

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK  
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Charles E. Collins, III,

Plaintiff,

Case No.: 1:00-CV-1348

- against -

James B. Campbell,  
John Doe and Jane Doe

TJM / DRH

**MEMORANDUM OF LAW**

Defendants.

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This is a Memorandum of Law in support of the plaintiff's Affidavit in Opposition to the defendants Motion to Dismiss and for Summary Judgment.

It the plaintiff's position that he has a cause of action in the above matter.

The following case supports the plaintiff's position that his right to privacy was violated when his shower time was supervised by a female officer and there were no shower curtains. Sheriff Campbell is fully aware or should have been fully aware that there are no shower curtains on the shower stalls. Further, he should have been aware that female officers were supervising the showers as showers in cell block 7E were taken only between 3:00 p.m. and 9:00 p.m.

Strickler v. Waters, 989 F.2d 1375 (4th Cir.(Va.), Mar 26, 1993) (NO. 92-6147)

[20][21][22] Strickler claims first that his involuntary exposure before female penal officers violated his constitutional rights. Though convicted prisoners necessarily forfeit many of their constitutional rights by virtue of their confinement, see Wolfish, 441 U.S. at 545, 99 S.Ct. at 1877, we have held that, when not reasonably necessary, exposure of a prisoner's genitals to members of the opposite sex violates his constitutional rights, see Lee v. Downs, 641 F.2d 1117, 1119 (4th Cir.1981).

Strickler maintains that he was exposed to female officers in the "back office" area, where prisoners housed in the basement shower and where those entering and leaving the

jail are strip searched, dress, and use the toilet. In addition, he claims that he was routinely exposed to female officers who patrolled the cellblock. It is conceded by defendants that female officers work in the back room and patrol the cellblock. However, it is undisputed that curtains conceal the male prisoners while they shower, J.A. at 137, and that the female guards cannot observe the male prisoners from the waist down during strip searches because of a counter in the back room that obscures their view, id. (Strip searches are conducted by members of the same sex only.) Nor did Strickler contest below that prison officials make efforts to ensure that female officers walk the cellblock only at regular intervals so that their appearance may be to some extent anticipated. Id. at 136; see also id. at 15 ("[F]emale deputies walk thru [sic] the male cellblocks to deliver mail or escort medical personal [sic] or maintenance persons."). [FN20]

Strickler alleged that female guards can see inmates using the toilet in the back room, which is infrequently used because there are toilets in the cells. The district court awarded summary judgment to the defendants on Strickler's challenge to this condition, however, on the ground that Strickler did not allege that he himself used or had been seen using this toilet, a ruling which was clearly correct, see J.A. at 10 ("We have been denied our right to privacy [sic] as the male inmates are expected to undress and dress, shower and use the bathroom in front of both male and female deputies." (emphasis added)). The district court expressly did not "pass judgment on whether an inmate's right to privacy is violated when he is observed using the unenclosed toilet by an officer of the opposite sex." Id. at 137-38.

Strickler cannot on these facts make out a claim that his exposure was "done to effectuate an official policy or custom for which [the Sheriff] was responsible." It is clear not only that Strickler has not been unreasonably exposed to persons of the opposite sex, Hudson v. Goodlander, 494 F.Supp. 890, 891 (D.Md.1980) ("[N]either an inadvertent encounter nor a regularly scheduled visit by a female employee at an announced time ... rise[s] to the level of a constitutional deprivation."), but also that Portsmouth officials have taken measured precautions to prevent the unreasonable exposure of prisoners' genitals to members of the opposite sex.

A district court is not required to act as an advocate for a pro se litigant; but when such a litigant has alleged a cause of action which may be meritorious against a person or persons unknown, the district court should afford him a reasonable opportunity to determine the correct person or persons against whom the claim is asserted, advise him how to proceed and direct or permit amendments of the pleadings to bring that person or persons before the court.

Plaintiff requests that this Court advise him how to proceed and direct or permit amendments of the pleadings to bring that person or persons before the court who witnessed him showering and using the toilet as well as freezing the cell block by turning on the air conditioner and/or turning off the heat.

That the Albany County Jail provides the female prisoners better living conditions than male prisoners in that the female prisoners are not frozen out during the day and night and the fact that there cells do not leak; have no mold on the walls and ceiling and has no asbestos to breath is sex based discrimination as the jail is giving preferential treatment to the female prisoners.

Lyon v. Temple University of Commonwealth System of Higher Educ., 543 F.Supp. 1372.

(7)(8) Generally, sex-based discrimination "not supported by reasonable justifications, (is) invalid under the Equal Protection Clause and the right to be free from such unconstitutional discrimination can be protected by s 1983 actions."

Bell v. Godinez, 139 F.3d 901 (Table, Text in WESTLAW), Unpublished Disposition, 1998 WL 60393 (7th Cir.(Ill.), Feb 09, 1998) (NO. 96-3379)

First, although several successful cold-temperatures cases have involved other serious problems as well, the existing precedent does not demonstrate that cold temperatures by themselves can never reach the level of a constitutional violation. Rather, courts should consider several factors in evaluating cold-cell claims. Id. at 643-44. One such factor is the duration of the cold. Here, as in Dixon, the cold temperatures existed throughout the winter months over a period of four years. Second, although the inmate's possession of bedding and extra clothing is relevant to the court's evaluation of the cold, the question "is not simply whether the inmate had some alternative means of warmth, but whether the alternative was adequate to combat the cold." Id. at 643.

The plaintiff was allowed only one blanket and two sheets for

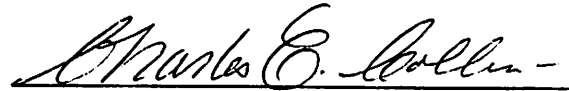
his bed. It was against the jail policy to have more than one blanket and if you were caught with more than one blanket you faced a penalty. Further, the guards on several occasions came through cell block and removed any extra blankets that an inmate may have had.

#### CONCLUSION

For all of the above reasons it is respectfully submitted that there are triable issues of fact for this Court and the defendant's motion for summary judgment should be denied.

Dated: December 19, 2000

Respectfully submitted,

  
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