


 **07hr\_JCR-AR\_Misc\_pt41**



 Details: Complaint.

(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

**2007-08**

(session year)

**Joint**

(Assembly, Senate or Joint)

**Committee for Review of Administrative Rules...**

### **COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### **INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)

STATE OF WISCONSIN

CIRCUIT COURT

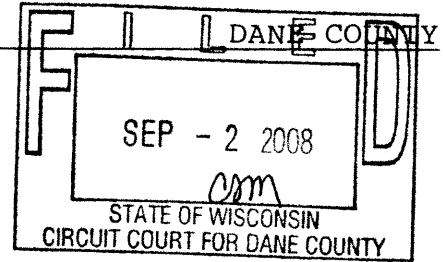
DANE COUNTY

HARLAN RICHARDS  
Oakhill Correctional Institution  
P.O. Box 938  
Oregon, WI 53575-0938,

Plaintiff,

-v-

Case No.



08CV3650

MARK HEISE, CLASSIFICATION CHIEF,  
Department of Corrections  
3099 E. Washington Ave.  
Madison, WI 53707-7925,

Defendant.

Classification code 30955

ORDER TO PRODUCE RECORD

UPON filing of the summons and complaint by the above named complaint by Harlan Richards, and good cause shown therefore,

IT IS HEREBY ORDERED that the defendant shall prepare the record of the proceedings held in the above decision to transfer Richards from a work release center and deprive him of his community custody security rating and to forward the record to the court and to Harlan Richards within thirty (30) days of the date this order is served on him.

Dated: Sept 2, 2008

By the Court:

Drane Paul

State of Wisconsin  
County of Dane  
This document is a full, true and correct copy of the original on file and of record in my office and has been compared by me.

Attest 9-12-2008

CARLO ESQUEDA  
Clerk of Courts

By

[Signature]  
Deputy Clerk

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

CARLO ESQUEDA  
CLERK OF CIRCUIT COURT

SERVED BY ADRIAN LOMAX

9-18-08

DIANE NICKS  
CIRCUIT COURT, BR. 5

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

HARLAN RICHARDS  
Oakhill Correctional Institution,  
P.O. Box 938  
Oregon, WI 53575,

Plaintiff,

-v-

MARK HEISE, CLASSIFICATION CHIEF  
Department of Corrections  
3099 E. Washington Ave.  
Madison, WI 53707-7925,

Defendant.

AUG - 8 2008

Case No.

08CV3650

Classification code 30955

SUMMONS (COMPLAINT ATTACHED)

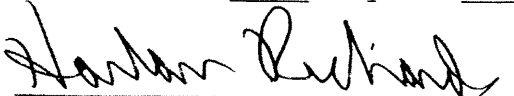
THE STATE OF WISCONSIN TO: MARK HEISE

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 basis of the legal action.

Within thirty (30) 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 215 South Hamilton St., Madison, Wisconsin 53703, and to Harlan Richards, whose address is P.O. Box 938, Oregon, Wisconsin 53575. You may have an attorney help or represent you.

If you do not provide a proper answer within thirty (30) 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 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 this 30<sup>th</sup> day of July, 2008.



HARLAN RICHARDS

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

CARLO ESCOBEDA  
CLERK OF CIRCUIT COURT

HARLAN RICHARDS  
Oakhill Correctional Center  
P.O. Box 938  
Oregon, WI 53575,

Plaintiff, AUG - 8 2008

08CV3650

-v-

Case No. \_\_\_\_\_

MARK HEISE, CLASSIFICATION CHIEF  
Department of Corrections  
3099 E. Washington Ave.  
Madison, WI 53707-7925,

Classification 30955

Defendant.

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COMPLAINT FOR CERTIORARI RELIEF

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Nature of the Action

1. This is an action filed pursuant to sec. 801.02(5), stats., as a summons and complaint seeking certiorari review of the decision to deprive Richards of his community custody security rating and transfer him to a secure minimum facility based solely on his receipt of a 12 month defer from the parole commission.

Parties

2. Plaintiff Harlan Richards has served 23 $\frac{1}{2}$  years on a life sentence and is currently housed in Oakhill Correctional Institution (OCI).

3. Defendant Mark Heise is the classification chief of the Bureau of Offender Classification and Movement (BOCM) and as such is the final authority on prison transfers and security ratings within the Department of Corrections (DOC).

THIS IS AN ELECTRONIC COPY OF THE  
ORIGINAL DOCUMENT FILED WITH THE DANE  
COUNTY CLERK OF CIRCUIT COURT  
EPM/ALP/MDA  
2008 AUG 14 10:54 AM  
Clerk of Circuit Court

### Facts

4. In December 2005 Richards transferred from OCI to Gordon Correctional Center (GCC) with a community custody security rating.

5. Richards remained at GCC until October 31, 2007, when he transferred to Sangar Powers Correctional Center (SPCC).

6. While at GCC, Richards spent 19 months on work release at Jack Links Beef Jerky from March 2006 until October 2007.

7. Richards obtained a transfer to SPCC for further work release at a different job because the job at Jack Links required standing and walking on concrete for 8 hours per day which Richards was no longer able to do due to the deteriorating condition of his left ankle caused by a previous injury. Richards has been disabled since 1972.

8. Richards arrived at SPCC on November 2, 2007 and began working as an inmate driver ferrying other inmates on work release to their job sites. Richards was removed from that position on Nov. 16, 2007 based on a phone call from an unidentified person within the DOC to Supt. Patrick Melman of SPCC who had Richards suspended pending "further review". Richards was not allowed to return to his driving job nor was any reason ever given for his removal.

9. Richards then worked as a center janitor until he was removed from SPCC on April 2, 2008.

10. On March 18, 2008, Richards was given a parole hearing where he was informed that he would be receiving a "no action" and his case would be referred to the full commission for a review. No reason was given for the referral to the full commission.

11. On April 1, 2008, the full commission recommended that Richards receive a 12 month defer which was accepted by chairman Alfonso Graham.

12. Richards has previously received four 11 month defers and three 10 month defers and had been repeatedly recommended for work release by the parole commission since January 2002. The reason given for the increase of Richards' defer was Richards' current offense and prior criminal record. That decision is currently under judicial review (Richards v Graham, 08 CV 2244, Dane County).

13. Richards was placed in Temporary Lock Up (TLU) in Redgranite Correctional Institution (RGCI) based on Supt. Melman's subjective belief that the 12 month defer made Richards an escape risk if he were allowed to remain at SPCC.

14. On April 4, 2008, Richards had a telephonic program review committee (PRC) hearing where he was told by Scott Propheter that he would be losing his community custody rating and returned to a secure minimum facility based on the application of the risk rating guidelines using Richards' 12 month defer.

15. BOCM staff approved the recommendation of the PRC on April 7, 2008, stating:

"ELEVATION TO A D-12 SUGGESTS THAT RELEASE VIA PAROLE IS NOW DELAYED RELATIVE TO HIS PREVIOUS PAROLE ACTIONS. NOTE OFFENSE AND OFFENSE HISTORY RELATIVE TO THIS CHANGE BY PC. MONITOR FENCED MINIMUM DUE TO PC ACTION." (exhibit A attached)

16. On April 28, 2008, Richards filed his administrative appeal of the PRC decision raising the following issues:

a. That Richards had done nothing wrong and could not lose his community custody rating and placement at a center absent misconduct on his part because it was a liberty interest protected under the Due Process Clause;

b. That other inmates were routinely housed at centers with community custody with 12-month or longer defers and that Richards was being denied equal protection of the law;

c. That the use of the Risk Rating Guidelines to raise his risk rating to moderate and return him to a secure minimum was an abuse of discretion in relying on an unpromulgated rule contrary to State ex rel Richards v Traut, 429 N.W. 2d 81 (Wis. App. 1988). (exhibit C).

17. On July 28, 2008, Richards received the decision on his appeal affirming his loss of community custody and transfer:

"A change in parole potential does impact risk and is cause to revisit custody & placement. Minimum assignment with placement at OCI is supported." (exhibit D).

### Statement of Claim

18. The decision to remove Richards from a work release center and deprive him of his community custody rating was deficient for the following reasons:

a. The decision was arbitrary and capricious and violated Richards' substantive due process right to retain his status absent misconduct on his part;

b. The decision denied equal protection of the law in removing Richards while allowing other inmates with parole defers just as long or longer to retain placement at a center and community custody;

c. The decision was contrary to law and an abuse of discretion in relying the the Risk Rating Guidelines which meet the criteria for administrative rules but were never properly promulgated.

### Relief Rquested

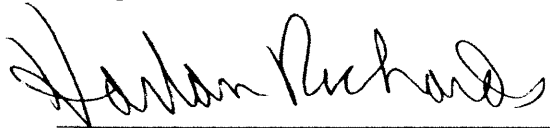
19. Richards prays that this court will issue an order to prepare the record in the above proceedings and forward copies to the court and to Richards so that the court may review the decision made in this case.



20. The upon review of the record that the court reverse the decision of defendant and order the decision to be expunged from Richards' social services file and all other department of corrections records thereby returning Richards to the status he had before the decision was issued.

Dated this 30<sup>th</sup> day of July, 2008.

Respectfully submitted,



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Harlan Richards  
P.O. Box 938  
Oregon, WI 53575-0938

PROGRAM REVIEW  
INMATE CLASSIFICATION SUMMARY

*Inmate Copy*

04/04/08  
Page 1 of 2

INMATE NAME Last First MI SUE | INMATE # | REPORTING INSTITUTION | AREA #  
██████████ | ██████████ | ██████████ | ██████████ | WCCS-S B POWERS | 12042

DATE RECEIVED A&E | LATEST PAROLE ACTION | PED | MR/ES DATE | MAXIMUM DISCHARGE DATE  
11/09/84 | DEFER (12 MONTHS) | 05/20/09 | / / | \*\*/\*\*/LIFE

MEDICAL REPORT DATE | MEDICAL CONDITION Primary | NO SPECIAL CONDITION  
07/15/03 | Secondary | NO SPECIAL CONDITION | Other NO

MEDICAL ACTIVITY LEVEL | MEDICAL HOLD DATE | MEDICAL/DENTAL PLACEMENT STATUS  
MODERATE | / / |

DENTAL REPORT DATE | DENTAL CLASSIFICATION | DENTAL HOLD DATE  
12/04/03 | NO DENTAL CONSTRAINTS | / /

SENTENCE INFORMATION  
Offense Description Relationship Term  
1. MURDER 1ST DEG GOVERNING LIFE  
2.  
3. ADDITIONAL OFFENSES  
USE OF WEAPON IN CRIME  
HABITUAL CRIMINAL

DETAINERS/PENDING CHARGES  
NONE KNOWN

Program	A&E Need	Participation Code	Entry Date	Exit Date
MENTAL HEALTH CLASIFICATN		MH-0 NO CURRENT MH NEED	05/01/04	
CLINICAL ASSESSMENT NEED		COMPLETED		09/03/92
AGGRESS/ANGER MGMT COUNSG	1	COMPLETED	03/28/94	05/16/94
CHALLENGE INCARCERATION		EXCLUDED OFFENSE	07/08/04	
INTENSIVE SANCTIONS		TERMINATED-ADMINISTRATIVE	09/14/95	03/08/02
EARNED RELEASE PROGRAM		EXCLUDED OFFENSE	07/08/04	
ASSOC DEGREE COLLEGE PROG		COMPLETED	10/25/88	06/05/90
WOOD INDUSTRIES		COMPLETED	09/20/93	10/25/93

TYPE OF REVIEW EARLY | LAST PRC DATE 08/16/07

SOCIAL WORKER SUMMARY AND APPRAISAL OF PROGRAM REVIEW REQUEST  
I/M WAS INTERVIEWED FOR THIS PRC ON 04/04/08. HE WAS ADVISED THAT THIS HEARING WILL ADDRESS CUSTODY, PROGRAM ASSIGNMENT, AND INSTITUTION PLACEMENT. HE WISHES TO APPEAR BEFORE THE PRC COMMITTEE.  
OFFENSE DESCRIPTION: 2ND INCARCERATION. 1ST DEGREE MURDER. I/M STABBED ANOTHER UNARMED MALE 21 TIMES WITH A 3 INCH KNIFE WHICH RESULTED IN THE VICTIMS DEATH.  
PRIOR OFFENSE: 1973 MANSLAUGHTER, SHOT AND KILLED HIS BROTHER.  
P/C: DATE OF ACTION: 04/01/08, DE-12, PED 5/20/09, NO PPI REQUESTED.  
SPN: OSCI  
ESCAPE: NONE NOTED. PROGRAM NEEDS: COMPLETED  
MEDICAL/DENTAL: SEE MEDICAL FILE FOR ADDITIONAL INFO.  
R/R: CURRENT OFFENSE: HIGH, OFFENSE HISTORY: MOD, SENTENCE STRUCTURE: MOD DUE TO INCREASE TO D-12.  
I/M REQUESTS: I/M REQUESTS TO STAY AT SPC WITH MINIMUM-COMMUNITY CUSTODY. IF MINIMUM-COMMUNITY IS ELEVATED, HE STILL WISHES TO STAY AT SPCC. IF GIVEN MEDIUM CUSTODY HE PREFERS TO BE TRANSFERRED TO FMCI.  
SOCIAL WORKER RECOMMENDATIONS: SW RECOMMENDS CUSTODY ELEVATION FROM MINIMUM COMMUNITY TO MINIMUM DUE TO HIM RECEIVING A D-12 FROM THE PAROLE BOARD WHICH RAISES HIS RISK RATING FOR SENTENCE STRUCTURE TO MODERATE. SW REQUESTS TRANSFER TO ANY SECURE MINIMUM.  
A 12 MONTH RECALL IS REQUESTED.

Exhibit A-1

ASSIGNMENT | SOCIAL WORKER NAME | COMPLETION DATE  
1. INVUNA | 2. JANITOR | CRAWFORD | 04/04/08

*Received 4-11-08*

PROGRAM REVIEW  
INMATE CLASSIFICATION SUMMARY

04/04/08

Page 2 of 2

INMATE NAME Last	First	MI	SUF	INMATE #	TYPE OF REVIEW
RICHARDS	HARLAN	C		037975	EARLY

PROGRAM REVIEW COMMITTEE COMMENTS, RECOMMENDATIONS, AND DECISION

INMATE APPEARED BEFORE PRC TO RE-EVALUATE CUSTODY, PLACEMENT AND PROGRAM ISSUES SINCE HIS LAST PRC. CASE PREPARATION OCCURED PER S. 302.17. SW COMMENTS INCLUDING OFFENSE DETAILS NOTED. THIS IS AN EARLY REVIEW. AT AGE 54, HE IS SERVING 2ND INCARCERATION. PRIOR RECORD INCLUDES 3/73 MANSLAUGHTER. PAROLE COMMISSION GAVE INMATE A D-12 WITH NEW PED OF 05/20/09. FULL BOARD REVIEW 04/01/08 W UNANIMOUS DECISION FOR D-12. MR DATE IS LIFE AND MD OF LIFE. MODERATE RISK RATING. PROGRAM NEEDS AND PARTICIPATION HAVE BEEN REVIEWED BY THE SW. HE COMPLETED CLINICAL ASSESSMENT, ANGER MANGT, WOOD INDUSTRIES AND ASSOC. DEG COLLEGE PROGRAM. SINCE ADMISSION TO A&E ON 11/09/1984, HE HAS RECEIVED 0 MINOR AND 0 MAJOR CR'S. MEDICAL CODE IS MODERATE (07/15/03. DENTAL CODE IS 10. ERP & CIP- EXCLUDED OFFENSE. SPN NOTED AT OSCI. INMATE REQUESTS CONTINUED PLACEMENT AT SPCC IN MINIMUM COMMUNITY CUSTODY OR FMCI PLACEMENT IN MINIMUM CUSTODY. HE STATES THAT HE WILL APPEAL PAROLE ACTION AND CUSTODY EVALUATION. THIS IS AN EARLY HEARING DUE TO PAROLE COMMISSION ACTION OF D-12. I/M SAW PAROLE BOARD ON 03/18/087 AND RECV'D A NO ACTION. A FULL BOARD WAS HELD ON 04/01/08 AND A UNANIMOUS DECISION WAS MADE RESULTING IN A D-12. BASED ON D-12 I/M'S RISK RATING ON SENTENCE STRUCTUREELEVATED TO MODERATE. SPCC SUPT REQUESTED PRC HEARING TO EXAMINE RISK RATING, CUSTODY & PLACEMENT ISSUES. PER SS. DOC 302.07 & 302.09, THE COMMITTEE UNANIMOUSLY RECOMMENDS MINIMUM CUSTODY WITH TRANSFER TO PDCI;OCI, TEMP RGCI;DCI. A 12 MONTH RECALL IS SET. RECALL AND RECOMMENDATION ARE BASED ON: SENTENCE STRUCTURE, OFFENSE/OFFENSE HISTORY, POSITIVE INSTIT. ADJ AND PC ACTION OF D-12 (LIFER). CLASSIFICATION EXPECTATIONS ARE TO: MAINTAIN POSITIVE INSTITUTION ADJ., ENROLL IN ESSENTIAL TREATMENT WHEN AVAILABLE AND FACILITATE RELEASE PLANNING. PER S. DOC 302.18, INMATE MAY APPEAL WITHIN 30 DAYS OF THE INMATE'S RECEIPT OF THE WRITTEN DECISION. DCC AREA IS 120.

INMATE PRESENT AT PROGRAM REVIEW	SECOND STEP REFERRAL	NO
----------------------------------	----------------------	----

CURRENT CUSTODY RATING	TOTAL # OF CONDUCT REPORTS RECEIVED	LAST MAJOR CONDUCT REPORT DATE
MIN-COMUNITY	Minor 000 Major 000	/ /

RISK RATING MOD	SPECIAL PLACEMENT NEEDS	OSCI
-----------------	-------------------------	------

RISK RATING GUIDELINE	DISCRETIONARY	CUSTODY RATING	MINIMUM
-----------------------	---------------	----------------	---------

INSTITUTION ASSIGNMENT	TEMPORARY ASSIGNED INSTITUTION	RECALL DATE
1. 2. OCI	1. RGCI 2. DCI 3.	04/09

NAMES OF STAFFING COMMITTEE	REVIEW DATE
PROPHETER KARSTEN	04/04/08

CENTRAL OFFICE DECISION COMMENTS

ELEVATION TO A D-12 SUGGESTS THAT RELEASE VIA PAROLE IS NOW DELAYED RELATIVE TO PREVIOUS PAROLE ACTIONS. NOTE OFFENSE AND OFFENSE HISTORY RELATIVE TO THIS CHANGE BY PC. MONITOR FENCED MINIMUM DUE TO PC ACTION.

Exhibit A-2

CENTRAL OFFICE DECISION	CENTRAL OFFICE STAFF INITIALS	DECISION DATE
APPROVED	AH MKH	04/07/08

TRANSFER PRIORITY CODE	C
------------------------	---

PROGRAM REVIEW  
INMATE RISK ASSESSMENT

-----  
INMATE NAME Last First MI Suffix | INMATE # | INSTITUTION  
RICHARDS HARLAN C | 037975 | WCCS-S B POWERS  
-----

MONTH TO MR DATE | SOCIAL WORKER NAME (Last) | DATE COMPLETED  
| CRAWFORD | 04/04/08  
-----

CURRENT OFFENSES Rating: HIGH

- |    | Offense Description | Relationship | Term |
|----|---------------------|--------------|------|
| 1. | MURDER 1ST DEG      | GOVERNING    | LIFE |
| 2. |                     |              |      |
| 3. |                     |              |      |

Comment: 1ST DEGREE MURDER

-----  
OFFENSE HISTORY Rating: MOD

Comment: 03/73 MANSLAUGHTER, ERROR CORRECTED 8/25/99

-----  
SENTENCE STRUCTURE Rating: MOD

Assigned Track: LIFER-CATEGORY I

Comment: NO PPI REQUESTED, DF-12 PED 5/20/09, MR:LIFE.

-----  
INSTITUTION ADJUSTMENT Rating: LOW

Comment: EXCELLENT ZERO SINCE A&E 11-09-84.

Conduct Report Offense:

Disposition Date: / / Release to Population Date: / /

Disposition (Days): Program Seg: 0 Adj Seg: 0 Loss of Time: 0

-----  
ESCAPE HISTORY Rating: LOW

Comment:

-----  
EMOTIONAL/MENTAL HEALTH Rating: LOW

Comment:

-----  
PROGRAM PARTICIPATION Rating: LOW

Comment: COMPLETED

-----  
TEMPORARY FACTORS Rating: LOW

County Hold: NO Detainer/Pending Charges: NO

Field Information Unavailable: NO INS Status: NO

Other Condition: NO

Comment:

-----  
RISK RATING: MOD

# APPEAL OF ASSESSMENT AND EVALUATION (A&E) OR PROGRAM REVIEW (PR) DECISION

- The A&E/PR staffing recommendation is not subject to appeal. Per DOC 302.18, only the classification director/designee decision(s) concerning the staffing recommendations on one of the following are subject to appeal on this form:
  - custody classification
  - institution placement/transfer
  - identification of a program need
- PROGRAMS:** Concerns regarding program start date, enrollment or termination are not subject to appeal on this form. These concerns should be submitted directly to the facility Warden/Superintendent.
- Per 302.18, appeals will only be considered within 30 days of the offender's receipt of the written decision by the classification director/designee concerning an A&E/PR recommendation.

OFFENDER NAME	DOC NUMBER	INSTITUTION	TYPE OF STAFFING	DATE OF STAFFING	DATE OF DECISION
Harlan Richards	37975	SPCC/OCI	<input type="checkbox"/> A&E <input checked="" type="checkbox"/> PR	4/4/08	4/7/08

CHECK ALL DECISION(S) YOU ARE REQUESTING TO BE REVIEWED

Custody Classification  Institution Placement/Transfer  Identification of a Program Need; Specify Program: \_\_\_\_\_

SUMMARIZE REASON(S) FOR APPEAL: **PRINT LEGIBLY--ATTACHMENTS MAY DELAY RESPONSE TIME**

The parole commission increased my defer from a ten to a 12 for no apparent reason. The Supt. at SPCC then placed me in TLU at RGC I and ordered an early PRC hearing. I was given a telephonic hearing where I had my community custody taken away and was transferred to a secure minimum - OCI. I have done nothing wrong. Once I earned a community custody rating and transfer to a center I cannot lose that absent misconduct on my part. An increase of my defer from a 10 to a 12 after I have served over 23 years in prison is irrelevant and cannot

(continued on next page)

Send via U.S. mail to Bureau of Offender Classification & Movement-Appeal, Post Office Box 7925, Madison, WI. 53707-7925

OFFENDERS SIGNATURE

*Harlan Richards*

DATE SIGNED

4-28-08

### BUREAU OF OFFENDER CLASSIFICATION AND MOVEMENT RESPONSE

- ORIGINAL DECISION IS AFFIRMED concerning: (a)  Custody Classification (b)  Institution Placement/Transfer (c)  Program Need
- APPEAL REJECTED: (a)  Form incomplete (circled) (b)  Submitted prior to receipt of decision (c)  30-Day Time Limit Exceeded  
(d)  Not subject to appeal (e)  Program issue subject to warden review (f)  Issue addressed:
- ORIGINAL DECISION IS ALTERED OR MODIFIED (a)  Custody to: (b)  Institution Placement/Transfer to:  
(c)  Recall altered to: (d)  Program Need:

**REASONS:**

- Decision in compliance with DOC 302  Current Offense/history  Dynamics of crime/Violations  Sentence  Time likely to be served  
 Pending matters  Conduct/adjustment history  HSU/PSU review all county jail placements  In accordance with DOC criteria for stated program  
 Professional recommendations by other departments  Program assessment/performance  Other:

Exhibit B-1

DATE REQUEST RECEIVED | DIRECTOR/Designee SIGNATURE | DATE OF DECISION

Appeal of Program Review Decision

justify a loss of my custody rating or transfer from SPCC. It should be noted that I have a perfect conduct record, no history of escapes, spent 19 months on work release and 2½ years in centers. This transfer is an "atypical and significant" change in circumstances which triggers the protections of the Due Process Clause. I cannot be sent back to prison based on a 2 month change in my parole defer when it was already clear that I would not be getting a parole until after I received a PPI - which I had no prospect of getting at the current hearing.

De Andre Armour is at SPCC on an 18 month defer from the parole commission with community custody. When I was at GCC, Richard Swanson - a lifer - had a 12 month defer with community custody and worked with me at Jack Links Beef Jerky. Even if loss of community custody was justified - which it wasn't - I should have been allowed to stay at SPCC. Terry Erickson - a lifer - just spent 2 years at TCC on 12 month defers before getting a 10 month defer last fall. I have encountered dozens of guys at GCC and SPCC who did not have community custody yet were allowed to reside at centers.

At my hearing, Mr. Prophter stated that the Risk Rating Guidelines were mandatory and that with a 12 month defer I was now moderate risk and had to be returned to a secure minimum. This fails for 2 reasons: 1) The guidelines are advisory, not mandatory, and under the totality of the circumstances there was no rational factual basis to justify taking my community custody or transferring me to a secure minimum after I had spent so much time at centers and on work release; 2) The guidelines are an unpromulgated rule which may not be used to render an adverse PRC decision against me. In State ex rel Richards v Traut, 429 N.W. 2d 81 (Wis. App. 1988), the court held that the use of an unpromulgated 7 year rule to deny me transfer to medium security was an abuse of discretion. An unpromulgated rule may not be used to take away my community custody and remove me from a center.

I should be returned to SPCC and my community custody reinstated. The 12 month defer was unlawfully imposed on me and will be vacated. I should not be subjected to irreparable harm in the interim.

Dated: 4-24-08

  
Harlan Richards 37975

Received  
 MAY 12 2008  
 Page One of Two  
 BOOM SCOPE

## APPEAL OF ASSESSMENT AND EVALUATION (A&E) OR PROGRAM REVIEW (PR) DECISION

- The A&E/PR staffing recommendation is not subject to appeal. Per DOC 302.18, only the classification director/designee decision(s) concerning the staffing recommendations on one of the following are subject to appeal on this form:
  - custody classification
  - institution placement/transfer
  - identification of a program need
- PROGRAMS:** Concerns regarding program start date, enrollment or termination are not subject to appeal on this form. These concerns should be submitted directly to the facility Warden/Superintendent.
- Per 302.18, appeals will only be considered within 30 days of the offender's receipt of the written decision by the classification director/designee concerning an A&E/PR recommendation.

OFFENDER NAME	DOC NUMBER	INSTITUTION	TYPE OF STAFFING	DATE OF STAFFING	DATE OF DECISION
Harlan Richards	37975	SPCC/OCI	<input type="checkbox"/> A&E <input checked="" type="checkbox"/> PR	4/4/08	4/7/08

CHECK ALL DECISION(S) YOU ARE REQUESTING TO BE REVIEWED

- Custody Classification  
  Institution Placement/Transfer  
  Identification of a Program Need; Specify Program: \_\_\_\_\_

SUMMARIZE REASON(S) FOR APPEAL: PRINT LEGIBLY-ATTACHMENTS MAY DELAY RESPONSE TIME

The parole commission increased my defer from a ten to a 12 for no apparent reason. The Supt. at SPCC then placed me in TLU at RGC and ordered an early PRC hearing. I was given a telephonic hearing where I had my community custody taken away and was transferred to a secure minimum - OCI. I have done nothing wrong. Once I earned a community custody rating and transfer to a center I cannot lose that absent misconduct on my part. An increase of my defer from a 10 to a 12 after I have served over 23 years in prison is irrelevant and cannot

(continued on next page)

Send via U.S. mail to Bureau of Offender Classification & Movement-Appeal, Post Office Box 7925, Madison, WI 53707-7925

OFFENDERS SIGNATURE

*Harlan Richards*

DATE SIGNED

4-28-08

### BUREAU OF OFFENDER CLASSIFICATION AND MOVEMENT RESPONSE

- (1)  ORIGINAL DECISION IS AFFIRMED concerning: (a)  Custody Classification (b)  Institution Placement/Transfer (c)  Program Need
- (2)  APPEAL REJECTED: (a)  Form Incomplete (circled) (b)  Submitted prior to receipt of decision (c)  30-Day Time Limit Exceeded
- (d)  Not subject to appeal (e)  Program Issue subject to warden review (f)  Issue addressed:
- (3)  ORIGINAL DECISION IS ALTERED OR MODIFIED (a)  Custody to: (b)  Institution Placement/Transfer to: (c)  Recall altered to: (d)  Program Need:

**REASONS:**

- Decision in compliance with DOC 302  
  Offense/history  
  Dynamics of crime/violations  
  Sentence  
  Time likely to be served  
 Pending matters  
 Conduct/adjustment history  
 HSU/PSU review all county jail placements  
 In accordance with DOC criteria for stated program  
 Professional recommendations by other departments  
 Program assessment/performance  
 Other:

*a change in parole potential does impact risk and is cause to revisit custody & placement. Minimum assignment with placement at OCI is supported.*

DATE REQUEST RECEIVED

05/15/08

DIRECTOR/Designee SIGNATURE

*David Kuntz, Sector Chief*

DATE OF DECISION

07-22-08

DISTRIBUTION: Copy - Offender; Copy - Institution Case File; Copy - A&E/PR - Social Worker; Copy - CRG;  Copy - Warden/Supt. re Program

Received  
 7-28-08  
*Harlan Richards*