

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Ricky Dyckes, Jr.,

Plaintiff,

Civil Action No.: _____

v.

South Carolina Department of Juvenile
Justice, Velvet McGowan, and Freddie
Pough in his individual capacity,

Defendants.

COMPLAINT

Jury Trial Demanded

Plaintiff, Ricky Dyckes, Jr., complaining of Defendants above-named, would respectfully show unto this Honorable Court the following:

I. Parties, Jurisdiction, and Venue

1. That Plaintiff is a citizen and resident of Richland County, South Carolina.
2. That Defendant South Carolina Department of Juvenile Justice, (hereinafter “Defendant DJJ”), is a subdivision of the State of South Carolina with its headquarters in Columbia, South Carolina.
3. That, upon information and belief, Defendant Velvet McGowan (“Defendant McGowan”) is a citizen and resident of Richland County. That, at all times relevant hereto, Defendant McGowan was acting as the Defendant DJJ’s Executive Director of Security.
4. That, upon information and belief, Defendant Freddie Pough (“Defendant Pough”) is a citizen and resident of Richland County. That at all times relevant hereto, Defendant Pough was acting as Defendant DJJ’s Executive Director.

5. That this Court has jurisdiction over this action pursuant to 28 U.S.C. §1331 and 1343, because this action is based on federal statutes, 42 U.S.C. §§1983 and 1988. Pendent jurisdiction over Plaintiff's state law claims is conferred by 28 U.S.C. §1367.

6. That venue is proper in this Court pursuant to 28 U.S.C. §1391, because Defendant DJJ is situated in the Columbia judicial division, Defendants McGowan and Pough reside in the Columbia judicial division, and the unlawful employment practices giving rise to Plaintiff's claims were committed within the Columbia judicial division.

II. Facts

7. Defendant DJJ is a subdivision of the State of South Carolina.

8. The Director of DJJ who served at all times relevant hereto is Defendant Pough. Defendant Pough's tenure at DJJ was riddled with challenges to his management of the agency and before he resigned Federal and State reports revealed myriad significant problems with the operation of the agency under his directorship.

9. That in April 2021, shortly before Defendant Pough's ignominious resignation, the South Carolina Legislative Audit Council, reporting about findings from 2017, 2019, and 2020, reported the following failures at DJJ:

a. DJJ under Defendant Pough's leadership did not maintain sufficient security staff to ensure safety for staff and juveniles;

b. DJJ's secure facilities failed to meet federal and internal standards for supervision of juveniles;

c. that as staffing levels at DJJ reduced, the number of injurious incidents increased;

d. that since 2017 there had been a 42% increase in juvenile-on-juvenile or juvenile-on-staff violent incidents;

e. that of those DJJ employees surveyed, 69% felt that DJJ's management, of which Defendants Pough and McGowan were included, did not listen and understand the responsibilities of their positions;

f. that there was insufficient camera surveillance at secure facilities;

g. that video retention practices were inadequate;

h. that DJJ was unprepared for, therefore mismanaged the implementation of programs such as Raise the Age and Youth in Transition;

i. that DJJ had not appropriately paid essential security staff;

j. that Human Resources records were lacking, that personnel were hired from within, avoiding proper Human Resources practices, and that personnel, including top management, were not consistently evaluated or position descriptions updated;

k. that DJJ did not enforce its own Progressive Disciplinary System and it did not ensure timely and equitable treatment of its employees' breaches of conduct;

l. that DJJ was not providing timely and adequate medical care for the juveniles in its custody;

m. that the lack of security staff or lack of transportation were related to the inadequate medical care afforded to juveniles in DJJ custody;

n. that DJJ had not ensured that its security staff was appropriately trained;

and,

o. that DJJ had misrepresented to the Legislature the improvements it had

implemented after a 2017 audit that revealed numerous deficiencies and gross mismanagement, among other findings outlined in the Legislative Audit Council's report.

10. The United States Department of Justice, speaking of DJJ as it existed under Defendant Pough's directorship and under Defendant McGowan's authority, found, "South Carolina fails to keep youth reasonably safe from youth-on-youth violence." The Department of Justice noted that DJJ's "failure to train its staff, implement effective behavior management tools, and establish key safety features in its physical plant, seriously harms youth or places them at substantial risk of serious harm from other youth."

11. It was in this environment of long-standing mismanagement, significant understaffing, inadequately trained employees, inadequate security of juveniles and staff, inadequate pay, inequitable application of progressive discipline, and management's documented failure to understand and respond appropriately to employees, that Plaintiff served for over ten years as a correctional officer with DJJ, working under the supervision of Defendant McGowan and, in the final years of his tenure, Defendant Pough.

12. That Defendant DJJ terminated Plaintiff on August 27, 2021. That at the time of his termination, Plaintiff worked as a Lieutenant/Assistant Unit Manager.

13. That for years prior to his termination, Plaintiff had been openly and publicly expressing concerns about Department mismanagement, understaffing, and security of juveniles and staff, among other problems, which were identical to the deficiencies revealed in the Legislative Audit Council's report and the Department of Justice's report.

14. That, specifically, on February 19, 2019, Plaintiff drafted a SCDJJ Event Report and sent it to the individual Defendants and all upper management at Defendant DJJ.

15. That the Event Report complained about the fact that for months Plaintiff had been working on B-1 unit, that it was grossly understaffed, and that the lack of staff compromised the safety of the juveniles and staff such as Plaintiff.

16. That the Event Report also noted that staff such as Plaintiff were working 13-14 hour shifts without any breaks and that such excessive working hours were also compromising the safety of the juveniles and staff such as Plaintiff.

17. That the Event Report noted that staffing shortages resulted in unsafe transportation of juveniles.

18. That the Event Report noted that the pay and compensatory time practices for employees such as Plaintiff were inequitable.

19. That the Event Report concluded by saying, “we are operating at an extremely dangerous and hostile working environment every day” and it asked for help in remediating the dire working conditions that were dangerous for juveniles and staff such as Plaintiff.

20. That rather than responding substantively to Plaintiff’s report of gross understaffing that compromised the safety of juveniles and staff, and rather than providing help to remediate the dangerous and hostile working environment, Defendants responded to Plaintiff by moving Plaintiff to Midlands Evaluation Center, which is another DJJ facility.

21. That thereafter, on March 13, 2019, Plaintiff submitted a SCDJJ Event Report describing a scenario where juveniles were packed into a bus such that many did not have seats and were standing the aisles of the bus, presenting a potential danger to those juveniles’ safety and to the safety of the few adults charged with escorting the juveniles. Plaintiff noted in the report, “this is a daily practice that we have to stop doing.”

22. That in the year that followed, Plaintiff had at least two instances where he was subjected to unfounded disciplinary actions that Defendants had to rescind or revoke because Plaintiff challenged the disciplinary actions, and they were deemed to be inappropriate and unwarranted.

23. That on or around April 5 and 6, 2020, a group of juveniles at Defendant DJJ, C-pod, rioted.

24. That on April 17, 2020, related to the riot, Plaintiff was placed on suspension without pay.

25. That in placing Plaintiff on suspension, Defendants charged Plaintiff with leaving the juveniles unattended.

26. That Plaintiff had to leave juveniles unattended because Defendant DJJ was grossly understaffed, and Plaintiff had been complaining to Defendants about the understaffing and what he perceived to be the danger to both the juveniles and staff that were the result of the gross understaffing for more than one year.

27. That Plaintiff challenged being placed on suspension without pay related to the April 5 and 6 incident and Plaintiff was returned to work, his pay reinstated, and he was paid for the pay that Defendant DJJ deprived him during the suspension.

28. That on July 26, 2020, Plaintiff again complained about staffing shortages and Defendant DJJ's decision to put Lieutenants such as Plaintiff on the second shift as well as other concerns about increased responsibilities attendant to COVID.

29. That, per usual, Defendants did nothing to substantively address Plaintiff's valid concerns and specifically did nothing to address the gross shortage of staff to manage the

juveniles at DJJ.

30. That, also per usual, after Plaintiff communicated complaints about the deplorable and unsafe conditions for juveniles and staff at DJJ, Plaintiff was met with an unwarranted punitive response, to wit: Plaintiff received a written reprimand on September 10, 2020, for using profanity.

31. That staff and juveniles at Defendant DJJ frequently used profanity with impunity and it is highly uncommon for staff to receive any disciplinary action whatsoever for using profanity. That this exercise of discipline represents the type of inequity in the effectuation of its disciplinary policy that the Legislative Audit Council recognized in its audits of Defendant DJJ.

32. That, as with other unwarranted disciplinary actions Defendant DJJ meted out to Plaintiff, when Plaintiff challenged the September 10, 2020, written reprimand it was rescinded.

33. That through this period, Defendant DJJ continued to operate with inadequate staff working in deplorable conditions over inordinately long shifts for which they were not appropriately paid. That through this period, the juveniles at DJJ were exposed to inhumane living conditions, violence, and unsafe practices like allowing youth to stand in the aisles on a moving bus.

34. That in early 2021, Plaintiff became an acting Unit Manager, taking on additional responsibilities.

35. That in the summer of 2021, Plaintiff continued to report intolerable working conditions within DJJ, the chronic problem of under-staffing and its effects on employee morale and juveniles' safety, and other mismanagement within DJJ.

36. That on or about June 4, 2021, Plaintiff participated in an employee walk-out at

DJJ. That the aim of the walk-out was to publicly expose and protest the chronic problems at DJJ, the deplorable living conditions for juveniles in DJJ custody, and the intolerable working conditions for staff such as Plaintiff.

37. That, after the June 4, 2021, walk-out, Plaintiff spoke publicly with various local news outlets in South Carolina and those outlets publicized Plaintiff's reports about the living conditions for juveniles and working conditions for staff. That Plaintiff discussed the ways in which Defendant DJJ's operations violated the Prison Rape Elimination Act ("PREA").

38. That also in early June, Plaintiff testified before a legislative committee that was examining Defendant Pough and assessing, among other issues, his continuing fitness to serve as DJJ's Director. That, at the conclusion of the meeting at which Plaintiff and others voiced serious concerns about DJJ's operations and Defendant Pough's fitness, the legislative committee gave Defendant Pough a 'no confidence' vote.

39. That, additionally, Plaintiff spoke with agents of the State Law Enforcement Division ("SLED") about concerns relating to Defendant DJJ and its upper management.

40. That over the summer of 2021, Defendants Pough and McGowan failed to effectuate meaningful improvements at Defendant DJJ and staff such as Plaintiff continued to labor in deplorable, unsanitary, and unsafe working conditions, those being the same in which the juveniles were housed. Plaintiff continued his campaign of protest and opposition to the intolerable practices and conditions to which he and the juveniles were subject.

41. That on or about June 27, 2021, just weeks after Plaintiff had participated in the walk-out that raised public attention about the conditions within DJJ, Plaintiff had testified before a legislative committee about DJJ, Plaintiff had spoken with various media outlets, and

Plaintiff had talked with agents from SLED, Plaintiff left the jobsite at DJJ because he had been working a lengthy time in unsanitary conditions with urine and feces coming up through the drains in the units where the juveniles were housed, with an unacceptable staff-to-juvenile ratio, and in conditions that violated PREA. That Defendant DJJ, acting through upper management such as Defendants Pough and McGowan did not take any disciplinary action for this serious misconduct for months after it occurred. That, further, Defendant Pough was on-site to watch Plaintiff leave work, and Defendant Pough took no action whatsoever to deter or stop Plaintiff from leaving.

42. That on or about July 27, 2021, Plaintiff was accused of calling Defendant McGowan on her cell phone and using profanity during the conversation.

43. That on or about July 28, 2021, Plaintiff was accused of using profanity towards co-workers during a discussion about scores from an interview in which Plaintiff participated. That during that exchange, Defendant DJJ summoned officers from the South Carolina Department of Public Safety and had Plaintiff placed in handcuffs, searched without his consent, and physically removed from the workplace.

44. That, thereafter, Defendant DJJ began the process for terminating Plaintiff, with Plaintiff's termination becoming official on August 27, 2021.

FOR A FIRST CAUSE OF ACTION
(Violation of 42 U.S.C. § 1983-Defendants McGowan and Pough)

45. That Plaintiff repeats and realleges the preceding paragraphs as if restated verbatim.

46. That in all their actions, and specifically in their actions in issuing disciplinary

actions to Plaintiff and terminating him on August 27, 2021, Defendants McGowan and Pough acted ‘under color of State law.’

47. That Defendants McGowan and Pough terminated Plaintiff on August 27, 2021, because Plaintiff spoke on numerous occasions on a matter of public concern, to wit: the chronic mismanagement at DJJ, the intolerable working conditions for staff such as Plaintiff, the deplorable conditions in which juveniles in DJJ custody were housed, and the violations of PREA that Plaintiff observed, among other public reports relating to DJJ and its upper management.

48. That, in terminating Plaintiff because he had spoken on a matter of public concern, Defendants McGowan and Pough deprived Plaintiff of his rights protected by the First Amendment of the United States Constitution.

49. That, as a direct and proximate result of being terminated, Plaintiff suffered actual damages in the form of lost wages and employment benefits, and he endured a negative effect on his career and earning capacity. That, accordingly, Plaintiff is entitled to recover in this action actual damages from Defendants McGowan and Pough for their illegal conduct, effectuated under color of state law, that damaged Plaintiff.

50. That, further, Plaintiff is entitled to recover punitive damages against Defendants McGowan and Pough.

51. That, under 42 U.S.C. §1988, Plaintiff is also entitled to an award of reasonable attorney’s fees, expert fees, and costs incurred in bringing this action.

. FOR A SECOND CAUSE OF ACTION
(Wrongful Termination in Violation of Public Policy-Defendant DJJ)

52. That Plaintiff repeats and realleges the preceding paragraphs as if restated

verbatim.

53. That the State of South Carolina has a public policy interest in employees truthfully reporting intolerable working conditions for state employees, deplorable conditions in which juveniles in DJJ custody are housed, and violations of laws such as PREA that state employees observe in the workplace.

54. That in terminating Plaintiff after he publicly reported and opposed intolerable working conditions for staff, deplorable living conditions for juveniles in DJJ custody, and violations of PREA, Defendant DJJ violated the public policy of the State of South Carolina.

55. That, as a direct and proximate result of being terminated in violation of the public policy of the State of South Carolina, Plaintiff suffered actual damages in the form of lost wages and employment benefits, and he endured a negative effect on his careers and earning capacity. That, accordingly, Plaintiff is entitled to recover in this action actual damages from Defendant DJJ for its conduct, effectuated under color of state law, that damaged Plaintiff.

FOR A THIRD CAUSE OF ACTION
(Assault-Defendant DJJ)

56. That Plaintiff repeats and realleges the preceding paragraphs as if restated verbatim.

57. That on or around July 28, 2021, Defendant's agents responded to Plaintiff in such a manner as to cause him to fear for his personal safety.

58. That, specifically, Defendant, through its agents, reported Plaintiff to the Department of Public Safety, encouraged officers of that agency to come to DJJ and physically restrain, search, and escort Plaintiff from the jobsite.

59. That as a direct and proximate result of Defendant DJJ's agents' actions, Plaintiff

was made to fear for his personal safety in response to the actions of those summoned by Defendant DJJ's agents.

60. That, Plaintiff was damaged because of the assault perpetrated by, or at the insistence of, Defendant DJJ, and therefore Plaintiff is entitled to relief.

WHEREFORE, having fully set forth his allegations against Defendants, Plaintiff respectfully requests the following relief:

- a. Back pay, front pay, lost employment benefits, actual damages, consequential damages, special damages, and interest thereon;
- b. Punitive damages against Defendants McGowan and Pough;
- c. Attorney's fees, expert fees, and costs; and
- d. Such further relief as the Court deems just and appropriate.

PLAINTIFF HEREBY DEMANDS A JURY TRIAL.

RESPECTFULLY SUBMITTED,

GAFFNEYLEWIS LLC

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This the 8th day of December 2021