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FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA

JAN 15 1992

CLERK  
U.S. DIST. COURT  
MIDDLE DIST. OF ALA.  
DEPUTY CLERK, BY \_\_\_\_\_

THOMAS PAUL BRADLEY, by his father and )  
next friend, WILLIAM H. BRADLEY, who )  
brings this action individually and in )  
behalf of all others similarly situated, )

Plaintiff, )

VS. )

LYNN HARRELSON, individually and in )  
his capacity as Warden of Kilby )  
Correctional Center; MORRIS L. )  
THIGPEN, individually and in his )  
capacity as Prison Commissioner of the )  
State of Alabama Department of )  
Corrections; LARRY D. STRICKLIN, )  
individually and in his capacity as )  
Director of the Taylor Hardin Secure )  
Medical Facility; and X, Y, and Z, being )  
those persons not named herein, whose )  
names are not presently known, but who )  
will be added by amendment when )  
ascertained, )

Defendants. )

CIVIL ACTION NO.

92-A-70-N

COMPLAINT

1. Plaintiff brings this action for declaratory and injunctive relief and monetary damages for the violation of his rights under color of state law by defendants. Jurisdiction is pursuant to 42 U.S.C. 1983, 28 U.S.C. 1343, and 42 U.S.C. 2000(e) and the constitutions of the United States and of the State of Alabama. Plaintiff also seeks to bring pendent claims under state law against defendants.

2. Plaintiff is over 19 years of age and a resident of Jefferson County, Alabama, but is presently incarcerated in the prison system of the State of Alabama at Kilby Correctional

facility in the Middle District of Alabama. The defendants are over 19 years of age and are residents of the Middle District of Alabama. Defendant Thigpen is the duly appointed Commissioner of the Department of Corrections of the State of Alabama, and as such has the duty and responsibility of administering the prison system in Alabama. Defendant Harrelson is the duly appointed Chief Warden of the Kilby Correctional Facility in Mt. Meigs, Alabama, with it being a correctional facility maintained by the State of Alabama, under the direction of defendant Thigpen. Defendant Stricklin is the duly appointed Director of the Taylor Hardin Secure Medical Facility in Tuscaloosa, Alabama, the facility established by the State of Alabama to house and treat incarcerated persons suffering from mental illness.

3. Plaintiff has a long history of mental illness, having been treated consistently prior to his incarceration and during his incarceration in the Jefferson County Jail. Defendants have had knowledge of his condition and have been informed of problems plaintiff has been experiencing, yet have not taken reasonable and appropriate measures to correct such.

4. Plaintiff was moved from another prison to the Kilby facility, ostensibly for better medical treatment. His condition has deteriorated over time to the point where Kilby has not been appropriate, yet defendants have failed and refused to take action to grant plaintiff appropriate care and treatment. On one occasion, for perhaps two weeks, plaintiff was transferred to the Taylor Hardin Secure Medical Facility, but was soon sent back to

Kilby, where he has remained.

5. Plaintiff's family has made repeated efforts to get him transferred or to get proper treatment made available, but such have been to no avail. On several occasions over the past few months, his parents have been unable to see him, even after going to the facility and waiting. The response of defendants' agents has been that he did not want to see anyone or that he is in such a state that it would not do any good to try to see him. Plaintiff's mental state has deteriorated to the extent that he cannot recognize others, cannot communicate, cannot walk unassisted, has lost an inordinate amount of weight, cannot feed himself or care for his personal hygiene. He has remained in an agitated state, undressed and without medication or proper treatment, in spite of numerous contacts by family and his attorneys.

6. A psychiatrist who had examined plaintiff before was hired by the family to go to Kilby and seek to treat or examine him, but such was not allowed by defendants. The policy as communicated is that an outside physician cannot see an inmate except pursuant to a court order. Plaintiff's family obtained the psychiatrist after finally being able to see plaintiff briefly in December, 1991. A court order is needed in order to have plaintiff evaluated.

7. Upon information and belief, it is averred that defendants seek to house and treat seriously ill persons at the Taylor Hardin Facility, but that various reasons are given for

the reluctance or delay in admission of persons such as plaintiff. In response to questions posed, defendants' agents have asserted that a sanity board is used to consider transfer of inmates. Such procedure has not been effective in this instance. In addition, defendants have asserted that transfer of plaintiff has been delayed due to the fact that the Probate Judge of Montgomery County has not been to Kilby to have a formal commitment for plaintiff and any others in need of such. These excuses are pretextual, being advanced in an effort to justify the violation of constitutional rights. Defendants have exhibited a reluctance to admit persons for treatment at the Taylor Hardin Facility in other instances in the past, such as unindicted persons in county jails.

8. The defendants have set up and used the facility at Kilby as a holding facility in lieu of sending inmates in need of intensive care or hospitalization to Taylor Hardin. At least 23 other inmates are housed in the mental health wing at Kilby. During such confinement, adequate care, supervision and treatment has not been made available, as noted by the condition of plaintiff herein.

9. Plaintiff brings this action as a class action pursuant to Rule 23 of the F.R.C.P. The class of persons is numerous and relief can best be obtained in a single action, as there are common questions of fact and law. Plaintiff will adequately represent the interest of the members of the class, and his claims are representative of those of the class of persons

similarly situated.

10. Defendants have violated the constitutional rights of plaintiff and his class as guaranteed by the Fifth, Eighth and Fourteenth Amendments to the United States Constitution and of the Constitution of the State of Alabama. Plaintiff has been summarily punished, being exposed to cruel and unusual punishment, without due process of law and being treated discriminatorily due to his mental and physical condition. Having total control over plaintiff, defendants have intentionally failed and refused to provide even minimal standards of care for persons in such condition, denying adequate medical treatment and adequate facilities. Defendants have denied plaintiff procedural and substantive due process.

11. Plaintiff avers that the actions of defendants are intentional and malicious, with knowledge or reckless indifference of the anticipated consequences, including the fact that plaintiff would suffer great economic and emotional distress, so that punitive damages are proper.

WHEREFORE, THE PREMISES CONSIDERED, plaintiff seeks the following relief:

A. Appropriate declaratory and injunctive relief against defendants, whereby plaintiff will be granted evaluation, care and treatment consistent with sound medical practice, and that defendants be enjoined from further violation of plaintiff's constitutional rights.

B. That defendants be ordered to cease and desist from

further similar violations. That defendants be ordered to implement an appropriate system of evaluation and treatment for inmates suffering from mental or emotional illness, particularly requiring that the Taylor Hardin Secure Medical Facility promptly admit and treat inmates referred there. Further, that defendants be ordered to allow physicians to see inmates without the need for a court to order such.

C. Appropriate monetary damages, both actual and punitive, compensating plaintiff and his class for the violation of rights as alleged herein.

D. Plaintiff seeks all costs of this action, including reasonable attorneys' fees.

E. Plaintiff seeks any other and different relief to which he may be entitled.

ADDRESS OF COUNSEL:

490 Park Place Tower  
2001 Park Place North, #490  
Birmingham, AL 35203  
(205) 323-6170

By: William M. Dawson  
William M. Dawson

By: Gayle H. Gear  
Gayle H. Gear

PLAINTIFF DEMANDS TRIAL BY JURY OF ALL APPROPRIATE ISSUES.

By: William M. Dawson  
Attorney at Law

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MIDDLE DIST. OF ALA.  
MONTGOMERY, ALA.

CIVIL ACTION NO.

92-A-70-N

MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiff moves for preliminary relief in the above action, including the granting of a temporary restraining order and the setting of the matter later for preliminary relief. As grounds, plaintiff would show:

1. As grounds, plaintiff submits herewith the complaint and affidavits attached thereto.
2. Said matters establish that the Department of Corrections is following a policy whereby a court order is required by the Department to allow a psychiatrist to visit an

inmate. Efforts have been made to have plaintiff examined, but such has not been allowed by defendants.

3. As shown, plaintiff is in need of medical help beyond the level which has been provided at Kilby Correctional Facility. Due to the unavailability of plaintiff to confer with his counsel or medical experts, it is necessary for said expert to have access to plaintiff at Kilby. Experts from the Frank Kay Clinic have agreed to come to Kilby and examine plaintiff.

4. Granting access to plaintiff would be no inconvenience to defendants, as doing so would cause no more trouble than would conferences with legal counsel. The plaintiff would suffer extreme harm if relief were not granted. Additionally, the ability to prosecute this action requires reasonable access and documentation by impartial experts.

WHEREFORE, PLAINTIFF SEEKS THE FOLLOWING:

That defendants be ordered to allow reasonable access by a physician of counsel's choosing to see and interview plaintiff and record, if necessary, the contact. Plaintiff would also ask that defendants provide the medical records on plaintiff for examination by the said expert.

ADDRESS OF COUNSEL:

490 Park Place Tower  
2001 Park Place North, #490  
Birmingham, AL 35203  
(205) 323-6170

By: William M. Dawson  
William M. Dawson

By: Gayle H. Gear  
Gayle H. Gear

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY RELIEF

I am William H. Bradley, the father of the plaintiff in this action. I am familiar with the facts and make this affidavit in order to support the motion for preliminary relief.

My son has been incarcerated in the Alabama prison system for over three years, having been incarcerated in the county jail for more than one year before his conviction in Jefferson County, Alabama.

Plaintiff has had a long history of mental illness and is in dire need of immediate medical treatment. He is now 31 years of age, and has been treated off and on by psychiatrists since the age of 17. Before he was tried, there was a serious question about his competency to stand trial, and he was sent to Taylor Hardin and evaluated for approximately three months. At his trial, medical experts testified at length as to his condition and to the need for long term care in the future.

He was moved from St. Clair Prison to Mt. Meigs about a year ago, due to his medical condition worsening. While at St. Clair, he was in the hospital ward on several occasions.

Since arriving at Mt. Meigs, he has continued to deteriorate to the point that we have been unable to communicate with him. In the last six months, I have complained on numerous occasions about the fact that he needs treatment or hospitalization. The response has consistently been that he is on the waiting list for transfer to Taylor Hardin.

I have been to Kilby perhaps eight times since September, 1991, in an effort to see plaintiff, but have been able to see him only once. On that occasion, shortly before Christmas, I went to great lengths to demand that they allow me to see my son. Always before, I was told by prison employees that he was not able to see me. Though he had always consistently written and called us and other family members and friends, this ceased entirely some months ago.

When I saw him in late August, he was incoherent and mumbling, but was able to walk and speak. He was brought to us still wet from a shower and bleeding from being shaved. From that point on, I started requesting and demanding help for him. When I next saw him in late December, I hardly recognized him. His weight had dropped significantly, to perhaps 110 pounds. He did not seem to recognize me or his mother and did not communicate or show any expression. He was pale and trembling uncontrollably and was in great distress.

On January 10, 1992, my wife and daughter called the prison and later went there in an effort to see him, as it was the normal visiting day. They refused our visit, saying that he was not able to visit or recognize anyone. My son's attorney has called and written in an effort to get treatment for him. A private psychiatrist who had examined him before was hired to go to Kilby and see him, but the administration there refused such, saying that a court order is needed before any outside physician can see an inmate.

I understood that the attorney went to Kilby yesterday, and after much delay, was able to see my son. A lengthy delay was occasioned by the need to get him cleaned and dressed. It appears that my son's condition has gotten worse. I understand that some prison employees were even shocked by what they saw.

The only assurances of help as related to us are that perhaps eventually he will be accepted by the Taylor Hardin Facility or that the Probate Judge of Montgomery County will order some sort of commitment.

I request a court order so that he can be evaluated or treated. In the past, at the Jefferson County Jail, there has been no problem in having physicians enter the facility and confer with him. I have observed consultation rooms at Kilby and am informed that a psychiatrist could confer with him there with no greater intrusion than a visit by a lawyer.

The strain and emotional distress this has caused our family is enormous. We remain totally helpless to understand or deal with the gravity of his condition due to the actions of the prison officials, and we have turned to this Court as a final resort.

William H. Bradley  
William H. Bradley

Sworn and subscribed before me, a Notary Public, this the 15<sup>th</sup> day of January, 1992.

Edna J. [Signature]  
NOTARY PUBLIC

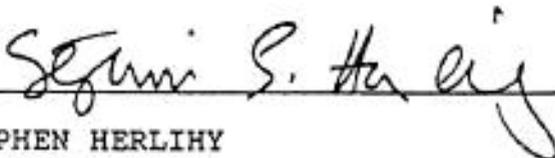
AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY RELIEF

I am Stephen Herlihy, a law student who works for attorneys in Birmingham doing investigative work and serving legal process. I am familiar with plaintiff, having had extensive contact with him when he was incarcerated in Jefferson County. I would imagine that I have been around him perhaps 25 times in the past.

There have been times when he has been so disturbed that meaningful communication has been impossible. During those periods, however, he has been able to speak and feed himself, but has been hospitalized soon thereafter.

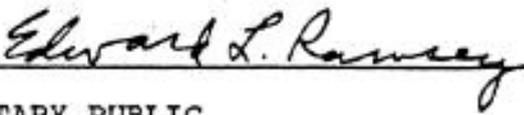
I saw him at Kilby Correctional Facility in Montgomery on January 14, 1992. I hardly recognized him due to the enormous weight loss. He was pale and appeared to have lost hair and had scabs and scratches on his face. During the entire meeting with him, he never opened his eyes and was unresponsive, though he did once commence a monotone which made no sense. He appeared unable to walk without a guard on each arm, and shook uncontrollably the entire time. He also had continuous facial twitches the whole time. It was perhaps 45 minutes after the 2:30 p.m. appointed time before we could see him. It was related that he had not been dressed or cleaned up for the visit. We were told that seeing him would be useless, as he was catatonic and unable to communicate. I was shocked by what I observed, and I noticed other prison employees also appearing disturbed at seeing him.

The previous week I had called the prison in an effort to have a psychiatrist see him there. I was informed that a court order would be needed for such.

  
\_\_\_\_\_

STEPHEN HERLIHY

Sworn and subscribed before me, a Notary Public, this the \_\_\_\_\_ day of January, 1992.

  
\_\_\_\_\_

NOTARY PUBLIC