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Landmark Class Settlement Approved to Reform One of the "Harshest and Most Draconian" Solitary Confinement Units in the United States

by James F. Bogan III

In *Gumm v. Ford*, No. 5:15-CV-41 (MTT), 2019 WL 2017497 (M.D. Ga. May 7, 2019), Judge Marc Treadwell of the United States District Court for the Middle District of Georgia approved a landmark class settlement involving Georgia's most restrictive prison, the Special Management Unit (SMU) at the Georgia Diagnostic & Classification Prison in Jackson, Georgia. Jackson is roughly midway between Atlanta and Macon, Georgia.

In correctional practice, "solitary confinement" refers to placing an inmate in extreme isolation, for 23 hours a day or even longer, with the result the inmate has extremely limited or no opportunities for direct and normal social contact with other human beings. In 2015, the United Nations Crime Commission approved the so-called "Mandela Rules," which prohibited placing a prisoner in solitary confinement for longer than ***15 days***. The original named plaintiff in the case, Timothy Gumm, was held in solitary confinement in the SMU for ***seven-and-a-half years***, and another class plaintiff (Robert Watkins) was confined in the SMU for ***10 years***.

Mr. Gumm originally filed the action under 42 U.S.C. § 1983, challenging the conditions of confinement and practices at the SMU. Attorneys at the Southern Center for Human Rights (SCHR) were appointed to represent Mr. Gumm. Later, attorneys from Kilpatrick, Townsend & Stockton LLP (including the author of this article) joined SCHR as co-class counsel.

The class claims were brought under the Eighth Amendment's Cruel and Unusual Punishments Clause and the Fourteenth Amendment's Due Process Clause, and sought declaratory and injunctive relief on behalf of all prisoners who were or who later would be confined in the SMU.

After a lengthy discovery process, as well as settlement negotiations that lasted roughly 18 months, the parties reached a settlement in December 2018 to settle the declaratory and injunctive relief claims asserted on behalf of the class.

Pre-Settlement Conditions in the SMU

Built in 2007, the SMU was designed to isolate prisoners in an extremely harsh form of solitary confinement. Those transferred to the SMU were locked inside specially-equipped, tiny cells that made it almost impossible for them to communicate with others. By 2017, the SMU had deteriorated to the point where people were being confined to isolation cells for nearly 24 hours per day on average, unable even to see out of a window. A number of inmates were confined literally 24 hours a day for months at a time. For many of them, the only way out was being released directly into society after the expiration of their prison sentences. Two men committed suicide in the SMU in 2017.

Class counsel hired Dr. Craig Haney as the expert witness for the class plaintiffs. Dr. Haney is a

renowned psychology professor and perhaps the most qualified expert in the United States on the issue of solitary confinement. After a visit to the SMU in October, 2017, he issued a report describing the SMU as "one of the harshest and most draconian" facilities he has seen in this country, and its prisoners as "among the most psychologically traumatized persons [he] ha[d] ever assessed in this context." During his tour of the SMU, Dr. Haney encountered a cell block full of inmates with serious mental illness; a man who had been locked for months inside a pitch-black cell; and another man, naked and psychotic, whose cell was covered in blood. The SMU's prisoners were exposed to such conditions for years on end. Dr. Haney ultimately concluded that the SMU's conditions deprived prisoners of basic human needs and posed a substantial risk of serious psychological harm to all prisoners housed there.

Class counsel developed and submitted (among other) evidence that prisoners sent to the SMU spent a minimum of 90 days without any out-of-cell time, personal property, or other materials to occupy their minds; that many SMU prisoners endured extended and severe solitary confinement; that SMU prisoners faced arbitrary barriers in moving through the SMU's program phases or otherwise in transferring to normal prisons; and that the SMU held an intolerably high number of mentally ill prisoners in extreme isolation.

Settlement Terms

In December 2018, after protracted negotiations, counsel for the parties hammered out a settlement agreement to reform the conditions and procedures in the SMU.

The settlement terms provided:

- Every person held in the SMU must be allowed at least four hours per day out of their cells, except on weekends and holidays. People will no longer have out-of-cell time denied as a punishment except for short periods following serious misconduct.
- Except in narrowly-defined circumstances, assignment to the SMU cannot exceed 24 months. Any prisoner held for longer than two years will be reviewed quarterly by a special panel composed of senior security, legal, and mental health professionals.
- People may qualify for transfer from the SMU as soon as 13 months after assignment and may not be arbitrarily moved backward in the program.
- Everyone in the SMU is assigned a computer tablet equipped with educational programs, email capability, music, and other media.
- People are also permitted library access and the opportunity to participate in at least 120 minutes per week of out-of-cell programming or classes.
- The criteria for assignment to the SMU will be modified to limit those who may be placed in the unit.
- Before assignment to the SMU, and in conjunction with every 60-day or 90-day review hearing, people will receive an out-of-cell mental health evaluation performed by a licensed mental health provider. If the provider finds that someone is decompensating or is likely to decompensate, they will be transferred to an appropriate treatment facility.

The district court preliminarily approved the class settlement on January 17, 2019. After a fairness

hearing on April 30, 2019, the district court entered its Final Order and Permanent Injunction approving the settlement. Among other things, the court determined that the injunctive relief elements of the class settlement satisfied the "need-narrowness-intrusive" requirements of the federal Prison Litigation Reform Act. The court also overruled various objections to the class settlement, most of which raised objections not with the settlement itself, but with compliance issues going to the defendants' alleged failure to implement terms of the settlement.

In the prison context, class actions serve as an indispensable tool for achieving tangible changes to inmates' conditions of confinement. In *Gumm*, the class action device served as the mechanism to provide meaningful relief to persons exposed to one of the most psychologically and physically damaging forms of incarceration used today. Hopefully, the *Gumm* class settlement will serve as a model for other state class actions similarly challenging solitary confinement.