

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RICHARD WINTERS, JOE CORONADO,
RONNIE NICHOLSON, PETER YOGERST,
WILLIAM PAYNE, COREY WISEMAN,
NATHANIAL DUKES, AL CURTIS,
EDWARD WILSON, RONALD McCAIN,
PAUL PRICE, DANNY DAVIS,
STANLEY FELTON, BRIAN CLARK,
RUFUS LYNCH, DANNY WEBB,
JAMES JACKSON, ROY BOATNER,
JESSIE THOMAS, JIMMY McQUEEN,
KEVIN VANCE, DEMITRIUS ROBERTSON,
THOMAS JONES and ANTWAN TOWNSEND,
Plaintiffs,

ORDER
00-C-318-C

v.

CHARLES BLANCHETT, PERCY PITZER,
OFFICER JOHN DOE #1, OFFICER JOHN DOE #2
and OFFICER JOHN DOE #3,
Defendants.

In an order entered on June 12, 2000, I allowed plaintiffs to proceed on their claims of excessive force, failure to protect from harm and conditions of confinement, growing out of the events surrounding a riot at the Corrections Corporation of America - Whiteville Correctional Facility in Tennessee on November 20, 1999. In that order, I dismissed

proposed plaintiffs Eric Hune, James Towns and Gerald Tucker because they failed to allege any personal involvement in the events surrounding the riot or any injury resulting from the riot. On September 22, 2000, Eric Hune filed a request for reconsideration of the decision to dismiss him from the case. He contends that he should have been allowed to proceed on his conditions of confinement claim because the complaint alleged that he was subjected to the same conditions between November 30, 1999 and December 10, 1999 as the plaintiffs who were allowed to proceed on this claim. Upon reconsideration, I agree. Although plaintiffs failed to allege that Hune was injured in the riot, they alleged that all of the plaintiffs were subjected to unconstitutional conditions of confinement in violation of the Eighth Amendment. Hune will be allowed to proceed on his conditions of confinement claim against defendant Pitzer.

On September 26, 2000, plaintiff Richard Winters requested information about serving defendants Charles Blanchett and Percy Pitzer. On October 5, 2000, this court received a completed waiver of service of summons form from defendants Blanchett and Pitzer. Because service of the named defendants has been accomplished, I assume that plaintiff Winters no longer needs additional information about the service process.

On October 18, 2000, plaintiffs requested that this case be transferred to the District Court for the Western District of Tennessee pursuant to 18 U.S.C. § 1406(a) because all of the defendants reside in Tennessee and plaintiffs are incarcerated in a facility in Tennessee. Under

28 U.S.C. § 1391(b), a civil rights action “may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same state, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.” 28 U.S.C. § 1406(a) authorizes a federal court in which venue is improper to transfer a case to another court where venue is proper if the transfer would further the interests of justice. I will give defendants Blanchett and Pitzer until November 2, 2000 to file objections, if any, to plaintiffs' request for a change of venue.

ORDER

IT IS ORDERED that Eric Hune's request for reconsideration of his dismissal from this case is GRANTED. Plaintiff Hune may proceed on his conditions of confinement claim against defendant Percy Pitzer.

FURTHER, IT IS ORDERED that defendants Charles Blanchett and Percy Pitzer may file objections, if any, to plaintiffs' request to transfer this case to the District Court for the Western District of Tennessee by November 2, 2000. If by November 2, 2000, defendants have not filed any objections, plaintiffs' request to transfer this case to the District Court for

the Western District of Tennessee will be granted.

Entered this 19th day of October, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge