

# UNITED STATES DISTRICT COURT

Western District of Wisconsin

## JUDGMENT IN A CIVIL CASE

Case No.: OO-C-421-C

June 24 2002

DENNIS E. JONES' EL, MICHA' EL  
JOHNSON, DE'ONDRE CONQUESET,  
LUIS NIEVES, SCOTT SEAL, ALEX  
FIGUEROA, ROBERT SALLIE, CHAD  
GOETSCH, EDWARD PISCITELLO,  
QUINTIN L' MINGGIO, LORENZO  
BALLI, DONALD BROWN,  
CHRISTOPHER SCARVER, BENJAMIN  
BIESE, LASHAWN LOGAN, JASON  
PAGLIARINI and ANDREW COLLETTE,  
and all others similarly situated,

Plaintiffs,

v.

GERALD BERGE JAMES PARISI, LINDA  
TRIPP, VICKI SHARPE, RANDY HEPP,  
TED HARIG, LAURA HARDING, DAVID  
HAUTAMAKI, BRUCE MURASKI, GARY  
R. McCAUGHTRY, and JON LITSCILER,  
Defendants.

This action came for consideration before the court with U. S. District Judge Barbara B. Crabb presiding. The issues have been considered and a decision has been rendered.

## IT IS ORDERED AND ADJUDGED

1. The request of plaintiffs Dennis Jones'el and Micha'el Johnson for leave to proceed in forma pauperis on their claims of interference with access to the courts at Supermax; denial of certain periodicals in violation of the First Amendment; and denial of mail on Saturdays is DENIED pursuant to 28 U.S.C. § 1915(e)(2)(B) for their failure to state a claim upon which relief may be granted.

A copy of this document has been mailed to  
the following:

\_\_\_\_\_  
this 24 day of June 2002 by  
J.M. Dye, Secretary to Judge Crabb

2. The request of plaintiffs Dennis Jones'el and Micha'el Johnson for leave to proceed in forma pauperis on their claim that they did not have access to Muslim programming in violation of the First Amendment is DENIED pursuant to 42 U.S.C. § 1997e(a) for their failure to exhaust their administrative remedies.

3. The request of plaintiff Dennis Jones'el for leave to proceed in forma pauperis on his access to the courts claims against defendants Sharpe, Muraski, Hautamaki and McCaughtry and his Eighth Amendment claim of inadequate shoes, socks and underwear is DENIED pursuant to 28 U.S.C. § 1915(e)(2)(B) for his failure to state a claim upon which relief may be granted.

4. The request of plaintiff Dennis Jones'el for leave to proceed in forma pauperis on his claims of conditions of confinement at Waupun Correctional Institution, inadequate medical treatment at Waupun and Supermax; denial of privacy at Supermax; denial of visitors claim at Waupun; loss of privileges while in segregation at Waupun; and any remaining claims against defendants Laura Harding, David Hautamaki, Gary McCaughtry and Bruce Muraski is DENIED pursuant to 42 U.S.C. § 1997e(a) for his failure to exhaust his administrative remedies.

5. The attached settlement agreement (Exhibit A) is approved by the court with the court's definition of serious mental illness (Exhibit B) and the court-ordered procedures for implementing the definition (Exhibit C) on the finding that the prospective relief approved in the parties' settlement agreement and fleshed out in the order entered herein on April 15,2002 and in the order of June 21,2002, is narrowly drawn, extends no further than necessary to correct the violation of the federal rights at stake and is the least intrusive means necessary to correct the violation of the federal rights.

Approved as to form this 21st day of June, 2002

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BARBARA B. CRABB  
U.S. DISTRICT JUDGE

Judgment is hereby entered.

*JUN 24 2002*

JOSEPH W. SKUPNIEWITZ, Clerk of Court

Date

EXHIBIT A

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WISCONSIN

DENNIS JONES'EL, MICHA'EL  
JOHNSON, DE'ONDRE CONQUEST  
LUIS NIEVES, SCOTT SEAL, ALEX  
EIGUEROA, ROBERT SALLIE, CHAD  
GOETSCH, EDWARD PISCITELLO,  
QUINTIN L'MINGGIO, LORENZO  
BALLI, DONALD BROWN, CHRISTOPHER  
SCARVER, BENJAMIN BIESE, LASHAWN  
LOGAN, JASON PAGLIARINI, and  
ANDREW COLLETTE, on behalf of  
themselves and all others similarly  
situated,

U.S. DISTRICT COURT  
WEST. DIST. OF WISCONSIN

JAN 24 2002

FILED/RECEIVED  
JOSEPH W. SKUPNIEWITZ, CLERK

Plaintiffs,

Case No. 00-C-421-C

v.

JON LITSCHER, in his official capacity;  
GERALD BERGE, in his official and  
individual capacities; and DOES 1 - 100,  
in their official and individual capacities,

Defendants.

**SETTLEMENT AGREEMENT**

**INTRODUCTION:**

Counsel for the Class of Plaintiffs in the Boscobel prison known as Supermax, were appointed by Federal Judge Barbara Crabb on October 10, 2000. The Department of Justice represented the Department of Corrections. Hundreds of pages of briefs and documents have been filed, expert opinions have come forward and discovery is underway. On October 11, 2001, the Court issued a preliminary injunction prohibiting the

Exhibit A

housing of seriously mentally ill prisoners at SMCI. Negotiations began in October to determine if the Parties could reach an amicable settlement. After more than 8 sessions, the Parties have reached this Settlement Agreement (“Agreement”), subject to the approval of the Court. Portions of the Agreement have already been implemented.

## **ARTICLE I: DEFINITIONS**

1.1 “the Court” means the United States District Court to which this case is assigned.

1.2 “Defendants” means WDOC Secretary Jon Litscher, SMCI Warden Gerald Berge, their successors in office, subordinates, agents, contractors, and attorneys.

1.3 “Electronic control device” means any device that delivers an electric shock, including but not limited to the Ultron II stun gun, stun shield, and Air taser.

1.4 “Ultron II stun gun” is a hand held electronic control device which is applied directly to the inmate’s body while held by the approved officer.

1.5 “Stun Shield” is an electronic control device consisting of a plastic shield equipped with an electrical device.

1.6 “Air Taser” is an electronic control device which employs attached projectiles which deliver the electronic charge to the inmate from a distance.

1.7 “SMCI” means the prison currently known as the Supermax Correctional Institution, located in Boscobel, Wisconsin.

1.8 “Serious Mental Illness” shall be defined by the Court.

1.9 “DOC” means the Wisconsin Department of Corrections, its subdivisions, agents, employees, contractors, and attorneys.

1.10 “Warden” means the Warden of SMCI or his/her designee.

## **ARTICLE II: POPULATION**

2.1 All inmates transferred to SMCI will come in a specified segregation status. Implicit in such status is that each inmate who comes to the institution will have had the required due process to lawfully place him in that status.

### **ARTICLE III: MONITOR**

3.1 This Agreement became a reality when the Parties agreed to have a Court approved Monitor who understands the needs of the DOC as well as the rights of inmates. The Parties have agreed to appoint a monitor who will be the intermediary between DOC and counsel for Plaintiffs, review complaints from inmates, visit the prison and have access to records at SMCI, staff and inmates when he/she deems it appropriate.

3.2 The Monitor may provide information deemed appropriate and necessary for the enforcement of this Agreement and Court approved settlement to Plaintiffs' counsel.

3.3 Plaintiffs' counsel shall retain the lawyer-client relationship as set forth in Judge Crabb's order and will retain the right to meet with inmates and review their files.

3.4 The Monitor shall report to the Court on the implementation of the Court's order and the Settlement Agreement on an annual basis or whenever he/she feels it is imperative to do so. The Monitor's initial appointment shall be for two years with the possibility of extending the appointment for up to two additional years at the discretion of the Court.

3.5 The Parties have agreed that Attorney Steve Hurley will serve as the Monitor. In the event that it shall become necessary to select a replacement for Attorney Hurley, Walter Dickey and Ken Morgan shall select from a pool of candidates acceptable to both parties.

3.6 Counsel for the Parties have agreed that the settlement documents should be brief, flexible and consistent with the spirit of the goal of managing a prison within constitutional limits. The Monitor, order approving this Agreement, and continuing

jurisdiction of the Court are the substitute for excruciating detail otherwise necessary in a Court Order and Agreement.

3.7 Counsel for Plaintiffs shall have a continuing responsibility regarding the implementation of this Agreement. Reasonable attorney fees, expert fees, and costs at market rates shall be provided for such purpose. The Monitor shall determine any dispute over fees. Counsel shall have access to the prison, records, inmates and staff, through the Monitor, during the term of this Agreement. The Monitor's decisions are final unless appealed to the Court.

3.8 The Monitor's role shall extend no further than is necessary to enforce the terms of this Agreement.

#### **ARTICLE IV: NAME & SPECIFICATIONS**

4.1 The Building Commission shall determine the name of the prison. One possible name is *Sand Prairie Correctional Institute* (SPCI) but there is agreement that the institution shall not be known in any future literature of the DOC as a so-called "Supermax" prison.

4.2 The goal is to utilize programming and a reward system to prepare inmates to progress to level five in order to transition to another less restrictive institution or to society. SMCI shall not be identified by DOC as housing the "worst of the worst."

4.3 All inmates, whether or not in the level program, shall have at least the same rights and privileges that prisoners in other maximum-security prisons in Wisconsin have in Program or Administrative segregation

4.4 Prisoners assigned to SMCI shall be on Program Segregation status, i.e., a maximum of 365 days of segregation, or Administrative Confinement. No prisoners will

be assigned to SMCI for Adjustment segregation.

4.5 If a prisoner is required to serve Adjustment Segregation while at the Institution, he shall be given a due process hearing and shall not be in that status for more than eight (8) days.

4.6 No seriously mentally ill prisoners will be sent to SMCI nor will seriously mentally ill prisoners at the facility be permitted to remain there. The Court will be asked to define serious mental illness.

4.7 No prisoners in protective custody status will be assigned to SMCI.

#### **ARTICLE V: ENTRY LEVEL**

5.1 Under current DOC rules, every prisoner who enters SMCI is automatically assigned to Level 1. While that will be the norm, an entering inmate could move directly to a different level based on the decision of the Warden under existing DOC rules.

5.2 Those placed in Level 1 will stay no longer than seven days with the following exceptions:

5.2.1 The Warden, for cause, may permit an extension of the stay in which case the inmate may be housed in Level I for no longer than an additional 7 days.

5.2.2 The Monitor will be notified of any instance in which the warden deems it necessary to extend an inmate's stay in Level 1 beyond a total of 14 days. No inmate will be held in Level I for longer than 14 days unless he has received and been found guilty of a major conduct report or multiple minor conduct reports while in Level

1.

5.3 Prisoners, following observation, may be assigned to Level 2 or Level 3. The normal stay at Level 2 shall be 60 days.

5.4 It is the goal of the Parties that the vast majority of inmates shall be on Levels 3, 4, or 5.

#### **ARTICLE VI: LEVEL PROGRAM**

6.1 The policy handbook for SMCI shall be approved by the Monitor insofar as current policies are altered by this Agreement.

6.2 The Monitor shall be asked to review the policy handbook and make certain that the rules for progressing through the level system are consistent with the Agreement, the Court's order, and the constitutional rights of the inmates. The rules shall be explained to the inmates.

#### **ARTICLE VII: EDUCATIONAL MATERIAL**

7.1 Additional reading material will be provided for those on Level I and they will have video programs.

7.2 All prisoners above Level 1 shall have television and additional program material.

7.3 Out of cell educational programming shall be expanded for Levels 4 and 5.

#### **ARTICLE VIII: OUT OF CELL ACTIVITY**

8.1 Level I. Inmates shall receive not less than 5 hours out of cell per week which may be used for exercise. Visits shall not count against that time.

8.2 Level 2. Inmates shall receive not less than 5 hours out of cell per week which may be used for exercise. Visits shall not count against that time.

8.3 Level 3: Inmates shall receive not less than 5 hours out of cell per week which may be used for exercise. Visits shall not count against that time.

8.4 Level 4 & 5: Inmates shall receive not less than 10 hours out of cell per week, at least five of which may be used for exercise. Congregate activity will be encouraged. Educational activities, jobs, and day room activities may be allowed at the discretion of the Warden in addition to the allotted 10 hours.

8.5 Outdoor Exercise Area: By April 1, 2002, or as soon thereafter as possible, there will be an outdoor recreation area available to all inmates on Levels 3, 4 and 5. The prisoner's preference for indoor or outdoor exercise shall be considered.

8.6 The indoor recreation areas shall be heated. The goal is 68 degrees. Proper ventilation or fans will be utilized in summer.

#### **ARTICLE IX: LIGHTS**

9.1 Night-lights shall be reduced by at least 60% with the replacement of current bulbs with 5-watt bulbs or less.

9.2 Inmates shall be permitted to cover their eyes so long as some facial skin is exposed for inspection purposes.

#### **ARTICLE X: CANTEEN PRIVILEGES**

10.1 It is recognized that there are minor variances throughout the system in Wisconsin but it is agreed that canteen privileges in SMCI shall be approximately the same as in other maximum-security prisons.

#### **ARTICLE XI: VISITS**

11.1 Prisoners at Levels 4 & 5 shall have the right to face-to-face non-contact visits. DOC will determine if this privilege can be extended to Level 3.

11.2 Visits by video shall be made available at least from Milwaukee and Racine as soon as practicable.

## **ARTICLE XII: RESTRAINTS**

12.1 Prisoners on Level 4 shall move toward no restraints. It is understood that those entering Level 4 may require a transition from Level 3 to Level 4 before having restraints removed.

12.2 Those on Level 5 will not normally have restraints and those on Level 4 will not normally have restraints following the transition period.

12.3 No prisoner may be held in the so-called 5-point restraint absent specific permission from medical staff and the Warden.

12.4 The air taser shall not be used in cell.

12.5 Electronic control devices shall not be used on prisoners who are taking anti-psychotic medications or anti-depressant medications.

## **ARTICLE XIII: MISCELLANEOUS ISSUES**

### Dental and health issues:

13.1 The defendants shall develop and implement a written policy to provide for dental emergencies which may arise when the institution dentist is not present or available to report to the institution.

13.2 The defendants shall make every effort to ensure that the contracted providers maintain the dental staff at the levels set forth in the current contract with the dental provider and shall make every effort to fill any vacancies as quickly as is reasonably possible.

13.3 The defendants shall develop and implement a system of making medical entries and maintaining inmate medical records.

13.4 inmates entering SMCI shall receive an initial health screening which shall include a complete review of essential medications.

13.5 Medical staff members shall only undertake tasks which are consistent with their level of credentials and training.

13.6 Consistent with security policy, inmates shall be permitted to request that any discussions involving confidential medical information be conducted in a private setting.

13.7 The defendants shall make reasonable efforts to ensure that the contracted providers are providing medical care that is consistent with standards set forth in the contract with the contracted provider.

13.8 Confidential medical records shall only be reviewed by persons with the appropriate status or position.

Religious Articles.

13.9 In accordance with the DOC IMP covering religious articles, inmates shall normally be permitted to possess the following items:

13.9.1 Protestant inmates-Bible on all levels-other books/literature depending on level

13.9.2 Muslim inmates- black kufi —24 x 40 prayer rug Qur'an on all levels - other books/literature depending on level

13.9.3 Jewish inmates-Torah (Bible)-Talith (pocket size) on all levelsother books/literature depending on level

13.9.4 Catholic inmates- Bible - plastic, black rosary on all levels - other books/literature depending on level

13.9.5 Native American inmates-one braid of sweet grass (app. 2 inches long) - religious text on all levels - other books/literature depending on level

13.9.6 Wiccan inmates-religious text on all levels- other books/literature depending on level

13.9.7 Buddhist inmates .religious text on all levels .other books/literature depending on level

13.10 Food shall not be used as punishment.

13.11 Cell temperatures: The goal shall range between 68 and 72 degrees during the winter, spring and fall. Inmates requesting additional warmth will be given extra blankets and a long-sleeve underwear top.

13.12 The goal for cell temperatures in summer shall be 80-84 degrees. DOC will investigate and implement as practical a means of cooling the cells during summer heat wave&

13.13 No additional video cameras will be installed.

13.14 Showers: Prisoners shall be allowed no fewer than three showers per week

13.15 Shutters to the cell vestibule will be open in Alpha unit. Shutters in Alpha unit shall open to the hallway.

13.16 Calendar clocks shall be installed in all cells and kept on timeand in good working order by DOC.

13.17 Phone privileges for inmates shall be available at all levels and will be comparable to other maximum-security facilities. The number of minutes per level shall be at least:

Level 1: one 10 minute call per month

Level 2: two 10- minute calls per month

Level 3: three 10 minute calls per month

Level 4: four 15 minute calls per month

Level 5: five 15 minute calls per month

#### **ARTICLE XIV: FEES & COSTS**

14.1 Counsel for Plaintiffs and their expert witnesses shall be paid reasonable attorneys and expert fees and costs at market rates for time and expenses in connection with this suit including work leading up to the Agreement and securing its final approval from the Court under Fed. R. Civ. P. 23(e).

14.2 Defendants shall be responsible for the fees and reasonable costs of the Monitor and his agents, and for future reasonable attorney and expert fees and costs at market rates for counsel for plaintiffs to oversee the Court approved Settlement. It is understood that Judge Crabb shall retain jurisdiction.

#### **ARTICLE XV: PLRA COMPLIANCE AND COURT JURISDICTION**

15.1 It is understood and agreed by the parties that the Court shall retain jurisdiction to enforce the terms of this Agreement.

15.2 The parties stipulate, based on the entire record, that the relief granted by this Agreement is narrowly drawn, extends no further than necessary to correct the alleged violations of plaintiffs' federal rights, and is the least intrusive means necessary to correct the alleged violations of plaintiffs' federal rights.

15.3 In order to allow for proper implementation of this Agreement, the parties agree not to seek to modify or terminate or otherwise challenge this Agreement, or any order approving or implementing this agreement, for a period of five years from the date the Court finally approves this Agreement pursuant to Fed~ R. Civ. P. 23(e).

15.4 The settlement of this matter~ does not constitute, and should not be construed as an admission or indication of liability on the part of the defendants and shall not be relied upon as precedent in any future claims.

15.5 The Parties agree that the relief granted by this Agreement is consistent with all requirements of Prison Litigation Reform Act (PLRA).

## **ARTICLE XVI: DAMAGES**

16.1 The Defendants agree to pay \$3,500 each to the original Plaintiffs, Dennis Jones'el and Micha'el Johnson. It is understood by the attorneys for the parties that this provision is subject to approval by Plaintiffs Jones 'el and Johnson.

Dated: 29

~i?n behalf of  
StanDa s,fo  
The Department of Corrections

Plaintiffs

Dated: ~c?e~Z

Dennis Jones'el  
as an individual Plaintiff

Dated

a e ohnson  
as an individual Plaintiff

## EXHIBIT B

### DEFINITION OF SERIOUS MENTAL ILLNESS

IT IS ORDERED that

1. In assessing the mental health of any inmate identified for screening in this court's order of October 10, 2001, any inmate proposed for transfer or return to Supermax and any inmate confined at Supermax whose mental health is in question, defendants are to apply the following definition in determining whether an inmate suffers from a serious mental illness:

a. Inmates found to have current symptoms or who are currently receiving treatment for the following types of Diagnostic and Statistical Manual IV (DSM-IV) Axis I diagnosis:

- (1) Schizophrenia (all sub-types)
- (2) Delusional Disorder
- (3) Schizophreniform Disorder**
- (4) Schizoaffective Disorder
- (5) Brief Psychotic Disorder
- (6) Substance-Induced Psychotic Disorder (excluding intoxication and withdrawal)
- (7) Psychotic Disorder Not Otherwise Specified

(8) Major Depressive Disorders

(9) Bipolar Disorder I and II;

- b. Inmates diagnosed with a mental disorder that includes being actively suicidal;
- c. Inmates diagnosed with a serious mental illness that is frequently characterized either by breaks with reality or by perceptions of reality that lead the individual to significant functional impairment;
- d. Inmates diagnosed with an organic brain syndrome that results in a significant functional impairment if not treated;
- e. Inmates diagnosed with a severe personality disorder that is manifested by frequent episodes of psychosis or depression and results in significant functional impairment; or
- f. Inmates diagnosed with any other serious mental illness or disorder that is worsened by confinement at Supermax.

## EXHIBIT C

### COURT-ORDERED PROCEDURES FOR IMPLEMENTING SETTLEMENT AGREEMENT AND ORDER OF APRIL 15, 2002

IT IS ORDERED that defendants are not to return to Supermax any inmate that has been removed from Supermax because he was diagnosed as seriously mental ill but who defendants believe is sufficiently recovered to be able to withstand incarceration at Supermax unless they proceed as follows:

1. If defendants intend to return to Supermax an inmate that has been diagnosed as seriously mentally ill in the past, they must give plaintiffs' counsel notice not less than ten (10) days before the planned transfer and, if the transfer is disputed, must stay the transfer until the dispute has been resolved.
2. If plaintiffs' counsel believe that returning the inmate to Supermax would be a violation of the consent decree, they may ask the monitor to hire an independent expert to evaluate the inmate.
3. If the independent expert disagrees with defendants' evaluation of the inmate's ability to return to Supermax and if defendants do not rescind their decision to transfer the inmate, the parties will convene a special panel of three persons to hear and decide the matter. Each side will choose one member of the panel; the two

named members will choose a third.

FURTHER, IT IS ORDERED that in order to insure that retaining a seriously mentally ill inmate at Supermax or transferring him there remains an extraordinary event, defendants will be required to observe the following requirements:

1. No seriously mentally ill inmate (as defined in the April 15, 2002 order) shall be incarcerated at Supermax or transferred there without notice to plaintiffs' counsel.

(a) If defendants wish to transfer a seriously mentally ill inmate to Supermax, they must provide plaintiffs' counsel at least ten (10) days' advance notice and must stay any transfer pending resolution of any objections plaintiffs' counsel raise to the proposed transfer.

(b) If defendants wish to retain a seriously mentally ill inmate at Supermax, they must advise plaintiffs' counsel of their intention promptly.

2. No seriously mentally ill inmate is to be transferred to Supermax unless defendants can

(a) Document his dangerousness;

(b) List all of the potential alternative placements, both in Wisconsin and outside the state, that defendants have considered and explain why none of them is feasible; and

(c) Identify the additional services that will be provided to the inmate to help him with his serious mental illness and to ameliorate the effect the conditions at Supermax have on that illness.

3. If plaintiffs' counsel finds the report insufficient to justify retention or transfer of the inmate to Supermax, they may ask the monitor to retain an independent expert to conduct his or her own evaluation of the need to place the inmate at Supermax.

4. If, after the independent expert has made his or her own evaluation of the justification for incarceration of the inmate, the parties are unable to agree on the proper placement, they may convene a panel of three to resolve the matter. As described above, each party shall select one member of the panel; those two will select the third member.