

First 6-Month Report for Barbara McDowell Foundation Grant

Solitary Class Action Lawsuit

On 16 October 2019, North Carolina Prisoner Legal Services, Inc. (NCPLS) and the American Civil Liberties Union of North Carolina Legal Foundation, Inc. (ACLU) filed a class action complaint in Wake County Superior Court against Erik Hooks in his official capacity as Secretary of the North Carolina Department of Public Safety (DPS) and against DPS for violating Article I, Section 27 of the North Carolina Constitution, which forbids infliction of cruel or unusual punishments, for DPS' practice and policy of solitary confinement in North Carolina prisons. Allegations in the complaint include that DPS uses solitary confinement as punishment for a wide variety of infractions, including using profane language and disobeying an order; that DPS extends periods of solitary confinement for vague and arbitrary reasons that lead to years spent in solitary confinement; that the conditions of solitary confinement lead to psychological and physical damage; and that DPS knew about the risks of keeping people in solitary confinement. Plaintiffs asked for declaratory and injunctive relief only – not for money damages. Named Plaintiffs Rocky Dewalt, Robert Parham, Anthony McGee, and Shawn Bonnett were all in various forms of solitary confinement at the inception of this lawsuit, although two of them have since been moved into regular population.

Plaintiffs and Defendants moved jointly on 9 December 2019 to have this case designated as an exceptional case, meaning that a single judge would oversee the case because of its complexity. Both sides agreed on two possible judges to be assigned to the case – Judge Michael O’Foghludha or Judge James Hardin, both resident superior court judges in Durham County. Chief Justice Cheri Beasley designated the case exceptional on 4 February 2020 and assigned Judge Hardin to the case.

In Defendants’ answer to the complaint, they denied most of the allegations and disagreed with our use of the term “solitary confinement.” They also put forth fifteen defenses to the claims against them, including failure to state a claim, statute of limitations issues, lack of standing, causation issues, mootness, separation of powers, and failure to mitigate harm.

During January and February, the new coronavirus was gaining worldwide attention as it spread from country to country and leaders figured out ways to try to limit exposure. On 10 March 2020, Governor Cooper declared a state of emergency in North Carolina because of COVID-19 and encouraged people to work remotely. Most NCPLS and ACLU staff transitioned to working from home in the next few weeks. In addition to creating and learning new ways of managing tasks remotely, NCPLS and ACLU staff were also preoccupied with responding to concerns of prisoners and their loved ones regarding their particular vulnerabilities to COVID-19. Communication with clients became even more difficult as visitations were no longer feasible and phone calls were severely restricted. On defendants’ side, they were also preoccupied with their handling of the COVID-19 crisis. Therefore, work on the solitary case slowed somewhat.

On 30 March 2020, counsel for both sides met by telephone with Judge Hardin to discuss next steps and scheduling. Plaintiffs’ counsel let the judge know that we intended to file a class

certification motion in the next few weeks. We discussed logistics of filing and other tasks and agreed to coordinate with defendants' counsel to come up with a schedule. The next week, counsel for both sides met via telephone and discussed whether each side would seek discovery related to class certification. Over the next week, counsel communicated via email and drafted a plan for scheduling and potential class certification discovery. On 24 April 2020, we filed our motion for class certification and supporting brief and exhibits. Defendants will now determine whether they intend to seek discovery related to that motion or not.

While the COVID-19 situation has slowed progress on many cases, we intend to move forward with this case as quickly as possible under the circumstances because our clients are still experiencing the damages of being in solitary confinement. During the next six months, we hope to have a hearing on the merits of our class certification motion. If our class is certified, we hope to at least begin fact discovery in the next six months.

For further information, please contact Mani Dexter at NCPLS (mdexter@ncpls.org).