

✓ Ellis (A)

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

16 2009

COMPLAINT UNDER CIVIL RIGHTS ACT 42 U.S.C. § 1983

Action Number 1:09CV1167
(To be supplied by the Clerk, U.S. District Court)

TSE/TCB

Please fill out this complaint form completely. The Court needs the information requested in order to assure that your complaint is processed as quickly as possible and that all your claims are addressed. Please print/write legibly or type.

I. PARTIES

A. Plaintiff:

1. (a) OPHELIA De'LONTA (b) 120047
(Name) (Inmate number)
(c) Powhatan Correctional Center
(Address)
State Farm, Virginia 23160

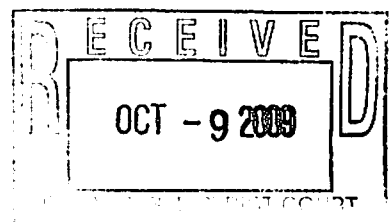
Plaintiff MUST keep the Clerk of Court notified of any change of address due to transfer or release. If plaintiff fails to keep the Clerk informed of such changes, this action may be dismissed.

Plaintiff is advised that only persons acting under the color of state law are proper defendants under Section 1983. The Commonwealth of Virginia is immune under the Eleventh Amendment. Private parties such as attorneys and other inmates may not be sued under Section 1983. In addition, liability under Section 1983 requires personal action by the defendant that caused you harm. Normally, the Director of the Department of Corrections, wardens, and sheriffs are not liable under Section 1983 when a claim against them rests solely on the fact that they supervise persons who may have violated your rights. In addition, prisons, jails, and departments within an institution are not persons under Section 1983.

B. Defendant(s):

GENE JOHNSON

1. (a) GENE JOHNSON (b) Director of VDOC
(Name) (Title/Job Description)
(c) 6900 Atmore Drive
(Address)
Richmond Virginia 23225



2. (a) EDDIE. L. PEARSON (Name) (b) Warden of Powhatan Corr. (Title/Job Description)
 (c) State Farm, Virginia 23160 (Address)
-
3. (a) P.C. Hunnel (Name) (b) Assist. Warden of P.C.C. (Title/Job Description)
 (c) State Farm, Virginia 23160 (Address)

See attachment for addition parties.....

If there are additional defendants, please list them on a separate sheet of paper. Provide all identifying information for each defendant named.

Plaintiff MUST provide a physical address for defendant(s) in order for the Court to serve the complaint. If plaintiff does not provide a physical address for a defendant, that person may be dismissed as a party to this action.

II. PREVIOUS LAWSUITS

- A. Have you ever begun other lawsuits in any state or federal court relating to your imprisonment? Yes [] No []
- B. If your answer to "A" is Yes: You must describe any lawsuit, whether currently pending or closed, in the space below. If there is more than one lawsuit, you must describe each lawsuit on another sheet of paper, using the same outline, and attach hereto.

1. Parties to previous lawsuit:

Plaintiff(s) Ophelia De'lonta

Defendant(s) Ronald Angelone et.al; Gene Johnson et.al;

2. Court (if federal court, name the district; if state court, name the county):

Eastern District of Virginia

3. Date lawsuit filed: 1999, 2005,

4. Docket number: 330 F.3d 630/ 2005 csae 1:07cv245

5. Name of Judge to whom case was assigned: 1999 case assigned to Judge Turk
2005 case assigned to Judge Buchanan

6. Disposition (Was case dismissed? Appealed? Is it still pending? What relief was granted, if any?): Both cases were settled.

III. GRIEVANCE PROCEDURE

A. At what institution did the events concerning your current complaint take place: Powhatan Correctional Center

B. Does the institution listed in "A" have a grievance procedure? Yes [] No []

C. If your answer to "B" is Yes:

1. Did you file a grievance based on this complaint? Yes [] No []

2. If so, where and when: filed 5-20-09 at Powhatan Corr. Ctr.

3. What was the result? Response was that my complaint was very delayed.

My complaint was never properly responded to on all levels of
exhaustion.

4. Did you appeal? Yes [] No []

5. Result of appeal: same response as #3

D. If there was no prison grievance procedure in the institution, did you complain to the prison authorities? Yes [] No []

If your answer is Yes, what steps did you take? _____

E. If your answer is No, explain why you did not submit your complaint to the prison authorities:

V. RELIEF

I understand that in a Section 1983 action the Court cannot change my sentence, release me from custody or restore good time. I understand I should file a petition for a writ of habeas corpus if I desire this type of relief. _____ (please initial)

The plaintiff wants the Court to: (check those remedies you seek)

Award money damages in the amount of \$ Please see attachment

Grant injunctive relief by Please See Attachment

Other _____

VI. PLACES OF INCARCERATION

Please list the institutions at which you were incarcerated during the last six months. If you were transferred during this period, list the date(s) of transfer. Provide an address for each institution.

Powhatan Correctional Center

State Farm, Va 23160 Incarcerated since 2005

VII. CONSENT

CONSENT TO TRIAL BY A MAGISTRATE JUDGE: The parties are advised of their right, pursuant to 28 U.S.C. § 636(c), to have a U.S. Magistrate Judge preside over a trial, with appeal to the U.S. Court of Appeals for the Fourth Circuit.

Do you consent to proceed before a U.S. Magistrate Judge: Yes [] No []. You may consent at any time; however, an early consent is encouraged.

VIII. SIGNATURE

If there is more than one plaintiff, each plaintiff must sign for himself or herself.

Signed this September day of 15th 2009, 2009.

Plaintiff *Ophelia Bailant*

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

Ophelia Azriel De'lonta #120047
Plaintiff, Pro se

V.

Gene Johnson, Director of Virginia Department of Corrections et.al
Defendants

COMPLAINT UNDER CIVIL RIGHTS ACT 42 USC SECTION 1983

Preliminary Statement

This complaint for injunctive relief and damages brought under 42 U.S.C. §1983, in connection with the Sexual Assault and Extortion on plaintiff Ophelia De'lonta, a Transsexual Prisoner at Powhatan Correctional Center, by defendant Sheri Anderson former Correctional Officer. The assault on plaintiff was cruel and unusual punishment violation of her constitutional right under the Eighth Amendment.

Jurisdiction and venue

Jurisdiction:

This cause of action is brought pursuant to 42 U.S.C. Section 1983; because plaintiff's Constitutional Rights protected under the 14th Amendment were violated by individuals acting under the color of state law. Vested jurisdiction is based upon 28 U.S.C. Section §: 1331 and 1343. This court further has supplemental jurisdiction over the state claims.

Venue:

28 U.S.C. Section 1391 (b): The unlawful acts asserted hereinafter in this petition occurred primarily within this judicial district and the defendants reside within the district.

Parties

Plaintiff: Ophelia De'lonta, #120047 is a Virginia State Prisoner in the custody and control of the Virginia Department of Corrections during the events described in this complaint. Plaintiff is a Pre-Operative Transsexual, and has been since the age of thirteen years of age. Plaintiff has had procedures as a female prior to her incarceration. And during her incarceration she has won a settlement in a Civil Action against defendants' to continue Hormone Therapy Treatment for Gender Identity Disorder from which plaintiff suffers. Said treatment is and will continue to be administered by the Virginia Department of Corrections.

Defendant: Gene Johnson is director of the Virginia Department of Corrections. He is responsible for conditions and operations over all prisons in the state of Virginia, and the final policy maker; he is also responsible for the misdeeds of his employees. He is being sued in his individual and official capacities. Said address being: VDOC P.O.Box 26963 Richmond Virginia 23261, 6900 Atmore Drive Richmond, Virginia 23261

Defendant: Eddie L. Pearson is the warden of Powhatan Correctional Center, and the receiving center of Powhatan Correctional Center. Pearson is responsible for conditions and operations at Powhatan Correctional Center, and Receiving Center. Pearson is also a final policy maker. He is being sued in his individual and official capacities. Defendant said address being.... Virginia Department of Corrections, Powhatan Correctional Center, State Farm, Virginia 23160.

Defendant: P.C. Hunnel is the assistant warden of (P.C.C.). P.C. Hunnel is responsible for conditions, treatment, and security at P.C.C. He is being sued in his individual and official capacities. Defendant said address being... Virginia Department of Corrections Center, State Farm, Virginia 23160.

Defendant: Susan Carson is the assistant warden of operations at (P.C.C.) Susan Carson is responsible for the daily conditions and operations at (P.C.C.) and (P.R.C.C.). She is being sued in her individual and official capacities. Defendant said address being... Virginia Department of Corrections, Powhatan Correctional Center, State Farm, Virginia 23160.

Defendant: Anthony Scott is the Chief of Security; he is responsible for supervising (P.C.C.) and (P.R.C.C.) staff, maintaining inmate's safety and security, and responding to inmate's requests and informal complaints. Major Scott is also a final policy maker for the (VDOC) and (P.C.C) he is being sued in his individual and official capacities. Defendant said address being... Virginia Department of Corrections, State Farm, Virginia 23160.

Defendant: Poe is the institutional investigator here at Powhatan Correctional Center. He is responsible for any and all internal matters involving staff and inmates of possible criminal intent. He is being sued in his individual and official capacities. Defendant said address being Virginia Department of Corrections, Powhatan Correctional Center, State Farm, Virginia 23160.

Defendant: Serrano is the institutional investigator here at Powhatan Correctional Center. He is responsible for any and all internal matters involving staff and inmates of possible criminal intent. He is being sued in his individual and official capacities. Defendant said address being Virginia Department of Corrections, Powhatan Correctional Center, State Farm, Virginia 23160.

Defendant: John Bendrick is the institutional investigator here at Powhatan Correctional Center. He is responsible for any and all internal matters involving staff and inmates of possible criminal intent. He is being sued in his individual and official capacities. Defendant said address being Virginia Department of Corrections, Powhatan Correctional Center, State Farm, Virginia 23160.

Defendant: Sheri Anderson, a correctional officer at Powhatan Correctional Center. She is being sued in her individual and official capacities. Defendant said address being Virginia Department of Corrections, Powhatan Correctional Center, State Farm, Virginia 23160.

ALL THE DEFENDANT'S HAVE ACTED AND CONTINUE TO ACT UNDER THE COLOR OF STATE LAW AT ALL TIMES RELEVANT TO THIS COMPLAINT. CORRECTIONAL OFFICER SHERI ANDERSON IS NOT EMPLOYED WITHIN THE (VDOC). PLAINTIFF DOES NOT KNOW HER NEW SAID ADDRESS, SO PLAINTIFF WILL USE HER LAST KNOWN ADDRESS WHICH WAS: VIRGINIA DEPARTMENT OF CORRECTIONS, POWHATAN CORRECTIONAL CENTER, STATE FARM, VIRGINIA 23160.

Previous Lawsuits:

Plaintiff has in the past initiated other causes of action with the federal courts pursuant to 42 U.S.C. Section 1983, but plaintiff only retained information of most recent action. Defendant was Gene Johnson et.al; the court was Eastern District of Virginia, Alexandria Division, Docket Number, 1:05CV1469, disposition of the case was settlement. Issues raised was, sexual assault by another inmate, date filed approximately 2005, disposition date approximately 2009, plaintiff is proceeding in this cause of action requesting to be granted Informa Pauperis status pursuant to the Prison Litigation Reform Act (PLRA).

STATEMENT OF FACTS

- 1) Approximately on or about March 2009, Plaintiff Ophelia De'lonta while being housed at Powhatan Correctional Center; cell block C-5.
- 2) Plaintiff entered the laundry room to wash her clothes.
- 3) Correctional Officer Sheri Anderson approached plaintiff from behind.
- 4) Defendant Anderson intentionally applied force fondling plaintiff genital area in a perverse manner stating, "Now with a little incentive you will do what I tell you to do."
- 5) The use of force caused plaintiff pain and severe discomfort which still continues today.
- 6) Approximately on or about March 2009, Defendant Anderson was regularly working housing unit C-5, where Plaintiff De'lonta is assigned.
- 7) Defendant Anderson would obtain food items from plaintiff in an aggressive manner.
- 8) Approximately on or about March 2009, Defendant Anderson demanded money from plaintiff.
- 9) Plaintiff advised Defendant Anderson she did not have any money.
- 10) Defendant Anderson became angry, entered plaintiff's cell stating, "*Stop lying Bitch.*"
- 11) Defendant Anderson then threw plaintiff's mail at her, after she had open and read the contents of the money receipt.
- 12) Defendant Anderson threaten plaintiff with false disciplinary reports, which would automatically diminish plaintiff's parole opportunity. If she didn't do what Defendant Anderson demanded her to do.
- 13) Approximately on or about March 2009, Defendant Anderson told plaintiff she wanted her to send money to her bank account.
- 14) Defendant Anderson told plaintiff she would write down her banking information and instruct plaintiff to write a letter to her lawyer to transfer money from plaintiff's account to her account.
- 15) Plaintiff did as she was forced and extorted by Defendant Anderson.
- 16) Defendant Anderson told plaintiff to bring the letter to her to mail because she didn't trust plaintiff to mail it.
- 17) Plaintiff out of fear, pain, and discomfort told her counselor, Barry Marano, of the assault and threats from Defendant Anderson.
- 18) Mr. Marano called psychologist Jena Porterfield, advising her of plaintiff's allegations.
- 19) Mr. Marano notified internal affairs, Agent Poe, and institutional investigator Serrano took plaintiff's statement.
- 20) Agent Poe advised plaintiff to continue to receive letters of instructions from Defendant Anderson.

- 21) Approximately on May 20th 2009, plaintiff filed informal complaint stating what had happened with Defendant Anderson. See Exhibit-“A”
- 22) On July 2nd 2009, Sgt. John Bendrick, investigator for Powhatan Correctional Center responded to the informal complaint by plaintiff stating, “This complaint is very delayed, moreover the staff member is no longer here.” See Exhibit “A”
- 23) Defendant Anderson, Sgt. Bendrick, Agent Poe, and Investigator Serrano lacked penological and/or security justification to treat plaintiff in the manner as described herein.
- 24) Defendant’s Poe, Serrano, and Bendrick acted wantonly, maliciously and willfully, not providing plaintiff a full and fair review of the investigation concerning the sexual assault by ex-officer Anderson.

**CAUSE OF ACTION
COUNT I**

Plaintiff was subjected to cruel and unusual punishment violation of The Eighth Amendment to the United States Constitution.

- 25) Plaintiff incorporates Paragraphs 4 through 24 as though they were stated fully herein.
- 26) Defendants Pearson, Hunnel, Scott, and Carson demonstrated deliberate indifference to plaintiff medical needs by not providing her with medical examination and psychological counseling after the alleged sexual assault.
- 27) Defendants Pearson, Hunnel, Scott, and Carson violated plaintiff’s Eighth Amendment right to be free from cruel and unusual punishment by depriving plaintiff protection from the sexual assault and extortion by ex-correctional officer Anderson.
- 28) Defendants Pearson, Hunnel, Scott, Carson, and Johnson violated plaintiff’s Eighth Amendment right to be free from cruel and unusual punishment by failing to exercise safeguards in their hiring procedures including an extensive criminal and psychological background check.

Count II

Plaintiff was denied due process under The Fourteenth Amendment to the United States Constitution.

- 29) Plaintiff incorporates Paragraphs 1-28 as though they were stated fully herein.
- 30) Defendants Bendrick, Poe, and Serrano violated plaintiff’s Fourteenth Amendment rights to due process by not providing plaintiff a full and fair review of the investigation concerning the sexual assault by ex-officer Anderson.
- 31) Defendants Bendrick, Poe, and Serrano violated plaintiff’s Fourteenth Amendment right to due process by depriving plaintiff reasonable

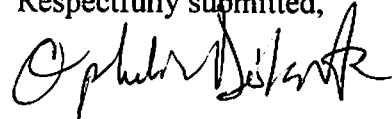
medical/psychological treatment and or examination after she reported the incident.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this court:

- A.** Declare that the acts and omissions described herein violated plaintiff's right under the Constitution and laws of the United States;
- B.** Order Defendants Gene Johnson, Eddie L. Pearson, P.C. Hunnel, Susan Carson, Anthony Scott, Sheri Anderson, John Bendrick, Poe, and Serrano to pay compensatory damages in the following amounts \$100,000.00 jointly and severely against defendants.
- C.** Order Defendants Gene Johnson, Eddie L. Pearson, P.C. Hunnel, Susan Carson, Anthony Scott, Sheri Anderson, John Bendrick, Poe, and Serrano to pay punitive damages in the following amounts \$100,000.00 each against defendants.
- D.** Order defendants to pay reasonable attorney fees and cost;
- E.** Grant other just and equitable relief that this honorable court deems necessary.

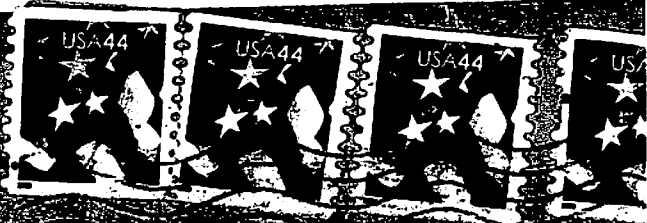
Respectfully submitted,



Ophelia Azriel De'lonta
Powhatan Correctional Center
State Farm, VA 23160

VERIFICATION:

Pursuant to 28 U.S.C. § 1746, I declare and verify under penalty of perjury under laws of the United States of America that the foregoing is true and correct. Executed on September 28, 2009.



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Mr. J. Edgar Hoover
U.S. Department of Justice
Washington, D.C.