

Shadale Williams, E-11488
Kern Valley State Prison
P.O. Box 5103
Delano CA 93216-5103

FILED

**MAINTAINED
IN PAPER**

AUG 16 2007

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

1: 07 CV 01189 OWL WDW PC

SHADALE L. WILLIAMS,
(Name of Plaintiff)

(Case Number)

vs.

COMPLAINT

CAPTAIN H. TYSON,
et al.,

Civil Rights Act, 42 U.S.C. § 1983

(Names of all Defendants)

I. Previous Lawsuits (list all other previous or pending lawsuits on back of this form):

A. Have you brought any other lawsuits while a prisoner? Yes No

B. If your answer to A is yes, how many? "Current"
Describe previous or pending lawsuits in the space below.
(If more than one, use back of paper to continue outlining all lawsuits.)

(PC) Williams v. Tyson et al

Doc. 16 Att. 1

1. Parties to this previous lawsuit:

Plaintiff SHADALE L. WILLIAMS

Defendants GOV A. SCHWARZENEGGER, et al.,

2. Court (if Federal Court, give name of District; if State Court, give name of County)

U.S. EASTERN DISTRICT COURT

3. Docket Number _____ 4. Assigned Judge _____

RECEIVED

5. Disposition (For example: Was the case dismissed? Was it appealed? Is it still pending?)

INITIAL FILING

AUG 16 2007

6. Filing date (approx.) _____ 7. Disposition date (approx.) _____

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

INMATE'S NAME <i>Williams</i>	CDC NUMBER <i>E 114188</i>	PRIVILEGE GROUP	INSTITUTION <i>KVSP</i>	DATE <i>5-11-07</i>
PROPERTY INVENTORIED BY <i>E. Brubaker</i>	TITLE <i>clo</i>	REASON FOR INVENTORY		NUMBER OF BOXES

CANTEEN ITEMS	PERSONAL ITEMS	NON-EXPENDABLE ITEMS
<input type="checkbox"/> Cereal <input type="checkbox"/> Cocoa <input type="checkbox"/> Crackers <input type="checkbox"/> Dry Meat <input type="checkbox"/> Health Food <input type="checkbox"/> Vitamins <input type="checkbox"/> Nuts <input type="checkbox"/> Tea <input type="checkbox"/> Soda <input type="checkbox"/> Jelly <input type="checkbox"/> Honey <input type="checkbox"/> Hot Sauce <input type="checkbox"/> Cheese <input type="checkbox"/> Cookies <input type="checkbox"/> Creamer <input type="checkbox"/> Dry Drink Mix <input type="checkbox"/> Protein Supplement <input type="checkbox"/> Soup <input type="checkbox"/> Sugar Cubes <input type="checkbox"/> Instant Coffee <input type="checkbox"/> Peanut Butter <input type="checkbox"/> Chips <input type="checkbox"/> Pork Rinds	<input type="checkbox"/> Photo Albums <input checked="" type="checkbox"/> Cassette Tapes <i>3</i> <input type="checkbox"/> Religious Medallion <input type="checkbox"/> Chain G S <input checked="" type="checkbox"/> Watch G S <i>1</i> <input type="checkbox"/> Prescription Glasses <input type="checkbox"/> Handkerchief <input type="checkbox"/> Magazines <input type="checkbox"/> Address Book <input type="checkbox"/> Shoe Horn <input type="checkbox"/> Brush <input type="checkbox"/> Cosmetic Bag <input type="checkbox"/> Photos <input checked="" type="checkbox"/> CDs <i>5</i> <input type="checkbox"/> Ring G S <input type="checkbox"/> Earrings G S <input type="checkbox"/> Wallet <input checked="" type="checkbox"/> Sunglasses <i>1</i> <input type="checkbox"/> Wash Cloth <input checked="" type="checkbox"/> Books <i>4</i> <input type="checkbox"/> Calendar <input type="checkbox"/> Shaving Bag <input checked="" type="checkbox"/> Comb <i>2</i> <input type="checkbox"/> Perm Rods	<input type="checkbox"/> Televisions Operational <input type="checkbox"/> Yes <input type="checkbox"/> No Model: _____ SR/N: _____ <input type="checkbox"/> CD/Cassette Player Operational <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Model: <i>C4051</i> SR/N: _____ <input type="checkbox"/> Radio Operational <input type="checkbox"/> Yes <input type="checkbox"/> No Model: _____ SR/N: _____ <input type="checkbox"/> Musical Instruments Operational <input type="checkbox"/> Yes <input type="checkbox"/> No Type: _____ Model: _____ SR/N: _____ <input type="checkbox"/> Typewriter Operational <input type="checkbox"/> Yes <input type="checkbox"/> No Model: _____ SR/N: _____ <input type="checkbox"/> Fan Model: _____ <input type="checkbox"/> Lamp <input type="checkbox"/> Blow Dryer <input type="checkbox"/> Curling Iron <input type="checkbox"/> Pressing Comb <input type="checkbox"/> Electric Shaver <input type="checkbox"/> Hair Dryer <input type="checkbox"/> Hair Rollers <input type="checkbox"/> Calculator
Stationary Items <input type="checkbox"/> Envelopes <input type="checkbox"/> Stamped Envelopes <input type="checkbox"/> Writing Tablets <input type="checkbox"/> Pencil Sharpener <input type="checkbox"/> Writing Paper <input checked="" type="checkbox"/> Stamps <i>2</i> <input type="checkbox"/> Greeting Cards <input type="checkbox"/> Stationary <input checked="" type="checkbox"/> Pens <input checked="" type="checkbox"/> Pencils	Clothing Items <input checked="" type="checkbox"/> B/B Hat <input type="checkbox"/> Head Band <input checked="" type="checkbox"/> Shower Thongs <input checked="" type="checkbox"/> Sweat Pants <input checked="" type="checkbox"/> Tennis Shoes <input checked="" type="checkbox"/> Thermal Top <i>1</i> <input type="checkbox"/> Bras <input type="checkbox"/> Gym Shorts <input type="checkbox"/> Slip <input type="checkbox"/> Watch Cap <input type="checkbox"/> Gloves <input type="checkbox"/> Slippers <input type="checkbox"/> Sweat Shirt <input type="checkbox"/> Raincoat <input checked="" type="checkbox"/> Thermal Pants <i>1</i> <input type="checkbox"/> Panties <input type="checkbox"/> Athletic Supporter	
Hygiene Items <input type="checkbox"/> Razor <input type="checkbox"/> Shaving Cream <input type="checkbox"/> Nail Clippers <input type="checkbox"/> Soap <input checked="" type="checkbox"/> Toothpaste <i>2</i> <input checked="" type="checkbox"/> Baby Powder <i>1/1 + 1/1</i> <input checked="" type="checkbox"/> Shampoo <i>(1)</i> <input checked="" type="checkbox"/> Hair Grease/Gel <input type="checkbox"/> Perm Kit <input type="checkbox"/> Nail Polish <input type="checkbox"/> Makeup Ball <input type="checkbox"/> Mascara <input type="checkbox"/> Tweezers <input type="checkbox"/> After Shave <input type="checkbox"/> Nail Polish <input type="checkbox"/> Soap Dish <input type="checkbox"/> Mouthwash <input type="checkbox"/> Talc <input type="checkbox"/> Conditioner <input checked="" type="checkbox"/> Deodorant <i>3</i> <input type="checkbox"/> Mirror <input type="checkbox"/> Foundation <input type="checkbox"/> Blush <input checked="" type="checkbox"/> Other: <i>brush (2)</i>	Games <input type="checkbox"/> Chess <input type="checkbox"/> Dominoes Other <i>Mix. Paperwork</i> <i>Mix. Legal Work</i> <input type="checkbox"/> (1) Head Phones <input type="checkbox"/> (1) AC/DC Adapter <input type="checkbox"/> (1) Head Phone Adapter Cord <input type="checkbox"/> 2 wave caps <input type="checkbox"/> 2 Bibles	
Tobacco Items <input type="checkbox"/> Pipe Tobacco <input type="checkbox"/> Other Tobacco <input type="checkbox"/> Tobacco Pouch <input type="checkbox"/> Cigarette Roller <input type="checkbox"/> Chewing Tobacco <input type="checkbox"/> Cigarette Lighter <input type="checkbox"/> Cigarette Case <input type="checkbox"/> Smoking Pipe	Hobby Items	
Other Items <input type="checkbox"/> Immersion Heater <input checked="" type="checkbox"/> Bowl <i>2</i> <input type="checkbox"/> Shoe Polish <input checked="" type="checkbox"/> Batteries <i>2</i> <input checked="" type="checkbox"/> Tumbler <input type="checkbox"/> Can Opener <input type="checkbox"/> Extension Cord Size: _____		
TO BE SIGNED UPON INVENTORY OF THE INMATE'S PROPERTY The above listed items constitute all of my personal property which I am authorized to retain.		TO BE SIGNED UPON RETURN TO THE INMATE I have received all the above listed personal property or have noted any discrepancies below.
INMATE'S SIGNATURE: <i>Williams</i> DATE: <i>5/11/07</i> RECEIVED IN R&R BY: _____ INMATE'S SIGNATURE: <i>Williams</i> DATE: <i>7-13-07</i>		

INMATE'S SIGNATURE: <i>Williams</i>	DATE: <i>5/11/07</i>	INMATE'S SIGNATURE: <i>Williams</i>	DATE: <i>7-13-07</i>
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If property being disposed of per CCR Section 3091 shall be listed on a separate inventory.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO, CALIFORNIA

SHADALE LEWIS WILLIAMS,
Plaintiff,



(CASE NUMBER)

CAPTAIN H. TYSON;
CORRECTIONAL SER-
GEANT J. HARDEN;
CORRECTIONAL OFFI-
CER(S) M. LOZANO,
S. LOPEZ AND
C. BRECKNER,

Defendant(s).

CIVIL RIGHTS
SECTION 1983
COMPLAINT W/
LEGAL BRIEF

DEMAND FOR
JURY TRIAL

(ALL DEFENDANT(S)
ARE SUED IN IN-
DIVIDUAL CAPACITY)

Pro se
SHADALE L. WILLIAMS, E11488
KERN VALLEY STATE PRISON
2737 CECIL AVENUE
P O BOX 5103 FCB8-130
DELANO, CA 93216-5103

II. Exhaustion of Administrative Remedies

A. Is there an inmate appeal or administrative remedy process available at your institution?

Yes No

B. Have you filed an appeal or grievance concerning ALL of the facts contained in this complaint?

Yes No

If your answer is no, explain why not _____

C. Is the process completed?

Yes If your answer is yes, briefly explain what happened at each level.

*SEE DECLARATIVE STATEMENT ON
EXHAUSTION OF REMEDIES
(ATTACHED, heretofore)*

No If your answer is no, explain why not.

NOTICE: Pursuant to the Prison Litigation Reform Act of 1995, “[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). If there is an inmate appeal or administrative remedy process available at your institution, you may not file an action under Section 1983, or any other federal law, until you have first completed (exhausted) the process available at your institution. You are required to complete (exhaust) the inmate appeal or administrative remedy process before filing suit, regardless of the relief offered by the process. Booth v. Churner, 532 U.S. 731, 741 (2001); McKinney v. Carey, 311 F.3d 1198, 1999 (9th Cir. 2002). **Even if you are seeking only money damages and the inmate appeal or administrative remedy process does not provide money, you must exhaust the process before filing suit. Booth, 532 U.S. at 734.**

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DECLARATIVE STATEMENT ON
EXHAUSTION OF REMEDIES

5 I, SHADALE LEWIS WILLIAMS (E11488),
6 agree to be depose and hereby, under the
7 penalty of perjury, do declare:

8 1) I am a prisoner confined at
9 Kern Valley State Prison ("Delano-II"),
10 where herein, at all times alleged,
11 C. J. CHRONES was (KVSP) Warden.

12 2) On Monday, June 26, 2006, the
13 Plaintiff/Appellant filed a grievance
14 alleging the "loss and destruction of
15 "active cases) [legal evidence property]"
16 through staff "interference and assault."

17 3) On June 27, 2006, the "issue"
18 was "partially granted" at the informal
19 level. (See Appeals p. 3.)

20 4) On September 10th and October
21 05th of 2006, the "issue" was "partially
22 granted" at the first level. (See
23 Appeal's p. 14-16.)

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5) On March 05, 2007, the "issue" was "partially granted" at the second level. (See Appeal's p. 5-6.)

6) On June 19, 2007, the "issue" was "denied" at the Director's level. (See Appeal's p. 1-2.)

7) This Appeal meets the "PLRA" requirement under Ngo v. Woodford, 403 F.3d at 624-625 (9th Cir. 2005).

8) On July 06, 2007, the Plaintiff filed a [state] "petition of habeas corpus" in the Superior Court of California, in the County of Kern "challenging" the director's level decision on "clear-err" of policy. (See Exhibit Cover Page 2.)

I declare under the penalty of perjury the following to be true and correct.

DATED: Aug 9, 2007

W.M. #8.2.
(Declarant)

III. Defendants

(In Item A below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use item B for the names, positions and places of employment of any additional defendants.)

A. Defendant _____ is employed as _____
_____ at _____

B. Additional defendants _____
_____ (SEE ATTACHED PAGES
7-9)

IV. Statement of Claim

(State here as briefly as possible the facts of your case. Describe how each defendant is involved, including dates and places. Do not give any legal arguments or cite any cases or statutes. Attach extra sheets if necessary.)

_____ (SEE ATTACHED PAGES
10-15)

V. Relief.

(State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.)

_____ (SEE ATTACHED PAGES
16-27)

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

Date 8.9.07

Signature of Plaintiff WMM ¹¹/₁₁ 8.7.

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III. DEFENDANTS UNDER COLOR OF AUTHORITY

1. Plaintiff is and was at all relevant times mentioned herein an inmate in the custody, control, and care of CDCR employees. Plaintiff has been an inmate at Kern Valley State Prison ("Delano II") since February 09, 2006. At all times during his (KVSP) incarceration, plaintiff has relied on the medical care providers at CDCR prisons to provide him with the necessary medical care.

2. Defendant H. TYSON is, and at all times relevant herein was employed by the CDCR as a correctional captain [Facility-C] at KVSP-Delano II. Plaintiff is informed and believes, and thereon alleges, that defendant Tyson is a properly trained correctional captain who is and has been responsible for the training, guidance, supervision and control of "all" subordinate(s) under him on facility-C. And has been responsible for the safety, security, movement and

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2 over all well-being of all inmates govern-
3 ing his facility and ASU #2 at
4 KVSP-Delano II. At all times mentioned
5 defendant Tyson was acting under color
6 of state law, in the course and scope of
7 his employment, and is sued in his
8 individual capacity.

9 3. Defendant J. HARDEN is, and
10 at all times relevant herein was employed
11 by the CDCR as a correctional sergeant
12 [Facility-C] at KVSP-Delano II.

13 Plaintiff is informed and believes, and there-
14 on alleges, that defendant Harden is a
15 properly trained correctional sergeant who
16 is dependant on the responsible training,
17 guidance, supervision and control of his
18 superior defendant Tyson. And has been
19 responsible for the leadership, instructing
20 and control supervision of his subordi-
21 nates appropriate staff and correctional
22 officials. And has been responsible for the
23 safety, security, movement and over all
24 well-being of all facility-C inmates.

1 At all times mentioned defendant
2 Harden was acting under color of state
3 law, in the course and scope of his em-
4 ployment, and is sued in his individual
5 capacity.

6 4. Defendant(s) M. LOZANO [male],
7 S. LOPEZ [female], and C. BRECKNER
8 [female] are, and at all times relevant
9 herein were employed by the CDCR as
10 correctional officers [Facility-C, Units
11 7-8] at Kern Valley State Prison - Delano II.
12 Plaintiff is informed and believes, and thereon
13 alleges, that defendant(s) Lozano, Lopez and
14 Breckner are properly trained and alert
15 correctional officers who are dependant upon
16 the responsible leadership, instructions and
17 control of their immediate supervisor
18 defendant Harden. And they are responsi-
19 ble for the safety, security, care and move-
20 ment of all facility-C, Units 7-8 inmates.
21 At all times mentioned defendants were
22 acting under color of state law, in the
23 course and scope of their employment and
24 are sued in their individual capacities.

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COMES NOW, the Plaintiff,
SHADALE LEWIS WILLIAMS in the foregoing
proceeding, to commence; the Plaintiff
is housed at Kern Valley State Prison
("Delano II") • 2737 CECIL AVENUE •
DELANO • CA 93216. For custody
mail purposes (Rule 4(d), (m)). This Court
has proper subject matter jurisdiction
pursuant 28 U.S.C. § 1343 (a)(3) and 42
U.S.C. § 1983.

IV. STATEMENT OF CLAIM

On Monday, June 12, 2006, the
Plaintiff claims he was a victim of an
unlawful assault and use of "ex-
cessive force" constituting "cruel and
unusual punishing." And that for
1) having filed a civil rights action;
2) having asserted his diet(s) care
and treatment rights without in-
terference.

Resultively, that he was denied "pre-

1 scribed" diet diabetic care; and he
2 suffered "mental and emotional"
3 distress. And "defaulted" two (2)
4 "active" Ninth Circuit ["diabetic
5 related"] cases) where the case files
6 and evidence were destroyed by defendants
7 Lozano and Breckner. And "these"
8 acts constitutes violation of his 1st,
9 [4th], 14th and 8th Amendment rights.

10 DEF(S), No. 4

11 On Monday, June 12, 2006, evidence
12 demonstrates (See EXH #1, Appdx A, p. 28-
13 29.) "clearly" [any] "dispute" between
14 defendant Lozano and the Plaintiff
15 was "indeed 'diabetic' related." (State
16 Gov't Record, CDC115-C RVR.)

17 On June 22, 2006, evidence demon-
18 strates (See EXH #1, Appdx A, p. 28.)
19 "clearly" the Plaintiff "passed on his
20 person the 'required' medical and reli-
21 gious diet" paperwork to the Unit's
22 Kitchen (, the Unit's Kitchen Manager and
23 Officers' Unit #8 station. aswell possess the
24 paperwork.), And that defendants are not
25

1 part of the medical nor religious pro-
2 fession.

3 On June 22, 2006, evidence demon-
4 strates (See EXH #1, Appdx A, p. 28-29.)
5 that [all] witnesses 'clearly knew' that
6 the Plaintiff was 'permitted daily (, since
7 Mar-April of 2006.)' to leave the
8 dining "chow hall" w/ extra milk -- apple
9 -- peanut butter and jelly and these
10 "witnesses" 'knew well' his [Plaintiff]
11 diet regime.

12 On June 22, 2006, evidence de-
13 monstrates (See EXH #1, Appdx A,
14 p. 28-29.) defendant Lozano [an officer
15 of 'the day-relocated.'] "learned and
16 knew" that the Plaintiff was a diabetic
17 and was 'clearly indifferent--' according
18 to the witnesses, to his condition.

19 On June 12, 2006, evidence demon-
20 strated on June 22, 2006, that de-
21 fendant Lozano "attacked" the plain-
22 tiff 'while he was asserting his rights'
23 to the diets. (See EXH #1, Appdx A,
24 p. 28-29.)

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2 On June 12, 2006, evidence de-
3 monstrated on June 22, 2006; How-
4 ever, the "fears" of defendant
5 Lozano [within the 'chow hall,']
6 -- once the plaintiff was on the ground,
7 in the PRONE position, and handcuffed
8 (, having been 'pepper-sprayed.') defendant
9 Lozano "continued to spray [MK-90
10 OC (ed)]" the subdued Plaintiff and
11 "Kick him about the body." (See EXH
12 #1, Appdx A, p. 28-29.) Also (EXH
13 #1, Appdx A, p. 18-25.).

14 On June 12, 2006, evidence de-
15 monstrated on June 22, 2006, that
16 co-worker [which are Unit/building
17 "regulars."] defendants Lopez and
18 Breckner, neither 'informed nor
19 assisted' the defendant [Lozano] re-
20 garding the care and treatment of the
21 plaintiff nor the 'physical attack's'
22 prevention in doing so with "Knowledge"
23 of the 'sets' documentation. (FACT, is
24 defendants Lopez and Breckner "refused"
25 to be a part of the 'INCIDENT REPORT.')

1 (See EXH #1, Appdx A, p. 26-29)
2 Also (EXH #1, Appdx A, p. 23.)

3 On June 12, 2006, the Plaintiff
4 claims that defendant Lozano, upon
5 then physically assaulting him stated:
6 "What's gonna become of your civil
7 suits now? -- too see if you get
8 your diabetic meals from the hole
9 -- that's where your going!" (See
10 EXH #1, Appdx A, p. 20.)

11 On June 12, 2006, defendants
12 Lozano and Breckner 'packed my personal
13 property' amongst things that were
14 "missing (upon June 22, 2006 "discharge".)"
15 : two (2) Ninth Circuit "active" case(s)
16 are their "evidence" to which I later
17 "defaulted" on (unable to make a
18 'response'; yet filing for Injunctive Relief
19 [Sanctions].) (See EXH #1, Appdx. B,
20 p. 31-42.)

21 On June 12, 2006, the Plaintiff
22 claims it was not possible for defendant
23 Lozano [a "redirected" state official.]
24 to have known the Plaintiff had two
25 (2) "active" U.S. cases.

DEF(S), No. 2-3

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3 On Monday, June 12, 2006, the
4 Plaintiff claim(s) that defendants
5 Tyson and Harden are responsible for
6 the conduct and unlawful acts or in-
7 actions [i.e. "dereliction of duty."] of
8 defendants Lopez and Breckner; and
9 Lozano. That defendants Tyson and
10 Harden "failed to adequately TRAIN,
11 CONTROL and SUPERVISE" these their
12 subordinates; and that defendants Tyson
13 and Harden had 'personal-personnel' know-
14 ledge of [former] acts complained of by
15 defendant Lozano and agreed to allow
16 defendant Lozano to continually 'unlawful-
17 ly assault prisoners;' thusly, also the
18 defendants Tyson and Harden directed the
19 deprivation of the right to be 'free from
20 force and violence' once physically re-
21 strained and the right to not have 'due
22 personal property' "destroyed" thereby.

23 Defendants Tyson and Harden are dir-
24 ectly responsible for the "excessive use of
25 pepper-spray and physical violence", and the
26 "destruction of legal property" which "de-
27 nied meaningful access to courts."

LEGAL BRIEF

A. Crossing The Constitutional Line -

State Officials Tyson and Harden's inaction is that 'deliberate indifference' to a substantial risk; a serious injury or harm to the plaintiff. They "failed" to control and instruct, properly train the supervise defendant Lozano.

Does states a violation under the Eighth Amendment. See *Farmer v. Brennan*, 114 S. Ct. 1970, 1981-82 (1994). (Under the 8th Amendment, prison officials may not use excessive physical force against prisoners and are required to provide humane conditions of confinement...

and must take reasonable measures to guarantee safety of inmates.) Defendants Tyson and Harden "knew" and had "full knowledge" enough to continuously redirect him, having a 'reckless disregard' for the safety, care and treatment of prisoners; as [he] 'racking up' assaults on the Facility - C ["lower yard."]

And they permitted this conduct to go "unchecked." See *Taylor v. List* (9th Cir. 1989) 880 F.2d 1040, 1045; See e.g., *Berry v. Ratelle* (S.D. Cal. 1997) 985 F. Supp. 1225, 1239.

1 The "underground policy" of Defend-
 2 ants Tyson and Harden was: "-- Spray
 3 first! Ask questions latter."
 4

5 I believe one of the witnesses said,
 6 "... the use of and methods of
 7 Pepper Spray has become an intentional
 8 and personal employment of both re-
 9 venge and retaliations by state officials
 10 at (KVSP)...." (See EXH #1, Appdx A,
 11 p. 25.). And such 'policy and actions'
 12 would bring the 'supervisory officials' under
 13 the 'umbrella of liability.' Wright v. McMann
 14 (2nd Cir. 1972) 450 F.2d 126 cert. denied, 409
 15 U.S. 885 [34 L. Ed. 2d, 93 S. Ct. 115]; Hearn v.
 16 Morris (E.D. Cal. 1981) 526 F. Supp. 263;
 17 Hansen v. Black (9th Cir. 1989) 855 F.2d 642.

18 Never the less -- However, "ruthless
 19 U.S. Second Circuit' decisions have been,"
 20 [T]here applications have 'exemplary and
 21 long standings'... "Not every push or
 22 shove, even if it may later seem un-
 23 necessary in the peace of a judge's
 24 chambers, violates a prisoner's constitu-
 25 tional rights. In determining whether
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1 the constitutional line has been
 2 crossed, a court must look to such
 3 factors as the need for the application
 4 of force, the relationship between the
 5 need and the amount of force that
 6 was used, the extent of injury inflicted,
 7 and whether force was applied in a
 8 good faith effort to maintain or re-
 9 store discipline or maliciously and
 sadistically for the very purposes of
 causing harm."

10 Citing Arroyo v. Schafer (2nd Cir. 1977)
 11 548 F.2d 47 [HN3]. Here, the Second
 12 Circuit dealt with 'unnecessary and in-
 13 discriminate use of tear gas,' but [w]
 14 here the plaintiffs failed to allege acts or
 15 omissions sufficiently harmful to evidence
 16 deliberate indifference... and it was used
 17 in an emergency situation without intent
 18 to cause injury. [Case Summary.]

19 However -- to 'No extent' are the
 20 factors to extend herein, before this U.S.
 21 district court where 1) the Plaintiff,
 22 with his paperwork, was asserting his
 23 rights to not have 'diabetic/religious' meals
 24 interfered with or denied; 2) no inmate
 25 or staff was in 'danger of safety nor

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2 security' in him doing so; 3) there
3 is no penological interest to deny
4 inmates' diet where the officer inference
5 maybe drawn to 'deliberate indifference'
6 to the prisoner's health or care. (I
7 believe many—but one of the witnesses
8 said) : "Williams said, "I take this out
9 every day, I'm a Diabetic" Lozano
10 stated, "I don't care what you is,
11 throw it away." "...while explaining
12 his medical condition to Lozano. C/O
13 Lozano pulled out his spray and sprayed
14 Williams."

14 Yet, another witness —

15 : "William told this Officer "I always
16 take a extra milk out, it's part of my
17 diabetic program." The Officer then
18 said "Your not going to take it out
19 while I'm here." "William said "I'm
20 very passive, this is o.k., I will go back
21 to my cell and write this up. Your denying
22 me what I'm entitled to have because
23 I'm Diabetic... Williams was just speak-
24 ing a very passive voice he was very calm
25 and collected... we will handle this in
26 an appropriate way. Lozano pulled his
27 spray out of the blue—no alarm—no
28 warning—just out of the blue...."

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2 And it is this act of "deliberate
3 indifference" to the plaintiff's
4 treatment and care [an interference.]
5 that that--preceeded a 'questionable
6 state of mind of "reasonability--"
7 stepped beyond,' pursued the restrained
8 plaintiff; pepper-sprayed him again,
9 'kicked' him about the body [restrain-
10 ed and helpless], and then 'emptied'
11 MK-90 OC Pepper spray (Not 1972 CN.) into
12 the face of the plaintiff--after 'knock-
13 ing' his glasses off and smashing them.

14 Proves to be a violation of the Eighth
15 Amendment and that deprivation of
16 adequate medical/religious dietary care.

17 See Estelle v. Gamble (1976) 429 U.S. 97
18 [97 S. Ct. 285]; Wilson v. Geter (1991)

19 501 U.S. 294 [115 S. Ct. 2321]. And de-
20 fendants' applied the necessary force

21 "maliciously and sadistically to cause harm."

22 See Hudson v. McMillian (1992) 503 U.S. 1,

23 6-7 [112 S. Ct. 995]; Also, "where a

24 'reasonable officer' should know that

25 Kicking a helpless prisoner in the genitals

1 is excessive force in violation of the
2 Eighth Amendment." See Watts v.
3 McKinney (9th Cir. 2005) 394 F.3d 710.

4
5 As a direct result of defendant
6 Lozano's unlawful conduct the plaintiff
7 suffered 1) physical injury and bruising
8 to the back and side of the head, ribs
9 and back. 2) being kicked in the
10 genitals several times the plaintiff
11 couldn't eat for ten (10) days (, while in
12 adleses and not permitted to "decontami-
13 nate from "MK-90 OC Pepper spray."").

14 3) mental and emotional distress and
15 anguish. (The Plaintiff was denied "re-
16 quested" medical and psychological atten-
17 dance.)

18 The Plaintiff believes that the in-
19 juries and physical harm constituting the
20 violation is constitutionally significant;
21 where defendants may not qualify for im-
22 munity. See Williams v. Vincent, 508 F.2d
23 541 (2d Cir. 1974); Louisiana ex rel.
24 Francis v. Resweber, 329 U.S. 459, 471 (1947).
25 Also, Shabazz v. Lynaugh (5th Cir. 1992)
26 974 F.2d 597, 598.

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B. Destruction of U.S. Court Cases And Evidence — Truly,

defendant Lozano's intent and motives were not "Known—" until he [stated] (, after attacking Plaintiff.) :

"Kicked me in the side of the head "twice"
-- spit on me -- stepped on my glasses;
and replied, "what's gonna become of your
civil suits now? --"
(See EXH #1, Appdx A, p. 20.)

On Monday, June 12, 2006, it is a FACT that defendants Lozano and Breckner "packed" his personal property. Amongst ONE set of items) of many things either "missing or destroyed" on Thursday, June 22, 2006, were two (2) "active ([U.S. cases] : 9th Cir. 06-55729 and 03-9548-RSWL (MAN) both "defaulted" on my inability to "respond" both plaintiff filed for "injunctive relief."]) cases" and 'diabetically' related.

The government 'attempted' to assert that during periods (: 6/12-22/2006) while confined within (Ad/Seg) the plaintiff received 'such legal property—" but. "Quickly

1 abandoned" this defense in light of their
2 "policy" absent in the process of
3 "discharging legal materials." (See EXH
4 #1, p. 3 (subd) ("F") and p. 15; however,
5 no "mention" of this 'alleged' fact nor
6 evidence of this at the SECOND or
7 DIRECTOR'S level.) So, I have reintro-
8 duced "these" 'critical level decisions'
9 not that the defendants should make this
10 'foolish assertion.'

11 The plaintiff makes "no attempt" to
12 obtain compensation for lost or damaged
13 property by means of ("section 1983") this
14 action. See Daniels v. Williams (1986), 474
15 U.S. 327, 330-31; herein citing, King v.
16 Massarweh, 782 F.2d 825, 826 (9th Cir. 1986.).

17 But. Rather contends that the
18 [S]pecific "destruction" of "active case
19 files and evidence" impeded and im-
20 paired with his [R]ight of access to
21 courts. See Vigliotto v. Terry (9th Cir.
22 1989) 873 F.2d 1201. To the 'extent of
23 [an injury or loss of action] defaulted.'
24 See Id. at 1133; Lewis v. Casey (1996)
25 518 U.S. 343.

1
2
3 Moreso, [w]here the loss or destruc
4 tion was pursuant to an established
5 state procedure [CCR, § 3160 ref.
6 Cal Pen Code, § 2601.] See Logan v.
7 Zimmerman Brush Company (1982)
8 455 U.S. 422 [102 S. Ct. 1148.].

9 The Plaintiff believes and request for
10 "separate damages" for "injury and
11 loss" suffered and/or caused by and
12 through the "denial" of due process
13 where there existed a "state created
14 liberty interest." See Franklin v.
15 Aycock, 795 F.2d 1253 at 63-64
16 (6th Cir. 1986.); Paratt v. Taylor (1981)
17 101 S. Ct. 190; Hudson v. Palmer (1984)
18 104 S. Ct. 3194. (Same.)

19 Wherefore, this "particular" claim
20 under the fourteenth amendment is
21 appropriate; this Court has subject
22 matter jurisdiction.

23
24
25

V. MITIGATION ON DAMAGES

FACTS of the matter, that on August 02, 2006, "prior" to the FIRST Level Review the State was provided the opportunity to settle on this 'issues' entirety' of the sum of \$1044., to the reduced sum of \$300., (Administratively reachable.) and "REFUSED." (See EXH #1, p. 8, 14-16.)

On February 26, 2007, "prior" to the SECOND Level Review (p. 5-6.) the Appellant/Plaintiff provided the State an Opportunity to settle on the 'issues' raised in this civil action' of the sum of \$300., to the reduced sum of \$100., and "REFUSED." (See EXH #1, p. 9-10.)

On June 19, 2007, the director "DENIED" any liability and any equitable feasible administrative remedy (ies.). (See EXH #1, p. 1-2.) See also, EXHIBIT #2.

Accordingly, any 'mitigation of damages' was NOT agreeable by the State.

DEMAND FOR JURY TRIAL

1
2
3 Plaintiff demands that this matter be
4 tried by and before a jury to the extent
5 provided by law and pray for judgment
6 as follows:

7 1. That judgment be rendered in
8 favor of the Plaintiff and against the
9 defendants;

10 2. That Plaintiff be awarded Actual
11 Injury damages in an awarded amount of
12 \$ 51,000., from each defendant in his or
13 her individual capacity;

14 3. That Plaintiff be awarded Compens-
15 atory damages in an awarded amount of
16 \$ 90,000., from each defendant in his or
17 her individual capacity;

18 4. That Plaintiff be awarded Punitive
19 damages in an awarded amount of \$ 25,000.,
20 from each defendant in his or her individual
21 capacity;

22 5. Reasonable attorney fees pursuant
23 to 42 U.S.C. § 1988;

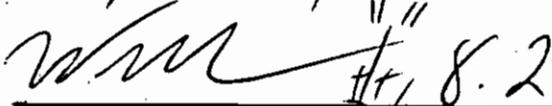
1
2
3 6. Costs for suit; and
4 7. Such further RELIEF as the
5 Court seems proper, to include, not
6 limited to,

7 - Injunctive Relief (, where the
8 Court seems appropriate.),

9 - Declaratory judgments as-to
10 the parties rights.

11
12 DATED: Aug 9, 2007

13
14 Respectfully submitted,

15  # 8.2

16
17 Shadale L. WILLIAMS,
18 Plaintiff, Pro se

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SHADALE L. WILLIAMS,

v. Case Number:

CAPTAIN H. TYSON,

PROOF OF SERVICE

et al.

I hereby certify that on Aug 9, 2007, I served a copy

of the attached INITIAL SECTION 1983 COMPLAINT

by placing a copy in a postage paid envelope addressed to the person(s) hereinafter

listed, by depositing said envelope in the United States Mail at

DELANO, CA 93216-5103.

(List Name and Address of Each
Defendant or Attorney Served)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
OFFICE OF THE CLERK
2500 TULARE STREET, RM 1501
FRESNO, CALIF 93721

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

WLM #8.2

(Signature of Person Completing Service)

EXHIBIT COVER PAGE

1
EXHIBIT

Description of this Exhibit:

*DIRECTOR I/M APPEAL
PACKET; GENERAL SUBMISSION*

Number of pages to this Exhibit: 43 pages.

JURISDICTION: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- State Circuit Court
- United States Supreme Court
- Grand Jury

Exhibit A

RECEIVED AUG 07 2006

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

DIRECTOR'S LEVEL APPEAL DECISION

Date: JUN 19 2007

In re: Williams, E-11488
Kern Valley State Prison
P.O. Box 6000
Delano, CA 93216

LAB Case No.: 0612514

Local Log No.: KVSP 06-02274

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

I APPELLANT'S ARGUMENT: It is the appellant's position that on June 22, 2006 he was placed into the Administrative Segregation Unit (ASU). The appellant contends that staff did not accurately inventory his property when he was placed in the ASU. The appellant has asked for Officer Breckner to provide her property receipt and conduct an investigation into this appeal. The appellant claims that staff lost his property and requests that his missing property be replaced or that he receive compensation in the amount of \$1,044.00 to replace the items.

II SECOND LEVEL'S DECISION: The reviewer found that the appellant did not cooperate in the inventory process when he was placed into the ASU. The appellant has failed to provide receipt(s) or other documents proving that the appellant legally owned the alleged lost property listed in his appeal. Officer Breckner has provided the appellant with a copy of the CDC Form 1083, Inmate Property Inventory, which the appellant refused to sign. The reviewer determined that the appellant was provided with the opportunity to note discrepancies with his property at the time of the ASU placement but refused to cooperate with the officers. The CDC Form 1083, Inmate Property Inventory presented to the appellant clearly indicates in the box entitled "To be signed upon return to the inmate" the admonishment, "**I have received all the above listed personal property or have noted any discrepancies below**" was not heeded by the appellant, nor did the appellant cooperate with the process by noting any discrepancies; therefore no liability for the alleged loss of property will be accepted by Kern Valley State Prison (KVSP). The reviewer noted that the appellant has failed to provide any evidence beyond his assertion that property was lost to support his allegation.

Based upon the aforementioned, the appeal was partially granted at the Second Level of Review (SLR). The appeal was denied in that the appellant will not receive reimbursement. Staff discipline is outside the scope of the appeals process; therefore no sanctions will be assessed against an employee at the request of an inmate. The appellant has failed to cooperate in assessing and communicating the exact loss he sustained; therefore, no compensation will be made for property the appellant has not proven to be owned and lost due to staff negligence. The appeal was granted in that Officer Breckner supplied the appellant with a copy of the CDC Form 1083, Inmate Property Inventory.

III DIRECTOR'S LEVEL DECISION: Appeal is denied.

A. FINDINGS: The SLR is appropriate and the decision is based upon a reasonable penological interest. The response by the SLR is comprehensive. An investigation was conducted into the appellant's allegations. The appellant has not presented a compelling argument to warrant modification of the decision reached by the institution. The appellant has failed to provide proof of a legitimate purchase for the items listed as missing. The appellant has also failed to establish that any alleged missing items were in fact in his cell at the time he was secured in the ASU. The regulations are clear in this matter in that the department shall not accept liability for the loss or destruction of inmate property where it can not be established that through staff negligence the loss occurred. The appellant has not provided sufficient evidence to establish this threshold of accountability. There shall be no relief afforded the appellant at the Director's Level of Review (DLR).

B. BASIS FOR THE DECISION:

California Code of Regulations, Title 15, Section: 3005, 3084.1, 3190, 3191, 3193, 3270, 3287

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

This decision exhausts the administrative remedy available to the appellant within CDCR. If dissatisfied, the appellant may forward this issue to the California Victims Compensation and Government Claims Board, (formerly known as the State Board of Control), Government Claims Unit, P.O. Box 3035, Sacramento, CA 95812-3035, for further review.



N. GRANNIS, Chief
Inmate Appeals Branch

cc: Warden, KVSP
Appeals Coordinator, KVSP

copy
FAC
1-2

3

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

Location: Institution/Parole Region Log No. Category
1. KVSPB 1. 06-02274 5
2. _____ 2. _____

You may appeal any policy, action or decision which has a significant adverse affect 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: WILLIAMS, Shadale NUMBER: E11488 ASSIGNMENT: AD-SEG (B1) DISCHARGE UNIT/ROOM NUMBER: C8 226

A. Describe Problem: REIMBURSEMENT FOR "VARIOUS LOSS"
2 PROPERTY AND (9th CIR) U.S. COURT OF APPEALS
3 CS NO. 06-55729 AND/OR MOTION FOR "IMMED-
4 IATE" COURT ORDER SANCTIONS (9th CIR Rule
5 46-1) (CCR, § 3084.7. (e)(1)-(4) ("EMERGENCY"
6 PROPERTY APPEALS) (§§ 3190, 3193) (SAME.)
7 ~ On Thursday, June 22, 2006, at approximately
(SEE ATTACHED PAGE)

If you need more space, attach one additional sheet.

B. Action Requested: 1) Officer C. Breckner both provide property receipt
and conduct HER own investigation (e.g. with B1 Ad-Seg
property officer/R&R.) 2) Full reimbursement (\$1,044.) OR
3) "Immediate" Sanctions (§CCR, 3160) upon State defendants.

Inmate/Parolee Signature: WILLIAMS, S. L. Date Submitted: 6.26.06

C. INFORMAL LEVEL (Date Received: 6.27.06) § 3084.6. (b)(1)
Staff Response: Your appeal is partially granted. Attached you
will find a copy of the property receipt you requested.
The rest of the loss is denied. I am not authorized to
conduct my own investigation. I released all 4 boxes and
t.v. at the same time for transfer with you to Ad-Seg.
I released all responsibility of your property at that time.
Staff Signature: Breckner Date Returned to Inmate: 6.28.06

D. FORMAL LEVEL
If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification Report, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.
On 06.28.06, at approx. 10:10 hrs., % BRECKNER, upon calling me out of my
cell--showed her (3) boxes w/labels discharged with me from (Ad/seg),
informing her box 1 of 4 is still "missing": verifying, too, (4) boxes
(I saw) were sent with me to (ad/seg.) (See Declaration(s)).

Signature: WILLIAMS, S. L. Date Submitted: 06.29.06

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

RECEIVED NOV 22 2006

RECEIVED
MAR 30 2006
INMATE APPEALS
BRANCH

RECEIVED AUG 07 2006

RECEIVED JUL 12 2006

Please Return
ALL original(s)

4

"EMERGENCY" PROPERTY
LOSS APPEALS
CONTINUED PAGE TWO

WILLIAMS E11488
FACILITY "C" 8.226
JUNE 22, 2006

LOG NO.

8 1700 hours, I was discharged from Ad/Seg
9 (B1.211) escorted by Officer(s) B. ANGUIANDO,
10 with (3) of (4) "reflected" labeled boxes. (I.e.,
11 box 1 of 4 is "missing" as verified by building
12 officer(s) and you (Officer BRECKNER) this day.)

13 BOX 1 of 4 (CONTAINS):

- 14 • My Legal ("Books") Library \$ 390.
- 15 • Evidence "Active Case" (9th Cir 06-55729)
- 16 • My Religious ("Books") Library. . . \$ 260.
- 17 • Two "Prescription" Eyeglasses. . . \$ 240.
- 18 • Seven "language" Dictionaries . . \$ 84.
- 19 • My T.V. (Control "bustyin") Inoperative &
- 20 Returned with NO coax cable . . \$ 70.*

21 *(depreciative value.)

22
23 Officer Breckner, On Monday, June 12, 2006, You
24 provided me NO "property" receipt and Ad/Seg
25 property officer indicate one was NEVER SENT.
26 (Nor attached to my property.)

NOTE: This is NOTICE upon COUNSEL for STATE
Official(s) per 9th Cir Rule 46-2.

Memorandum

5

Date : MAR 05 2007

To : INMATE WILLIAMS, E11488
Kern Valley State Prison

Subject : **APPEAL LOG # KVSP-O-06-02274**
SECOND LEVEL RESPONSE

APPEAL ISSUE: The appellant is alleging that when he was placed in Administrative Segregation (ASU) on June 22, 2006, the entirety of his property did not follow him to ASU. The appellant alleges Kern Valley State Prison (KVSP) Correctional Officer Breckner lost his property. The appellant refused to sign the CDC-1083 Inventory Form (attached). The appellant is asking for Officer Breckner to provide her property receipt and conduct an investigation into this appeal, reimbursement in the amount of \$1,044.00 or immediate sanctions against state defendants.

INTERVIEW: Correctional Sergeant J. Harden interviewed the appellant at the first level of review on August 2, 2006. The appellant was afforded ~~for~~ opportunity to address the issues of this appeal, and provide further information and documents to support his appeal issues. The appellant stated he would give the state a break by reducing his reimbursement request to \$300.00.

REGULATIONS: The rules governing this issue are:

- California Code of Regulations (CCR), Title 15, Article 9, Section 3190, Property
- CCR, Article 9, Section 3191 (c) (1) – (5), Property Registration and Disposition
- CCR, Section 3193, Liability
- Departmental Operations Manual (DOM) Section, 54030, Inmate Property

APPEAL RESPONSE: Correctional Counselor II W. Adams, Appeals Coordinator, was assigned to investigate this appeal at the Second Level of Review. All submitted documentation and supporting arguments have been considered. Additionally, an examination has been conducted regarding the claim presented, and evaluated in accordance with the CCR, and the DOM. It is noted that this appeal is overdue for response due to lack of available staff. The appellant was notified via written correspondence of the delay.

In reviewing the appeal and the attached documents, CCII Adams determined that the appellant did not cooperate in the inventory process when he was placed in ASU. The appellant has failed to provide receipts or other documents proving the appellant's legal ownership of allegedly lost property listed in his appeal. Officer Breckner has provided the appellant with a copy of the CDC-1083 that the appellant has refused to sign.

6

WILLIAMS, E11488
CASE NO. KVSP-O-06-02274
Page 2 of 2

California Code of Regulations, Title 15, Section 3193, Liability, states in part, "*The department does not accept liability for the loss or destruction of personal property in the inmate's possession or control at the time of any willful act by the inmate, such as escape, which exposes such property to loss or theft before it can be recovered and controlled by staff.*" CCII Adams determined that the appellant was given the opportunity to note discrepancies with his property at the time of ASU placement but refused to cooperate with the officers. The CDC-1083 Inventory Form presented to the appellant (attached) clearly indicates in the box entitled "*To be signed upon return to the inmate*" the admonishment, "**I have received all the above listed personal property or have noted any discrepancies below**" was not heeded by the appellant, nor did the appellant cooperate with the process by noting any discrepancies; therefore, no liability for the alleged loss of property will be accepted by the KVSP.

CCII Adams notes that appellant has not provided any evidence beyond his assertion that property was lost to support his allegations. The appellant has not cooperated in a meaningful way to note specific missing property on the CDC-1083 form.

DECISION: Based on the aforementioned, this appeal is **PARTIALLY GRANTED** at this level of review. The appeal is denied in that the appellant will not receive reimbursement. Staff discipline is outside the scope of the appeals process; therefore no sanctions will be assessed against an employee at the request of an inmate. The appellant has failed to cooperate in assessing and communicating the exact loss he sustained; therefore no compensation will be made for property the appellant has not proved he lost. The appeal is granted in that Officer Breckner supplied the appellant with a copy of the CDC-1083 he requested.

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


C. J. CHRONES
Chief Deputy Warden
Kern Valley State Prison

RECEIVED AUG 07 2006

8

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS & REHABILITATIONS
KERN VALLEY STATE PRISON
DELANO II

WEDNESDAY, AUGUST 02, 2006

TO B. GRICEWICH / C. PFEIFFER
Appeal Coordinators

WILLIAMS E11488
FCB8 226L

Re: Abandonment / Deliberate Destruction
Of Legal / Personal Property

LOG NO.: KVSP-0-

This Appeal Meets The PLRA Requirement Within
The Meaning of:

- [V] BOOTH V. CHURNE, 121 S. Ct. 1819 (2001)
- [J] BROWN V. VALOFF, 422 F.3d 929-30 (9th Cir. 2005)
- [V] NGO V. WOODFORD, 403 F.3d at 624-25 (9th Cir. 2005)

SCREEN OUT IS ERR as based UNREASONABLE, being

- Officer C. BRECKNER could only furnish a copy of "property receipt" apparently adua misplaced
- Ad/Sec Property Officer "neither" inventoried property nor upon discharge provided any receipt
- NO "CDC 143" administratively "exist".

However, with respect to the State and district court; I've REDUCED (only administratively) damages from (\$1044.00) to (\$300.) in which, to demonstrate that the PLRA (§1997e(c)) provides NO intent nor motive for the State to resolve and remedy appeals.

DATED: 8/02/06

Respectfully submitted,


Shadale L. WILLIAMS

cc: File

1 WILLIAMS, E11488
2 FC B800000226L

3
4 STATE OF CALIFORNIA
5 DEPARTMENT OF CORRECTIONS & REHABILITATIONS
6 KERN VALLEY STATE PRISON-DELANO. II

7
8 FEBRUARY 26, 2007

9
10 Appeal Number: KVSP-0-06-02274

11
12 Subject: 2nd Attempt to Resolve

13
14 To: Assigned Staff Reviewer Appeals
15 Coordinator

16
17
18 NOTICE TO RESOLVE IS HEREBY
19 GIVEN that the above-entitled appeal is
20 not just one of deliberate destruction
21 and neglect of personal property but, too,
22 "staff misconduct" thereby. (Your office
23 REFUSED to incorporate the multitude of
24 SIGNED declarations in this matter.)
25

26
27
28

1 RESOLVE, APPEAL 2nd NOTICE
2 CONT. : PAGE TWO

3
4 I truly, believe it is in the in-
5 terest of state correctional official(s) with
6 respect to the Calif Attorney Gen's Office,
7 and the department of corrections that
8 this Appeal go no further this administration.
9

10 WHEREFORE, I Agree —

11 1) Reimbursement in the admini-
12 strative amount of \$100.⁰⁰ :

13 2) (By Memorandumper Appeal) To
14 be permitted to purchase "Non-Clear"
15 previously approved products as follows (A
16 typewriter word processor; CD/CASSETTE I AM I
17 FM BOOMBOX w/HEADPHONES; And HOT POT).

18 And that I, upon my RELEASE, donate these
19 items to WHOM I CHOSE not to the State.

20 And now, that these item(s) AGREED to, in-
21 which to relieve any liability to the state.
22

23 DATED: 2.26.07

24 Respectfully submitted,

25
26 cc: File, I/M

27 Wm ¹¹¹¹ #8.1.

28 Shadale L. WILLIAMS, Appellant



State of California

Department of Corrections

Memorandum

Date : December 19, 2006

To : WILLIAMS, E11488
ECB800000000226L

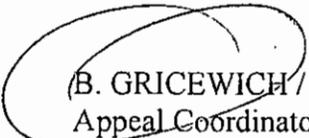
Log Number: KVSP-O-06-02274

Subject: **EXCEPTIONAL DELAY IN REVIEW OF APPEAL**

This is to notify you that the due date on the above referenced appeal has been extended for the following reason:

- Unavailability of the appellant, or staff or inmate witness.
- Complexity of the decision, action, or policy.
- Necessary involvement of other agencies or jurisdictions.

This notification is required per California Code of Regulations, Section 3084.6(b)(6). The new estimated completion date is 3-5-07.


B. GRICEWICH / C. PFEIFFER / W. ADAMS
Appeal Coordinator

INMATE APPEAL ASSIGNMENT NOTICE

To: INMATE WILLIAMS, E11488
Current Housing: FCB800000000226L

Date: November 29, 2006

From: INMATE APPEALS OFFICE

Re: APPEAL LOG NUMBER: KVSP-O-06-02274

ASSIGNED STAFF REVIEWER: APPEALS COORDINATOR
APPEAL ISSUE: PROPERTY
DUE DATE: 12/20/2006

Inmate WILLIAMS, this acts as a notice to you that your appeal has been sent to the above staff for SECOND level response. If you have any questions, contact the above staff member. If dissatisfied, you have 15 days from the receipt of the response to forward your appeal for THIRD level review. Third level appeals are to be mailed directly to:

Chief of Inmate Appeals
Department of Corrections
P. O. Box 942883
Sacramento, CA 94283-0001

13

RE: Screening at the FIRST Level

July 25, 2006

WILLIAMS, E11488
FCB800000000226L

Log Number: KVSP-O-
(Note: Log numbers are not assigned to screen out appeals, or informal level appeals)

The enclosed documents are being returned to you for the following reasons:

Your property appeal is incomplete. You must attach legible copies of all documents relative to ownership and loss/destruction of the property. For example: the Property Inventory Sheet, the CDC 143, Property Transfer Receipt, the cell search slip, and receipt(s).

Why have you attached Exhibit A? It has no relevance to this appeal.

B. Gricewich

B. GRICEWICH / C. PFEIFFER
Appeal Coordinator

NOTE: Failure to follow instruction(s) will be viewed as non-cooperation and your appeal will be automatically dismissed pursuant to CCR 3084.4(d). This screening decision may not be appealed. If you believe this screen out is in error, please return this form to the Appeals Coordinator with an explanation of why you believe it to be in error, and supporting documents. You have only 15 days to comply with the above directives.

PERMANENT APPEAL ATTACHMENT – DO NOT REMOVE

RECEIVED AUG 07 2006

14

Memorandum

Date : September 10, 2006

To : Inmate Williams
E11488 / FCB8-226

Subject : **APPEAL LOG # KVSP-O-06-02274
FIRST LEVEL RESPONSE**

Appeal Decision: PARTIALLY GRANTED

Appeal Issue: PROPERTY

Appeal Response: Your appeal, the attachments and the California Code of Regulations (CCR) Title 15 have been reviewed.

You contend that upon release from B-1 Administrative Segregation Unit (ASU) you were missing one box of property.

On September 6, 2006 you were interviewed by J. Harden, Sergeant, regarding your appeal. You were afforded the opportunity of further explaining your issue and to provide any supporting evidence or documents. You are requesting to have mutiple items returned to you or a monitary amount paid in the amount of \$300. The Items you state are missing are your legal library, evidence on an active case religious books, two prescription eye glasses, and a television control.

During the course of the interview with Inmate Williams, he stated he was doing the state a favor by reducing the amount of money he was requesting from \$1044 to \$300 and I should just pay the money. Upon further investigation, I discovered that upon intake into B-1 ASU, there were four boxes of property loged in the property log book. I later discovered that property had been issued to Williams as he had an active case with the courts. The remaining property was condensed down to three boxes that was given to him upon his release from ASU.

Based on the aforementioned, your appeal is PARTIALLY GRANTED at the First Level. If you are dissatisfied with this decision, you may appeal to the Second Level by following the instructions on your appeal form.

J. HARDEN
B-1 ASU Sergeant 3rd Watch
Kern Valley State Prison

NATE DILL, JR.
Associate Warden, Housing
Kern Valley State Prison

Memorandum

15

Date : October 5, 2006

To : Inmate Williams
E11488 / FCB8-226

Subject : **APPEAL LOG # KVSP-O-06-02274**
FIRST LEVEL RESPONSE

Appeal Decision: PARTIALLY GRANTED

Appeal Issue: PROPERTY

Appeal Response: Your appeal, the attachments and the California Code of Regulations (CCR) Title 15 have been reviewed.

You contend that upon release from B-1 Administrative Segregation Unit (ASU) you were missing one box of property.

On September 6, 2006 you were interviewed by J. Harden, Sergeant, regarding your appeal. You were afforded the opportunity of further explaining your issue and to provide any supporting evidence or documents. You are requesting to have all your property returned to you or a monetary amount paid in the amount of \$300. The items you state are missing are your legal library, evidence on an active case religious books, two prescription eye glasses, and a television control.

During the course of the interview with Inmate Williams, he stated he was doing the state a favor by reducing the amount of money he was requesting from \$1044 to \$300 and I should just pay the money. Upon further investigation, I discovered that upon intake into B-1 ASU, there were four boxes of property logged in the property log book. I later discovered that property had been issued to Williams as he had an active case with the courts. The remaining property was condensed down to three boxes that was given to him upon his release from ASU. Williams request to have all his property returned to him is Granted as his property was reduced to three boxes upon him being issued his legal documents and ASU allowable property. Williams request for full reimbursement for the items stated above is Denied.

Based on the aforementioned, your appeal is PARTIALLY GRANTED at the First Level. If you are dissatisfied with this decision, you may appeal to the Second Level by following the instructions on your appeal form.

Appeal Log #KVSP-O-06-02274
Inmate Williams, E11488

16

Page 2



J. HARDEN
B-1 ASU Sergeant 3rd Watch
Kern Valley State Prison



NATE DILL, JR.
Associate Warden, Housing
Kern Valley State Prison

17

APPENDIX COVER PAGE



APPENDIX

Description of this Appendix:

*DECLARATION(S) IN SUPPORT OF
STAFF MISCONDUCT (TO DIRECTOR OF
CDCR)*

Number of pages to this Appendix: 17 pages.

JURISDICTION: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- State Circuit Court
- United States Supreme Court
- Grand Jury

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS & REHABILITATIONS
KERN VALLEY STATE PRISON
DELANO II

SHADALE L. WILLIAMS Log No. FC-06-06-0019
(#E11488), KVP-FCP-06-06-0280
Defendant,

✓

DECLARATION OF SHADALE
L. WILLIAMS AND
SUPPORTIVELY IN HIS
DEFENSE

CHIEF DISCIPLINARY
OFFICER F. B. HAWS,
Superior Respondent.

WARDEN CHRONES

I, Shadale L. WILLIAMS (#E11488),
hereby, declare the following:

1. I am an inmate confined at
Kern Valley State Prison. (Facility C, Bldg #8.)

2. I am NOT a participant in the
EOP nor CCCMS level of care.

3. On JUNE 12, 2006, between 0720
- 0730 hours, having observed Correctional
Officer M. LOZANO disputing and arguing
with inmates (, coming in and leaving the
dining hall.)

///
///
///

1 4. My table was called for Kitchen
2 release and pod housing return:

3 5. As is my permitting (since: Feb-
4 ruary 27, 2006.) (See attached EXH A.),
5 I have taken out my "diabetic" milk, one
6 of two milks issued to me (within the
7 dining Kitchen), to be consumed later:

8 6. Upon approaching, Officer Lozano
9 who deliberately placed himself positioned
10 in the path of on coming inmates, in which
11 to inspect cups, hands and pockets;

12 7. replied (to me.): "You're not
13 taking that milk out -- leave it on the
14 table!"

15 8. (, before I could get two words
16 out.) Officer(s) BRECKNER and S.
17 LOPEZ (, standing aside Officer Lozano,
18 his left.), stated: "Oh, he's a diabetic he
19 can take that out" (in unison.):

20 9. Officer D.R. CASTRO (, standing
21 further left.) stated: "- Yeah, it's OK."

22 10. Officer Lozano (, positioned
23 himself affirmatively before me.) stated:
24 "I say, you're not taking it out!"
25

1 11. Upon which, MIKE A. TOSCANO
2 (#E30459) stated: "Hey officer,
3 he's a diabetic -- he's been taking that
4 out as long as I can remember."

5 12. After disputing my health rights,
6 I layed (placed.) the milk on the table
7 before him; but

8 13. it was not until, I informed
9 Officer Lozano I would file paperwork
10 on him (, then turn from him.) he drew
11 his MK-90 (OC) Pepper Spray and dis-
12 charged it to the side of my face and
13 head;

14 14. I fled to the rotunda: where
15 Officer Lozano pursued me -- cuffed me
16 -- emptied his "OC" Pepper Spray into my
17 face --

18 15. Kicked me in the side of the
19 head "twice" -- spit on me -- stepped
20 on my glasses; and

21 16. replied: "What's gonna become
22 of your civil suits now? -- too, you'll
23 see, if you get your diabetic meals
24 from the 'hole' -- that where your
25 going.
26 1))

(21)

17. (In the 'hole : B1 AD-5EG.) Upon arrival, on JUNE 12, 2006, I both initiated a "foodstrike" and preached the Word of God (, night and day to the men.) until my discharge: JUNE 22, 2006 and ate my first meal on Facility "C".

18. I have attempted to initiate the "Polygraph Examination" (§ 3293.(a)) process with 'negative' (KVSP) participation:

19. ILL; the U.S. Ninth Circuit, Court of Appeals; and the U.S. Central District Court^{2/} is aware of this incident.

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

Executed this Saturday, JUNE 24, 2006, at Kern Valley State Prison.

W. S. L.
DECLARANT (E11488)

(See Attached Supportively)

-
1. 06-55729 "Active Case"
 2. 03-9548-RSWL(MAN) "Active Case"

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS & REHABILITATIONS
KERN VALLEY STATE PRISON
DELANO II

SHADALE L. WILLIAMS
(#E11488),
Defendant,

LOG No.: FC-06-06-0019
KVP-FCP-06-06-0280

✓

CHIEF DISCIPLINARY
OFFICER F.B. HAWS,
Superior Respondent.

DECLARATION OF E.
JOHNSON (#T37236) IN
SUPPORT OF THE DEFENSE
OF SHADALE L. WILLIAMS
WARDEN CHRONES

I, E. JOHNSON (#T37236), hereby deposed
WILL STATE, and now, declare:

1. I am an inmate confined at Kern Valley
State Prison. (Facility C, Bldg # 8): And,

2. I was physically present at the time
of this above-entitled incident.

3. I saw inmate WILLIAMS (#E11488),
being "Peppered Sprayed" as he entered into
the rotunda of Building # 8:

4. I saw inmate WILLIAMS, at the
command of Officer M. LOZANO "immediately"
'go down to the ground' and upon;

///
///
///

1 5. being handcuffed and motionless;

2 6. I observed Officer M. LOZANO
3 making 'various' Kicking motions to the
4 still body of MR. WILLIAMS; And

5 7. 'walking back and forth' to the
6 yard door observing through the window;

7 8. then returned back to MR. WILLIAMS
8 where he (Officer Lozano) "emptied" his
9 (OC) "Pepper Spray" canister in the face
10 of MR. WILLIAMS -- for no reason;

11 9. while 'snatching' him around, on
12 the ground in the 'prone position';

13 10. I don't know what the 'other
14 [cops]' were at as they were out of
15 sight; but

16 11. It took a long time for response to
17 come.

18 I declare under the penalty of perjury
19 that the following is true and correct.

20 Executed this 28th day of June

21 →, 2006, at Delano, California 93216-5103.

22
23 
24 (Declarant)

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS & REHABILITATIONS
KERN VALLEY STATE PRISON
DELANO II

SHADALE L. WILLIAMS LOG NO.: FC-06-06-0019
(#E11488), KVP-FCR-06-06-0280
Defendant,

✓
CHIEF DISCIPLINARY OFFICER F. B. HAWS,
Superior Respondent. DECLARATION OF R.
BLACKWELL (#E90645)
IN SUPPORT OF THE
DEFENSE OF SHADALE
L. WILLIAMS

WARDEN CHRONES

I, R. BLACKWELL (#E90645), hereby
deposed WILL STATE, and now, declare:

1. I am an inmate confined at
Kern Valley State Prison. (Facility C, Bldg #8):

2. And, I was physically present
at the time of this above-entitled incident.

3. I having read the "Declaration
of Shadale L. WILLIAMS And Supportively
In His Defense" dated: Saturday, June
24, 2006; and

4. consisting of four (4) pages:

5. nineteen (19) numeral points;

1 hereby now, declare that statements
2 declarative to be a true and correct
3 account of incidents; however,

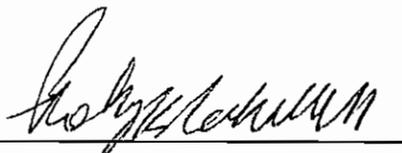
4 6. I was NOT a witness to num-
5 berals: one, eleven, and sixteen
6 through nineteen; as

7 7. I was either both "earshot" or
8 out of "eyesight" or having "no
9 knowledge" of these details.

10 8. I FURTHER, declare:
11 That the "use" of and "methods" of
12 Pepper Spray has become an intentional
13 and personal employment of both revenge
14 and retaliations by state officials at
15 (KVSP) gained over inmates.

16 I declare under the penalty of per-
17 jury the following to be true and correct.

18 Executed this 28th day, of June
19 →, 2006, at Delano, California 93216.

20
21 
22 _____
23 DECLARANT

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT 804 SENT TO RECORDS ON _____ BY _____

CDC NUMBER E-11488	INMATE'S NAME WILLIAMS	RELEASE/BOARD DATE Life	INST. KVSP	HOUSING NO. EES1-211L	LOG NO. SC-06-06-0019
VIOLATED RULE NO(S). E-6005(a)		SPECIFIC ACTS BEHAVIOR WHICH MIGHT LEAD TO VIOLENCE	LOCATION TO-"C" DINING HALL	DATE 6/12/06	TIME 0728
CIRCUMSTANCES					

On June 12, 2006, at approximately 0728 hours, while conducting my duties as Facility C, Building 8, Floor Officer, I was monitoring the morning meal for Building 8, as I called for the next two(2) tables to get up, Inmate WILLIAMS, E-11989, F088 22L, was walking back to the building, I observed that Inmate WILLIAMS still had his milk in his cup. I told WILLIAMS that he had to throw the milk carton away, WILLIAMS became upset and began to yell, WILLIAMS stated, "We can play games all day and you are about to have a problem." WILLIAMS dropped his cup and milk carton and made fists. I stepped back and ordered WILLIAMS to stop, with negative results. I pulled my M4-90 (OC) Pepper Spray and sprayed WILLIAMS in the facial area. WILLIAMS stepped away into the rotunda of Building 8. I activated my Personal Alarm. Correctional Officer, I Sanchez and I followed WILLIAMS. As WILLIAMS reached "A" Section door, he stopped and turned to face us. Officer Sanchez and I gave several orders to WILLIAMS from the Dining to the rotunda, to get down, with negative results. Inmate WILLIAMS took a step towards us and I utilized my M4-90 OC Pepper Spray for a second time, with another 3-4 second burst. WILLIAMS stopped and turned away from us and got down on his stomach in front of "A" Section door. Officer I. Sanchez placed WILLIAMS in Handcuffs awaiting arrival of responding Staff. Inmate WILLIAMS was escorted out of the Unit by Correctional Officers A. Gomez and J. Negrete without further incident.

(CONTINUED ON PART C)

REPORTING EMPLOYEE (Typed Name and Signature) M. Lozano, Correctional Officer	DATE 6/13/06	ASSIGNMENT F088-Floor Officer	RDO'S S/M
REVIEWING SUPERVISOR'S SIGNATURE R. Bennett, Correctional Sergeant	DATE 6/13/06	<input type="checkbox"/> INMATE SEGREGATED PENDING HEARING	
CLASSIFIED <input type="checkbox"/> ADMINISTRATIVE <input checked="" type="checkbox"/> SERIOUS	OFFENSE DIVISION: E-3	DATE 6/13/06	CLASSIFIED BY (Typed Name and Signature) H. Tyson, Facility Captain
HEARING REFERRED TO		<input type="checkbox"/> HO <input checked="" type="checkbox"/> SHO <input type="checkbox"/> SC <input type="checkbox"/> FC	

COPIES GIVEN INMATE BEFORE HEARING

<input type="checkbox"/> CDC 115	BY: (STAFF'S SIGNATURE)	DATE	TIME	TITLE OF SUPPLEMENT
<input type="checkbox"/> INCIDENT REPORT LOG NUMBER:	BY: (STAFF'S SIGNATURE)	DATE	TIME	BY: (STAFF'S SIGNATURE)

HEARING

REFERRED TO CLASSIFICATION BPT/NAEA

ACTION BY: (TYPED NAME)	SIGNATURE	DATE	TIME
REVIEWED BY: (SIGNATURE)	DATE	CHIEF DISCIPLINARY OFFICER'S SIGNATURE	DATE
BY: (STAFF'S SIGNATURE)		DATE	TIME

COPY OF CDC 115 GIVEN INMATE AFTER HEARING

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT - PART C

PAGE 3 OF 2

CDC NUMBER E-11488	INMATE'S NAME WILLIAMS	LOG NUMBER PC-05-05-0019	INSTITUTION KVSP	TODAY'S DATE 05/12/05	
<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

INMATE WILLIAMS READING LEVEL IS/IS NOT GREATER THAN 4.0. INMATE WILLIAMS DID/DID NOT DISPLAY BIZARRE, UNUSUAL, UNCHARACTERISTIC BEHAVIOR, AND HE IS/IS NOT A PARTICIPANT IN THE MENTAL HEALTH DELIVERY SYSTEM, AT THE ADJ LEVEL OF CARE.

(END OF RVR)

<input type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE	SIGNATURE OF WRITER M. Lozano, Correctional Officer 2/W	DATE SIGNED 5/12/05
	GIVEN BY: (Staff's Signature)	DATE SIGNED

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT - PART C

PAGE 2 OF 3

CDC NUMBER E-11488	INMATE'S NAME WILLIAMS	LOG NUMBER PC-06-06-0019	INSTITUTION KVSP	TODAY'S DATE 6/19/06
<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 _____				

I request the following individuals to be present at my hearing:

NAME:	TITLE:	AREA:
S. Lopez	C/O	FCB8
Burch	Inmate/D-27328	FCB8-128L
D. Castro	C/O	FCB8
M. Toscano	Inmate/E-30459	FCB8-123L
C. Breckner	C/O	FCB8

On June 22, 2006, at approximately 0800am hours I contacted C/O Breckner. I explained that I was doing a Investigative Report for Inmate WILLIAMS in regards to an incident on June 12, 2006. I explained to her that WILLIAMS had her listed as a Staff Witness. I read the incident report to her and asked her to explain to me what she seen that day. C/O C. Breckner stated, "I was next to C/O M. Lozano and C/O I. Sanchez in the chow hall nearest to Building #8. I heard C/O M. Lozano request Inmate TOSCANO to throw away his coffee. TOSCANO stated "But I always take a extra coffee back to my cell. Lozano stated, "Throw it out". TOSCANO turned back to the trash can. TOSCANO continued to complain TOSCANO engaged me in conversation about how petty he felt this was. I was concentrating on TOSCANO, but I did hear C/O Lozano instruct WILLIAMS to throw away his milk. I remember hearing WILLIAMS saying to Lozano that he was going to have a problem. He was a Diabetic and he was allowed to have extra milk. My focus was on TOSCANO, so I didn't see what transpired, but I heard Lozano tell WILLIAMS to back away. WILLIAM had raised his voice and was upset about his milk. At this point, Lozano and WILLIAMS conversation escalated to the point that Lozano ordered WILLIAMS to get down and then I heard the sound of spray. WILLIAMS-Lozano and Sanchez went through the door to Building #8 and the door closed behind them. I moved toward the center of the chow hall to assist with the remaining Inmates.

On June 22, 2006, at approximately 0830 hours I contacted C/O D. Castro. I asked him if he was aware of the incident on June 12, 2006. C/O Castro replied that he was on vacation that day, he had no knowledge of this incident. I asked C/O D. Castro if he could explain to me about Inmate WILLIAMS medical condition. C/O Castro said, " Inmate WILLIAMS is a documented Diabetic and Vegetarian." WILLIAMS did possess paperwork to validate both conditions. C/O D. Castro also stated that Inmate WILLIAMS had told him previously that an extra milk was part of the Diabetic lunch. Castro said the first time WILLIAMS told him he allowed him to take it back to his cell. Castro said that he called the MTA's office to find out if this was true and was told that extra milk was not part of a Diabetic food program.

On June 22, 2006, at approximately 0845 hours, I contacted Inmate BURCH, D-27328, FCB8-128L (Black Mac Rep) I informed BURCH that I was the Investigative Assistant for WILLIAMS. I asked BURCH how long WILLIAMS had lived in the building. BURCH replied that WILLIAMS had been in building #8 for approximately (2) months. BURCH stated that WILLIAMS normally receives an extra lunch (Peanut Butter, Jelly and an apple) this includes an extra milk. WILLIAMS is a Diabetic. I asked BURCH if he needed me to read the report and refresh his memory BURCH replied no, I remember the day. I was leaving the chow hall with WILLIAMS and TOSCANO. I was standing in
(SEE ATTACHED PART C)

<input type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE	SIGNATURE OF WRITER Correctional Officer, E.S. Flippo (E.S.)	DATE SIGNED 6-21-06
	GIVEN BY: (Staff's Signature)	DATE SIGNED
		TIME SIGNED

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT - PART C

PAGE 3 OF 3

CDC NUMBER E-11488	INMATE'S NAME WILLIAMS	LOG NUMBER PC-06-06 0019	INSTITUTION KVSP	TODAY'S DATE 6/19/06
<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				

the rotunda near the office when I heard Lozano spray him. Previous to this Lozano had stopped WILLIAMS and told him to throw away the extra food. WILLIAMS said "I take this out every day, I'm a Diabetic" Lozano stated, "I don't care what you is, throw it away." WILLIAMS was standing at the table, putting his Diabetic lunch inside his regular lunch, while explaining his medical condition to Lozano. C/O Lozano pulled out his spray and sprayed WILLIAMS. I left to 'C' section, not wanting to get sprayed. BURCH did share with me that WILLIAMS does speak loudly, and does have a tendency to be excitable when he talks about his medical condition.

On 06/22/06, at approximately 0900 hours, I contacted Inmate M. TOSCANO, E-30459, FCBS-123L. TOSCANO stated, "I remember the incident well. This is what happen. I was walking out with a cup of coffee, out of the chow hall. This new Officer, I don't remember his name, I explained to him, I always take my coffee back. This Officer stated "Not while I'm here, you aren't." I walked back to empty my coffee to the trash. WILLIAMS was walking behind me, the same Officer told him to throw away his milk. WILLIAMS told this Officer "I always take a extra milk out, it's part of my diabetic program". The Officer then said "Your not going to take it out while I'm here". WILLIAMS said "I'm very passive, this is O.K., I will go back to my cell and write this up. Your denying me what I'm entitled to have because I'm Diabetic and I have been taking out milk since day one." WILLIAMS was just speaking to him in a very passive voice he was very calm and collected. I believe this officer's name was Lozano, he was new that day to this Building. After WILLIAMS told Lozano this is O.K. we will handle this in an appropriate way. Lozano pulled his spray out of the blue-no alarm-no warning-just out of the blue sprayed WILLIAMS while WILLIAMS was saying how passive he was. C/O Lozano escorted WILLIAMS out of the chow hall-proned him out inside the rotunda and sprayed WILLIAMS again. He was handcuffed and taken out. I was down inside the chow hall when this happen.

ALL PARTIES INVOLVED HAS BEEN CONTACTED AND INTERVIEWED "YES"

- REPORTING EMPLOYEE REQUESTED AT HEARING? ?YES
- STAFF WITNESS'S REQUESTED AT HEARING? ?YES
- INMATE WITNESS'S REQUESTED AT HEARING? ?YES
- INTERVIEWING EMPLOYEE REQUESTED AT HEARING? ?NO

<input type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE	SIGNATURE OF WRITER Correctional Officer, E.S. Filippo (C.E.)	DATE SIGNED 6-19-06
	GIVEN BY: (Staff's Signature)	DATE SIGNED

APPENDIX COVER PAGE



APPENDIX

Description of this Appendix:

DECLARATION(S) IN SUPPORT OF STAFF
MISCONDUCT RESULTING IN DIS-
STRUCTION OF PROPERTY (TO DIRECTOR
OF CDLR)

Number of pages to this Appendix: 12 pages.

JURISDICTION: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- State Circuit Court
- United States Supreme Court
- Grand Jury

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SHADALE L. WILLIAMS E11488
KERN VALLEY STATE PRISON
P.O. BOX 5103 FC 8.226
DELANO, CA 93216-5103

(Attorney of Record, Pro se)

UNITED STATES COURT OF APPEAL
NINTH CIRCUIT OF CALIFORNIA

SHADALE L. WILLIAMS,
Plaintiff-Appellant,

No.: 9th Cir. 06-55729
CX No.: CV04-2127-DOC

✓.

WARDEN M. YARBROUGH,
et al.,
Defendants-Appellees.

DECLARATION OF
SHADALE L. WILLIAMS
IN SUPPORT OF
MOTION FOR COURT
ORDERED SANCTIONS
UPON THE DE-
FENDANTS-APPELLEES

I, SHADALE L. WILLIAMS, declares
as follows:

I am an inmate (litigant) confined
within the California Department of Correc-
tions, at Kern Valley State Prison (KVSP)
under the jurisdiction of the California
Department of Corrections and Re-
habilitation ("CDCR").

1 I. I am the plaintiff-Appellant
2 in the above-entitled cause before this
3 high Circuit Court; and that

4 II. on June 12, 2006, I was a
5 victim of an unlawful attack and use
6 of "excessive" force of violence for
7 both 1) having filed this civil action.
8 And 2) asserting my diabetic care and
9 treatment rights. (See Declarations
10 attached as "EXH A" on Motion For
11 Court Ordered Sanctions Upon The
12 Defendants-Appellees.)

13 III. on June 12, 2006, upon
14 arrival at (KVSP-B1 AD-SEG) the
15 "segregated" housing unit":

16 IV. while being held in the "hold-
17 ing cage;" I informed (2nd/Watch^v)
18 property officer that within the (4)
19 boxes of property that arrived with
20 me at approximately 1140 hours:

21
22
23 1. This "property (officer)" deliberately con-
24 ceals his signia badge and name-tag; however,
25 facility "B" Program Office WILL indicate on
26 the "Staff/Assignment Sign-in log Roster"
27 this officials identity.

1 I had an "active" 9th Circuit
2 Court case; and that file "immediately"
3 needed to be released to me; as well as
4 1) my legal lawbooks and 2) (dia-
5 betic) eyewear; upon which, he replied:

6 VI. : "Oh, your MR WILLIAMS!
7 -- the problem! I don't care
8 about what you need -- except
9 without a Court Order?!" "Your
10 not getting it." "You guys (he
11 refers to the many state officials about
12 me and the 'day-sergeant.') where
13 is his property -- this is it over
14 here?" "MR WILLIAMS, what is
15 the case title you refer?" (Upon
16 my informing him. I was "immediately"
17 removed from the holding cage; too,
18 observing him going through my boxes
19 of property.)

20 VII. On June 14, 2006, this
21 property officer inquired of me whether
22 or not I possessed my property 'in-
23 ventory slip' -- I informed him "No."

24 VIII. On June 22, 2006, I was
25 released from (BI AD-5E6); yet in
26 a 'hunger-strike (10th day);' and that

IX. without box 1 of 4:
(, which contained 'ironically')

- My Legal ("Books") Library
(Valued) \$ 390.
- Evidence "Active Case" (9th Cir
06-55729²¹) (Valued) \$ Default
- My Religious ("Books") Library
(Valued) \$ 260.
- Two "Prescription" Eyeglasses
(Valued) \$ 240.
- Seven "Language" Dictionaries
(Valued) \$ 84.

(See EXH "B" on Motion For Court
Ordered Sanctions Upon The Defendants -
Appellees.)

X. I am "currently" unable to
proceed in this civil action having been
legally "frustrated" and "unethically
obstructed" by state ceater hinderance
and impediments by state agencies
representative on behalf of appellees

I declare under the penalty of per-
jury that the forgoing is true and correct.

Executed this day, of
July 01, 2006, at Delano, California.

Wm "11
7/1/06
(Declarant/Custody)

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

LOCATION: INSTITUTION/Parole Region	Log No.	Category
1. _____	1. _____	_____
2. _____	2. _____	_____

You may appeal any policy, action or decision which has a significant adverse affect 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 <u>WILLIAMS, S. L.</u>	NUMBER <u>E11488</u>	ASSIGNMENT <u>AD-SEG (B1) DISCHARGE</u>	UNIT/ROOM NUMBER <u>C8 226</u>
--------------------------------	-------------------------	--	-----------------------------------

A. Describe Problem: REIMBURSEMENT FOR "VARIOUS LOSS"
2 PROPERTY AND (9th CIR) U.S. COURT OF APPEALS
3 CS NO. 06-55729 AND/OR MOTION FOR "IMMED-
4 IATE" COURT ORDER SANCTIONS (9th CIR Rule
5 46-1)(CCR, § 3084.7.(e)(1)-(4) ("EMERGENCY"
6 PROPERTY APPEALS) (§§ 3190, 3193) (SAME.)
7 ~ On Thursday, June 22, 2006, at approximately
(SEE ATTACHED PAGE)

If you need more space, attach one additional sheet.

B. Action Requested: 1) Officer Breckner both provide property receipt
and conduct HER own investigation (e.g. with B1 Ad-Seg
property officer/R&R.) 2) Full reimbursement (\$1,044.) OR
3) "Immediate" Sanctions (§CCR, 3160) upon State defendants.

Inmate/Parolee Signature: Will #1, S. L. Date Submitted: 6.26.06

C. INFORMAL LEVEL (Date Received: 6.27.06) § 3084.6.(b)(1)

Staff Response: Your appeal is partially granted. Attached you
would find a copy of the property receipt you requested.
The rest of the loss is denied. I am not authorized to
conduct my own investigation. I released all 4 boxes and
t.v. at the same time for transfer with you to Ad-Seg.
I released all responsibility of your property at that time.

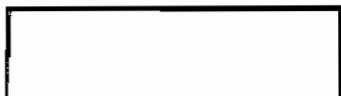
Staff Signature: Breckner Date Returned to Inmate: 6.28.06

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.

On 06.28.06, at approx. 10:10 hrs., % BRECKNER, upon calling me out of my
cell--showed her (3) boxes w/labels discharged with me from (Ad/seg);
informing her box 1 of 4 is still "missing": verifying, too, (4) boxes
(I saw) were sent with me to (ad/seg.) (See Declaration(s)).

Signature: Will #1, S. L. Date Submitted: 06.29.06

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



"EMERGENCY" PROPERTY
LOSS APPEALS
CONTINUED PAGE TWO

WILLIAMS E11488
FACILITY "C" 8.226
JUNE 22, 2006

LOG NO.

8 1700 hours, I was discharged from Ad/Seg
9 (B1.211) escorted by Officer(s) B. ANGUIANDO,
10 with (3) of (4) "reflected" labeled boxes. (I. e.,
11 box 1 of 4 is "missing" as verified by building
12 officer(s) and you (Officer BRECKNER) this day.)

13 BOX 1 of 4 (CONTAINS):

- 14 • My Legal ("Books") Library \$ 390.
- 15 • Evidence "Active Case" (9th Cir 06-55729)
- 16 • My Religious ("Books") Library . . . \$ 260.
- 17 • Two "Prescription" Eyeglasses . . . \$ 240.
- 18 • Seven "Language" Dictionaries . . \$ 84.
- 19 • My T.V. (Control "bustyn") Inoperative &
- 20 Returned with NO coax cable . . \$ 70.*

21 *(depreciative value.)

22
23 Officer Breckner, On Monday, June 12, 2006, You
24 provided me NO "property" receipt and Ad/Seg
25 property officer indicate one was NEVER SENT.
26 (Nor attached to my property.)

NOTE: This is NOTICE upon COUNSEL for STATE
Officials) per 9th Cir Rule 46-2.

(37)

INMATE'S NAME Williams	CDC NUMBER E11488	PRIVILEGE GROUP	INSTITUTION KVSP	DATE 6/12/06
PROPERTY INVENTORIED BY C. Breckner	TITLE 90	REASON FOR INVENTORY Ad Sec Placement		NUMBER 4

CANTEEN ITEMS	PERSONAL ITEMS	NON-EXPENDABLE ITEMS
<input type="checkbox"/> Cereal <input type="checkbox"/> Cocoa <input checked="" type="checkbox"/> Crackers box <input type="checkbox"/> Dry Meat <input type="checkbox"/> Health Food <input type="checkbox"/> Vitamins <input type="checkbox"/> Nuts <input type="checkbox"/> Tea <input type="checkbox"/> Soda <input type="checkbox"/> Jelly <input type="checkbox"/> Honey <input type="checkbox"/> Hot Sauce <p style="text-align: center;">Stationary Items</p> <input type="checkbox"/> Envelopes <input type="checkbox"/> Stamped Envelopes <input checked="" type="checkbox"/> Writing Tablets <input type="checkbox"/> Pencil Sharpener <input type="checkbox"/> Writing Paper <p style="text-align: center;">Hygiene Items</p> <input type="checkbox"/> Razor <input type="checkbox"/> Shaving Cream <input type="checkbox"/> Nail Clippers <input checked="" type="checkbox"/> Soap <input checked="" type="checkbox"/> Toothpaste <input type="checkbox"/> Baby Powder <input checked="" type="checkbox"/> Shampoo <input type="checkbox"/> Hair Grease/Gel <input type="checkbox"/> Perm Kit <input type="checkbox"/> Nail Polish <input type="checkbox"/> Makeup Ball <input type="checkbox"/> Mascara <p style="text-align: center;">Tobacco Items</p> <input type="checkbox"/> Pipe Tobacco <input type="checkbox"/> Other Tobacco <input type="checkbox"/> Tobacco Pouch <input type="checkbox"/> Cigarette Roller <input type="checkbox"/> Chewing Tobacco <input type="checkbox"/> Cigarette Lighter <input type="checkbox"/> Cigarette Case <input type="checkbox"/> Smoking Pipe <p style="text-align: center;">Other Items</p> <input type="checkbox"/> Immersion Heater <input checked="" type="checkbox"/> Bowl <input type="checkbox"/> Shoe Polish <input type="checkbox"/> Batteries <input type="checkbox"/> Cheese <input type="checkbox"/> Cookies <input type="checkbox"/> Creamer <input type="checkbox"/> Dry Drink Mix <input type="checkbox"/> Protein Supplement <input type="checkbox"/> Soup <input type="checkbox"/> Sugar Cubes <input type="checkbox"/> Instant Coffee <input checked="" type="checkbox"/> Peanut Butter 6oz <input type="checkbox"/> Chips <input type="checkbox"/> Pork Rinds <input checked="" type="checkbox"/> Top Ramen <input type="checkbox"/> Stamps <input type="checkbox"/> Greeting Cards <input type="checkbox"/> Stationary <input checked="" type="checkbox"/> Pens <input checked="" type="checkbox"/> Pencils <input type="checkbox"/> Tweezers <input checked="" type="checkbox"/> After Shave <input type="checkbox"/> Nail Polish <input type="checkbox"/> Soap Dish <input type="checkbox"/> Mouthwash <input type="checkbox"/> Talc <input checked="" type="checkbox"/> Conditioner <input checked="" type="checkbox"/> Deodorant <input type="checkbox"/> Mirror <input type="checkbox"/> Foundation <input type="checkbox"/> Blush <input type="checkbox"/> Other: lotion <input type="checkbox"/> Tumbler <input type="checkbox"/> Can Opener <input type="checkbox"/> Extension Cord Size: _____	<input type="checkbox"/> Photo Albums <input checked="" type="checkbox"/> Cassette Tapes <input type="checkbox"/> Religious Medallion <input type="checkbox"/> Chain G S <input type="checkbox"/> Watch G S <input type="checkbox"/> Prescription Glasses <input type="checkbox"/> Handkerchief <input checked="" type="checkbox"/> Magazines <input type="checkbox"/> Address Book <input type="checkbox"/> Shoe Horn <input type="checkbox"/> Brush <input type="checkbox"/> Cosmetic Bag <input type="checkbox"/> Photos <input type="checkbox"/> CDs <input type="checkbox"/> Ring G S <input type="checkbox"/> Earrings G S <input type="checkbox"/> Wallet <input type="checkbox"/> Sunglasses <input type="checkbox"/> Wash Cloth <input checked="" type="checkbox"/> Books <input type="checkbox"/> Calendar <input type="checkbox"/> Shaving Bag <input type="checkbox"/> Comb <input type="checkbox"/> Perm Rods <p style="text-align: center;">Clothing Items</p> <input type="checkbox"/> B/B Hat <input type="checkbox"/> Head Band <input checked="" type="checkbox"/> Shower Thongs <input type="checkbox"/> Sweat Pants <input type="checkbox"/> Tennis Shoes <input type="checkbox"/> Thermal Top <input type="checkbox"/> Bras <input checked="" type="checkbox"/> Gym Shorts <input type="checkbox"/> Slip <input type="checkbox"/> Watch Cap <input type="checkbox"/> Gloves <input type="checkbox"/> Slippers <input type="checkbox"/> Sweat Shirt <input type="checkbox"/> Raincoat <input type="checkbox"/> Thermal Pants <input type="checkbox"/> Panties <input type="checkbox"/> Athletic Supporter <p style="text-align: center;">Games</p> <input type="checkbox"/> Chess <input type="checkbox"/> Checkers <p style="text-align: center;">Other</p> <input type="checkbox"/> Chess <input type="checkbox"/> Checkers 2 toothbrushes 1 spike 1 wrap band 3 pairs prescription glasses 1 baby powder legal work 1 dictionary <p style="text-align: center;">Hobby Items</p> 4 religious books 4 legal books	<input checked="" type="checkbox"/> Televisions Operational <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Model: Philips SRN: PA1309B102 -missing power bu <input type="checkbox"/> CD/Cassette Player Operational <input type="checkbox"/> Yes <input type="checkbox"/> No Model: _____ SRN: _____ <input checked="" type="checkbox"/> Radio Operational <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Model: GE Super Rai SRN: 7-2887B MC <input type="checkbox"/> Musical Instruments Operational <input type="checkbox"/> Yes <input type="checkbox"/> No Type: _____ Model: _____ SRN: _____ <input type="checkbox"/> Typewriter Operational <input type="checkbox"/> Yes <input type="checkbox"/> No Model: _____ SRN: _____ <input type="checkbox"/> Fan Model: _____ <input type="checkbox"/> Lamp <input type="checkbox"/> Blow Dryer <input type="checkbox"/> Curling Iron <input type="checkbox"/> Pressing Comb <input type="checkbox"/> Electric <input type="checkbox"/> Hair D <input type="checkbox"/> Hair R <input type="checkbox"/> Calcul

TO BE SIGNED UPON INVENTORY OF THE INMATE'S PROPERTY		TO BE SIGNED UPON RETURN TO THE INMATE	
The above listed items constitute all of my personal property which I am authorized to retain.		I have received all the above listed personal property or have noted any discrepancy.	
INMATE'S SIGNATURE: ETS	DATE: 6/12/06	INMATE'S SIGNATURE:	DATE:
RECEIVED IN R&R BY:	INSTITUTION		

MIKE A. TOSCANO E 30459
KERN VALLEY STATE PRISON
P.O. BOX 5103 FC 8.123
DELANO, CA 93216-5103
[for]
SHADALE L. WILLIAMS

(Attorney of Record, Pro se)

UNITED STATES COURT OF APPEAL
NINTH CIRCUIT OF CALIFORNIA

SHADALE L. WILLIAMS,
Plaintiff-Appellant,

9th Cir. No.: 06-55729

CDC No.: (V04-2127-DOC

v.

WARDEN M. YARBROUGH,
et al.,
Defendants-Appellees.

DECLARATION OF MIKE
A. TOSCANO IN
SUPPORT OF THE
PLAINTIFF'S MOTION
FOR COURT ORDER
SANCTIONS

I, MIKE A. TOSCANO (#E 30459), hereby,
declare the following:

I am an inmate, confined within the
California Department of Corrections, at Kern
Valley State Prison (KVSP-DELANO II) under
the jurisdiction of the California Department of
Corrections and Rehabilitation ("CDCR").

I. I am not a party in the above-entitled action and make this declaration, based on my personal knowledge, in support of the Plaintiff's Motion For Court Ordered Sanctions. This declaration is, on behalf of the plaintiff, is within the meaning of Johnson v. Avery, 89 S. Ct. 747, 751 (1969); Title 15, CCR § 3163: And,

II. herein, agree within the meaning of F.R. Civ. P., Rule 30(a) to be deposed, based on my personal knowledge detailed herein, that:

III. I have personally known the plaintiff since (:2003) confined with him at Lancaster State Prison (CSP-LAC) and now, here at (KVSP) "DELANO II"; also, has continuously been his 'next door' neighbor; and in the day of question,

IV. On June 12, 2006, prior to the plaintiff being sent to ("Ad-5eg") he did maintain and posses "these" personal properties:

- The CITEBOOK (valued): \$ 34.95
- Fed Criminal Law Inmate Handbook (valued): \$ 59.95
- Fed Criminal Code and Rules (valued): \$ 44.95

- Fed Civil Judicial Procedure and Rules
(Valued): \$ 44.95
- The Criminal Law Handbook
(Valued): \$ 29.95
- The Prisoners' Self-help Litigation
Manual (Valued): \$ 39.95
- Secret Tools for Post-Conviction Relief
(Valued): \$ 39.95
- Representing Yourself in Court
(Valued): \$ 34.95
- The California Penal Code
(Valued): \$ 34.95
- The Law of Sentencing, Corrections, and
Prisoner's Rights (Valued): \$ 26.95 ;

And, it is "these" lawbook only that I know of for I have personally used them being that (KVSP) too, has "stripped" me of my own "personal" law library I had accumulated through my mother and brother.

V. I FURTHER declare,

VI. the plaintiff posses an extensive "personal" religious library, prescription glasses (he's without any "currently" as a diabetic.) and too, maintain several languagebook dictionaries.

VII. I declare, that on Thursday, June 22, 2006, upon his discharge and return to the housing unit (C8-C Pod) he only had in his possession "three" boxes when his label tags on each box reflected "four": according to the label readings, he was clearly "missing" 1 of 4:

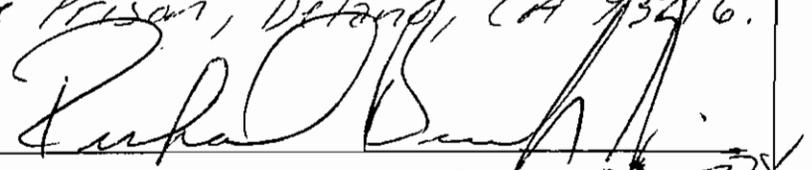
I, Richard BURCH (D27328)*, declare:

I. A witness to this numeral VII, herein, to be true and correct as asserted by Declarant Toscano;

II. I as the "unit's Black Mac Rep ("MAC")" did appeal to Court unit officers on behalf of Mr. Williams' "missing" box (1 of 4) of property -- in which the officers acknowledge, too, as "missing" having contacted (B1 AD-SEG); However, all with negative results between June 22-23, 2006.

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

Executed this Thursday, June 29, 2006
at Kern Valley State Prison, Detonia, CA 93216.


(Declarant/Witness) D27328

1
2 VIII. I, MIKE A. Toscano, having
3 presented my witness (Mac Rep R. BURCH), in
4 support and on behalf of the plaintiff, hereby,
5 submit before this Circuit Court on the motion:

6 I declare under the penalty of perjury
7 the following to be true and correct.

8 Executed this Thurs day, of June
9 29, 2006, at Kern Valley State Prison.

10 Mike A. Toscano
11 (Declarant MIKE A.
12 TOSCANO)
13
14
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27
28

43

Proof of Service by Mail

[Case Name and Court Number]

KVSP 06-02274.

I declare that:

I am a resident of Delano in the county of Kern,

California. I am over the age of 18 years. My residence address is:

2737 CECIL AVE. BOX 5103. DELANO. CA 93216.

On Thursday, I served the attached Appeal [Doc # 1-42] on the Director of Corr in said case by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully paid, in the United States mail at KVSP

addressed as follows:

Director of Corr. Box 942883. Sacramento
. CA 94283-0001. [Attn: Chief N. GRANNIS]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on 3.22.07 [date], at Delano, California.

Shadale L. Williams
[Type or Print Name]

WLM #8.2.
[Signature]

EXHIBIT COVER PAGE

2
EXHIBIT

Description of this Exhibit:

*SUPERIOR COURT PETITION
ON DIRECTOR'S (CDCR) "CLEAR-ERR"*

Number of pages to this Exhibit: 20 pages.

JURISDICTION: (Check only one)

- Municipal Court
 - Superior Court
 - Appellate Court
 - State Supreme Court
 - United States District Court
 - State Circuit Court
 - United States Supreme Court
 - Grand Jury
-
-

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN

SHADALE LEWIS WILLIAMS
THE MATTER

In re WILLIAMS, NO. HC010100A
Petitioner, IAB CS No. 0612514

-√-

PETITION ON HABEAS
CORPUS

CHIEF N. GRANNIS
(CD of C & R); WARDEN
A. HEDGPETH (KVSP);
CHIEF DEPUTY WARDEN
C. J. CHRONES; ASSOC
WARDEN NATE DILL, JR;
CORRECTIONAL SERGEANT
J. HARDEN; CORRECTIONAL
OFFICER(S) M. LOZANO;
S. LOPEZ and
C. BRECKNER,

MITIGATION OF
DAMAGES ON CLAIMS

HON JUDGE JOHN
I KELLY

Respondents.

SHADALE L. WILLIAMS, E11488
KERN VALLEY STATE PRISON
2737 CECIL AVENUE
P.O. BOX 5103 FCB8-130
DELANO, CA 93216-5103

1
2 No. HC010100A
3
4

5 COMES NOW, Shadale L. Williams,
6 Petitioner in the above-entitled matter
7 filed in this Court on July 6, 2007.

8 The Petitioner having moved this
9 Court to Review the RECORD DEVELOPED
10 FOR SUFFICIENT EVIDENCE ON PRIMA FACIE
11 DEMONSTRATION in the Inmate Appeals Branch
12 ("IAB") decision in case no.: 0612514
13 attached to the filed petition. (See
14 Exhibit "F".)

15 It is the Petitioner's belief that
16 this "Consecutive Destruction of Property
17 and Staff Misconduct" complaint
18 can be worked out under state juris-
19 diction for an equitable remedy "far
20 less" than that of a "state government
21 tort" action where the restoration/re-
22 imbursement (see EXH "A.") swallows the
23 "staff misconduct" claim and that
24 federally (42 U.S.C., § 1983) cognizable.
25

1
2 MITIGATION OF DAMAGES

3
4 On Friday, July 13, 2007, at approxi-
5 mately 1240 hours the Petitioner
6 received from ("ASU-B1") Property
7 Official A. MARTIN the "release" of his
8 property. (See EXH "6" - attached.)

9 For cause, the Petitioner's SECOND
10 Ground has no "basis for remedy" nor
11 to be redressed by this Court.

12 Request is made to "strike" the
13 allegation(s) made under Ground 2.

14
15 A. Clear Demonstration On Evidence

16
17 The Petitioner turns this Court's
18 attention to (EXH 6) where "clearly"
19 in order to "recieve" his property, he had
20 to sign it forth custody releasing it
21 (CCR, §§ 3191, 3192, 3193:). Where he also,
22 provided the right - upon release of property,
23 to make discrepancies; under "no" con-
24 dition can an inmate thwart "liability of
25 staff (§ 3193 (a))" REFUSING to sign for
26 property to be "released" to possession.

1
2 TAKE SPECIAL JUDICIAL NOTICE HERE...

3
4 [T]hat (EXH "A") in dispute is
5 too "reflective" of what should be found
6 in (EXH "G") or a "discrepancy" so
7 indicated. (E.g., ONE clearly does not
8 find—on reinventoried property, — 4
9 legal books — 3 pair of perscription
10 glasses — 1 Philips (T.V.) nor — 1 GE.
11 Super Radio. The argued "Non-expend-
12 able items".)

13
14 B. The Administrative Procedures
15 Act ("APA") & The "Underground" Rule

16
17 Now, most Honorable John I. Kelly,
18 "all the rules found in Title 15 (The Director's
19 Rulebook) have by definition been adopted
20 in accord with the APA's formal requirements.
21 However, CDC and BPT have some regulations
22 which were not adopted through proper
23 procedures, and thus technically are
24 illegal." [T]hese regulations are referred
25 to as "underground" rules, and they are

1
2 found mostly in manuals such as the
3 CDC Operational Manual, also called the
4 "DOM." (See ref. Gov'm Code, § 11340.5.)
5 (EXH "F" p.1.) contends
6 that the Petitioner —

- 7
- 8 • failed to provide evidence that he
9 legally owned the alleged lost property;
 - 10 • refused to sign ("RTS") the copy
11 of the CDC Form 1083 provided him by
12 Correctional Official C. BRECKNER;
 - 13 • at the time of ASU placement he
14 refused to cooperate with officers noting
15 discrepancies; and
 - 16 • failed to provide any evidence...
17 that property was lost.

18 The FIRST Point it without "merit"
19 because it is gravely "consequential" unto
20 the inmate per CCR, §§ 3191.(a) and 3192.
21 (Official Breckner — as all officials, made "veri-
22 fication" by serial no. and name — as she
23 recorded it so, by "Receiving and Release
24 ("R&R")" registration of non-expendable items.)
25 Neither was it indicated by the director that

1
2 Official Breckner on the CDC 1083 made a
3 disposition (§ 3191.(c)) of non-expendables
4 in violation "warranting" automatic dis-
5 ciplinary; thus, she included the verified
6 property - in dispute, within the inventory
7 - as owned by the petitioner.

8 The SECOND Point, "refusing to
9 sign (RTS)" - Honorable Kelly?! Simply a
10 matter of dates... on June 12, 2006, I
11 and my property was "rolled up (Ad/Seg)"
12 by Official Breckner and Lozano (as 1083
13 indicates 1/4 hand bottom of EXH "A" p. 1.);
14 but. On June 26, 2006, I made a re-
15 quest for my 1083; thereupon, on June 28,
16 2006 Official Breckner provided me with a
17 copy of 1083, 16-day letter as indicated.
18 (See EXH "A" p. 2, SECTION-C.)

19 Official Breckner isn't required to have me
20 sign "released" property - when I asked for
21 a property receipt discharged (Ad/Seg), nor
22 does my "RTS (on 6/12/06)" negate that
23 "disputed" item(s) upon my being "rolled
24 up" did not exist - clearly, she [Breck
25 ner] indicates such did exist; hence I

1
2 must "dispute" or note "discrepancies" of
3 what is not "returned" to me - upon
4 my discharge (Adlseg) on Thursday,
5 June 22, 2006. No relevance to the
6 director's point here, or (the "SLR")
7 decision.

8 The THIRD Point, ... ASU placement
9 he refused to cooperate. This is rather
10 peculiar and in contradiction with (the
11 "SLR"). On June 22, 2006, ASU B-1
12 ("Adlseg") officials "released me w/my
13 property" illegally (or an "Underground"
14 policy.) nor did ASU indicate a RTS
15 if the "property receipt" actually existed
16 at that time; which would be against
17 regulations (§ 3190.(r),(s)) to "release w/
18 RTS" under any conditions! Hence, the
19 property "existed" in ASU unaccounted for
20 by a "receipt on transfer (on 6.12.06.)"
21 establishing "staff (ASU) (§ 3193.(a)) liability."

22 The FOURTH Point, evidence that
23 property was lost (?). But. is not this
24 the purpose of the "grievance process?"
25 [I]t is only my responsibility to

1
2 establish that through Official Breckner
3 non-expandable item(s) both existed and
4 was accounted for on June 12, 2006;
5 ASU's property officer and Correctional
6 Sergeant J. Harden's responsibilities
7 - apart my cooperation (§ 3391.(2)), was
8 to disposition 1083 Form (r/hand bottom,
9 EXH "A" p.1.) "property released upon
10 discharge" to which, a RTS here! Does
11 not provide to the inmate his property;
12 otherwise state officials would be gravely
13 liable and negligent on behalf of the
14 administration and department.

15 These "points" I've just challenged
16 our "Underground" rules of policy in
17 conflict with the APA governing the Title
18 15 (The Director's Rulebook.)

19 The Director's Level ("DLR") con-
20 tends that the Petitioner —

- 21 • [FIRST Point same at (SLR)
22 as pointed out and argued.]
23 • failed to establish that any
24 missing items were in fact in his cell at
25 time he was secured in the ASU.

1
2 The (DLR) SECOND Point is a 'lu-
3 dicrous "tailoff" of an otherwise
4 meritless argument'.

5 PRIOR to my going to ASU on June
6 12, 2006 Official Breckner established
7 — by inventory, non-expandable item(s)
8 in the petitioner's cell, now in dispute.
9 See EXH "A" p.14. (For the RECORD!
10 Petitioner is a single-housed inmate.)

11
12 PLEASE TAKE JUDICIAL SPECIAL NOTICE...

13
14 that neither the Second nor Third
15 Level Reviews ("SLR and DLR") ers indicate
16 'who' ASU Property Officers [they] inquired
17 of or interviewed or made such comments;
18 SECONDLY, when a 1083 Form is properly
19 handled and dispositioned under the Title
20 15 and not individual [Underground] policy?!
21 Administratively, it will look similar to
22 now provided, EXH "a" — Accountability!

LEGAL BRIEF

[T]he right to own personal property is specifically provided for in Penal Code § 2601(a)... any property that is not authorized is considered to be contraband. Possession of contraband can result in confiscation of the property and in disciplinary action. (See 15 CCR §§ 3006, 3190-3192.) By this (APA) regulation Officer Breckner (on 6.12.06) was obligated— if the T.V., Super Radio, legal books and (3) diabetic eye-wear prescription glasses in the Petitioner's cell were not in fact his, to disposition "these items" as contraband. (NO indication of this was made; thus, such property was legally and lawfully in the Petitioner's possession. Petitioner has a right to make and seek an adequate state post-deprivation remedy, e.g. a state tort action available within procedural due process. *King v. Massarweh*, 782 F.2d 825, 826 (9th Cir. 1986).

1
2 California law provides an adequate post-
3 deprivation remedy for any property
4 deprivations. *Barnett v. Centoni*, 31
5 F.3d 813, 816-17 (9th Cir. 1994) (citing
6 Cal. Gov't Code §§ 810-895).

7 [A]gain, Officer Breckner knew,
8 certain types of non-expendable property
9 (E.g. T.V. and Radios.) must also be
10 registered by the prisoner's property card,
11 and any which is not registered may be cause
12 for disciplinary action. (15CCR, § 3191.)
13 She had "verified" these items with
14 Receiving and Release ("RandR") property
15 sergeant. (A custodian's file.)

16 The practice employed by Officer Breckner
17 on June 12, 2006 is (APA) regulations
18 whether the Petitioner RTS or otherwise.
19 However, the policy employed by ASU (B-1)
20 neither giving an "account" of a property
21 HANDLING officer nor disposition of property
22 "release" on June 22, 2006 is adm policy
23 not adopted according to the APA. See
24 *Hillery v. Rushen* (9th Cir. 1983) 720 F.2d
25 1132; *In re Alcala* (1990) 222 Cal. App. 3d
26 345 [271 Cal. Rptr. 674].

1
2 PLEASE TAKE SPECIAL JUDICIAL NOTICE...

3
4 that the [E]vidence in an "active"
5 (9th Cir No. 06-55729) U.S. Ninth Cir-
6 court case was 'deliberately destroyed
7 (See EXH "A" p. 3 and EXH "C" p. 3:
8 15-16)' to which, the Petitioner filed
9 for "injunctive relief" and defaulted.

10 "Now, here me CLEARLY --
11 Compensation for loss or damaged property,
12 in a federal civil rights ("section 1983"),
13 by prison officials does not support a
14 civil rights action based on a violation of
15 due process. See *Hudson v. Palmer* (1984)
16 468 U.S. 517 [104 S. Ct. 3194; 82 L. Ed. 2d
17 393]; *Daniels v. Williams* (1986) 474 U.S.
18 327 [106 S. Ct. 662; 88 L. Ed. 2d 662].

19 However, where the loss or destruction
20 was of a prisoner's transcripts or other
21 legal material interfering with the right
22 of access to the courts; thusly, (§ 1983)
23 is "cognizable." See *Vigliotto v. Terry*
24 (9th Cir. 1989) 873 F.2d 1201 ... now!

25 The Chief of Appeals can be "bullheaded
26 and pigheaded" and as stubborn; even so,

1
2 Eight of his subordinates [to include]
3 the Chief; "neither" will I reason
4 through the California States Attorney
5 Generals Office within a federal jur-
6 isdiction.

7 REQUEST FOR RELIEF

8
9 Petitioner is without remedy save for
10 habeas corpus. Accordingly, petitioner re-
11 quests that the Hon Judge John I Kelly:

- 12 1. Issue a writ of habeas corpus;
- 13 2. Issue an order to show cause;
- 14 3. Declare the rights of the parties;
- 15 4. Order respondent to "immediate"
16 provide 'diabetic eyewear' to the petitioner.
17 (Which can take as little as 21-days.)
- 18 5. Grant any and all other relief found
19 necessary or appropriate.

20
21 DATED:

22
23
24 _____
Shadale h. Williams, Petitioner

ON REMEDY

[I]f the CDC had accepted responsibility for the Petitioner's damage and/or loss property, and could not repair or replace the disputed property, then the prisoner is to have been reimbursed in cash for the loss. Payment of \$100 or less requires approval at either the second or third level of review. Thus, every property appeal involving payment of money will have to be reviewed at the second level. Reimbursement of more than \$100 requires approval of both the third level and the Board of Control. (See 15 CCR §§ 3084.7(c)(4)(A) and (B).)

According to staff at the CDC Inmate Appeals Office, if the amount to be paid the prisoner is \$300 or less, the prisoner can be paid by the institution. (See DOM § 54100.22.5.)

For cause, the Petitioner reduced his property loss (\$1044.) feasibly (\$300.) and administratively reachable.

VERIFICATION

(C.C.P. §§ 446, 2015.5; 28 U.S.C. § 1746)

I, S.L. WILLIAMS, declare under the penalty of perjury that:

I am the Petitioner in the attached matter; I have read the foregoing document(s) and know the contents thereof; that the same is true of my own personal knowledge, and if called to testify as to the contents thereof, I could do so competently as a sworn witness.

~~Executed this _____ day of _____, 20____, at Kern Valley State Prison, Delano, CA. 93216-5101.~~

Declarant

DECLARATION OF SERVICE BY MAIL

(C.C.P. §§ 446, 2015.5; 28 U.S.C. § 1746)

I, Shadale Lewis Williams, declare: That I am a resident of Kern Valley State Prison, Delano, California; I am over the age of 18 years; (I am / I am not) a party to the above entitled action; My address is P.O. Box 5101, Delano, California 93216-5101. I served the attached document(s) entitled;

MITIGATIONS OF DAMAGES ON THE CLAIM

On the persons/parties specified below by placing a true copy of said document(s) into a sealed envelope with the appropriate postage affixed thereto and placing said envelope(s) into the United States Mail in a deposit box provided for at the Kern Valley State Prison, Delano, California, addressed as follows:

Chief N. GRANNIS, IIM APPEALS BRANCH
P.O. BOX 942883
SACRAMENTO, CA 94283-0001

There is First Class mail delivery service by the United States Mail at the places so addressed and/or regular communication by mail between the place of mailing and the addresses above. I declare under the penalty of perjury that the foregoing is true and correct and that I executed this service on this _____ day of _____, 20____, at Kern Valley State Prison, Delano, California 93216-5101.

Declarant

EXHIBIT COVER PAGE



Description of this Exhibit:

*DIRECTOR'S LEVEL APPEAL
DECISION ("DLR")*

Number of pages to this Exhibit: 2 pages.

JURISDICTION: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- State Circuit Court
- United States Supreme Court
- Grand Jury

DEPARTMENT OF CORRECTIONS AND REHABILITATION

INMATE APPEALS BRANCH

P. O. BOX 942883

SACRAMENTO, CA 94283-0001

DIRECTOR'S LEVEL APPEAL DECISION

Date: JUN 19 2007

In re: Williams, E-11488
Kern Valley State Prison
P.O. Box 6000
Delano, CA 93216

IAB Case No.: 0612514

Local Log No.: KVSP 06-02274

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

I APPELLANT'S ARGUMENT: It is the appellant's position that on June 22, 2006 he was placed into the Administrative Segregation Unit (ASU). The appellant contends that staff did not accurately inventory his property when he was placed in the ASU. The appellant has asked for Officer Breckner to provide her property receipt and conduct an investigation into this appeal. The appellant claims that staff lost his property and requests that his missing property be replaced or that he receive compensation in the amount of \$1,044.00 to replace the items.

II SECOND LEVEL'S DECISION: The reviewer found that the appellant did not cooperate in the inventory process when he was placed into the ASU. The appellant has failed to provide receipt(s) or other documents proving that the appellant legally owned the alleged lost property listed in his appeal. Officer Breckner has provided the appellant with a copy of the CDC Form 1083, Inmate Property Inventory, which the appellant refused to sign. The reviewer determined that the appellant was provided with the opportunity to note discrepancies with his property at the time of the ASU placement but refused to cooperate with the officers. The CDC Form 1083, Inmate Property Inventory presented to the appellant clearly indicates in the box entitled "To be signed upon return to the inmate" the admonishment, "I have received all the above listed personal property or have noted any discrepancies below" was not heeded by the appellant, nor did the appellant cooperate with the process by noting any discrepancies; therefore no liability for the alleged loss of property will be accepted by Kern Valley State Prison (KVSP). The reviewer noted that the appellant has failed to provide any evidence beyond his assertion that property was lost to support his allegation.

Based upon the aforementioned, the appeal was partially granted at the Second Level of Review (SLR). The appeal was denied in that the appellant will not receive reimbursement. Staff discipline is outside the scope of the appeals process; therefore no sanctions will be assessed against an employee at the request of an inmate. The appellant has failed to cooperate in assessing and communicating the exact loss he sustained; therefore, no compensation will be made for property the appellant has not proven to be owned and lost due to staff negligence. The appeal was granted in that Officer Breckner supplied the appellant with a copy of the CDC Form 1083, Inmate Property Inventory.

III DIRECTOR'S LEVEL DECISION: Appeal is denied.

A. FINDINGS: The SLR is appropriate and the decision is based upon a reasonable penological interest. The response by the SLR is comprehensive. An investigation was conducted into the appellant's allegations. The appellant has not presented a compelling argument to warrant modification of the decision reached by the institution. The appellant has failed to provide proof of a legitimate purchase for the items listed as missing. The appellant has also failed to establish that any alleged missing items were infact in his cell at the time he was secured in the ASU. The regulations are clear in this matter in that the department shall not accept liability for the loss or destruction of inmate property where it can not be established that through staff negligence the loss occurred. The appellant has not provided sufficient evidence to establish this threshold of accountability. There shall be no relief afforded the appellant at the Director's Level of Review (DLR).

B. BASIS FOR THE DECISION:

California Code of Regulations, Title 15, Section: 3005, 3084.1, 3190, 3191, 3193, 3270, 3287

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

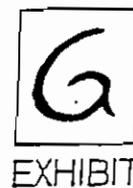
This decision exhausts the administrative remedy available to the appellant within CDCR. If dissatisfied, the appellant may forward this issue to the California Victims Compensation and Government Claims Board, (formerly known as the State Board of Control), Government Claims Unit, P.O. Box 3035, Sacramento, CA 95812-3035, for further review.



N. GRANNIS, Chief
Inmate Appeals Branch

cc: Warden, KVSP
Appeals Coordinator, KVSP

EXHIBIT COVER PAGE



Description of this Exhibit:

*REINVENTORIED [1083]
PROPERTY*

Number of pages to this Exhibit: 1 pages.

JURISDICTION: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- State Circuit Court
- United States Supreme Court
- Grand Jury