

AUG 24 2001

CERTIFICATE - PROOF OF SERVICE

I Tony G. Merrinweather #188123, hereby certify and declare under penalty of perjury acting in capacity as a process server in case: Merrinweather - Gerald Berge, case no. 01-CV-847 Dane county and that I have duly served, per. ss-227.40 (S) Wis. Stats. the said Joint Committee For Review of Administrative Rules, Room #37, South State Capitol, P.O. Box 7882, Madison, Wis. 53707-7882, said party to action, per ss. 53.02 (S) (E) Stats. ss. 801.14 (4) Wis. Stats. via per. certified mail, a authenticated copy of the following: "Summons and complaint with attached inmates complaints: notice, + decisions and exhibit #a thereof... This declaration is made per. Title 28 § 1746 (2) U.S.C. in conjunction with ss. 706.07 Stats. Notarial Act...

Dated 21st day of August, 2001

Subscribed and sworn to before me on
this _____ day of _____, 2001

Notary Public / State of Wisconsin

My Commission Expires: _____

Respectfully Submitted

Tony G. Merrinweather

151
Tony G. Merrinweather #188123

IN PERSON / BOX 9900 (SMCI)
Roscoebel, Wis. 53805-9900

MICHAEL NOWAKOWSKI
CIRCUIT COURT, BR. 13

010Y0847

State of Wisconsin Circuit Court DANE County

Tony G. MERRIWEATHER AND those
similarly situated inmates.

MAR 29 7 48 AM '01

CIRCUIT COURT
DANE COUNTY WI 0035

-VS-

Plaintiff - Petitioner(s)

CASE NO. _____

GERALD BERGE - WARDEN AND
VICKIE SHAGE - Unit Manager/Program Dir.

CODE NO. 30707, 30701

Defendant(s) - Respondent(s)

SUMMONS

State of Wisconsin: To each person named as defendant-Respondent:
GERALD BERGE - WARDEN AND Vickie shage -
Unit Manager/Program Director, 1101 Morrison Dr.
P.O. Box 1000, Moscobel, Wis. 53805-1000.

You ARE hereby notified that: the Plaintiff-Petitioner
named above has filed a lawsuit or other legal
action above against you. The complaint which
is attached states the nature and basis of the legal
action.

Within 45 days of receiving this summons,
you must respond with a written answer as that
term is used in chapter 802 of the Wisconsin
statutes, to the complaint.

The court may reject or disregard an
answer that does not follow the requirements of
the statutes.

LEGAL
CORRESPONDENCE

The ANSWER must be sent or delivered to the court, whose address is DANE COUNTY COURTHOUSE, 213 CITY-COUNTY BUILDING, 210 MARTIN LUTHER KING JR. BLVD. MADISON, WIS. 53709. AND TO THE PLAINTIFF-PETITIONER whose address is SUPERMAX CORRECTIONAL INSTITUTION P.O. BOX 351, WAUPUN, WIS. 53805-9900.

YOU MAY HAVE AN ATTORNEY help or REPRESENT YOU. IF YOU DO NOT PROVIDE A PROPER ANSWER WITHIN 45 DAYS, THE COURT MAY GRANT JUDGMENT AGAINST YOU FOR THE AWARD OF MONEY OR OTHER LEGAL ACTION REQUESTED IN THE COMPLAINT AND LOSE YOUR RIGHT TO OBJECT TO ANYTHING THAT IS OR MAY BE INCORRECT IN THE COMPLAINT...

A JUDGMENT MAY BE ENFORCED AS PROVIDED BY LAW. A JUDGMENT AWARDING MONEY MAY BECOME ENFORCED AS PROVIDED BY LAW OR A LIEU AGAINST ANY REAL ESTATE YOU OWN NOW OR IN THE FUTURE AND MAY ALSO BE ENFORCED BY PROPERTY OR GARNISHMENT.

Dated 14th day of FEBRUARY, 2001

Subscribed and sworn to before me on this 14th day of February, 2001.

Christina A. Beer
Notary Public / State of Wisconsin

My Commission Expires: 1-5-2003

Respectfully submitted

Tony G. Meagher
1st Tony G. Meagher #88123
IN PERSON / Box 9900 (smc2)
Boscobel, Wis. 53805-9900

STATE OF Wisconsin Circuit Court

Dane County
MAR 29 7 48 AM '01
01CV0847

Tony B. Mearweather and Mose
Similarly Situated Inmates,

CIRCUIT COURT
DANE COUNTY, WI
01IP0035

-vs- Plaintiff - Petitioner

CASE NO. _____

Gerald Beerge - Warden and
Vickie Sharpe - Unit Manager - Program Dir.
Defendant(s) - Respondent(s)

code no. 30707, 30701

CIVIL ACTION

The Plaintiff's in the above entitled action in his natural person capacity, commences this civil action against the defendant's Respondent's in their individual and personal capacities for acts and omissions consistent with ss. 801.05 (2)(3) Wis. stats., Title 42 § U.S.C. 1983 in conjunction with extraordinary writ of mandamus and writ of Prohibition, par. ss. 781.01 Wis. stats., Wisconsin common law and ss. 806.04 Wis. stats., contrary to their ministerial duty's to their office and employment acting under color of law and as a result the Plaintiff - Petitioner (both) person's and properties was injured thereby...

costs or providing security for such fee's and cost pursuant to ss. 814.29 (1) Wis. stats. from the affidavit of indigency accompanying the Plaintiff - Petitioner's proposed complaint should be concluded that the plaintiff - Petitioner is unable to pay the fees and cost of bringing the civil action...

LEGAL
CORRESPONDENCE

JURISDICTION

This court pursuant to Title 28 U.S.C. § 1343 (a) (2)(3) articles 7 & 8 Wis. Const. in issuing a 42 § U.S.C. 1983 with article 3 § 2, cl. 1 U.S.C. in conjunction with ss. 781.01 Wis. Stats., ss. 783.01, ss. 783.08 Wis. Stats. and ss. 803.08 Wis. Stats., the court shall exercise its Judicial Powers over all cases arising under the Constitution and laws of this land, affecting persons and things.

Plaintiff's - Petitioners'

Tony G. Meagweather, and those similarly situated inmates having had their 4th, 5th, 8th, 14th and 1st Amendment Right U.S.C. Violated who is a natural born person - and Resident of the United States Residing at Supermax Correctional Institution, P.O. Box 9900, Escobedo, Wisconsin 53805-9900. whose mailing address is the same;

DEFENDANTS - Respondents

Gerald Berge - Warden and Vickie Sharpe - Unit Manager/Program Director both citizens of the United States, employed by the state of Wisconsin, Dept. of Corrections and responsible for the discipline, safety and welfare of all residents and prisoners at ~~Escobedo~~ Supermax Correctional Institution, P.O. Box 1000, 1101 Morrison Dr., Escobedo, Wis. 53805-1000, whose mailing address is the same...

Trial By Jury Demanded

Pursuant to article 3, § 2 cl. 1 U.S.C., article 1, SEC. 5 Wis. Const. in conjunction with ss. 805.01 (2) Wis. Stats. the Plaintiff-Petitioner's demand a Trial By Jury of (6) and pursuant to this the court shall extend it's - Judicial Powers - over all civil and criminal matters arising under the laws of this land and constitution.

Petition

1. That on 9-19-00 Defendants-Respondent's Gerald Beage and Vickie Sharpe violated the Plaintiff's-Petitioner's Tony G. Mehlweather and those statutes situated 9th 8th and 14th amendment Rights wherein the defendant's-Respondent's acted beyond and outside their authority vested under DUC 308.04 (1)(2)(10) (12)(f) Wis. adm. code, by using administrative confinement (NON-PUNITIVE) as a vehicle of punishment to impose punitive conditions of confinement upon Plaintiff-Petitioner as a penalty of confinement for his alleged acts of misconduct, contrary to their own rules vested pursuant to DUC 308.04 (2)-Apparent causing Plaintiff-Petitioner inflict of pain, and mental cruelty and constituted cruel and unusual Punishment.

2.) That Defendants-Respondent's Vickie Sharpe and Gerald Beage acted beyond their

Authority, wherein they imposed Rules of a Step process and demotion process upon the Plaintiff - Petitioner, which was not authorized per. Doc 308.04 Wis. adm. code nor expressly or impliedly authorized by legislature under chapter ss. 227.11 Wis. stats. which was inconsistent with unambiguous statute Doc 308.04 Wis. adm. code in violation of ss. 227.10 (2) Wis. stats.

3.) That Defendant - Respondent's Violated Plaintiff - Petitioner's 14th amendment and 4th amendment right to due process, wherein Plaintiff - Petitioner Property and Privileges were taken without a hearing and Plaintiff - Petitioner was subjected to punitive conditions to the same extent as those of punitive - disciplinary segregation inmates and denied equal protection as to be given a property's + privileges as those other administrative confinement inmates, wherein Plaintiff - Petitioner's non-punitive status was changed to punitive status in its operation;

4.) That Defendant's - Respondent's failed to follow their own ministerial duty's pursuant to Doc 308.04 (2) - appendix not to use administrative confinement as a penalty of misconduct which thereby subjected Plaintiff - Petitioner to civil

and unusual punishment and a typical hardship outside ordinary incident of Prison life is violation of the 8th and 14th amendment U.S.C.

Therefore, selfenth in article 1 + 4 of the Wisconsin by right of the People, recently to assemble to consult for any department thereof, shall never be abridged.

Wherefore, the Plaintiff being a natural person born equally free and independent and being apart, thereof, the people of Wisconsin being grateful to almighty God for our freedom to obtain our right to this court for redress in our demand for judgment.

RELIEF

1.) Injunctive Relief: is that the arbitrary practice of demotion and step program process be stopped/banded on those inmates in administrative confinement non-punitive status;

2.) Declaratory Judgment: That a declaration that the defendant-respondent policy and implementation of a demotion, or step program process or level system be deemed invalid and not authorized to govern inmates, under Doc 308.04 Wis. Adm. Code administrative confinement non-punitive status, as it constitutes "Punishment" or a "Penalty of Punishment" for misconduct contrary to Doc 308.04 (2)-appendix;

3.) Punitive Damages: against the defendants- Respondents both jointly and severally for a sum of \$300,00 ~~00~~ Three Hundred dollars per. day for each day Plaintiff - Petitioner's was held under demolition process and Plaintiff's - ~~and~~ Petitioner's original status and time frame be restored;

4.) Compensatory Damages: From each defendant- Respondent both jointly and severally for the sum of one hundred thousand (\$100,000.00) dollars---

Dated 14th day of February, 2001

Respectfully Submitted

Tommy G. Maguire
 1st Tommy G. Maguire #188123
 In Person / Box 9900
 Roscoke, Wis. 53805-9900

subscribed and sworn to before me on this 14th day of February, 2001

Christian A. Burckhardt
 Notary Public / Wisconsin

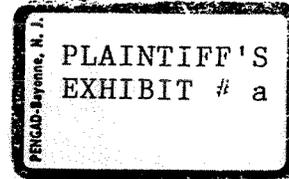
My commission expires: 1-5-2003,

Results of Level Review

Inmate Name Merrillweather, Anthony Number 188123

Your Level 3 status was recently reviewed. The results are as follows.

- Retention on Level 3
- Demotion to Level 2
- Return to Level 1 – Unit Alpha



The reason for the decision is:

Since 8-15-00, you have been found guilty at disciplinary hearings on 3 separate Conduct Reports. The charges have included Disobeying Orders & Possession of Contraband. Your performance is not consistent with the behavioral expectations of inmates on Level 3. Inmates on Level 3 are expected to demonstrate appropriate behavior including participation in programming, following rules & staff directions & treating others with respect. Although you have been participating in programming, the violations of basic institution rules, which has resulted in your being found guilty on charges on 3 separate Conduct Reports within a short period of time clearly demonstrates a lack of respect for the rules of SMCJ & is not deemed acceptable. Demotion to Level 2 is therefore warranted.

Debbie J. Murray
Unit Manager or Designee

9-19-00
Date

Tommy G. Thompson
Governor



ICE RECEIPT
SMCI-2000-29572

Jon E. Litscher
Secretary

State of Wisconsin

01CV0847

Department of Corrections

**** ICRS CONFIDENTIAL ****

To: MERRIWEATHER, ANTHONY G # 188123
UNIT: Foxtrot - 412
SUPERMAX CORRECTION INSTITUTION
1101 Morrison Dr.
BOSCOBEL, WI 53805-0265

Complaint Information:

DOC Complaint Number:

Date Received:

Subject of Complaint:

Brief Summary:

This is to acknowledge the complaint you filed and which was received on the date indicated. Depending on the nature of the complaint, you may or may not be interviewed by the ICE. A recommendation on the complaint will be made and submitted to the appropriate reviewing authority within 15 working days of acknowledgement. A decision will be made by the appropriate reviewing authority within 5 working days following receipt of the recommendation unless extended for cause.

Please write to the ICE if this issue is resolved before you receive an answer.

Tommy G. Thompson
Governor

SMCI-2000-29572
ICE REJECTION



Jon E. Litscher
Secretary

State of Wisconsin
Department of Corrections
REJECTION OF COMPLAINT

To: MERRIWEATHER, ANTHONY G # 188123
UNIT: Foxtrot - 412
SUPERMAX CORRECTION INSTITUTION
1101 Morrison Dr.
BOSCOBEL, WI 53805-0265

Complaint Information:	REJECTED	DOC Complaint Number:	SMCI-2000-29572
Date Complaint Received:	10/16/2000		
Subject of Complaint:	Discipline		
Inmate Contacted?	N		
Person Interviewed:			
Documents Relied Upon:			
Brief Summary:	JMB Alleging he was illegally punished and demoted in level status contrary to DOC 308.04.		
Rejection Comment:	If the inmate needs copies of evidence submitted, he will need to submit a disbursement request to the ICE Office. JMB - Complainant states he submitted this complaint on 9/23/00 and did not receive a receipt. The ICE Office has no record of him previously submitting this complaint. It is also noted that this complaint is dated 9/23/00 by complainant, is the original, and was not received by our office until 10/16/00.		
Rejection Code:	Beyond 14 calendar day limit		

Date: Wednesday, October 18, 2000

Examiner's Signature:

A handwritten signature in black ink that reads "Julie Bigger".

Tommy G. Thompson
Governor



CCE RECEIPT
SMCI-2000-29572

Jon E. Litscher
Secretary

State of Wisconsin

Department of Corrections

**** ICRS CONFIDENTIAL ****

To: MERRIWEATHER, ANTHONY G # 188123
UNIT: Foxtrot - 412
SUPERMAX CORRECTION INSTITUTION
1101 Morrison Dr.
BOSCOBEL WI 53805-0265

Complaint Information:

DOC Complaint Number: **SMCI-2000-29572**

Date Received: **11/7/2000**

Subject of Complaint: **Discipline**

Brief Summary: **JMB Alleging he was illegally punished and demoted in level status contrary to DOC 308.04.**
If the inmate needs copies of evidence submitted, he will need to submit a disbursement request to the ICE Office.

Your request for review has been received.

You can expect a decision by the Secretary within 47 working days. If you do not receive a decision or other notices within that time, you may write directly to:

Secretary of the Department of Corrections
Post Office Box 7925
Madison, WI. 53707-7925

Tommy G. Thompson
Governor

CCE REPORT
SMCI-2000-29572



Jon E. Litscher
Secretary

State of Wisconsin Department of Corrections

CORRECTIONS COMPLAINT EXAMINER'S REPORT

To: MERRIWEATHER, ANTHONY G # 188123
UNIT: Foxtrot - 412
SUPERMAX CORRECTION INSTITUTION
1101 Morrison Dr.
BOSCOBEL WI 53805-0265

From:
Corrections Complaint Examiner
Office of Audits, Investigations and Evaluations
P.O. Box 7925
Madison, WI. 53707-7925

RE: Complaint File #: SMCI-2000-29572

Name: MERRIWEATHER, ANTHONY G # 188123

Complaint Number: SMCI-2000-29572

Nature of Complaint: JMB Alleging he was illegally punished and demoted in level status contrary to DOC 308.04.

If the inmate needs copies of evidence submitted, he will need to submit a disbursement request to the ICE Office.

Method of Disposition:

Y **Review on Record**
N **Investigation**

Recommendation:

The issue of the level system applicable to SMCI inmates in Administrative Confinement has been addressed numerous times in this forum and need not be repeated here beyond stating it does not violate any administrative rules, and it is not discriminatory, given that it is consistently applied to all inmates who are similarly situated. Inmates in AC may earn extra good time credit in accordance with DOC 302 and they earn compensation. Thus it is a non-punitive status. Accordingly, it is recommended this complaint be dismissed on appeal.

Date: Wednesday, November 08, 2000

John Rau

Tommy G. Thompson
Governor



OOS REPORT
SMCI-2000-29572

Jon E. Litscher
Secretary

State of Wisconsin
Department of Corrections
OFFICE OF THE SECRETARY'S REPORT

To:
MERRIWEATHER, ANTHONY G # 188123
UNIT: Foxtrot - 412
SUPERMAX CORRECTION INSTITUTION
1101 Morrison Dr.
BOSCOBEL WI 53805-0265

Complaint File #: SMCI-2000-29572

The following is the Secretary's decision on the Corrections Complaint Examiner's recommendation of 11/8/00 in the above case:
The attached Corrections Complaint Examiner's recommendation to dismiss this complaint is accepted as the decision of the Secretary.

Date: Saturday, November 11, 2000

Reviewer's Signature:

A handwritten signature in black ink that reads "Craig O'Donnell".

Certified

8/22/01

Joint Committee for Review
of Administrative Rules

Room 37 State Capitol

P.O. Box 7882

Madison, WI 53707-7882

Dear Committee:

Pursuant to Chapter 227.40(5)
Wis. Stats. I am enclosing a copy of my-our-
lawsuit challenging Supermax's Level
System, Demotions, and no notice of warnings.
I only send this to you as I believe it
is required (227.40(5)).

Respectfully,

Bruce Garrett

Bruce Garrett

Box 9900 SMCJ

Boscobel, WI 53805

cc:

Daniel Harr, Plntf. #2

Enclosure:

Summons.

Motion for Counsel

Motion for Class Certification

12 Page Complaint

Bryce Garrett and
Daniel Harr,
Plaintiffs,
v.

GERALD BERGE, Warden, SMCI, and
THE WISCONSIN DEPARTMENT OF CORRECTIONS,
Defendants,

JUL 20 2 02 PM '01

THIS IS AN AUTHENTICATED COPY OF THE ORIGINAL FILED WITH THE CLERK OF CIRCUIT COURT OF DANE COUNTY, WI
CIRCUIT COURT
DANE COUNTY, WI
Case No

01CV1954

COMPLAINT

COME NOW THE PLAINTIFFS, Bryce Garrett and Daniel Harr, in representation of all similarly situated inmates at the Supermax Correctional Institution, proceeding herein pro se, by their complaint against the named defendants to allege, state and show the court as follows:

Subject to Haines v. Kerner, 404 U.S. 519, (liberal reading standard)

JURISDICTION AND VENUE

1. This is an action pursuant to 42 U.S.C. Section 1983, for legal, injunctive and declaratory relief, and to secure protection and redress deprivations under color of state law of rights secured by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, and the laws of the United States and the State of Wisconsin, and the administrative rules and regulations of the Wisconsin Department of Corrections, and the liberty interests secured therein.
2. The defendants are employees of a Wisconsin Administrative Agency with its agency offices located in Madison, Wisconsin.
3. Venue is vested in this Court pursuant to s.801.50(3), Wis. Stats.
4. The plaintiffs have exhausted all their administrative remedies pursuant to s.801.02(7)(b), Wis. Stats..

PARTIES

5. Plaintiff Bryce Garrett is an adult individual who resides and is incarcerated at SMCI located at 1101 Morrison Rd., PO Box 9900, Boscobel, Wisconsin, 53805.
6. Plaintiff Daniel Harr is an adult individual who resides and is incarcerated at SMCI located in Boscobel, Wisconsin.
7. Defendant Gerald Berge is an adult individual who is employed by the Wisconsin Department of Corrections as the Warden of SMCI, located in Boscobel, Wisconsin. Defendant Berge is named herein in his individual capacity and in his official capacity as the Warden of SMCI.
8. Defendant Wisconsin Department of Corrections (WDOC) is a department of the executive branch of the State of Wisconsin, with principle offices located in Madison, County of Dane, Wisconsin, and pursuant to Section 301.04, Wisconsin Stats., is an entity with the capacity to be sued.

ALLEGATIONS OF FACT

9. Pursuant to s.301.02, Wis. Stats., defendant WDOC is responsible for governing the state's correctional institutions.
10. Pursuant to ss.302.04 and 302.07, Wis. Stats., defendant Berge is responsible for the administration, operation and maintenance of SMCI.

I. SMCI'S REQUIRED LEVEL SYSTEM

11. After an inmate is transferred to SMCI, prior to his being eligible for return to a less-restrictive environment, he is required by SMCI Policy and Procedure No. 300.00 to progress and transition through a five step level system. SMCI Policy and Procedure No. 300.00 was approved by defendant Berge, with an effective date of July 1, 2000.

12. SMCI Policy and Procedure No. 300.00 defines the minimum amount of time an inmate is required to spend at each level prior to advancement to the next level. Those times are as follows:

Level I:	30 days before transition to Level II
Level II:	90 days before transition to Level III
Level III:	6 months before transition to Level IV
Level IV:	120 days before transition to level V
Level V:	90 days before transition out of SMCI

When added together, the total minimum time as inmate must spend at SMCI from arrival to departure is approximately seventeen (17) months.

13. SMCI is considered a control-use facility. All inmates located at SMCI are in some form of segregation status, with the predominant majority of inmates on Administrative Confinement (A.C.) status. It is the general practice of defendants Berge and the WDOC to review and place all inmates who arrive at SMCI into A.C. status at some point prior to the termination of any disciplinary or other status.

14. Pursuant to s.DOC 308.04(1), A.C. is a non-punitive status, and any inmate misconduct shall be handled through the disciplinary procedures.

15. Criteria for A.C. placement are found in s. DOC 308.04(2)(a-d), and do not include any reference to "step programs" or "level" participation and completion as a requirement for being released from A.C. status. To be released from A.C. status, an inmate only need establish

through evidence and testimony that he no longer meets the criteria for A.C. status as defined by code. That criteria is:

- a) The inmate presents a substantial risk to another person, self or institution security as evidenced by a behavior or a history of homicidal, assaultive or other violent behavior or by an attempt or threat to cause that harm;
- b) The inmate's presence in the general population poses a substantial risk to another person, self or institutional security;
- c) The inmate's activity gives a staff member reason to believe that the inmate's continued presence in general population will result in a riot or disturbance;
- d) The inmate has been identified as having an active affiliation with an inmate gang or street gang or there are reasonable grounds to believe that the inmate has an active affiliation with an inmate gang or street gang; and there is reason to believe that the inmate's continued presence in the general population will result in a riot or disturbance.

16. On September 6, 2000, plaintiff Harr filed Inmate Complaint (I.C.) No. SMCI-2000-25684, challenging being subjected to disciplinary-style "program levels" while on A.C. status, and being denied access to various properties, privileges and amenities that inmates on A.C. status in other Wisconsin prisons receive. He further stated that as a result of SMCI's Level system, he is subject to the same restrictions as inmates in disciplinary segregation status.

17. SMCI's Inmate Complaint Examiner (I.C.E.) dismissed Harr's complaint, stating that SMCI's Level system is "similar to" the "step programs" found at other Wisconsin Institutions. Those "step" programs referred to by the I.C.E. are imposed on disciplinary status inmates only. Further, inmates on disciplinary status have a specific end date to their status, and failure to transition through "step" program levels will not affect the duration of that specifically limited confinement. Inmates at SMCI who do not progress through the Level system or are dropped back for whatever reason have their release from A.C. status affected and, effectively, indefinitely delayed. Defendant Berge accepted the I.C.E.'s recommendation for dismissal of the complaint and dismissed the complaint. Harr appealed to the Corrections Complaint Examiner and WDOC Secretary. That appeal was dismissed on October 28, 2000. Plaintiff Garrett has also completed administrative remedies related to this issue in I.C. number SMCI-2000-9262.

18. Inmates in A.C. status have a liberty right created by s.DOC 308.04(10) and (11) for periodic reviews (no longer than six (6) months) of their A.C. placement and consideration for removal of same. Inmates have a liberty interest right to be considered for removal from A.C. status based upon the merits of the evidence and record before the Administrative Confinement Review Committee (ACRC), if the merits of the evidence and defense presented by the inmate are strong enough to establish that the inmate no longer meets the criteria of s.DOC 308.04(2)(a-d).

Pursuant to s.DOC 308.04(4)(e)(1-7), inmates have established due process rights at ACRC hearings, including:

- sub. (3) The right to present documentary evidence;
- (4) The right to present and question witnesses in accordance with sub.(7) and the hearing procedures for major disciplinary offenses;
- (7) The right to appeal the finding.

19. The code-created rights establish the opportunity for release from A.C. placement and the right to be heard. The ACRC is required by code to make its decision based solely upon the evidence before it pursuant to s.DOC 308.04(s)(a) and (b):

(A) The ACRC shall deliberate in private considering only the evidence presented to it that supports or refutes the need for administrative confinement...

(B) The ACRC shall decide whether the evidence and the record support the need for Administrative Confinement... (Emphasis added to both)

20. SMCI Policy and Procedure No. 300.00 requiring inmates to proceed through all five levels of the Level System before being released from A.C. status and returned to the general population at a less restrictive institution at a minimum time of seventeen (17) months violates the plaintiffs' rights to due process and the liberty interests created by WDOC administrative code in their right to be released from A.C. confinement at the ACRC hearings regardless of "Level" if the merits of the evidence refute the need for A.C. placement. SMCI Policy and Procedure No. 300.00 makes meaningless and nonexistent the due process and liberty interest rights of the plaintiffs at their six (6) and twelve (12) month ACRC hearings, and at any subsequent hearings at which they are not on "Level V."

21. WDOC administrative code sections DOC 302.14, 302.15, 302.16 and 302.19 provide the plaintiffs with the same due process rights and liberty interest rights for their Program Review Committee (PRC) hearings for consideration for transfer out of SMCI. Like it does with the ACRC, SMCI Policy and Procedure No. 300.00 violates the plaintiffs' due process and liberty interest rights to be considered for transfer from SMCI based on the merits of the evidence and testimony presented to the PRC, and makes meaningless and nonexistent the due process and liberty interest rights at their six (6) and twelve (12) month PRC hearings, and at any subsequent hearings at which they are not on "Level V."

22. Plaintiff Harr filed I.C. #SMCI-2001-4719 on February, 2001, challenging SMCI policy and Procedure No. 300.00 and inmates on A.C. being subjected to "Level" requirements, stating the violation of due process and liberty interest rights by the policy requiring a minimum stay at SMCI of seventeen (17) months. Harr indicated that the policy made meaningless and nonexistent the inmates' due process rights at all ACRC hearings at which the inmate was not on "Level V." The SMCI I.C.E. rejected the I.C. citing "scope" pursuant to s.DOC 310.08, and claiming that their own policy does not require inmates to stay at a particular institution for a specified time. Harr appealed the I.C. to the C.C.E. and WDOC Secretary. The I.C. was dismissed by the C.C.E. and WDOC Secretary on April 16, 2001.

23. The plaintiffs assert that they are aware of only a few isolated instances where inmates were removed from A.C. and transferred out of SMCI prior to completing all five levels of the Level System by required by policy, and those instances occurred when inmates reached their Mandatory Release or Discharge dates, or were removed to the Wisconsin Resource Center for psychiatric purposes, or were otherwise removed by court order or other order based on their improper placement at SMCI.

24. The plaintiffs assert that the action and policies promulgated by the defendants affect all similarly situated inmates confined at SMCI. The plaintiffs further assert that SMCI policy and Procedure No. 300.00 violates their due process and liberty interest rights.

25. The plaintiffs further assert that inmates in A.C. status at other Wisconsin Institutions are not subject to "level" or "step" programs or systems, and that SMCI Policy and Procedure No. 300.00 violates the plaintiffs rights to equal protection. Likewise, the "level" distinction between A.C. inmates at SMCI violates the plaintiffs' rights to equal protection when A.C. inmates on "Level I, II, III, or IV" are not provided the same properties, privileges and amenities as A.C. inmates on "Level V."

II. SMCI'S USE OF "WARNINGS" WITHOUT DUE PROCESS

26. WDOC administrative code s.DOC 303.65 authorizes institutions to use a "warning" system to monitor inmate behavior. The purpose of the warning system is to "merely inform the inmate that the inmate's behavior is against the rules," and that the conduct merits a warning instead of a conduct report if not serious or repeat behavior. The code does not authorize or provide sanctions for warnings. To have sanctions allowed, a conduct report must be served pursuant to s.DOC 303.66.

27. The general practice at all Wisconsin institutions EXCEPT SMCI is to serve a conduct report on an inmate who earns three or more warnings for the same type of behavior. At all Wisconsin institutions EXCEPT SMCI, warnings are not used in any way by themselves to affect an inmate's access to properties, privileges and amenities, or to affect his ACRC and PRC hearings.

28. At SMCI, defendants Berge and the WDOC use warnings against inmates to prevent movement to the next level or demote inmates in level which directly affects their properties, privileges and amenities, and to provide "justification" for keeping inmates in A.C. status at SMCI.

29. Based on the requirements of SMCI's "Level System," warnings which affect an inmate's Level directly affect the length of his stay at SMCI.

30. At no time are inmates provided any type of due process to contest the warnings and present evidence and testimony in their defense. In fact, more often than not, inmates are not even notified of receiving any warnings until after those warnings have been used against him.

31. The plaintiffs assert that they have had warnings used against them to deny an increase in level, to be demoted in level, and in ways which affect the decisions by the ACRC and PRC, without receiving any form of due process to challenge said warnings and, in more cases than not, not receiving any notification of alleged warnings until after they were used against them.

32. Plaintiff Harr filed I.C. #SMCI-2000-26693 on September 19, 2000, challenging SMCI's use of warnings to affect an inmate's status without providing any due process, citing it as a violation of his Fifth, Sixth and Fourteenth Amendments to the United States Constitution rights. That I.C. was dismissed by the SMCI I.C.E. and deputy warden. Harr filed an appeal to the C.C.E. and WDOC Secretary. The C.C.E. and WDOC Secretary dismissed Harr's appeal on November 11, 2000. Plaintiffs Garrett also completed administrative remedies relative to this issue in I.C. number SMCI-2000-8838.

33. Plaintiff Harr also challenged the issue in his ACRC and PRC appeals of decisions on January 25, 2001 and March 27, 2001, respectively. Those appeals were dismissed by defendants Berge and the WDOC central office staff.

34. The plaintiffs assert that the actions by the defendants affect all similarly situated inmates confined at SMCI. The plaintiffs further assert that the defendants' actions violate plaintiffs' Fifth, Sixth and Fourteenth Amendment rights to due process and equal protection.

PLAINTIFFS FIRST CAUSE OF ACTION

35. The plaintiffs reallege and incorporate numbers 1 through 34 above, and all the information presented therein.

36. Defendants' actions in promulgating and enforcing SMCI Policy and Procedure No. 300.00 requiring inmates on A.C. status to transition through all five levels of the Level System, at a minimum of seventeen (17) months, prior to being removed from A.C. status and confinement at SMCI, constitute intentional violations of plaintiffs' rights to due process as guaranteed by the Fifth and Sixth Amendments to the United States Constitution and made applicable to the states by the Fourteenth Amendment to the United States Constitution, by the statutes, laws and regulations of the State of Wisconsin, and the liberty interests created by same. Defendants are therefor jointly and severally liable to the plaintiffs under 42 U.S.C. s.1983.

37. Defendants unlawfully acted individually and in concert to unlawfully deprive the plaintiffs of their rights.

38. As a direct, foreseeable and proximate result of defendants' unlawful actions as alleged in this complaint, the plaintiffs have suffered injuries and damages in the form of the deprivation of their liberty, physical and emotional deprivations, injuries to body and mind, emotional duress, humiliation and other injuries which are continuing to this day and which will continue into the foreseeable future.

39. Defendants' unlawful actions as alleged in this complaint were taken with willful, wanton and reckless disregard of plaintiffs' rights.

PLAINTIFFS' SECOND CAUSE OF ACTION

40. The plaintiffs reallege and incorporate numbers 1 through 39 above, and all the information presented therein.

41. Defendants' actions in using the warning system in ways that directly affect the plaintiffs' access to properties, privileges and amenities by using warnings to prevent Level increases or to demote plaintiffs in Levels, and to affect the plaintiffs' ACRC and PRC decisions,

without providing any opportunity of due process to contest the warnings, and in the majority of instances not to provide notification of the warnings until after the warnings have been used against plaintiffs, constitutes intentional violations of plaintiffs' rights to due process as guaranteed by the Fifth and Sixth Amendments to the United States Constitution and made applicable to the states by the Fourteenth Amendment to the United States Constitution, by the statutes, laws and regulations of the State of Wisconsin, and the liberty interests created by same. Defendants are therefore jointly and severely liable to the plaintiffs under 42 U.S.C. s.1993.

42. Defendants unlawfully acted individually and in concert to unlawfully deprive the plaintiffs of their rights.

43. As a direct, foreseeable and proximate result of defendants' unlawful actions as alleged in this complaint, the plaintiffs have suffered injuries and damages in the form of the deprivation of their liberty, physical and emotional deprivations, injuries to body and mind, emotional duress, humiliation and other injuries which are continuing to this day and which will continue into the foreseeable future.

44. Defendants' unlawful actions as alleged in this complaint were taken with willful, wanton and reckless disregard of plaintiffs' rights.

PLAINTIFFS' THIRD CAUSE OF ACTION

45. The plaintiffs reallege and incorporate numbers 1 through 44 above, and all the information presented therein.

46. Defendants' actions in subjecting the plaintiffs to Level systems and sanctions for warnings when inmates in the status at other Wisconsin institutions are not subject to same, and in restricting plaintiffs' access to properties, privileges and amenities when other inmates on A.C. status at SMC I are allowed such properties, privileges and amenities by virtue of being on "Level V" in the illegal level system, constitutes intentional violations of the plaintiffs' rights to

Equal Protection as guaranteed by the Fourteenth Amendment to the United States Constitution, and made applicable to the states by same, by the statutes, laws and regulation of the State of Wisconsin, and the liberty interests created by same. Defendants are therefore jointly and severely liable to their plaintiffs under 42 U.S.C. s/1983.

47. Defendants unlawfully acted individually and in concert to unlawfully deprive the plaintiffs of their rights.

48. As a direct, foreseeable and proximate result of defendants' unlawful actions as alleged in this complaint, the plaintiffs have suffered injuries and damages in form of the deprivation of their liberty, physical and emotional deprivations, injuries to body and mind, emotional duress, humiliation and other injuries which are continuing to this day and which will continue into the foreseeable future.

49. Defendants' unlawful actions as alleged in this complaint were taken with willful, wanton and reckless disregard of plaintiffs' right.

WHEREFORE plaintiffs pray this Court enter Judgment in their favor on their claims and Order the following relief:

- A) Order defendants, jointly and severely, to immediately withdraw and repeal SMCI Policy and Procedure 300.00 and to cease and desist requiring A.C. inmates to participate in "Level" systems.
- B) Order and enjoin defendants to immediately, and at all future times, fully follow and obey the written code of the WDOC, Wisconsin statutes and laws, and all Constitutionally applicable due process law.
- C) Order and enjoin the defendants to immediately cease and desist using warnings to affect Levels, ACRC and PRC decisions, and applying sanctions to warning contrary to WDOC code.
- D) Order and enjoin defendants to make available and grant inmates on A.C. status no matter what "Level," access to all properties, privileges and amenities as inmates on

similar status at other institutions enjoy, and that A.C. inmates on "Level V" at SMCI enjoy.

E) Order and enjoin defendants to provide plaintiffs immediately, and at all future times, all due process for ACRC and PRC hearings pursuant to administrative code, state and federal law, and the United States Constitution.

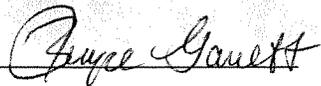
F) Order defendants jointly and severely to pay plaintiffs' costs and fees, and any applicable attorney's fees incurred in this action.

G) Order defendants, jointly and severly, to pay to the plaintiffs an amount sufficient to compensate them for their injury and pain and suffering of mind and body proximately caused by the defendants' unlawful actions against the plaintiffs.

H) Order any other relief as deemed appropriate by the Court.

PLAINTIFFS REQUEST A TRIAL BY JURY OF SIX QUALIFIED PERSONS.

Respectfully submitted this 6 day of July, 2001.

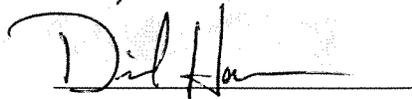


Bryce Garrett 78526, Plaintiff Pro Se

SMCI

Box 9900

Boscobel, WI 53805



Daniel Harr 97891, Plaintiff Pro Se

SMCI

Box 9900

Boscobel, WI 53805

MICHAEL NOWAKOWSKI
CIRCUIT COURT, BR. 13

STATE OF WISCONSIN

DANE COUNTY

CIRCUIT COURT BRANCH _____

JUL 20 2 02 PM '01

BRYCE GARRETT and
DANIEL HARR,
Plaintiffs,

CIRCUIT COURT
DANE COUNTY, WI

SUMMONS

THIS IS AN AUTHENTICATED COPY OF THE
ORIGINAL DOCUMENT FILED WITH THE DANE
COUNTY CLERK OF CIRCUIT COURT.

Case No. 01CV1954

JUDITH A. COLEMAN
CLERK OF CIRCUIT COURT

v.

GERALD BERGE, Warden, SMCI,
Supermax Correctional Institution, PO Box 9900, Boscobel, WI 53805
THE WISCONSIN DEPARTMENT OF CORRECTIONS,
Wisconsin Department of Corrections, 149 E. Wilson, Madison, WI 53703
Defendants

THE STATE OF WISCONSIN, To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and the basis of the legal action.

Within 45 days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Dane Circuit Court, 210 Martin Luther King Blvd., Madison, WI 53703, and to the Plaintiff, whose address is Supermax Corr. Inst., Box 9900, Boscobel, Wisconsin, 53805. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated: July 6, 2001

Signed: Bryce Garrett
Bryce Garrett, Plaintiff, pro se

Signed: D. Harr
Daniel Harr, Plaintiff, pro se

STATE OF WISCONSIN

DANE COUNTY

Circuit Court Branch _____

JUL 20 2 02 PM '01

BRYCE GARRETT and
DANIEL HARR,
Plaintiffs,

v.

GERALD BERGE, Warden, SMCI, and
THE WISCONSIN DEPARTMENT OF CORRECTIONS,
Defendants,

THIS IS AN UNREPLICATED COPY OF THE
ORIGINAL FILED WITH THE DANE
COUNTY CLERK OF CIRCUIT COURT.
JUDITH A. COLEMAN
CLERK OF CIRCUIT COURT

Case No. _____

CIRCUIT COURT
DANE COUNTY, WI

01CV1954

MOTION FOR APPOINTMENT OF COUNSEL

COME NOW THE PLAINTIFFS, Bryce Garrett, and Daniel Harr, et al., proceeding herein pro se, to move the court for appointment of counsel for representation of the class, for the following reasons:

1. The plaintiffs are not able to afford counsel.
2. The plaintiffs have moved the court for class action certification and would be unable to collect necessary information relative to the other plaintiffs in the class in order to prosecute this action.
3. The plaintiffs are all on Administrative Confinement (A.C.), held in segregation-type confinement, and have extremely limited access to legal materials.
4. The issues presented are complex in nature.

Submitted this 6 day of July, 2001.

Bryce Garrett
Bryce Garrett 78526, Plaintiff, pro se
SMCI
Box 9900
Boscobel, Win 53805

Daniel Harr
Daniel Harr 97891, Plaintiff, pro se
SMCI
Box 9900
Boscobel, WI 53805

STATE OF WISCONSIN

DANE COUNTY

Circuit Court Branch

BRYCE GARRETT, and
DANIEL HARR,
Plaintiffs,

V.

GERALD BERGE, Warden. SMCI, and
THE WISCONSIN DEPARTMENT OF CORRECTIONS,
Defendants,

JUL 20 2 02 PM '01

Case No.

CIRCUIT COURT
DANE COUNTY, WI

01CV1954

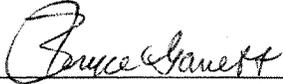
MOTION FOR CLASS ACTION CERTIFICATION

COME NOW THE PLAINTIFFS, Bryce Garrett and Daniel Harr, proceeding here in pro se, to move the Court for Class Action Certification of their complaint filed against the named defendants. In support of this motion, plaintiffs show the Court as follows:

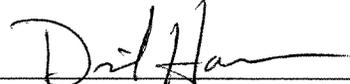
1. There are approximately three hundred and fifty inmates confined and incarcerated at the Supermax Correctional Institution (SMCI), located in Boscobel, County of Grant.
2. Many of the members of the class are functionally illiterate or of an intellectually challenged educational level and are thus incapable of raising the issues or correctly filing the necessary paperwork to proceed on the issues raised in the complaint.
3. A common issue of law exists for all class members similarly situated at SMCI. All inmates are subject to a "Level" system, and all inmates are subject to the use of warnings as sanctions without due process and in violation of DOC code.
4. All members of the class share the common element of their rights to due process under the Fifth and Sixth Amendments to the United States Constitution, share the common element of their right to equal protection under the Fourteenth Amendment of the United States Constitution, and equally share the denial of those rights due to the actions by the defendants.
5. The interests of the named plaintiffs are typical and are common representation of the other members of the class.
6. The parties opposing the class have acted or refused to act on grounds generally applicable to the class on the claims raised in the complaint, and plaintiffs have no other recourse but to seek injunctive and declaratory relief through the Courts. The defendants have made decisions on Inmate Complaints and appeals that are generally applicable to the class that are contrary to the rights of all plaintiffs, the laws, statutes and regulations of the State of Wisconsin, and the United States and Wisconsin Constitutions.
7. That without class certification and applicability of the courts decision to all class members, the violation of rights and unlawful deprivations of liberty as alleged in the complaint

will continue to be unlawfully inflicted on all non-named plaintiffs who are confined and incarcerated at SMCI.

Respectfully submitted this 6 day of July, 2001.



Bryce Garrett 78526, Plaintiff, pro se
SMCI
Box 9900
Boscobel, WI 53805



Daniel Harr 97891, Plaintiff, pro se
SMCI
Box 9900
Boscobel, WI 53805

OCT 24 2001

DEAR
JOINT COMMITTEE FOR REVIEW,

10/21/01

PLEASE FIND ENCLOSED A COPY OF THE ORIGINAL COMPLAINT
42 U.S.C. § 1983, AND MEMO OF LAW IN SUPPORT OF JOHNSON
ET AL V. LITSCHER ET AL CASE NO. 01-CV-0329, IT'S BEING
PARTIALLY BROUGHT TO CHALLENGE THE VALIDITY OF SEVERAL
RULES BEING IN PRACTICE AT S.M.C.J. ALSO ENCLOSED
IS PLAINTIFF'S AMENDED COMPLAINT IN THE ACTION.

THESE ACTIONS SEEKS DECLARATORY JUDGEMENT AS RELIEF
IN THIS ACTION AND A MOTION FOR CHANGE OF VENUE
HAS BEEN FILED FOR MOVING TO DANE COUNTY TO PROPER
COURT TO ADDRESS DECLARATORY CLAIMS. YOU ARE HEREBY
BEING NOTIFIED AND SERVED. PURSUANT TO WI-STATS CHAP
TER 207.40 (5).

Thank you for your time and attention.

Respectfully Submitted
Mr. Michael Johnson

265812
265812

S.M.C.J.
PO BOX 9900
Boscobel, WI 53505

CC:
COURT
Johnson
Joint Committee

LEGAL
CORRESPONDENCE