THIS REVEALS A BOP WARDEN LIEING IN COURT AND OF COURSE GETTING AWAY W/ IT W/ A WINK AND NOD FROM THE COURTS. WHAT THEY SAY AND DO ARE TWO DIFFERENT THINGS! 8-9-18

Possibility of Life in Control Unit Doesn't Mitigate Death

by Matthew T. Clarke

The Court of Appeals for the Seventh Circuit has held that the possibility of life imprisonment in a control unit is not a mitigating factor in a federal death penalty case.

Darryl Lamont Johnson, a federal prisoner, is allegedly a high-ranking member of the Gangster Disciples, a large Chicago street gang. Johnson was convicted of ordering the murder of two Gangster Disciples who were cooperating with federal authorities in an investigation of the gang. During the trial, the judge refused to allow the defense to introduce evidence of the possibility of life imprisonment in the federal control unit at Florence, Colorado, as a reason for the jury not to assess the death penalty. Johnson received the death penalty and appealed.

During Johnson's trial, in rebuttal, the government called a former assistant warden from Florence. The warden testified that the Bureau of Prisons (BOP) is forbidden by law to confine a prisoner for life in a control unit on the basis of evidence presented at his trial. The Seventh Circuit noted that although this testimony was an improper statement of law by a witness, the defense failed to object to it. Law is supposed to be presented by the judge to the jury, not presented through witness testimony.

The warden also testified that Florence's control unit had a capacity of only 68 and most murderers and gang leaders in the BOP were not at Florence or in its control unit. According to the warden, prisoners are only sent to Florence for misbehaving at other facilities, rather than being sentenced to a control unit. He also testified that even control unit prisoners received visits and made phone calls and that one Aryan Brotherhood gang member had successfully ordered the murders of two other persons while incarcerated at the Florence control unit. On appeal, Johnson challenged the warden's testimony as false.

The Seventh Circuit cited 28 C.F.R. § 501.3 as allowing a warden to take "special administrative measures" against a prisoner when "there is a substantial risk that a prisoner's communications or contacts with persons could result in death or serious bodily injury to persons." However, these restrictions must be reviewed, before being re-imposed, every 120 days. Furthermore, 28 C.F.R. § 541.49(d) requires BOP review of control unit status every 60 to 90 days to determine readiness for release from the control unit. Reasoning that these limitations imply that the BOP could not assign a prisoner directly upon his admission to the federal prison system to spend his life in the control unit without possibility of reconsideration, the Seventh Circuit held that the impression the warden conveyed of the facts and policies (that the BOP could not sentence a prisoner to a control unit for life based upon facts adduced at his trial and that, even being sentenced to a control unit for life would not ensure that a prisoner could not perform additional heinous acts) were correct. BS

Johnson cited several cases, including *United States v. Felipe*, 148 F.3d 101 (2d Cir. 1998); *United States v. Yousef*, S12 93 CR. 180 (S.D.N.Y. Jan. 8, 1998) (sentencing transcript); and *United States v. Jones*, No. 96-458, 97-0355 (D.Md.1998), to show that other federal criminal defendants had been sentenced to life in a control unit. However, the Seventh Circuit, citing Benjamin Weiser, *Judge Gives OK For New Member of Prison Rec Club*, Cleveland *Plain Dealer*, (March 13, 1999, page A1.) as proof that the order for Felipe had been modified to allow him to consort with Timothy McVeigh and Theodore Kaczynski. Unmentioned by the Seventh Circuit was that McVeigh and Kaczynski are under permanent control unit confinement with severe restrictions on who they can communicate with and that such "consorting" consisted of being locked in widely separated "dog runs" on the control unit's rec yard; or that Felipe was sentenced to spend his incarceration in solitary confinement with no correspondence with or visits from anyone except his close family members (as approved by the U.S. Attorney General's Office) and attorney, with all of his non-legal visits and letters monitored, and with no telephone privileges (later modified to allow attorney phone calls).

Finally, the Seventh Circuit held that it was improper to argue that the possible imposition of life in a control unit was a mitigating factor when it was, in fact, an argument against the death penalty in general. "A mitigating factor is a factor arguing against sentencing this defendant to death; it is not an argument against the death penalty in general. The argument that life in prison without parole, especially if it is spent in the prison's control unit, and thus in an approximation to solitary confinement, sufficiently achieves the objectives aimed at by the death penalty to make the latter otiose is an argument addressed to legislatures, not juries." The Seventh Circuit held that 18 U.S.C. § 3592(a) allows only factors in the defendant's background, record, or character or circumstances of the offense to be argued in mitigation of the death penalty. Therefore, the possibility of life in a control unit was an improper mitigation argument and could not lead to reversible error. The conviction and death sentence were affirmed. See: *U.S. v. Johnson*, 223 F.3d 665 (7th Cir. 2000). ■

BS. LOOK WHAT THEY'VE DONE 2 ME.

THIS IS BS...