

IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

JAMES MILLER, CODY DEERY, TRAVIS)
GIBSON, JAMES RODGERS, and JOSEPH)
RICKETTS, on behalf of themselves and a class)
of those similarly situated,)

Plaintiffs,)

v.)

MARSHALL COUNTY, INDIANA; and the)
MARSHALL COUNTY SHERIFF, in his official)
capacity,)

Defendants.)

No. 3:19-cv-00842

COMPLAINT – CLASS ACTION

CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. The Marshall County Jail (“the Jail”) is overcrowded and understaffed, and as a result it is a place where violence between prisoners is common and dangerous conditions prevail. The conditions in the Jail therefore violate the Eighth and Fourteenth Amendments to the United States Constitution. Declaratory and injunctive relief should be issued to address and remedy the Jail’s 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. James Miller is an adult person who is currently confined in the Marshall County Jail.
7. Cody Deery is an adult person who is currently confined in the Marshall County Jail.
8. Travis Gibson is an adult person who is currently confined in the Marshall County Jail.
9. James Rodgers is an adult person who is currently confined in the Marshall County Jail.
10. Joseph Ricketts is an adult person who is currently confined in the Marshall County Jail.
11. Marshall County, Indiana is one of Indiana's ninety-two counties and is located in northern Indiana. Its executive is the Marshall County Commissioners and its fiscal body is the Marshall County Council.
12. The Marshall County Sheriff is the duly elected sheriff of Marshall County, and is sued in his official capacity.

Class action allegations

13. This action is brought by plaintiffs on their 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.
14. The class is defined as follows:

all persons currently confined, or who will in the future be confined, in the Marshall County Jail.
15. 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 Marshall County Jail regularly houses more than 250 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 Marshall County Jail violate the United States Constitution.
 - c. The claims of the representative parties are typical of those of the class.

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

16. The further requirements of Rule 23(b)(2) are met in this cause as at all times the defendants have acted or 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.

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

Legal background

18. 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).

19. 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. *See, e.g., Weatherholt v. Spencer County*, 639 N.E.2d 354, 356 (Ind. Ct. App. 1994).

Factual allegations

Allegations Concerning the Marshall County Jail

20. The Marshall County Jail (“the Jail”) is located in Plymouth, Indiana. The current jail was constructed in 2007 and opened in 2008.

21. The Jail contains 230 permanent beds.

22. Of the cells in the Jail that are designed to house more than one prisoner, some are designed to house two prisoners and others are designed to house four prisoners.

23. Under Indiana law, county jails are periodically inspected by Indiana Department of Correction (“DOC”) jail inspectors. The most recent inspection of the Jail was conducted in June of 2019.

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

25. 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 necessary classification of prisoners much beyond separating men and women.

26. At the time of the June inspection of the Jail, the DOC's jail inspector noted that on the day of inspection the jail exceeded its rated capacity and that there was not a bed for all the prisoners. At the time of the inspection, the Jail housed 242 inmates.

27. During a meeting of the Marshall County Council that took place in August of 2019, the Marshall County Sheriff noted that at that time the Jail housed 292 inmates.

28. The Jail is chronically overcrowded.

29. Classification is essential to protect the safety of both prisoners and staff. By way of example only, inmates 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, and prisoners who have had previous problems with each other should be separated.

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

31. As a result of the overcrowding at the Jail, many if not most cells have at least one prisoner 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 are forced to sleep either near the toilets or under another inmate's bed. Because of the small size of the cells, some prisoners need to eat while sitting on the toilet as well; others need to eat while sitting on the floor.

32. The Jail has recently opened up the recreation room as additional housing, and some

inmates sleep on the floor of that room as well. Because the recreation room is used for this purpose, inmates are no longer provided recreation, a fact that exacerbates tensions in the Jail. After all, 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 an institutional environment. The opportunity for vigorous physical exercise is even more important in an overcrowded jail, as in such a situation tensions escalate and there is inadequate area within the prisoners' living space to engage in exercise.

33. Local media reported that, prior to the August 2019 meeting of the Marshall County Council, the Marshall County Sheriff and the President of the Marshall County Council exchanged jokes about pitching tents at the Jail to alleviate the overcrowding.

34. There is insufficient staff at the Jail to adequately monitor the prisoners, and inmates with medical conditions are housed in general population and are not seen in a timely manner if at all.

35. Assaults between prisoners are frequent, aggravated by the overcrowded conditions.

36. The Jail is locked down daily from 10 p.m. to 7 a.m. While on lockdown and at other times, jail staff frequently does not respond to requests for attention or assistance from prisoners.

37. The lack of meaningful recreation, the overcrowding, and the lack of staff supervision causes continuous tension and dangerous conditions at the Jail. The conditions at the Jail are objectively unreasonable.

Allegations Concerning the Named Plaintiffs

James Miller

38. James Miller has been incarcerated in the Jail since January 11, 2019.

39. Mr. Miller is currently incarcerated as a pretrial detainee.

40. When Mr. Miller first arrived at the Jail, he was placed in a two-person cell in the holding

area of the Jail. He remained in that cell for about a week.

41. Mr. Miller was then transferred to a two-person segregation cell. He remained in that cell for approximately two months. During this time, he was confined to his cell for about 23 hours a day, even though there was no reason for him to be in segregation. He was told that he was placed in that cell because there was nowhere else to put him.

42. Mr. Miller was then transferred to a two-person cell on a “pod” that housed persons charged with sex offenses even though he has not been charged with a sex offense. He remained in that cell for two or three months.

43. Mr. Miller is currently housed in a four-person cell with five total inmates. He has been housed in that location since July of 2019. Every cell on the “pod” where Mr. Miller is housed has five persons, with one person sleeping on a thin mat on the floor.

44. Mr. Miller has seen prisoners fighting because of the tensions at the Jail.

45. Mr. Miller has not been offered any outside recreation since he arrived at the Jail. The last time he was offered indoor recreation was about three months ago.

46. Mr. Miller has filed grievances concerning the overcrowding at the Jail and the problems that result from this overcrowding. In response, he has been told that staff is aware of the situation. He has thus fully exhausted the Jail’s grievance system.

Cody Deery

47. Cody Deery has been incarcerated in the Jail since January 5, 2019. He was previously incarcerated at the Jail for a short period in late 2017.

48. Mr. Deery is currently incarcerated as a pretrial detainee.

49. When Mr. Deery first arrived at the Jail, he was placed in a two-person holding cell for less than a day.

50. Mr. Deery was then transferred to a four-person cell that housed four persons at the time. He has remained in that cell and another cell on the same “pod” since that time. Several months ago, the population at the Jail became such that every cell on the “pod” housed five persons, with the fifth person sleeping on a thin mat on the floor of the cell.

51. The fifth person in Mr. Deery’s cell thus has two options: either sleep on the floor right next to the toilet or sleep under one of the bunk beds in the cell. He sleeps under a bunk bed even though it is not more than a foot or two off the ground.

52. Mr. Deery has seen prisoners fighting because of the tensions at the Jail.

53. Mr. Deery has not been offered any outside recreation since he arrived at the Jail. The last time he was offered indoor recreation was several months ago.

54. Mr. Deery has filed grievances concerning the overcrowding at the Jail and the problems that result from this overcrowding. In response, he has been told that staff is aware of the situation. He has thus fully exhausted the Jail’s grievance system.

Travis Gibson

55. Travis Gibson has been incarcerated in the Jail since December 18, 2018. He was previously incarcerated at the Jail on a couple of occasions, once in 2013 and once in 2017.

56. Mr. Gibson is currently incarcerated as a pretrial detainee.

57. When Mr. Gibson first arrived at the Jail, he was placed in the holding area for a day or two.

58. Since that time, Mr. Gibson has been transferred to a few different housing “pods” at the Jail. He has been housed in his current “pod” for approximately six months.

59. Mr. Gibson is currently housed in a four-person cell with five persons. One of the persons has the choice between sleeping next to a toilet or under a bunk. He sleeps under one of the bunks

even though the bunk is only a foot or two off the ground.

60. Mr. Gibson has seen prisoners fighting because of the tensions at the Jail.

61. Mr. Gibson has not been offered any outside recreation since he arrived at the Jail. The last time he was offered indoor recreation was several months ago.

62. Mr. Gibson has filed grievances concerning the overcrowding at the Jail and the problems that result from this overcrowding. In response, he has been informed that staff is aware of the situation and is working on it. He has thus fully exhausted the Jail's grievance system.

James Rodgers

63. James Rodgers has been incarcerated in the Jail since July 11, 2019. He was previously incarcerated at the Jail from May 4th through July 10th of 2019.

64. Mr. Rodgers is currently incarcerated as a pretrial detainee.

65. When Mr. Rodgers first arrived at the Jail, he was placed in the drunk tank for approximately six days.

66. Mr. Rodgers was then transferred for one night to a two-person segregation cell, even though there was no reason for him to be in segregation.

67. Mr. Rodgers was then transferred to a four-person cell that housed five persons. He remained in that cell for approximately two and a half weeks. During this time, one of the persons in the cell was required to sleep on a thin mattress on the floor of the cell.

68. Mr. Rodgers is currently housed in a two-person cell with two other persons, with one person sleeping on a thin mat on the floor of the cell.

69. Mr. Rodgers has seen prisoners fighting because of the tensions at the Jail.

70. Mr. Rodgers has not been offered any outside recreation since he arrived at the Jail. The last time he was offered indoor recreation was approximately three months ago.

71. Mr. Rodgers has filed grievances concerning the overcrowding at the Jail and the problems that result from this overcrowding. He has received responses to these grievances and has thus fully exhausted the Jail's grievance system.

Joseph Ricketts

72. Joseph Ricketts has been incarcerated in the Jail since August 6, 2019.

73. Mr. Ricketts is currently incarcerated as a pretrial detainee.

74. When Mr. Ricketts first arrived at the Jail, he was placed in the holding area for approximately nine days. During this time, he was assigned to a two-person cell that held three persons, with one of the persons sleeping on a thin mat on the floor.

75. After leaving the holding area, Mr. Ricketts was transferred to two different housing "pods" at the Jail. In each location, he was housed in a four-person cell that contained five persons, with one person sleeping on a thin mat on the floor. Between his placements in these two different "pods," Mr. Ricketts was placed in a two-person segregation cell for approximately two weeks.

76. Mr. Ricketts was then transferred to the recreation area of the Jail, which is designed for recreation purposes and not for housing purposes. There are currently ten persons housed in the recreation area, all of whom are required to sleep on thin mats on the floor.

77. Mr. Ricketts has seen prisoners fighting because of the tensions at the Jail.

78. Mr. Ricketts has not been offered any recreation since he arrived at the Jail.

79. Mr. Ricketts has filed grievances concerning the problems that result from the overcrowding at the Jail. Before he could receive a response to this grievance, he was transferred to the recreation area. The inmates housed in the recreation area do not have access to a tablet through which grievances are submitted and grievance responses are received. Mr. Ricketts has thus fully exhausted the Jail's grievance system.

Concluding Allegations

80. The named plaintiffs are concerned not only for their own safety, but for the health and safety of other prisoners who are similarly injured by the conditions in the Jail. They believe that all prisoners are negatively affected by the overcrowding, lack of sufficient staff, lack of recreation, and the problems that result from these conditions.

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

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

83. Marshall County, Indiana has failed in its mandatory duty to establish and maintain the Jail in a constitutional manner.

84. The Marshall County Sheriff has failed in his mandatory duty to take care of the Jail and the prisoners detained there in a constitutional manner.

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

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

Legal claim

87. The conditions of the Marshall County Jail violate the Fourteenth Amendment to the United States Constitution as applied to pretrial detainees and the Eighth Amendment to the United States Constitution as applied to convicted prisoners.

Request for relief

WHEREFORE, the plaintiffs request that this Court:

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

/s/ Gavin M. Rose
Gavin M. Rose

/s/ Stevie J. Pactor
Stevie J. Pactor

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

*Attorneys for the plaintiffs and the
putative class*