

UNITED STATES DISTRICT COURT

FILED
CHARLOTTE, NC

for the

JAN 26 2021

Western District of North Carolina

US DISTRICT COURT
WESTERN DISTRICT OF NC

Asheville Division

Case No.

3:19-cv-709-MR

(to be filled in by the Clerk's Office)

Richard Lee Bolen

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

DARRICK C. PHILEMON

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

AMENDED
COMPLAINT FOR VIOLATION OF CIVIL RIGHTS
(Prisoner Complaint)

NOTICE

Federal Rules 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.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

Richard lee Bolen

All other names by which you have been known:

ID Number

Opus 0631731

Current Institution

Alexander Correctional Institute

Address

633 old landfill rd

TAYLORSVILLE

NC

28681

City

State

Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

DARRICK C. Philemon

Job or Title (*if known*)

Corr Lieutenant III

Shield Number

PDC 15

Employer

Department Public Safety

Address

City

State

Zip Code

Individual capacity

Official capacity

Defendant No. 2

Name

CHRISTOPHER J. BREINICH

Job or Title (*if known*)

Professional Nurse

Shield Number

BC 544

Employer

Department Public Safety

Address

City

State

Zip Code

Individual capacity

Official capacity

Defendant No. 3

Name

Lanesboro/Anson Correctional Institute

Job or Title (if known)

Shield Number

Employer

Department Public Safety

Address

City

State

Zip Code

Individual capacity

Official capacity

Defendant No. 4

Name

Department Public Safety

Job or Title (if known)

Shield Number

Employer

Address

City

State

Zip Code

Individual capacity

Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

Federal officials (a *Bivens* claim)

State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

Deliberate Indifference, Negligence

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

DARRICK C. PHILEMON PDC15 Did not call Code 5 Fire I have trained assisted help, ~~knowing~~ I was burning Did not pull me from fire or enter cell for 15 minutes, Allowed or involved with statements and jokes about me in fire. Christopher J. Breinich Professional nurse (8544) Allowed or put nurse on my feet with water and Galls After I clearly stated Do not touch me I need A Hospital. Lanesboro ~~cell~~ For NOT Responding or Being Built For this type of situation with sprinker in cell.

III. Prisoner Status

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

- Pretrial detainee
- Civilly committed detainee
- Immigration detainee
- Convicted and sentenced state prisoner
- Convicted and sentenced federal prisoner
- Other (explain) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

~~Lanesboro Correctional Institute, Anson Unit E Pod cell 01~~

Lanesboro Correctional Institute, Anson Unit E Pod cell 01

C. What date and approximate time did the events giving rise to your claim(s) occur?

February 4, 2017 1511 Hours pm, Saturday.

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

I WAS INVOLVED IN A Freak accident Fire In my cell. I inhaled A potent drug "KA spice" and It knocked me out Instantly! when I woke, other Inmates were kicking And yelling For Help For me In my cell.. when officer Harrington come near my cell I was yelling For help. He exited out the side door. Next other officers entered and started telling me to come to the door, I stated I can't move, officers stated "let his Dumb ass burn"! I kept yelling For please help me and officers kept saying "well come to the door" other inmates were yelling Get him the Fuck out of there Help him, A nurse come to the Block and stated what the Fuck are ya'll doing Get him out of there I WAS Finally extracted From cell And taken to medical then to a Helicopter and to Chapel Hill Burncenter. A other Inmate! A code 5 Fire was not called to Have staff assist situation. Statements.

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

while in main medical A nurse tempted to pour water on my Foot I stated dont touch me and she did anyway which put me into shock! After Helicoptered to Burncenter where I stayed Roughly 3 1/2 4 months? I Received countless surgeries to my Feet Before they put A skin Graft that was taken from my thigh skin. I was In wound VAC'S For 2 months, that suck poison from wounds, I had Infections, Physical Therapy to learn to walk again plus physical Therapy For months after Hospital.. LASER surgery 5 times. Toes cut apart twice. Still have medication For pain + nerve damage. Very poor Balance and have had time standing For A period of time "I How." I did not finish surgery's due to to much pain and suffering physically + mentally while under care of the prison system! medical care For this was poor and trying For me, Not same or close to Hospital care A comment made alot Dont cry now you did it to your self because of officers claiming self Injury! Behavior!

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

800,000.00, Eight hundred thousand Dollars. I am a uneducated construction worker/ laborer. I can not work in my trade any more. Need money to last life time. Pain and suffering that hasn't and will not end with Burns. 200,000.00 Two Hundred thousand to have Rest of surgery's after Release 3/11/21. mental Health assistance after Release as well.

Statement of claim

Continued page 5 of 11

Section D. Based on Incident Report Housing Unit manager Whitney Revels comments, A Emergency Code 5 was not called for this Incident. Incident was not handled properly and Requires Further Action.

In Incident Report Exhibit A page 6 The Regional Director comments Actions were Questionable to once Fire was discovered And appears staff Failed to take appropriate and timely Action during the course of this Incident.

Argument general is if code 5 was activated "Fire". Trained officers could have Assisted In cell extraction and Removed me In A Faster way and minimized my injuries Instead of letting me burn For 15 minutes after I was noticed to be on fire And that time does not include The time I burned unnoticed before smoke billowed out of secured steel prison Door. Cell E1 is also In borderline blind spot out of view of officers spot in control booth. Sprinkler system is out side of cell's And are of no help to A human In case of Fire inside cell. I was on maximum security (Icon) when Incident Accured A place For High Risk inmates that Requires cell scans every 30 minutes by Tablet electronic Device. These scans are Rarely Done even on A hourly Basis.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

Yes

No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

Innesboro Corr Institute, Alexander Corr Institute

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

Yes

No

Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

Yes

No

Do not know

If yes, which claim(s)?

D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

Yes

No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

Yes

No

E. If you did file a grievance:

1. Where did you file the grievance?

After Being in Hospital for 3 1/2 to 4 months I was shipped to central prison Hospital where I attempted to file grievance without response! In Nov 2017 at Alexander Corr I tried to file grievance and was told it's too late to complain. I did file a grievance about fire safety set up out side of cells and I was in cell like central prison's cell's that my injuries could have been lessened. The grievance was processed but rejected before any further could be said.

2. What did you claim in your grievance?

Everything written in this 1983 was written in detail and immediately rejected, due to time. Like the write up situation and I was at the institution where I was injured.

3. What was the result, if any?

Rejection, told couldn't process grievance numerous times and many attempts.

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

wrote to Superintendent, spoke to unit manager, with all the officer involvement in my case and finger pointing I was shut down at all efforts so I filed this claim.

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

Alexander Corr, Mr Murray Blue unit tried to file told I could not, but he had me write a incident report on what I had happened for lanesboro which I did and he sent to lanesboro because they were requesting it. That was 12-19-17 I filed statement but wasn't allowed to file grievance.

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

When there's merit to a grievance that involves staff and possibly a lawsuit it's impossible to go through normal procedure's do to staff lookin out for staff mentality and the bethe believe there's nothing inmates can do! I tried everything to file and I'm not sure if some were processed then denied I need discovery to find out, Alexander Corr told me they don't print old grievances unless ordered by court.

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this "three strikes rule"?

Yes

No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes

No

B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

Yes

No

If no, give the approximate date of disposition. _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I 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, modifying, or reversing 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.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 01-17-2021

Signature of Plaintiff Richard Lee Bolen
Printed Name of Plaintiff Richard Lee Bolen
Prison Identification # opus 0631731
Prison Address 633 old landfill rd
TAYLORVILLE NC 28681
City State Zip Code

B. For Attorneys

Date of signing: _____

Signature of Attorney _____
Printed Name of Attorney _____
Bar Number _____
Name of Law Firm _____
Address _____

City State Zip Code
Telephone Number _____
E-mail Address _____