

NAME VanTrae Gregory, #C-85909

PRISON NUMBER #C-85909

CURRENT ADDRESS OR PLACE OF CONFINEMENT
CSP-LAC Lancaster State Prison
P.O. BOX 4430/ A2-111Low

CITY, STATE, ZIP CODE
Lancaster, California 93539-4430

2254	1983
FILING FEE PAID	
Yes	No
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ORIGINAL FILED

JAN 23 2012

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

'12 CV 0193 JLS RBB

Civil No _____
(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

VanTrae Gregory, pro-per ,
(FULL NAME OF PETITIONER)
PETITIONER

v.

Domingo Uribe, Jr., Warden, et. al.,
(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED
PERSON HAVING CUSTODY OF PETITIONER (E.G., DIRECTOR OF THE
CALIFORNIA DEPARTMENT OF CORRECTIONS))

RESPONDENT

and

Kamala Harris,
The Attorney General of the State of
California, Additional Respondent.

PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack:
2. Date of judgment of conviction:
3. Trial court case number of the judgment of conviction being challenged:
4. Length of sentence:

5. Sentence start date and projected release date:
6. Offense(s) for which you were convicted or pleaded guilty (all counts):
7. What was your plea? (CHECK ONE)
- (a) Not guilty
 - (b) Guilty
 - (c) Nolo contendere
8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)
- (a) Jury
 - (b) Judge only
9. Did you testify at the trial?
- Yes No

DIRECT APPEAL

10. Did you appeal from the judgment of conviction in the **California Court of Appeal**?
- Yes No
11. If you appealed in the **California Court of Appeal**, answer the following:
- (a) Result:
 - (b) Date of result (if known):
 - (c) Case number and citation (if known):
 - (d) Names of Judges participating in case (if known):
 - (e) Grounds raised on direct appeal:
12. If you sought further direct review of the decision on appeal by the **California Supreme Court** (e.g., a Petition for Review), please answer the following:
- (a) Result:
 - (b) Date of result (if known):
 - (c) Case number and citation (if known):
 - (d) Grounds raised:

13. If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to that petition:

- (a) Result:
- (b) Date of result (if known):
- (c) Case number and citation (if known):
- (d) Grounds raised:

COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Superior Court?

Yes No (PRISON DISCIPLINE)...

15. If your answer to #14 was "Yes," give the following information:

- (a) California Superior Court Case Number (if known): EHC-01460
- (b) Nature of proceeding: Habeas Corpus

(c) Grounds raised: #21, Due process violation, denial of penal Code §2932, Senior hearing officer (SHO) Lt. J. SAIS, found me guilty of CCR§ 3004(b), Conduct that could lead to violence, yet, I was charged with CCR§ 3005(b), Willfully Delaying A peace officer/Obstructing with specific act of, "Therefore, Gregory obstructed my duties by trying to-- **CONT'D Page #13**

(d) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(e) Result: Denied

(f) Date of result (if known): April 28, 2011, exhibit "D"

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Court of Appeal?

Yes

17. If your answer to #16 was "Yes," give the following information:

(a) California Court of Appeal Case Number (if known): D059824, exhibit#"E"

(b) Nature of proceeding: Habeas Corpus

(c) Names of Judges participating in case (if known)
Huffman, Acting P.J.,

(d) Grounds raised: Due process violations, denial of Penal Code§ 2932, Senior hearing Officer(SHO) Lt. J.SAIS, found me guilty of CCR§ 3004(b), Conduct that could lead to violence, yet, I was charged with CCR§ 3005(b) willfully delaying A Peace Officer/Ob-

CONT'D (e) Did you receive an evidentiary hearing on your petition, application or motion? Page

Yes No

(f) Result: Denied

(g) Date of result (if known): June 21, 2011

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Supreme Court?

Yes No

19. If your answer to #18 was "Yes," give the following information:

(a) California Supreme Court Case Number (if known): S194730 exhibit "F"

(b) Nature of proceeding: Habeas Corpus

(c) Grounds raised: Due Process violations, denial of Penal Code§ 2932, Senior hearing Officer(SHO) Lt. J.SAIS, found me guilty of CCR§ 3004(b), Conduct that could lead to violence, yet, I was charged with CCR§ 3005(b) willfully delaying A peace officer/Obstructing with specific act of, 'Therefore, Gregory obstructed my duties by trying to manipulate medical conditions to circumvent the search procedures that he was ordered to perform by ISU staff, Due process violations and Procedural due process, CONT'D Pg.

(d) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(e) Result: Post Card DENIAL

(f) Date of result (if known): November 16, 2011

20. If you did *not* file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the California Supreme Court, containing the grounds raised in this federal Petition, explain briefly why you did not:

The California Supreme Court Chief Justice CANTIL-SAKAUYE, gave an En Banc post card denial, giving petitioner no other choice but to address his issue's in the Federal Courts...

Exhibit 'F'

COLLATERAL REVIEW IN FEDERAL COURT

21. Is this your first federal petition for writ of habeas corpus challenging this conviction?

Yes No (If "YES" SKIP TO #22)

- (a) If no, in what federal court was the prior action filed?

(i) What was the prior case number?

(ii) Was the prior action (CHECK ONE):

Denied on the merits?

Dismissed for procedural reasons?

(iii) Date of decision: _____

- (b) Were any of the issues in this current petition also raised in the prior federal petition?

Yes No

- (c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?

Yes No

CAUTION:

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present *all* other grounds to the California Supreme Court before raising them in your federal Petition.
 - **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
 - **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.
-

GROUNDS FOR RELIEF

22. State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground. (e.g. what happened during the state proceedings that you contend resulted in a violation of the constitution, law or treaties of the United States.) If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

(a) **GROUND ONE:**

Supporting **FACTS:**

Did you raise GROUND ONE in the California Supreme Court?

Yes No.

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition):
- (2) Case number or citation:
- (3) Result (attach a copy of the court's opinion or order if available):

(b) **GROUND TWO:**

Supporting FACTS:

Did you raise GROUND TWO in the California Supreme Court?

Yes No:

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition):
- (2) Case number or citation:
- (3) Result (attach a copy of the court's opinion or order if available):

(c) **GROUND THREE:**

Supporting FACTS:

Did you raise GROUND THREE in the California Supreme Court?

Yes No.

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition):
- (2) Case number or citation:
- (3) Result (attach a copy of the court's opinion or order if available):

(d) **GROUND FOUR:**

Supporting FACTS:

Did you raise GROUND FOUR in the California Supreme Court?

Yes No.

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition):
- (2) Case number or citation:
- (3) Result (attach a copy of the court's opinion or order if available):

23. Do you have any petition or appeal now pending in any court, either state or federal, pertaining to the judgment under attack?

Yes No

24. If your answer to #23 is "Yes," give the following information:

(a) Name of Court:

(b) Case Number:

(c) Date action filed:

(d) Nature of proceeding:

(e) Name(s) of judges (if known):

(f) Grounds raised:

(g) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing

(b) At arraignment and plea

(c) At trial

(d) At sentencing

(e) On appeal

(f) In any post-conviction proceeding .

(g) On appeal from any adverse ruling in a post-conviction proceeding:

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No

(a) If so, give name and location of court that imposed sentence to be served in the future:

(b) Give date and length of the future sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No

28. Consent to Magistrate Judge Jurisdiction

In order to insure the just, speedy and inexpensive determination of Section 2254 habeas cases filed in this district, the parties may waive their right to proceed before a district judge and consent to magistrate judge jurisdiction. Upon consent of all the parties under 28 U.S.C. § 636(c) to such jurisdiction, the magistrate judge will conduct all proceedings including the entry of final judgment. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to consent to a magistrate judge as it will likely result in an earlier resolution of this matter. If you request that a district judge be designated to decide dispositive matters, a magistrate judge will nevertheless hear and decide all non-dispositive matters and will hear and issue a recommendation to the district judge as to all dispositive matters.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including the entry of final judgment, by indicating your consent below.

Choose only one of the following:

Plaintiff consents to magistrate judge jurisdiction as set forth above.

OR

YES
Plaintiff requests that a district judge be designated to decide dispositive matters and trial in this case.

29. Date you are mailing (or handing to a correctional officer) this Petition to this court:

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

SIGNATURE OF ATTORNEY (IF ANY)

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

January 10, 2012
(DATE)

VanDrae Bryson
SIGNATURE OF PETITIONER

CONT'D...GROUNDS RAISED AND, SUPPORTING FACTS...PAGES# 3,4, and 5,

Ground# 1, (cont'd),

manipulate medical conditions to circumvent the search procedures that he was ordered to perform by ISU staff'. Due process violation and procedural due process violations.

Supporting Facts Ground # 1,

On 01/27/2010, Senior Hearing Officer, had completed all the investigation in this prison disciplinary. On 01/26/2010 petitioner got his copy. He held my hearing 01/27/2010. At this time the SHO decided to change my charged offense from CCR§ 3005(b) wilfully Delaying A Peace Officer/Obstructing with the specific charge of, "therefore, Gregory obstructed my duties by trying to manipulate medical conditions to circumvent the search procedures that he was ordered to perform by ISU staff, to the completely different charge of CCR§ 3004(b), Conduct that could lead to violence, (see exhibit "B" pgs., 1,2, & 7 [in findings].). The SHO then proceeded to hear petitioner new charge without following due process procedures in penal code§ 2932. On the original charge I had asked for three witnesses which is documented at exhibit "B" pgs., 3,4,5 & 7,[under witnesses]. Of which Dr. Frazee the Chief Medical Officer (CMO) testified that I could not do what was asked of petitioner due to petitioner's medical condition, no circumvention existed here, per the head Prison Doctor's testimony (see exhibit "B" pgs 5 & 7.). So where did this new and additional charge come from, when it does not exist in the body of the disciplinary report by the reporting officer??? Petitioner was charged with a specific act, the SHO cannot just change the charge to one he seems to like at the time when petitioner is not guilty of the original charge, that against the California Department of Corrections and Rehabilitation

ment Of Corrections and Rehabilitation***(***)herein CDCR), own rules, regulations and policy, not to speak of petitioner's due process rights both constitutional and procedural, due process rights, California and United States Constitutional due process rights.

Ground 2

SHO Lt. J. SAIS should have found petitioner not guilty of original charge of CCR§ 3005(b), due to the Chief Medical Officer**herein CMO), Doctor Frazee statement, which is a due process violation and discrimination of petitioner's medical condition...

Supporting Facts Ground 2,

Doctor Frazee, the head medical Doctor of that prison at the time stated: "Inmate Gregory did have a medical condition, that prevented him or limited him physically". By the Senior Hearing Officer Lt. J. Sais finding of guilt, violated petitioner's due process and American Disability Rights. Due to petitioner's medical testimony by more than one medical staff member, (petitioner could not comply due to his medical condition.). Petitioner has three (3) spinal cord surgeries. On 12/31/09, petitioner was charged with "Willfully Delaying A peace Officer/Obstructing with the specific charge of, Therefore, Gregory obstructed mt duties by trying to manipulate medical conditions to circumvent the search procedures that he was ordered to perform by ISU staff, See exhibit "B" pgs., 1-2.). Above is the stated facts. How can the SHO Lt. J. Sais not find that the perponderance of evidence was created for this exact reason. On January 27, 2010, Lt. J. Sais found petitioner guilty of CCR§ 3004(b). A completely different charge not contained in the body of the report at all, 'conduct that will lead to violence'. Therefore petitioner's medical rights under current law, American Disability Act and CCR§

3085, which states: "No qualified inmate with a disability, as defined in Title 42 U.S.C. 12102, shall, by reason of such disability be excluded from participation in or be denied the benefits of the services, programs, or activities of the department, or be subjected to discrimination". petitioner contends the act of guilty, in the face of the evidence discriminated against petitioner, due to medical documents and testimony presented at and prior to petitioner's prison disciplinary hearing, such documents was plainly ignored.

Ground 3 Ground for Relief,

Respondents came to a verdict of guilty with out following their own procedures, due process rights set forth by CDCR. The SHO was biased in his decision to convict petitioner, of CCR§ Title 15: 3004(b), Conduct that could lead to violence.

Supporting Facts Ground 3,

No where in the report does it show/state petitioner acted aggressive against the reporting employee. At page 5 of the report (see exhibit "B" p. 5.), it states he the reporting employee never placed petitioner in handcuff's, per CCR§ Title 15: 3278, Control of Inmates and Parolee's;

Employee's who supervise inmates or parolee's must have training in physical controls, use of restraint equipment, and keep themselves in good physical condition. In addition, all employees who supervise inmates must have training designed to give them knowledge of emotional disturbances common to inmates and paroles, and understanding of their own feelings, and the use of such knowledge in ways, which will minimize the need for the use of physical force.

Under CCR§ Title 15; 3268 (a) (1) (2), and CCR § Title 15 3268.2 (a)

(2), would have not just been required, but demanded that petitioner be placed in handcuff's IF he had become unruly, CDCR's ISU staff is the most highly trained staff in the prison system. nothing in the record itself supports the second illegal charge. petitioner's due process, procedural and California Constitutional rights also petitioner's Medical American Disability Act rights have been violated.

Ground for Relief, Ground 4,

Respondents at either appeal level did not properly review the facts of petitioners appeal. Using rules set forth for such actions, for appeal of the CDCR 115-Rule Violation Report****(****herein RVR-115). The hearing officer violated petitioner's procedural due process rights guaranteed under the U.S. and California Constitutions.

Supporting Facts: Ground 4

When respondents review petitioner's appeal at the Wardens level they reduced the time credits loss from 90 days to 30 days due to an error. Yet, they did not view the facts that petitioner was charged with CCR§ 3005(b), Convicted of CCR§ 3004(b) which is two completely different charges. Either they did not read the facts or they just cared less of the facts, which "some evidence" would not have existed. Nor did they take notice to testimony of and on the record. The Director's level committed the same error's . This guilty finding did prejudice petitioner, not just by the findings, but also by the records, testimony and procedural and due process violations under penal code§ 2932, no notice of new charges, no witnesses testimony, no nothing, just guilty. Making their actions biased, prejudiced towards petitioner, creating many due process violations.

Ground for Relief 5, Ground 5,

Petitioner is entitled to an not guilty finding due to the preponderance of evidence and/or dississal in the interest of justice. Petitioner is entitled to an unbiased hearing.

Supporting Facts Ground 5,

Petitioner contends respondents failed at even the basic due process, procedural and constitutional rights of an unbiased prison disciplinary hearing. The original charge CCR§ 3005(b), Willfully Delaying a Peace Officer with a specific charge:Therefore, Gregory manipulated medical procedures in order not to follow the reporting employee's orders. The Chief Medical Officer Doctor FRAZE showed through his testimony that petitioner was not manipulating medical conditions to circumvent search procedures (see exhibit "B" pg. 7.). Which shows by the preponderance of evidence petitioner is not guilty. Then the SHO investigated while petitioner was in Administration Segregation on an unrelated investigation, the Senior Hearing Officer (SHO) recharged petitioner with and convicted him of CCR§ 3004 (b), Conduct that will lead to violence. Which by the report/facts does not equate, nor does the body of the report shows/states this. In such new findings the SHO Lt. J. Sais did not allow petitioner's rights under penal code§ 2932 or, rules that apply under CCR§ Title 15. Creating a major procedural rights violation. At no point did the highly trained Security Squad Officer (ISU), Correctional Officer *****(***)herein C/O), Truchanivicz ever place petitioner in handcuffs, when an inmate shows signs of unruly behavior. Per Title 15: 3268.2(a) (2). The SHO dropped the original charge from a division "D" offense CCR§ 3005(b), to an completely different charge of CCR§ 3004(b) which is a division "F", which is clearly illegal per

CDCR own policy for prison disciplinary hearings, CCRS 3313(c) (2), which says that a cdc 115 cannot be change from a serious to a serious. And under CCRS 3313(a) (1) describes what divisional letters are serious prison disciplinary infractions. Penal Code 2932 comes into play, again. Every contention was a due process rights violation rather California and or U.S. Constitutional rights that are guaranteed.

I, the undersigned, say: I am the petitioner in this action. I declare under the penalty of perjury under the laws of the state of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

DATE: Jan. 1, 2012
January 1, 2012

/s/ VanTrae Gregory
VanTrae Gregory
Petitioner/pro-per

Exhibit "A"

CDCR 602 Appeal Form

Pages; A1-A2-A3 and A4

PLEASE RETURN ORIGINAL

**INMATE/PAROLEE
APPEAL FORM**
CDC 602 (12/87)

Location: Institution/Parole Region

Log No.

Category

1. CEN-C

1. 10

1

2. _____

2. _____

You may appeal any policy, action or decision which has a significant adverse effect upon you. With the exception of Serious CDC 115s, classification, committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
GREGORY, V.	#C85909	N/A	A5-150 Low

A. Describe Problem: On Jan. 27, 2010, Weds., S.H.O. Lt. J. Sais held petitioners c.d.c.r. R.V.R.-115 hearing in case# "CEN-FAC-C"-09-12-064. S.H.O. Lt. J. Sais, blatantly ignored all the facts before him that would of shown by the PREPONDERANCE of the evidence Petitioner is factually innocent, per CCR§ Title 15: 3320 (small case). The S.H.O. Lt. J. Sais failed to adhere to procedures, when it comes to new charges of a c.d.c.r. R.V.R.-115, per Penal Code 2932(c)(1). S.H.O failed to follow CCR§ Title 15: 3315(a)(1)(2)(e). S.H.O failed to properly follow cdcr CCR§ Title 15: 3313(c)(1)(2). S.H.O failed to adequately --
 cont'd next additional SHEET --

If you need more space, attach one additional sheet.

B. Action Requested: 1) due to "Due Process" rights violations and failure to follow cdcr rules/regs. and policy the R.V.R.-115 should be dismissed and/or petitioner found "NOT GUILTY" by the evidence; 2) Per CCR§ Title 15: 3315 (e)(1)(2)(3) their should have never been an illegal reduction of Petitioners R.V.R.-115, the R.V.R.-115 - cont'd on a separate sheet

Inmate/Parolee Signature: Van Isaac Gregory #C85909 Date Submitted: Feb. 22, 2010

C. INFORMAL LEVEL (Date Received: _____)

Staff Response: _____

BY-PASS

RECEIVED
 APR 22 2010
 INMATE APPEALS BRANCH

Staff Signature: _____

Date Returned to Inmate: _____

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

Signature: _____

Note: Property/Funds appeals must be accompanied by a completed Board of Control Form BC-1E, Inmate Claim

Date Submitted: 10 FEB 24 AM 10:00

CDC Appeal Number: _____

INMATE APPEALS
 STAFF SIGNATURE

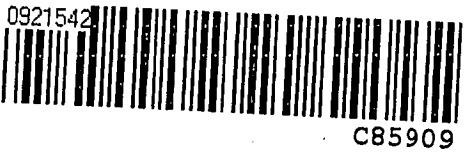
PLEASE RETURN ORIGINAL

2 PLEASE RETURN ORIGINAL

1st Level Granted P. Granted Denied Other

REVIEWER'S ACTION (Complete within 15 working days): Date assigned: _____ Due Date: _____

Interviewed by: _____



BYPASS

Staff Signature: _____ Title: _____ Date Completed: _____

Division Head Approved: _____ Returned: _____

Signature: _____ Title: _____ Date to Inmate: _____

If dissatisfied, explain reasons for requesting a Second-Level Review, and submit to Institution or Parole Region Appeals Coordinator within 15 days of receipt of response.

BYPASS

Signature: _____ Date Submitted: _____

2nd Level Granted P. Granted Denied Other FEB 24 2010

REVIEWER'S ACTION (Complete within 10 working days): Date assigned: _____ Due Date: APR 08 2010

See Attached Letter

Signature: _____ Date Completed: MAR 29 2010

Warden/Superintendent Signature: _____ Date Returned to: MAR 29 2010

If dissatisfied, add data or reasons for requesting a Director's Level Review, and submit by mail to the third level within 15 days of receipt of response. DISSATISFIED: Coming thru fac C's Safety Port gate is over 500 yards from fac C's 4-A section emergency door, that is blocked from view by a 40x40 foot brick wall. Once this was shown by Appellant the R.E. original statement changed. Appellant did comply w/ the search procedure. The R.E. opinion and/or assumption that appellant seemed angry holds NO bearing to appellant following orders to be searched, which appellant did per the report and the second level of review. At no point did appellant challenge the R.E. in a aggressive manner. At no point did the R.E. assume this fore I was never put in handcuffs per cdc policy. At no point did I require a guilty finding that was totally different than what the original cdc 115-RVR stated SPECIFICALLY! I was not guilty of that charge, per the record and medical records. Any other findings is a violation of my rights. I did request the video to prove and show NO TRUTH AND VICE WAS NOT WHERE HE SAID HE WAS, in this additional statement, when in the body of the original report he did not even imply he was on 2-Yard. Nothing in cdc policy states I have to talk to ISU or any staff, only that I respectfull and give my FOIA rights requested. The video shows I never refused to be searched. Signature: V. Gregory # C85909 = RETURN ORIGINAL = Date Submitted: APRIL 17, 2010

FOR SEN: TO Rd. Donovan on April 9, 2010 CONTI... section H, Associate Warden L Calderon, classified by and reviewed by Clayton A. Hernandez violated CCAS 3320(h), they had a predetermined belief of guilt. They either classified reviewed or set on the disposition of said charges. SEE sections 'A', 'B' & 'H' of this APPEAL. Please submit all documents to: Director of Corrections P.O. Box 942883 Sacramento, CA 94283-0001 Attn: Chief, Inmate Appeals

DIRECTOR'S ACTION: Granted P. Granted Denied Other

See Attached Letter Date: JUL 14 2010

DC 602 (12/87) = PLEASE RETURN ORIGINAL = From: 1-Rold At Rd. Donovan by

cont'd... Section "A",

this secondary charge of guilt erroneous and/or ersatz. Either way, "NO" Perponderance of Evidence HERE...

#5) At no point did SHO allow petitioner's due process rights to kick in per Wolff v. McDonald (1974) 418 U.S. 539, when he (SHO) completely changed my charges, illegally! Per CCRS Title 15; 3320 (c)(1)(2). See pages that show date of hearing and its newly added charges that are completely different than the original ones, pages 1 and 7.

#6) Petitioner requested that the video footage be viewed by petitioner w/hearing officer on "C" face yard video footage that day 12-31-09 between 11:45am and until 11:30pm to show petitioner is factually innocent of the original and the new charges. ITS not a security issue with revealing said video as evidence witnessed CCRS Title 15 3315(e), to prove petitioners innocence. That was denied by SHO Lt. J. Sais. Said video will show that security squad member #4 c/o Truchanovicz was mendacious in his accusations of petitioner's guilt. It will also show he was not where he said he was, it will show he could not see thru a 40x40 foot brick wall per his original statement, Sally Port gate walking on walkway towards the Program office, not towards building to building.

#7) Per CCRS Title 15; 3323(h) petitioner received a disposition of 90 days forfeiture, and 4 loss points of work/Behavioral credits, due to an illegal guilt finding. Pages #7 & 8.

#8) Associate warden L. Calderon, sat on petitioners R.C.C. committees hearings on 1-4-10 and 2-19-10 that retained petitioner in Ad/Seg, knowing the investigation was complete on 2-18-10. Then he reviewed petitioners RVR-115 as the final hearer of facts. At no point did he correct any of the many due process rights violations, e.g. no admission of guilt, effect violations, due to his pre-determined thoughts of guilt, was derelict in his duties. Plentiful disregard for cdc rules, regs., policy & the law within.

SECTION "B" (action requested), cont'd...

should be dismissed. Due process violations & cdc rules/regs & policy

N
DADO # ALI =

#3) SHO Lt. J. Sais, violated CCRS 3313(c)(1)(2). Additional charges did not exist within the body of the report, should be dismissed, more due process violations, cdc rules/regs & policy.

#4) Petitioners due process rights, cdc rules/regs & policy were not followed herein, "No" evidence substantiated these charges.

#5) Petitioner was denied due process rights under Wolff v. McDonald (1974) 418 U.S. 539.

#6) petitioner requested video footage and was denied, said video footage would of found petitioner factually innocent. Allow this.

#7) petitioners procedural, due process rights cdc rules/regs & policy denied herein under Wolff and CCRS 3323(h) said should be returned points & 90 days.

#8) A/W L. Calderon failed to remove himself from trier of facts due to his pre-determined ideal of guilt, and involvement in said issue.

#9) There should be an investigation, and no more reprisal or punitive acts.

#10) Petitioner shall rec. his 4 points back and 90 days that was illegal taking.

#11) CCRS Title 15; 3084.5 (e), and 3084.1 (d) and chillin effect has occurred.

cont'd... Section 'A',

this secondary charge of guilt erroneous and/or ersatz. Either way, "NO" Perponderance of Evidence HERE...

- #5) At no point did SHO allow petitioner's due process rights to kick in per Wolff v. McDonald (1974) 418 U.S. 539, when he (SHO) completely changed my charges, illegally! Per CCRS TITLE 15; 3320 (c)(1)(2). See pages that show date of hearing and its newly added charges that are completely different than the original ones, pages 1 and 7.
- #6) Petitioner requested that the video footage reviewed by petitioner, w/hearing officer on "C" fac yard video footage that day 12-31-09 between 11:45am and until 11:30pm to show petitioner is factually innocent of the original and the new charges, ITS not a security issue with revealing said video as evidence witnessed ~~ccr~~ 15 3315(e), to prove petitioner's innocence. That was denied by SHO Lt. J. SANS. Said video will show that security squad member #4 c/o Truchanovicz was mendacious in his accusations of petitioner's guilt. It will also show he was not where he said he was, it will show he could not see thru a 40x40 foot brick wall per his original statement, Sally port gate walking on walkway towards the program office, not towards building to 4 building.
- #7) Per CCRS Title 15; 3323(h) petitioner received a disposition of 90 days forfeiture, and 4 loss points of work/behavioral credits, due to an illegal guilt finding. Pages #7 & 8.
- #8) Associate warden L. Calderon, sat on petitioner's D.C.C. committees hearings on 1-4-10 and 2-9-10 that retained petitioner in Ad/seg, knowing the investigation was complete on 2-18-10. Then he reviewed petitioner's RVR-115 as the final hearer of facts. At no point did he correct any of the many due process rights violation, eight admission chilling effect violations, due to his pre-determined, thoughts of guilt, was derelict, in his duties. Plentiful disregard for cdcr rules, regs, policy & the law within.

SECTION "B" (action requested), cont'd...

- should be dismissed. Due process violations & cdcr rules/regs & policy
- #3) SHO Lt. J. SANS, violated CCRS 3313(c)(1)(2). Additional charges did not exist within the body of the report, should be dismissed, more due process violations, cdcr rules/regs & policy.
- #4) Petitioner's due process rights, cdcr rules/regs & policy were not followed herein, "NO" evidence substantiated these charges.
- #5) Petitioner was denied due process rights under Wolff v. McDonald (1974) 418 U.S. 539.
- #6) Petitioner requested video footage and was denied, said video footage would of found petitioner factually innocent. Allowth
- #7) Petitioner's procedural, due process rights cdcr rules/regs & policy denied herein under Wolff and CCRS 3323(h) said should be returned points of
- #8) A/W L. Calderon failed to remove himself from trier of facts due to his pre-determined idea of guilt, and involvement in said issue.
- #9) There should be an investigation, and no more reprisals or punitive acts.
- #10) Petitioner shall rec. his 4 points back and 90 days that was illegal taken.
- #11) CCRS Title 15; 3084.5 (e), and 3084.1 (d) and chilling effect has applied, herein also admission violations.

Page # 4

STATE OF CALIFORNIA
RULES VIOLATION REPORT

FR-09-12-

CDC NUMBER: C85900	INMATE'S NAME: GREGORY	RELEASE/BOARD DATE: LIFE	INST.: GENTINIELA	HOUSING NO.: C4-109L	LOG NO.: 1210
VIOLATED RULE NO(S): S 3005(b)		SPECIFIC ACTS: WILLFULLY DELAYING A PEACE OFFICER/OBSTRUCTING	LOCATION: FAC. C	DATE: 12/31/09	TIME: 1210

CIRCUMSTANCES
On 12/31/09, at approximately 1210 hours, while performing my duties as Security Squad Officer #4, I was assisting ISU Staff in conducting cell searches on Facility C, Building #4. As the first time entered C-4's Sally Port area, I walking towards C-4 and observed a black inmate, later identified as Gregory, C-85909, C4-109L walk up to the Emergency Exit Door of C-4 (A-Section) bend over and yell through the key hole of the door to alert the inmates that ISU was coming in the building for searches. I immediately responded and instructed Gregory to turn around for a clothed body search. Gregory seemed to be angry being searched. I ordered Gregory to remove his shoes for the search. Gregory refused to comply. I again ordered Gregory to remove his shoes, Gregory stated, "I can't, I have to sit down." I ordered Gregory to sit down on the ground and remove his shoes. Gregory again refused and stated, "I cannot sit down on the ground. I have a medical condition." I escorted Gregory to the C Program Office and placed Gregory in holding cell #1. I ordered Gregory to remove all of his clothing as well as his shoes. Gregory refused to comply and would not submit to an unclothed body search.

REPORTING EMPLOYEE (Typed Name and Signature): J. TRUCHANOVICZ	DATE: 12-31-09	ASSIGNMENT: SEC SQUAD#4	RDO'S: S/S'S
--	--------------------------	-----------------------------------	------------------------

REVIEWING SUPERVISOR'S SIGNATURE: M. RAMIREZ, Sergeant	DATE: 12/31/09	<input type="checkbox"/> INMATE SEGREGATED PENDING HEARING
--	--------------------------	--

CLASSIFIED OFFENSE DIVISION: <input checked="" type="checkbox"/> ADMINISTRATIVE <input checked="" type="checkbox"/> SERIOUS	DATE: 11/3/10	CLASSIFIED BY (Typed Name and Signature): A. Hernandez, Facility Captain	LOC.: N	HEARING REFERRED TO: <input type="checkbox"/> HO <input checked="" type="checkbox"/> SHO <input type="checkbox"/> SC <input type="checkbox"/> FC
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COPIES GIVEN INMATE BEFORE HEARING

<input checked="" type="checkbox"/> CDC 115	BY: (STAFF'S SIGNATURE): 	DATE: 12/31/09	TIME: 0900	TITLE OF SUPPLEMENT: N/A
<input type="checkbox"/> INCIDENT REPORT LOG NUMBER: N/A	BY: (STAFF'S SIGNATURE): N/A	DATE: -	TIME: -	BY: (STAFF'S SIGNATURE): N/A

HEARING
This hearing convened on 01-27-10 at 1130 hours. I introduced myself to Inmate GREGORY, C-85909, as the Senior Hearing Officer. This inmate is not a participant in the Mental Health Services Delivery System at the COOMS, MHC, DDP, PPD level of care.

STAFF ASSISTANT: A Staff Assistant was not assigned. Inmate is not illiterate, can read and write, is English-speaking. The issues are not complex. Inmate GREGORY stated that his health is good, with unimpaired hearing and/or vision. Although inmate claimed a GPL/TABE of COLLEGE, a review was conducted to ensure that inmate was not identified as having a TABE score below 4.0, SHO elected to evaluate inmate's communication abilities by having him read a portion of the 115 documentation and respond appropriately to questions asked concerning the charges. SHO was satisfied with the responses to the questions, determined that effective communication had been established, and elected to continue the hearing without the need for a Staff Assistant.

DOCUMENT REVIEW: Inmate GREGORY acknowledged receipt of this CDC-115 RVR and the following documents more than 24 hours prior to the start of this hearing: CDC-115A, CDC-115C, I.E. REPORT. These reports, as well as the disciplinary charge of CONDUCT THAT COULD LEAD TO VIOLENCE, were reviewed with Inmate GREGORY at this hearing. Inmate GREGORY stated that he understood all documentation and was prepared to begin.

(Continued on CDC-115 part C)

ACTION BY: (TYPED NAME): L. S. S. Senior Hearing Officer	SIGNATURE: 	DATE: 1/31/10	TIME: 1300
REVIEWED BY: (SIGNATURE): 	DATE: 2-12-10	CHIEF DISCIPLINARY OFFICER'S SIGNATURE: 	DATE: 2-18-10
<input type="checkbox"/> COPY OF CDC 115 GIVEN INMATE AFTER HEARING	BY: (STAFF'S SIGNATURE): A. Hernandez, Facility Captain	L. Calderon, Chief Disciplinary Officer	DATE: -


RULES VIOLATION REPORT - PART C

PAGE ___ OF ___

CDC NUMBER C85909	INMATE'S NAME GREGORY	LOG NUMBER FC-09-12-064	INSTITUTION CENTINELA	TODAY'S DATE 12/31/09
<input type="checkbox"/> SUPPLEMENTAL	<input checked="" type="checkbox"/> CONTINUATION OF: <input checked="" type="checkbox"/> 115 CIRCUMSTANCES <input type="checkbox"/> HEARING <input type="checkbox"/> IE REPORT <input type="checkbox"/> OTHER			

Gregory would not answer questions concerning where he lived and would avoid answering my questions. Gregory was uncooperative towards and was not receptive to counseling. I notified CTC Medical Records to determine what medical restrictions Gregory had. I was notified by Medical Records that as of 09/08/2009, Gregory had no restrictions or limitation to perform the orders that were given to him by ISU staff. Specifically, on his CDC-7410 (up-dated chrono) section "D" states: Based on the above are there any physical limitations to job assignments?" This box was checked as NO, there are not any restrictions for job assignment. Gregory is assigned as a third watch yard crew worker on Facility C. Therefore, Gregory obstructed my duties by trying to manipulate medical conditions to circumvent the search procedure that he was ordered to perform by the ISU staff. A copy of his updated Chrono is attached.

Inmate GREGORY is aware of this report. Inmate GREGORY is not a participant in the Mental Health Services Delivery System at the CCCMS/EOP/MHCB Level of care.

<input checked="" type="checkbox"/>	COPY OF CDC 115-C GIVEN TO INMATE	SIGNATURE OF WRITER J. TRUCHANOVICZ, Correctional Officer	DATE SIGNED 12-31-09
		GIVEN BY: (Staffs Signature) 	DATE SIGNED 11/5/10
			TIME SIGNED 0900

SERIOUS RULES VIOLATION REPORT

CDC NUMBER C85909	INMATE'S NAME GREGORY	VIOLATED RULE NO(S) CCR § 3005(b)	DATE 12/31/09	INSTITUTION CENTINELA	LOG NO. FC-09-12-064
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REFERRAL FOR FELONY PROSECUTION IS LIKELY IN THIS INCIDENT YES NO

POSTPONEMENT OF DISCIPLINARY HEARING

<input type="checkbox"/> I DO NOT REQUEST my hearing be postponed pending outcome of referral for prosecution.	INMATE'S SIGNATURE	DATE
<input type="checkbox"/> I REQUEST my hearing be postponed pending outcome of referral for prosecution.	INMATE'S SIGNATURE <i>[Signature]</i>	DATE
DATE NOTICE OF OUTCOME RECEIVED	DISPOSITION	
<input type="checkbox"/> I REVOKE my request for postponement.	INMATE'S SIGNATURE	DATE

STAFF ASSISTANT

STAFF ASSISTANT	INMATE'S SIGNATURE	DATE
<input type="checkbox"/> REQUESTED <input type="checkbox"/> WAIVED BY INMATE		
<input type="checkbox"/> ASSIGNED	DATE	NAME OF STAFF
<input type="checkbox"/> NOT ASSIGNED	REASON Inmate does <u>not</u> meet criteria per CCRS3315(1)(2) 12.9	

INVESTIGATIVE EMPLOYEE

INVESTIGATIVE EMPLOYEE	INMATE'S SIGNATURE	DATE
<input type="checkbox"/> REQUESTED <input type="checkbox"/> WAIVED BY INMATE		
<input checked="" type="checkbox"/> ASSIGNED	DATE 1/19/10	NAME OF STAFF <i>Courtnier</i>
<input type="checkbox"/> NOT ASSIGNED	REASON Inmate does <u>not</u> meet criteria per CCRS3315(d)(1)(2)	

EVIDENCE / INFORMATION REQUESTED BY INMATE:

WITNESSES

WITNESSES REQUESTED AT HEARING (IF NOT PRESENT, EXPLAIN IN FINDINGS)

REPORTING EMPLOYEE STAFF ASSISTANT INVESTIGATIVE EMPLOYEE OTHER NONE

WITNESSES (GIVE NAME AND TITLE OR CDC NUMBER)	GRANTED	NOT GRANTED	WITNESSES (GIVE NAME AND TITLE OR CDC NUMBER)	GRANTED	NOT GRANTED
Dr. Frazee (C/O)	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

INVESTIGATIVE REPORT: Investigative Employees must interview the inmate charged, the reporting employee, and any others who have significant information, documenting the testimony of each person interviewed. Review of files, procedures, and other documents may also be necessary.

On 01-19-10, I, C/O, P. COURNIER, explained to Inmate GREGORY, C-85909, C6-114L, my function was to gather information, question staff, inmate(s), screen witness(es), and/or complete and submit a written report to the Senior Hearing Officer. Inmate GREGORY stated that he understood my position as the Investigative Employee and had no objections to my assignment.

INMATE GREGORY'S STATEMENT: "On 12-31-09, I was released for my housing at Facility C building 4 to go get my chronic pain medications. On my way out the building door I passed 3 security squad members we spoke in passing as they entered 4 building door. As I walked towards the handball court to see if the gate by 3 building was open, I got to the curb and I seen it was not. I continued towards the tower (yard). I looked up and seen 2 security squad members. Their were other people on the yard also. I also noticed that the center fence line gate was open which was about 30 feet from C Facility Medical. When I reached and went thru that gate Security Squad C/O J. Truchanovicz stopped me asked me how was I and said turn around so I can search you. I said I'm fine and turned around to be searched. C/O Truchanovicz began searching me at my arms around my neck line, around my torso, around my waistband

(Continued on CDC-115 PART C PAGE 2)

Copy Given to Inmate on **1/20/10** by *Courtnier* time **1099**

INVESTIGATOR'S SIGNATURE <i>P. Courtnier</i>	DATE 1/20/10
BY: (STAFF'S SIGNATURE) <i>[Signature]</i>	DATE 1/5/10
COPY OF CDC 115-A GIVEN INMATE <input checked="" type="checkbox"/>	TIME 0900

RULES VIOLATION REPORT - PART C

PAGE ___ OF ___

CDC NUMBER G-85909	INMATE'S NAME GREGORY	LOG NUMBER FC-09-12-064	INSTITUTION CENTINELA	TODAY'S DATE 01-19-10
<input checked="" type="checkbox"/> SUPPLEMENTAL	<input type="checkbox"/> CONTINUATION OF:	<input type="checkbox"/> 115 CIRCUMSTANCES	<input type="checkbox"/> HEARING	<input checked="" type="checkbox"/> IE REPORT
<input type="checkbox"/> OTHER _____				

(Continued from CDC-115 Part A)

then he searched by my private area. He went down the center then he grabbed my penis and scrotum and I asked him what are you doing? C/O Truchanovicz said my job. I said that's me your holding then I said you can let me go now! C/O Truchanovicz continued his search, he went to my inner and outer thigh to my knees, back up and his hand down the center of my back, around and thru my waistband then he grabbed me again. For the second time. I stated hey that's me you got. The security squad member that was in front of me said what is it he has, I said, my private person, then I said to C/O Truchanovicz what are you doing? This time he held my penis and scrotum for about 20 seconds. Then I said, after he pulled it...man you can let me go now. He finally let my private person go. Something was mentioned to the security squad member in front of me. Then C/O Truchanovicz said, no, I said strip out. I said strip out. I said look C/O I have a medical problem my spine is screwed up, you can ask the yard medical staff or the regular yard staff, they will tell you. He said, so your refusing, I said I'm not refusing. I said I'll get naked and dance for you, I just need a chair or bench, C/O Truchanovicz then stated I think he has something and said let's go to the program office. I said okay turned and walked to the program office without mechanical restraints. I was placed in cage #1. Asked to strip out, I again asked for a chair that was 2 feet in front of me, he said, no, I don't care about your medical problem. Called Sgt. Botello asked for my housing # went and searched my cell, tore it up. He had Facility C Sgt. watch me. I was taken out of the cage to get my pain meds, the Squad Lt. told Facility C Sgt. he could let me go. I sat in the corner to avoid C/O Truchanovicz while he was till in my cell. When he came out he passed thru the center gate, I sneaked around to get to my housing C/O Truchanovicz came out of the program office, yelled Gregory across the yard twice. I stopped he ordered me to report to the center gate, I did. I asked him why is he going thru all this I'm not under any type of investigation? Is it because I asked you to let my private person go, he angrily walked off. At no point do I think feel or believe there are any safety issues for me; nor do I present a danger to any one else.

* **REPORTING EMPLOYEE'S STATEMENT:** SQUAD OFFICER J. TRUCHANOVICZ stated the following: "After reviewing my report in the RVR, I find it accurate and consistent with my recollection of the events. I have no additional information to provide at this time."

STAFF WITNESS STATEMENT: Questions for Squad Officer J. TRUCHANOVICZ by Inmate GREGORY:

Q1) As you were searching me, I asked you why are you searching my private parts? Did I not?

A1) No.

Q2) Did you tell me that was your job? At this point did I not say you can let go now?

A2) No.

Q3) As you continued your search you went down to my inner and outer legs to my knees back up and ran a hand down the middle of my back and ran a hand down the middle of my back and around my waistband for the second time and then you reached around and grabbed me again. At this point I asked you, what are you doing? You said for the second time my job, then the person you were with said what is he doing, I said, he's (you) holding my private person, he said "What?", I said, I've said it nice twice and I said he's holding my "Penis", you can let go now. And he laughed at this point. Who was this person?

* A3) No. You were searched by Officer Truchanovicz, witnessed by Sgt. Ramirez.

* Q4) At this point you finished your search then ordered me to strip out after you searched me. Correct?

* A4) You were ordered to remove your shoes.

Q5) Did I not express to you due to a medical problem I can not stand up and take off my clothes?

(CONTINUED ON CDC-115 PART C PAGE 3))

Copy Given to Inmate on 1/20/10 by Pen Amier time 1000

SIGNATURE OF WRITER P. COURINIER, Correctional Officer, I.E.		DATE SIGNED 1/20/10	
<input checked="" type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE	GIVEN BY: (Staff's Signature)	DATE SIGNED 1/20/10	TIME SIGNED 1000

RULES VIOLATION REPORT - PART C

CDC NUMBER C-85909	INMATE'S NAME GREGORY	LOG NUMBER FC-09-12-064	INSTITUTION CENTINELA	TODAY'S DATE 01-19-10
<input type="checkbox"/> SUPPLEMENTAL	<input checked="" type="checkbox"/> CONTINUATION OF:	<input type="checkbox"/> 115 CIRCUMSTANCES	<input type="checkbox"/> HEARING	<input checked="" type="checkbox"/> IE REPORT
<input type="checkbox"/> OTHER				

A5) You stated, "I can't, I have to sit down", when the first order was given. You refused to comply. Again you were ordered to sit down and remove your shoes you stated, "I cannot sit down on the ground I have a medical condition. *** Also you did not provide any documentation or an updated chrono signed by the Chief Medical Officer stating you did have any limitations at the time of the search. YOUR LAST CHRONO THAT WAS SIGNED OFF BY THE CMO WAS DATED 09-09-09. This medical document stated that you are cleared for full duty and were assigned as a third watch yard crew on Facility C Yard crew workers are required to bend down, pick up trash, push heavy carts, cut grass, and dig ditches for installing sprinklers.

Q6) Did you not say to me I don't care Strip out?

A6) No. You were given orders, which you failed to comply with.

Q7) Did I not say to you let me sit on the bench, so I can strip out for you and the person whom was with you?

A7) You were given an direct order to sit down on the ground and remove your shoes. That was an order. You failed to comply with. When there is an institutional alarm on Facility C, you are required to sit down on the ground where you are. You do not chose where you can sit.

Q8) At this point did you not say I think he has something?

A8) By you refusing my order, brings reasonable suspicion that you might be in possession of contraband.

Q9) And then did you order me to program office Facility C?

A9) You were escorted to the Facility C program office, holding cell #1.

* Q10) At any point was I placed in mechanical restraints?

* A10) You were not placed in handcuffs.

Q11) In cage #1 in the program office did I not express to you again I need a chair to strip out?

A11) You continued to refuse orders and submit to an unclothed body search.

INMATE WITNESS STATEMENT: Questions for Inmate ANDERSON in C4-113 by Inmate GREGORY:

Q1) When I passed you and others whose names I'm not aware of, sitting at your work station on the benches in the middle of the yard by the center fence, as I passed thru the upper center gate about 30 feet from medical, was I stopped by two security squad members and searched?

A1) Yes.

Q2) Did I comply with that search that you and others seen from about 15 feet away?

A2) Yes.

Q3) Did you see or hear security squad member C/O Truchanovicz, then tell me to strip out after he just searched me?

A3) They took you to program for strip.

Q4) Did you hear me tell him due to my medical problem, I needed a bench or a chair to sit on?

A4) Yes.

Q5) At any time did you hear me refuse to comply to any order C/O Truchanovicz gave? Did you hear me curse at C/O Truchanovicz at any time?

A5) No.

Q6) Did you hear me tell C/O Truchanovicz let me sit on the bench so I can strip out for you?

A6) Yes.

INVESTIGATIVE EMPLOYEE'S STATEMENT: Medical Record was checked and all Medical Chronos pertaining to mobility are included for SHO to view. Inmate GREGORY, C-85909, declined to make a statement and did not request any Staff or Inmate Witnesses to be present at his 115 hearing.

STAFF WITNESSES REQUESTED AT HEARING: NONE (P) Dr. Frazee (CMO)

(CONTINUED ON CDC-115 PART C PAGE 4)

SIGNATURE OF WRITER 		DATE SIGNED 1/20/10	
GIVEN BY: (Staff's Signature) 		DATE SIGNED 1/20/10	TIME SIGNED 1000
<input checked="" type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE			

RULES VIOLATION REPORT - PART C

CDC NUMBER C-85909	INMATE'S NAME GREGORY	LOG NUMBER FC-09-12-064	INSTITUTION CENTINELA	TODAY'S DATE 01-19-10
<input type="checkbox"/> SUPPLEMENTAL	<input checked="" type="checkbox"/> CONTINUATION OF:	<input type="checkbox"/> 115 CIRCUMSTANCES	<input type="checkbox"/> HEARING	<input checked="" type="checkbox"/> IE REPORT
<input type="checkbox"/> OTHER _____				

INMATE WITNESSES REQUESTED AT HEARING: NONE.

REPORTING EMPLOYEE REQUESTED AT HEARING: YES [] NO [X]
 INVESTIGATIVE EMPLOYEE REQUESTED AT HEARING: YES [] NO [X]
 ADDITIONAL INFORMATION CONTAINED IN CONFIDENTIAL REPORTS: YES [] NO [X]

SIGNATURE OF WRITER I.E. P. COURINIER, Correctional Officer	DATE SIGNED 1/21/10
--	------------------------

<input checked="" type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE	GIVEN BY (Staff's Signature) 	DATE SIGNED 1/26/10	TIME SIGNED 1000
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RULES VIOLATION REPORT - PART C

PAGE ___ OF ___

CDC NUMBER C-85909	INMATE'S NAME GREGORY	LOG NUMBER FC-09-12-064	INSTITUTION CENTINELA	TODAY'S DATE 01-27-10
<input type="checkbox"/> SUPPLEMENTAL	<input checked="" type="checkbox"/> CONTINUATION OF:	<input type="checkbox"/> 115 CIRCUMSTANCES	<input checked="" type="checkbox"/> HEARING	<input type="checkbox"/> IE REPORT
<input type="checkbox"/> OTHER				

The SHO amends this RVR, Log# FC-09-12-064 to reflect the specific act as CONDUCT THAT COULD LEAD TO VIOLENCE, a violated rule# 3004(b).

* This amendment does not prejudice Inmate GREGORY.

INVESTIGATIVE EMPLOYEE: An Investigative Employee was assigned. (I.E. Officer P. Courtmier) The issues are not complex. The inmate's housing status did preclude the gathering of evidence. Additional information was not necessary for a fair hearing. Inmate GREGORY received a copy of the I.E. Report and had no objections to the report.

DUE PROCESS: This disciplinary was served on Inmate GREGORY within 15 days of discovery and the hearing was held within 30 days of service. There are no due process issues.

DISTRICT ATTORNEY: This matter was not referred for felony prosecution.

FLEA: Inmate GREGORY plead NOT GUILTY and declined to make a statement.

* **WITNESSES:** Inmate GREGORY did request the following staff witness during the hearing:

Staff Member Dr. Frazee, Position Dr./C/O, RDO S/S

Dr. Frazee: The following statement were stipulated by witnesses called by Inmate GREGORY: If present Dr. Frazee would state Inmate GREGORY did have a medical condition, that prevented him or limited him physically.

C/O Truchanovicz was requested as a witness by this SHO. IS. 1/31/10

The following question is by the SHO for C/O Truchanovicz:

- Q) Were you able to identify Inmate GREGORY as the inmate that walked up to the exit door of C4?
A) Yes, I was able to identify Inmate GREGORY.

The following question is by Inmate GREGORY for C/O Truchanovicz:

- Q) You were on yard 1 and did not have a clear view of Building C4?
A) I came across yard #1 and entered yard #2 by the middle gate and I was able to see you GREGORY as the only inmate out of bounds.

CONFIDENTIAL INFORMATION: Confidential information/documentation was not used for evidentiary purposes.

VIDEO TAPE: Was not used for evidentiary purposes.

FINDINGS: Inmate GREGORY was found **GUILTY AS CHARGED** of violating OCR Section 3004(b) a Division "F" offense; the specific charge of CONDUCT THAT COULD LEAD TO VIOLENCE.

EVIDENCE: The following evidence submitted was considered in reaching this finding and substantiates the charges.

The RVR written by Correctional Officer J. Truchanovicz, stating in part: "I observed a black inmate later identified as GREGORY, C-85909, C4-109L walk up to the Emergency Exit Door of C4 (A-Section) bend over and yell through the key hole of the door to alert the inmates that ISU was coming in the building for searches. I immediately responded and instructed GREGORY to turn around for a clothed body search. GREGORY seemed to be angry being searched. GREGORY

(CONTINUED ON CDC-115 PART C PAGE 3)

<input type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE	SIGNATURE OF WRITER Lt. J. SAIS, Senior Hearing Officer	DATE SIGNED 1/31/10
	GIVEN BY: (Staff's Signature)	DATE SIGNED

RULES VIOLATION REPORT - PART C

CDC NUMBER C-85909	INMATE'S NAME GREGORY	LOG NUMBER FC-09-12-064	INSTITUTION CENTINELA	TODAY'S DATE 01-27-10
<input type="checkbox"/> SUPPLEMENTAL	<input checked="" type="checkbox"/> CONTINUATION OF:	<input type="checkbox"/> 115 CIRCUMSTANCES	<input checked="" type="checkbox"/> HEARING	<input type="checkbox"/> IE REPORT
<input type="checkbox"/> OTHER _____				

would not answer questions concerning where he lived and would avoid answering my questions. GREGORY was uncooperative towards me and was not receptive to counseling."

there are differences = S- 1/31/10

* Statements made at the hearing: C.L. Lynch, SRN II was contacted by SHO. SRN II Lynch stated that the inmates medical condition was valid prior to this incident. SRN II Lynch said the reason in the comprehensive Accommodation Chrono's submitted as evidence by staff and Inmate GREGORY, is due to Medical Records Staff not having all the information in a timely manner, additionally, some times Medical Records Staff conducts a review of the Medical File in different ways. Therefore in the interest of justice this RVR is reduced to CONDUCT THAT COULD LEAD TO VIOLENCE a Division "F" offense.

The inmate's non-statement at the hearing does not exonerate him of the charge, as he is aware of the rules governing CONDUCT THAT COULD LEAD TO VIOLENCE.

DISPOSITION: ASSESSED 90 DAYS FORFEITURE OF BEHAVIORAL CREDITS CONSISTENT WITH A DIVISION "F" OFFENSE.

Inmate GREGORY was informed that he would receive a final copy upon review of the Chief Disciplinary Officer, and was advised of his right to appeal the findings of this hearing and that the First Level of appeal has been eliminated on disciplinary issues.

Inmate GREGORY was informed that he may apply for 100% percent of any credit forfeited for a Division "F" Offense, not identified in section 3327, after the inmate has remained disciplinary free for 90 days. (Exceptions due to time remaining 90 days or less are covered under CCR §3328.)

Inmate GREGORY was informed that no credit would be restored if the inmate were found guilty of any rule violation within the required disciplinary-free period provided in CCR §3328.

<input type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE	SIGNATURE OF WRITER <i>[Signature]</i> Lt. J. SATS, Senior Hearing Officer	DATE SIGNED 1/31/10
	GIVEN BY: (Staff's Signature) <i>[Signature]</i>	DATE SIGNED

Memorandum

Date: **MAR 29 2010**

To: Gregory, C85909
R.J. Donovan Correctional Facility

*F 1-4-10 150L - Rec'd by you
on April 9, 2010
V. Gregory*

Subject: **SECOND LEVEL APPEAL RESPONSE**
LOG NO.: CEN-A-10-00234

APPEAL DECISION: GRANTED IN PART.

ISSUE:

The appellant is submitting this appeal relative to CDC 115, Rules Violation Report (RVR), Log #FC-09-12-064, dated 12/31/09, for "Willfully Delaying a Peace Officer/Obstructing." It is the appellant's position that there were many due process violations, his request for video was denied, and the Senior Hearing Officer (SHO) ignored evidence presented that would prove his innocence.

The appellant requests on appeal the RVR is dismissed and he is found not guilty.

REGULATIONS: The rules governing this issue are:

California Code of Regulations (CCR) 3005, 3315, 3323.

On 12/31/09, at approximately 1210 hours, while performing the duties as Security Squad Officer #4, the Reporting Employee (RE) was assisting Investigative Services Unit (ISU) Staff in conducting cell searches on Facility C-4. The RE walked toward C-4 and observed a black inmate, later identified as Gregory (C85909) walk up to the Emergency Exit Door of C-4 (A-section) bend over and yell through the key hole of the door to alert the inmates that ISU was coming in the building for searches. The RE immediately responded and instructed Gregory to turn around for a clothed body search. Gregory seemed to be angry being searched. The RE ordered Gregory to remove his shoes for the search. Gregory refused to comply. The RE again ordered Gregory to remove his shoes. Gregory stated, "I can't, I have to sit down." The RE ordered Gregory to sit down on the ground and remove his shoes. Gregory again refused and stated, "I cannot sit down on the ground. I have a medical condition." The RE escorted Gregory to the C Program Office and placed him in Holding Cell #1. The RE ordered Gregory to remove all of his clothing as well as his shoes. Gregory refused to comply and would not submit to an unclothed body search. He would not answer questions concerning where he lived and would avoid answering the RE's questions. Gregory was uncooperative towards and was not receptive to counseling. The RE notified CTC Medical Records to determine what medical restrictions Gregory had. The RE was notified by Medical Records that as of 09/08/09, Gregory had no restrictions or limitation to perform the orders that were given to him by ISU Staff. Specifically, on his CDC 7410 (up-dated chrono) Section "D" states: "Based on the above are there any physical limitations to job assignments?" This

box was checked as "NO, there are not any restrictions for job assignment. Gregory was assigned as a Third Watch yard crew worker on Facility C. Therefore, Gregory obstructed the RE's duties by trying to manipulate medical conditions to circumvent the search procedure that he was ordered to perform by ISU staff.

On 12/31/09, CDC 115, RVR, Log #FC-09-12-064 was issued charging the appellant with a violation of Director's Rules, Section 3005(b), with a specific act of "Willfully Delaying a Peace Officer/Obstructing." It is noted that the SHO amend the RVR to reflect the specific act as "Conduct that Could Lead to Violence," a violation of CCR 3004(b). The SHO noted that the amendment does not prejudice the appellant.

This matter was not referred to the District Attorney's office for criminal prosecution.

Based on the information provided within the CDC 115, RVR, the report provided a preponderance of evidence to support the charge.

A CDC 115-X, Mental Health Assessment, was not prepared based on the appellant is not a participant in the Mental Health Services Delivery System at the CCCMS/EOP/MHCB level of care.

The appellant did not meet the criteria for assignment of a Staff Assistant pursuant to CCR Section 3315(d); however, an Investigative Employee (IE) was assigned. It was noted that the appellant received a copy of the IE Report and had no objections to the report.

Upon review of the Hearing Section of the CDC 115, the appellant stated he understood all the documentation contained within the disciplinary package and was prepared for the hearing.

It is noted within the CDC 115 that the appellant did request the presence of Dr. Frazee. The SHO noted that the following statement was stipulated that if present, Dr. Frazee would state the appellant did have a medical condition that prevented or limited him physically. The RE was requested as a witness by the SHO.

* It is noted in the Plea Section of the CDC 115 that the appellant plead "Not Guilty" and declined to make a statement.

On 01/27/10 the hearing was conducted and the appellant was found guilty of CCR Section 3004(b), a Division "F" offense, the specific charge of "Conduct that Could Lead to Violence."

On 02/18/10, A. Hernandez, Chief Disciplinary Officer (A), reviewed Rules Violation Report, Log #FC-09-12-064, and affirmed the disposition.

A review of the RVR does not indicate that the appellant requested the videotape to review at the disciplinary hearing. Additionally, there is no mention of a videotape being viewed, placed into evidence, or used as evidence at the disciplinary hearing. The SHO determined that the evidence submitted was considered in reaching the finding and substantiated the charge.

GREGORY, C85909
CASE NO. 10-00234
PAGE 3

The appellant was found guilty of a Division "F" offense and assessed 90 days forfeiture of credits in error. The correct range of forfeiture of credit for a Division "F" offense is between 0 to 30 days. Therefore, the SHO inappropriately assessed the forfeiture of credit outside of the approved range. Although the forfeiture of credit was assessed above the approved range, this is a procedural error that does not bar the forfeiture of credit taken.


A review of the disciplinary package indicates that the appellant's due process rights were met. The finding was appropriate.

DECISION: The appeal is Granted in Part.

The CDO is instructed to amend RVR Log# FC-09-12-064, to correct the loss of behavioral credit from 90 days to 30 days, consistent with a Division "F" offense.

Records Staff and Classification Staff are instructed to make the necessary casework adjustments.

The appellant is advised that this issue may be submitted for a Director's Level of Review if desired.


DOMINGO URIBE, JR
Warden (A)
Centinela State Prison

COMPREHENSIVE ACCOMMODATION CHRONO

INSTRUCTIONS: A physician shall complete this form if an inmate requires an accommodation due to a medical condition. Circle P if the accommodation is to be permanent, or T if the accommodation is to be temporary. If the accommodation is temporary, write the date the accommodation expires on the line. A new form shall be generated when a change to an accommodation is required or upon renewal of a temporary accommodation. Any new form generated shall include previous accommodations, if they still apply. Chronos indicating permanent accommodations shall be reviewed annually. This form shall be honored as a permanent chrono at all institutions.

A. HOUSING

None

- 1. Barrier Free/Wheelchair Access P/T
- 2. Ground Floor Cell P/T (P) 1/4
- 3. Continuous Powered Generator P/T

- 4. Bottom Bunk LB
- 5. Single Cell (See 128-C date:)
- 6. Permanent OHU / CTC (circle one)
- 7. Other

P/T (P) 1/4
P/T
P/T
P/T

B. MEDICAL EQUIPMENT/SUPPLIES

None

- 8. Limb Prosthesis P/T
- 9. Brace Body Brace P/T (P) 1/4
- 10. Crutches Spinal Brace P/T
- 11. Cane: (type) P/T
- 12. Walker P/T
- 13. Dressing/Catheter/Colostomy Supplies P/T
- 14. Shoe: (specify) P/T
- 15. Dialysis Peritoneal P/T

- 16. Wheelchair: (type) P/T
- 17. Contact Lens(es) & Supplies P/T
- 18. Hearing Aid P/T
- 19. Special Garment: (specify) P/T
- 20. Rx. Glasses P/T
- 21. Cotton Bedding P/T
- 22. Extra Mattress P/T
- 23. Other P/T

C. OTHER

None

- 24. Attendant to assist with meal access and other movement inside the institution. P/T
Attendant will not feed or lift the inmate/patient or perform elements of personal hygiene.
- 25. Wheelchair Accessible Table P/T

- 26. Therapeutic Diet: (specify) P/T
- 27. Communication Assistance P/T
- 28. Transport Vehicle with Lift P/T
- 29. Short Beard P/T
- 30. Other P/T

D. PHYSICAL LIMITATIONS TO JOB ASSIGNMENTS

Based on the above, are there any physical limitations to job assignments? Yes No

If yes, specify: No bending, No lifting 7/10 lb

INSTITUTION <u>CNT</u>	COMPLETED BY (PRINT NAME) <u>KHARRI</u>	TITLE
SIGNATURE <u>[Signature]</u>	DATE <u>12/30/09</u>	CDC NUMBER, NAME (LAST, FIRST, MI) AND DATE OF BIRTH <u>Gregory Vambrae C85909 9.27.43</u>
HCM/CMO SIGNATURE <u>[Signature]</u>	DATE	
APPROVED (list the number of items approved) <u>(2) (1)</u>		
DENIED (list the number of items denied) <u>(1)</u>		

COMPREHENSIVE ACCOMMODATION CHRONO

0-13

What is a body brace

COMPREHENSIVE ACCOMMODATION CHRONO

INSTRUCTIONS: A physician shall complete this form if an inmate requires an accommodation due to a medical condition. Circle P if the accommodation is to be permanent, or T if the accommodation is to be temporary. If the accommodation is temporary, write the date the accommodation expires on the line. A new form shall be generated when a change to an accommodation is required or upon renewal of a temporary accommodation. Any new form generated shall include previous accommodations, if they still apply. Chronos indicating permanent accommodations shall be reviewed annually. This form shall be honored as a permanent chrono at all institutions.

A. HOUSING

- None _____
1. Barrier Free/Wheelchair Access P/T _____
2. Ground Floor Cell P/T 1yr
3. Continuous Powered Generator P/T _____
4. Bottom Bunk LB P/T 1yr
5. Single Cell (See 128-C date: _____) P/T _____
6. Permanent OHU / CTC (circle one) P/T _____
7. Other _____ P/T _____

B. MEDICAL EQUIPMENT/SUPPLIES

- None _____
8. Limb Prosthesis P/T _____
9. Brace Body brace P/T 1yr
10. Crutches P/T _____
11. Cane: (type) _____ P/T _____
12. Walker P/T _____
13. Dressing/Catheter/Colostomy Supplies P/T _____
14. Shoe: (specify) _____ P/T _____
15. Dialysis Peritoneal P/T _____
16. Wheelchair: (type) _____ P/T _____
17. Contact Lens(es) & Supplies P/T _____
18. Hearing Aid P/T _____
19. Special Garment: _____ P/T _____
(specify) _____
20. Rx. Glasses: _____ P/T _____
21. Cotton Bedding P/T _____
22. Extra Mattress P/T _____
23. Other _____ P/T _____

C. OTHER

- None _____
24. Attendant to assist with meal access and other movement inside the institution. P/T _____
Attendant will not feed or lift the inmate/patient or perform elements of personal hygiene.
25. Wheelchair Accessible Table P/T _____
26. Therapeutic Diet: (specify) _____ P/T _____
27. Communication Assistance P/T _____
28. Transport Vehicle with Lift P/T _____
29. Short Beard cut double back or P/T _____
30. Other side chair access P/T 1yr

D. PHYSICAL LIMITATIONS TO JOB ASSIGNMENTS

Based on the above, are there any physical limitations to job assignments? Yes No

If yes, specify: no bending, no stooping, no lifting/pushing > 10#
no work above 5'6"

INSTITUTION <u>Central</u>	COMPLETED BY (PRINT NAME) <u>FRATE</u>	TITLE <u>MD</u>
SIGNATURE <u>[Signature]</u>	DATE <u>1/13/10</u>	CDC NUMBER, NAME (LAST, FIRST, MI) AND DATE OF BIRTH <u>Gregory, Van Lued</u> <u>C 85909</u> <u>9/27/63</u>
HCM/CMO SIGNATURE <u>[Signature]</u>	DATE <u>1/13/10</u>	
APPROVED (list the number of items approved) <u>(2) (4) (9) (30)</u>		
DENIED (list the number of items denied)		

COMPREHENSIVE ACCOMMODATION CHRONO

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION
INMATE APPEALS BRANCH
P. O. BOX 942883
SACRAMENTO, CA 94283-0001

DIRECTOR'S LEVEL APPEAL DECISION

JUL 14 2010

Date:

In re: Vantrea Gregory, C85909
Richard J. Donovan Correctional Facility
at Rock Mountain
P.O. Box 799006
San Diego, CA 92179-9005

IAB Case No.: 0921542

Local Log No.: CEN-10-00234

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner M. Hodges Wilkins, Facility Captain. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: The appellant is submitting this appeal relative to CDC Form 115, Rules Violation Report (RVR), Log #FC-09-12-064, dated December 31, 2009, for Conduct that Could Lead to Violence. It is the appellant's position that the Senior Hearing Officer (SHO) did not allow the videotape of the incident; the SHO found him guilty of a new charge that is not supported by the evidence; and the Chief Disciplinary Officer (CDO) participated in the appellant's Administrative Segregation Unit (ASU) retention on January 14, 2010 and February 19, 2010.

The appellant requests that the RVR be dismissed.

II SECOND LEVEL'S DECISION: The reviewer found that the SHO amended the RVR to reflect the specific act as Conduct that Could Lead to Violence, a violation of the California Code of Regulations, Title 15, Section (CCR) 3004(b). The SHO noted that the amendment did not prejudice the appellant.

Review of the RVR does not indicate that the appellant requested the videotape to review at the disciplinary hearing. There is no mention of a videotape being viewed, placed into evidence, or used as evidence at the disciplinary hearing. The SHO determined that the evidence submitted was considered in reaching the finding and substantiated the charge.

The appellant was found guilty of a Division "F" offense and assessed 90 days forfeiture of credits in error. The correct range of forfeiture of credit for a Division "F" offense is between 0 and 30 days. Therefore, the SHO inappropriately assessed the forfeiture of credit outside the approved range. Although the forfeiture of credit was assessed above the approved range, this is a procedural error that does not bar the forfeiture of credit taken.

Review of the disciplinary package indicates that the appellant's due process rights were met. The finding was appropriate. The appeal was granted in part in that the CDO was instructed to amend the RVR to correct the loss of behavioral credit from 90 days to 30 days, consistent with a Division "F" offense.

III DIRECTOR'S LEVEL DECISION: Appeal is denied.

A. FINDINGS: The submitted documentation and arguments presented are persuasive that the appellant was afforded disciplinary due process and was found guilty by the SHO based upon the preponderance of evidence presented during the hearing. Upon review of the documentation presented, it is determined that the appellant's arguments are without merit.

The review revealed that all time constraints were met and the appellant received a copy of all documentation relied upon in the hearing at least 24 hours prior to the hearing. The appellant did not meet the criteria to be assigned a Staff Assistant pursuant to CCR 3315. An Investigative Employee was assigned. Testimony by one staff witness was stipulated to. The Reporting Employee was present at the hearing as requested by the appellant. No witnesses were requested by the SHO.

Dr. Frazee
incorrect findings based on incorrect information -

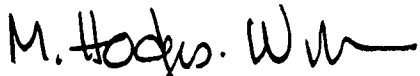
The appellant has failed to present a persuasive argument or compelling evidence to warrant a favorable decision in his behalf. The appellant's appeal issues regarding the videotape and the amended charge was appropriately addressed at the Second Level of Review. The appellant's contention that the CDO participated in the appellant's ASU retention on January 14, 2010 and February 19, 2010, has no bearing on the processing of the disciplinary. The appellant was appropriately found guilty of the charged offense based on the evidence presented during the hearing. No relief is warranted at the Director's Level of Review.

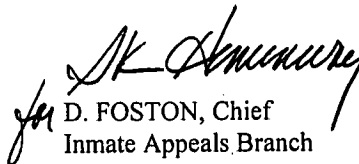
✕ **B. BASIS FOR THE DECISION:**

CCR: 3005, 3315, 3320

C. ORDER: No changes or modifications are required by the Institution.

This decision exhausts the administrative remedy available to the appellant within CDCR.


M. HODGES WILKINS, Appeals Examiner
Inmate Appeals Branch


D. FOSTON, Chief
Inmate Appeals Branch

cc: Warden, RJD
Appeals Coordinator, RJD
Appeals Coordinator, CEN

EXHIBIT

" C "

ORDER TRANSFERRING
PETITION FOR WRIT
OF HABEAS CORPUS
CASE# CHW-2936

Pgs. 1-2

ENDORSED FILED

MAR 11 2011

CLERK OF SUPERIOR COURT
LASSEN COUNTY COURTS

By _____ Deputy

L. Barron

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LASSEN

In the Matter of the Petition of
VANTRAE GREGORY
For Writ of Habeas Corpus

Case No. CHW - 2936

ORDER TRANSFERRING PETITION
FOR WRIT OF HABEAS CORPUS

The petition present issues pertaining to disciplinary proceedings had at Centinela State Prison January 27, 2010. Pursuant to *Griggs v. Superior Court* (1976) 16 Cal. 3rd 341, 347, and Rule 4.552(b)(2), California Rules of Court, the petition should be transferred.

IT IS ORDERED THAT the petition is transferred to the Superior Court of the State of California for the County of Imperial, the county in which said institution is located, for consideration and disposition by that court.

Dated: March 11, 2011

Donna Arnold
Judicial Officer

Lassen County Superior Court

Department 1 - 220 S. Lassen St., Ste 6, Susanville, CA 96130

Department 2 - 220 S. Lassen St., Ste 2, Susanville, CA 96130

In the Matter of the Petition of:

Vantrae Gregory

CASE NO.: CHW2936

AFFIDAVIT OF SERVICE AND OF MAILING

ENDORSED FILED

MAR 14 2011

R. REED, Chief Administrator & Clerk
LASSEN COUNTY COURTS

By L. Barron Deputy

STATE OF CALIFORNIA,

COUNTY OF LASSEN

}
55 }

I am now and at all times hereafter mentioned, a citizen of the United States of America over the age of eighteen (18) years,

and that on the: 14th day of March, 20011, I mailed to:

State of California	Prison Prosecution	Vantrae Gregory CDC #C-85909
Office of the Attorney General	Attn: Paula	HDSP
P.O. Box 944255	Mall Box Dept 1 Annex Bldg	P.O. Box 3030
Sacramento, CA 94244-2550	Susanville, CA	Susanville, CA 96127

a copy of the: Order transferring petition for writ of habeas corpus

in the above entitled action by depositing prepaid postage, in the United States Post Office at Susanville, California, addressed to his/her proper address.

I SWEAR UNDER PENALTY OF PERJURY, THAT THE FOREGOING IS TRUE AND CORRECT.

Dated: March 14, 2011

Signed: R. Reed Clerk

L. Barron

Signed: _____ Deputy Clerk

EXHIBIT
"D"

ORDER DENYING PETITION
FOR WRIT OF Habeas Corpus
Superior Court, CA - Imperial
County, CASE# EHC-01460

Pages 1-4

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ENDORSED

APR 28 2011

SUPERIOR COURT
COUNTY OF IMPERIAL
KRISTINE S. KUSSMAN, CLERK
BY KARINA PALACIO
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF IMPERIAL

In re:

VanTrea Gregory,

On Habeas Corpus.

) Case No.: EHC01460

) **ORDER DENYING PETITION FOR**
) **WRIT OF HABEAS CORPUS**

In a verified petition filed March 16, 2011, upon a transfer from Lassen County Superior Court, petitioner, currently incarcerated at High Desert State Prison in Susanville CA, alleges due process violations at an administrative hearing at Calipatria State Prison for a violation of 15 C.C.R. 3005(b) willfully delaying a peace officer on December 31, 2009 (a division E offense because of its misdemeanor status under Penal Code section 18) when he refused to sit down when so ordered.

Petitioner was cited for shouting a warning to other inmates regarding searches, refusing to remove his shoes, refusing to sit on the ground, refusing later to remove his clothing while in a holding cell and refusing to answer questions.

15 C.C.R. 3005(b) provides:

1 Obeying Orders. Inmates and parolees must promptly and courteously
2 obey written and verbal orders and instructions from department staff,
3 and from employees of other agencies with authorized responsibility for
4 the custody and supervision of inmates and parolees.

5 The charge was amended and reduced by the hearing officer at the hearing to a
6 violation of 15 C.C.R. 3004(b) conduct which could lead to disorderly
7 operations/violence, a division F offense.

8 (b) Inmates, parolees and employees will not openly display disrespect or
9 contempt for others in any manner intended to or reasonably likely to
10 disrupt orderly operations within the institutions or to incite or provoke
11 violence.

12 Petitioner exhausted his administrative remedies. The petition is DENIED.

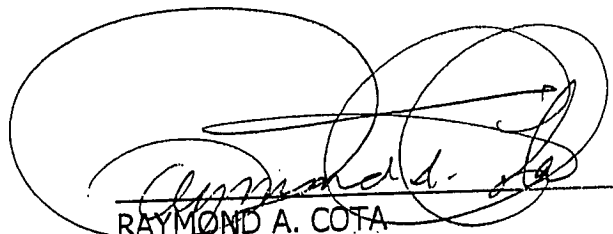
13 Petitioner alleges that the offense was improperly amended or "illegally reduced"
14 by the hearing officer when, in fact, the charge was reduced from one which would
15 otherwise be a misdemeanor per 15 C.C.R. 3323(g)(9) to one which is administrative
16 only.

17
18 Petitioner alleges that a videotape should have been introduced into evidence
19 but he did not request any video tape at the hearing. Nor is there an authorization for
20 such evidence in the administrative code.

21 Petitioner alleges he was not allowed to call Dr. Frazee as a witness who would have
22 testified to his medical disabilities. However, the hearing officer stipulated that Dr. Frazee
23 would have testified that petitioner had a medical condition which limited him
24 physically.
25

1 The court's finds that petitioner was afforded due process of law. The court's
2 review of the evidence is limited as to whether the decision of the hearing officer is
3 supported by some evidence. (*In re Zepeda* (2006) 141 Cal.App.4th 1493, 1500) The
4 court finds that it is as there are several instances of conduct, besides refusals of
5 certain physical tasks, which were disruptive of ordinary operations at the time.

6
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8 Dated: 4/28/11


RAYMOND A. COTA
Judge of the Superior Court

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF IMPERIAL

220 Main Street
Brawley, CA 92227

415 4th Street
Calexico, CA 92231

939 Main Street
El Centro, CA 92243

PO Box 1087
2124 Winterhaven Drive
Winterhaven, CA 92243

Jail Division
328 Applestill Road
El Centro, CA 92243

Juvenile Division
324 Applestill Road
El Centro, CA 92243

ENDORSED

APR 29 2011

SUPERIOR COURT
COUNTY OF IMPERIAL
KRISTINE S. KUSSMAN, CLERK
BY KARINA PALACIO
DEPUTY

VanTrae Gregory
Plaintiff/Petitioner,

vs.

Mike McDonald, Warden et al
Defendant/Respondent.

Case No. EHC01460

DECLARATION OF MAILING

State of California, County of Imperial

I, the undersigned, certify under penalty of perjury, that I am a Deputy Clerk of the above entitled Court and not a party to the within action; that I mailed a true and correct copy on 04/29/11 of the **ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS** to each of the persons listed below, by depositing such notice in the United States Mail, enclosed in sealed envelopes with postage prepaid:

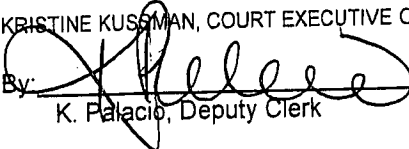
Gregory, VanTrae
CDC#: C85909
PO Box 4430 # Fac A
Lancaster, CA 95671

Office of the Imperial County District Attorney**
940 Main Street
El Centro, CA. 92243

**Sent via inter-office mail

Dated: April 29, 2011

KRISTINE KUSSMAN, COURT EXECUTIVE OFFICER

By: 
K. Palacio, Deputy Clerk

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PROOF OF SERVICE BY MAIL

(CCP §§1013(a), 2015.5; 28 U.S.C. §1746)

#C85909

I, VanTrae GREGORY, hereby declare that I am over the age of 18, I am the petitioner in the above-entitled cause of action, and my legal mailing address CSP/LAC - A2 - 104L, P.O. BOX 8457, Lancaster, CA 93539-8457.

On May 19, 2011, I delegated to prison officials the task of mailing, via the institution's internal mail system (*Houston v. Lack*, 487 US 266 [101 L.Ed.2d 245; 108 S.Ct. 2379] (1988)), the below entitled legal document(s):

Writ of Habeas Corpus

by placing said documents in a properly addressed and sealed envelope, with postage fully pre-paid, in the United States Mail, deposited in the manner provided by CSP/LAC, and addressed as follows:

Fourth District Court of Appeal
Division One
750 "B" Street, Suite# 300
San Diego, CA. 92101-8189

Office of The Attorney
General
P.O. BOX 85266
San Diego, CA. 92186-5266

I further declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 19 day of May, 2011 at California State Prison - Los Angeles County.

VanTrae Gregory
Pro-per

EXHIBIT "E"

Fourth District Appellate
COURT of California,
Division One - Denial

pages 2

EXHIBIT "E"

D059824

VanTrae Gregory
CDC #: C-85909
PO Box 4430 / A2-104 Low
Lancaster, CA 93539

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Court of Appeal Fourth District

FILED

JUN 21 2011

Stephen M. Kelly, Clerk

DEPUTY

In re VANTRAE GREGORY

on

Habeas Corpus.

D059824

(Imperial County
Super. Ct. No. EHC01460)

THE COURT:

The petition for a writ of habeas corpus has been read and considered by Presiding Justice McConnell and Associate Justices Huffman and Irion.

VanTrae Gregory states he is serving 27 years to life in prison after a jury found him guilty of first degree murder with gun use in 1985 in Los Angeles County. On January 27, 2010, a senior hearing officer found Gregory guilty of conduct that could lead to violence at Centinela State Prison in violation of California Code of Regulations, title 15, section 3004, subdivision (b). Gregory was ultimately assessed 30 days loss of behavioral credits. Gregory exhausted his administrative remedies on July 14, 2010.

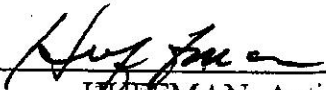
Gregory contends he was denied due process because he was originally charged with willfully delaying a peace officer (Cal. Code Regs., tit. 15, § 3005, subd. (b)) and the hearing officer amended the charge after medical evidence came to light that Gregory's physical limitations prevented him from complying with the correctional officer's orders. Gregory argues there is nothing in the record to support the amended charge that he acted in a way that could lead to violence.

Prison disciplinary findings must be supported by "some evidence." (*In re Rothwell* (2008) 164 Cal.App.4th 160, 165, citing *Superintendent v. Hill* (1985) 472 U.S. 445, 455.) Ascertaining whether the "some evidence" standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the prison authorities. (*Hill*, at pp. 455-456.)

The record shows on December 31, 2009, as Centinela security staff entered the sally port of facility C, building 4, Gregory walked to the emergency exit door, bent over and yelled through the keyhole in the door to alert the inmates there that a cell search was underway. That is some evidence to support the finding Gregory conducted himself in a way that could lead to violence. Gregory was not prejudiced by the amendment to the charges because he had an assigned investigative employee to assist him and the hearing was continued from January 19, 2010 to January 27, 2010, to allow Gregory to present additional evidence.

Additionally Gregory's petition is untimely. He did not seek judicial review of the disciplinary finding until around March 2011, nine months after exhausting his administrative remedies, when he erroneously petitioned in the Superior Court of Lassen County. That court properly transferred the petition to the Superior Court of the County of Imperial. Gregory's petition was denied on April 28, 2011. Gregory concedes he was not ordered to be transferred from Centinela until October 2010, thus he had three months to timely petition after he exhausted his administrative remedies.

The petition is denied.


HUFFMAN, Acting P. J.

Copies to: All parties

EXHIBIT

EXHIBIT

"F"

CA. Supreme Court
Denial -

EXHIBIT

S194730

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re VANTRAE GREGORY on Habeas Corpus.

The petition for writ of habeas corpus is denied.

SUPREME COURT
FILED

NOV 16 2011

Frederick K. Ohlrich Clerk

Deputy

CANTIL-SAKAUYE

Chief Justice

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PROOF OF SERVICE BY MAIL

(CCP §§1013(a), 2015.5; 28 U.S.C. §1746)

I, V. Gregory #CBS98 hereby declare that I am over the age of 18, I am the petitioner in the above-entitled cause of action, and my legal mailing address CSP/LAC - A2-11^{low} P.O. BOX ⁴⁴³⁰~~4430~~, Lancaster, CA 93539-8457.

On Jan. 12 2012, I delegated to prison officials the task of mailing, via the institution's internal mail system (*Houston v. Lack*, 487 US 266 [101 L.Ed.2d 245; 108 S.Ct. 2379] (1988)), the below entitled legal document(s):

Writ of Habeas Corpus

by placing said documents in a properly addressed and sealed envelope, with postage fully prepaid, in the United States Mail, deposited in the manner provided by CSP/LAC, and addressed as follows:

U.S. District Court
SOUTHERN District of CA
Clerk of Court
880 Front St. Room # 4290
San Diego, CA 92101-0900

I further declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 12 day of January 2012 at California State Prison - Los Angeles County.

V. Gregory
Petitioner-Prisoner

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

VanTrae Gregory

DEFENDANTS

FILING FEE PAID

Yes No

COPIES SENT TO

Court _____ Pro Se Attorneys (If Known) _____

FILED

Domingo Uribe, et al.

JAN 23 2012

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

(b) County of Residence of First Listed Plaintiff **Los Angeles**

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

VanTrae Gregory
PO Box 4430
Lancaster CA 93539-4430
C-85909

(IN U.S. PLAINTIFF CASES, USE THE LOCAL COURT IN LAND CONDEMNATION CASES, USE THE LOCAL COURT IN LAND INVOLVED.)

'12 CV 0193 JLS RBB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTIES	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	IMMIGRATION
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input checked="" type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28:2254

Brief description of cause:

Petition for Writ of Habeas Corpus (State)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

1/23/12

SIGNATURE OF ATTORNEY OF RECORD

SKHoestenbach

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

PO BOX 4430 / A2 - WILSON
LANCASTER, CA 93539-4430

019H26522029

\$ 05.550

01/19/2012

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Hasler



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District of California
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SAN DIEGO, CA 92101-8900

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JAN 23 2017
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SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY



NIGHT PERSON - PLEASE DON'T SPEAK WITH TRUST ACCOUNT STAFF -
Reviews -