

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

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SUPREME JUDICIAL COURT

OCT - 9 2020

FOR THE COMMONWEALTH
FRANCIS V. KENNEALLY, CLERK

No. FAR-027770

Appeals Court No: 2018-P-1136

Lower Court: Suffolk Superior No. 1984 CV 02417

George Mackie
(Plaintiff-Appellant)

v.

Commissioner of Department of Corrections, et al
(Defendants)

Plaintiff - Petitioner
Application for Further Appellate Review

On Application From:
The Massachusetts Appeals Court
and
Suffolk Superior Court
Suffolk County

George Mackie, Pro-se
Nemasket Correctional Center
30 Administration Road
Bridgewater, MA. 02324

October 2020

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

Suffolk,ss

No. FAR-027770

Appeals Court 2018-P-1136

Sa Suffolk Superior 1784 CV 02417

George Mackie
(Plaintiff)

v.

Commissioner of Department of Corrections, et al
(Defendants)

PLAINTIFF'S APPLICATION FOR FURTHER APPELLATE REVIEW

Plaintiff-Petitioner, George Mackie, acting Pro-se in the above entitled matter and pursuant to G.L. c. 211A, §11, and Mass. R. App. P. 27.1, requests Further Appellate Review, for "Substantial reasons affecting the public interest or ... justice." Further grounds for this Application are elaborated in the accompanying memorandum.

Date: *October 7, 2020*

Respectfully submitted,

George Mackie
George Mackie, Pro-se
Nemasket Correctional Center
30 Administration Road
Bridgewater, MA. 02324

COMMONWEALTH OF MASSACHUSETTS

Suffolk County

Supreme Judicial Court
No. FAR 027770

Appeals Court Docket
No. 2018-P-1136

GEORGE MACKIE
(Plaintiff)

v.

COMMISSIONER OF DEPARTMENT OF CORRECTIONS & OTHERS
(Defendants)

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S APPLICATION
FOR FURTHER APPELLATE REVIEW

STATEMENT OF PRIOR PROCEEDINGS

On August 1, 2017, the Pro-se Plaintiff, George Mackie, filed a Verified Civil Complaint, pursuant to §1983 for violations of Civil and Human Rights contrary to the United States Constitution and the Constitution of the Commonwealth of Massachusetts. (i.e. the Massachusetts Declaration of Rights), damages and fees, and for Declaratory and Injunctive Relief, in regards to his removal from the list of medical diets by the food service director at the North Central Correctional Institution (NCCI) at Gardner and the subsequent denial of several meals over the course of three months in retaliation, including an incident after the NCCI Gardner meal policy was rewritten. Mr. Mackie named nine (9) defendants who all participated in the violations of his rights.

Mr. Mackie filed several grievances with his complaint as evidence to show recurring violations of 103 CMR 761, Inmate Therapeutic Diet Procedures/Medium, and other CMRs, and in accordance with §1997e to show administrative remedies were exhausted.

After a hearing on April 26, 2018, for which Mr. Mackie was denied the transcripts, the Lower Court denied Mr. Mackie's complaint on May 4, 2018, based on M.G.L. c. 127 §38H, a Review of Administrative Agency Decisions, not §1983 as filed by Mr. Mackie.

On August 9, 2018, Mr. Mackie's Notice of Appeal was docketed (2018-P-1136), raising several violations in the Court's decision and handling of Mr. Mackie's Complaint.

On July 31, 2020, the Appeals Court Affirmed the Lower Court's decision in the Unpublished Decision attached, issued pursuant to Rule 23.0. Mr. Mackie seeks no rehearing in the Appeals Court.

On August 14, 2020, Mr. Mackie submitted his Application for Further Appellate Review to this Court seeking an extension until November 20, 2020 to submit his Memorandum in support.

STATEMENT OF RELEVANT FACTS

Mr. Mackie served all defendants with His Verified Civil Complaint, pursuant to §1983; relevant exhibits (#8); a Motion for Leave to File a Supplemental Complaint; The Supplemental Complaint, relevant exhibits (#2.1); Tracking Order and Summonses (#10 - #18), via Certified, First Class Mail, on August 8, 2018.

The complaint explained that the Food Service Director removed Mr. Mackie from his prescribed medical diet in violation of the Americans with Disabilities Act and 103 CMR 761. Even though Mr. Mackie was returned to the medical diet two (2) days later, he was denied the ability to manage his diabetes through choice of meals six (6) times between April and July 2017, including one occasion which occurred after the 103 NCCI 761 Institutional policy was re-written by [redacted].

policy was re-written by the Defendants. Mr. Mackie was subjected to harassment and ridicule by some Defendants when he reported for meals. When those Defendants were present, Mr. Mackie did not go to the chow hall on over a dozen occasions to avoid the abuse.

Mr. Mackie included several grievances in his complaint as evidence that administrative remedies had been exhausted pursuant to the Prison Litigation Reform Act (PLRA) Title 42 §1997e and M.G.L. c. 127 §38F.

Mr. Mackie timely filed a Motion for Default pursuant to Rule 55, with affidavit (#19: Filed 9/25/17), which went unanswered by the Court. As was Mr. Mackie's Emergency Motion for Preliminary Injunction regarding Defendant Colette Goguen (#20) with Affidavit (#21: both Filed 9/26/17); Mr. Mackie's request for the Production of Documents (#24: filed 10/20/17); and Mr. Mackie's two (2) Motions to Extend Time (#28: filed 11/29/17) and (#32: filed 12/12/17). Mr. Mackie's Motion to Strike Defendants' Answer (#26: filed 11/16/17) was denied within five (5) days without opposition from the defendants. Mr. Mackie was forced to file a Motion for Judgment on the Pleadings (#37: filed 12/27/17) to preserve his Complaint which denied him due process under §1983.

POINTS AND ARGUMENTS COMBINED

The review of the Lower Court's decision by the Appeals Court under "Review of Administrative Agency Decision" pursuant to M.G.L. c. 127 §38H, is error.

The Appeals Court decision stated that Mr. Mackie's request to "correct errors in the administrative action" can reasonable be construed as a request for review of the administrative decision".

If any relief, such as declaratory or injunctive relief, were not proper pursuant to a §1983 claim, the Court should have denied those, not recast Mr. Mackie's entire complaint to fit the judge's view. Mmoe v. Commonwealth, 393 Mass 617, 620 (1985): "Furthermore, nothing in the rules of civil procedure authorizes a judge to recast a complaint in a form that corresponds to a judge's view of what the plaintiff intended but failed adequately to set forth.", or the Defendants' "Answer by way of Certification of the Record." (#25: filed 11/7/17). In Commonwealth v. Brown, 395 Mass 604, 605 (1985): "Rules of court have the force of law and may not be disregarded by an individual judge." Also, "Rules of procedure are not just guidelines, there purpose is to provide an orderly, predictable process by which parties to a lawsuit conduct their business."

The Appeals Court explains away Mr. Mackie's claims as "moot" by stating the "Plaintiff was restored to the list and error remedied within two days". This is an inaccurate assessment by the court as Mr. Mackie had suffered violations of his Constitutional rights pursuant to the A.D.A. and 103 CMR 761 at least six times over a period between April and July 2017. see Rodriguez-Narvaez v. Peréira, 552 F. Supp. 2d 211, 219 (2007). Also, Mr. Mackie's claims for damages avoids "Mootness" under Trafford v. City of Westbrook, 669 F. Supp. 2d 133 (2009); Shedlock v. Mass. Dept. of Corrections, 10 Mass L. Rep. 19 (1999) ("As state prisons are encompassed by the ADA, an inmate may maintain an action for violations of his rights thereunder."); and

Fitzgerald, v. City of Portland, 2014 U.S. Dist. LEXIS 152492.

The complaint explained that the Food Service Director removed Mr. Mackie from his prescribed medical diet in violation of the ADA and 103 CMR 761.10.(2): Corrections staff are not to interfere with medical matters. Only medical staff can remove individuals from medically prescribed diets and only after a series of procedures which were ignored in this case. Mr. Mackie provided a signed document from the Health Services Unit (HSU) that denied that medical personnel were responsible for the removal of Mr. Mackie from the diet list, thus leaving the Food Service Director, a member of the Corrections Staff who claimed responsibility.

The Appeals Court state: "That the defendants only provided the plaintiff with foods that were medically approved for his condition and refused, per policy protocol, [a "policy" that did not conform to the 103 CMR 761 which governs medical diets.] to supply him with foods that had not been approved (and were possibly detrimental to his condition)[not within their purview] does not establish a deliberate indifference to his serious medical needs." Yet violates the ADA, 103 CMR 761.10(2), 103 DOC 400.06 and 103 NCCI 400.7, which protect inmates from the interference with daily functions such as "... eating".

The Defendants' even after being notified through the grievance procedure and a letter of advocacy from Prisoners Legal Services (PLS), continued the violations, even after Connors v. DuBois, 95-5522-C 1995. The Defendants' continued to show a complete disregard for an individuals rights and a propensity to violate

those rights over and over again.

In the Appeals Court decision, the Court explains that: "The Plaintiff must establish a "deliberate indifference to serious medical needs." Even though Mr. Mackie was returned to the medical diet two days later, he was denied the ability to manage his diabetes through choice of meals six times between April and July 2017, including one occasion which occurred after the 103 NCCI 761 Institutional Policy was re-written by the Defendants to conform to 103 CMR 761. During this time, Mr. Mackie was subjected to harassment and ridicule by some defendants when he reported for meals. This forced Mr. Mackie to choose between harassment/ridicule or going to the dining hall. Mr. Mackie chose not to eat on several occasions due to that harassment. Therefore, retaliation and deliberate indifference is evidenced.

These actions violated Mr. Mackie's right under the ADA, his Eighth Amendment Right to be free from cruel and unusual punishment, State Statutes and Regulations and several DOC regulations and policies.

Mr. Mackie included several grievances as evidence that administrative remedies had been exhausted pursuant to the PLRA Title 42 §1997e and M.G.L. c. 127 §38F. Mr. Mackie claimed removal of his grievance privilege was retaliation for exercising his ability to file grievances, pursuant to 103 CMR 491. The Appeals Court stated that: the retaliation argument fails regarding removal of grievance privileges for "...repeated grievances about his meals". However, if Mr. Mackie had not grieved each separate

violation, (not specifically restricted in 103 CMR 491) of his Constitutional Right under the ADA and violations of 103 CMR 761, the defendants would claim that he failed to exhaust administrative remedies and one violation would not satisfy Mr. Mackie's claim of deliberate indifference and other requirements as referenced by the Appeals Court earlier. In Commonwealth v. Bright, 25 Mass. L. Rep 233 (2008): "Although Courts give force of law only to formal agency regulations; administrative agencies must abide by their own internally promulgated policies. This is true regardless whether the policy exists pursuant to a formal rule, or an informal guideline."

The Court further prejudiced Mr. Mackie when ignoring his: Motions for Default pursuant to Rule 55, with affidavit (#19: filed 9/25/17), which went unanswered by the Court. The Appeals Court decision addresses this error by stating: An Order for Default is at the discretion of the judge. However, as argued by Mr. Mackie, the judge erred by rescripting Mr. Mackie's Complaint, thereby creating a new set of deadlines and procedures for Defendants to file their answers, ultimately avoiding Rule 8(b) and (d).

Mr. Mackie's Emergency Motion for Preliminary Injunction regarding Defendant Colette Goguen (#20) with affidavit (#21: both filed 9/26/17); Mr. Mackie's Request for the Production of Documents (#24: filed 10/20/17); and Mr. Mackie's two Motions for an extension of time (#28: filed 11/29/17) and (#32: filed 12/12/17) were also ignored by the trial Court. The Court's failure to respond to Mr. Mackie's Motion for extension of time (#32) handicapped the unlettered, pro-se plaintiff, forcing him to rush

his Motion for Judgment on the Pleadings (#37: filed 12/27/17), to preserve his complaint and denied him due process under §1983. State Board of Retirement v. Bulger, 446 Mass 169 (2005): "Rules of Court are designed primarily to accomplish the ends of justice, protect rights, serve the convenience of litigants and implement the substantive law." Mr. Mackie's Motion to Strike Defendants' Answer (#26: filed 11/16/17) was denied within five (5) days without opposition from the Defendants. These actions by the Court ultimately silenced Mr. Mackie and denied him his right to be heard. The Appeals Court claims in Note 6: United States v. Lynd, 301 F. 2d 818, 822 (5th Cir. 1962): "Motions that have not been ruled on are deemed denied and therefore appealable." However, Genest V. Archambault, 1991 Mass App Div. 1010: "The trial judge is required either to grant requests which state correct principle of law or relate the decisive factual situation or to state facts found by him which would make said requests inapplicable. Stella v. Curtis, 348 Mass 458; 204 N.E. 2d 457 (1965)." By answering the Defendants Motions and not Mr. Mackie's, and allowing Defendants' Motions prior to the expiration of time for Mr. Mackie to respond in opposition, pursuant to Mass. R. Civ. P. 9A, and Administrative Directive 92-1, the Court showed favoritism toward the Defendants. (e.g. Defendants' Motion to Enlarge (#22; filed 10/2/17) allowed after 3 days (10/5/17); Defendants' Motion to Extend Time (#40; filed 1/8/18) allowed 8 days later (1/16/18); and Defendants' Motion to extend time (#43; filed 2/20/18) allowed 1 day later (2/21/18).

Finally, the Appeals Court states that Mr. Mackie's request for relief are "without merit". However, the Court fails to acknowledge the noncompliance with Standing Order 1-88 and the Pro-se plaintiff's first request for relief: "A. Liberally construe these proceedings" and "Any relief this Court deems appropriate."

The Court failed to conduct its business according to its own rules and procedures regarding Mr. Mackie. This is not the first time. The Appeals Court in 2017-P-1527 returned Mr. Mackie's complaint to the Lower Court (1784 CV 00165) for abuse of discretion in November 2018. That matter is still pending in the Lower Court. The Courts in this matter, The Suffolk Superior and The Appeals Court, allowed the Defendants to dictate the course of this litigation when filing its Certification of the Record (#25; filed 11/7/17) pursuant to M.G.L. c. 127 §38H: Review of Administrative Decision, rather than Mr. Mackie's §1983 action as requested in the Civil Action Cover Sheet, filed by Mr. Mackie at the onset of his complaint. This allowed the Defendants to avoid the requirements of Mass. R. Civ. P. 8.

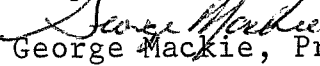
If this Court allows the Appeals Court decision to stand, No pro-se plaintiff will receive justice because judges and Defendants represented by counsel will unfairly dictate the legal procedures and bypass rules of Court meant to protect all litigants.

CONCLUSION

This case could let this Court enforce and articulate minimum effort in balancing the protections of civil Pro-se litigants and those individuals represent by qualified counsel, and in the

process grant Mr. Mackie the justice which he has yet to receive. Therefore, Mr. Mackie asks that he be allowed to fully brief his claims to this Court.

Respectfully submitted


George Mackie, Pro-se
Nemasket Correctional Center
30 Administration Road
Bridgewater, MA. 02324

CERTIFICATE OF SERVICE

I, George Mackie, hereby certify that I sent a true copy of the attached petition, and exhibits, to the parties named below, via Prepaid, First Class Mail:

Department of Corrections Legal Division
c/o Mary Eiro-Bartevyan - Counsel
70 Franklin Street - Suite 600
Boston, MA. 02110-1327

Signed under the pains and penalties of perjury, on this

7th day of October, 2020.


George Mackie, Pro-se

A D D E N D U M

1. Copy of Appeals Court Memorandum and Order pursuant to Rule 23.0
2. Appeals Court Docket Sheet No. 2018-P-02417
3. Lower Court Memorandum of Decision and Order on Parties Cross-Motions for Judgment on the Pleadings
4. Lower Court: Suffolk Superior Court No. 1784 CV 02417
5. Rule 16(d) Certification

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT CLERK'S OFFICE

John Adams Courthouse
One Pemberton Square, Suite 1200
Boston, Massachusetts 02108-1705
(617) 725-8106; mass.gov/courts/appealscourt

Dated: July 31, 2020

George Mackie, Pro Se
Mass. Treatment Center M-128822
30 Administration Road
Bridgewater, MA 02324

RE: No. 2018-P-1136
Lower Court No: 1784CV02417

GEORGE MACKIE vs. COMMISSIONER OF DEPARTMENT OF CORRECTIONS & others

NOTICE OF DECISION

Please take note that on July 31, 2020, the Appeals Court issued the following decision in the above-referenced case. In light of public health concerns arising from the COVID-19 (coronavirus) pandemic and the State of Emergency declared by the Governor, the requirement that the Clerk provide notice and a copy of the decision and rescript is temporarily suspended. See Mass. R. A. P. 2 & 31(c). All persons receiving notice of the decision are directed to receive it via the Reporters Office at <https://www.mass.gov/service-details/new-opinions>. Only self-represented litigants in an institution or parties for whom the Appeals Court does not have an e-mail address on file will receive a paper copy of the decision.

Decision: Rule 23.0 Judgment affirmed. (Maldonado, Singh, Englander, JJ.). *Notice.

Any further filings in this appeal by attorneys must be filed by using the electronic filing system. For access go to <http://www.efilema.com/>.

Very truly yours,
Joseph Stanton, Clerk

To: George Mackie, Mary C. Eiro-Bartevyan, Esquire

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1136

GEORGE MACKIE

vs.

COMMISSIONER OF DEPARTMENT OF CORRECTION & others.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The plaintiff, George Mackie, a prisoner, alleged numerous violations of State and Federal law and regulations arising from his being removed from a special dietary list for two days, and subsequently being denied a "regular" meal in lieu of his special diabetic dietary meal. Judgment on the pleadings was granted in favor of the defendants. We affirm.

Background. The plaintiff complains that between March 27 and March 29, 2017, he was removed from the diet sign-in sheet and was therefore unable to receive therapeutic meals for his diabetes during that time. Then, between April 26, 2017, and July 7, 2017, the plaintiff complained that he requested a

¹ Steven Tellier, Jason Patterson, James O'Gara, Jr., Colette Goguen, Stephanie Collins, Karen L. DiNardo, Paul Visconti, and Shane Bergevin, in their official and individual capacities.

regular meal in lieu of his therapeutic meal six times, and these requests were denied each time. Due to purported anxiety over being denied these regular meals, the plaintiff refused to go to the dining hall for his meals an additional six times. As a result of these incidents, the plaintiff submitted and resubmitted at least twelve grievances. Based on the repeated submission of these grievances and in accordance with prison policy, the plaintiff's ability to file nonurgent grievances was subsequently revoked. The plaintiff alleges the defendants deprived him of his State and Federal constitutional rights. His appeal from the entry of judgment dismissing his complaint followed.

Discussion. The plaintiff contends the judge erred in entering judgment on the pleadings because his claims were not grounded in the administrative decision regarding his grievances, but rather in the deprivation of his Federal, State, and constitutional rights. The plaintiff requested numerous forms of relief, including: (1) correcting errors in the administrative actions, (2) declaratory judgment that the defendants' actions violated the State and Federal constitution, the ADA, State statutes, State regulations, and prison policy, (3) declaratory judgment that 103 NCCI 761 was invalid, (4) monetary damages including nominal, punitive, and special damages, (5) an injunction preventing the defendants from

interfering with the plaintiff's ability to manage his health and diabetes, and (6) court costs and attorney's fees. These requests for relief are without merit.

We agree with the judge that the plaintiff's complaint to "correct errors in the administrative actions" can reasonably be construed as a request for review of the administrative decisions. Claims seeking review of administrative agency proceedings based upon the administrative record "whether joined with a claim for declaratory relief . . . , or any other claim, shall be heard in accordance with" the procedures outlined in Superior Court Standing Order 1-96. Superior Court Standing Order 1-96(1). Thus, complying with the appropriate standing order, the judge properly treated the plaintiff's complaint as a request to review the administrative decision.

The plaintiff complained that his name had been removed from the special dietary list and further that he was deprived of the right to manage his own meal selection. However, the plaintiff's name was restored to the list within two days and, further, the defendants amended the 103 NCCI 761 meal plan policy so as to permit prisoners on special diets the option of being served a regular meal upon request. As a result, any claims challenging the constitutionality or legality of the

defendants' former meal plan policy are moot.² See Roby v. Superintendent, Mass. Correctional Inst., Concord, 94 Mass. App. Ct. 410, 413 (2018) (deeming controversy moot where challenged regulation had been amended). Likewise, where the policy no longer prevents the plaintiff from opting for a regular meal, his request to enjoin the defendants from interfering with his ability to manage his diabetes is also moot. See Hubrite Informal Frocks, Inc. v. Kramer, 297 Mass. 530, 533-534 (1937) (request for injunctive relief moot where ultimate purpose of seeking injunction had been accomplished).

It appears the plaintiff seeks damages pursuant to his § 1983 claim alleging violations of the Eighth Amendment.³ It is unclear whether the plaintiff views his removal from the diet list or his inability to choose a regular nontherapeutic meal -- or both -- as interfering with his ability to manage his medical condition. In any event, in order to prevail on such claims the plaintiff must establish a "deliberate indifference to serious medical needs." Johnson v. Summers, 411 Mass. 82, 86 (1991), quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976). On this

² Because the issue of validity is moot, the plaintiff's separate argument that the lower court erred in failing to review 103 NCCI 761 also lacks merit.

³ Any claim for damages based upon regulatory violations also fails, as there is no indication that these regulations create a private cause of action. See Loffredo v. Center for Addictive Behaviors, 426 Mass. 541, 546 (1998) ("a private cause of action cannot be inferred solely from an agency regulation").

record, he fails to meet that high burden. That the defendants only provided the plaintiff with foods that were medically approved for his condition and refused, per policy protocol, to supply him foods that had not been approved (and were possibly detrimental to his condition) does not establish a deliberate indifference to his serious medical needs. Just the opposite. Likewise, there is nothing in the record to suggest that the inexplicable removal of the plaintiff from the special diet list for two days was anything more than unintentional.⁴ The plaintiff was restored to the list and the error remedied within two days. We will not say that an unexplained meal plan mistake of two days constitutes the defendants' deliberate indifference to his serious medical needs. Cf. White v. Gurnon, 67 Mass. App. Ct. 622, 629 n.15 (2006), quoting Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 290 (1998) ("A premise behind the 'deliberate indifference' concept is that a given board or official made a purposeful decision 'not to remedy the violation'").

⁴ The plaintiff alleges that the food service director removed the plaintiff's name from the list. However, there is no suggestion as to why the food service director would have removed the plaintiff from the special dietary list, especially where it appears that only medical staff have the authority to remove an inmate from the special dietary list. And, the health service unit denied removing the plaintiff from the list.

To the extent the plaintiff argues that his request for damages is based on retaliation for the exercise of his constitutional rights, this argument also fails. The defendant submitted repeated grievances about his meals. Pursuant to a written disciplinary policy designed to limit repetitious grievances, the defendants revoked the plaintiff's right to file only nonemergency grievances. Actions taken in accord with prison policy are authorized and are not retaliatory. Cf. Colburn v. Parker Hannifin/Nichols Portland Div., 429 F.3d 325, 337 (1st Cir. 2005) (affirming summary judgment in favor of defendant where "decision to discharge [the plaintiff] was within the bounds of its disciplinary policy and raises no inference of pretext"). Similarly, the defendants' refusal (prior to their policy change) to substitute the plaintiff's dietary meal for a regular meal was also pursuant to a written policy and not a retaliatory measure. See id.

We also find no error in the judge's refusal to enter a default judgment against the defendants. "The decision to enter or remove a default judgment is essentially a matter of the trial judge's discretion." Riley v. Davison Constr. Co., 381 Mass. 432, 441 (1980). Pursuant to Superior Court Standing Order 1-96(2), "[t]he administrative agency whose proceedings are to be judicially reviewed shall, by way of answer, file the original or certified copy of the record of the proceeding under

review (the record) within ninety (90) days after service upon it of the Complaint." Where Standing Order 1-96(2) grants the defendants ninety days to file the record, we cannot conclude that the judge abused his discretion by refusing to enter a default judgment after only twenty days had elapsed.

Likewise, we find no error in the judge's refusal to strike the defendants' answers. We review a judge's denial of a motion to strike for an abuse of discretion. Cf. Commonwealth v. Otsuki, 411 Mass. 218, 234 (1991) (reviewing motion to strike testimony for abuse of discretion). Standing Order 1-96(2) requires the filing of the administrative record by way of an answer. This is precisely what the defendants did. We therefore cannot conclude that the judge abused his discretion in refusing to strike the defendants' answer.⁵

Finally, although the plaintiff argues that the court erred in failing to rule on certain motions -- such as two motions for an extension of time, a motion for production of documents, and a motion for emergency preliminary injunction -- his arguments are unclear and focus largely on the defendants' conduct. The

⁵ We similarly agree with the trial court that, because the plaintiff's claims can be properly reviewed by examining the administrative record, and because the hearing for which transcripts were sought involved no live testimony, the transcripts were not "reasonably necessary" for the plaintiff's appeal. Cf. Commonwealth v. Souza, 397 Mass. 236, 242 (1986) (no error in denying motion for transcript where there was no evidence that transcript would be necessary).

plaintiff has made little if any argument and presented no authority as to why the court's failure to rule on these additional motions was erroneous.⁶ We therefore decline to consider such arguments on appeal. See Kellogg v. Board of Registration in Med., 461 Mass. 1001, 1003 (2011).

Judgment affirmed.

By the Court (Maldonado,
Singh & Englander, JJ.⁷),

Joseph F. Stanton

Clerk

Entered: July 31, 2020.

⁶ The sole authority cited stands for the proposition that motions that have not been ruled on are deemed denied and therefore are appealable. See United States v. Lynd, 301 F.2d 818, 822 (5th Cir. 1962).

⁷ The panelists are listed in order of seniority.

**Commonwealth of Massachusetts
APPEALS COURT
FOR THE COMMONWEALTH
Docket Sheet**

06/11/2019
10:23 am

2018-P-1136

George Mackie v Commissioner of Department of Corrections et al

CASE HEADER			
Entered:	08/09/2018	Docket Type:	A.C. Panel Cases
Case Status:	Stayed till certain date	Status Date:	04/24/2019
Case Nature:	Prisoner's rights & Claims	Sub-Nature:	
Brief Status:	Awaiting status report	Brief Due:	06/07/2019
Appellant:	Plaintiff	Case Type:	Civil
Argued/Submitted:		Panel:	
Decision Date:		Citation:	
Disposition:		Disposition Date:	

Other Court Information			
SJ Docket No:		Public:	Yes - Public
Lower Court:	Suffolk Superior Court (ssuffo)	Lower Ct No:	1784CV02417
Lower Ct Entry:	08/01/2017	Notice of Appeal:	12/14/2017
Transcripts:	No	Trans. Ordered:	
Related Case(s)	2013-P-0198	Relation(s)	Same Parties
	2016-P-1586		Same Parties
	2017-P-0138		Same Parties
	2017-P-1527		Same Parties
	2018-J-0110		Same Parties
	FAR-22334		Same Parties
FAR Number:		SJC Number:	

INVOLVED PARTY	ATTORNEY APPEARANCE
George Mackie Plaintiff/Appellant Blue brief & appendix filed, 2 Extensions, 240 Days Mass. Treatment Center M-128822 30 Administration Road Bridgewater, MA 02324 Active 08/09/2018	Pro Se Active 08/09/2018 Entitled,
Commissioner of Department of Corrections Defendant/Appellee Awaiting status report - next br. due 06/07/2019, 2 Extensions, 101 Days Active 08/09/2018 Thomas A. Turco, III	Mary C. Elro-Bartevyan Esquire Department of Corrections 70 Franklin Street, Suite 600 Boston, MA 02110-1300 Phone: 617-727-3300 x115 558970 Active 08/09/2018 Entitled. eMail Only (APC)
Steven Tellier Defendant/Appellee Awaiting status report - next br. due 06/07/2019, 1 Extension, 59 Days Active 08/09/2018	Mary C. Elro-Bartevyan Esquire See Above 558970 Active 08/09/2018
Jason Patterson Defendant/Appellee Awaiting status report - next br. due 06/07/2019, 1 Extension, 59 Days Active 08/09/2018	Mary C. Elro-Bartevyan Esquire See Above 558970 Active 08/09/2018
James O'Gara Jr. Defendant/Appellee Awaiting status report - next br. due 06/07/2019, 1 Extension, 59 Days Active 08/09/2018	Mary C. Elro-Bartevyan Esquire See Above 558970 Active 08/09/2018

Commonwealth of Massachusetts
APPEALS COURT
FOR THE COMMONWEALTH
Docket Sheet

06/11/2019
10:23 am

2018-P-1136

George Mackie v Commissioner of Department of Corrections et al

INVOLVED PARTY		ATTORNEY APPEARANCE	
Colette Goguen Defendant/Appellee Awaiting status report - next br. due 06/07/2019, 1 Extension, 59 Days Active 08/09/2018		Mary C. Elro-Bartevyan Esquire See Above 558970 Active 08/09/2018	
Stephanie Collins Defendant/Appellee Awaiting status report - next br. due 06/07/2019, 1 Extension, 59 Days Active 08/09/2018		Mary C. Elro-Bartevyan Esquire See Above 558970 Active 08/09/2018	
Karen L. DiNardo Defendant/Appellee Awaiting status report - next br. due 06/07/2019, 1 Extension, 59 Days Active 08/09/2018		Mary C. Elro-Bartevyan Esquire See Above 558970 Active 08/09/2018	
Shane Bergevin Defendant/Appellee Awaiting status report - next br. due 06/07/2019, 1 Extension, 59 Days Active 08/09/2018		Mary C. Elro-Bartevyan Esquire See Above 558970 Active 08/09/2018	
Suffolk Superior Court Dept. (Lower Court: Civil or General) Clerk for Civil Business 3 Pemberton Square, 12th Floor Boston, MA 02108 Phone: 617-788-8175 Active 08/09/2018			
Superintendent Bridgewater State Hospital Massachusetts Correctional Institution 20 Administration Road Bridgewater, MA 02324 Phone: 508-279-4500 Active 08/09/2018			
DATE	PM	ENTRY	
08/09/2018	1	Lower Court Assembly of the Record Package	
08/09/2018		Notice of entry sent.	
08/09/2018	2	Affidavit of indigency (IMPOUNDED) filed for George Mackie	
08/09/2018		ORDER TO COMMISSIONER OF CORRECTION TO PROVIDE CERTAIN INFORMATION REGARDING INMATE ACCOUNT RELATIVE TO APPELLANT'S MOTION TO WAIVE FILING FEE. The appellant in the above-captioned action has filed a Motion to Waive entry fee. Pursuant to G. L. c. 261, § 29, the correctional facility where the prisoner is currently incarcerated shall file a document showing the current status of the plaintiff's canteen account and savings account, if any, and the account activity for the past six (6) months. The statement shall be filed within thirty (30) days of the date of this order. The statement is to be mailed to: APPEALS COURT CLERK'S OFFICE, JOHN ADAMS COURTHOUSE, ONE PEMBERTON SQUARE, ROOM 1200, BOSTON, MA 02108. The appellant's brief and record appendix remain due in this court on or before 09/18/2018. Notice Sent.	
08/16/2018	3	Inmate transaction history - summary report for George Mackie received from Superintendent Bridgewater State Hospital.	

Commonwealth of Massachusetts
APPEALS COURT
FOR THE COMMONWEALTH
Docket Sheet

06/11/2019
10:23 am

2018-P-1136

George Mackie v Commissioner of Department of Corrections et al

DATE	PT	ENTRY
08/17/2018		ORDER: PAYMENT REQUIRED FROM INMATE ACCOUNT (see G. L. c. 261, § 29). The appellant in the above-captioned action has filed a Motion to Waive entry fee. After reviewing the affidavit of indigency and the additional information provided, the court hereby orders: The appellant is ordered to pay a lump-sum payment of \$62 in order to proceed. The court further finds that requiring additional installment payments would create an undue administrative burden for the court. The appellant's name and the Appeals Court docket number must be noted on each remittance. Payment is to be made by check or money order payable to the Commonwealth of Massachusetts within fourteen (14) days of the date of this Order. The payment is to be mailed to: APPEALS COURT CLERK'S OFFICE, JOHN ADAMS COURTHOUSE, ONE PEMBERTON SQUARE, ROOM 1200, BOSTON, MA 02108. (McDonough, J.). Notice Sent.
08/31/2018		Returned Mail: Notice re: order for payment sent to George Mackie, Pro Se Plaintiff/Appellant returned as Released. Notice not resent as no current address is available.
09/20/2018	4	Letter from George Mackie re: Status of case
10/01/2018	5	MOTION to extend brief & appendix due date, filed by George Mackie
10/02/2018		RE#5: Allowed in part to 01/16/2019. Notice sent.
10/05/2018	6	Letter from George Mackie re: \$62 payment to proceed and request for copy of docket
10/05/2018	7	Additional docket fee in the amount of \$62 received from George Mackie, Pro Se Plaintiff/Appellant, Pro Se.
10/05/2018		Copy of docket sent to George Mackie
12/17/2018	8	Motion to reduce the required number of briefs filed, filed for George Mackie
12/20/2018		RE#8: Allowed in part. Appellant is given leave to file 3 copies of his brief and appendix with the Court and serve 1 copy on the Department. *Notice.
01/11/2019	9	Motion for leave to file non-conforming brief, filed by George Mackie.
01/17/2019		RE#9: Denied without prejudice to renewal accompanied by the proposed brief and apperidix. Further, all future filings are to include a certificate of service compliant with MRAP 13. *Notice.
01/23/2019		RE#9 (Revised Action): The brief and appendix are accepted for filing as they substantially conform with the MRAP. The appellees' brief is due on or before 2/25/19. *Notice.
01/23/2019	10	Appellant brief filed for George Mackie.
01/23/2019	11	Appendix filed for George Mackie.
01/28/2019	12	Motion to reconsider Courts decision of January 17th, 2019 on P#9 filed by George Mackie.
01/28/2019	13	MOTION to extend time to re-file brief & appendix with motion to leave to file nonconforming brief, filed by George Mackie.
01/30/2019		RE# 12 & 13: No action necessary as the appellant's brief and appendix were accepted for filing on 1/23/19. * Notice.
02/22/2019	14	MOTION of Appellee to extend brief due date filed for Commissioner of Department of Corrections, Steven Tellier, Jason Patterson, James O'Gara, Colette Goguen, Stephanie Collins, Karen L. DiNardo and Shane Bergevin by Attorney Mary Eiro-Bartevyan.
02/22/2019		RE#14: Allowed to 04/26/2019. Notice sent.
03/04/2019	15	Motion to reconsider paper #14, filed by George Mackie, Plaintiff/Appellant.
03/05/2019		RE#15: The order of 2/22/19 is to stand. However, the Appellees shall forthwith mail a copy of their motion to extend brief due date (paper #14) to the appellant at his current address and make note of that address for future filings. (Meade, J.) *Notice.
04/23/2019	16	MOTION of Appellee to stay appellate proceedings filed for Commissioner of Department of Corrections, Steven Tellier, Jason Patterson, James O'Gara, Colette Goguen, Stephanie Collins, Karen L. DiNardo and Shane Bergevin by Attorney Mary Eiro-Bartevyan.

Commonwealth of Massachusetts
APPEALS COURT
FOR THE COMMONWEALTH
Docket Sheet

06/11/2019

10:23 am

2018-P-1136

George Mackie v Commissioner of Department of Corrections et al

DATE	RE#	ENTRY
04/24/2019		RE#16: Allowed. Appellate proceedings stayed to 6/7/19. Status report due then concerning developments in the trial court following the issuance of its 4/18/19 Memorandum and Order requesting additional submissions from the plaintiff. *Notice/attest
05/02/2019	17	Motion to reconsider paper #16, filed for George Mackie, Plaintiff/Appellant.
05/16/2019	18	ORDER: (RE#17) A response is due from the Commissioner on or before 6/7/19. *Notice/Attest.
05/24/2019	19	Letter from George Mackie re: Requesting Copy of Docket Sheets.
06/07/2019	20	Status Report filed for Commissioner of Department of Corrections, Steven Tellier, Jason Patterson, James O'Gara, Colette Goguen, Stephanie Collins, Karen L. DiNardo, Shane Bergevin and Superintendent Bridgewater State Hospital by Attorney Mary Eiro-Bartevyan.

V5/3

NOTIFY

RA: 415

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 1784CV02417

Notice sent
5/03/2018
M. C.E-B.
G. M.

GEORGE MACKIE

vs.

(sc0 THOMAS A. TURCO, III & others¹

MEMORANDUM OF DECISION AND ORDER ON PARTIES' CROSS-MOTIONS FOR JUDGMENT ON THE PLEADINGS

The plaintiff, George Mackie, brought this action against Thomas A. Turco, III, Collette Goguen, Karen DiNardo, Paul Visconti, Shane Bergevin, Steven Tellier, Jason Paterson, James O'Gara, and Stephanie Collins (collectively "defendants"). Plaintiff is a state prisoner in lawful custody at the North Central Correctional Institution in Gardner, Massachusetts ("NCCI-Gardner"). Plaintiff brought this action based on alleged misconduct that occurred while so incarcerated.

Plaintiff initially brought a motion for judgment on the pleadings on December 12, 2017 pursuant to Mass. R. Civ. P. 12(c). Defendants opposed the motion for judgment on the pleadings and filed their own cross-motion for judgment on the pleadings shortly thereafter. A hearing on this matter was held on April 26 2018. For the reason set forth below, the plaintiff's motion for judgment on the pleading is **DENIED**. Defendants' cross-motion for judgment on the pleadings is **GRANTED**.

¹ Collette Goguen, Karen DiNardo, Paul Visconti, Shane Bergevin, Steven Tellier, Jason Paterson, James O'Gara, Stephanie Collins.

The alleged misconduct occurred at NCCI-Gardner between March and June 2017. Plaintiff is a non-insulin dependent diabetic who was on a medically prescribed 2200 calorie ADA diet. On March 27, 2017 plaintiff alleges he was wrongfully removed from the list to receive this medically prescribed diet, and therefore had to receive five "main line" regular meals from March 27-29. Thereafter, plaintiff was reinstated on the list for the medically prescribed meals. Plaintiff filed his first complaint based on this incident. Thereafter, plaintiff alleges that at various times from April through July 2017, instead of the diet-prescribed meal plaintiff attempted to receive a main line meal. He was refused, and when he did not take the medically prescribed meal was returned to his unit. Defendants assert this was in accordance with institutional policies at that time. Plaintiff alleges that he then missed additional meals over the next several months due to his anxiety in not being able to receive the main line meals. Investigations were completed into the aforementioned grievances, and no wrongdoing was found.

When reviewing an agency decision, the court is required to give "due weight to the experience, technical competence and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it." G. L. c. 30A § 14(7). This court may reverse, remand, or modify an agency decision if the substantial rights of any party may have been prejudiced because the agency decision is based on an error of law or on unlawful procedure, is arbitrary and capricious or unwarranted by the facts found by the agency, or is unsupported by substantial evidence. G. L. c. 30A § 14(7)(c)-(g). The appealing party bears the burden of demonstrating the invalidity of the agency decision. See Badgley v. Contributory Ret. Appeal Bd, 397 Mass. 255, 258 (1986). The Supreme

Notice sent
5/03/2018

RA:
417
(sc)

Judicial Court has noted that the appellant's "burden is heavy." Springfield v. Dep't of Telecomms. & Cable, 457 Mass. 562 (2010) (citation omitted).

Overturning an agency's decision is a heavy burden to meet. The court finds that the agency's decision was not "unsupported by substantial evidence." Further, as to plaintiff's other claims, namely claims pursuant to 42 USC §1983, the American with Disability Act, the Eight Amendment, the Massachusetts Declaration of Rights, G.L. c. 127 § 37, G.L. c. 127 § 38E, 103 CMR 761, 103 DOC 400.06, and 103 NCCI 400.07, the Court adopts the arguments of the defendants, as stated in their opposition to plaintiff's motion for judgment on the pleadings. For these reasons, the plaintiff's motion for judgment on the pleadings is DENIED, and defendants' cross motion for judgment on the pleading is GRANTED.

ORDER

For the foregoing reasons, it is therefore ORDERED that the plaintiff's motion for judgment on the pleadings is hereby DENIED. The defendants' cross-motion for judgment on the pleadings is GRANTED.



Anthony M. Campo
Justice of the Superior Court

DATED: April 26, 2018

JUDGMENT ON THE PLEADINGS**Trial Court of Massachusetts
The Superior Court**

DOCKET NUMBER

1784CV02417

Michael Joseph Donovan, Clerk of C

CASE NAME

George Mackie
vs.
Thomas A Turco, III Commissioner of Massachusetts D.O.C and
Chief Administrative Officer et al

COURT NAME & ADDRESS

Suffolk County Superior Court - Civil
Suffolk County Courthouse, 12th Floor
Three Pemberton Square
Boston, MA 02108

This action came before the Court, Hon. Anthony M Campo, presiding, upon a motion for judgment on the pleadings,

After hearing or consideration thereof;

It is ORDERED AND ADJUDGED:

that plaintiff's motion for judgment on the pleadings is DENIED and defendants' cross-motion for judgment on the pleadings is GRANTED. Judgment enters for the defendants.

*Noted
5/4/18
MCEB
GM*

*[Signature]
5/11/18*

JUDGMENT ENTERED ON DOCKET May 4, 2018
PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 58(a)
AND NOTICE SEND TO PARTIES PURSUANT TO THE PRO-
VISIONS OF MASS. R. CIV. P. 77(d) AS FOLLOWS

DATE JUDGMENT ENTERED

05/02/2018

CLERK OF COURT / ASST. CLERK

X

Date/Time Printed: 05-02-2018 15:24:18

SCV117: 07/2016

①

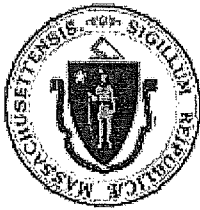
CASE TYPE:	Civil Actions with Incarcerated Party	FILE DATE:	08/01/2017
ACTION CODE:	PB1	CASE TRACK:	A - Average
DESCRIPTION:	Tortious Action involving an Incarcerated Party		
CASE DISPOSITION DATE	05/04/2018	CASE STATUS:	Closed
CASE DISPOSITION:	Disposed by Court Finding	STATUS DATE :	05/04/2018
CASE JUDGE:		CASE SESSION:	Civil A

PARTIES		
Plaintiff Mackie, George W94918 North Central Correctional Institution PO Box 466 Gardner, MA 01440	Attorney Pro Se Massachusetts Bar Added Date: 08/01/2017	PROPER
Defendant Bergevin, Shane	Attorney Mary C Eiro-Bartevyan Department of Correction - Legal Division Department of Correction - Legal Division 70 Franklin St Suite 600 Boston, MA 02110-1300 Work Phone (617) 727-3300 Added Date: 10/02/2017	558970
Defendant Collins, Stephanie	Attorney Mary C Eiro-Bartevyan Department of Correction - Legal Division Department of Correction - Legal Division 70 Franklin St Suite 600 Boston, MA 02110-1300 Work Phone (617) 727-3300 Added Date: 10/02/2017	558970
Defendant DiNardo, Karen L.	Attorney Mary C Eiro-Bartevyan Department of Correction - Legal Division Department of Correction - Legal Division 70 Franklin St Suite 600 Boston, MA 02110-1300 Work Phone (617) 727-3300 Added Date: 10/02/2017	558970



**COMMONWEALTH OF MASSACHUSETTS
SUFFOLK COUNTY CIVIL
Public Docket Report**

Defendant Goguen, Colette	Attorney 558970 Mary C Eiro-Bartevyan Department of Correction - Legal Division Department of Correction - Legal Division 70 Franklin St Suite 600 Boston, MA 02110-1300 Work Phone (617) 727-3300 Added Date: 10/02/2017
Defendant O'Gara, Jr., James	Attorney 558970 Mary C Eiro-Bartevyan Department of Correction - Legal Division Department of Correction - Legal Division 70 Franklin St Suite 600 Boston, MA 02110-1300 Work Phone (617) 727-3300 Added Date: 10/02/2017
Defendant Patterson, Jason	Attorney 558970 Mary C Eiro-Bartevyan Department of Correction - Legal Division Department of Correction - Legal Division 70 Franklin St Suite 600 Boston, MA 02110-1300 Work Phone (617) 727-3300 Added Date: 10/02/2017
Defendant Tellier, Steven	Attorney 558970 Mary C Eiro-Bartevyan Department of Correction - Legal Division Department of Correction - Legal Division 70 Franklin St Suite 600 Boston, MA 02110-1300 Work Phone (617) 727-3300 Added Date: 10/02/2017
Defendant Thomas A Turco, III Commissioner of Massachusetts D.O.C and Chief Administrative Officer	Attorney 558970 Mary C Eiro-Bartevyan Department of Correction - Legal Division Department of Correction - Legal Division 70 Franklin St Suite 600 Boston, MA 02110-1300 Work Phone (617) 727-3300 Added Date: 10/02/2017



COMMONWEALTH OF MASSACHUSETTS
SUFFOLK COUNTY CIVIL
Public Docket Report

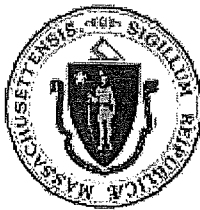
Defendant Visconti, Paul	Attorney Mary C Eiro-Bartevyan Department of Correction - Legal Division Department of Correction - Legal Division 70 Franklin St Suite 600 Boston, MA 02110-1300 Work Phone (617) 727-3300 Added Date: 10/02/2017	558970
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**COMMONWEALTH OF MASSACHUSETTS
SUFFOLK COUNTY CIVIL
Public Docket Report**

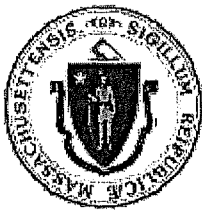
INFORMATIONAL DOCKET ENTRIES

Date	Ref	Description	Judge
08/01/2017		Attorney appearance On this date Pro Se added for Plaintiff George Mackie	
08/01/2017		Case assigned to: DCM Track A - Average was added on 08/01/2017	
08/01/2017	2	Original civil complaint filed. TRK	
08/01/2017	3	Civil action cover sheet filed.(n/a)	
08/01/2017		Demand for jury trial entered.	
08/01/2017	1	Affidavit of Indigency and request for waiver substitution of state payment of fees and costs filed without Supplemental affidavit Allowed, subject to review by judge	
08/01/2017	4	Plaintiff George Mackie's Motion for Service by certified, first class mail return receipt requested	
08/01/2017	5	Plaintiff George Mackie's Motion for Appointment of counsel	
08/01/2017	6	Plaintiff George Mackie's Motion to Waive the filing Fees	
08/03/2017	7	ORDER: To Commissioner of Correction to provide certain information regarding inmate account relative to plaintiff's Motion to waive filing fee and proceed in Forma Pauperis. (Anthony M. Campo, Justice) Notice Sent 08/03/2017	Campo
08/03/2017	8	ORDER: After a review of your petition and correspondence, the Court has instructed the Clerk's Office to take the following action: Service is to be made upon defendant(s) by means of certified mail at the plaintiff's expense, and you must return to the court the original summons with the green receipt card for each defendant. A copy of the complaint is to be sent to the Office of the Attorney General or the Department of Corrections by the plaintiff(s). (Anthony M. Campo, Justice) Notice Sent 08/03/2017	Campo
08/03/2017.		General correspondence regarding Nine summonses mailed to plaintiff this day	
08/03/2017		General correspondence regarding On 08/03/2017, Order P#7 sent to Marlene Cronin, DOC, to fax order to NORTH CENTRAL CORRECTIONAL INSTITUTION requesting a canteen account for (6) months.	
08/14/2017	2.1	General correspondence regarding Plaintiff's Supplement to verified Civil Complaint	



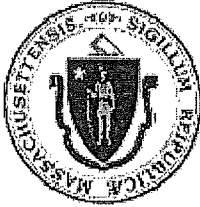
**COMMONWEALTH OF MASSACHUSETTS
SUFFOLK COUNTY CIVIL
Public Docket Report**

08/18/2017	9	ORDER: Notice of Waiver of Court costs and request for payment to be withdrawn from account (Pursuant to G.L. c. 261 sec. 29) The prisoner/plaintiff in the above-captioned action has filed a motion to waive the filing fee of \$275.00 and court costs (normal) and to proceed in forma pauperis. After reviewing the affidavit of indigency and the statement of inmate account provided by the correctional facility, the court hereby orders: The plaintiff is incapable of paying the filing fee and may proceed in forma pauperis. (Anthony M. Campo, Justice) entered 08/17/2017 Notice Sent 08/18/2017	Campo
08/18/2017		Endorsement on Motion for service by first class US mail. (Anthony M. Campo, Justice) entered 08/17/2017 Notice Sent 08/18/2017 (#4.0): ALLOWED	Campo
08/18/2017		Endorsement on Motion for appointment of counsel. DENIED, no funds exist for this purpose. By the Court, (Anthony M. Campo, Justice) entered 08/17/2017 Notice Sent 08/18/2017 (#5.0): DENIED	Campo
08/28/2017	10	Service Returned for Defendant Thomas A Turco, III Commissioner of Massachusetts D.O.C and Chief Administrative Officer: Service via certified mail;	
08/28/2017	11	Service Returned for Defendant Goguen, Colette: Service via certified mail;	
08/28/2017	12	Service Returned for Defendant DiNardo, Karen L.: Service via certified mail;	
08/28/2017	13	Service Returned for Defendant Visconti, Paul: Service via certified mail;	
08/28/2017	14	Service Returned for Defendant Bergevin, Shane: Service via certified mail;	
08/28/2017	15	Service Returned for Defendant Tellier, Steven: Service via certified mail;	
08/28/2017	16	Service Returned for Defendant Patterson, Jason: Service via certified mail;	
08/28/2017	17	Service Returned for Defendant Collins, Stephanie: Service via certified mail;	
08/28/2017	18	Service Returned for Defendant O'Gara, Jr., James: Service via certified mail;	
09/25/2017	19	Plaintiff George Mackie's Application for default pursuant to rule 55 with affidavit herein	
09/26/2017	20	Plaintiff George Mackie's EMERGENCY Motion for Preliminary Injunction regarding defendant Colette Goguen (w/o opposition)	
09/26/2017	21	Affidavit of George Mackie in support of his motion for Emergency Preliminary Injunction regarding defendant Colette Goguen Applies To: Mackie, George (Plaintiff)	
10/02/2017	22	Defendants Thomas A Turco, III Commissioner of Massachusetts D.O.C and Chief Administrative Officer, Colette Goguen, Karen L. DiNardo, Paul Visconti, Shane Bergevin, Steven Tellier, Jason Patterson, James O'Gara, Jr., Stephanie Collins's Motion to Enlarge Time and Opposition to Plaintiff's Motion for Default (P#19)	



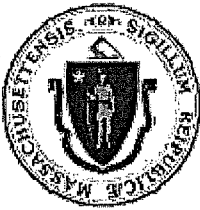
**COMMONWEALTH OF MASSACHUSETTS
SUFFOLK COUNTY CIVIL
Public Docket Report**

10/02/2017		Attorney appearance On this date Mary C Eiro-Bartevyan, Esq. added for Defendant Thomas A Turco, III Commissioner of Massachusetts D.O.C and Chief Administrative Officer
10/02/2017		Attorney appearance On this date Mary C Eiro-Bartevyan, Esq. added for Defendant Colette Goguen
10/02/2017		Attorney appearance On this date Mary C Eiro-Bartevyan, Esq. added for Defendant Karen L. DiNardo
10/02/2017		Attorney appearance On this date Mary C Eiro-Bartevyan, Esq. added for Defendant Paul Visconti
10/02/2017		Attorney appearance On this date Mary C Eiro-Bartevyan, Esq. added for Defendant Shane Bergevin
10/02/2017		Attorney appearance On this date Mary C Eiro-Bartevyan, Esq. added for Defendant Steven Tellier
10/02/2017		Attorney appearance On this date Mary C Eiro-Bartevyan, Esq. added for Defendant Jason Patterson
10/02/2017		Attorney appearance On this date Mary C Eiro-Bartevyan, Esq. added for Defendant James O'Gara, Jr.
10/02/2017		Attorney appearance On this date Mary C Eiro-Bartevyan, Esq. added for Defendant Stephanie Collins
10/05/2017		Endorsement on Motion to (#22.0): ALLOWED enlarge time Plff's Motion to enlarge time to file responsive pleading is ALLOWED to 10/31/17 Motion to default stayed to same date Notice sent 10/6/17 Judge: Tochka, Hon. Robert N
10/06/2017	23	Opposition to and response to defts Motion to enlarge tme & opposition to plff's Motion for default filed by George Mackie
10/20/2017	24	Plaintiff George Mackie's Request of the production of documents by the defts
11/07/2017	25	Received from Defendants Thomas A Turco, III Commissioner of Massachusetts D.O.C and Chief Administrative Officer, Colette Goguen, Karen DiNardo, Paul Visconti, Shane Bergevin, Steven Tellier, Jason Patterson, James O'Grady and Stephanie Collins: Answered (CERTIFICATION OF RECORD OF PROCEEDINGS FILED)
11/16/2017	26	Plaintiff George Mackie's Motion to Strike Defendants' "Answer"



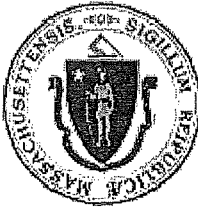
**COMMONWEALTH OF MASSACHUSETTS
SUFFOLK COUNTY CIVIL
Public Docket Report**

11/21/2017		Endorsement on Motion to strike defendant's "answer" (#26.0): DENIED Notice Sent : 11/22/2017 Motion to strike answers and for default is DENIED. Judge: Tochka, Hon. Robert N	Tochka
11/28/2017	27	Opposition to plff's Motion to strike defts answer filed by Thomas A Turco, III Commissioner of Massachusetts D.O.C and Chief Administrative Officer	
11/29/2017	28	Plaintiff George Mackie's Motion to extend time to file Judgment on the pleadings	
12/04/2017	29	Plaintiff George Mackie's Reply to defts opposition to plff's Motion to strike defts answer	
12/07/2017	30	Plaintiff George Mackie's Motion to compel production of documents	
12/07/2017	31	Plaintiff George Mackie's Request for of the plff George Mackie for the production of documents by the defts	
12/12/2017	32	Plaintiff George Mackie's Motion to extend time to file judgment on the pleadings	
12/12/2017	33	Plaintiff George Mackie's Motion for Reconsideration of Courts Decision dated November 21, 2017 by the Honorable Robert N. Tochka	
12/14/2017	34	Notice of appeal filed. Applies To: Mackie, George (Plaintiff)	
12/21/2017	36	Opposition to to plf's Motion for Reconsideration filed by Thomas A Turco, III Commissioner of Massachusetts D.O.C and Chief Administrative Officer	
12/22/2017	35	Opposition to to plff's Motion to compel discovery and Motion for protective order filed by Thomas A Turco, III Commissioner of Massachusetts D.O.C and Chief Administrative Officer	
12/27/2017	37	Plaintiff George Mackie's Motion for Judgment on the pleadings	
01/08/2018	38	Plaintiff George Mackie's Reply to defts opposition to plff's Motion to compel and Motion for a Protective order	
01/08/2018	39	Plaintiff George Mackie's Reply to defts opposition to plff's Motion for Reconsideration	
01/08/2018	40	Defendants Thomas A Turco, III Commissioner of Massachusetts D.O.C and Chief Administrative Officer, Colette Goguen, Karen L. DiNardo, Paul Visconti, Shane Bergevin, Steven Telliér, Jason Patterson, James O'Gara, Jr., Stephanie Collins's Motion to Enlarge Time to Respond to Plaintiff's motion for judgment on the pleadings	
01/16/2018	41	Opposition to defts Motion for an extension of time to respond to plff's Motion for Judgment on the pleadings filed by George Mackie	



COMMONWEALTH OF MASSACHUSETTS
SUFFOLK COUNTY CIVIL
Public Docket Report

01/16/2018		Endorsement on Motion to enlarge time to respond to plaintiff's motion for judgment on the pleadings (#40.0): ALLOWED Notice Sent : 01/16/18 (01/16/18) ALLOWED. Judge: Campo, Hon. Anthony M.	Campo
01/31/2018	42	Plaintiff George Mackie's Motion for Reconsideration of Courts Decision Dated January 16, 2018, by the Honorable Anthony M. Campo	
02/07/2018		Endorsement on Motion for Reconsideration (#42.0): DENIED (dated 2/2/18) notice sent 2/6/18 Judge: Campo, Hon. Anthony M	Campo
02/20/2018	43	Defendants Thomas A Turco , III Commissioner of Massachusetts D.O.C and Chief Adminstrative Officer's Motion to Enlarge Time to Respond to Plaintiff's Motion for Judgment on the Pleadings	
02/21/2018		Endorsement on Motion to (#48.0): ALLOWED enlarge Notice sent 2/22/18 Judge: Campo, Hon. Anthony M.	Campo
02/22/2018	44	Opposition to plff's Motion for Judgment on the pleadings and defts cross-motion for Judgment oin the pleadings filed by	
03/09/2018		The following form was generated: Notice to Appear Sent On: 03/09/2018 08:46:41	
03/09/2018		The following form was generated: Notice to Appear Sent On: 03/09/2018 08:47:58	
03/09/2018	45	Plaintiff George Mackie's Request for Court to rule on his motion for judgment on the pleadings	
03/23/2018	46	Plaintiff(s) George Mackie's Motion for Audio and/or Visual Recording Pursuant to Superior Court Rule 17A	
03/23/2018	47	Plaintiff(s) George Mackie's Motion to Postpone and Reschedule the Hearing now scheduled for April 5, 2018.	
03/27/2018		Event Result: Judge: Campo, Hon. Anthony M. The following event: Hearing for Judgment on Pleading scheduled for 04/05/2018 02:00 PM has been resulted as follows: Result: Not Held Reason: By Court prior to date	Campo
03/27/2018		The following form was generated: Notice to Appear Sent On: 03/27/2018 09:15:59	



**COMMONWEALTH OF MASSACHUSETTS
SUFFOLK COUNTY CIVIL
Public Docket Report**

04/03/2018		Endorsement on Motion to postpone and reschedule the hearing (#47.0): ALLOWED Notice Sent : 04/03/18 (Dated: 04/02/2018) ALLOWED. Continued to April 26, 2018 Judge: Campo, Hon. Anthony M.	Campo
04/09/2018	48	Plaintiff George Mackie's Reply to Defendant's Opposition to Plaintiff's Motion for Judgment of the Pleadings and Cross-Motion for Judgment on the Pleadings and Memorandum in Support Thereof	
04/25/2018		Habeas corpus issued as to George Mackie at North Central Correctional Center for 04/26/2018 02:00 PM Hearing for Judgment on Pleading. THIS IS A VIDEO CONFERENCE TO BE HELD THROUGH THE VIDEO CONFERENCING FACILITIES OF THE DEPARTMENT OF CORRECTIONS. Judge: Campo, Hon. Anthony M.	Campo
04/26/2018		Matter taken under advisement Judge: Campo, Hon. Anthony M. The following event: Hearing for Judgment on Pleading scheduled for 04/26/2018 02:00 PM has been resulted as follows: Result: Held - Under advisement	Campo
05/03/2018	49	MEMORANDUM & ORDER: ON PARTIES' CROSS-MOTIONS FOR JUDGMENT ON THE PLEADINGS: ORDER - For the foregoing reasons, it is therefore ORDERED that the plaintiff's motion for judgment on the pleadings is hereby DENIED. The defendants' cross-motion for judgment on the pleadings is GRANTED. Dated: April 26, 2018 Notice sent 5/3/18 Judge: Campo, Hon. Anthony M. Judge: Campo, Hon. Anthony M.	Campo
05/04/2018	50	JUDGMENT on the Pleadings entered: After hearing and consideration thereof; It is ORDERED and ADJUDGED: that plaintiff's motion for judgment on the pleadings is DENIED and defendants' cross-motion for judgment on the pleadings is GRANTED. Judgment enters for the defendants entered on docket pursuant to Mass R Civ P 58(a) and notice sent to parties pursuant to Mass R Civ P 77(d) Judge: Campo, Hon. Anthony M.	Campo
05/04/2018		Disposed for statistical purposes	
05/15/2018	51	Notice of appeal filed. Notice sent 5/16/18 Applies To: Mackie, George (Plaintiff)	



COMMONWEALTH OF MASSACHUSETTS
SUFFOLK COUNTY CIVIL
Public Docket Report


10
Rec'd
7/9/18

05/15/2018	52	Plaintiff George Mackie's Motion for Free Transcript	
		Applies To: Mackie, George (Plaintiff)	
06/22/2018		Endorsement on Motion for Free Transcript (#52.0): DENIED While the court appreciates the plaintiff's effort to present a complete record on appeal, the decision in this case was based upon an administrative record, not live testimony. Therefore, no transcript is necessary for the appeal, and a litigant with sufficient funds would not pay for an unnecessary transcript. The motion is DENIED. Plaintiff has complied with the transcript notice of 5/16/18 (dated 6/20/18) notice sent 6/22/18	Wilkins
		Judge: Wilkins, Hon. Douglas H	
06/22/2018	53	General correspondence regarding Letter to the court regarding request for transcripts See Ruling on P#2 (dated 6/20/18) notice sent 6/22/18	Wilkins
		Judge: Wilkins, Hon. Douglas H	
07/03/2018	54	Plaintiff George Mackie's Motion for Reconsideration of the Court's Decision to Deny his Motion for Free Transcripts	

RULE 16(K) CERTIFICATION

I, George Mackie, hereby certify, pursuant to Rule 16(K), Mass. R. App. P., that this Brief of the Plaintiff-Petitioner complies with the relevant Rules of Court pertaining to the preparation and filing of Briefs, including Rule 20(a), to the best of his abilities. However, the Plaintiff-Petitioner is unable to bind, confirm margins, or word count except as manually counted by Mr. Mackie. That word count is approximately 1978. Any other errors or omissions are purely accidental or unknown, under the current restrictions in place at the NCC/MTC.

The Plaintiff has filed a separate Motion to File a Non-conforming Brief with this Application for Further Appellate Review.


George Mackie, Pro-se
Nemasket Correctional Center
30 Administration Road
Bridgewater, MA. 02324

