

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JUN - 3 2020

JEFFREY P. COLWELL
CLERK

Civil Action No. 20-cv-00766-GPG
(To be supplied by the court)

CONG THAN, Plaintiff

v.

SEE ATTACHED

_____, Defendant(s).

(List each named defendant on a separate line. If you cannot fit the names of all defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Section B. Do not include addresses here.)

AMENDED PRISONER COMPLAINT

NOTICE

Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should not contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include only: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Plaintiff need not send exhibits, affidavits, grievances, witness statements, or any other materials to the Clerk's Office with this complaint.

DEFENDANTS

Lt. CODY MCKIBBIN,
JODY BROWN, Captain,
KEN TOPLISS, Lt.,
MATTHEW VALDEZ, Captain,
CAROL TRUJILLO, Major,
MIKE ROMERO, Warden,

DEFENDANTS.

A. PLAINTIFF INFORMATION

You must notify the court of any changes to your address where case-related papers may be served by filing a notice of change of address. Failure to keep a current address on file with the court may result in dismissal of your case.

Cong Than, #98493 P.O. Box 1010, Canon City, COLO. 81215

(Name, prisoner identification number, and complete mailing address)

(Other names by which you have been known)

Indicate whether you are a prisoner or other confined person as follows: (check one)

____ Pretrial detainee

____ Civilly committed detainee

____ Immigration detainee

XX Convicted and sentenced state prisoner

____ Convicted and sentenced federal prisoner

____ Other: *(Please explain)* _____

B. DEFENDANT(S) INFORMATION

Please list the following information for each defendant listed in the caption of the complaint. If more space is needed, use extra paper to provide the information requested. The additional pages regarding defendants should be labeled "B. DEFENDANT(S) INFORMATION."

Defendant 1: Cody McKibbin, Lieutenant Colorado Dep't. of Corr.
(Name, job title, and complete mailing address)

CTCF 275 US Hwy. 50 West, Canon City, CO 81212

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? XX Yes ___ No *(check one)*. Briefly explain:

Lt. McKibbin is employed by the Colo. Dep't of Corr. in the
capacity of Intelligence Officer.

Defendant 1 is being sued in his/her X individual and/or X official capacity.

Defendant 2: Jodi Brown, CTCF Disciplinary Officer *Captain*
(Name, job title, and complete mailing address)

275 West Hwy 50, Canon City, CO 81212

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? Yes ___ No (*check one*). Briefly explain:

Captain is employed by CDOC and held the position at the facility as Disciplinary Officer, initiating COPD charges.

Defendant 2 is being sued in his/her individual and/or official capacity.

Defendant 3: Ken Topliss, CTCF Hearings Officer
(Name, job title, and complete mailing address)

275 West Hwy. 50, Canon City, CO 81212

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? Yes ___ No (*check one*). Briefly explain:

Lt. Topliss was employed as the Hearings officer and it was his duty to insure Plaintiff's rights were not violated.

Defendant 3 is being sued in his/her individual and/or official capacity.

SEE ATTACHED

C. JURISDICTION

Indicate the federal legal basis for your claim(s): (check all that apply)

42 U.S.C. § 1983 (state, county, and municipal defendants)

Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971) (federal defendants)

Other: (*please identify*) Mackey v/ Watson, 2019 U.S. Dist. LEXIS 142861 (August 22, 2019)

DEFENDANT INFORMATION Cont'd.

Defendant 4: Matthew Valdez, Captain

CTCF, 275 West Hwy. 50, Canon City, CO 81212

At the time the claims in this complaint arose, this defendant was acting under color of state or federal law.

EXPLANATION:

Captain Valdez is employed by CDOC and was the housing supervisor. Captain Valdez falsely testified under oath, thereby denying Plaintiff's right to due process.

Defendant Valdez is being sued in his individual and official capacity.

Defendant 5: Carol Trujillo, Major

CTCF, 275 West Hwy. 50, Canon City, CO 81212

At the time the claims in this complaint arose, this defendant was acting under color of state or federal law.

EXPLANATION:

Major Trujillo is employed by CDOC as Administrative Services Manager/Litigation Coordinator. Major Trujillo's duties included review of disciplinary hearings to insure that due process had been followed.

Defendant Trujillo is being sued in her individual and official capacity.

Defendant 6: Mike Romero, Warden, Colorado Territorial Correctional Facility

CTCF, 275 West Hwy. 50, Canon City, CO 81212

At the time the claims in this complaint arose, this defendant was acting under color of state or federal law.

EXPLANATION:

Defendant Romero is employed by the Colorado Department of Corrections as warden of CTCF. Warden Romero was made aware of the denial of due process and other injustices in Plaintiff's hearing and instead of correcting the injustices, legitimized the violations outside of codified time frames.

D. STATEMENT OF CLAIM(S)

State clearly and concisely every claim that you are asserting in this action. For each claim, specify the right that allegedly has been violated and state all facts that support your claim, including the date(s) on which the incident(s) occurred, the name(s) of the specific person(s) involved in each claim, and the specific facts that show how each person was involved in each claim. You do not need to cite specific legal cases to support your claim(s). If additional space is needed to describe any claim or to assert additional claims, use extra paper to continue that claim or to assert the additional claim(s). Please indicate that additional paper is attached and label the additional pages regarding the statement of claims as "D. STATEMENT OF CLAIMS."

Captain

CLAIM ONE: Defendant ~~It~~ Captain Brown denied Mr. Than procedural due process in violation of the Fourteenth Amendment.

Supporting facts:

On June 5, 2019 Mr. Than was served with a Code of Penal Discipline ("COPD") report alleging a violation of departmental rules. The charging document was served upon Mr. Than without the "Incident Report" as per regulation. The initiating officer as documented on the charging document was Defendant Brown.

The omitted "incident report" would show the actual date of the alleged incident that Mr. Than was being charged with. This date is relevant as the acts that Mr. Than is/was charged with transpired before the acts that MR Than was accused of participating in. Simply put, Mr. Than was charged with possession of contraband based on a letter that he allegedly sent out of the facility. The letter was mailed out of the facility after the dates of the alleged misconduct by other individuals. The omitted incident report would also establish by the relevant dates that there was no nexus between Mr. Than's letter and the events that occurred in the visiting room with other inmates.

Defendant Brown's decision to conceal the mitigating evidence contained in the original incident report prejudiced Mr. Than in that he was not able to defend himself when various staff member witnesses presented incorrect and/or false testimony during Mr. Than's disciplinary hearing.

While Mr. Than's original COPD charge alleged that he was attempting to smuggle electronic equipment or device into the facility, the department never produces any smuggled equipment nor alleges that any such equipment was ever attempted to be smuggled in by either Mr. Than or any other individual. The evidence used to convict Mr. Than was an incident in the visiting room involving another inmate where no contraband was found and a letter that Mr. Than mailed out May 22. The writing of this letter occurred at least one week after

D. STATEMENT OF CLAIMS

recorded telephone calls by another inmate allegedly claiming that "stuff" was sent to a female. No conversation by other mentions nor implicates Mr. Than in any manner.

Defendant Brown, as the hearing officer denied Mr. Than procedural due process when Lt. Brown failed to allow him to review all non-confidential evidence to be used against him and in fact failed to provide him with evidence of his actual innocence.

Defendant Brown served Mr. Than with a second COPD charge after his cell was searched. Mr. Than was housed in a two-man cell and on the same date that the FBI returned a summary of the translation of Mr. Than's letter, his cell was searched and he was stripped searched. It must be noted that Mr. Than's cellmate was not stripped searched during this shakedown.

At the time of the alleged events herein, Mr. Than was housed in the facilities "Incentive" unit. CDOC has implemented incentive units in most of its facilities. Incentive units provide extra ^{perks} perks for inmates who have remained out of trouble and who comport themselves in a positive manner.

Different facilities may offer different 'incentives' from other facilities. Incentives at CTCF include monthly culinary purchases; access to late night day halls; access and use of DVD and Blue Ray players; in cell use of X-box players as well as movie DVDs and X-box games. Mr. Than was housed in the with the same privileges as other incentive inmates.

Mr. Than was charged with two separate infractions of "Unauthorized possession of portable electronic device" and a separate charge of "Unauthorized possession". Both COPD charges were heard at the same time and presented by Defendant Brown, who at that time was the disciplinary officer. (Defendant Brown has been promoted to Captain and is no longer the disciplinary officer at CTCF).

The first charge stemmed from a letter that Mr. Than wrote to a person outside of the facility. In that letter Mr. Than asked that the recipient send electronic storage devices to a third party. The department intercepted mail and telephone conversations between other offenders that the department alleged was a conspiracy to introduce contraband into the facility. However, the department produced no evidence that Mr. Than was part of this alleged conspiracy. In fact, the department produced no evidence what-so-ever,

D. STATEMENT OF CLAIMS

It is mandatory that disciplinary officers are trained in the elements of due process and jurisprudence. Admin.Reg. 150-01(F)(1)(e). In this case, the disciplinary officer, Defendant Brown, failed to provide Mr. Than procedural due process. Defendant Brown failed to independently investigate the facts surrounding the charges against Mr. Than. Instead, Defendant Brown simply signed off on the incident report which was a complete fabrication based on falsehoods, innuendo, conjecture and unprofessional guesswork. In so doing, Defendant Brown denied Mr. Than his procedural due process rights as guaranteed by the constitution.

Had Defendant Brown actually performed, even a rudimentary investigation into the alleged events, she would have discovered that a department witness, Captain Valdez, was untruthful regarding the sequence of events; that Lt. McKibbin, the facility intelligence officer, made materially false statements in the incident report and falsified the date that Mr. Than's letter was sent out of the facility.

The second disciplinary charge stemmed from a shakedown of Mr. Than's cell. With regard to the incident above, the department sent a copy of Mr. Than's letter to the FBI for translation. On the date that the summary of the ~~translation summary~~ was returned to the facility, security officers were tasked with shaking down the cell occupied by Mr. Than and his cellmate.

From the start, the shakedown was not performed in conformity with DOC policy and procedures. Mr. Than was assigned to a two-man cell which was occupied by Mr. Than and his cellmate when officers arrived to shake the cell down. Mr. Than's cell mate was simply told to leave the cell while Mr. than was stripped searched. Under procedure, if one assigned person is to be stripped searched, both occupants are stripped searched. This makes sense from a security purpose. Various items were removed from the cell including laundry (zip) ties, fingernail/toenail clippers, movie DVD's and a DVD player. Only Mr. Than was charged with possession of these items despite the fact that there was no indication of where the other items were found. The Incident report, but not the shakedown slip, states that the DVD player was found on MR. Than's bunk.

Irrelevant to where the DVD player was found, the DVD player and its placement cannot be deemed to be an unauthorized item. DVD players and X-box systems are permitted in the cells of inmates housed in the incentive units. CDOC defines the offense of 'Unauthorized Possession' as:

D. STATEMENT OF CLAIMS

"An offender commits this offense when they have in their possession, in their cell, in their immediate sleeping area, locker, or immediate place of work or other program assignment or fashions, manufactures, introduces or attempts to arrange or arranges to introduce into the facility any item defined as contraband."

Admin.Reg. 150-01(IV)(E)(16). Emphasis added.

It is clear that per administrative regulation. Admin.Reg. 650-01. Therefore, when an item is permitted in the offenders immediate living are, that item cannot be arbitrarily deemed to be contraband by line staff. And when line staff deem a permissible item to be contraband and an offender is sanctions with 15 days in segregation for otherwise allowable items, the offender is denied any procedural due process.

For the reasons stated above, Defendant Jodi Brown (Captain), violated Mr. Than's Procedural due process rights. Mr. Than was sentenced to fifteen (15) days in punitive segregation for a non-offense. Even if the court should find that the conviction for fingernail clippers, (another item permitted), was just, the sanction of the maximum in punitive segregation is disproportionate to the alleged offense.

At the very minimum Defendant Brown failed to secure all mitigating information and evidence in order that Mr. Than could properly prepare his defense.

D. STATEMENT OF CLAIMS

CLAIMS TWO: Defendant Ken Topliss violated Mr. Than's Due Process Rights in violation of the Fourteenth Amendment to the Constitution of the United States.

Defendant Ken Topliss is employed by the Colorado Department of Corrections in the position of Hearings Officer. The Hearings Officer has the same role as a judge in disciplinary hearing.

In the case at hand, Defendant Topliss violated Mr. Than's constitutional rights when as a hearings officer Defendant Topliss denied Mr. Than a translator to assist with the hearings. Defendant Topliss violated Mr. Than's procedural due process rights when he denied Mr. Than's witnesses at his disciplinary hearing.

As stated above, Mr. Than was charged with two separate disciplinary infractions, Possession of Portable Electronic Device and/or Media Storage Device, a Class I violation Admin. Reg. 150-01(IV)(D)(20). The elements of the infractions consists of:

An offender commits this offense when the possess or use a communication device, to include but not limited to: cell phone, computer, pager, or DTR (digital trunked radio), any unauthorized external storage device with/or without WiFi capability, or media storage device.

Id.

Mr. Than's hearing was held on June 7, 2019 and Lt. Topliss was the hearing officer.

Plaintiff Cong Than is Vietnamese who only learned English while incarcerated. At the hearing, Mr. Than requested a translator but Defendant Topliss denied this request. Instead, Defendant Topliss inquired of the inmate rep if he believed that Mr. Than would be able to continue with the proceedings. Defendant Topliss then stated that if Mr. Than had any difficulty understanding, Defendant would slow down to allow Mr. Than a better opportunity to understand the proceedings.

Simply on its face, Defendant Topliss denied Mr. Than procedural due process. The regulation clearly and unambiguously states offenders requiring a translator will be afforded one. Admin.Reg. 150-01 (F)(1)(h). There simply is no provision that the offender must pass some sort of test. In fact Defendant Topliss recognized

D. STATEMENT OF CLAIMS

that Mr. Than may have difficulty comprehending when he offered to slow down the proceedings.

Mr. Than had a procedural due process right to have a translator present and available during his disciplinary hearing, Admin.Reg. 150-01 (IV)(F)(1)(h). As disciplinary officer it was Defendant Topliss's duty to insure that Mr. Than's due process rights were adhered to. With callousness and indifference Defendant Topliss denied Mr. Than his rights as guaranteed by the Fourth Amendment of the Constitution.

In addition to the denial of a translator, Mr. Than was found guilty of possession of an electronic device without any evidence whatsoever. No device was found on his personal possession or in an area under his control. The very elements of the charge states that the offender must be in possession of the electronic device. Even where a prison disciplinary hearing only requires a preponderance of evidence in order to convict, this minimal amount of evidence was never presented to sustain the charge.

Despite the complete lack of evidence Defendant Topliss found Mr. Than guilty and imposed the maximum sentence permitted. Admin.Reg. 150-01 (Form A).

With the complete lack of evidence, even at the low bar of preponderance, the only way that Defendant Topliss could find Mr. Than guilty was to callously disregard the very principals of procedural due process. The elements of the charge, possession, were not met and yet there was a finding of guilty and the maximum sentence imposed.

In the second hearing held on the same date, Defendant Topliss again denied Mr. Than a translator, and denied Mr. Than an opportunity to present evidence that the department's witness, Matthew Valdez, was untruthful. The denial of a translator violated the regulation (see above). The denial of the ability to call witnesses further denied Mr. Than his procedural due process rights. Admin.Reg. 150-01 (IV)(F)(3)((i)(1).

In a callous disregard of the procedures Defendant Topliss permitted Captain Valdez to present hearsay evidence that he was not given directly to Valdez and his belief that an announcement had been made over the intercom system. Mr. Than wanted to call witnesses to state that other inmates had not heard an announcement over the address system. Mr. Than also wanted to call witnesses

D. STATEMENT OF CLAIMS

who would have shown that the titler system that Captain Valdez referred to is not an official system for the dissemination of information within the facility. With callous disregard to disciplinary procedures, Defendant Topliss denied Mr. Than his procedural due process rights.

However, more importantly than the denial of a translator and witnesses, the elements of the charge of possession were clearly not met. The main item of concern was a DVD player. DVD players, X-box systems, DVD's and X-box games are permitted within the incentive unit at the facility. Even if Mr. Than had been directed to turn in the items, this was not unauthorized possession as defined by any regulation that Mr. Than has been directed to. Mr. Than maintains that he was never given notice that he had to turn in the DVD player however, even he had been told to do so, the failure to turn it in would only have amounted to disobeying a lawful order, not unauthorized possession. (Admin.Reg. 150-01 (IV)(E)(22)).

As for the other items that were taken and deemed to be unauthorized, there was no evidence presented that these items were taken from Mr. Than's possession or any area that he maintained sole control. These items, fingernail clippers, laundry ties, HDMI cable could very easily been discovered on Mr. Than's cell mates bunk. Again there was no indication as to where these items were removed from and therefore a conviction for possession can only be sustained by the denial of Mr. Than's procedural due process rights.

D. STATEMENT OF CLAIMS

CLAIM THREE: Lt. Cody McKibbin Violated Mr. Than's Procedural Due Process
When He Perjured Himself During the Disciplinary Hearing.

At all times relevant to the issues and claims herein Lt. Cody McKibbin was employed by the Colorado department of corrections and assigned as the Intelligence Officer at the Colorado Territorial Correctional Facility.

At some point Defendant McKibbin initiated an investigation regarding a letter that Mr. Than sent out of the facility. In this letter Mr. Than asked the recipient to send electronic storage devices to a third party. The letter did not discuss how to introduce contraband into a correctional facility, nor did the letter state or allude to what may become of the storage devices. The letter simply asked that the devices be sent to this third party. The rest of the letter was of a strictly personal nature and the topic of the storage device was not the sole purpose of the letter.

The original letter was copied by the department and then sent out of the facility to the addressee. Soon thereafter, Defendant McKibbin authored an incident report wherein he falsely stated that the letter contained instructions on how to smuggle contraband into the facility. The incident report also provided an incorrect date that Mr. Than supposedly deposited the mail for mailing. These materially false statements were callously intended for the sole purpose of denying Mr. Than his due process rights. More importantly, Defendant McKibbin testified to these falsehoods under oath at Mr. Than's disciplinary hearing. Defendant McKibbin knew the true date that the letter was logged and copied and he was in possession of the translation of the letter completed by the FBI. He knew that his testimony was false.

The incident report authored by Defendant McKibbin stated that the letter was sent out on April 20, 2019. Mr. Than questioned McKibbin during the hearing regarding this date and McKibbin was adamant about the date. Mr. Than then requested the mail logs that are kept regarding outgoing facility mail, especially mail that is flagged for copying. The logging of such mail is integral to any investigation. Defendant McKibbin stated, under oath, that the facility does not keep such logs as the letter was sent out the same day. As the facility intelligence officer, he knew, or should have known his testimony regarding the keeping of mail logs was

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false.

Through a discovery request in state court Mr. Than was able to discover the existence of the out going mail log showing that his letter was actually sent out on May 22, 2019 and not one month earlier on April 20, 2019 as testified to by McKibbin.

Of equal significance was the content of the letter. The FBI returned the translation of the letter to the department. There is no indication that Mr. Than described how to, or even alluded to the smuggling of any sort into this facility or any other facility. McKibbin made this up out of nothing other than his imagination.

Mr. McKibbin's false testimony, made under oath, plus his hiding of exculpatory evidence in the form of the mail log and translation of the letter, denied Mr. Than his procedural due process.

D. STATEMENT OF CLAIMS

CLAIMS FOUR: Major Carol Trujillo Denied Mr. Than's Procedural Due Process Rights As Guaranteed Under the Fourteenth Amendment.

Defendant Major Carol Trujillo is employed by the Colorado Department of Corrections and at all times relevant to this case Defendant Trujillo was designated by the warden of Colorado Territorial Correctional Facility to review appeals of disciplinary hearings and render final judgments.

In this case Defendant Trujillo failed to insure that Mr. Than was provided procedural due process before, during and after his disciplinary hearing. Admin.Reg. 150-01 (IV)(F)(s)(3).

Mr. Than's appeal asserted that the notice of charges did not comport with the regulation in that he was not served with the incident report as mandated by the regulation. Id. at (IV)(F)(s)(3)(c)(2). Mr. Than also stated that there was no evidence that he possessed an electronic device and therefore could not be convicted of the class one offense.

Defendant Trujillo stated in the response to the appeal that "all aspects of due process were followed." The appellate response went on to state that there was a preponderance of evidence which led to the conviction.

Defendant Trujillo failed to explain how an offender can be found guilty of possession of an object when no object was found, let alone found in an area where the offender, Mr. Than had no control. Absent evidence of a ~~XXXXXXXXXX~~ contraband item a conviction for possession cannot be sustained without violating procedural due process.

The Code of Penal Discipline (CPD) defines Possess as "To knowingly exercise control over an object." Admin.Reg. 150-01 (III)(v). There was no evidence presented that Mr. Than ever possessed an electronic device yet Defendant Trujillo stated that due process had been adhered to.

When the department, hearing officers and those assigned to review disciplinary hearing substitute conjecture for preponderance, an inmate is denied procedural due process. This is what happened to Mr. Than.

Mr. Than filed his appeal for the second conviction, unauthorized possession (of the DVD player). In Defendant Trujillo's response to this second appeal she implicitly acknowledged that the conviction for the possession of the DVD player

D. STATEMENT OF CLAIMS

was unsubstantiated, but upheld the conviction and maximum sentence based on other items found in the cell.

Again, while miscellaneous items were found in the cell that Mr. Than shared with another offender, there was no evidence, documentary or otherwise, that tied Mr. Than to the items, toenail clippers, laundry ties etc. As no evidence was presented that Mr. Than had control over these items, his conviction for unauthorized possession was had without procedural due process.

Major Trujillo chose to deny Mr. Than's procedural due process rights in violation of the constitution when she supported his conviction(s) absent any evidence at all.

D. STATEMENT OF CLAIMS

CLAIM FIVE: Captain Matthew Valdez Violated Mr. Than's Procedural Due Process Rights When He Testified Falsely Under Oath.

At all times relevant to the issues and claims herein Captain Valdez was employed by the Colorado department of Corrections. Defendant Valdez held the position of Housing Captain.

During Mr. Than's disciplinary hearing for unauthorized possession the department called Captain Valdez as a witness. Captain testified only to the events of the DVD player. Valdez testified that an announcement had been made in the unit to turn in all DVD players and X-box systems. Valdez also stated that a message had been posted on the facility titler.

All of Defendant Valdez's testimony was not only hearsay, it was false. Defendant Valdez could ^{not} state who made the announcement in the living unit nor could he state when such an announcement had been made. In fact, Mr. Than had wanted to call witnesses who would have testified that they had not heard any such announcement.

Defendant's testimony regarding the facility titler is irrelevant as the titler is not an official source of information for the offender population. Notices are not dated and are often out of date. As an example the titler currently is broadcasting contradictory messages. One message states that there are currently no positive cases of Covid in the facility and another message a few minutes later states that at least one staff member has tested positive for Covid. There are messages that are more than two years old on the titler.

Captain did not testify that DVD players and X-box systems had been banned by the facility administration. Captain Valdez provided hearsay testimony couched as information that he was personally aware of leading decision makers to believe his statements to be factual.

As a Captain, a position of authority within the department of corrections Defendant Valdez knew that his statements would lead to the denial of Mr. Than's procedural due process rights.

D. STATEMENT OF CLAIMS

CLAIM SIX: Mike Romero, Warden, Denied Mr. Than's Procedural Due Process Under the Fourteenth Amendment.

Mike Romero is employed by the Colorado Department of Corrections and at all times relevant to the claims herein, Mr. Romero was the warden at the Colorado Territorial Correctional Facility.

Mr. Than knew that he had not violated and departmental rule. After his disciplinary conviction was upheld on appeal he contacted his family to inform them of what had happened. His family then contacted Defendant Romero who at first did not respond to the families inquiries. The family then contacted headquarters, which prompted an e-mail response from Romero. In the response Defendant Romero first stated that he looked into the matter and found that a preponderance of the evidence supported the convictions. Yet, two months after the conviction and appeals, Defendant Romero directed that the Disposition of Charges be modified to change the conviction from Unauthorized Possession of an Electronic Device to Attempt - Unauthorized Possession of an Electronic Device.

On its face, Defendant Romero lacked authority to order the modification of the disposition of charges absent a hearing. The regulation is the sole authority for disciplinary hearings. The regulation unequivocally states that the appeal is final. Admin.Reg. 150-01 (IV)(F)(3)(s)(5). Defendant Trujillo had held that the convictions were had within the confines of due process and therefore just. As the appeal had been completed and the results were found to be within due process the warden had no further authority.

Defendant Romero ordered the change in the disposition without offering Mr. Than an opportunity to set the record straight, he had not asked that items be smuggled in and there were no items recovered that could reasonably attributed to him or any actions that he may have taken.

Under normal circumstances a superior cannot be held accountable for the actions of a subordinate. However, here, the warden chose to become personally involved and made decisions that attempted to justify the denial of procedural due process and therefore, Defendant Romero can, and should be held accountable, for denial of Mr. Than's procedural due process.

E. PREVIOUS LAWSUITS

Have you ever filed a lawsuit, other than this lawsuit, in any federal or state court while you were incarcerated? Yes ___ No (check one).

If your answer is "Yes," complete this section of the form. If you have filed more than one previous lawsuit, use additional paper to provide the requested information for each previous lawsuit. Please indicate that additional paper is attached and label the additional pages regarding previous lawsuits as "E. PREVIOUS LAWSUITS."

Name(s) of defendant(s): Executive Director CDOC

Docket number and court: 2019CV303, Fremon County District Court

Claims raised: Denial of Due Process; Abuse of discretion

Disposition: (is the case still pending? has it been dismissed?; was relief granted?) Complaint dismissed

Reasons for dismissal, if dismissed: Court claimed that filing fee not paid

Result on appeal, if appealed: Not Appealed

F. ADMINISTRATIVE REMEDIES

WARNING: Prisoners must exhaust administrative remedies before filing an action in federal court regarding prison conditions. See 42 U.S.C. § 1997e(a). Your case may be dismissed or judgment entered against you if you have not exhausted administrative remedies.

Is there a formal grievance procedure at the institution in which you are confined?

Yes ___ No (check one)

Did you exhaust administrative remedies?

Yes ___ No (check one)

G. REQUEST FOR RELIEF

State the relief you are requesting or what you want the court to do. If additional space is needed to identify the relief you are requesting, use extra paper to request relief. Please indicate that additional paper is attached and label the additional pages regarding relief as "G. REQUEST FOR RELIEF."

Granting Plaintiff a declaration that the acts and omissions described herein violated his rights under the Constitution and the laws of the United States.

Granting Plaintiff punitive damages against Defendant Topliss in the amount of \$50,000 for his callous indifference and disregard to Plaintiff's Constitutional Rights.

Granting Plaintiff punitive damages in the amount of \$30,000 against Defendant Romero for his callous indifference and disregard to Plaintiff's Constitutional rights.

Granting Plaintiff punitive damages against Defendants Brown and McKibbin, jointly and severally for their callous indifference to Plaintiff's Constitutional Rights, in the amount of \$20,000.


Granting Plaintiff Punitive damages against Defendant Trujillo in the amount of \$10,00 for her callous indifference to Plaintiff's Constitutional rights.

SEE ATTACHED

H. PLAINTIFF'S SIGNATURE

I declare under penalty of perjury that I am the plaintiff in this action, that I have read this complaint, and that the information in this complaint is true and correct. *See* 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Under Federal Rule of Civil Procedure 11, by signing below, I also certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending or modifying existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.



(Plaintiff's signature)

5/28/2020

(Date)

G. REQUEST FOR RELIEF

Granting Plaintiff damages in the amount of \$5,000 against Defendant Valdez for his callous indifference to Plaintiff's Constitutional rights.

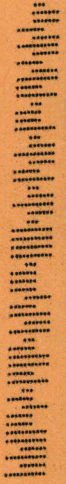
Plaintiff requests a jury trial on all issues triable by a jury, and

Any additional relief this Court deems just, proper and equitable.

From: CONG THAN # 98493
CTCF
P.O. Box 1010
Canon City, CO 81215

neopost
06/01/2020
FIRST-CLASS MAIL
US POSTAGE
\$01.80⁰
ZIP 81212
041L11241745

To: Clerk of the Court
AFred A. Arraj United States Courthouse
901 19th Street, Room A105
Denver, CO 80294-3589



<u>CTCF</u>	<u>5/29/2020</u>
FACILITY	DATE REC'D
<u>Willis</u>	<u>6364</u>
DOC EMPLOYEE LAST NAME	ID#
<u>98493</u>	<u>THAN</u>
DOC#	OFFENDER LAST NAME
	<u>CT</u>
	INT