

MAR 31 2004

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LUTHER D. THOMAS, Clerk
By: *[Signature]*
Deputy Clerk

BOBBY JAMES JOHNSON,
on behalf of himself and all
persons similarly situated,

Plaintiff

v.

JAMES E. DONALD, Commissioner
of the Georgia Department of
Corrections, and MICHELLE MARTIN,
Warden of Phillips State Prison,
in their official capacities,

Defendants

COMPLAINT

Civil Case No:

Class Action

1:04-CV-0886

I. INTRODUCTION

1. Plaintiff BOBBY JAMES JOHNSON, a prisoner at Phillips State Prison, seeks protection for himself and for all other persons who are now or will in the future be housed in the mental health unit at Phillips State Prison, from an ongoing substantial risk of death and serious injury resulting from abuse by correctional staff and other prisoners and from self-injury at the prison. During the past eight months, Plaintiff JOHNSON has been forcibly raped twice and repeatedly sexually harassed and intimidated by other prisoners. During this period he has also mutilated himself on several occasions - cutting his own skin

three times in February 2004 alone, once so severely that the bleeding could not be stopped and he required treatment in an emergency room.

2. Plaintiff JOHNSON has been diagnosed by mental health professionals in the Georgia Department of Corrections with a host of serious mental impairments, including dementia, bipolar disorder, schizoaffective disorder, borderline personality disorder, and impulse control disorder. According to his prison records, he also has borderline intellectual functioning with declining cognitive skills. He experiences acute psychotic and manic symptoms, suicidal ideation, and command auditory hallucinations that tell him to injure himself. All of these impairments interfere with his ability to comprehend and relate rationally to what is happening around him and increase the risk of serious harm to which he is subjected at Phillips State Prison.

3. Plaintiff JOHNSON resides in the mental health unit at Phillips State Prison, where there are approximately 225-250 other individuals with serious mental illness. The "mental health unit" consists of several dormitories where defendants confine all of the seriously mentally ill prisoners at Phillips. As of the date of this filing, those dormitories are D-1 and D-2,

E-1 and E-2, F-1 and F-2, G-1 and G-2, the crisis stabilization unit and the special management unit.

4. In the dormitories that constitute the mental health unit at Phillips State Prison, there has been chronic understaffing of correctional staff, deployment of untrained or undertrained correctional staff, and inadequate policies, procedures and practices for dealing with the special population of seriously mentally ill prisoners. In this one unit alone, six individuals have died in the past two and a half years. This death rate is alarmingly higher than the death rate of the prison system as a whole. In addition to the deaths, there has been a large number of reported and unreported assaults on prisoners - both by correctional staff and by other prisoners - leading to further serious physical and mental injuries. Suicide attempts and self-injurious conduct such as cutting one's own skin with a razor or other sharp instrument is commonplace in the mental health units, and there are inadequate safeguards to prevent this dangerous behavior.

5. Plaintiff JOHNSON has suffered numerous physical and sexual assaults and threats in the mental health unit, and has

injured himself severely because there are inadequate policies, procedures, practices and prison staff to protect him.

6. The defendants are public officials who bear final responsibility for the care and custody of the plaintiff and other seriously mentally ill prisoners who are confined in the mental health unit at Phillips State Prison. Through their practices, policies and customs, these officials have acted with deliberate indifference to the unacceptably high risk of harm faced daily by the plaintiff and other mentally ill prisoners at Phillips. In particular, they have failed to protect the plaintiff and other members of the proposed class from the substantial risk of serious physical and sexual abuse at the hands of officers and other prisoners, and from the substantial risk of self-harm and suicide. Defendants have disregarded known risks of harm and have allowed dangerous conditions to persist.

7. Plaintiff brings this action on behalf of himself and all other similarly situated prisoners at Phillips State Prison in Buford, Georgia, pursuant to 42 U.S.C. § 1983, and the Eighth and Fourteenth Amendments to the United States Constitution, seeking declaratory and injunctive relief.

II. JURISDICTION

8. This action is brought pursuant to 42 U.S.C. § 1983. This Court has jurisdiction over plaintiff's claims pursuant to 28 U.S.C. §§ 1331 and 1343, and the United States Constitution.

9. This Court is authorized to grant declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

III. VENUE

10. The Northern District of Georgia is an appropriate venue for this action under 28 U.S.C. § 1391(b)(2) because a "substantial part of the events or omissions giving rise to the claim[s] occurred" in this district, at Phillips State Prison in Buford, Georgia.

IV. PARTIES

11. The plaintiff BOBBY JAMES JOHNSON is currently in Georgia Department of Corrections ("GDC") custody at Phillips State Prison, where he is held in the mental health unit. Plaintiff JOHNSON is diagnosed with dementia, bipolar disorder, schizoaffective disorder, borderline personality disorder, and impulse control disorder - serious mental impairments that substantially interfere with his thought processes, make him

vulnerable to assaults by other prisoners, and cause him to injure himself. He also has borderline intellectual functioning and has recently suffered a decline in cognitive skills and behavioral capacity. He has been repeatedly raped and assaulted by other prisoners in the mental health unit and has caused himself serious injury by cutting his own skin on numerous occasions.

12. Defendant JAMES E. DONALD is Commissioner of the Georgia Department of Corrections. As Commissioner, DONALD is responsible for the daily supervision of operations at the Georgia Department of Corrections. This responsibility includes the development, implementation, and maintenance of policies and procedures that protect prisoners from serious injury and death. He is the highest ranking official in the Georgia Department of Corrections. Defendant DONALD is sued in his official capacity as Commissioner of the Georgia Department of Corrections.

13. Defendant MICHELLE MARTIN is Warden of Phillips State Prison. Defendant Martin is responsible for the day-to-day operations, supervision, and oversight of Phillips, including the establishment and implementation of conditions, practices and policies of the prison relating to safety and security. She is responsible for the development, implementation, and maintenance

of policies and procedures that protect prisoners at Phillips State Prison from serious injury and death. Defendant MARTIN is sued in her official capacity as Warden of Phillips State Prison.

V. CLASS ACTION ALLEGATIONS

14. The plaintiff brings this action on behalf of himself and all others who are similarly situated pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure. The class consists of individuals who are now or will be in the future incarcerated at the mental health unit at Phillips State Prison.

15. The class is so numerous that joinder of all members is impracticable. The mental health unit houses approximately 225 mentally ill and/or mentally retarded prisoners. This population changes often as prisoners are transferred in and out of the prison or released.

16. There are questions of law and fact common to the class.

17. The conditions, policies, and practices challenged in this action apply with equal force to the named plaintiffs and all members of the class so that the claims of the named plaintiffs are typical of those of the class.

18. The named plaintiff will fairly and adequately represent the interests of the class. He possesses the requisite personal interest in the subject matter of the lawsuit. He is represented by a law office that is experienced in class-action litigation involving failure to protect prisoners from risk of harm.

19. Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

VI. STATEMENT OF FACTS

20. Phillips State Prison is located in Buford, Georgia, and has approximately 1,200 total beds. Approximately 225-250 beds make up the mental health unit, where individuals suffering from serious mental illness are confined. Phillips State Prison is one of only three prisons in the Georgia Department of Corrections designated and purportedly equipped to confine and treat the most severely mentally ill male prisoners in the State of Georgia. The other two prisons are Augusta State Medical Prison and Georgia State Prison. Severely mentally ill prisoners are classified by the Department of Corrections as mental health

"Level III" or "Level IV." Prisoners are considered "Level V" when they are in the crisis stabilization unit, where plaintiff JOHNSON has been confined numerous times during the past several months due to his self-injurious and suicidal behavior and thoughts.

21. As a mentally ill prisoner who is currently considered Level IV by defendants, plaintiff JOHNSON has been and will continue to be housed in the mental health unit as long as he remains at Phillips State Prison. During the past year defendants have repeatedly transferred plaintiff JOHNSON from Phillips State Prison to Augusta State Medical Prison for treatment of his significant physical health problems, but defendants have on each occasion returned JOHNSON to Phillips State Prison. His maximum possible release date is July 26, 2021.

22. Plaintiff JOHNSON is frequently victimized and threatened by other prisoners because defendants fail to adequately protect mentally ill prisoners from assault. During the past eight months, plaintiff JOHNSON has been forcibly anally raped on two occasions, sexually assaulted on another occasion,

and sexually harassed and intimidated on yet another occasion. He was assaulted and raped by another prisoner in the mental health unit on July 9, 2003. He was raped again by another prisoner in the mental health unit on January 3, 2004, after being hit on the back of his head and knocked unconscious by that prisoner. On October 9, 2003, he was sexually harassed by a prisoner who solicited him for sex, and on August 22, 2003, another prisoner in the mental health unit placed his finger in plaintiff JOHNSON's anus. When other prisoners harass or threaten plaintiff JOHNSON, his attempts to get help from officers are frequently ignored and ridiculed.

23. During February 2004, plaintiff JOHNSON cut his own skin with a razor or other sharp instrument on three separate occasions while housed in the mental health unit. On the first occasion, February 6, 2004, he cut himself so deeply that the bleeding could not be controlled at the prison and he was sent to the emergency room where he received staples to close the wound. He remained in the prison's crisis stabilization unit for about five days after this injury. Two hours after he was released from this unit, he cut himself again. Two weeks later, plaintiff

JOHNSON was again able to find a sharp piece of metal and cut himself again.

24. In the past two years and a half, due to defendants' failure to protect mentally ill prisoners from harm, at least six individuals housed in the mental health unit at Phillips State Prison have died from suicide, at the hands of other prisoners, or by suspicious accidents:

- (a) On July 27, 2001, Alfred Motes died during a "cutting party," in which several mentally ill prisoners urged each other to cut their own skin and then did so together as a group. Before the death of Mr. Motes, a mental health aide informed the deputy warden of security that there was a knife blade in a certain cell. Despite the warning, Mr. Motes was placed in that cell. Mr. Motes was cut, either by another prisoner or by himself, so severely that he bled to death. Despite being informed by an eyewitness that Mr. Motes was cut by another person, the death was called a suicide without further investigation by defendants or their agents in the Department of

Corrections.

- (b) On October 21, 2001, David Strickland was killed while double-bunked in an administrative segregation cell. Before he died, David Strickland had repeatedly told guards that he was fearful for his life and asked them to move him from the cell. He was not removed despite his pleas. Both Mr. Strickland and his cellmate, who was accused of causing the death of Mr. Strickland, suffered from serious psychiatric disorders, and had been placed in segregation for disciplinary reasons.
- (c) On September 7, 2002, prisoner Frederick Roberson died after falling while in the dayroom of his living unit.
- (d) On January 12, 2003, Arthur Umberhand, a Level IV mental health prisoner, was killed while double-bunked in a segregation cell. Mr. Umberhand had requested protective custody and had been moved to a segregation cell for his own protection. Another prisoner, who was being segregated pending a disciplinary investigation for threatening another prisoner, was already occupying the cell where Mr. Umberhand was placed. Due to the

inadequate policies, procedures, and practices of defendants, the prisoner already occupying the cell was not moved, and both he and Mr. Umberhand were locked into the same segregation cell. A day later, Mr. Umberhand was killed by his cellmate.

(e) On March 26, 2003, prisoner John Walker died after falling onto the floor in the dayroom in his living unit.

(f) On June 13, 2003, Reginald Taylor was slammed against a wall or a fence by an officer who accused him of trying to get two lunch trays. Mr. Taylor warned a correctional officer that he was feeling depressed and suicidal. Later that day, he died after hanging himself from his top bunk in a segregation unit.

25. Six deaths over a two and a half year period in a population that averages about 250 prisoners, or 2.4% of the population, is an extraordinarily high death rate. This is approximately six times higher than the death rate in the remainder of the Georgia Department of Corrections. Defendants' investigations of these deaths are inadequate and fail to identify or attempt to identify systemic causes for the high rate of death within this unit. While precise numbers are unknown,

there is also an extraordinarily high rate of rapes and other assaults among mentally ill prisoners at Phillips State Prison. The policies, procedures and practices at Phillips State Prison are inadequate to prevent future deaths and serious injuries at the prison.

26. Phillips State Prison does not have sufficient correctional staff who are adequately trained and experienced to monitor and supervise seriously mentally ill prisoners who may pose a risk of violence to other prisoners and to themselves. Nor does the prison have sufficient correctional staff who are adequately trained to protect those mentally ill prisoners, such as plaintiff JOHNSON, who are particularly vulnerable to physical and sexual assault and intimidation.

27. Mentally ill prisoners such as plaintiff JOHNSON present correctional staff with significant management problems due to manifestations of their mental illness: they may be incoherent, manic, responding to auditory hallucinations, experiencing delusions or other disturbed thought processes, or suffering from other severe mental impairments or limitations that make it difficult or impossible for them to respond to commands in the way that a person without mental illness would be expected to respond. This makes the job of the correctional

staff who are required to manage and protect this population extremely difficult and necessarily requires more staff with appropriate mental health training and certification to do the job safely. Nevertheless, defendants have persistently failed to ensure that there is an adequate number of sufficiently trained staff in the mental health unit. Often a single officer who may or may not be mental health certified is required to monitor a housing area in the mental health unit by him or herself. The mental health certification process itself is inadequate to protect prisoners such as plaintiff JOHNSON. The insufficient number of staff and the inadequacy of training for staff working with mentally ill prisoners increases the risk of serious harm to plaintiff JOHNSON and other class members.

28. Due to the shortage of trained and experienced correctional staff at Phillips, officers in the mental health units are forced to work double shifts without overtime pay to cover essential positions. Such officers become exhausted and resentful, and frequently do not respond adequately to threats of abuse and self-harm within the mental health unit. The poor response from officers to threats of abuse and self-harm increases the risk of serious harm to plaintiff JOHNSON and other class members.

29. Overworked, undertrained officers are also more likely to use excessive physical force and unnecessary brutality against mentally ill prisoners for symptoms of their mental illness, even when such prisoners are already restrained. The presence of exhausted and overworked officers, many of whom are required to work in two dormitories at a time because there are not enough officers on the shift, increases the risk of serious harm to plaintiff JOHNSON and other class members.

30. Another factor contributing to the high risk of harm is defendants' practice of placing two prisoners into cells, including administrative and disciplinary segregation cells, without adequate consideration of whether the prisoners are a danger to one another. The two deaths described in paragraphs 24(b) and 24(d) above, are a result of improperly placing two prisoners without appropriate screening into a single segregation cell. More recently, at the end of February 2004, a prisoner in D-1 dormitory was sexually assaulted by his cellmate after he complained that they should not be housed in the same cell. The practice of placing mentally ill prisoners together in the same

cell without adequately screening them increases the risk of serious harm to plaintiff JOHNSON and other class members.

31. Due to defendants' failure to provide adequate security at Phillips State Prison, sharp instruments such as razors and pieces of metal are easily accessible to prisoners in the mental health units who are likely to use them to injure or kill themselves or to threaten others. As detailed above in paragraph 23, in February 2004, plaintiff Johnson cut himself so badly that he was sent to the emergency room. Nonetheless, plaintiff JOHNSON was able to gain access to a sharp implement with which he was able to injure himself on two further occasions within that same month. The availability of razors and other sharp objects in the mental health unit contributed to the death of Alfred Motes as described in paragraph 24(a) above. Defendants' failure to control mentally ill prisoners' access to razors and other sharp implements increases the risk of serious harm to plaintiff JOHNSON and other class members.

32. Other policies and procedures at the prison do not adequately take into account the safety needs of seriously mentally ill prisoners and place them at increased risk of serious harm.

33. The practices, policies and procedures challenged in this lawsuit are implemented and maintained by defendants with deliberate indifference to the substantial risk of serious harm faced by prisoners confined in the mental health unit at Phillips State Prison. Defendants have known about this risk, which is longstanding, pervasive, well-documented, and apparent to any knowledgeable observer. In addition to the obviousness of the risks of harm to plaintiff JOHNSON and the proposed plaintiff class, defendants were also put on notice of the risks of harm on February 20, 2002, when a class of 21 seriously mentally ill prisoners at Phillips State Prison filed a class action lawsuit describing substantially the same problems as are detailed in this Complaint. Four mentally ill prisoners have died since that lawsuit was filed and many more have been raped, assaulted and otherwise injured. On February 20, 2003, the plaintiffs in that lawsuit filed a motion for a preliminary injunction after a second mentally ill prisoner was killed by his cellmate. This death further demonstrated that prisoners continued to be at substantial risk of death because of defendants' deliberate indifference to known risks of harm. Defendants were again put on notice of the substantial risks of serious harm to JOHNSON and

the proposed plaintiff class on July 8, 2003, when Richard Ralph filed a lawsuit making substantially the same allegations as are detailed in this Complaint.

34. Defendants have not responded reasonably to the known risks of harm and to the actual deaths, assaults, and injuries that have already resulted from defendants' actions and inactions. The defendants' practices, policies and procedures have caused and, unless changed, will continue to cause, needless human suffering and an increased risk of serious injury and death.

VII. EXHAUSTION OF ADMINISTRATIVE REMEDIES

35. Plaintiff JOHNSON has exhausted his administrative remedies to the extent that they were available to him. In the case of JOHNSON and other similarly situated prisoners, the existing grievance procedure as it currently operates at Phillips State Prison is not available at all. Plaintiff JOHNSON suffers from dementia which causes him to become completely incoherent and impairs his memory, he has borderline intellectual functioning with declining cognitive skills, and he experiences hallucinations that tell him to harm himself. Due to his severe

mental impairments, JOHNSON is incapable of understanding the rules concerning grievances and incapable of complying with them or obtaining the help that he needs.

VIII. CAUSE OF ACTION

36. Defendants' policies and practices in failing to protect plaintiff JOHNSON and other class members from serious physical and sexual abuse and from self-injury constitute deliberate indifference to a substantial risk of serious harm to these persons and amount to cruel and unusual punishment in violation of plaintiff's rights under the Eighth and Fourteenth Amendments to the United States Constitution. In support of this claim, plaintiff incorporates by reference paragraphs 1-35 of this *Complaint*.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays that this Court:

37. Assume jurisdiction over this action;

38. Order that discovery in this matter commence immediately for a period of 90 days;

39. Adjudge and declare that the acts and omissions of the defendants with regard to the class members violate the Eighth and Fourteenth Amendments of the United States Constitution;

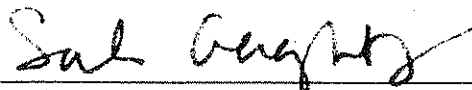
40. Enjoin defendants, their agents, officials, employees, and all persons acting in concert with them, under color of State law or otherwise, from continuing the unconstitutional and illegal acts, conditions, and practices described in this complaint;

41. Certify this civil action as a class action;

42. Award plaintiff the costs of this lawsuit and reasonable attorney's fees; and

43. Order such additional relief as the Court may deem just and proper.

Respectfully submitted this 31st day of March, 2004,



Sarah Geraghty, GA Bar No. 291393
Tamara Serwer Caldas, GA Bar No. 617053
Lisa Kung, GA Bar No. 430302
Stephen B. Bright, GA Bar No. 082075
SOUTHERN CENTER FOR HUMAN RIGHTS
83 Poplar Street, N.W.
Atlanta, Georgia 30303-2122
Telephone: (404) 688-1202
Facsimile: (404) 688-9440

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION


| | | |
|-------------------------|---|----------------|
| BOBBY JAMES JOHNSON, |) | |
| |) | |
| Plaintiff |) | |
| |) | |
| v. |) | |
| |) | |
| JAMES E. DONALD, et al, |) | COMPLAINT |
| |) | Civil Case No. |
| Defendants |) | Class Action |
| |) | |

CERTIFICATE OF SERVICE

I, Sarah Geraghty, do hereby certify that on this date I have caused to be served a copy of the *Complaint* by hand delivery upon defendants' attorney at the following address:

John C. Jones
Senior Assistant Attorney General
40 Capitol Square, S.W.
Atlanta, GA 30334-1300

Respectfully submitted this 31st day of March, 2004.



Sarah Geraghty, GA Bar No. 291393
Southern Center for Human Rights
83 Poplar Street, N.W.
Atlanta, Georgia 30303-2122
Telephone: (404) 688-1202
Facsimile: (404) 688-9440