

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

No. _____

VICTOR L. MARTIN, #0549353)

Plaintiff,)

v.)

ALVIN W. KELLER, SECRETARY OF)
NORTH CAROLINA DEPARTMENT)
OF CORRECTION; BOYD BENNETT,)
DIRECTOR OF NORTH CAROLINA)
DIVISION OF PRISONS; GERALD)
BRANKER, ADMINISTRATOR,)
CENTRAL PRISON; CAPTAIN)
FREDERICK S. O'NEAL,)

Defendants.)

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Victor L. Martin ("Plaintiff" or "Mr. Martin") brings the following Complaint against Defendants Alvin W. Keller, Secretary of North Carolina Department of Correction, Boyd Bennett, Director of North Carolina Division of Prisons, Gerald Branker, Administrator of Central Prison, and Captain Frederick S. O'Neal, Internal Affairs Officer at Central Prison (collectively, "Defendants"). Plaintiff's Complaint asserts claims of violation of his civil and constitutional rights under the First and Fourteenth Amendments to the United States Constitution, and for conversion and gross negligence under North Carolina law.

I. FACTUAL BACKGROUND

1. Plaintiff, who is currently incarcerated in the custody of the North Carolina Department of Correction ("DOC"), is a respected, published author who has

written a series of books in an emerging literary genre known as “urban fiction.” Urban fiction is a genre of literary expression that is receiving increasing critical attention and acclaim. Authors within the urban fiction genre are often younger African-Americans who describe urban settings in ways that readers – many of whom have never read books before – can identify with and understand. Urban fiction writers use “the language of the streets, with plenty of slang and four-letter words.”

2. Works of urban fiction have become “especially popular among reluctant readers, notably including young, black men; and the language, cadences, subject matter and aesthetic evoke comparisons to hip-hop music.”¹ According to some literary critics, “[t]he material may be a little crude or harsh sometimes, but many find it to be true to the experience that it depicts What is significant is that a new audience for books has evolved.”² Indeed, as recently reported in *The New York Times*, public libraries around the country “are embracing urban fiction as an exciting, if sometimes controversial, way to draw new people into reading rooms, spread literacy and reflect and explore the interests and concerns of the public they serve.”³

3. Many readers and reviewers have recognized Plaintiff as an important voice within urban fiction. For instance, one reviewer stated, “I loved [Plaintiff’s book and] I couldn’t put it down. Can’t wait to read the second one!!” Other reviewers have described Plaintiff’s novels as “engaging” and “based on the world today.” One reader stated, “I love the book, it made me think about my life and what I really wanted it to

¹ See Powerpoint presentation on Urban Fiction, available at

<http://www.teenlibrarian.com/streetlit/urban%20fiction%20powerpoint.ppt>.

² Definition of “Urban Fiction,” available at www.blackbooksdirect.com/urbanfiction.html.

³ Anne Barnard, *From the Streets to the Libraries*, N.Y. TIMES, Oct. 22, 2008, available at http://www.nytimes.com/2008/10/23/nyregion/23fiction.html?_r=1.

be.”⁴ This lawsuit arises from Defendants’ efforts to silence Plaintiff’s voice. Upon information and belief, those efforts were based at least in part on Defendants’ disdain for the content of Plaintiff’s writings.

4. Plaintiff brings this lawsuit against officials of North Carolina DOC due to their violations of his rights, including his rights under the First Amendment to the United States Constitution, by, among other things, arbitrarily and capriciously disciplining Plaintiff for acts related to writing urban fiction during his incarceration. In addition, Defendants, upon information and belief, seized and destroyed a 310-page, handwritten urban fiction manuscript (the “Manuscript”) that Plaintiff had spent countless hours working on while housed at Central Prison in Raleigh. Defendants did so without providing Plaintiff with due process before the Manuscript was destroyed, and, upon information and belief, did so in retaliation for Plaintiff’s acts of literary expression, and because they did not condone the content of Plaintiff’s writings.

II. JURISDICTION AND VENUE

5. The Court has jurisdiction over the federal claims in this action pursuant to 28 U.S.C. § 1331, in that the claims arise under the Constitution of the United States; and by 28 U.S.C. § 1343. The matters in controversy arise under the Civil Rights Act, 42 U.S.C. § 1983 and 42 U.S.C. § 1981. This Court has supplemental jurisdiction over the state constitutional claims pursuant to 28 U.S.C. § 1367.

6. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b) because all Defendants are located within the Eastern District of North Carolina, and a substantial

⁴ For more reviews of Plaintiffs’ novels, please see http://www.amazon.com/review/product/0970247222/ref=cm_cr_dp_synop?%5Fencoding=UTF8&sortBy=bySubmissionDateDescending#R37E6RD7V7AA3Y.

part of the events and omissions giving rise to Plaintiff's claims occurred, and continue to occur, within the Eastern District of North Carolina.

III. PARTIES

7. Plaintiff Victor L. Martin is an individual citizen of the State of North Carolina. He is currently confined by DOC at Pasquotank Correctional Institution in Elizabeth City, North Carolina. Plaintiff has previously been an inmate at other DOC facilities, including Central Prison, as well as Lanesboro, Polk, and Warren Correctional Institutions.

8. Defendant Alvin W. Keller is Secretary of the North Carolina Department of Correction and is responsible for the operation and administration of all facilities within the North Carolina Department of Correction, including the management of DOC policies and procedures. Defendant Keller is sued in his official capacity only.

9. Defendant Boyd Bennett is Director of Prisons for the North Carolina Department of Correction, Division of Prisons, and is responsible for the operation and administration of all facilities within the DOC, including the management of DOC policies and procedures. Defendant Bennett is sued in his official capacity only.

10. Defendant Gerald Branker is Administrator at Central Prison in Raleigh, Wake County, North Carolina, and is responsible for the operation and administration of Central Prison, including disciplinary actions against prisoners and application of DOC policies and procedures to prisoner behavior. Prior to July 2007, Defendant Branker was Deputy Administrator at Central Prison. Defendant Branker is sued in his individual and official capacities.

11. Defendant Captain Frederick S. O'Neal is an Internal Affairs officer at Central Prison in Raleigh, Wake County, North Carolina. At the time of some of the allegations set forth herein, Defendant O'Neal had the title of "Correctional Lieutenant." Defendant O'Neal is sued in his individual and official capacities.

12. Plaintiff is informed, believes, and therefore alleges that the actions of Defendant O'Neal, as set forth herein, constituted the official policy and custom of the Defendants and were part of a pattern of conduct in violation of citizens' rights.

13. In the alternative, Defendant O'Neal acted outside the scope of his agency, outside the pattern, practice, policy or custom of Defendants, and/or in an intentional, malicious or corrupt manner in his dealings with the Plaintiff; and, therefore, Defendant O'Neal is personally liable for the violation of Plaintiff's rights.

IV. FACTUAL ALLEGATIONS

Plaintiff's Writing Activities at Polk, Lanesboro and Warren Correctional Institutions

14. Plaintiff began writing his first novel, "A Hood Legend," before his incarceration at Craven County Jail in January 2000. Defendant continued to write after he was sent to prison in July of 2000.

15. In 2004, while Plaintiff was housed at Polk Correctional Institution, a well-regarded publishing company known as Triple Crown Publications offered Plaintiff a two-book publishing contract. Those two books, *A Hood Legend* and *Menage's Way*, were published in April 2004 and November 2004, respectively.

16. In 2005, while Plaintiff was housed at Lanesboro Correctional Institution, Triple Crown Publications published Plaintiff's third novel, *For the Strength of You*.

17. In 2006, while Plaintiff was housed at Warren Correctional Institution, Plaintiff's fourth novel, *Unique's Ending*, was published by a publishing company called Vic Mar Publications, LLC, which had been incorporated by a friend of Plaintiff's.

18. Between 2000 and 2006, Plaintiff exchanged routine correspondence with both publishing companies regarding the publication of his novels. Prison staff were aware that Plaintiff was seeking and had obtained publication of the above-mentioned works, did not consider his activities to violate any DOC policies, and did not attempt to curtail his writing or publishing activities.

19. In 2004, while Plaintiff was housed at Polk Correctional Center, TCP made a mistake and mailed a \$5,000 advance check to Plaintiff. Plaintiff's case manager informed Defendant that he could not have money sent from a publisher. Even at this time, staff did not consider his activities to violate any DOC policies.

20. While Plaintiff was housed at Lanesboro, Warren and Polk Correctional Institutions, there is no record of any problems arising as a result of this correspondence or the publication of Plaintiff's novels.

21. Indeed, Plaintiff's disciplinary file suggests that prior to November 30, 2006, Plaintiff's disciplinary infractions decreased dramatically after Plaintiff began to write for publication.

22. Between December 13, 2002 and August 20, 2006, a span of nearly four years, Plaintiff's disciplinary file indicates no disciplinary infractions. During this time period, numerous prison officials and employees complimented Plaintiff during this time for "doing something positive."

23. Prior to the November 30, 2006 incident with Defendant O'Neal at Central Prison, which is described below, DOC staff did not interpret Plaintiff's actions in writing books for publication and attending to routine business matters associated with such publication as violating any DOC policies.

24. Whatever small monetary proceeds that Plaintiff has received as a result of some of his publishing activities are sent to an outside Navy Federal account, which was opened by Plaintiff in or around January 1995 when he was in boot camp for the United States Marine Corps. Prison staff are not required to spend any time dealing with Plaintiff's financial affairs or his ministerial activities related to his book publications.

Central Prison – May 2006 through July 2007

25. Plaintiff was transferred from Warren Correctional Institution to Central Prison on May 10, 2006.

26. A short time after Plaintiff arrived at Central Prison, his case manager informed him that he could continue to write for publication, and that writing books for publication did not violate DOC policies, including Policy B.0700. Defendant's unit manager informed Defendant that he did not object to Defendant's writing so long as it was not gang-related.

27. Between May 2006 and November 30, 2006, there is no record or other indication that Plaintiff's writing and publication efforts imposed any burden on the staff at Central Prison or that it deterred or distracted in any way from any legitimate penological objective.

28. On November 30, 2006, by order of Defendant O'Neal, a sergeant and two officers searched Plaintiff's cell and seized materials related to his urban fiction writing and his publication efforts.

29. As a result of the November 30, 2006 search, Defendant O'Neal charged Plaintiff with engaging in a business activity, a violation of DOC Division of Prisons Policy B.0700, "Inmates Conducting Personal Business" (the "Policy").

30. While disciplining him for his writing, Defendant O'Neal harassed Plaintiff and uttered an offensive racial slur to him.

31. After these events, Plaintiff received several disciplinary infractions and was repeatedly placed on segregation because of his writing and publishing activities, and specifically because of the content of those writings.

32. Defendant O'Neal figured prominently in many of Plaintiff's disciplinary infractions. For instance, Plaintiff was found guilty and received punishment for at least five infractions based upon mail reviewed by Defendant O'Neal on January 17, 2007 that was related to Plaintiff's writings. These infractions include two separate write-ups for alleged bartering and trading. It appears that Plaintiff received 100 days in disciplinary segregation for the alleged infractions of January 17, 2007 alone.

33. Under disciplinary segregation, an inmate is placed in an isolation cell. For only four days out of a week, the inmate is permitted out of the cell, in order to shower and engage in "recreation" in a cage in the outside yard. Recreation lasts for one hour, and then the inmate is given fifteen minutes to shower. On "non-rec" days, an inmate is kept in his cell 24 hours a day. While on disciplinary segregation, an inmate

has no access to television, phone and no church services. While Plaintiff was allowed face-to-face visits, these visits were through a glass window while he was in chains and cuffs. The lights are turned on at 6:00 a.m. and turned off at 10:00 p.m. Inmates are fed through a metal trap in the cell door.

34. Plaintiff has also been subject to censorship of his outgoing and incoming mail, and has received disciplinary infractions for *receiving* correspondence from his publishers without being given a chance to ask his publishers to stop sending correspondence.

35. For instance, on January 4, 2007, Plaintiff received twenty days in disciplinary segregation for receiving an *incoming* letter containing a “Literary Agency Agreement” from Green & Company Printing & Publishing. This letter was reviewed by Defendant O’Neal on December 13, 2006. Plaintiff was found guilty of engaging in a business activity even after he attempted to explain that he was “not responsible for what somebody sends him in the mail.” On January 25, 2007, Plaintiff was again disciplined after Defendant O’Neal reviewed Plaintiff’s mail on January 17, 2007 and discovered a letter from Triple Crown Publications regarding royalty checks that had been sent to Plaintiff’s outside account. In his defense, Plaintiff argued that “he has attempted through United States Postal Service to stop all correspondence in reference to these issues. He states that he has not been given enough time to do this.”

36. Plaintiff filed a grievance with DOC in January 2007 complaining that he was not allowed to correspond with his publisher.

37. On February 1, 2007, Plaintiff was punished with even more disciplinary segregation after Defendant O'Neal reviewed a letter Plaintiff wrote to his publisher in an attempt to find a typist for one of his manuscripts.

38. In February 2007, Plaintiff filed a grievance alleging racial harassment on the part of Defendant O'Neal and the violation of his rights under the First Amendment.

39. While incarcerated at Central Prison, Plaintiff was targeted for punishment based, in part, on the content of his writings. Notably, between March 1998 and November 30, 2006, Plaintiff was charged with a total of twenty-one (21) disciplinary infractions while housed at various state prisons. But from November 30, 2006 through June 18, 2007, the seven months Plaintiff spent at Central Prison, Plaintiff was charged with a total of thirty (30) disciplinary infractions, all related in some capacity to his writing or publication efforts. Thus, Plaintiff was charged with nine more infractions in a seven-month span at Central Prison than he had received in the previous eight years.

40. Upon information and belief, the disciplinary actions against Plaintiff occurring between November 30, 2006 and June 18, 2007, were motivated by racial prejudice and by a disdain for the content of Plaintiff's works of urban fiction.

Warren and Pasquotank Correctional Institutions – July 2007 to the Present

41. Plaintiff was transferred from Central Prison to Warren Correctional Institution on July 6, 2007 and remained at Warren from July 2007 until April 2, 2008. During those ten months, Plaintiff received only two disciplinary infractions – both related to his writing and publishing activities.

42. Plaintiff was transferred from Warren to Pasquotank Correctional Institution on April 2, 2008. To date, Plaintiff has received no disciplinary infractions at Pasquotank.

43. There is no record or other indication that Plaintiff's writing and publication efforts have imposed any burden on guards at Warren Correctional Institution or Pasquotank Correctional Institution. Indeed, prison officials at Pasquotank Correctional Institution appear to support Plaintiff's writing efforts.

Seizure and Destruction of Plaintiff's 310-Page Manuscript

44. In March 2007, prison officials at Central Prison seized a 310-page urban fiction manuscript ("the Manuscript") written by Plaintiff that Plaintiff had attempted to mail outside the prison to be typed and copyrighted. Plaintiff was not disciplined for this activity.

45. Upon information and belief, prison officials transferred possession of the Manuscript to Defendant O'Neal.

46. Plaintiff filed a grievance in April 2007 alleging biased treatment by Captain O'Neal in preventing Plaintiff from copyrighting his 310-page manuscript.

47. Katherine Lewis Parker, Legal Director for the American Civil Liberties Union of North Carolina Legal Foundation (ACLU-NCLF) contacted DOC on Plaintiff's behalf in June 2007. Stephanie Teachey, an employee in the Administrator's office at Central Prison, informed Ms. Parker that the Manuscript was still intact and that Central Prison planned to hold the Manuscript in the event of an appeal.

48. On or about July 10, 2007, the General Counsel of DOC, LaVee Hamer, advised Ms. Parker that Plaintiff's Manuscript was still in the possession of DOC and had not been destroyed.

49. In March 2008, Ms. Parker, on behalf of Plaintiff, contacted the DOC to reiterate Plaintiff's request that the Manuscript or a copy of the Manuscript be returned to him or mailed to one of his family members. No response was forthcoming.

50. On May 21, 2008, Ms. Parker wrote to Defendants, requesting the return of Plaintiff's Manuscript and a clarification of how Policy B.0700 is applied to Plaintiff's writing and publishing activities.

51. In July 2008, Defendants indicated to Ms. Parker for the first time that DOC is no longer in possession of the Manuscript.

52. Upon information and belief, Defendant O'Neal destroyed the Manuscript, without providing Plaintiff with any due process before such destruction.

The Need for Declaratory Relief

53. Plaintiff, through counsel, has sought clarification of DOC's interpretation of the Policy. Specifically, Plaintiff has asked for clarification of whether DOC's policy prohibits him from writing literary works for publication without compensation, from taking certain ministerial actions related to such publication, or from seeking copyright protection for his works without publishing them. DOC has refused to provide any clarification on these points. Plaintiff intends and wishes to continue writing literary works, to publish them, with or without compensation, and to take ministerial actions, including securing copyright registrations, attendant to such writing and publication. As

a result of DOC's actions in disciplining Plaintiff for writing and publishing his works, and for engaging in ministerial activities necessarily attendant to such publication, and its refusal to provide the clarification of the Policy that Plaintiff has sought as set forth above, Plaintiff is insecure in his rights and is in need of a judicial declaration of his rights.

FIRST CAUSE OF ACTION – ALL DEFENDANTS
VIOLATION OF PLAINTIFF'S FREE SPEECH RIGHTS
UNDER THE FIRST AND FOURTEENTH AMENDMENTS

54. Plaintiff incorporates by reference paragraphs 1 through 53 of this Complaint as if fully set out herein.

55. Defendants' punishment of Plaintiff and selective enforcement of Policy B.0700 in order to discipline Plaintiff for writing and publishing works of urban fiction, based on racial bias and on Defendants' disdain for the content of Plaintiff's works, violates Plaintiff's rights under the First and Fourteenth Amendments.

56. Defendants' intended application of Policy B.0700 in order to discipline Plaintiff for publishing and seeking to publish his works of urban fiction without compensation violates Plaintiff's rights under the First and Fourteenth Amendments.

57. Defendants' intended application of Policy B.0700 in order to discipline Plaintiff for obtaining federal copyright registrations for his works of urban fiction violates Plaintiff's rights under the First and Fourteenth Amendments.

58. Defendants' intended application of Policy B.0700 in order to discipline Plaintiff for writing urban fiction without any attempt to publish (with or without

compensation) or to obtain federal copyright registrations for the material violates Plaintiff's rights under the First and Fourteenth Amendments.

59. Plaintiff has suffered injury, including irreparable injury, and damages as a direct and proximate result of Defendants' violation of his First Amendment rights as alleged herein. Defendants' are jointly and severally liable to Plaintiff for all such damages in an amount to be proven at trial.

SECOND CAUSE OF ACTION – ALL DEFENDANTS

**DESTRUCTION OF PROPERTY IN VIOLATION OF PLAINTIFF'S
RIGHT TO DUE PROCESS UNDER THE FOURTEENTH AMENDMENT**

60. Plaintiff incorporates by reference paragraphs 1 through 59 of this Complaint as if fully set out herein.

61. The actions of Defendants in destroying Plaintiff's Manuscript violated the rights of the Plaintiff to Due Process of Law under the Fourteenth Amendment to the United States Constitution, which guarantees that prisoners are entitled to at least minimal procedural safeguards before they may be deprived of their property, thereby ensuring that their constitutional rights are not entirely abrogated.

62. Plaintiff is informed, believes, and therefore alleges that the actions of Defendant O'Neal, in seizing and destroying the Manuscript without providing minimal procedural safeguards, constituted the official policy and custom of the Defendants and were part of a pattern of conduct in violation of citizens' rights.

63. In the alternative, Defendant O'Neal acted outside the scope of his agency, outside the pattern, practice, policy or custom of Defendants, and/or in an intentional,

malicious or corrupt manner in his dealings with the Plaintiff; and, therefore, Defendant O'Neal is personally liable for the violation of Plaintiff's rights.

64. Plaintiff has suffered injury, including irreparable injury, and damages as a direct and proximate result of Defendants' destruction of his property as alleged herein. Defendants' are jointly and severally liable to Plaintiff for all such damages in an amount to be proven at trial.

THIRD CAUSE OF ACTION – DEFENDANT O'NEAL ONLY
CONVERSION

65. Plaintiff incorporates by reference paragraphs 1 through 64 of this Complaint as if fully set out herein.

66. By intentionally destroying Plaintiff's Manuscript without providing Plaintiff with any post-deprivation remedy, thereby depriving Plaintiff of his property without State authorization, Defendant O'Neal unlawfully converted Plaintiff's property in violation of state law.

67. As a direct and proximate result of Defendant O'Neal's actions herein, Plaintiff has suffered damages for his lost Manuscript.

FOURTH CAUSE OF ACTION– DEFENDANT O'NEAL ONLY
GROSS NEGLIGENCE

68. Plaintiff incorporates by reference paragraphs 1 through 67 of this Complaint as if fully set out herein.

69. The conduct of Defendant O'Neal in destroying Plaintiff's Manuscript was purposeful, and was with knowledge that it constituted a breach of his duty to observe and honor the rights of others.

70. In addition, the actions of Defendant O'Neal were done needlessly, manifesting a conscious and reckless disregard of and indifference to the rights of others.

71. The conduct of Defendant O'Neal amounted to gross negligence in the performance of his duties owed to Plaintiff.

72. As a direct and proximate result of Defendant O'Neal's actions herein, Plaintiff has suffered damages for his lost Manuscript.

FIFTH CAUSE OF ACTION – DEFENDANT O'NEAL ONLY
VIOLATION OF PLAINTIFF'S RIGHT UNDER 42 U.S.C. § 1981
TO BE FREE FROM RACIAL DISCRIMINATION

73. Plaintiff incorporates by reference paragraphs 1 through 72 of this Complaint as if fully set out herein.

74. Plaintiff is of the African-American race, a racial minority within the protections afforded racial minorities under 42 U.S.C. § 1981.

75. Defendant O'Neal acted with unlawful racially discriminatory motivation in targeting Plaintiff for disciplinary action as a result of Plaintiff's urban fiction writing and in destroying Plaintiff's Manuscript, as evidenced by a racial slur that Defendant O'Neal directed at Plaintiff during such an incident.

76. Defendant O'Neal's discriminatory statement and actions were performed under color of state law.

JURY DEMAND

Plaintiff hereby demands trial by jury on all issues so triable.

WHEREFORE, Plaintiff hereby respectfully requests that this Court issue:

1. A declaratory judgment declaring the following:

- a. Defendant's intended application of Policy B.0700 in order to discipline Plaintiff for writing, seeking to publish, and publishing his works of urban fiction for compensation violates Plaintiff's rights under the First and Fourteenth Amendments.
- b. Defendants' intended application of Policy B.0700 in order to discipline Plaintiff for writing, seeking to publish, and publishing his works of urban fiction without compensation violates Plaintiff's rights under the First and Fourteenth Amendments.
- c. Defendants' intended application of Policy B.0700 in order to discipline Plaintiff for taking ministerial activities in connection with writing, seeking to publish, and publishing his works, including securing copyright registrations for those works, violates Plaintiff's rights under the First and Fourteenth Amendments.
- d. Defendants' intended application of Policy B.0700 in order to discipline Plaintiff for writing works of urban fiction without any attempt to publish (with or without compensation) or to copyright the material violates Plaintiff's rights under the First and Fourteenth Amendments.

2. An injunction prohibiting Defendants, their successors, assigns, those persons in active concert or participation with Defendants, and all other persons within the scope of Federal Rule of Civil Procedure 65, from applying Policy B.0700 in order to discipline Plaintiff for (1) seeking to publish and publishing literary works for compensation; (2) seeking to publish and publishing literary works without compensation;

(3) taking ministerial activities related to seeking to publish and publication of his literary works, including securing copyright registrations; and/or (4) creating literary works of urban fiction without any attempt to publish (with or without compensation) or to copyright the material.

3. Recovery of nominal, compensatory and punitive damages in an amount to be proven at trial;

4. Reasonable expenses and attorney fees, pursuant to 42 U.S.C. § 1988;

5. That Plaintiff have and receive a jury trial on all issues so triable; and

6. Such other and further relief as to the Court seems just and proper.

Respectfully submitted this 3rd day of February, 2009.

s/ W. Swain Wood

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