

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

BONITA PRYOR,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action
	:	No. 98-419 (GK)
DISTRICT OF COLUMBIA, <u>ET AL.</u> ,	:	
	:	
Defendants.	:	

---

MEMORANDUM OPINION

Plaintiff Bonita Pryor has filed an Application for Writ of Habeas Corpus Ad Testificandum [#67-1], and a Modified Application for Writ of Habeas Corpus Ad Testificandum [#71-1]. Upon consideration of the two Applications, the Opposition of the District of Columbia, the Position of the United States, and the applicable statutory and case law, the Court concludes that the two Applications must be **denied**.

Plaintiff is a prisoner incarcerated at FMC Carswell (a facility operated by the Federal Bureau of Prisons) in Carswell, Texas, on District of Columbia charges for drug possession and escape. She has brought the present civil lawsuit against the District of Columbia for violation of 42 U.S.C. § 1983, and trial is scheduled for October 25, 2000.

In her two Applications for a Writ of Habeas Corpus Ad Testificandum, Plaintiff seeks the following relief: (1) an order

requiring the custodian to produce Plaintiff in the District of Columbia or the area "forthwith"; (2) an order requiring the Defendant District of Columbia and Federal Bureau of Prisons to hold her in the area until her trial is completed; (3) a writ of habeas corpus ad testificandum directing her custodian to produce her for trial, and an order requiring the District of Columbia Department of Corrections and the Federal Bureau of Prisons to hold her in a District of Columbia facility until the trial is completed and she is remanded to her original custodian, the warden of FMC Carswell. The Court concludes, for the following reasons, that there are not sufficient grounds for granting the Applications.

Plaintiff is currently housed at FMC Carswell and her custodian is the warden of that institution. Neither he nor any other official of the Federal Bureau of Prisons is an appropriate official to provide transportation to and housing in the District of Columbia for the Plaintiff. The Carswell warden, as Plaintiff's custodian, is the appropriate official to surrender her custody, but he would be transferring her to the custody of the United States Marshals Service, which would then have the responsibility of transporting her to the District of Columbia. See 28 U.S.C. § 566(c).

Put in practical terms, it is the United States Marshals Service which would have to pay the costs of transporting her to the District of Columbia (estimated at \$2,880) and housing her at the D.C. Jail

(estimated at \$70.50 a day now and \$81.00 in the near future).<sup>1</sup> Section 1921(d) of Title 28 of the U.S. Code permits the Marshals Service to collect, in advance, a deposit to cover the fees and expenses anticipated in executing a writ or order in a civil case, thus ensuring that private litigants will bear their own costs in such cases.

While every prisoner should, as a matter of fundamental fairness and decency, be able to attend their own civil rights trial, there simply is no such constitutional right. See Price v. Johnson, 334 U.S. 266, 285-86 (1948), overruled on other grounds, McCleskey v. Zant, 499 U.S. 467 (1991). Consequently, it lies within the Court's discretion whether or not to issue a writ of habeas corpus ad testificandum. In making this determination, the Court must weigh a number of factors, including the security risk and dangers posed in transporting the prisoner, the magnitude of the expense, the possibility of postponing the trial, the availability of testimony by other than in-court presentation, etc.<sup>2</sup>

In this case, Plaintiff has certainly demonstrated that she is a

---

<sup>1</sup> Since there is no Bureau of Prisons facility near enough to the District of Columbia to allow for the daily transportation of Plaintiff to trial, she would have to be housed at the D.C. Jail.

<sup>2</sup> Both Defendant and the United States have cited numerous cases and recent A.L.R. Annotations to this effect. See, e.g., Muhammed v. Warden, Baltimore City Jail, 849 F.2d 107, 112-13 (4<sup>th</sup> Cir. 1988), Pollard v. White, 738 F.2d 1124, 1125 (11<sup>th</sup> Cir 1984), cert. denied, 469 U.S. 1111 (1985).

real security risk and poses a danger to others. As set forth in Defendant's Opposition, she has many drug convictions, Bail Reform Act convictions,<sup>3</sup> and an extensive institutional history of disciplinary violations.<sup>4</sup>

Moreover, there are alternatives available, namely video conferencing (the facilities for which do exist at FMC Carswell), or video or written deposition. Finally, the cost would be substantial--probably well over \$5,000. There is no reason that the District of Columbia, strapped as it to provide the most basic social services to its citizens (education, health care for the poor, housing for the homeless, and safety and comfort for its neglected and abused children), should have to lay out these expenses.

For the foregoing reasons, the Applications are **denied**.

---

Date

---

Gladys Kessler  
United States District Judge

---

<sup>3</sup> In 1995, Plaintiff was released on parole in her underlying drug case through work release to a half-way house; after fleeing the halfway house without permission and failing to return, her parole was revoked and she was convicted on the escape charge for which she is now serving an 18 month sentence. If she had not escaped from the half-way house, she would not be incarcerated at this time.

<sup>4</sup> On August 7, 2000, Plaintiff's custody level was increased to maximum.