

30696

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

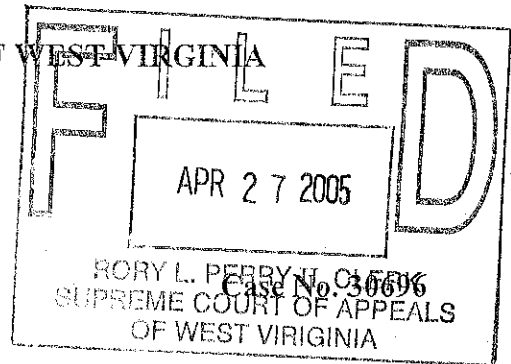
JAMES WILLIAM BERRY, SR.

Petitioner,

v.

THOMAS McBRIDE,

Respondent.



PETITIONER'S RESPONSE TO QUESTIONS POSED BY INTERIM
REPORT OF THE SPECIAL MASTER

Now comes the petitioner, James W. Berry, Sr., by counsel, Jason E. Huber and Forman & Huber, and does hereby provide the following information in addition to that which has already been submitted in this matter:

1. What objective criteria, if any, do medical professionals at MOCC follow in assessing similarly situated inmates?

RESPONSE: Based on the additional information submitted by the Respondent and the information which the parties have already submitted, it is clear that the Respondent has no objective criteria to evaluate an inmate's physical and/or psychiatric need, or lack thereof, for a single cell. In fact, based on the Respondent's answer to this question, it is obvious that there are no general standards and that all inmates are evaluated on an ad hoc basis.

2. Was Mr. Berry medically assessed for his condition and for his suitability for double bunking?

RESPONSE: The Respondent admits that the medical unit did not specifically evaluate Mr. Berry in order to determine if he needed a single cell. In addition, attached is an affidavit from Victor Nutter (Exhibit 1) who, based on his disability, has requested and been denied a single cell.

3. Was MOCC's determination of Mr. Berry's medical disability based upon the

assessment of medical professionals by those objective criteria, and if so, did this determination play a role in his being double-bunked in the future?

RESPONSE: As Mr. Berry was never assessed, any the Respondent's housing decision could not have been based on the same. In addition, considering this fact, it is difficult if not impossible to determine what criteria the Respondent will use in the future in order to make housing decisions for Mr. Berry.

4. If there are no such objective criteria, and Mr. Berry was medically assessed for the reasons set forth above, then what criteria were used and by whom, and did this determination play a part in his being double-bunked in the past and will this determination play a role in his being double-bunked in the future?

RESPONSE: The Respondent's only guidance in respect to housing decisions for Mr. Berry are found in Policy Directive 202.02. Beyond this the Respondent has no objective framework for making housing decisions for disabled individuals.

5. What are the dimensions of regular and handicapped cells at MOCC, and in which type of cell is Mr. Berry housed?

RESPONSE: Attached as Exhibit 2 is a diagram which Mr. Berry created that accurately depicts the encumbered and unencumbered space in Mr. Berry's cell.

6. Is Mr. Berry wheelchair-bound at all times or can he move short distances without the use of a wheelchair, i.e. can he move about his cell without using his wheelchair?

RESPONSE: Mr. Berry, for all practical purposes, is confined to his wheelchair at all times. When he initially reported to the Respondent's facility he had crutches; his use of them at the time cause him great physical pain. Since incarceration his physical condition has deteriorated dramatically and he is now unable to use the crutches (i.e. must use his wheelchair) even in his cell.

7. What are the dimensions of Mr. Berry's wheelchair, and is it a collapsible

wheelchair?

RESPONSE: Mr. Berry's wheelchair is not collapsible with the exception of the pieces which support his legs. However, if he does not use the leg supports he endures severe pain. His wheelchair is 18 inches wide, 38 inches long and 36 inches tall with the leg rest down. With the leg rest up it is 44 inches long.

James W. Berry, Sr.
By counsel

Jason E. Huber (WV Bar #7175)
FORMAN & HUBER, L.C.
100 Capitol Street, Suite 400
Charleston, WV 25301
304-346-6300

SWORN TESTIMONIAL OF VICTOR NUTTER 27562

I, Victor Nutter 27562, held within the Mount Olive Correctional Complex, have been housed in a double bunking situation since I was incarcerated within the W.Va. Correction Institutions. I am a heart Patent, crippled, and diagnosed with certain mental illnesses by the States own Phyiatrict evaluation and been on sleep aide due to Insominia and other illnesses.

I have on many occasions requested to be placed in a single cell. I was refused. I have been placed in double bunking cells and been threatened and abused by those whom I was celled with. I got no releif from the Unit Teams and/or Officers whom are to keep peace and all inmates and staff safe.

I have a One to Five and a Fifteen to thirty five year sentence. All Ran in a consecitive manner. This is Unconstitutional and Unsanitary due to the many illnesses within the System, I Request a Single Cell

respectfully

Victor Nutter 27562
Victor Nutter 27562

Notary

Sheila Hosey

Day

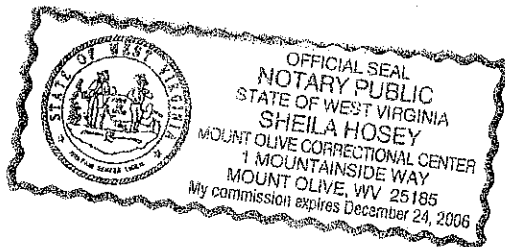
18

Month

February

2005

SEAL



EXHIBIT

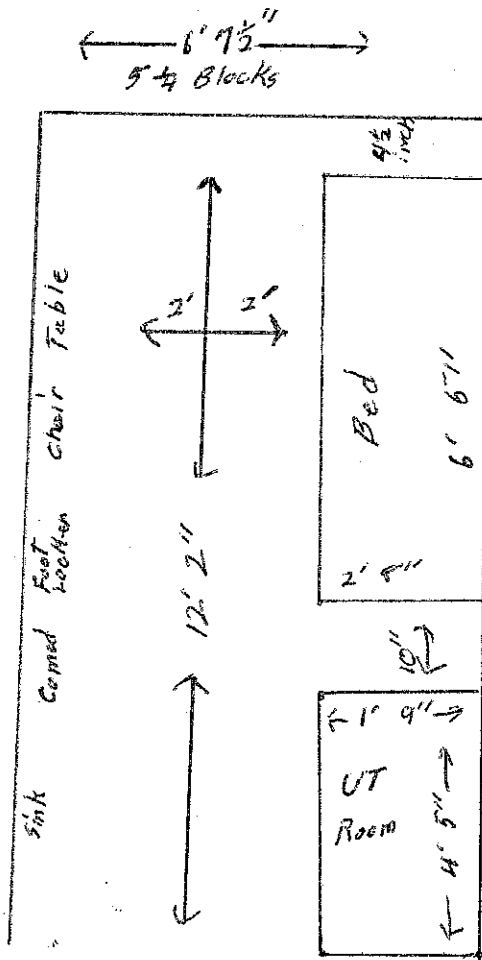
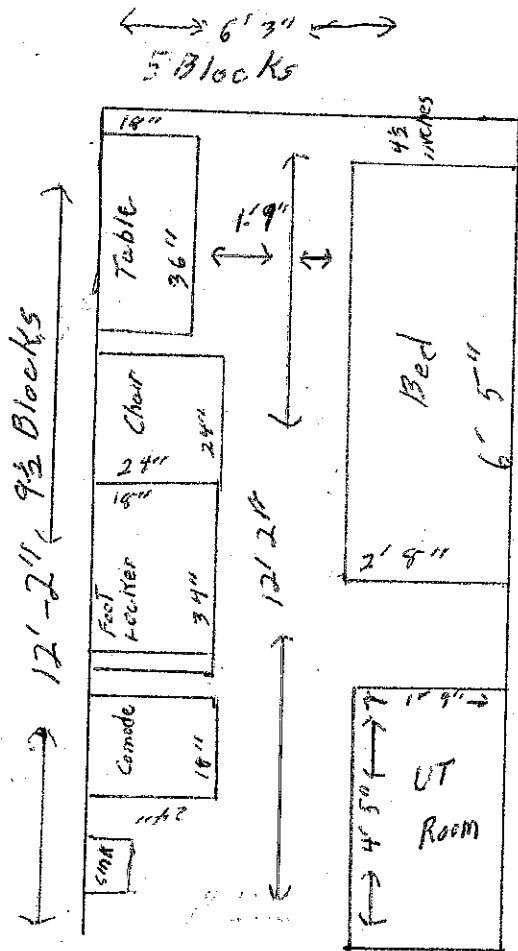
EXHIBIT

CASE NO - 30696

Room 217 + 215

R217

R215



12' 2" x 11' 9" = 19' 6" unincumbered space in R217 + 24' 9" UNC

Both cells have 2 inmates = 2 Locker Boxes more state issued, minus 6 more feet of space with no inmate personal property in cells

A.G.A. Section C of Series 4 + Policy Directive 202.02 Forbids 2 in a cell this size. Also the Blue Prints I was shown 5-18-04 are False fact to this, I measured cells + counted blocks 5-18-04 + 5-19-04 using Ruler

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CERTIFICATE OF SERVICE

I, Jason E. Huber, counsel for the petitioner, do hereby certify that the foregoing Petitioner's Response to Questions Posed by Interim Report of the Special Master has been served upon the following counsel of record, by first class mail, postage prepaid, on this 26th day of April, 2005:

Charles Houdyschell, Jr., Esquire
Office of the Attorney General
112 California Avenue
Building 4, Room 300
Charleston, WV 25305

Hon. Derek C. Swope, Judge
Circuit Court of Mercer County
1501 W. Main Street
Princeton, WV 24740-2626

Jason E. Huber (WV Bar #7175)
FORMAN & HUBER, L.C.
100 Capitol Street, Suite 400
Charleston, WV 25301
304-346-6300