

May 11, 2018

Mr. Harold W. Clarke
Director, Virginia Department of Corrections
P.O. Box 26963
Richmond, VA 23261-6963
Director.Clarke@vadoc.virginia.gov

Re: Kevin Snodgrass, Jr., Virginia Department of Corrections
#1203403



Virginia

701 E. Franklin Street
Suite 1412
(804) 644-8022
Richmond VA 23219
acluva.org

Claire G. Gastañaga
Executive Director

Dear Director Clarke:

I write out of concern for the safety of the ACLU of Virginia's client, Kevin Snodgrass Jr., who as of yesterday afternoon is being held (at last report dressed only in his underwear/no jumper) in solitary confinement or, as you term it, "temporary detention," at Red Onion State Prison. Our concern is heightened in part because phone calls we have made to Red Onion this afternoon about scheduling a confidential attorney/client phone call with Mr. Snodgrass have not been returned as of 4:00pm this afternoon.

As you know, Mr. Snodgrass had been housed in solitary confinement at Red Onion for four years, until he completed the Department's much publicized "Step Down" program and was released to the general population. Yesterday afternoon, May 10th, according to information we have received, Mr. Snodgrass was in the cell he currently shares with another person when the individual housed in the next cell kicked on the door to that next-door cell. We have been told that correctional officers entered Mr. Snodgrass' cell claiming that he was the person kicking his cell door asserting risibly that he was trying to escape. We further understand that the correctional officers threw Mr. Snodgrass against a wall injuring his eye, and broke his TV and the charger to his MP3 player, and that Mr. Snodgrass was shackled and moved from his shared cell to a single cell with only his underwear and bed clothes. It has also been reported to us that, during the incident, the correctional officers involved referred to his mother's participation in a press conference that morning (the morning of May 10th) announcing the publication of the ACLU of Virginia's report on the use of solitary confinement in Virginia correctional facilities and threatened him with long-term solitary confinement.

The action taken by correctional officers against Mr. Snodgrass yesterday would appear to be part of a pattern and practice of



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retaliatory conduct by Red Onion employees taken against Mr. Snodgrass because of his exercise of his First Amendment rights to file grievances and petition the courts for redress of the unconstitutional conditions of his confinement. As you know, there is a hearing scheduled in federal court in July in [Snodgrass v. Gilbert, No. 7:16cv91, 2018 U.S. Dist. LEXIS 70021 \(W.D. Va. Apr. 26, 2018\)](#) regarding previous actions by correctional officers at Red Onion that are alleged to be retaliatory:

“In reviewing Snodgrass' evidence in support of his retaliation claims, however, the court also concludes that its prior order granting summary judgment for the defendants must be vacated in part, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. After that order entered, the United States Court of Appeals for the Fourth Circuit held that under clearly established law, when an inmate files a grievance under the prison's grievance procedure, he is exercising his First Amendment right to petition. *Booker v. S.C. Dep't of Corr.*, 855 F.3d 533, 541 (4th Cir. 2017). As described in the court's memorandum opinion, Snodgrass has alleged that Defendants Gallihar, Gilbert, and Stewart threatened to delay his movement out of segregation if he continued to file informal complaints and grievances. Mem. Op. 9-10, ECF No. 33. In light of *Booker*, the court finds material disputes of fact as to whether these defendants made the alleged statements and whether they made recommendations or decisions about Snodgrass' progress in the step-down program in retaliation for his filing of grievances. Accordingly, the court will vacate the portion of the order granting summary judgment as to Snodgrass' claims that Defendants Gallihar, Gilbert, and Stewart delayed his progress through the step-down program in retaliation for his exercise of his constitutional right to petition by filing informal complaints and grievances. Given the disputed facts, the court will deny summary judgment as to these claims and refer the matter to Judge Sargent for further proceedings, pursuant to 28 U.S.C. § 636(b)(1)(B). An appropriate order will enter this day.”

As you know, the *Gilbert* case is not the only case filed by Mr. Snodgrass regarding alleged retaliation by employees at Red Onion State Prison. He made very similar factual claims in *Snodgrass v. Messer*, et al, another pre-*Booker* case dismissed largely because there was, at the time, no First Amendment right to petition “government” for a change in prison conditions recognized by the courts. The details of this case illustrating a pattern of retaliatory

behavior of employees at Red Onion can be found in Mr. Snodgrass' petition for certiorari.¹

At this point, the Department of Corrections must take several actions that are essential to secure Mr. Snodgrass from harm:

- 1) The Department must convene an independent investigation of Mr. Snodgrass' treatment by correctional officials at Red Onion State Prison;
- 2) The Department must transfer Mr. Snodgrass immediately out of solitary confinement ("temporary detention") at Red Onion to the general population at another facility (we understand that his security level before the incident on May 10 would permit his transfer to Sussex I);
- 3) The Department must act to ensure that Mr. Snodgrass is not subject to any further retaliatory action by employees at Red Onion or at the new facility where he is transferred;
- 4) The Department must take all reasonable steps to preserve any and all evidence potentially relevant to Mr. Snodgrass' claims arising out of the May 10 incident, including all documents, tangible things (including his broken electronic equipment), photographs, and electronically stored video, information and data. Included in this demand are all employees and contractors of the Department whether located at Red Onion State Prison or elsewhere. In addition, we request that the Department take photographs of Mr. Snodgrass's face and body today so that evidence of any injuries can be preserved.

We also ask the Department to provide us immediately with the name of the officer in charge who authorized the adverse action against Mr. Snodgrass, information regarding the offense with which Mr. Snodgrass was charged under Operating Procedure 861.1 RH as a predicate for his involuntary transfer to solitary confinement ("temporary detention"), and a copy of the Disciplinary Offense Report filed regarding the incident. You may consider this a request pursuant to VADOC Operating Procedures 050.6 (Offender Access to Record Information) for Mr. Snodgrass' correctional file. Specifically, please provide any offender notification information relevant to this request ("records, reports, and notices . . . generated specifically for the information and receipt of an offender, regarding a specific matter involving the offender, including, but not limited to, responses to offender



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¹ http://macarthurjustice.org/uploads/rsmjc/documents/snodgrass_v_messer.pdf

grievances, classification actions, disciplinary reports, and legal update sheets,” OP 050.06).

We ask that the Department take these actions voluntarily and immediately in a good faith effort to ensure that Red Onion State Prison and all the departmental facilities and employees are committed to protecting the First Amendment rights of all incarcerated people and to protecting Mr. Snodgrass individually from further retaliation and physical or mental harm.

Very truly yours,



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A handwritten signature in blue ink, which appears to read "Claire Guthrie Gastañaga". The signature is fluid and cursive.

Claire Guthrie Gastañaga

Cc: Victoria Pearson, Deputy Attorney General