UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Petition of Kenneth Myers :

LOUIS MILBURN, :

Plaintiff, :

v. :

THOMAS A. COUGHLIN, III, et al., :

Defendants. :

79 Civ. 5077 (LAP)

MEMORANDUM & ORDER

LORETTA A. PRESKA, Chief United States District Judge:

On August 21, 2012 pro se Petitioner Kenneth Myers ("Petitioner" or "Myers") submitted an Application for the Court to Request Counsel [dkt. no. 408] and filed a Notice of Motion for Contempt ("Petitioner's Motion") [dkt. no. 406] (contempt of the September 27, 1991 Modified Final Judgment in this case ("Milburn II Consent Decree")). For the reasons below, Petitioner's application to request counsel is denied. Petitioner's Motion also is denied, with prejudice.

I. Background

Petitioner, an inmate presently incarcerated at the Green Haven Correctional Facility ("Green Haven"), claims that Defendants violated Section XIV(A) of the Milburn II Consent Decree by: (1) improperly countermanding a medical permit and (2) confiscating a knee brace upon his entry into the Special Housing Unit ("SHU"). (See Pet.'s Mot., Ex. A ("Pet.'s Aff."),

at ¶¶ 3, 10.) Petitioner also alleges that Defendants violated Sections XX(C)(1) and XX(C)(2) either by not sending him to a specialist within the timeframes of Section VII(B) or by giving him neoprene sleeves instead of his knee brace to delay such a visit. (See id. ¶ 25.) Additionally, Petitioner alleges that he was damaged due to deprivation of recreation and exercise while in the SHU, deprivation of his cane, and his being housed in the furthest housing block from the hospital upon being released from the SHU. (See id. ¶¶ 14, 15, 23.) A review of the pertinent facts follows, as set forth in the parties' filings.

On July 22, 2011, Petitioner alleges that Sergeant O'Connor countermanded his medical permit, which stated that Petitioner was to avoid sitting or standing for long periods of time even though he had been standing for thirty minutes in a "hot hallway." (Id. ¶ 3; Decl. of Julinda Dawkins ("Dawkins Decl.") [dkt. no. 413], Ex. C ("Burnett Decl."), Ex. C, at MYERSGRV0005.)) He states that the permit had been issued for years due to postoperative knee injuries and degeneration of the joints in his body. (Id.) According to Petitioner, Sergeant O'Connor then went directly to Dr. Frederick Bernstein ("Dr. Bernstein"), the Facility Health Services Director at Green Haven, who rescinded Petitioner's permit without examining him, conferring with his primary care provider, or consulting his

medical record. (See id. ¶ 4.) Petitioner then filed a grievance to this effect the same day. (See id. ¶¶ 5, 7.) He thereafter resubmitted the grievance requesting that the permit be reinstated and pursued and exhausted his remedies on this issue, to no avail from Defendants. (See id. ¶¶ 3, 5, 7, 9.)

Unsurprisingly, Defendants' version of these events is different. Defendants concede that such a medical permit had been issued by Nurse Practitioner Albert Acrish ("Acrish") for the purpose of allowing Petitioner to be able to change positions from sitting to standing or vice versa while waiting for services such as mess hall, sick call, and medications. (See Dawkins Decl., Ex. A ("Acrish Decl."), at ¶ 6.) Sergeant O'Connor, though, contends that the language of the permit was "vague" and in "direct conflict with the facilities med[ical] run procedure" because it required security staff, not medical staff, to determine how long "a long time" to sit or stand was. (See Burnett Decl., Ex. C, at MYERSGRV0006.) Additionally, only after Petitioner filed his grievance did Sergeant O'Connor meet with Dr. Bernstein with regards to the language in the permit. (See id. ¶ 5; Dawkins Decl., Ex. B ("Bernstein Decl."), at ¶ 6.) Following Sergeant O'Connor's investigation, medical apparently came to agree that such permits were problematic due to the potential for disagreements and arguments between patients and security staff. (See Bernstein Decl. ¶ 7.) Additionally,

Defendants contend that Dr. Bernstein did, indeed, meet with Acrish prior to revision of his permit and discussed the necessity of the permit. (See Acrish Decl. ¶ 7.) According to Defendants, only after that meeting was Plaintiff issued a revised permit, which excluded the contested instructions due to the fact that Petitioner had since been issued a cane to assist with ambulation. (See id.; see also Bernstein Decl. ¶ 8.)

Petitioner alleges a broader set of violations of the Milburn II Consent Degree based upon his time in the SHU, namely surrounding the loss and slow replacement of his metal knee brace. The SHU is a unit within Green Haven that houses inmates who are being punished for disciplinary infractions, in which security staff and medical personnel routinely make rounds. (Burnett Decl. ¶ 7.) "Upon admission to the SHU, an inmate is strip searched, medically examined[,] and he is issued new items of clothing. Within seventy-two hours the inmate's property is transferred to [the] SHU and is inspected by the security staff for contraband." (Id. ¶ 8.) An inmate's property is then "inventoried in the inmate's presence[,] and he indicates which items he wants retained" in the SHU and "which items are to be destroyed, donated[,] or sent home to family. The inmate is permitted to store four bags of property while in [the] SHU." (Id.)

Additionally, an inmate's therapeutic device and other medical devices would be removed from his property by security and held in the SHU office until it is reviewed by a medical provider making rounds. (See id.; Dawkins Decl., Ex. C ("Bentivegna Decl."), at ¶ 6.) According to Defendants, medical devices present security concerns, especially in the SHU, and, thus, have to be approved by the medical department for medical necessity and reviewed by the deputy superintendent for security. (See Burnett Decl. ¶ 14.) Upon approval, a new permit is issued for the device. (See Bentivegna Decl. ¶ 6.) If an item is not permitted in the SHU due to a security concern, then the inmate is notified that the item will not be returned, the inmate is given a receipt, and the item is then placed with the inmate's property for his use once released back into Green Haven's general population. (Burnett Decl. ¶ 14.)

On November 14, 2011, Petitioner was sent to the SHU for four months. (Pet.'s Aff. ¶ 10; Burnett Decl. ¶ 9.) Upon admission, Petitioner contends that Defendants confiscated his knee brace. (Id.) According to Petitioner, this was done even though he had written authorization in his possession. (Id.) Defendants, however, note that the policies governing admittance to the SHU require confiscation of all such items upon entry due to the SHU's nature as a disciplinary unit. (See Burnett Decl. ¶ 8; Bentivegna Decl. ¶ 6.)

On November 15, 2011, Petitioner states that Dr. Bentivegna reissued him his back brace but told him that "security will not let you have the knee brace [in the SHU] because it's metal." (Pet.'s Aff. ¶ 11.) Dr. Bentivegna, however, does not recall making such a statement to Petitioner. (Bentivegna Decl. ¶ 9.) The same day, thirteen bags of Petitioner's property and one cane were secured from his cell and transported to the SHU. (See Burnett Decl. ¶ 9.) Then, on November 17, 2011, Petitioner's property that was to be stored in the SHU was reduced to four sealed bags. (Id.) Petitioner's signature is reflected on an inventory list of his personal property that was transferred from his cell. (See id. ¶ 9, Ex. B, at MYERSSHU0010.)

Due to other health issues, Petitioner was admitted into the mental health observation cell on November 21, 2011, and returned to the SHU on November 23, 2011. (See id. ¶ 13.) Upon returning to the SHU, Petitioner contends that he continued to complain about needing his knee brace in order to attend recreation, including verbally to security staff making rounds on the SHU. (Id. ¶¶ 14-15.)

In response to his requests, Petitioner was provided on several occasions with neoprene knee braces. (Id. ¶ 16.) However, according to Petitioner, they were not the properly prescribed metal brace he previously had and were not his.

(Id.) Despite a search of Petitioner's property bags, Defendants were unable to account for a metal knee brace such as the one Petitioner described being in possession of upon admittance to the SHU. (Id.)

On or about January 6 or 8, 2012, Petitioner then wrote to Deputy Superintendent for Security Edward Burnett ("Burnett") about Green Haven's failure to maintain and provide medical care due to deprivation of his knee brace. (Pet.'s Aff. ¶ 17; Burnett Decl., Ex. B, at MYERSSHU0011.) He also wrote to Acting SHU Director Venetozzi on January 12, 2012, to request a reconsideration of his Tier II disposition and informed Venetozzi of Defendants' refusal to provide Petitioner with his prescribed knee brace. (Pet.'s Aff. ¶ 18.)

Defendants conducted an investigation in response to Petitioner's letter to Burnett. (See Burnett Decl., Ex. B, at MYERS0012.) As part of the investigation, Sergeant LaMay interviewed Petitioner, who, according to the investigation report, informed Sergeant LaMay that "his knee brace and insoles were in a plastic bag behind his cell on the catwalk along with his state winter coat and boots." (Id.) Although "compression type knee braces" were located in Petitioner's belongings, a stiff brace like the one desired by Petitioner was not found. (See id.) Thereafter, Petitioner received a response from Burnett on January 23, 2012, stating that a medically prescribed

metal knee brace would be permitted in the SHU but that said brace could not be located in his property and that Petitioner should contact medical and request a replacement. (Id., Ex. B, at MYERS0011; Pet.'s Aff. ¶ 20)

Petitioner also filed a grievance on January 23, 2012, wherein he complained that his knee brace was misplaced. (Bernstein Decl. ¶ 12.; Pl.'s Reply Aff. ("Pet.'s Reply"),[1] Ex. "P"-¶ 19.) In response to Petitioner's grievance, Dr. Bernstein informed Petitioner on January 27, 2012, that his knee brace would be replaced "if and when it is worn out, or if and when security certifies that the brace, which is state property, was lost and that the medical department should replace it." (Bernstein Decl., Ex. B.) On January 30, 2012, it is noted in Petitioner's medical records that documentation was needed of the lost knee brace. (Bernstein Decl. ¶ 12.) And on February 9, 2012, Dr. Bernstein and Acrish decided to provide Petitioner with another neoprene knee brace until they received the necessary documentation regarding the lost knee brace. (Id.)

[1] It does not appear that Petitioner's Reply, received by this Court on January 25, 2013, was properly docketed. Petitioner, however, did attach an affidavit of service, so in consideration of his pro se status and in the interests of justice, the Court has considered the arguments and information included therein. The Court further will provide Petitioner's Reply to the Clerk of the Court and request the Clerk to docket it accordingly.

According to Petitioner's Affidavit, also on February 9, 2012, he began suffering additional injuries, such as stiffness in his leg, due to being deprived of recreation and adequate support. (Pet.'s Aff. ¶ 22.) For these reasons, he says that he wrote his Acrish to request physical therapy, but his request was denied. (Id.) According to Defendants, however, no record of such a request exists in Petitioner's medical records. (See Acrish Decl. ¶ 16.)

On February 10, 2012, Petitioner was released from the SHU but remained in keeplock status, initially without his cane. (Id. ¶ 23.) He also initially was housed in H block, the farthest from the hospital, as opposed to E block, which is adjacent to the medical clinic. (Id.) Petitioner alleges that such were in retaliation for his persistent complaints. (Id.)

Again, on February 13 and 15, 2012, Petitioner saw Acrish and complained of his missing knee brace. (Id. ¶ 25.) He was issued a new cane on February 13th, and on the latter of these visits, he was issued a new permit for a cane, braces, and boots. (See Bernstein Decl. ¶ 13.) Petitioner also resubmitted his latest formal grievance on February 16, 2012, along with copies of his medical records demonstrating the existence of his prescribed knee brace. (Pet.'s Aff. ¶ 26.)

On February 24, 2012, Petitioner was seen by Acrish and provided proof that his metal knee brace had been lost. (See

Bernstein Decl. ¶ 13.) Then, on March 15, 2012, Petitioner was seen and measured by a specialist for his replacement knee brace, and said brace was issued to him on March 29, 2012. (Id. ¶ 27.) Petitioner states that, thereafter, on April 11, 2012, he received a response to his grievance conceding that Defendants do not log any therapeutic devices given to them. (Id. ¶ 28.)

II. Discussion

A. Application for the Court to Request Counsel

Petitioner applied to the Court for the appointment of pro bono counsel due to his being a layperson, having a hearing impairment, and lack of financial resources. (See [dkt. no. 408], at 1.) In light of the decisions of the Court of Appeals in Cooper v. Sargenti Co., 877 F.2d 170 (2d Cir. 1989), and Hodge v. Police Officers, 802 F.2d 58 (2d Cir. 1986), the Court denies Petitioner's application.

The threshold question in determining whether or not to assign counsel to an indigent plaintiff is whether his claim is "likely to be of substance." Cooper, 877 F.2d at 172; Hodge, 802 F.2d at 61. Hodge articulates those factors to be considered with respect to whether or not counsel should be appointed once a claim is found likely to be of substance: "the indigent's ability to investigate the crucial facts, whether conflicting evidence implicating the need for cross-examination

will be the major proof presented to the factfinder, the indigent's ability to present the case, the complexity of the legal issues and any special reason in that case why appointment of counsel would be more likely to lead to a just determination." Hodge, 802 F.2d at 61-62; accord Cooper, 877 F.2d at 172. The "plaintiff's ability to obtain representation independently" is another factor to be considered. Cooper, 877 F.2d at 172. Finally, appointment of counsel is usually not warranted if the plaintiff's chances of success with his complaint are slight. Cooper, 877 F.2d at 172; Hodge, 802 F.2d at 60.

As the Court of Appeals has reminded the district courts, volunteer lawyer time is a scarcity that should be carefully meted out. In Cooper, the Court of Appeals emphasized this scarcity, and admonished district courts to take seriously the threshold requirement that the claim be "likely to be of substance." Cooper, 877 F.2d at 172. The Court of Appeals went on to instruct that district "courts should not grant such applications indiscriminately." Id.; see also Hodge, 802 F.2d at 60.

The Court notes while Petitioner's application was pending, he demonstrated a noteworthy ability to pursue his case as through his filings and communications with the Court. His submissions indicate that the primary factor that would have

weighed in favor of the appointment of counsel would have been how Petitioner's hearing impairment may have affected his ability to present his case at a hearing. Because the Court does not see a need for a hearing, however, this factor bears little consideration in a review of whether counsel should have been appointed. As discussed below, Petitioner faces the rather substantial clear and convincing burden of proof on his contempt motion, and upon review of the record the Court has concluded that Petitioner is unable to clear that hurdle. Accordingly, his application shall be marked denied.

B. Milburn II Consent Decree Allegations

1. Standard of Review

Where an individual brings a claim for civil contempt of a court order or consent decree, as here, he must prove the alleged noncompliance with clear and convincing evidence. See U.S. v. N.Y.C. Dist. Council of N.Y.C., 229 Fed. Appx. 14, 18 (2d Cir. 2007) (citing King v. Allied Vision, Ltd., 65 F.3d 1051, 1058 (2d Cir. 1995)). Moreover, a court's inherent power to hold a party in civil contempt should only be exercised when: (1) the order the party allegedly failed to comply with is clear and unambiguous; (2) the proof of noncompliance is clear and convincing; and (3) the party has not diligently attempted in a reasonable manner to comply. Id. (citing New York State Nat'l Org. for Women v. Terry, 886 F.2d 1339, 1351 (2d Cir. 1989)).

Courts are not "entitled to expand or contract the agreement of the parties as set forth in the consent decree," Berger v. Heckler, 771 F.2d 1556, 1558 (2d Cir. 1988); courts must narrowly construe the terms of a consent decree and not impose supplementary obligations on the parties. Barcia v. Sitkin, 367 F.3d 87, 106 (2d Cir. 2004) (internal citation omitted). The Court now turns to Petitioner's claims.

2. Analysis

Petitioner's motion is denied because he fails to demonstrate by clear and convincing evidence, as he must, that the Milburn II Consent Decree unambiguously requires the specific treatment requested here or that Green Haven has not diligently attempted in a reasonable manner to comply with the relevant provisions of the Consent Decree.

a. Alleged Countermanding of Medical Permit

Petitioner alleges that Sergeant O'Connor violated Section XIV(A)(1)-(3) of the Milburn II Consent Decree by countermanding the orders on his June 20, 2011, medical permit that Petitioner should avoid sitting/standing for long periods of time, in part because Sergeant O'Connor was not the rank of Lieutenant or higher. Section XIV(A) provides that security personnel shall not countermand written medical orders in the possession of an inmate unless the security officer is of the rank of Lieutenant. Although Defendants seem to have ignored the portion of

Petitioner's grievance that implicates Sergeant O'Connor in the alleged countermanding of such orders, Petitioner still has not demonstrated by clear and convincing evidence that Sergeant O'Connor did not diligently attempt in a reasonable manner to comply with the Milburn II Consent Decree.

Upon review of the record, the language of Petitioner's permit is vague. It does not specify what "a long time" to sit or stand is, and it does not provide security personnel a means to make such a determination. Additionally, Defendants have put forth evidence describing how the policies of the medical run procedure are designed to minimize disagreements and arguments between patients and Green Haven personnel. Security officers at Green Haven try to minimize such by avoiding appearances of unequal treatment. Considering that Petitioner based his grievance upon his being forced to stand for thirty minutes, the Court is unconvinced that Sergeant O'Connor's alleged denial of Petitioner's request to sit constitutes "countermanding" Petitioner's medical permit.

Furthermore, the record indicates that Sergeant O'Connor only approached Dr. Bernstein after Petitioner filed his grievance and in accordance with a formal investigation. The record further reflects that Dr. Bernstein did, indeed, consult with Acrish. And finally, the record reflects that after said consultation, Defendants attempted to remedy the problem by

providing Petitioner with a cane and a new permit allowing him to have said cane.

b. Confiscation of Petitioner's Knee Brace

Petitioner alleges that Defendants violated Section XIV of the Milburn II Consent Decree by illegally taking his knee brace upon entry into the SHU and that the Decree was further violated by not writing a confiscation report and providing him with a receipt. Sextion XIV(A) of the Decree prohibits security personnel from confiscating any medical devices for which an inmate has written authorization in his possession unless a security officer of the rank of Lieutenant or above determines that such possession would pose a: (1) likelihood of escape; (2) risk to the safety of staff, inmates, or the public; or (3) risk to the good order of the prison. "Prior to making this determination the security officer must consult with a Green Haven physician or, in his or her absence, a designated physician's assistant." (Milburn II Consent Decree ¶ XIV(A)(1).) "When a physician or physician's assistant is not in the facility, the medical provider on duty must consult by telephone with the physician or physician assistant on call." (Id.) "The security officer shall make a written report explaining the reasons for the action taken." (Id.) "This report shall be kept in a file designated for this purpose and

the inmate shall receive a receipt for any confiscated property." (Id.)

The Court finds that Petitioner has not demonstrated by clear and convincing evidence that Defendants violated the Milburn II Consent Decree. At the outset, the Court notes that Green Haven policies mandate confiscation of such materials when inmates are admitted to the SHU and that such is done for security reasons (which the Decree allows) and apparently represents a standing order approved at sufficient levels. Therefore, assuming the brace was confiscated, the Court does not find that Petitioner has demonstrated that Defendants violated the Decree by confiscating his knee brace for further review.

Furthermore, if the Decree was violated, it would be on the grounds that Defendants did not properly document the confiscation of his prescribed knee brace and reasoning for doing so and did not provide him with a receipt. But Petitioner does not show on this record that the brace in question was confiscated and not lost in some other manner.

While Petitioner affirms in both his motion and reply that Defendants set his knee brace aside for approval before it could be provided to him in the SHU, (see Pet.'s Aff. ¶¶ 10, 19, 21, 28; Pet.'s Reply ¶ 6), his allegations regarding the timing of such are vague, and he does not specifically allege that he

raised any concerns about the whereabouts of the brace when his property was being inventoried. Defendants offer an investigation report stating that the officer who processed Petitioner's property in the SHU "[did] not recall seeing a knee brace." (See Burnett Decl., Ex. B, at MYERSSHU0012.) And it is worth noting that Petitioner's compression knee braces and his insoles were not logged until January, 2012, after Petitioner directed security officials to bags with his personal belongings on a catwalk behind his cell. Furthermore, Defendants highlight in their brief that Petitioner signed off on the inventory list. Although the form Defendants point the Court to states explicitly on it that "NO STATE PROPERTY SHALL BE LISTED ON THIS FORM," (see id., Ex. B, at MYERSSHU0010), which would explain why the brace is not listed on the form,[2] Petitioner has not put forth evidence that demonstrates clearly and convincingly that the knee brace in question was formally confiscated in November with the vast majority of his property upon his admittance to the SHU.

In short, there is insufficient evidence in the record to discount the possibility that Petitioner's custom knee brace was inadvertently left behind on the catwalk with his winter coat and boots, where Petitioner described as the place he stored it

[2] Defendants concede that the brace in question was state property. (See (Bernstein Decl., Ex. B.)

in January, 2012. Although there is no apparent explanation for the subsequent disappearance of the medical devices Petitioner claims were therein, the Court is not convinced that this amounts to clear and convincing evidence that Defendants did not diligently attempt in a reasonable manner to comply with the Decree in logging Petitioner's items. The fact that a bag was still there approximately two months after Petitioner entered the SHU demonstrates that the bag and the contents inside may not have been readily identifiable as Petitioner's to security officials who gathered and inventoried his property. Accordingly, Petitioner's motion for contempt on these grounds is denied.

c. Replacement of Petitioner's Knee Brace

Section XX(C) of the Milburn II Consent Decree requires that with respect to custom braces, Defendants shall ensure that all patients determined by a Green Haven health care provider to have a presumptive need for such a device or a replacement are evaluated by the appropriate specialist within the Guidelines of Section VII(B) after the time presumptive need is determined. Such device must then be delivered to the patient within two months after the appropriate specialist determines that the patient is ready to have the device fabricated, repaired, or replaced; however, the time limitation shall be subject to modification following required consultations. (Milburn II

Consent Decree ¶ XX(C).) The relevant portion of Section VII(B) provides:

> B. Defendants shall insure that all patients needing specialist care receive consultations with specialists in ac cordance with the severity of their health conditions, as follows:
> . . .
> 3. Priority Three Cases: Except as provided in ¶ VII-B-4, no other patient shall wait more than forty-five calendar days from the date a specialist consultation is ordered by a Green Haven provider to the date the consultation occurs.
> 4. Priority Four Cases : Patients awaiting appointments with an optometrist or podiatrist who have stable conditions without risk of decline by del ay and whose conditions are not painful and do not involve substantial impairment of function may wait up to seventy -five (75) calendar days for such appointments. Patients referred to optometry by a Green Haven health care provider shall be given an optometry appointment regardless of whether they have been seen by the optometrist within the last two years.

(Milburn II Consent Decree ¶ VII(B)(3)-(4).)

Petitioner alleges that Defendants violated the Decree by denying his request for physical therapy and by failing timely to replace his custom knee brace. The Court finds that Petitioner has failed to show by clear and convincing evidence that Defendants did not diligently attempt in a reasonable manner to comply with the Decree.

First, with regards to Petitioner's request for physical therapy, the only record of said request is Petitioner's

statement to this effect in his affirmation. Defendants do not have record of such a request. Moreover, the Court could not find a record of such a letter in Petitioner's own submissions to the Court, which is notable because Petitioner has provided copies of virtually every other letter he referenced. Therefore, the Court finds that Petitioner cannot show by clear and convincing evidence that such constituted a violation of the Decree.

Second, Petitioner cannot show that once it became clear that his custom knee brace had been lost that Defendants did not diligently attempted in a reasonable manner to comply. Petitioner formally did not file a grievance to this effect until January 23, 2012. But in terms of the Decree, what is most important is when a consultation with a specialist was ordered. On February 24, 2012, Petitioner was seen by Acrish, and proof was accepted that his custom knee brace had been lost. A consultation was then ordered, and Petitioner was seen by the Orthotics Clinic and measured for a new brace on March 15, 2012, well within forty-five day period required under Section VII(B)(3). Petitioner was then delivered and fitted with the device on March 29, 2012, well within the two months set forth in Section XX(C).

Consequently, the Court holds that Petitioner cannot show by clear and convincing evidence that Defendants violated the Milburn Decree in replacing Petitioner's knee brace.

d. Petitioner's Other Allegations

Petitioner strings together various other allegations related to his allegedly being denied a cane upon release from the SHU and his being housed in H block initially upon release from the SHU. These claims are similarly unfounded.

First, Petitioner received a cane within three days of being released from the SHU. That such a delay of three days represents callousness and retaliation is unsupported by any evidence in the record. Beyond claiming that he was being retaliated against for his prior complaints, Petitioner does not even allege who is responsible for withholding his cane for such reasons.

Petitioner's allegations regarding his housing in H block are similarly hollow. Defendants make clear in their submissions to the Court that standard operating procedure at Green Haven is for inmates who have just been released from the SHU to initially be placed in H block. (See Burnett Decl. ¶ 16.) Within two weeks after being released, on both February 24 and 27, 2012, Petitioner requested that he be transferred to E block to be closer to medical. (Id.) On February 27, 2012, approval of said request was forwarded to movement and control.

(Id.) Soon thereafter, on March 2, 2012, Petitioner was transferred to E block. (Id.) Thus, Petitioner cannot demonstrate in the face of standard operating procedure and the date of his formal request that Defendants acted with callousness or in retaliation in housing him in H block upon release from the SHU.

III. Conclusion

For the foregoing reasons, Petitioner's Application for the Court to Request Counsel [dkt. no. 408] is DENIED. Additionally, Petitioner's Motion for Contempt [dkt. no. 406] is denied, with prejudice.

SO ORDERED.

Dated: New York, New York
March 29, 2013

Loretta A. Preska

LORETTA A. PRESKA
Chief U.S. District Judge