

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

8/8/97

JOHN JOHNSON and TERRY LEE)
JOHNSON, individually and on behalf of)
all others similarly situated,)
)
Plaintiffs,)
)
vs.)
)
BILLY MITCHEM, Warden of Donaldson)
Correctional Facility,)
)
Defendant.)

CV-97-C-1301-S

AMENDED COMPLAINT
NATURE OF THE ACTION

1. This is a civil action brought pursuant to 42 U.S.C. § 1983 to vindicate the Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution. The Plaintiffs seek injunctive relief to require the Defendant to cease his policy of prohibiting inmates at Donaldson Correctional Facility from receiving (a) books from publishers, book clubs, or book distributors; (b) magazines that are not on the Defendant's list of sixteen approved publications; (c) newspapers that are not from inmates' hometowns; and (d) book catalogs. These practices deprive the Plaintiffs of their First Amendment rights and serve no neutral, legitimate penological purpose.

JURISDICTION

2. This action arises under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. Jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331, 1343.

3. This Court has jurisdiction over Plaintiffs' request for declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-2202.

PARTIES

4. Plaintiff John Johnson is an inmate at Donaldson Correctional Facility.

5. Plaintiff Terry Lee Johnson is an inmate at Donaldson Correctional Facility.

6. Defendant Billy Mitchem is the Warden of Donaldson Correctional Facility. He is responsible for the development and implementation of penological policies and practices of the prison and for ensuring that the prison operates in a manner that is consistent with the United States Constitution. He is sued in his official capacity.

CLASS ACTION

7. The Plaintiffs bring this suit on their own behalf and on behalf of a class of all present and future Donaldson Correctional Facility inmates who are being or may be denied the opportunity to receive books, magazines, newspapers, or book catalogs as a result of the Defendant's policy.

8. The individual Plaintiffs sue on their own behalf and on behalf of the class pursuant to Rule 23 of the Federal Rules of Civil Procedure. The prerequisites of Rule 23(a) and Rule 23(b)(2) are satisfied.

STATEMENT OF FACTS

9. On March 19, 1997, former Donaldson Correctional Facility Warden Steve Dees implemented a policy that severely limits the types of publications available to Donaldson inmates. Warden Dees issued a list of sixteen magazines that inmates are permitted to receive. By preventing inmates from receiving magazines not included in this list, the policy bans magazines as diverse and innocuous as *Harper's*, *Astronomy*, *Writer's Digest*, and *Inside*

Chess. The policy also prohibits inmates from receiving newspapers that are not from their hometowns and catalogs of any kind. The new Warden, Defendant Billy Mitchem, has continued to enforce this policy.

10. Warden Dees also implemented a policy prohibiting Donaldson inmates from purchasing or receiving books of any kind from publishers, book clubs, book distributors, or any other source. Warden Mitchem has continued to enforce this policy.

11. The named Plaintiffs have been denied publications as a direct result of the challenged policies.

a. Prison officials have refused to allow Plaintiff John Johnson to receive a book from a publisher entitled *The Evaluation of Forensic DNA Evidence*. Mr. Johnson needs this book to assist him in pursuing his post-conviction appeal. They have also refused to allow Mr. Johnson to receive issues of *Sail* magazine, a publication to which he had subscribed for several years.

b. Prison officials have prevented Plaintiff Terry Lee Johnson from receiving book catalogs. Mr. Johnson previously relied upon book catalogs to order approximately six books per month. Without the information provided by book catalogs, it is virtually impossible to order books by mail. Prison officials also have refused to allow Mr. Johnson to order books from two book distributors.

12. There are no ready, alternative means for the Plaintiffs to obtain publications that they have been denied as a result of the Defendant's policy. The Plaintiffs' access to Donaldson's library for general reading is extremely limited. Inmates typically have access to the library for no more than ten minutes per week. During that brief period, they are not permitted to browse through the collection, but must instead request a specific book from the

inmate library clerk, accept a book selected by the clerk, or choose from an outdated list of the library's book collection. The library's collection of magazines is limited and outdated, and inmates are not permitted to borrow them. The library does not have any newspapers.

13. The Defendant's policy of refusing to allow inmates to receive (a) books from publishers, book clubs, or book distributors; (b) magazines that are not on Donaldson's list of sixteen approved publications; (c) newspapers that are not from inmates' hometowns; and (d) book catalogs is not rationally related to any neutral, legitimate penological objective.

14. The Defendant has acted and continues to act under color of state law.

15. The Plaintiffs do not have an adequate remedy at law.

CAUSES OF ACTION

16. The Defendant's policy of refusing to allow the Plaintiffs to receive books from publishers, book clubs, or book distributors violates the First and Fourteenth Amendments to the United States Constitution.

17. The Defendant's policy of refusing to allow inmates to receive magazines that are not on Donaldson's list of sixteen approved publications violates the First and Fourteenth Amendments to the United States Constitution.

18. The Defendant's policy of refusing to allow inmates to receive newspapers that are not from inmates' hometowns violates the First and Fourteenth Amendments to the United States Constitution.

19. The Defendant's policy of refusing to allow inmates to receive book catalogs violates the First and Fourteenth Amendments to the United States Constitution.

20. The violation of the Plaintiffs' rights specified above may be remedied pursuant to 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that this Honorable Court grant the following relief:

1. Certify the Plaintiff class in this action;
2. Declare unconstitutional and unlawful the Defendant's practice of refusing to allow inmates to receive books from publishers, book clubs, or book distributors;
3. Declare unconstitutional and unlawful the Defendant's practice of refusing to allow inmates to receive magazines that are not on Donaldson's list of sixteen approved publications;
4. Declare unconstitutional and unlawful the Defendant's practice of refusing to allow inmates to receive newspapers that are not from inmates' hometowns;
5. Declare unconstitutional and unlawful the Defendant's practice of refusing to allow inmates to receive book catalogs;
6. Enter a permanent injunction requiring the Defendant, his agents, employees, and all persons acting in concert with him to cease refusing to allow inmates to receive books from publishers, book clubs, or book distributors;
7. Enter a permanent injunction requiring the Defendant, his agents, employees, and all persons acting in concert with him to cease refusing to allow inmates to receive magazines that are not on Donaldson's list of sixteen approved publications;

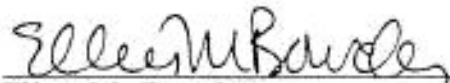
8. Enter a permanent injunction requiring the Defendant, his agents, employees, and all persons acting in concert with him to cease refusing to allow inmates to receive newspapers that are not from inmates' hometowns;

9. Enter a permanent injunction requiring the Defendant, his agents, employees, and all persons acting in concert with him to cease refusing to allow inmates to receive book catalogs;

10. Award the Plaintiffs reasonable costs and attorneys' fees; and

11. Grant the Plaintiffs such other relief as the Court deems necessary and just.

Respectfully submitted,



Ellen M. Bowden
Rhonda Brownstein
J. Richard Cohen
Southern Poverty Law Center
400 Washington Avenue
Post Office Box 2087
Montgomery, AL 36102-2087
(334) 264-0286