STATE OF INDIANA)
) SS:
COUNTY OF SULLIVAN)

IN THE SULLIVAN CIRCUIT COURT
2005 TERM
CAUSE NO. 77C01-0509-PL-00298

JAMES H. HIGGASON, JR.,
Plaintiff

VS

IND. DEPT. OF CORRECTION, et. al.,
Defendant

FILED
NOV 8 2005
Clerk, Sullivan Circuit Court

ORDER

The Plaintiff having filed a MOTION TO CORRECT ERRORS, and the Court having reviewed the same, now grants said Motion and reinstates this matter to the active docket.

On September 9, 2005, the Plaintiff having filed a MOTION TO RECUSE which requests that seven (7) judicial officers in Administrative District 7 be recused from presiding over his case pursuant to Trial Rule 76. The Court now denies said request for the reason that Trial Rule 76 does not pertain to recusal of judicial officers not does it afford this type of remedy.

The Court has examined Plaintiff's CIVIL COMPLAINT filed on September 9, 2005, in accordance with I.C. 34-58-1-1 and has determined that the claim is frivolous in that it does not have an arguable basis in the law and does not state a claim upon which relief may be granted for the following reasons:

1. The Plaintiff has failed to comply with conditions stated in the Court of Appeals decision in *Higgason v. Lemmon*, 818 N.E.2d 500, 505, Ind. App. 2004.

2. The Plaintiff has failed to provide any proof to the Court that he has exhausted his administrative remedies before filing this cause of action. The Plaintiff has failed to show he completed the grievance process before filing this cause of action.

3. In Plaintiff's First Claim, he has alleged that the Defendants denied his access to the Court when they disposed of his Petition To Transfer in Cause Number 77A04-0208-CV-00371. Plaintiff has no direct knowledge that the Defendants disposed of his pleading but bases his allegation on a "high probability" that either Defendant Ducharme or Defendant Stogsdill disposed of this pleading.

4. In Plaintiff's Second Claim, he is seeking damages because he alleges the Defendants unjustly depriving him of his television set from 6/16/03 through 9/16/03. In the beginning of Plaintiff's CIVIL COMPLAINT he alleges several constitutional violation but the Plaintiff has failed to cite any specific Indiana or Federal Case Law evidencing that inmates have a constitutional right to watch

television while incarcerated. According to Plaintiff's CIVIL COMPLAINT, it appears the DOC affords inmates the privilege of watching television as a means to induce good behavior. The Plaintiff's specific allegations in his Second Claims do not reference any specific constitutional violation. Thus, the Court finds that watching television is a privilege not a constitutional right, and as such, the Plaintiff would not be entitled to damages.

5. Although Higgason states that he complied with I.C. 34-13-3-6, 34-13-3-7, and 34-13-3-8 before filing his CIVIL COMPLAINT, he has failed to submit a copy of his NOTICE OF TORT CLAIM with his pleadings filed in this cause of action.

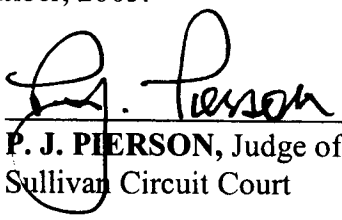
6. Plaintiff has failed to allege fact sufficient to pursue this cause of action against the named employees of the DOC in accordance with I.C. 34-13-3-5(c). Plaintiff must allege specific facts not just make a general statement to meet the requirements of I.C. 34-13-3-5(c).

Based on the foregoing, Plaintiff's Complaint cannot proceed and this matter is removed from the Court's active docket.

SO RECOMMENDED this 8th day of November, 2005.

ANN SMITH MISCHLER, Magistrate of the
Sullivan Circuit Court

SO ORDERED this 8th day of November, 2005.



P. J. PIERSON, Judge of the
Sullivan Circuit Court

Distribution:
James H. Higgason, Jr.
DOC #856635
P.O. Box 557
Westville, Indiana 46394

Indiana Department Of Corrections
Attn: Commissioner Evelyn Ridley-Turner
E334 Government Center S
302 W. Washington Street
Indianapolis, Indiana 46204-2760

Patricia Orloff Erdmann
Section Chief, Civil Rights and Employment Litigation OAG,
IGCS - 5th Floor
302 West Washington Street
Indianapolis, IN 46204