

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

ZEBERIAH STILWELL, individually and)	
on behalf of a class of those similarly)	
situated,)	
)	
Plaintiff,)	
)	
v.)	No. 3:19-cv-30
)	
SHERIFF OF GIBSON COUNTY, in his)	
official capacity;)	
GIBSON COUNTY, INDIANA,)	
)	
Defendants.)	

CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. The Gibson County Jail is overcrowded and understaffed, and as a result it is a place where violence between prisoners is common and dangerous conditions prevail. Additionally, the Jail has a policy that prevents prisoners from receiving newspapers or other publications, even directly from the publishers. The conditions in the Jail violate the Eighth and Fourteenth Amendments to the United States Constitution. Declaratory and injunctive relief should be issued to address and remedy these systemic problems.

Jurisdiction, venue and cause of action

2. This Court has jurisdiction of this case pursuant to 28 U.S.C. §§ 1331 and 1343.
3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.
4. Declaratory relief is authorized by 28 U.S.C. §§ 2201, 2202, and by Rule 57 of the Federal Rules of Civil Procedure.

5. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the United States Constitution.

Parties

6. Zeberiah Stilwell is an adult person who is currently confined in the Gibson County Jail.

7. The office of the Gibson County Sheriff is sued pursuant to Rule 25(d)(2) of the Federal Rules of Civil Procedure.

8. Gibson County, Indiana is a county located in southern Indiana. Its executive is the Gibson County Commissioners and its fiscal body is the Gibson County Council.

Class action allegations

9. This action is brought by plaintiff on his own behalf and on behalf of a class of those similarly situated pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

10. The class is defined as:

all persons currently confined, or who will in the future be confined, in the Gibson County Jail.

11. All the requirements of Rule 23(a) are met in this cause in that:

a. The class is so numerous that joinder of all members is impractical. The jail regularly houses more than 100 persons and the membership of the proposed class is constantly changing as prisoners enter and leave the facility.

b. There are questions of law or fact common to the class: whether conditions in the Gibson County Jail violate the United States Constitution.

c. The claims of the representative party are typical of those of the class.

d. The representative party will fairly and adequately protect the interests of the class.

12. The further requirements of Rule 23(b)(2) are met in this cause as at all times defendants have acted or have refused to act in a manner generally applicable to the class, thereby making final injunctive and declaratory relief appropriate with respect to the class as a whole.

13. Undersigned counsel are appropriate persons to be appointed as counsel for the class pursuant to Federal Rule of Civil Procedure 23(g) and should be appointed.

Legal background

14. Indiana law provides that the sheriff of a county must “take care of the county jail and the prisoners there.” Ind. Code § 36-2-13-5(a)(7).

15. The county commissioners of each Indiana county, as the county executive, have the statutory duty to “establish and maintain a . . . county jail.” Ind. Code § 36-2-2-24(a). This includes not only providing a jail, but also keeping it in good repair. *Weatherholt v. Spencer County*, 639 N.E.2d 354, 356 (Ind. Ct. App. 1994).

Factual allegations

16. The Gibson County Jail was built in 1988 and opened in 1989.

17. When opened, the Jail contained 100 beds.

18. As originally constructed, the cells that were designed to house more than one prisoner had permanent double beds, arranged on top of each other like bunk beds.

19. Under Indiana law, county jails are periodically inspected by Indiana Department of Correction (“DOC”) jail inspectors. The most recent jail inspection report for the

Gibson County Jail was issued in July of 2018.

20. A jail facility is deemed to be overcrowded long before it gets to 100% of capacity.

21. This is because when a jail exceeds 80% of its capacity, and under certain circumstances less than that percentage of capacity, it becomes difficult, if not impossible, to conduct classification of prisoners much beyond separating men and women.

22. At the time of the July inspection by the DOC's inspector, Kenneth Whipker the DOC's Executive Liaison to Sheriff and County Jail Operations, he noted that on the day of inspection the jail exceeded its rated capacity and that there was not a bed for all the prisoners.

23. The Jail is chronically overcrowded.

24. Classification is essential to protect the safety of both prisoners and staff. For example, prisoners with mental and physical disabilities should be separated from those without those disabilities, prisoners who are prone to be preyed upon should be separated from predators, prisoners who have previous problems with each other should be separated, etc.

25. The overcrowded conditions prevent adequate classification, producing dangerous conditions.

26. Mr. Whipker, the DOC's jail inspector, noted in his July inspection report that although there are written policies for segregation of prisoners, "the classification and segregation system is compromised due to a lack of sufficient bed space."

27. As a result of the overcrowding, some blocks have prisoners living three to a two-person cell with one person sleeping on the cell floor. This causes a great deal of tension,

because the small size of the cells means that prisoners have very little space to maneuver around each other. Toilets are in each cell, and when prisoners are on the floor, they have to be stepped over to use the toilets and are forced to sleep near the toilets.

28. The Jail is linear in structure and there is inadequate audio and video surveillance equipment within the Jail to monitor the prisoners. Therefore, in order for the safety of prisoners to be assured, there must be frequent inspections by Jail staff.

29. These frequent, and necessary, cell-block inspections do not occur, in part because the Jail is chronically understaffed.

30. There is insufficient staff to monitor the prisoners.

31. The July 2018 inspection report by the DOC's jail inspector notes that there is not "sufficient jail personnel present in the jail to provide adequate 24 hour supervision of inmates."

32. As a result, assaults between prisoners are frequent, aggravated by the overcrowded conditions.

33. Additionally, if prisoners are in medical or other forms of distress, it is difficult if not impossible to get prompt attention from guards.

34. Recreation opportunities are extremely important for prisoners as physical exercise is essential to maintain physical and mental health and to relieve the tension that is inevitable in a prison environment.

35. The opportunity for vigorous physical exercise is even more important in an overcrowded prison or Jail, as in such a situation tensions escalate and there is inadequate area within the prisoners' living space to engage in exercise.

36. Although the Gibson County Jail has an outdoor exercise area, prisoners rarely if ever are afforded recreation. There is a small indoor area with no exercise or other equipment and is no larger than the area immediately outside cell areas. There is inadequate space to exercise in that area.

37. Zeberiah Stilwell has been incarcerated in the Gibson County Jail since October of 2018. He was previously incarcerated at the Jail for seven days in 2016.

38. He is currently incarcerated following a probation violation.

39. He is currently confined in Cell Block 11.

40. Cell Block 11 has 6 cells, each containing 2 beds in a permanent bunked layout, or double-bunked.

41. To Mr. Stilwell's knowledge, there are currently 17 inmates in Block 11.

42. When the Block is beyond its 12-person capacity, inmates sleep three to a cell, with the third person sleeping on a mattress on the floor.

43. When Mr. Stilwell first arrived at the Jail, he was the third person in the cell and slept on a mattress on the floor. His cell now contains two people, and he is able to sleep on a bunked bed.

44. The common area of the cell block, where prisoners eat their meals, has tables and seating sufficient for 12 people. Therefore, during meals, some prisoners sit on the floor, on trashcans, or even on the toilet in the common area to eat.

45. Mr. Stilwell has seen the population of Block 11 rise to 18 people, and he has never seen it house fewer than 14 people.

46. He has seen prisoners fighting because of the tensions on the block.

47. Because of the overcrowding, jail officials have not engaged in appropriate classification of inmates based upon their propensity for violence or predatory behavior.

48. For quite some time, there was a prisoner in the block who was extremely violent. He was not removed for two months despite requests from Mr. Stilwell and other prisoners.

49. On one occasion during the night, another Block 11 inmate was experiencing a medical issue. There was no staff around, and plaintiff and other prisoners had to kick their cell doors for staff to respond.

50. During the day prison staff rarely if ever look in on the block.

51. There is only one camera on the block and it is not trained on the cells. There is a box in the area outside the cells that provides an audio link to jail staff, but there is nothing inside the cells.

52. Mr. Stilwell is aware of situations where prisoners go out of the range of cameras to engage in physical altercations and they are never seen by staff.

53. Mr. Stilwell has not been offered any outside recreation during the five months of his incarceration.

54. The block is locked down daily from 10 p.m. to approximately 6:40 a.m. While on lockdown, there is no way to contact jail staff aside from banging on cell doors.

55. The lack of meaningful recreation, the overcrowding, and the lack of staff supervision causes continuous tension and dangerous conditions in the block.

56. Mr. Stilwell is concerned not only for his own safety, but for other prisoners who are similarly injured by the conditions in the Jail. He believes that all prisoners are

negatively affected by the overcrowding, lack of sufficient staff, lack of recreation, and the problems that all this causes.

57. The only grievance opportunity offered by the Jail are complaint forms that are collected by jail staff.

58. Mr. Stilwell has submitted numerous complaint forms on a number of occasions about overcrowding, violence within the cell block that goes on because of the overcrowding and the lack of staffing and the lack of meaningful recreation.

59. He has never received a response to any of his complaint forms.

60. He has witnessed other prisoners submit complaint forms and receive no response.

61. Mr. Stilwell has been informed that the denial of the relief requested in a complaint form can be "appealed" to the Sheriff, but the Sheriff's policy is to respond to an appeal only if he determines that the original result should be changed. Mr. Stilwell has not received, and is not aware of anyone receiving, a response from the Sheriff.

62. However, inasmuch as Mr. Stilwell has not received any responses to his complaints, he has not filed any appeals to the Sheriff. An appeal can only be filed if a response to the complaint has been received and must be on the form that is received back by the prisoner when the complaint is initially answered.

63. Inasmuch as his complaints have never been responded to, no further grievance steps are available to Mr. Stilwell.

64. Defendants have been on notice for some time concerning the deficiencies in the Jail but have failed to take the necessary steps to resolve the overcrowding and other

problems. At all times they have acted in a deliberate and purposeful manner.

65. As noted, the 2018 inspection report by the DOC's jail inspector notes numerous deficiencies in the Jail, and these have been indicated previously.

66. The 2017 inspection report indicated that the jail exceeded its rated capacity, lacked a fixed bed for each inmate, lacked sufficient square footage for the number of inmates detained, and that the number of inmates exceeded the proper ratio for toilets and showers.

67. The report also indicated that the lack of sufficient space resulted in staff being unable to properly segregate and classify the inmate population, which would lead to a critical incident in the jail.

68. The report stated that additional staffing was required to ensure the safety and security of the facility and to meet inmate needs.

69. On January 15, 2019, at a meeting of the County Council, the Sheriff indicated that the jail's rated capacity is 120 inmates, but at that time housed 161 inmates, and has housed as many as 190 inmates. The Sheriff also noted that the DOC has recommended that the Jail employ six more staff members than they currently employ.

70. These conditions still prevail in the Jail today.

71. The conditions in the Gibson County Jail result in the denial of basic human needs and the minimal civilized measures of life's necessities and amount to punishment.

72. Gibson County has failed in its mandatory duty to establish and maintain the Gibson County Jail in a constitutional manner.

73. Defendant Sheriff has failed in his mandatory duty to take care of the Gibson

County Jail and the prisoners detained there in a constitutional manner.

74. The actions and inactions of the defendants are causing plaintiff and the putative class irreparable harm for which there is no adequate remedy at law.

75. At all times defendants have acted and have refused to act under color of state law.

Claim for relief

76. The conditions of the Gibson County Jail violate the 14th Amendment to the United States Constitution as applied to pre-trial detainees and the 8th Amendment to the United States Constitution as applied to convicted prisoners.

Request for relief

WHEREFORE, plaintiff requests that this Court:

1. Accept jurisdiction of this case and set it for hearing at the earliest opportunity.
2. Certify this case as a class action with the class as defined above.
3. Declare that the actions and inactions of defendants violate the United States Constitution for the reasons noted above.
4. Enter a preliminary injunction, later to be made permanent, requiring defendants to take all steps necessary to ensure that the conditions of confinement at the Gibson County Jail comply with the United States Constitution.
5. Award plaintiff costs and reasonable attorney's fees pursuant to 42 U.S.C. § 1988.
6. Award all other proper relief.

Stevie J. Pactor

CA 300939
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202
317/635-4059
fax: 317/635-4105
spactor@aclu-in.org

s/ *Kenneth J. Falk*
Kenneth J. Falk
No. 6777-49
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202
317/635-4059
fax: 317/635-4105
kfalk@aclu-in.org

Attorneys for Plaintiff and the
Putative Class