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MAY 29 2007	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	E. DEPUTY

JAMES SKINNER # 1933B7  
Name and Prisoner/Booking Number

APPC-EYMAN, SMU1  
Place of Confinement

PO Box 9000  
Mailing Address

FLORENCE, AZ 85232  
City, State, Zip Code

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

(Full Name of Plaintiff)

Plaintiff,

vs.

CASE NO. CV07-1070-phx-SMM(ECU)  
(To be supplied by the Clerk)

JAMES Arnold  
ADW Marsh  
Lt. Scott  
SSU Sgt CARLSON

(Full Name of Each Defendant) Defendant(s).

**CIVIL RIGHTS COMPLAINT  
BY A PRISONER**

- Original Complaint
- First Amended Complaint
- Second Amended Complaint

**A. JURISDICTION**

1. This Court has jurisdiction over this action pursuant to:
  - a.  28 U.S.C. § 1343(a)(3); 42 U.S.C. § 1983
  - b.  28 U.S.C. § 1331; Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971).
  - c.  Other: (Please specify.) \_\_\_\_\_

2. Name of Plaintiff: JAMES SKINNER # 1933B7  
 Present mailing address: APPC-EYMAN, SMU1, Box 9000, FLORENCE, AZ 85232  
 (Failure to notify the Court of your change of address may result in dismissal of this action.)

Institution/city where violation occurred: APPC-EYMAN, SMU1

3. Name of first Defendant: JAMES ARNOLD The first Defendant is employed as: DEPUTY WARDEN at ASPC-EYMAN, SMU 1  
(Position and Title) (Institution)

The first Defendant is sued in his/her:  individual capacity  official capacity (check one or both).  
Explain how the first Defendant was acting under color of law: AT ALL TIMES RELEVANT  
JAMES ARNOLD WAS AN EMPLOYEE OF ARIZONA D.O.C.

4. Name of second Defendant: FRANK MARSH The second Defendant is employed as: ASSISTANT DEPUTY WARDEN at ASPC-EYMAN, SMU 1  
(Position and Title) (Institution)

The second Defendant is sued in his/her:  individual capacity  official capacity (check one or both).  
Explain how the second Defendant was acting under color of law: AT ALL TIMES RELEVANT  
MARSH WAS AN EMPLOYEE OF ARIZONA D.O.C.

5. Name of third Defendant: FRANK SCOTT The third Defendant is employed as: SECURITY LIEUTENANT at ASPC-EYMAN, SMU 1  
(Position and Title) (Institution)

The third Defendant is sued in his/her:  individual capacity  official capacity (check one or both).  
Explain how the third Defendant was acting under color of law: AT ALL TIMES RELEVANT  
SCOTT WAS AN EMPLOYEE OF ARIZONA D.O.C.

6. Name of fourth Defendant: FRANK CARLSON The fourth Defendant is employed as: SPECIAL SECURITY UNIT SUPERVISOR at ASPC-EYMAN, SMU 1  
(Position and Title) (Institution)

The fourth Defendant is sued in his/her:  individual capacity  official capacity (check one or both).  
Explain how the fourth Defendant was acting under color of law: AT ALL TIMES RELEVANT  
CARLSON WAS AN EMPLOYEE OF ARIZONA D.O.C.

(If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.)

### B. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner?  Yes  No
2. If your answer is "yes," how many lawsuits have you filed? 5. Describe the previous lawsuits in the spaces provided below.
3. First prior lawsuit:
  - a. Parties to previous lawsuit:
 

Plaintiff: JAMES SKINNER

Defendants: MASSACHUSETTS DOC OFFICIALS

- b. Court: (If federal court, identify the district; if state court, identify the county.) SUFFOLK  
County (Boston, Ma)
- c. Case or docket number: CANNOT RECALL
- d. Claims raised: UNLAWFUL CONFINEMENT
- e. Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?)  
SETTLED OUT OF COURT
- f. Approximate date lawsuit was filed: APPROX 1986-1987
- g. Approximate date of disposition: APPROX 1991

4. Second prior lawsuit:

- a. Parties to previous lawsuit:  
Plaintiff: JAMES KINGLER  
Defendants: MASSACHUSETTS DOC
- b. Court: (If federal court, identify the district; if state court, identify the county.) MIDDLESEX  
County (Cambridge, Ma)
- c. Case or docket number: CANNOT RECALL
- d. Claims raised: PROPERTY LOSS
- e. Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?) SETTLED OUT OF COURT
- f. Approximate date lawsuit was filed: APPROX 1995
- g. Approximate date of disposition: APPROX 1996

5. Third prior lawsuit:

- a. Parties to previous lawsuit:  
Plaintiff: JAMES KINGLER  
Defendants: Michael Cunningham, et al.
- b. Court: (If federal court, identify the district; if state court, identify the county.)  
FEDERAL DISTRICT OF NEW HAMPSHIRE (CONCORD)
- c. Case or docket number: CANNOT RECALL
- d. Claims raised: DELIBERATE INDIFFERENCE
- e. Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?)  
Lost at trial - ATTAINED ON APPEAL
- f. Approximate date lawsuit was filed: MAY 10, 2000
- g. Approximate date of disposition: APPEAL DECIDED (1 CIR) NOV. 2005

(If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.)

FOURTH PRIOR LAW SUIT

A. JAMES SKINNER V. JAMES BECKER

B. FILED WITH NORFOLK COUNTY (MA.)

C. CIVIL ACTION NO# 04-00343

D. JUDICIAL REVIEW

E. APPEAL DECIDED IN 2005 (2005-P-0951)

F. DATE FILED: MAY 2004

G. SEPTEMBER 2006

FIFTH PRIOR LAW SUIT

A. JAMES KUNNER V. DORA SCARPO, ET AL.

B. FEDERAL DISTRICT FOR ARIZONA (PHOENIX)

C. NO. CV06-1879-PHX-SMM(ECV)

D. 42 USC 1983 VCU CONFINEMENT ABSENT  
DUE PROCESS

E. RECEIVED SCREENING ORDER AND HAVE  
A RULE 12(B) MOTION PENDING

F. FIRST AMENDED COMPLAINT FILED ON  
NOVEMBER 7, 2007

G. ACTION PENDING

C. CAUSE OF ACTION

COUNT I

1. The following constitutional or other federal civil right has been violated by the Defendant(s): 42 USC § 1983 Against Defendants Arnold, Marshall, Scott & Carlson

2. Count I involves: (Check only one; if your claim involves more than one issue, each issue should be stated in a different count)
 Mail  Access to the court  Medical care
 Disciplinary proceedings  Property  Exercise of religion  Retaliation
 Excessive force by an officer  Threat to safety  Other: \_\_\_\_\_

3. Supporting Facts: (State as briefly as possible the FACTS supporting Count I. Describe exactly what each Defendant did or did not do to violate your rights. State the facts clearly in your own words without citing legal authority or arguments).

All counts of this civil complaint stem from procedural due process violations that are disciplinary in nature.

On April 26, 2007 Plaintiff was taken from General Population 1-C-19 and placed in the violence control unit 1-B-09. As a general population prisoner Plaintiff received a range of privileges, including but not limited to: TV, Radio/Cassette Player, Music Tapes, Correspondence, Books, Newspapers, Fax, Electric Shavers, Telephones, CMB, Full canteen, and may participate in fundraisers like pizza, cheeseburgers, ice cream etc.

CONTINUED -

4. Injury: (State how you have been injured by the actions or inactions of the Defendant(s)).
As a direct and proximate result of Defendants actions Plaintiff must have suffered and undergone a number of months on loss of privileges in a hot, noxious cell causing severe migraines.

5. Administrative Remedies:

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution?  Yes  No
- b. Did you submit a request for administrative relief on Count I?  Yes  No
- c. Did you appeal your request for relief on Count I to the highest level?  Yes  No
- d. If you did not submit or appeal a request for administrative relief to the highest level, briefly explain why you did not. Per ACC DO 802-10146 Grievance System "Discipline Issues" are not eligible

## Count I: Supporting Facts Continued

THESE PRIVILEGES MAY BE REVOKED BY A DISCIPLINARY HEARING OFFICER, BUT ONLY AFTER THE INMATE WAS PROVIDED 1) ADVANCE WRITTEN NOTICE OF THE CHARGES, 2) AN OPPORTUNITY TO PRESENT EVIDENCE AND HEAR WITNESSES IF IT DOES NOT JEOPARDIZE INSTITUTIONAL SAFETY OR CORRECTIONAL GOALS, AND 3) A SHORT WRITTEN STATEMENT BY THE FACTFINDERS AS TO THE EVIDENCE RELIED ON AND THE REASON FOR THE ACTION TAKEN.

THE MAXIMUM SANCTION PERMITTED PER DISCIPLINARY REPORT IS 15 DAYS DISCIPLINARY DETENTION AND 30 DAYS LOSS OF PRIVILEGES. (PER AOC DIRECTOR'S ORDER 803 - INMATE DISCIPLINE SYSTEM)

## THE VIOLENCE CONTROL UNIT (VCU)

VCU IS A CLUSTER OF SIX "PODS" EACH CONTAINING EIGHT (8) CELLS. EACH CELL HAS 3 CONCRETE WALLS AND A STEEL MESH FRONT. SEALED OVER AND ONTO THE STEEL MESH FRONT IS A THICK DIRTY LEXAN (PLEXI) GLASS WHICH SEVERELY RESTRICTS AIR CIRCULATION AND CAUSES

## Court I: Supporting Facts Continued

CELL TEMPERATURES TO SOAR WELL ABOVE THE ALREADY STIFLING DAY AND NIGHT TIME TEMPERATURES, AND SEVERELY RESTRICTS VISION. AT VARIOUS TIMES OF DAY AND NIGHT THE ONLY AIR VENT IN THE CELL RELEASES HOT, RANK AND THOROUGHLY FETID AIR DIRECTLY INTO THE CELL. AT OTHER TIMES, ACCORDING TO STAFF, IT'S NOXIOUS DIESEL FUMES WHICH CAUSE DIZZINESS, NAUSEA AND DEBILITATING MIGRAINES. WITH THERE BEING NO INTAKE VENT IN THE CELL AND DUE TO THE CIRCULATION RESTRICTIONS (EYON CROSS IT <sup>TAKES</sup> A LONG TIME FOR THE PROBLEM AIR TO DISSIPATE AFTER IT STOPS COMING OUT OF THE VENT.

PLAINTIFF HAS NO CONTROL OVER THE VENT AIR FLOW SO TO LESSEN THE EMISSIONS OF RANK, FETID AND NOXIOUS AIR INTO HIS CELL HE MUST COVER IT WITH A WET TEE-SHIRT WHICH CAN SUBJECT HIM TO DISCIPLINARY ACTIONS.

STAFF ARE PROHIBITED FROM PASSING OUT BEDDING OR MOPS SO CELLS MUST BE CLEANED BY HAND. PLAINTIFF MUST SWEEP AND WASH HIS CONCRETE FLOOR ON HANDS

## Court I's Supposed Facts Continued

and KNEES WITH ONE OF HIS OWN SOCKS ON HIS HAND.

When an inmate leaves his cell a pair of HANDCUFFS that are welded to a thick 4 FOOT LONG chain and HANDLE are applied behind his back and he then is made to KNEEL FOR THE application of LEG IRONS. Should the inmate require to be taken outside of his pod he is strapped FACE DOWN to a ERN CURNERY in the above mentioned RESTRAINTS and wheeled to his destination. In contrast, GENERAL population inmates wear only a regular pair of HANDCUFFS, NO LEG IRONS, and can walk to his their destination. IMMEDIATELY upon entrance into VCU all of Plaintiff's above stated PRIVILEGES were summarily REVOKED and the above stated conditions applied, without ~~any~~ any due process.

Having previously been subjected to a VCU Board imposed VCU sanctions, Plaintiff filed a May 4, 2007 informal resolution with the VCU CO III Ams which stated:

## Court I: Supportive Facts Continued

" I am attempting to informally resolve the following problem: SMI Officials have created a VCU Board/Committee which is presently chaired by ADW Marsh. Said Board has enacted its own and enforced its own policy, practice or custom of sentencing prisoners to VCU for terms ranging from 90-180 days, 5 to 11 times greater than the maximum allowable sanction provided by ADC promulgated policy. I have made numerous requests for 1) the authorizing policy number regarding the VCU Board, and 2) whether or not said board's decisions are either appealable or grievable. I am requesting procedural due process regarding any VCU Board confinement decisions and, responses to the 2 above enumerated questions."

On May 8, 2007 CO II AMO responded:

" In response to your informal resolution dated 5/6/07 pertaining to placement into VCU. You have been found to be a security risk to the safe

Count I: Supportive Facts Continued

and orderly operations of the unit based on your recent actions. As I explained before, you are not being housed here based on a disciplinary violation, rather a security risk to the institution. Your placement will be reviewed on a monthly basis by the VCU Committee and alternate housing will be discussed as the Deputy Warden and VCU Committee determine the level of security that is needed to appropriately house you for the safety of staff and inmates alike. This resolves your informal resolution and concludes my response."

Having not received any answers to the actual questions asked in the informal resolution Plaintiff wrote Ans again stating:

"This is a follow up to my May 4, 2007 Informal Resolution and your May 8, 2007 Response. I asked if the VCU Board's decision were/are either A) appealable, or B) grievable, to which you did not respond. Will you please

## Count I: Supportive Facts Continued

take the time to do so now. I HAVE MADE SEVERAL GOOD FAITH ATTEMPTS AT RECEIVING AN ANSWER TO BOTH QUESTIONS WITH NO SUCCESS. IF THE VCLL BOARD'S DECISIONS ARE IN FACT APPEALABLE PLEASE CITE THE ADC POLICY UNDER WHICH APPEALS ARE MADE." (dated May 14, 02)

On May 14, 02 AMO responded with a copy of her May 8, 02 response to which she added the following sentence:

"VCLL is a HOUSING MATTER AND HOUSING IS NOT APPEALABLE AND DOES NOT APPLY TO APPEALABLE ISSUES AS IT IS NOT DETENTION OR DISCIPLINARY PLACEMENT"

PER ADC DIRECTOR ORDER 804.01 § 1.53. IF IT IS DETERMINED THAT A PLAINTIFF IS A THREAT TO THE SAFE AND ORDERLY OPERATIONS OF THE UNIT BASED ON HIS RECENT "ACTIONS" THEN STAFF WERE TO FOLLOW ALL THE TIME FRAMES WITHIN THE REMOTE DISCIPLINE SYSTEM OR RELEASE HIM

## Count I: Supporting Facts Continued

ON THE FIFTH WORK DAY. THIS PLAINTIFF'S  
PLACEMENT AND CONTINUED MONTHLY  
REFERENCING TO VCU IS A DISCIPLINE  
ISSUE WHICH PLAINTIFF COULD NOT EVEN  
GRIEVE

DEFENDANTS ARNOLD, MERRETT, SCOTT,  
AND CARROLL ARE MEMBERS OF THE VCU  
COMMITTEE THAT HAS SENTENCED PLAINTIFF  
TO AN UNSPECIFIED NUMBER OF MONTHS,  
AND QUITE POSSIBLY AN INDEFINITE TERM  
IN VCU ABSENT DUE PROCESS.

DEFENSE: THE DEFENDANTS' ACTIONS  
SUBJECT PLAINTIFF TO AN ATYPICAL AND  
SIGNIFICANT HARDSHIP. EACH NAMED  
DEFENDANT COULD HAVE TAKEN CORRECTIVE  
MEASURES BUT FAILED OR REFUSED TO ACT.

COUNT II

1. The following constitutional or other federal civil right has been violated by the Defendant(s): 42 UBC 1983 against Defendants Arnold, Maritz, Scott, and Carlson

2. Count II involves: (Check only one; if your claim involves more than one issue, each issue should be stated in a different count)
 Mail  Access to the court  Medical care
 Disciplinary proceedings  Property  Exercise of religion  Retaliation
 Excessive force by an officer  Threat to safety  Other: PROCEDURAL DUE PROCESS

3. Supporting Facts: (State as briefly as possible the FACTS supporting Count II. Describe exactly what each Defendant did or did not do to violate your rights. State the facts clearly in your own words without citing legal authority or arguments).
Plaintiff incorporates by REFERENCE all Supporting Facts in Count I as though stated here.

The Defendants Arnold, Maritz, Scott and Carlson acting as members of the VCU Committee have enacted and enforced their own policy, practice or custom of sentencing inmates to VCU for 90 to 180 days absent procedural due process and in direct violation of the inmate discipline system - DO 803. The duration of the 90-180 days will be 90 days or less of privileges also in direct violation of the inmate discipline system. Their decision is

continued -

4. Injury: (State how you have been injured by the actions or inactions of the Defendant(s)).
As a direct and proximate result of defendants actions Plaintiff must suffer and undetermined number of months or less of privileges in a hot, noxious cell causing severe headaches.

5. Administrative Remedies:
a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution?  Yes  No
b. Did you submit a request for administrative relief on Count II?  Yes  No
c. Did you appeal your request for relief on Count II to the highest level?  Yes  No
d. If you did not submit or appeal a request for administrative relief to the highest level, briefly explain why you did not. PER AIC 802 INMATE GRIEVANCE SYSTEM "DISCIPLINE ISSUES" ARE NOT EXISTABLE

## Court II: Supporting Facts Continued

NEITHER APPEALABLE NOR CRIEABLE, AS THE VCU CODE'S 5/11/02 RESPONSE CONFIRMS.

THE VCU COMMITTEE MEETS WEEKLY TO DECIDE WHICH INMATES SHOULD REMAIN IN VCU AND WHICH SHOULD LEAVE OR INMATES END ANOTHER 30 days in VCU. IT IS WIDELY KNOWN AND DOCUMENTED, BY STAFF RESPONDING TO INMATES LETTERS, THAT ONLY AN INMATE TAKEN OUT OF GENERAL POPULATION FOR A STAFF RELATED INCIDENT WILL RECEIVE 6 MONTHS IN VCU, AND 90 days FOR ALL OTHER REASONS. INMATES ARE PROVIDED WITH NO WRITTEN NOTICE OF ANY KIND AND ARE THEY PERMITTED TO ADDRESS OR DEFEND THEMSELVES OR PRESENT EXRAX EXCULPATORY EVIDENCE TO THE VCU COMMITTEE.

DEFENDANTS ARNOLD, ALBERT, SCOTT AND CARLSON ARE FULLY AWARE OF DIRECTOR'S ORDER 803 - INMATE DISCIPLINE SYSTEM policy and that their actions violate the procedural due process mandated contained therein. ~~As~~ And that their sentencing practices exceed the permitted maximum. Any time after PLAINTIFFS 5th day in VCU THE DEFENDANTS COULD HAVE TAKEN CORRECTIVE ACTION, BUT FAILED OR REFUSED TO ACT.

COUNT III

1. The following constitutional or other federal civil right has been violated by the Defendant(s): W/ 1983 ACT. DEFENDANTS ARNOLD, MARSH, SCOTT and CARBON

2. Count III involves: (Check only one; if your claim involves more than one issue, each issue should be stated in a different count)
 Mail  Access to the court  Medical care
 Disciplinary proceedings  Property  Exercise of religion  Retaliation
 Excessive force by an officer  Threat to safety  Other: PROCEDURAL DUE PROCESS

3. Supporting Facts: (State as briefly as possible the FACTS supporting Count III. Describe exactly what each Defendant did or did not do to violate your rights. State the facts clearly in your own words without citing legal authority or arguments).
PLAINTIFF INCORPORATED BY REFERENCE ALL SUPPORTING FACTS IN COUNT I AND COUNT II AS THOUGH STATED HERE.

DEFENDANTS ARNOLD, MARSH, SCOTT, and CARBON USE THEIR POLICY, PRACTICE, OR CUSTOM OF DOING OUT SANCTIONS AS A MEANS TO CIRCUMVENT THE DULY PROMULGATED TARRANT DISCIPLINE SYSTEM POLICY EVEN THOUGH POLICY PROMULGATED BY STATUTORY ACT HAS THE FORCE OF LAW. BY FINING PLAINIFF TO HIS SECURITY THREAT THESE VIOLATIONS THE TARRANT DISCIPLINE SYSTEM PROCEDURE THEY ARE CONDONED, WITH MANDATORY LANGUAGE,
CONTINUED -

4. Injury: (State how you have been injured by the actions or inactions of the Defendant(s)).
AS A DIRECT AND PROXIMATE RESULT OF DEFENDANTS OBLIVIOUS PLAINIFF MUST SUFFER AN UNDETERMINED NUMBER OF MONTHS ON LOSS OF PRIVILEGES IN A HOT NOXI OUN CELL CAUSING SEVERE ILLNESS

5. Administrative Remedies:
a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution?  Yes  No
b. Did you submit a request for administrative relief on Count III?  Yes  No
c. Did you appeal your request for relief on Count III to the highest level?  Yes  No
d. If you did not submit or appeal a request for administrative relief to the highest level, briefly explain why you did not. PER DOC OO 302 - TARRANT GRIEVANCE SYSTEM "DISCIPLINE ISSUES" ARE NOT APPEALABLE.

(If you assert more than three Counts, answer the questions listed above for each additional Count on a separate page.)

## Count III: Supportive Facts Continued

to adhere to, they will fully violate the law, and thereby making Plaintiff's VCL sentence unlawful.

In leaving Plaintiff with no administrative remedies available to him the Defendants compounded his injury by making their decisions uncontestable unless he files a civil action at significant ~~expense~~ financial cost and burden. Throughout which action Plaintiff will still have to serve their unlawful sentence.

Defendants Arnold, Meest, Scott and Carlson know they do not have the regulatory authority to dismiss, disregard or ignore the duly promulgated Director's Order 803 - Inmate Discipline System in favor of their own policy practice or custom which has caused and continues to cause Plaintiff injury.

The Defendants could have at any time taken corrective measures but have failed or refused to act.

**D. REQUEST FOR RELIEF**

State briefly exactly what you want the Court to do for you.

*Plaintiff respectfully demands a Trial By Jury*

*A Declaration that Plaintiffs due Process Rights were violated and the VCU Committees policy, practice or custom is unlawful*

*An Award of compensatory damages of no less than \$100 dollars for each day consumed in VCU*

*An Award of punitive damages against each defendant in the amount subject to proof*

*An award of filing fees and costs and pre and post judgment interest as allowed by law against each defendant*

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 15, 2007  
DATE

James Kinner  
SIGNATURE OF PLAINTIFF

\_\_\_\_\_  
(Name and title of paralegal, legal assistant, or other person who helped prepare this complaint)

\_\_\_\_\_  
(Signature of attorney, if any)

\_\_\_\_\_  
(Attorney's address & telephone number)

**ADDITIONAL PAGES**

All questions must be answered concisely in the proper space on the form. If needed, you may attach no more than fifteen additional pages. The form, however, must be completely filled in to the extent applicable.

Request For Relief Continued

An Injunction ordering the release  
of Plaintiff from VCU and his privileges  
restored until such time the Defendants  
can produce for the Court an ADC  
promulgated policy which authorizes  
the VCU Committee's procedural and  
sentencing practices.

May 15, 2007

James Kinard