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UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
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DAVID MCGEE, and
all other inmates similarly
situated, Plaintiffs,

vs.

STEVEN GOLD, Commissioner,
Vermont Department of Corrections,
and KEITH TALLON, Superintendent,
Southern State Correctional Facility,
and CELESTE GIRRELL,
Superintendent, Northern State
Correctional Facility, individually and
in their official capacities,
Defendants.

INMATE
CIVIL
RIGHTS
COMPLAINT
PURSUANT TO
42 U.S.C. § 1983

JURY TRIAL
DEMANDED

Civil Case No.:

1:04-CV-335

I. Preliminary Statement

1) This is a class-action civil rights violation
complaint brought by Plaintiff David McGee, an inmate
in the Vermont Department of Corrections, and all other
inmates similarly situated in Vermont correctional facilities,
who suffer exposure to constant light by the continuous
illumination of their cells. Plaintiffs seek declaratory and
injunctive relief under 42 U.S.C. § 1983 to defend
and protect the Eight Amendment Rights

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guaranteed by the Constitution of the United States.

II. Jurisdiction

2) The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4) and 2201. The matter in controversy arises under 42 U.S.C. § 1983.

III. Parties

3) Plaintiff David McGee is in the custody of the Commissioner of the Vermont Department of Corrections and is presently an inmate incarcerated at the Southern State Correctional Facility, 700 Charlestown Road, Springfield, Vermont 05156-4400. The events and conditions described in this Complaint took place relevant to times Plaintiff was incarcerated at the Southern State Correctional Facility (SSCF) and the Northern State Correctional Facility ("NSCF").

4) Members of the plaintiffs' class are all other inmates similarly situated at the Southern State Correctional Facility and Northern State Correctional Facility whose cells are constantly illuminated. This is at a minimum 700 members.

5) Defendant Steven Gold is the Commissioner of the

Vermont Department of Corrections ("DOC") located at 103 So. Main Street, Waterbury, Vermont 05671-1001.

Defendant Gold is responsible for sanctioning, implementation and adherence to DOC policy at the Central Office level.

Furthermore, Defendant Gold is responsible for ensuring superintendents implement and adhere to DOC policy at the facility level.

6) Defendant Keith Tullon is the superintendent of the SSCF. Defendant Tullon is responsible for the administration, operation, conditions and management of SSCF.

7) Defendant Celeste Girrell is the superintendent of the NSCF, located at 2559 Glen Road, Newport, Vermont 05855.

Defendant Girrell is responsible for the administration, operation, conditions and management of NSCF.

IV. Previous lawsuits

8) Plaintiff has filed no other lawsuits dealing with the same facts involved in this action.

9) Plaintiff has filed other lawsuits relating to his imprisonment:

a) McGee vs. Gold; Washington County Superior Court;

Docket No. 528-9-04 Wrcv; Disposition still pending;
suit filed on 9/20/04.

b) McGee vs. Gold; Windsor County Superior Court; Docket
No. 589-11-04 Wrcv; Disposition still pending; suit filed 11/24/04.

IV. Exhaustion of Administrative Remedies

10) Plaintiff, pursuant to Vermont DOC Directive 320.01 and
Procedure 320.01.01, utilized the inmate grievance procedure
to its fullest extent and exhausted administrative remedies
in three separate actions related to the issue of constant
illumination and the harm caused by such.

11) First grievance action:

a) Plaintiff filed a Grievance Form #1 by giving the original
to COI Noel Olin at the NSCF on 4/28/01.

b) Plaintiff received the Grievance Form #2 (response) on
5/4/01. Request for relief was denied.

c) Plaintiff mailed Grievance Form #3 to the Commissioner
of Corrections on 5/5/01.

d) Plaintiff received the Commissioner's response on 6/4/01.
Request for relief was denied.

e) Plaintiff exhausted his administrative remedies in this action.

12) Second grievance action:

a) Plaintiff filed a Grievance Form #1 by giving the original to COI Merrill at the SSCF on 10/16/03.

b) Plaintiff received Grievance Form #2 on 10/21/04. Request for relief was denied.

c) Plaintiff mailed Grievance Form #3 to the Commissioner of Corrections on 11/7/03. Plaintiff received receipt from Central Office assigning the Grievance Form #3 Log In #9650.

d) On 8/25/04, Plaintiff received a letter from Defendant Tallon responding to several Grievance Form #1's filed 9 months earlier. Along with this letter was Plaintiff's original Grievance Form #3 that had been sent to the Commissioner and assigned Log In #9650. The Grievance Form #3 was signed "Keith Tallon, Responded August 24, 2004 @ 1140 hrs", though there was not a written response to the lighting issue included.

e) It is a violation of DOC Directive 320.01 and Procedure 320.01.01 and Vermont Statute, Title 28, Chapter 11, §854 for Defendant Tallon to respond to a Grievance Form #3.

f) On 10/25/04, Plaintiff wrote to Defendant Gold and advised of the violation of DOC Directive and Procedure and Vermont Law. Plaintiff advised Defendant Gold he was granted an additional 30 day period to respond to the Grievance Form #3, Log In #9650.

g) On 11/11/04, Plaintiff received a letter from Defendant Gold acknowledging receipt of the 10/25/04 letter on 11/1/04 and guaranteeing a response within the "proscribed period."

h) Plaintiff never received further response.

i) Defendant Gold exceeded "a reasonable amount of time" in responding to this grievance. Plaintiff has exhausted his administrative remedies in this action.

13) Third grievance action:

a) Plaintiff filed a Grievance Form #1 by giving the original to COI Massey at SSCF on 10/7/04.

b) The Grievance Form #1 was not responded to within the period proscribed by DOC policy.

c) Plaintiff mailed Grievance Form #3 to the Commissioner of Corrections on 11/8/04.

d) The Grievance Form #3 was not responded to within a reasonable amount of time.

e) Plaintiff has exhausted his administrative remedies in this action.

VI. Facts

A. Cell lighting

14) Each cell at NSCF and SSCF contains a built-in lighting fixture which contains either a 5-watt or 7-watt twin tube compact fluorescent light bulb which remains on 24-hours per day. These 24-hour lights are referred to as "security lights."

15) The security lights cannot be turned off by inmates. Inmates are forbidden from covering or interfering with the security lights in any manner and face disciplinary action if they do.

16) According to the bulb manufacturer and an industrial products catalog, the 5-watt bulb produces the equivalent light (lumens) of a 25-watt incandescent bulb; the 7-watt bulb produces the equivalent light (lumens) of a 40-watt incandescent bulb. The light produced by either of

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bolbs used in the security light fixture is extremely bright.

17) The security light fixture is located within 3 ft. of the head of the top bunk occupant, with the security light shining directly on that person. There is no significant difference or reduction in light for the bottom-bunk occupant as the ambient light is as bright as the direct light. The light is equally bright in all parts of the cell.

18) The light is bright enough to read a book comfortably by or larger print from across the room. The security light is so bright that the main cell lights are seldom voluntarily used.

B. Current Effects of Constant Illumination

19) Plaintiff avers that human beings are diurnal creatures and that being exposed to constant illumination is as unnatural, as alien, a human habitat as being kept in constant darkness, and such causes grave current and future health problems, including deadly hormone imbalances and cancer.

20) Plaintiff states exposure to constant illumination causes him: a) grave sleeping problems; b) sleep deprivation; c) inability to fall asleep; d) extreme difficulty falling asleep;

e) restless sleep; f) frequent awakenings during the night accompanied by severe temporal confusion as to make Plaintiff feel insane; g) unnatural changes in normal sleeping pattern and circadian rhythm; h) increased frequency of severe headaches; i) pain and discomfort from eye strain; j) an increase in cold & flu like symptoms; k) mental fatigue and confusion during the day; l) jet-lag like symptoms; and m) exacerbation of Plaintiff's existing depression, anxiety and bipolar disorders.

21) Plaintiff, through the grievance process and medical requests informed Defendants of the problems listed in ¶ 20.

C. Future Effects of Constant Illumination

22) Plaintiff fears that exposure to constant illumination threatens to cause grave and imminent health problems in the future, including deadly hormone imbalances and certain types of cancer.

23) Plaintiff, through the grievance process, medical requests and information supplied to his caseworker, Matt Burke, at SSCF, informed Defendants of the future threat of health problems caused by constant illumination.

D. Method of Effects of Constant Illumination

24) Plaintiff, with severely limited and restricted access to research resources and knowledge banks (e.g. no Internet, telephone or direct library access), located over 25 studies published in prestigious biomedical research journals (e.g. New England Journal of Medicine, Journal of the National Cancer Institute, Science, et al.) which confirm the harmful and potentially deadly effects of exposure to constant illumination.

25) The chief biomedical explanation in these studies for the harm is that constant exposure to light, and even light striking the retina while sleeping, suppresses the human body's ability to produce melatonin. Melatonin is a nocturnally produced hormone with functions including regulation of circadian rhythms and oncostatic (cancer stopping) properties. Absence or reduction of melatonin production is oncogenic (cancer creating).

26) The threat of harm from constant illumination is so severe it violates contemporary standards of decency and no

person aware of the threat would willingly expose themselves to such a risk. This is evidenced in a wide body of news articles reporting communities around the world recognize the threat, and are reducing and eliminating their exposure to constant illumination and artificial light at night.

E. Failed Remedies

27) Plaintiff found no respite from the effects of constant illumination by the security lights by having a bottom bunk, as the ambient light is of as significant brightness as the direct light.

28) Plaintiff found no respite from the effects of constant illumination by the security lights by covering his head or eyes with a cloth as:

a) a cloth still, inevitably, allows some light seepage into the eyes;

b) a cloth, inevitably, falls off at some point during the night because of normal body shifts and movement during sleep, letting light strike the eyes and causing Plaintiff to wake;

c) covering the head or eyes, in itself, can make sleeping difficult or impossible because of retention of body heat and irritation from fabrics; and

d) some officers require inmates to not have their head covered at any time (sleeping in bed or otherwise); and if sleeping with head covered will bang on door to awaken inmate and order them to uncover their head.

29) Plaintiff has submitted numerous Health Services Request Forms to seek help from the medical and mental health departments in resolving health problems caused by constant illumination.

30) Medical request submitted on 10/7/04, was responded to on 10/8/04, "This is DOC - Please speak to caseworker".

31) Medical request submitted on 10/19/04, MD denied request for increase in ibuprophen for increased headaches.

32) Mental health requests of 10/15/04 and 10/27/04, was referred to psychiatrist, Dr. Cotton. Dr. Cotton advised against sleeping medications to compensate for environmental factors as they can cause additional and increased problems. Dr. Cotton did prescribe an anti-depressant but it was discontinued a week

later because of adverse side-effects.

33) Mental health request of 11/28/04: Plaintiff was seen by psychiatric nurse practitioner (PNP). PNP recommended against sleep medications to compensate for environmental factors. All medications suggested had side effects of equal or greater severity and danger as those caused by constant illumination.

F. Use of Constant Illumination and Alternatives

34) Plaintiff states there is no legitimate penological justification for constant illumination of cells and such practice is unreasonable as:

a) Staff are not looking into the cells every minute,

24-hours per day;

b) Staff are not even near the cells every minute,

24-hours per day;

c) during the night staff only conduct checks of inmates once every half-hour, and such checks require only intermittent, brief, minimal illumination; and

d) even random, irregular checks would require only intermittent, brief, minimal illumination.

35) Plaintiff states de minimis, reasonable alternatives to achieving checks of inmates without the harm caused by the use of constant illumination are:

a) for light switches for the security lights to be installed outside each cell, so the officer can intermittently, briefly and minimally illuminate the cell only when looking in; or

b) for officers to use flashlights to intermittently, briefly and minimally illuminate the cell and view an inmate only when looking in.

36) Plaintiff states that officers at the other Vermont Correctional facilities: Northwest State Correctional Facility; Chittenden Regional Correctional Facility; Marble Valley Regional Correctional Facility (Alpha Unit); Northeast Regional Correctional Facility; and the Southeast State Correctional Facility; and the Greenville Correctional Center in Virginia (where VT DOC placed Plaintiff for two years), all successfully use flashlights, not constant illumination, to conduct checks of inmates.

37) Plaintiff states that his sleep was not disturbed by the officers use of flashlights to conduct checks of

him while he was incarcerated at the facilities listed in paragraph 36.

G. Continuity of Interest

38) Plaintiff David McGee avers that as long as he and other members of the Plaintiffs' class are inmates in the custody of the Vermont DOC, they are live parties and maintain a continuous, vested, cognizable interest in the outcome of this case.

39) Plaintiff David McGee has served 8 years of a 15 year sentence, and in that time has been transferred ~~to~~ 10 times to different Vermont facilities. He has been transferred twice in 9 months to SSCF. With Vermont DOC's penchant for randomly transferring inmates for "population management" there is no doubt that, even if transferred to a facility without constant illumination while this case is in progress, Plaintiff will again find himself in a facility that exposes inmates to constant illumination before his sentence is completed.

VII. Causes of Action

40) Plaintiff realleges and incorporates by reference

paragraphs 1-39 as if fully restated herein.

41) At all relevant times herein, Defendants were "persons" for purposes of 42 U.S.C. § 1983 and acted under color of law to deprive Plaintiff of his constitutional rights, as set forth in paragraphs 1-39 and below.

42) Defendants, by subjecting Plaintiff to constant illumination and the harm caused by such, have seriously deprived him of the minimal civilized measures of life's necessities, namely: a) the basic human need to sleep; b) adequate shelter where the basic human need to sleep can be achieved; and c) reasonable safety from current and future serious threats of harm to his health. This constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.

43) Defendants, by subjecting Plaintiff to constant illumination and the harm caused by such, have violated the evolving standards of decency, enlightened by scientific opinion, that mark the progress of a maturing society, as communities around the world are reducing and eliminating exposure to constant illumination and artificial light at night. This constitutes

deliberate indifference and cruel & unusual punishment in violation of the 8th Amendment to the United States Constitution.

44) Plaintiff, through filing numerous grievances and medical requests, exposed Defendants to information about the current and future serious threats of harm caused by constant illumination. By denying the requests for relief in the grievances and medical requests, Defendants consciously disregarded the current harm and substantial risk of future harm caused by continued exposure to constant illumination. Thus, Defendants were deliberately indifferent to Plaintiff's conditions of confinement and serious medical needs, which constitutes cruel and unusual punishment in violation of the 8th Amendment to the United States Constitution.

45) As stated in paragraphs 35-37, reasonable and non-harmful alternatives to constant illumination exist. By ignoring these alternatives and continuing to expose Plaintiff to constant illumination, Defendants subject Plaintiff to

unnecessary and wanton infliction of pain, so totally without penological justification that it results in the gratuitous infliction of suffering. This constitutes cruel & unusual punishment, and deliberate indifference to such, in violation of the 8th Amendment of the United States Constitution.

VIII. Relief Requested

46) Issue a declaratory judgment stating there is no legitimate penological justification for exposing inmates to constant illumination and continuing such violates Plaintiffs' rights to be free from cruel & unusual punishment under the 8th Amendment to the United States Constitution.

47) Issue an injunction barring Defendants or their agents from subjecting Plaintiffs in any VT correctional facility to constant illumination.

48) Grant such other relief as it may appear that Plaintiffs are entitled.

Pursuant to 28 U.S.C. §1746, I declare and verify under penalty of perjury that the foregoing is true and correct.

DATED AT Springfield, Vermont this 5th day of December 2004.

David M. Lee, pro se.
David M. Lee, Plaintiff, pro se