

No. 30696 - State of West Virginia ex rel. James William Berry, Sr. v. Thomas L. McBride, Warden, Mt. Olive Correctional Center

FILED

December 9, 2002

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED

December 11, 2002

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Maynard, Justice, dissenting:

I believe that the majority has unnecessarily addressed a moot issue and by doing so has placed State prison officials in an impossible position.

In his “Response To Petition For Writ Of Mandamus,” the acting warden of Mt. Olive advised the Court that the petitioner is now the sole occupant of a “handicapped cell.” Therefore, I would simply have decided that this issue is moot and avoided burdening prison wardens with the unreasonable conclusion that C.S.R. 95-2-8.7 “permits no exception, such as overcrowding, to house more than one inmate in a cell designed for single occupancy.”

According to a recent article that appeared in the Charleston Daily Mail,¹ “the regional jail system and the state prison system are already overcrowded, and the situation is getting worse.” Further, “State officials would like to avoid the estimated \$120 million to

¹Jim Wallace, *Some See Program As ‘Soft On Crime’ New Approach To Sentencing May Curb Overcrowding*, Charleston Daily Mail, November 18, 2002, at 2A.

\$150 million it would cost to build the additional 1,500 to 2,000 cells that would be needed in the next five years if that trend continues.” In light of the majority opinion, I want someone to tell me what prison wardens are supposed to do now to cope with this overcrowding problem. They are charged by law with housing inmates. However, according to this Court, they cannot house more than one inmate in a single occupancy cell even when there is overcrowding. What are they to do? Should they release felons back onto the streets? That would never be my solution to the problem. Should they send them to the already overcrowded regional jails to be housed with less serious offenders? Should they put them in janitor closets or storage rooms? I don’t have the answer, and I bet the majority does not either. Accordingly, I dissent.