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STATE OF WASHINGTON

No. 49001-3-II

COURT OF APPEALS,  
DIVISION II  
OF THE STATE OF WASHINGTON

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LORENZO GINO SANDOVAL, Appellant,

VS.

CHERYL L. SULLIVAN, et al., Respondent's

---

APPELLANT'S AMENDED OPENING BRIEF

---

Mr. Lorenzo Gino Sandoval  
#283632/CRCC/GA-03L1  
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GR 3.1(a) 11/22/16

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**I. Assignments of Error**

**Assignments of Error**

**No. 1 The Trial Court erred when it granted defendant's Motion For Summary Judgment on April 15th, 2016, When a genuine issue of material fact is in dispute, Regarding: "The Retaliatory Cell Search;**

**No. 2 The Trial Court erred when it granted defendant's Motion For Summary Judgment on April 15th, 2016, When a genuine issue of material fact is in dispute Regarding: The Retaliatory False "Serious Major Disciplinary Infraction";**

**No. 3 The Trial Court erred when it granted defendant's Motion For Summary Judgment on April 15th, 2016, When a genuine issue of material fact is in dispute Regarding: "The denial of Meaningful Access To The Court";**

**No. 4 The Trial Court erred when it granted defendant's Motion For Summary Judgment on April 15th, 2016, When genuine issues of material facts are in dispute Regarding: "Clearly established law which precludes defendant's defense of Qualified Immunity";**

**No. 5 Did the Trial Court error when it granted defendant's Motion For Summary Judgment on April 15th, 2016, When it considered defendant's Motion For Summary Judgment, When genuine issues of material facts are in dispute Regarding: "The inadmissible evidence used by defendant's to support their Motion For Summary Judgment, Exhibits and other Attachment's to their Motion, And was Plaintiff's Motion To Strike an Objection for appeal purposes.**

## Issues Pertaining to Assignments of Error

No. 1 Does Appellant have a U.S. Federally protected right to be free from Calculated harrasment ?.

Appellant's Prison Cell (H5-A75), was Searched and left in Shambles (Ransacked), for the sole reason and purpose to harass him and to confiscate only his Personal Mail from the Clerk of the Clark County Superior Court, and his Personal Legal Materials (documents and Research Material's), for participating in a protected activity of assisting another Offender and litigating his own pending case.

Did the Search and seizure violate Appellant's rights under the First, Fifth, Eighth and Fourteenth Amendment's of the U.S. Federal Constitution, Where no legitimate penological goal was established. (Assignment of Error No. 1).

No. 2 Does Appellant have a due process right to be free from a Retaliatory "Serious Disciplinary Infraction" for engaging in protected conduct, (Assisting another Offender and Accessing to the Court's), When he was not provided accurate account's of information on the Infraction Report. (Assignment of Error No. 2).

No. 3 Does Appellant have a Constitutional right under Washington State Constitution and of the U.S. Federal Constitution of Access to the Court, When the defendant's withheld his funds sent to him for his pending litigation, causing his appeal to be dismissed in the Washington State Court of Appeals Division II, because he could not utilize the funds to pay the Trial Court for the "Designation of the Clerk's Papers". (Assignment of Error No. 3).

No. 4 Does Appellant's Clearly established law that he presented in his Response in opposition to the defendant's Motion For Summary Judgment preclude the defendant's defense of Qualified Immunity. (Assignment of Error No. 4).

No. 5 Can the defendant's support their Motion For Summary Judgment with inadmissible evidence, Specifically; with the Retaliatory False "Serious Disciplinary Infraction Report", and with all it's Exhibit's and Attachment's therein. (Assignment of Error No. 5).

## II. Statement of the Case

### 1. (Retaliatory Cell-Search)

On September 24th, 2010, Sergeant (herein after Sgt.) Ms. Cheryl Sullivan requested that my cell (H5-A75), be searched for Offender Mr. E. Shamp's legal documents/papers. See: CP-1064 to 1070 (Declaration of Cheryl Sullivan), CP-945 (Cell-Search Report), and CP-938 to 940 (Plaintiff's First Set of Interrogatories and request for Production of Documents to Defendant Cheryl L. Sullivan).

On September 24th, 2010, Officer's J.Salvaggi, and K. Bisher, both searched my cell (H5-A75), leaving the cell in complete shambles, (Ransacked), with papers' strewn in disaray all over the cell floor, as if a Tornado had hit the cell. See: CP-869 to 881 (Affidavit of Mr. Michael G. Robtoy).

See also: CP-1215 to 1217 (Declaration of Joseph Salvaggi). No documents/papers nor any personal property belonging to Offender Mr. E. Shamp was ever confiscated from the cell-search of (H5-A75). The documents/papers believed to belong to Offender Shamp, are documents/papers (Legal Material's Mail) that belongs to appellant. I personally had a friend purchase these documents/papers for me from the Clark County Superior Court, which relates to Mr. Shamp, who was my Celly, and whom I was "ASSISTING " with his legal matters. See: CP-947, 948, (Clark County Superior Court RECIEPT'S), and (Envelope from the Clark County Clerk's Office).

The cell-search was RETALIATORY for engaging in protected activities of Access to the Courts and ASSISTING another Offender with his legal matters. See: CP-962 (Grievance #1210088), Proof of a continuation of RETALIATION for engaging in protected activities.

**2. (Retaliatory Serious Infraction Report)**

On September 24th, 2010, Sgt. Sullivan filed a False Serious Disciplinary Infraction Report, (WAC-137-28-260) #811, 725, 714, and 656. See: CP-930 to 935 (Disciplinary Infraction Report's).

On October 4th, 2010, I attended the infraction hearing, and pled not guilty to all charges. During the hearing I admitted guilt to a General Minor Infraction (WAC-137-28-220) #303, for CALLING another Offender by phone who was on Community Custody, without the Superintendent's permission.

The hearing officer DISMISSED Three of the Four Serious Infractions, and REDUCED the Fourth to a Minor General Infraction (#303). See: CP-930 to 935 (Disciplinary Hearing Minutes and Findings).

The infraction is RETALIATORY for participating in protected activities of "Access to the Court's" and for "ASSISTING another Offender Mr. Shamp with his legal matters.

On January 19th, 2016, Sgt. Sullivan admitted that she had "ERRONEOUSLY" ascribed an August 30th,

2010, date to several pieces of mail in the "Narrative portion of the September 30th, 2010, Initial Serious Infraction Report". See: CP-938 to 940, (Plaintiff's First Set of Interrogatories).

The initial serious infraction report was not based on accurate information, therefore, the entire infraction must not be CONSIDERED and STRICKEN.

3. (Denial of Access to the Court)

Sgt. Sullivan initiated an investigation against me, believing that I was misusing and violating the mail policies (450.100), by being in "POSSESSION" of another Offender's legal documents/papers, beginning in August 2010. See: CP-1064 to 1070, (Declaration of Cheryl Sullivan).

During the Month's of August thru September 2010, I had received mail with money orders from friends for my pending litigation, my appeal from the Thurston County Superior Court Case No. 09-2-02415-1, and the appeal in the Washington State Court of Appeals Division Two, Case No. 41671-9-II.

The funds (Monies) were rejected by the mail room of Stafford Creek Correction Center, by Sgt. Sullivan, and used as evidence for the Four Serious Major Disciplinary Infractions. Because of these rejections and the infraction I was DENIED to utilize the Funds to pay the Thurston County Superior Court Clerk for the "Designation of Clerk's Papers". See: CP-1028, 1029, (Letter from Thurston Co. Clerk).

All my attempts to send the Money Orders out were futile.

On August 31st, 2011, The Wa. St. Court of Appeals Div. II, Case No. 41671-9-II, DISMISSED my Appeal, because I could not pay for the "Designation of Clerk's papers", due to the unlawful withholding by Sgt. Sullivan, P. Glebe (Supt'), and C. May (Capt). This is clearly a denial of Meaningful Access to the Court. See: CP-1248,1250,1251,1252,1254,1255, and 1257, (Dismissal).

4. (Defendant's Qualified Immunity)

Appellant presented undisputable evidence in dispute.

Appellant has a U.S. Federal Constitutional

right to be free from "Calculated Harrassment", "Retaliatory Cell-Search", The right to Access the Court's", without intentional interference", The right to "Assist other Offender's", with their legal matters, and to be provided "Accurate information to a Serious Disciplinary Infraction Report". The defendant's adamantly dispute these Constitutional rights mentioned above.

Appellant at all times relevant to this lawsuit followed and complied with all of DOC Policy Directive, with the exception of making a phone call to an ex-offender at the time, which is now allowable without permission.

Appellant received Money Orders in the mail, however it was rejected and used as evidence in a False Serious Infraction. Appellant has a protected Liberty interest in Money received and or posted into his Prison Accounts. This was denied.

##### 5. (Inadmissible Evidence)

On December 8th, 2015, Defendant's filed their Motion and Memorandum For Summary Judgment in this Case with numerous attachments and exhibits in

support thereof.

On December 3rd, 2015, Defendant Sullivan filed her "Declaration", See: CP-1064 to 1070, In Ms. Sullivan's Declaration she admits her "MISTAKE". This mistake denied appellant his U.S. Federal Constitutional rights, when a chain of events occurred regarding: 1. A retaliatory cell-search, (Confiscation of his personal legal mail, legal research material's), (Regular Mail), (Money Orders), and 2. A falsifying Serious Major Infraction Report. All in retaliation, issues still in dispute.

The specific Attachment's/Exhibit's are inadmissible because they can not be used by the Trial Court when ruling on a Motion For Summary Judgment. See: CP-938 to 940,(Plaintiff's First Set of Interrogatories).

### III. ARGUMENT

#### (Retaliatory Cell-Search)

The Trial Court erred when it granted the defendant's motion for summary judgment when genuine issues of material facts remain in dispute. Anderson v. Liberty Lobby, Inc., 477 U.S.

242, 249, 106 S.Ct. 2505, 91 L.Ed.2d 202  
(1986), (holding, In deciding a motion for summary judgment, the court is not to "weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial".

1. Appellant's cell (H5-A75), was searched and RANSACKED, left in SHAMBLES, with all his document's/papers (Legal Material's) strewn all over the floor, in complete disarray, Contrary to DOC Policy Directive 420.320 Sec. IV. Offender Living Areas. See: CP-992, and See: CP-869 to 881 (Affidavit of Michael G. Robtoy).

See: Vigliotto V. Terry, 873 F.2d 1201, (11/14/88), at 1203, The Eighth Amendment protects Prisoner's from Searches conducted only for "Calculated Harassment".

See: Hudson v. Palmer, 468 U.S. 517, 530, 82 L.Ed.2d 393, 104 S.Ct. 3194 (1984). The Supreme Court recently refined the standard for determining whether prison authorities conduct

violates the eighth amendment. It is abdurecy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the cruel and unusual punishment clause, whether that conduct occurs in connection with establishing conditions of confinement, supplying medical needs, or restoring official control over a tumultuous cell block .... The general requirement that an eighth amendment claimant allege and prove the unnecessary and wanton infliction of pain should also be applied with due regard for differences in the kind of conduct against which an Eighth Amendment objection is lodged. Whitley v. Albers, 475 U.S. 312, 319-20, 89 L.Ed.2d 251, 106 S.Ct. 1078 (1986).

Here, the sole reason and purpose for the cell-search was to confiscate Mr. Sandoval's personal legal mail, (MAIL), and (Legal Material's) document's/paper's. The defendant's did not advance any legitimate penological goal related to the Disciplinary Infraction.

Appellant has a right to assist other offender's. See: Murphy v. Shaw, 195 F.3d 1121, 99 Cal. Daily op. Serv. 8846

(9th Cir.11/04/1999), at ¶ [30]; This Circuit in Rizzo v. Dawson, 778 F.2d 527, 531 (9th Cir.1985), Recognized that the provisions of legal assistance to a fellow "inmate" is an activity protected by the First Amendment.

2. (Retaliatory False Serious Disciplinary Infraction Report)

On September 24 thru 30, 2010, Defendant Sullivan filed a retaliatory false Serious Disciplinary Infraction Report, with Evidence of the mail sent to appellant, Money Orders included, and personal Legal Mail, and Legal Material's from the Cell-Search. Appellant pled not guilty and was found to be guilty of #725, but reduced to a General Minor Infraction #303, for calling his friend on the phone who was on Community Custody at the time, without the Superintendent's pre-approval.

On January 19th, 2016, Ms. Sullivan admitted that she had erroneously ascribed incorrect information on the September 24th, 2010, Initial Serious Infraction Report. See: In re Pers. Restraint of Ferguson, 2013 Wash.App. Lexis 2877, (Dec.23,2013), at ¶ [8], a disciplinary

proceeding is not arbitrary and capricious if the inmate was afforded the applicable minimum due process protections and the decision was supported by "Constitutionally Sufficient Evidence". In re Pers. Restraint of Krier, 108 Wn.App. 31, 38, 29 P.3d 720 (2001). See also: Watson v. Carter, 668 F.3d 1108 (9th Cir.2012).

Regardless of whether appellant lost good time or not as a disciplinary sanction. See: In re Personal Restraint of McVay, 99 Wn.App. 502, at 507, (Nov. 22, 1999); at ¶ [4]; The Washington Supreme Court has held prisoner's are entitled to minimum due process in "Serious Infraction" hearings. See: Gronquist, 138 Wn.2d at 397.

Here, Prison Officials charged McVay with a "602" infraction listed under WAC 137-28-260, as a "Serious infraction". After the disciplinary hearing, McVay received 10 days segregation and loss of 90 days good time for 360 days. However, the Prison Superintendent eliminated the loss of good time upon appeal. Although McVay did not actually suffer loss of good time, McVay did appear in a serious Infraction hearing. Therefore, following

Gronquist, we find that McVay was entitled to minimum due process in that hearing. 138 Wn.2d at 397.

Courts have held that a disciplinary hearing is not "Meaningful" if an inmate is given inadequate information about the basis of the charges. See: Brown v. Plaut, 131 F.3d 163, 172 (D.C.Cir.1997)("If [an inmate] was not provided an accurate picture of what was at stake in the hearing, then he was not given his due process"). As for the Money Orders that was withheld as evidence in the serious infraction, this resulted in a procedural due process claim violation when I was denied adequate information, and denied to send the Money Orders back to the sender. See: CP-976.

Appellant has a liberty and or property interest protected by the U.S. Federal Constitution. See: Quick v. Jones, 754 F.2d 1521 (9th Cir.1985), Prisoner's has a clear protected property interest in funds received or funds in his prison account.

### 3. (Denial of Access to the Court)

3. On January 13th, 2011, Judge Carol Murphy of the Thurston Co. Superior Court dismissed my 42 U.S.C. § 1983 Civil Rights Complaint, Case No. 09-2-02415-1. See: CP-1237 to 1239.

On May 2nd, 2011, The Washington State Court of Appeals Div. II, (herein after C.O.A Div.II), Case No. 41671-9-II, Notified me that the filing fee \$290.00 has been paid, via, (Appellant's Court Case Summary), ("Perfection Letter"). See: CP-1267.

On May 13th, 2011, The Thurston Co. Superior Court Clerk for Case No. 09-2-02415-1, Notified me that I must pay \$37.75 for the "Designation of Clerk's papers". See: CP-1246.

On May 26th, 2011, I sent a letter to the Thurston Co. Superior Court, explaining that Specific Correctional Official's of the Stafford Creek Correctional Center, are illegally withholding my funds sent to me in the mail, in violation of my rights. See: CP-1248.

On July 31st, 2011, I submitted to the Thurston Co. Superior Court Clerk, also to the C.O.A. Div.II, and to the Assistant Attorney General's Office a "Notice of Cancellation" of the Verbatim Report of Proceedings and the Designation of

Clerk's papers. See: CP-1254,1255.

On August 8th, 2011, The C.O.A. Div. II, Case No. 41671-9-II, The Clerk notified me by letter that: "The Notice of Cancellation filed by appellant on August 2, 2011, is being treated as a Motion To Dismiss the Appeal in the above referenced matter". See: CP-1268.

On August 31st, 2011, The C.O.A. Div. II, Case No. 41671-9-II, filed: "RULING DISMISSING APPEAL". See: CP-1258.

On September 19th, 2011, I filed a Motion For Reconsideration of a Commissioner's Ruling of August 31st, 2011, The Motion was considered as a Motion To Modify. See: CP-1268.

On October 12th, 2011, The C.O.A. Div.II, Case No. 41671-9-II, filed an "ORDER DIRECTING A RESPONSE". See: CP-1268 (Appellate Court Case Summary) (Calling for Response).

On October 20th, 2011, The Respondent's Responded to the Court of Appeals directive. See: CP-969 (6 Pages),(Respondent's Responded to the Motion to Modify). In the defendant's Response, they stated: Mr. Sandoval has not explained why he did not have the sender of the money Orders send funds directly to the Court as he did with the \$280.00 appeal filing fee in this case.

This response is completely absurd to say the least. Mr. Sandoval had his friend pay the filing fee of \$280.00 and send to him additional money for his pending litigation. However, the defendant's falsely believed that he was in violation of Four Serious Disciplinary Infractions, where all the infractions were dismissed or reduced to a General Minor Infraction. Then Five years later during the pendency of this Lawsuit Case No. 13-2-01098-1, Defendant Ms. Sullivan who is the individual who filed the Retaliatory Serious Infraction Report "ADMITTED" she had "ERRONEOUSLY" ascribed incorrect information in the Narrative portion of the September 30th, 2010, Initial Serious Infraction

Report. See: CP-938 to 940. Even after the Serious Disciplinary hearing was over I was still denied to send back the Money Orders, regardless of providing a Self Addressed Stamped Envelope. See; CP-976.

These acts complicated, interfered, obstructed, impeded, and were retaliatory and DENIED me Meaningful Access to the Court. See: CP-973, 974.

Mr. Sandoval exhausted numerous Grievances, and Letters to the Court's, but to no avail. See: CP-979 to 981.

In this case there are genuine issues in dispute of Material facts that preclude granting Summary Judgment. However, On Nov. 1st, 2011, The C.O.A.Div.II, Case No. 41671-9-II, filed: "ORDER DENYING MOTION TO MODIFY", the entire case ended. (ACTUAL INJURY). See: CP-972.

A Prisoner's First Amendment right to access the Court's without undue interference "extends beyond the pleading stages". Bounds v. Smith, 430 U.S. 817, 282, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977).

See also: Nevada Dep't of Corrections v. Greene, 648 F.3d 1014, 1018 (07/11/11), To establish a violation of the right of access to the court, a prisoner must establish a violation that he or she has suffered an actual injury. Lewis v. Casey, 518 U.S. 343, 349, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996). Actual injury is a jurisdictional requirement that flows from the standing doctrine and may not be waived. *Id.* It is "actual prejudice with respect to contemplated or existing litigation, such as the inability to meet a filing deadline or to present a claim". *Id.* at 348 (internal quotation marks omitted). Under Lewis v. Casey, 518 U.S. 343, 351 (1996); (citing Bounds v. Smith, 430 U.S. 817, 823 (1997)); Thus, a prisoner may claim the denial of meaningful access to the court by demonstrating that, ... he had suffered arguably actionable harm that he wish to bring before the courts; but was so stymied that he was unable to do so. The defendant's here restricted his mail and Money Orders, Searched his Cell unnecessarily, and confiscated his personal property: (Mail, Legal Mail, and Legal Material's), solely because he was previously assisting another Offender with their legal matters,

And corresponding with friends and the Courts via mail, and had previously filed numerous Grievances and State Tort-Claims complaining of Prison conditions and Staff Misconduct. The defendant's have violated clearly established laws and rights that an inmate retains while incarcerated, Retaliation is prohibited for engaging in First Amendment activities. See: Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2004).

These are genuine issues of material facts that are still in dispute. The Trial Court erred by Granting Defendant's Motion For Summary Judgment.

#### 4. Qualified Immunities

The doctrine of qualified immunity shields government officials from civil liability under § 1983 if "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known". See: Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).

Qualified immunity includes two independent prongs: 1. Whether the officer's conduct violated a constitutional right, and 2. Whether that right was clearly established at the time of the incident. Pearson v. Callahan, 555 U.S. 223,

232 (2009); Both of these "essential legal questions" are for the court to decide. Mitchell v. Forsyth, 472 U.S. 511, 526 (1985). There must be "a genuine issue as to whether the defendant in fact committed those acts". Mitchell, 472 U.S. at 526.

Appellant presented beyond debate that the defendant's had committed numerous violations of his U.S. Federal and State Constitutional rights, regarding: 1. Retaliatory Cell-Search; (Confiscation of mail & Legal Research Material's); 2. Falsified a Serious Infraction Report); and 3. (Denied him Meaningful Access to the Courts), with absolutely no sufficient, nor reasonable or any related legitimate justification to do so. See: CP-1037 to 1282, CP-869 to 881, and CP-882 to 1036.

These rights are found under the U.S. Federal First, Fifth, Eighth and Fourteenth Amendment's. See: Vigliotto v. Terry, 837 F.2d 1201, 1203 (9th Cir. 1989), The Eighth Amendment protects prisoners from searches conducted only for "Calculated Harassment". See: Rizzo v. Dawson, 778 F.2d 527, 531 (9th Cir. 1985), Recognized that the provisions of legal assistance to a fellow inmate is an activity protected by the First Amendment.

A Prisoner "retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the Corrections system". See: Pell v. Procunier, 417 U.S. 817, 822, 94 S.Ct. 2800, 41 L.Ed.2d 495 (1974). Among those rights is the right to file prison grievances and the right to pursue civil rights litigation in the federal courts.

Because actions taken to retaliate against prisoners who exercise those rights "necessarily undermine those protections, such actions violate the constitution quite a part from any underlying misconduct they are designed to shield".

The right to file an action is part of this right of access to the courts. See: Bill Johnson's Rest., Inc. v. NLRB, 461 U.S. 731, 741 (1983) (Finding access to the courts derives from the First Amendment right to petition for Redress. See: Armstrong v. Mans, 380 U.S. 545, 552 (1965) (Finding access to the courts derives from the Due Process of the "Fifth and Fourteenth Amendments"). See: Rhodes v. Robinson, 408 F.3d 559, 567 (9th Cir.2004) (Citing Pratt v. Rowland, 65 F.3d 802,

806 & N.4 (9th Cir.1995); ("The prohibition against Retaliatory punishment is 'Clearly established law' in the Ninth Circuit, for qualified immunity purposes, and See: Wolff v. McDonnell, 418 U.S. 539, 566, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974),(Due Process).

5. (admissible Evidence)

On December 11, 2015, Defendant's filed their Motion For Summary Judgment with nearly 100 Attachments in support.

On March 4th, 2016, Appellant filed a Motion to "Strike" specific attachments from defendant's Motion For Summary Judgment. See: DKT-#132 (Plt's Mt To Strike Specific Attachments).

On March 18th, 2016, The Trial Court denied Plaintiff's Motion To Strike specific attachment's of Defendant's Motion For Summary Judgment. See: EXPARTE: ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, filed April 15th, 2016, DKT-#149.

Appellant argued in his Motion To Strike specific attachment's that the defendant's can not use "inadmissible evidence" to support their motion for summary judgment, Specifically; all Summaries, and Narratives, and or any related Records, Files, and any other actual

documents of the August thru October investigation of and for and of the Initial Serious Disciplinary Infraction Report.

Because the infraction does not provide an accurate accounts in the information. This denied Mr. Sandoval a Fundamentally fair proceeding, because the findings of Guilt was based on less than Constitutionally sufficient evidence. See: CP-1064 to 1069, and CP-1205. (Sanction: "Summary of Testimony", "I never received any mail Restrictions dated 8-30-10").

Defendant Sullivan filed the Serious Infraction Report, And 5 years later she admitted stating: "I erroneously ascribed an August 30th, 2010, date to **SEVERAL PIECES OF MAIL IN THE** Narrative portion of the September 30, 2010, Initial Serious Infraction Report". See: CP-1064 to 1070.

Due Process attaches to all Serious Disciplinary Infractions. The introduction of False evidence in itself violates the due process Clause. See: CP-930 to 935. Therefore, the entire infraction report is invalid and inadmissible to be used as evidence in a motion for summary judgment. See: Cameron v. Murray, 151 Wn.App. 646, 658, 214 P.3d 150 (2009);

Review denied, 168 Wn.2d 1018 (2010), at [11-13], at ¶ [24], The trial court granted the defendant's motion to strike these material's from the Record. Cameron assigns error to this Ruling. Her objection is well taken. To begin with, material's submitted to the trial court in connection with a motion for summary judgment cannot actually be Striken from consideration as is true of evidence that is removed from consideration by a jury; They remain in the record to be considered on Appeal. Thus, it is misleading to denominate as a "Motion To Strike" what is actually an objection to the admissibility of evidence that could have been preserved in a reply brief rather than by a separate motion.

Here in this case, the trial court denied Plaintiff's Motion To Strike, However, Under: Raymond v. Pacific Chem, 98 Wn.App. 739 at 744, (Dec. 13, 1999), at ¶ [1]; [2], A Trial Court may not consider inadmissible evidence when ruling on a Summary Judgment Motion. King County Fire Protection Dist. No. 16, v. Housing Auth, 123 Wn.2d 819, at 826, 872 P.2d 516 (1994).

Here and all else where throughout this brief Appellant has shown that genuine issues of

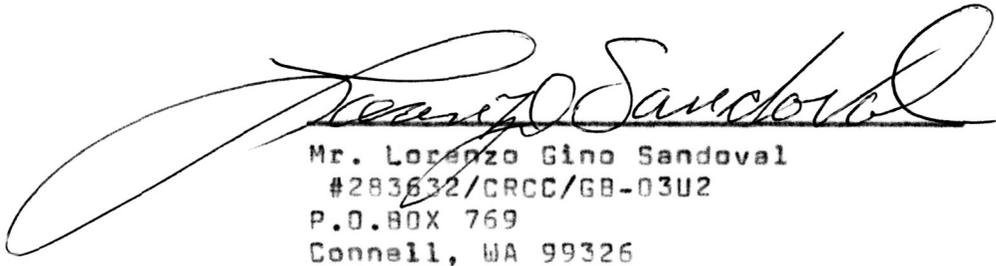
material facts remain in dispute in this case. Therefore, The Trial Court erred when it granted the defendant's their Motion For Summary Judgment.

#### IV. Conclusion

Appellant Mr. Lorenzo Gino Sandoval, respectfully prays for the following relief:

1. Grant this Amended Appeal;
2. Remand this Case back to the Thurston County Superior Court for a Trial by a Jury on all issues raised and stated in the 42 U.S.C. § 1983 Civil Rights Complaint;
3. Please Recuse the Honorable Judge Mary Sue Wilson, from this Case for Prejudice and lack of Civil Law Knowledge;
4. Award all cost incurred relating to this Appeal including Prevailing Party Fees, and Transportation of Appellant's Personal Legal Property from Prison to Prison Facilities; and
5. And an Evidentiary Hearing for uncertain issues relating to any Document's in this Case and issues. Because the Clerk of the Thurston County Superior Court has made several errors with the "Designation of Clerk's Papers" on several occasions, and my motions for Sanctions have been stricken.

RESPECTFULLY SUBMITTED This 22nd day of  
NOVEMBER, 2016.



Mr. Lorenzo Gino Sandoval  
#283632/CRCC/GB-03U2  
P.O. BOX 769  
Connell, WA 99326

DECLARATION OF SERVICE BY MAIL  
GR 3.1

I, Mr. Lorenzo Gino Sandoval, declares and Says:

That on the 22<sup>nd</sup> Day of NOVEMBER, 2016, I deposited the following documents in the, Coyote Ridge Correctional Center, P.O.BOX 769, Connell, WA 99326, Legal Mail System by First Class Mail Pre-Paid, Under: Court of Appeals Division Two, Case No. 49001-3-II:

"APPELLANT'S AMENDED OPENING BRIEF"

MAILED TO:

Mr. David C. Ponzoha,  
Hon. Clerk,  
Washington State Court  
of Appeals Division Two  
950 Broadway, Suite 300,  
Tacoma, Wash 98402-4454

Mr. Jerry P. Scharosch, WSBA#39393  
Asst' Atty General  
Corrections Division  
1116 West Riverside Ave,  
Suite 100  
Spokane, WA 99201-1106

I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and Correct, Sworn under: RCW § 9A.72.085, AND 28 U.S.C. § 1746.

DATED THIS 22<sup>nd</sup> Day of NOVEMBER, 2016, in the County of Franklin, State of Washington, 99326.

  
Signature

Mr. Lorenzo Gino Sandoval  
Print Name  
DOC#283632, UNIT GA-03L1  
P.O.BOX 769, (CRCC)  
Connell, WA 99326

GR 3.1