

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARVIN L. BROWN

Plaintiff

v.

Civil Action No.

BRAD LIVINGSTON, in his individual
and official capacity as the director of the
Texas Department of Criminal Justice,

STUART JENKINS, in his individual
and official capacity as the director of
the Texas Department of Criminal Justice
Parole Division,


RISSE OWENS, CHARLES AYCOCK,
CONRITH DAVIS, JACKIE DeNOYELLES,
JUANITA M. GONZALEZ, DAVID G.
GUTIERREZ, THOMAS A. LEEPER,
individually and in their official capacities
as executive officers of the Texas Department
of Criminal Justice Division Board of Pardons
and Paroles,

AND

RICK PERRY, in his official capacity
as the Governor of Texas,

Defendants

COMPLAINT

1. Plaintiff Marvin L. Brown is filing pro se. He is a resident of Dallas County, Texas. His address is .
2. Defendant Brad Livingston is Executive Director of the Texas Department of Criminal Justice. He is sued in his official capacity for injunctive and declaratory relief, and his individual

capacity for damages. He is a resident of Travis County, Texas. He may be served at the Texas Department of Criminal Justice 209 West 14th Street, Austin, Texas 78701.

3. Defendant Stuart Jenkins is Director of the Texas Department of Criminal Justice Parole Division. He is sued in his official capacity for injunctive and declaratory relief, and his individual capacity for damages. He is a resident of Travis County, Texas. He may be served at the Parole Division Central Office, 8610 Shoal Creek Blvd., Austin, TX 78757.
4. Defendant Risse Owens is the Presiding Officer of the Texas Department of Criminal Justice Board of Pardons and Paroles. She is sued in her official capacity for injunctive and declaratory relief, and her individual capacity for damages. She is a resident of Walker County, TX. She may be served at the Huntsville Board Office, 1300 11th Street, Suite 520, Huntsville, Texas 77342-0599.
5. Defendant Charles Aycock is an executive voting member of the Texas Department of Criminal Justice Board of Pardons and Paroles. He is sued in his official capacity for injunctive and declaratory relief, and his individual capacity for damages. He is a resident of Potter County, TX. He may be served at the Amarillo Board Office, 5809 S. Western, Suite 237, Amarillo, TX 79110.
6. Defendant Conrith Davis is an executive voting member of the Texas Department of Criminal Justice Board of Pardons and Paroles. He is sued in his official capacity for injunctive and declaratory relief, and his individual capacity for damages. He is a resident of Brazoria County, TX. He may be served at the Angleton Board Office, 1212 N. Velasco, Suite 201, Angleton, TX 77515.
7. Defendant Jackie DeNoyelles is an executive voting member of the Texas Department of Criminal Justice Board of Pardons and Paroles. She is sued in her official capacity for injunctive

and declaratory relief, and her individual capacity for damages. She is a resident of Anderson County, TX. She may be served at the Palestine Board Office, 133 E. Reagan Street, Palestine, TX 75801.

8. Defendant Juanita M. Gonzalez is an executive voting member of the Texas Department of Criminal Justice Board of Pardons and Paroles. She is sued in her official capacity for injunctive and declaratory relief, and her individual capacity for damages. She is a resident of Bexar County, TX. She may be served at the San Antonio Board Office, 2902 N.E. Loop 410, Suite #406, San Antonio, TX 78218.
9. Defendant David G. Gutierrez is an executive voting member of the Texas Department of Criminal Justice Board of Pardons and Paroles. He is sued in his official capacity for injunctive and declaratory relief, and his individual capacity for damages. He is a resident of Coryell County, TX. He may be served at the Gatesville Board Office, 3408 S. State Hwy. 36, Gatesville, TX 76528.
10. Defendant Thomas A. Leeper, is an executive voting member of the Texas Department of Criminal Justice Board of Pardons and Paroles. He is sued in his official capacity for injunctive and declaratory relief, and his individual capacity for damages. He is a resident of Walker County, TX. He may be served at Huntsville Board Office, 1300 11th Street, Suite 520, Huntsville, Texas 77342-0599.
11. Defendant Rick Perry is the Governor of Texas. He is being sued in his official capacity for injunctive and declaratory relief. He may be served at the Office of the Governor, State Insurance Building, 1100 San Jacinto, Austin, TX 78701.

12. At all relevant times, each Defendant was acting under color of law and as an agent, servant, and employee of the State of Texas, and, as such was upholding the laws of the State of Texas and the United States.

JURISDICTION AND VENUE

13. Jurisdiction is based on 28 U.S.C. §§ 1331 and 1343(a)(3)(4).
14. Venue is proper in this Court under 28. U.S.C. § 1391(b)(1) because it is the residence of Defendants Livingston, Jenkins, and Perry.

STATEMENT OF CLAIM

15. Defendant Rick Perry, with deliberate indifference to Plaintiff's clearly established constitutional rights, through his administrative actions, violated and/or has put into process action to violate Plaintiff's rights under the Fourteenth Amendment, when he ordered the Texas Board of Criminal Justice, the Board of Pardons and Paroles, and the Parole Division, which include all of the Defendants named herein, to alter and reverse Plaintiff's parole conditions to more serious restrictions and confinement, including putting Plaintiff back on an electronic monitor, without cause and due process of law.
16. Defendants Livingston, Jenkins, Owens, Aycock, Davis, DeNoyelles, Gonzalez, Gutierrez and Leeper, through their administrative actions, violated and/or have put into process action to violate Plaintiff's rights under the Fourteenth Amendment, when they knowingly agreed to follow Defendant Perry's unlawful and unconstitutional order to reverse Plaintiff's parole and put him back on an electronic monitor.

STATEMENT OF FACTS

17. In 1985, Plaintiff was convicted of a crime that took place in 2004 and was sentenced to 40 years in prison. On October 29th, 1999, due to his good behavior while imprisoned and sincere efforts

to reform himself, he was released from prison on mandatory supervision parole. He was also placed on Super Intensive Supervision (SISP) which included an ankle bracelet and electronic monitor, all of which was to be monitored and controlled by the parole division. Aside from a seven month period in which his parole was illegally revoked by the unconstitutional actions of officers of the Texas Board of Pardons and Paroles, (Parole Board), which were later overturned. Plaintiff has lived in the community without incident as a productive member of society ever since. He has complied with every condition of his release.

18. Plaintiff was placed on a GPS monitor in 2007, and had to carry around a small box and keep it with him at all times whenever he left his house as scheduled. He was required to push a button on the box every time it beeped. Carrying the box to work stigmatized the Plaintiff, in that everyone there saw it and knew what it was for. Plaintiff was ridiculed and ostracized at work by the employees, so much so that his boss had to remove him from his training and hiring position. Plaintiff was forced to find another job, where he had to hide his monitor in lunch bag under his desk.
19. Plaintiff was also further stigmatized when he went to the VA because every time he was examined or went to the ER he would be asked about the ankle bracelet, and would have to lie. But when he had a GPS system to carry, many there figured out what it was for and treated Plaintiff reluctantly. Even when Plaintiff went to church he hid the monitor in a small brief case bag, and people would ask why he carried the bag and he would have to lie and say he had to carry his medication. This too stigmatized the Plaintiff, because he hates lying.
20. On February 24th, 2007, Plaintiff's therapist, Mr. Phillip Taylor, wrote a letter to Plaintiff's parole officer requesting that the Plaintiff be removed from SISP based on the SONAR estimate

of dynamic risk that there was an 81% chance of him not reoffending. No action was taken on that request.

21. On June 12th, 2007, Plaintiff met with his parole officer and the supervision staff regarding his use of the internet. They agreed to allow the Plaintiff to use the internet for business and personal use as long as he stayed away from chat rooms, porn sites, and did not email or have contact with anyone under 17. Plus he had to take quarterly polygraphs. Plaintiff complied and passed all of his polygraphs.
22. In November, 2007, the Parole Division on its own accord requested that the Parole Board remove the Plaintiff from SISP. The Board voted and released Plaintiff from SISP and the electronic monitor.
23. Having been removed from SISP and the monitor Plaintiff was able to establish friendlier contacts at the VA, at places where he shopped, make friends at church, go out to eat with family and friends, and be able to live somewhat of a normal and productive life. Plaintiff still had to give his parole officer a list of places he was to go with travel routes included.
24. Plaintiff's health began to deteriorate a little faster in 2007. Already he had a stint placed in his coronary artery during his wrongful incarceration in 2004. However, Plaintiff's coronary artery disease, renal functions, congestive heart failure, and peripheral neuropathy over the past three years have gotten worse.
25. October 19, 2009, Plaintiff had his first minor ischemic attack (TIA) [mini-stroke], since then he has had three more on September 13th, 2010, September 19th, 2010 and October 20th, 2010. Because of this, Plaintiff had a life alert like system installed in his home where he can wear a necklace that has an alert button on it he can push in the event he has a stroke, heart attack and/or a fall and can't get to the phone. The system is connected to his phone line.

26. Also connected to the Plaintiff's phone line is a home health monitor furnished by the VA since April 2009. Plaintiff enters his daily vitals into the monitor and a nurse on the other end monitors them. When she see vitals that are not normal she calls the Plaintiff to insure that he is okay, or to tell him that he needs to come into the VA right away.
27. Plaintiff also stays in closed contact with his diabetic doctor at the VA by email. His internet usage was abruptly stopped in September 2009 by his parole officer and the parole division without cause and due process. Plaintiff via his attorney tried to remedy the situation but they refused, so the Plaintiff filed suit, and the U.S. Western District Court gave an Oral Preliminary Injunction Order on July 11th, 2010 granting the Plaintiff internet access. Settlement agreement is pending.
28. On January 4, 2010 the Plaintiff received from his parole officer modifications of his parole conditions, which further reduced his parole conditions. This modification came from the Defendants on the Parole Board and was transmitted to the Plaintiff via the Parole Division.
29. On February 8th, 2010, Plaintiff's therapist, Phillip Taylor, wrote a letter to Plaintiff's parole officer stating that Plaintiff's Static 99 score of "0" showed that Plaintiff was at a low risk of offending and that there was a 97.2% chance of him not reoffending.
30. On September 27th, 2010 Defendant Perry made a public announcement that he had received a \$1.7 million grant, and that he was having all high risk sex offenders put back on an electronic monitor. Plaintiff did not find out about this until October 9th, 2010, when his parole officer told him that he was on the list. Plaintiff also discovered that the Board was no longer considering his Static 99 Score or any other factors including Plaintiff's health, health monitor or life alert. And then the Plaintiff confirmed Plaintiff would have to disconnect the life saving devices from his phone line, once he was on SISP.

31. Plaintiff did further research and on October 16, 2010 sent certified letters to the Defendants (letters to the Board were sent to their attorney Bette Wells) in the letters Plaintiff informed all the defendants of his health conditions, his monitor, his life alert, and Static 99 score. From a recent lawsuit the Plaintiff settled with the Board, they were already aware of his health conditions and that Plaintiff was 100% disabled. The Defendants received the letters and have not responded nor have they denied that the Plaintiff is not on the SISP list.
32. On October 27, 2010, the Austin-American Statesman came out with an article confirming what Plaintiff's parole officer told him and quoted Bryan Collier (Livingston's assistant) who confirmed that the Governor was one ordering the monitors put back on sex offenders and that the main reason that they were doing this now was because they had the money to do it. Also Plaintiff learned that the Defendants new criteria for doing this was based solely on if there was a child victim in the sex offenders offense; and if so then nothing else mattered including the previous risk factor or anything else that was favorable and that everyone would be placed on a monitor.
33. Plaintiff is sixty-one years old, and suffers from several serious medical conditions, including diabetes; stage 4 renal disease, congestive heart failure, and coronary artery disease, loss of balance, peripheral neuropathy, and ischemic attacks (mini-strokes), all of which puts him in constant risk of suffering a serious heart attack, a major stroke and death. Plaintiff also has very little strength, and must use either a cane, or a walker or a power wheelchair, as the circumstances require, in order to move himself around. Further the VA furnishes Plaintiff a home care worker (via contract) to come in one hour a day 5 days a week to help Plaintiff around the house. The Plaintiff lives alone.

34. Plaintiff also makes frequent urgent visits to the VA when he is ill, besides being taken to the ER by ambulance at least 6 times a year. When he was on a monitor, he could not do this unless he was able to contact his parole officer, otherwise if he did without his parole officer's knowledge the parole division would issue a warrant for his arrest and Plaintiff would end up in jail without medical treatment, insulin, medication and etc. for at least 24 hours or longer. Today that would be gravely dangerous for the Plaintiff.
35. In Texas, two state entities are responsible for managing people released from prison on parole. The Defendants of the Board of Pardons and Paroles ("Parole Board") approves prisoner's release from custody, and determines what requirements parolees should comply with as conditions of their release. Tex. Gov't Code § 508.0441(a). The Texas Department of Criminal Justice Parole Division ("Parole Division"), which Defendant Jenkins is the Director, supervises parolees after their release to make sure they comply with the conditions set by the Board. *See* Tex. Gov't Code § 508.112. The Department also makes recommendations to the Board asking that a condition for a sex offender be removed. *See* BPP. POL. 145.263 (II)(A-C). Defendant Livingston is the Executive Director of the Texas Department of Criminal Justice (TDCJ) and "is responsible for the administration and enforcement of all laws relating to the department including rules implemented by the department but may delegate those responsibilities as permitted by board rule or general law." Tex. Gov't Code § 493.006. Defendant Perry is the Governor of Texas and neither under Texas law nor the Texas Constitution, has any legal authority to direct either TDCJ, the Board or the Department including the Defendants, on how or what to do in managing parolees, including the Plaintiff.
36. Defendant Perry's deliberately indifferent failure to uphold the law, as well as, both the Texas and U.S. Constitutions results in/ and will result in violations of Plaintiff's constitutional rights.

37. Defendant Livingston's deliberately indifferent failure to uphold the law, as well as, both the Texas and U.S. Constitutions results in/and will result in violations of Plaintiff's constitutional rights. The practices of those under Livingston (including the Parole Board and the Parole Division), of which he is aware of and deliberately indifferent to, are contrary to clearly established due process protections.

CAUSE OF ACTION I: DUE PROCESS

38. Incorporating the foregoing paragraphs as if fully set forth herein, Plaintiff brings this claim pursuant to 42 U.S.C. § 1983.

39. The State of Texas, via the Parole Division and the Parole Board, created a "state created liberty interest" when it voluntarily reduced the Plaintiff's parole conditions twice.

40. Procedural due process guarantees Plaintiff some sort of official review prior to altering or reversing the conditions of his parole, in that when doing so deprives him of a fundamental constitutional right.

41. Defendants Perry, Livingston, Jenkins, Owens, Aycock, Davis, DeNoyelles, Gonzalez, Gutierrez, and Leeper, in their Administrative capacities, have already decided to violate Plaintiff's clearly established constitutional rights under the Fourteenth Amendment of the United States Constitution, by putting him on a list to be put back on an electronic monitor and have his parole conditions reversed to more serious conditions and confinement. As such, they are not entitled to qualified immunity.

42. Defendant Perry, in his administrative capacity, has knowingly and in violation of the Texas and United States Constitution, ordered Defendants Livingston, Jenkins, Owens, Aycock, Davis, DeNoyelles, Gutierrez, Gonzalez and Leeper, to violate Plaintiff's constitutional rights to due process. As such, he is not entitled to qualified immunity.

43. Defendants Livingston, Jenkins, Owens, Aycock, Davis, DeNoyelles, Gutierrez, Gonzalez and Leeper, in their administrative capacities, have all agreed to act upon the unlawful and unconstitutional orders of Defendant Perry to violate the Plaintiff's rights to due process. As such, they are not entitled to due process.
44. The Governor, the Texas Department of Criminal Justice, the Board of Pardons and Paroles, and the Parole Division must be enjoined from altering or reversing Plaintiff's parole conditions, to more serious conditions and confinement without cause and due process.

CAUSE OF ACTION II: EIGHTH AND FOURTEENTH AMENDMENT'S PROHIBITION OF
CRUEL AND UNUSUAL PUNISHMENT

45. The Eighth Amendment applies to the Defendants (i.e. State) through the Due Process Clause of the Fourteenth Amendment, and guarantees the Plaintiff that the Defendants are prohibited from inflicting cruel and unusual punishment upon him because of his crime.
46. The Defendants are fully aware of Plaintiff's serious health conditions, and his serious medical needs for having a life alert like device and home health monitor, and in their administrative capacities, have already decided to be deliberately indifferent towards Plaintiff's serious medical needs, by having him placed on a monitor, which they fully know will force the Plaintiff to have his life alert and home health monitor disconnected from his phone line, and they further know and have determined to be deliberately indifferent to the fact that their administrative actions could cause the Plaintiff to suffer irreparable harm, injury and/or death. Plus they are aware that the Texas and U.S. Constitution prevent them from inflicting cruel and unusual punishment on the Plaintiff. As such, they are not entitled to qualified immunity.

47. The Defendants must be enjoined from forcing the Plaintiff to be put back on an electronic monitor, without due process, and be enjoined from inflicting cruel and unusual punishment on the Plaintiff by forcing him to disconnect his life alert and home monitor.

CAUSE OF ACTION III: STIGMATIZATION UNDER DUE PROCESS AND
SUBSTANTIVE DUE PROCESS

48. Procedural due process and/or substantive due process guarantees Plaintiff some sort of official review prior to altering or reversing the conditions of his parole and causing him to suffer greater stigmatization, in that when doing so deprives him of a fundamental constitutional right.

49. Defendants Perry, Livingston, Jenkins, Owens, Aycock, Davis, DeNoyelles, Gonzalez, Gutierrez, and Leeper, in their Administrative capacities, have already decided to violate Plaintiff's clearly established constitutional rights under the Fourteenth Amendment of the United States Constitution, by putting him on a list to be put back on an electronic monitor and have his parole conditions reversed to more serious conditions and confinement, and which they know will cause Plaintiff to suffer greater stigmatization. As such, they are not entitled to qualified immunity.

50. The Defendants must be enjoined from forcing the Plaintiff to be put back on an electronic monitor, without due process, and be enjoined from causing the Plaintiff from suffering greater stigmatization without due process.

DECLARATORY JUDGMENT

51. Plaintiff is entitled to declaratory judgment in this case concerning each of Defendants' violation of the law.

DAMAGES

52. Plaintiff is entitled to nominal, compensatory, and punitive damages against Defendants, including but not limited to costs.

INJUNCTIVE RELIEF

53. Plaintiff is entitled to injunctive relief against Defendant Perry to prevent him from having Defendants Livingston, Owens, Aycock, Davis, DeNoyelles, Gutierrez, Gonzalez, Leeper, Jenkins, and the Parole Division from altering or reversing Plaintiff's parole conditions to more serious conditions and confinement without affording the Plaintiff due process, including putting the Plaintiff on an electronic monitor.

54. Plaintiff is entitled to injunctive relief against Defendants Livingston, Owens, Aycock, Davis, DeNoyelles, Gutierrez, Gonzalez, Leeper and Jenkins from altering or reversing Plaintiff's parole conditions to more serious conditions and confinement without affording the Plaintiff due process, including putting the Plaintiff on an electronic monitor.

55. Plaintiff's claim for injunctive relief is authorized by Federal Rule of Civil Procedure 65 and by the general legal and equitable powers of this Court.

PLAINTIFF'S COSTS

56. Plaintiff is entitled to recover costs from Defendants pursuant to 42 U.S.C. § 1988.

PRAYER FOR RELIEF

Therefore, Plaintiff respectfully prays that this Court:

- A. Enter a declaratory judgment for the Plaintiff, that Defendants, acting under authority of law, intentionally, and with deliberate indifference has either violated, will violate, or has agreed to violate Plaintiff's constitutional due process rights;
- B. Issue an injunction, commanding the Defendants that they may not enforce or put into place the aforementioned unconstitutional condition of altering or reversing condition of Parole; and

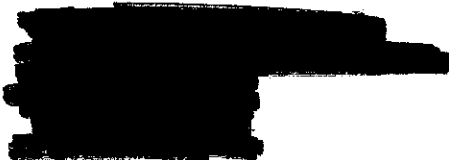
if they already have, commanding them to reinstate the previous parole condition until a final judgment is made in this case;

- C. In the event the Defendants carry out their plan, Order the Defendants to pay Plaintiff nominal, compensatory and punitive damages;
- D. Oder Defendants to pay Plaintiff's costs; and,
- E. Grant all other and additional relief to which Plaintiff may be entitled in this action, at law or in equity.

Plaintiff requests a trial by judge.

Dated: October 22, 2010

Marvin L. Brown
Plaintiff, pro se



DECLARATION

I declare under the penalty of perjury that the foregoing Complaint is true and correct to the best of my knowledge.

Signed this the 22nd day of October 2010.

Marvin L. Brown
Plaintiff, pro se