailed and describes the operation of this unit. It also clearly defines who is admitted to this unit. But what this policy fails to do is outline a specific date of release. Without having a cut-off point this ultimately leads to many prisoners being held on indefinite segregation. This unit is windowless, with minimum contact, and I must be handcuffed and shackled every time I leave my cell. This form of segregation constitutes an atypical and significant hardship in relation to the ordinary incidents of prison life.
5) Plaintiff's only view of the outside world is through a mesh roof of the recreation. Also, I am escorted to another area where 8 individual cages exist, every other day, which is equivalent to a dog cage for one hour recreation. The deprivation existing on this unit is extreme both in degree and duration. An indeterminate term of segregation in this SCU (Special Confinement Unit) suggests sufficient severity to implicate procedural due process protections. I have suffered a form of segregation that is far worse than the conditions experienced by the typical prisoner.
6) Plaintiff has been held in segregated confinement now for 16 years. He has been out of the general population since December 1994. He was transferred from the "Supermax" control unit in Westville, IN to WVCF and assigned to the special confinement unit, where he has been housed since 2003. I believe that status absent misconduct is not enough under these circumstances. I feel that continues segregation should be based solely on actual behavior, because attempting to use predictive criteria based on subjective information has led historically to unsatisfactory and possibly indefensible results.
7) I (Brother Khalfani Malik Khaldun) Leonard McQuay #874304, do hereby affirm under the penalty for perjury pursuant to I.C. 35-44-2-1 that the foregoing representations are true and correct to the best of my knowledge and belief.

Bro. Khalfani Malik Khaldun #874304
Leonard McQuay A-1205
PO Box 1111
Carlisle, IN 47838

In the Marion Superior Court Civil Division Rm 5

State of Indiana)
) SS:
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2011

Brother Khalfani Malik Khaldun)
(Leonard McQuay) #874304)
)
)
Vs) Memorandum of Law
)
) Civil Action No _____
Stanley Knight, et al)
Defendants)

Memorandum of law in support of a permanent restraining order and permanent injunction

This is a civil rights action brought under 42 USC 1983, to expose the practices of the defendants in this cause from assigning plaintiff to "indefinite segregation." Plaintiff has been subject to atypical and significant hardships, being isolated in segregation for nearly 17 years.

Plaintiff seeks a permanent restraining order and permanent injunction to stop defendants from warehousing him in what appears to be permanent indefinite administrative segregation.

Each defendant has a significant role in the assignment of plaintiff to indefinite administrative segregation.

Plaintiff's Argument Point One

In determining whether a party is entitled to a permanent injunction, or a permanent retraining order, courts generally consider several factors: 1) whether the party will suffer irreparable harm or injury; 2) The "balance of hardships" between parties; 3) the likelihood of success on the merits; and 4) the public's interest. Each of these factors favors the granting of this motion.

1) The plaintiff is threatened with irreparable harm:
   The plaintiff contends that the defendants have and continue to assign him segregated confinement on department-wide administrative segregation on a status meant to be indefinite. It is clear that plaintiff being permanently assigned thus suffers a loss of liberty much more severe than that experienced by a prisoner in general population. Spain v Procunier, 408 F. Supp. 534 (N.D. Cal 1976); Cluchette v Procunier 328 F. Supp 767 (ND Cal 1979).

Pursuant to defendants administrative and procedural directives/policy (02-01-111): The Use and Operation of Adult Offender Administrative Segregation Units, having no definite release scheduled for prisoners keeping plaintiff on dept. wide admin segregation or in segregation period, constitutes irreparable harm in violation of the eight and fourteenth amendments to the US Constitution, by which these rights are protected.

As a matter of law, continued assignment to an indefinite status by defendants openly expresses their intention toward plaintiff in this action. Per executive directive #09-48, which governs the defendants' Action, Consequences and Treatment program, the objectives and goals for the program are to re-integrate the long-term disciplinary segregation prisoners back into the general population.

Plaintiff completed the program and defendants refused to release him into general population. He is now on "indefinite segregation," with no hope of release to general population.

This violates Article 1 Section 3 of the Indiana constitution clause against cruel and unusual punishment. This clause consists of two elements: 1) objectively whether the injury is sufficiently serious to deprive plaintiff of the minimal civilized measures of life's necessities, and 2) subjectively, whether the prison officials' state of mind was one of "deliberate indifference" to the violation. Boyd v. Anderson, 265 F Supp. 2d 811 (1994), with Wilson v. Seiter, 501 US 294, 111 Sct 2321, 115 L. Ed. 2d. 271 (1991).

2) The Balance of Hardships Favors the plaintiff

In deciding whether to grant restraining orders and permanent injunctions, the court asks whether there is suffering to the non-moving party, if the motion is to be granted. See e.g. Mitchell v. Cuomo, 748 F 2d 804, 808 (2nd Cir 1984); Duran v. Anaya, 642 F Supp. 510, 527 (D.N.M. 1986); AND Washington v. Garcia, 977F Supp. 1067, (S.D. Cal 1997)

In this case the past and present suffering of this plaintiff will continue to thwart his rehabilitative efforts and to rebuild his relationship with family, children and supportive elements within society. Plaintiff's health and mental stability after 17 years in isolation has been impacted by the defendants' actions. Thus the suffering and damage to plaintiff's emotional and psychological state is enormous and yet immeasurable, if the defendants are not restrained form their practices.

Any suffering by the defendants is minimal if any. Under these circumstances, the hardships the plaintiff will suffer are exponentially greater than those the defendants may suffer.

3) The plaintiff is likely to succeed on the merits

The plaintiff has a great likelihood of success on the merits. What the defendants have done, and continue to do violates the plaintiff's clearly established rights both fundamentally and constitutionally, a right not to be assigned to "indefinite" long term department wide administrative isolation. Moreover, not only do defendants retain the ability to end these constitutional violations, they are required to: see Hobbs v. Pennel, 754 F Supp. 1040, 1041, N.6 (D Del. 1991).

Thus the plaintiff is likely to succeed on the purported merits of this complaint because of the strengths of the plaintiff's case overwhelms a showing of fair grounds for litigation, see: Longstreet v Maynard, 961. F2d 845, 903 (10th Cir. 1992), where the likelihood of success is maximized.

4) The relief sought will serve the public interest.

In this case, the granting of relief will serve the public's interest that prison officials obey constitutional mandates and state law. Pratt v. Chicago Housing Authority 848 F 848 F Supp. 794, 796 (N.D. III 1994); Curan v. Anaya, 642 F Supp 510 527 (D.N.M. 1986), stating respect for the law, particularly for public officials responsible for the stae's correctional system, is in itself a matter of the highest public safety and the criminal justice system is in itself a matter of the highest public interest. Id: Duran v. Elrod, 760 F2d 756 760-61 (7th Cir. 1985). Weighing public safety and criminal justice system concerns see also: Llewellyn v. Oakland County Prosecutor's Office, 402 F Supp. 1379, 1379, 1393 (E.O. Mich 1975). The US and Indiana constitutions are the ultimate expression of the public's interest.

Point Two

The plaintiff should not be required to post security. Usually a litigant who obtains an interim injunctive relief is asked to post security (Indiana rules Civil Procedures). However, plaintiff is a pro se litigant who is impoverished or indigent, and therefore cannot post security. The court has the discretion to excuse an impoverished litigant from posting security: Orantes Hernandez v. Smith, 541 F Supp 351, 385 N. 30 (C.O. Cal 1982); and T.L. v Parham, 412 F Supp 112 140 (O.Ga 1976), rev'd on other grounds 442 Us 584, 995 Ct 2493 (1979). Moreover, the relief which the plaintiff seeks will cost, if at all, only minimally, as any functions are the daily functions of the defendants employment requirements.

In light of the suffering and immeasurable damage to the plaintiff, the court should grant the relief requested, ordering defendants to release him to general population without requiring the posting of security.

For the foregoing reasons, the court should grant this motion in its entirety.

Date 2011 Name Leonard McQuay #874304