

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

SECOND AMENDED COMPLAINT

JUL 21 2010

DATE: 07-29-2010

By: JAMES W. MCCORMACK, CLERK

DEP CLERK

EDGAR L. GUNTHER

CASE 5:10CV00139

OBJECTIONS TO

VS.

RECOMMENDATION

TO DISMISS

JAMES BANKS, LARRY MORRIS,

DEFENDANTS

RANDALL WILLIAMS, DR. R. RECTENWALD

I EDGAR L. GUNTHER, WHO WAS FORMERLY A PRISONER AT THE TUCKER UNIT OF ARKANSAS DEPARTMENT OF CORRECTION, NOW CURRENTLY A PRISONER IN THE VARNER SUPER MAX UNIT OF ARKANSAS DEPARTMENT OF CORRECTION, ALLEGING THAT ALL SAID DEFENDANTS HAVE VIOLATED MY CONSTITUTIONAL RIGHTS MY BASIC OBJECTIONS TO THE RECOMMENDATION TO DISMISS DEFENDANTS DIRECTOR (FORMER) LARRY MORRIS AND RANDALL WILLIAMS CHAIRMAN OF THE BOARD OF CORRECTIONS DUTIES TO MY SERIOUS MEDICAL NEEDS THAT WERE VIOLATED. THE DELIBERATE INDIFFERENCE ARE SUFFICIENT TO IMPOSE LIABILITY UNDER § 1983 BY THE DEFENDANTS GROSS DEFICIENCIES IN STAFFING, AND PROCEDURES, GARCIA V. SALT LAKE CO., 768 F.2d 303 (10TH CIR. 1985). SIMPLY STATED, ALTHOUGH THE DOCTRINE OF RESPONDENT SUPERIOR DOES NOT APPLY IN A § 1983 ACTION., I THE PLAINTIFF MAY MAINTAIN A THEORY OF DIRECT LIABILITY AGAINST PRISON OFFICIALS AND SUPERVISORS IN THEIR INDIVIDUAL CAPACITIES BASED ON THEIR FAILURE TO PROPERLY HIRE, TRAIN, SUPERVISE, DIRECT OR CONTROL THE ACTIONS OF A SUBORDINATE WHO CAUSES INJURY TO AN INMATE. - PEARL V. DOBBS, 649. F.2d. 608 (8TH CIR. 1981)

; JONES V. DENTON, 527, F. SUPP. 106 (S.D. OHIO 1981).

APPROXIMATELY (6) SIX MONTHS PRIOR TO MY TESTING POSITIVE OF TUBERCULOSIS JANUARY (12) TWELVETH OF 2009. I HAD PERSISTENTLY SPOKE WITH TUCKERS MEDICAL STAFF URGING THEM TO TEST ALL OF (9) NINE BARRACKS FOR ACTIVE TUBERCULOSIS, BECAUSE ALL INMATES IN (9) BARRACKS USING THE MANTOUX TUBERCULIN SKIN TEST KEPT TESTING POSITIVE OF BEING EXPOSED TO TUBERCULOSIS. - 8TH AMENDMENT PROTECTION AGAINST DELIBERATE INDIFFERENCE TO PRISON HEALTH PROBLEMS EXTENDS TO CONDITIONS THAT THREATEN TO CAUSE HEALTH PROBLEMS, U.S. CA. CONST. AMEND. 8 HELLING V. MCKINNEY 509 U.S. 25, 113 S. CT. 2475, 125 L. ED. 2D. 22, 61 U.S.L.W. 4648 (1993). AFTER I TESTED POSITIVE OF BEING EXPOSED TO TUBERCULOSIS I BEGAN THE TUBERCULIN MEDICATION I.N.H. 900 MG. AND VITAMIN 50 MG. FROM MARCH 13, 2009 TILL NOVEMBER 30, 2009. TWICE DURING THIS TIME INMATE GARY COPUS WHO WAS HOUSED CLOSE TO ME IN (9) NINE BARRACKS HE TESTED POSITIVE OF HAVING PNEUMONIA. I HAVE DOCUMENTS I WAS UNABLE TO COPY THAT STATE WHAT IS TUBERCULOSIS? WHAT CAUSES TUBERCULOSIS? FOR CONFIRMATION, THAT WHEN A PERSON BECOMES INFECTED WITH TUBERCULOSIS, THE BACTERIA IN THE LUNGS MULTIPLY AND CAUSE PNEUMONIA - THIS PROVES INMATE GARY COPUS WAS IN NEED OF BEING TREATED AS A SUSPECT ACCORDING TO A.D. 09-02 POLICY AND PROCEDURE NO# 14. SEVERAL MONTHS BEFORE THE DEADLY / LIFE THREATENING DISEASE SPREAD TO MYSELF AND NUMEROUS OTHERS WHO WERE UTTERLY VICTIMIZED, AND BECAME AN EPIDEMIC ON MAY 4, 2010. - DEFENDANTS NORRIS AND WILLIAMS HAD AMPLE

TIME TO BE AWARE THAT GARY COPUS WAS DIAGNOSED WITH PNEUMONIA THE FIRST TIME AND RESOLVE IT SINCE THEIR SUBORDINATES CLAIM PROCEDURE NO#12, ACCORDING TO A.D. 09-02 POLICY WAS CONDUCTED. - THUS MY OBJECTIVE FACTOR IS MORE THAN A SCIENTIFIC AND STATISTICAL INQUIRY INTO THE SERIOUSNESS OF THE POTENTIAL HARM AND THE LIKELIHOOD THAT SUCH INJURY TO MY HEALTH WAS ACTUALLY CAUSED BY TUCKERS MEDICAL STAFF REFUSING TO FIND A HIGHLY POSSIBLE ACTIVE TUBERCULOSIS SUSPECT BEFORE OTHERS AND MYSELF BECAME INFECTED, BUT ALSO THAT TUCKERS MEDICAL STAFF REFUSED TO VIEW WHETHER SOCIETY CONSIDERS THE RISK I COMPLAINED OF TO BE SO GRAVE THAT IT VIOLATES CONTEMPORARY STANDARDS OF DECENCY TO EXPOSE ANYONE UNWILLINGLY TO SUCH A RISK. HELLING V. MCKINNEY Id. AT 36, 113 S. Ct. 2975 (1993).

THUS MY VIABLE CLAIMS AGAINST DEFENDANTS MORRIS/WILLIAMS ARE STATE OFFICIALS ACTING IN THEIR OFFICIAL CAPACITIES ARE § 1983 "PERSONS" WHEN SUED FOR PROSPECTIVE RELIEF. SEE TRELEVEN V. UNIVERSITY OF MINN., 73 F. 3d. 816, 819 (8TH CIR. 1996), THE FACTUAL BASIS OF MY TESTIMONY GOES TO THE WEIGHT OF THE EVIDENCE THE DIRECTOR WAS RESPONSIBLE FOR THE HIRE, TRAIN, SUPERVISE, DIRECT OR CONTROL THE ACTIONS SET FOR BY THE RULES OF THE CHAIRMAN OF THE BOARD OF CORRECTIONS FED. RULES EVID. RULE 702, 28 USCA. SUITS AGAINST STATE OFFICERS IN THEIR INDIVIDUAL CAPACITIES ARE NOT BARRED BY THE ELEVENTH AMENDMENT, BARGER V. STATE OF KANSAS, 620 F. SUPP. 1432, 1437 (D. KAN. 1985). HOWEVER, SUPERVISORY OFFICIALS SUED IN THEIR INDIVIDUAL CAPACITIES ARE ANSWERABLE IN A § 1983 ACTION WHERE THERE IS

A CONNECTION BETWEEN THEIR OWN ACTIONS AND THE CLAIMED CIVIL RIGHTS VIOLATION, WILSON V. ATTAWAY, 757 F.2d, 1227 (11TH CIR. 1985), HERE I HAVE SHOWN CONDUCT BY THE DEFENDANTS MORRIS/WILLIAMS EXHIBITING ACQUESCENCE IN UNCONSTITUTIONAL ACTIONS. McCLELLAND V. FACTEAU, 610 F.2d 693, 697 (10TH CIR. 1979), AND CONSTITUTIONALLY LIABLE FOR MY EXCRUCIATIONS OF PAIN & SUFFERING / INHIBITORY PROVISION THAT ENABLED ME TO BE DIAGNOSED WITH MY NOW LIFE THREATENING / PERMANENT DISEASE. LISCIO V. WARREN, 901 F.2d, AT 277; MEDCALF V. STATE OF ARKANSAS, 626 F. SUPP. 1179, 1186 (D. KAN. 1986).

CERTIFICATE OF SERVICE

CERTIFICATE OF THE FOREGOING, REQUEST UNDER THE UNITED STATES DISTRICT COURT RECOMMENDATIONS OBJECTIONS TO DISMISS DEFENDANTS HAS BEEN SERVED BY THE UNITED STATES MAIL POSTAGE PAID, TO THE A.D.C. MAILROOM, ON THIS 29TH DAY OF JUNE 20 10.

EDGAR L. GUNTHER
PETITIONER, PRO SE # 100017