

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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Charles E. Collins, III,

Plaintiff,

-against-

James B. Campbell,  
John Doe and Jane Doe,

Defendants.

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**AFFIDAVIT IN OPPOSITION  
TO MOTION**

Case No.: 00-CV-1348  
DNH/DRH

STATE OF NEW YORK    )  
                                  )  
COUNTY OF ALBANY    )    ss.:

ROBERT P. ROCHE, being duly sworn, deposes and says that I am an attorney and counselor at law duly admitted to practice before the Courts of the State of New York and the Federal District Court for the Northern District of New York and make this affidavit in opposition to a Notice of Motion dated October 25, 2000 by Charles E. Collins, III, 108 Brunswick Road, Troy, New York 12180 seeking a photographic array and disclosure of names of persons from whom it is his intention to pick persons to be identified as "John Doe and Jane Doe" in a certain complaint bearing the above index number filed by the said Charles E. Collins, III, pro se on or about September 23, 2000.

By Order of this Court dated September 25, 2000 U.S. Magistrate Judge David R. Homer ordered both that the suit papers be served upon the defendant James L. Campbell as Sheriff of the County of Albany and that the plaintiff undertake to attempt to ascertain the identities of the two persons identified and nominated in his complaint.

Accordingly, a motion by the claimant pro se has been brought.

A copy of the Order of Magistrate Judge David R. Homer is attached to this affidavit marked exhibit 1 and made a part hereof. On or about the 26<sup>th</sup> day of October a Notice of Motion was received by the undersigned at his offices as Special Counsel to Michael Lynch, County Attorney of the County of Albany which seeks the relief set forth hereinabove.

Previous thereto and on or about October 24, 2000 in response to the complaint of Charles E. Collins, III and the complaint numbered 00-CV-1348 your deponent did make a motion and file copies therewith with the Clerk of the Federal District Court of the Northern District of New York and identical copies of the same with Charles E. Collins, III at his residence and Georgetown Correctional Facility where, we believe he still is resident.

Movant sees with some distress that the Court on page 2, footnote 2 of the decision and order of September 25<sup>th</sup> notes that the claimant has now "been released" from prison. This is, to the best of the knowledge and information of your deponent, not true. Mr. Collins uses his address in Troy on Brunswick Road as his "lawyer" address whereas his actual address is Georgetown Correctional Facility where he is incarcerated pursuant to the Order of the Honorable Daniel LaMont, a Court of Claims B Judge acting as a County Court Judge in the County of Albany after Mr. Collins was found guilty at trial in December of 1999. Upon information and belief the defendant, now claimant, Collins was sentenced to 1 1/3 to 4 which would mean that he was obliged to do 16 months minimum from the date of his incarceration in December of 1999, which time should not by now have expired.

In lieu of an answer to the complaint of the plaintiff, and for the reasons set forth in the adjunct motion, the defendants James Campbell, et al. on behalf of the County of Albany have moved to dismiss the claims and causes of action brought by Mr. Collins under the aegis of Rule 56 of the Federal Rules of Civil Procedure. Summary Judgment should lay, in that the complaints

posited by Mr. Collins based on the facts and circumstances set forth in the responsive affidavits of deponent and Sheriff Campbell as well as a Memorandum of Law attached and accompanying those motion papers. They clearly establish that the claims made by Mr. Collins do not rise to the deprivation of Federal rights or the denial of Federal rights guaranteed to the claimant by the Constitution for all the reasons forth herein.

Because that motion is a dispositive motion the motion was returnable before Honorable District Court Judge Hurd who, along with Magistrate Judge Homer, is assigned to this case as the initials below the CV number indicate.

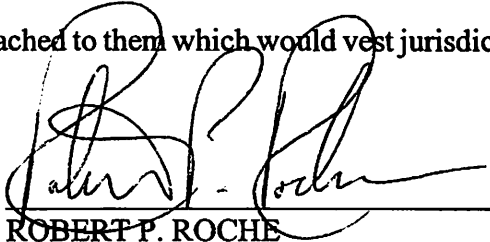
To the merits of the plaintiff's motion it must be stated that upon information and belief, after consulting with the warden at the facility, jail personnel i.e. corrections officers whom Mr. Collins wants to have a show up or line up created of, do not control the heat in the cell blocks and therefore would have *nothing* to do with whether the cell block was adequately heated, overheated or underheated.

The Courts have been somewhat reluctant to allow such show ups of the entire personnel as they merely afford a claimant an opportunity to pick and poke or guess and choose. Each of the guards at the facility at all times are required to wear a name tag. Incident to and set forth in the defendant's motion to dismiss this case is the fact that at no time while Mr. Collins was an inmate at the Albany County Correctional Facility did he file a complaint to the effect that the cells were too cold or that female guards had access to the prison shower or toilet facilities of male inmates or that the clothing which Mr. Collins was given to wear to Court for his sentencing was not adequate or that the seating provided in the back of the van was not adequate or for that matter *any* of those items enumerated in Judge Homer's Order of September 25<sup>th</sup>.

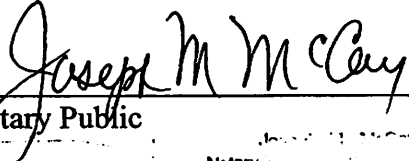
Additionally, as pointed out in the attendant motion before Judge Hurd the claims and causes of action set forth in plaintiff's complaint have no merit in this Court as each and every one of them generically have been addressed by the Federal Courts and, absent certain conditions predicate, have not been found to be deprivations of Federally guaranteed Constitutional rights or privileges and that the right of privacy in and of itself as a stand alone concept of the law does not, in fact, Constitutionally exist.

WHEREFORE, it is the contention of the defendants that granting of the plaintiff's motion to compel the Sheriff to provide Mr. Collins with the photographs of each and every officer who was there during that period of time as well as the tier schedules trying to figure out when those persons were in that portion of the tier in which Mr. Collins claims he was then housed, or given shower or toilet privileges, would be a monumental administrative task and would lead ultimately to a barren place where redress is not possible, as the complaint does not state a cause of action and there is no triable issue of fact.

Because of the pending motion before the United States District Court Judge for disposition of these claims it is respectfully submitted that the motion of Mr. Collins at this time is premature and should be denied unless it is determined that any of the claims for any of the redress he seeks have Federally Constitutionally guaranteed rights attached to them which would vest jurisdiction in this Honored Court.

  
ROBERT P. ROCHE  
Bar Roll No.: 102462  
Special Counsel to the Albany County Attorney

Sworn to before me this  
at Albany day of October, 2000.

  
Notary Public

Joseph M. McCoy  
Notary Public, State of New York  
Qualified in Albany County  
No. 4733005  
Commission Expires 5-31-01

Notary Public  
Commission Expires

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

CHARLES E. COLLINS, III,

Plaintiff,

-v.-

JAMES B. CAMPBELL; JOHN DOE and JANE DOE,

Defendants.

1: 00-CV-1348  
(DNH)(DRH)

2  
*[Signature]*

APPEARANCES:

CHARLES E. COLLINS, III  
Plaintiff, *pro se*  
108 Brunswick Road  
Troy, NY 12180

DAVID R. HOMER, MAGISTRATE JUDGE

ORDER

Presently before the Court is a *pro se* civil rights complaint filed by Charles E. Collins, III ("plaintiff" or "Collins"). Plaintiff has paid the filing fee required for this action.

In his *pro se* complaint, plaintiff alleges, *inter alia*, that on or after December 23, 1999, while plaintiff was incarcerated at the Albany County Jail, (i) "plaintiff was exposed to asbestos in and around his bed", docket no. 1 at ¶ 8; (ii) the defendants failed to adequately heat plaintiff's cell block during the winter months, *id.* at ¶ 9; (iii) despite the "no smoking policy in the jail", plaintiff was exposed to second hand smoke which "was hazardous to the health and safety of the plaintiff", *id.* at ¶ 12; (iv) plaintiff was denied his right to privacy,<sup>1</sup> *id.* at ¶ 14; and (v) plaintiff was not provided adequate

<sup>1</sup> Collins claims that female guards were assigned to the cell block while inmates were taking showers and using the toilet facilities. Docket no. 1 at ¶ 14.

COPIES SENT  
*[Handwritten notes]*

clothing when transported outside of the jail, *id.* at ¶ 15.<sup>2</sup> For a more complete statement of plaintiff's claims, reference is made to the entire complaint filed herein.

The Court notes that Collins has asserted claims against a "John Doe" and a "Jane Doe" defendant in this action. Plaintiff is advised that service cannot be effected upon a "John Doe" or "Jane Doe" defendant. In the event that plaintiff wishes to pursue this claim against these defendants, he shall take reasonable steps to ascertain their identities. Plaintiff may then file a motion to amend his complaint and seek leave of the Court to add such individuals, by name, as defendants to this lawsuit. Collins is further advised that if these individuals are not timely served, this action may be dismissed as against them.

WHEREFORE, it is hereby

ORDERED, that the plaintiff take reasonable steps to ascertain the identities of any other individual(s) that purportedly violated plaintiff's civil and/or constitutional rights, and it is further

ORDERED, that the Clerk shall forward a copy of the summons and complaint by mail to the Office of the County Attorney for the County of Albany, together with a copy of this Order, and it is further

ORDERED, that the parties shall comply with General Order 25, which sets forth the Civil Case Management Plan used by the Northern District of New York, and it is further

ORDERED, that a formal response to plaintiff's complaint be filed by the defendants or their counsel as provided for in Rule 12 of the Federal Rules of Civil Procedure subsequent to service of process on the defendants, and it is further

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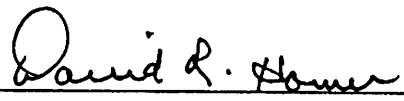
<sup>2</sup> Plaintiff has now been released from prison.

ORDERED, that any paper sent by a party to the Court or the Clerk shall be accompanied by a certificate setting forth the date a true and correct copy of same was mailed to all opposing parties or their counsel. Any letter or other document received by the Clerk or the Court which does not include a certificate of service which clearly states that an identical copy of same was served upon all opposing parties or their attorneys is to be returned, without processing, by the Clerk, to the party that sent same. Plaintiff shall also comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action. Plaintiff is also required to promptly notify the Clerk's Office and counsel for the defendants of any change in his address; his failure to do same will result in the dismissal of the instant action. All motions shall comply with the Local Rules of Practice of the Northern District, and it is further

ORDERED, that the Clerk serve a copy of this Order on plaintiff by regular mail.

IT IS SO ORDERED.

Dated: September 25, 2000  
Albany, New York

  
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David R. Homer  
U.S. Magistrate Judge