

No. 26647 – *State of West Virginia ex rel. Daniel L. Sams, et al. v. Commissioner, West Virginia Division of Corrections; Executive Director of the Regional Jail and Correctional Facility Authority; and the West Virginia Board of Probation and Parole*

FILED

December 15, 2005

Starcher, J., concurring:

released at 3:00 p.m.
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

I concur in the Court’s opinion and judgment. I write separately for two reasons.

First, I wish to point out that footnote 4 of this Court’s opinion limits the scope of the opinion to deciding whether the current overcrowding in West Virginia’s jail system today constitutes “cruel and unusual punishment.”

I am willing to accept – for today – that it does not.

But I do not concede that the “go slow” approach of the Division of Corrections, *et al.* is otherwise legal or constitutional.

The constitutional requirements of due process of law and equal protection require that people sentenced to prison get the benefits of prison sentences, as well as the hardships. Corrections has agreed to a plan, and they have a legal duty to carry out that plan – aside from their duty not to impose cruel or unusual punishment. The petitioners have other legal arrows in their quiver, I think, and they are not foreclosed by this Court’s opinion from using them.

I also note that footnote 20 does not preclude this Court from mandating that the jail system conduct risk reviews and assessments for all convicted persons, especially

nonviolent offenders; and offer alternative sentence proposals to the circuit courts. And nothing in the majority opinion precludes this Court from requiring our circuit judges to give consideration to those assessments and reviews.

Accordingly, I concur.