

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FOR THE  
**FILED**  
Dec 19 2008  
DEC 19 2008  
MB

JAMES E. MCROY  
V. NO. 06-3922  
MICHAEL F. SHEAHAN, REAL.

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT  
CASE NO. 03CV4718  
03CV4718  
MAGISTRATE JUDGE G.S. BROWN

MOTION FOR RELIEF FROM JUDGMENT OR ORDER

NOW COMES PLAINTIFF, JAMES E. MCROY (MCROY) PRO SE AND MOVES THIS HONORABLE COURT FOR RELIEF FROM JUDGMENT OR ORDER PURSUANT TO FED. R. CIV. P., 60(B)<sup>(1)</sup>(2)(3)(4)(5)(6), AND IN SUPPORT THEREOF PLAINTIFF STATES THE FOLLOWING:

1. PLAINTIFF MCROY, WITH DUE DILIGENCE COMES WITH NEWLY DISCOVERED EVIDENCE PURSUANT TO FED. R. CIV. P., RULE 60(B)(2); DISCOVERED EVIDENCE THAT IS MATERIAL, AND WILL LIKELY PRODUCE A NEW RESULT AT RETRIAL, (U.S. V. WALUS, 616 F.2d 283 (7TH CIR. 1980)).
2. PURSUANT TO FED. R. CIV. P., RULE 60(B)(3), FOR FRAUD AND/OR MISREPRESENTATION OR MISCONDUCT ON THE PART OF DART, ARAMARK AND CEAMARK (ROZIER V. FORD MOTOR CO. 573 F.2d 1332, 1339 (5TH CIR 1978)).
3. ON OR ABOUT JULY 11, 2008, THE UNITED STATES JUSTICE DEPARTMENT RELEASE 98 PAGES REPORT ON COOK COUNTY DEPARTMENT OF CORRECTIONS' (CCDOC) CONSTITUTIONAL VIOLATIONS AGAINST INMATES CIVIL RIGHTS.
4. THE REPORT INDICATED HOW THE JUSTICE DEPARTMENT

THREATENS TO TAKE LEGAL ACTION TO ENSURE IMMATES BASIC CONSTITUTIONAL RIGHTS ARE NOT BEING CONTINUALLY VIOLATED.

5. THE JUSTICE DEPARTMENT REPORT INCLUDES AREAS OF CONSTITUTIONAL VIOLATIONS THAT WERE/ARE A PART OF THIS COMPLAINT, THAT INCLUDE: FOOD SERVICE; ~~THE~~ INADEQUATE SANITIZATION PROCEDURES IN KITCHEN IN DIVISION XI; NO TRAINING PRIOR TO WORKING IN THE KITCHEN; NOT UTILIZING GLOVES OR HAIRNETS; NOT FOLLOWING FOOD CODES; FOOD DELIVERY VIOLATIONS TO IMMATES; **BACTERIAL** GROWTH ON FOOD VIOLATIONS; OBSERVED FOOD BEING PLATED AT UNACCEPTABLE TEMPERATURES 26 TO 40 DEGREES BELOW THE REQUIRED TEMPERATURES; RISK OF FOOD BORING DISEASE AND ILLNESSES; KITCHEN SUPERVISOR ADMITTING FOOD HELD FOR TWO OR THREE HOURS, PLATING AND DELIVERY; INADEQUATE FOOD PREPARATION; INADEQUATE STORAGE AREAS; <sup>FOOD SERVICE IS CONTRACTED TO</sup> ~~ARAMARK CORPORATION.~~

6. THE JUSTICE DEPARTMENT REPORT PROVIDES EVIDENCE OF A POLICY OR PRACTICE AT THE JAIL THAT CAUSES FOOD OR MILK TO SPOIL, AND SHERIFF THOMAS J. DART IS RESPONSIBLE FOR THE JAIL.

7. THE THEORY OF MUNICIPAL LIABILITY IS PROVEN.

8. THE DISTRICT COURT GRANTED DART'S AND ARAMARK'S MOTION FOR SUMMARY JUDGMENT ON CIVIL RIGHTS CLAIMS AND DELINED TO EXERCISE SUPPLEMENTAL JURISDICTION OVER STATE-LAW CLAIMS.

9. ON MARCH 13, 2008, THE U.S. COURT OF APPEALS AFFIRMED JUDGMENT IN FAVOR OF SHERIFF THOMAS DART, BECAUSE MCROY COULD NOT SHOW THAT HIS CIVIL RIGHTS WERE VIOLATED.

10. THE FRAUD AND/OR MISREPRESENTATION OR MISCONDUCT OF SHERIFF DART AND/OR CERMAK IS SHOWN IN THIS JUSTICE DEPARTMENT

REPORT IN THE FOLLOWING: INADEQUATE GRIEVANCE PROCEDURES; INADEQUATE MEDICAL CARE; INADEQUATE CHRONIC CARE; INADEQUATE TREATMENT AND MANAGEMENT OF COMMUNICABLE DISEASE; INADEQUATE ACCESS TO HEALTH CARE; INADEQUATE FOLLOW-UP CARE; INADEQUATE RECORD KEEPING IN MEDICAL; INADEQUATE MEDICAL ADMINISTRATION; INADEQUATE MEDICAL FACILITIES; INADEQUATE SPECIALTY CARE; INADEQUATE STAFFING, TRAINING, AND SUPERVISION; INADEQUATE DENTAL CARE; INADEQUATE QUALITY ASSURANCE REVIEW; INADEQUATE MENTAL HEALTH CARE; INADEQUATE ASSESSMENT AND TREATMENT; INADEQUATE PSYCHOTHERAPEUTIC MEDICATION ADMINISTRATION; INADEQUATE SUICIDE PREVENTION MEASURES; FIRE AND LIFE SAFETY; SANITATION AND MAINTENANCE OF FACILITIES; INADEQUATE ENVIRONMENTAL CONTROL; INADEQUATE SANITARY LAUNDRY PROCEDURES; AND INADEQUATE FOOD SERVICE.

11. IN THE 98 PAGE REPORT, THE U.S. ATTORNEY'S OFFICE IN CHICAGO AND THE JUSTICE DEPARTMENT'S CIVIL RIGHTS DIVISION CALLED THE CCDOC'S COMPLEX A VIOLATION OF CONSTITUTIONAL RIGHTS FOR INMATES AND "WOEFULLY INADEQUATE"

12. THE UNITED STATES ATTORNEY, PATRICK J. FITZGERALD STATED "EVERYTHING WE'VE SEEN FROM THEM (CCDOC) SUGGEST THEY RECOGNIZE WHAT THE PROBLE IS," "NOW THE RUBBER HITS THE ROAD." (CHICAGO TRIBUNE.COM, DATED JULY 18, 2008).

13. THIS REPORT JUSTIFIES RULE 60(B)(3), RELIEF FOR MISCONDUCT OF AN ADVERSE PARTY, MUST BE OF SUCH A NATURE AS TO PREVENT THE OTHER PARTY FROM FULLY AND FAIRLY PRESENTING HIS CASE. (WEST V. LOVE, 776 F.2d 170, 176 (7TH CIR. 1985).

14. SHERIFF DART, ARAMARK AND CERMARK WERE WITHHOLDING

EVIDENCE IN DISCOVERY IS SUFFICIENT FOR MISCONDUCT TO JUSTIFY RELIEF. (ANDERSON V. CRYOVAC, INC. 862 F.2d 910, 923 (1st Cir. 1988)). "MISCONDUCT" DOES NOT DEMAND PROOF OF NEFARIOUS INTENT OR PURPOSE AS PREREQUISITE TO REDRESS.

15. WITHIN A YEAR AFTER JUDGMENT, A PARTY MAY OBTAIN RELIEF FROM JUDGMENT WHICH IS VOID, WHICH HAS BEEN SATISFIED OR WHICH FOR SOME REASON, SHOULD NOT CONTINUE TO BE EFFECTIVE. FED. R. CIV. P., RULE 60(B)(4) AND 60(B)(5).

16. THE ABOVE SHOWS HOW FRAUD IS ESTABLISHED WITH THE CLEAR AND CONVINCING EVIDENCE. (ERVIN V. WILKINSON, 701 F.2d 59, 61 (7th Cir. 1983)) CITING JENNINGS V. HICKLIN, 587 F.2d 946, 948 (8th Cir. 1978)).

17. THERE IS A "SHOWING OF EXTRAORDINARY CIRCUMSTANCES THAT CREATE A SUBSTANTIAL DANGER THAT THE UNDERLYING JUDGMENT WAS UNJUST." (DEL CARMEN V. EMERSON ELEC. CO., COMMERCIAL CAM DIV., 908 F.2d 158, 161 (7th Cir. 1990)).

18. FED. R. CIV. P., RULE 60(B)(6), ALLOWS THE COURT TO GRANT RELIEF FOR "ANY OTHER REASON JUSTIFYING RELIEF FROM THE OPERATION OF THE JUDGMENT." (DONALD, 95 F.3d AT 554).

19. FED. R. CIV. P., RULE 60(B)(6), MEROY CLAIMS THAT HE FAILED TO NAME CORMAK HEALTH SERVICES THE DEFENDANT IN HIS ORIGINAL SUIT WAS A CONSEQUENCE OF "MISTAKE, INADVERTENCE, SURPRISE, OR EXCUSABLE NEGLIGENCE." CITING (DONALD V. COOK COUNTY SHERIFF'S DEPARTMENT, 95 F.3d 548, 554 (7th Cir. 1996)).

WHEREFORE, PLAINTIFF JAMES E. MEROY, HUMBLY REQUEST AND PRAYS THIS HONORABLE COURT GRANTS HIM RELIEF FROM JUDGMENT OR

ORDER FOR FURTHER PROCEEDING AND/OR REVERSE OUTRIGHT  
OR HOW EVER THIS HONORABLE COURT DEEMS FAR AND **EQUIT-**  
**ABLE** IN FAVOR OF McROY.

RESPECTFULLY SUBMITTED,  
James E. McRoy  
PRO SE

AFFIDAVIT

I, JAMES E. McROY, SWER UNDER PENALTY OF PERJURY  
THAT THE FACTS STATED ABOVE ARE TRUE AND CORRECT TO THE  
BEST OF MY KNOWLEDGE AND BELIEF.

James E. McRoy  
JAMES E. McROY  
ID#20020032025  
DIVISION 9, UNIT 26  
PO. BOX 089002  
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EXECUTED ON DECEMBER 15, 2008.