

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRED JOHN ZINSER, JR.

V.

C.A. NO. 06-4387

ADULT PROBATION-PAROLE
DEPARTMENT OF MONTGOMERY
COUNTY, ET AL.

MEMORANDUM OPINION AND ORDER

GOLDEN, J.

JANUARY 8, 2007

Plaintiff, an inmate at the Montgomery County Correctional Facility, filed this pro se 42 U.S.C. §1983 civil rights action, claiming that the Defendants violated his constitutional rights by allegedly failing to ensure that he received a timely court hearing on probation violation charges for which he was being held. Named as Defendants are the Adult Probation-Parole Department of Montgomery County ("Probation Department"), the Montgomery County Office of the Public Defender ("Public Defender") and the Court of Common Pleas of Montgomery County. Presently before the Court is the motion of the Defendants Probation Department and Public Defender to dismiss pursuant to Rule 12(b)(6) for failure to state a claim. The Plaintiff has

not responded to this motion. For the reasons which follow, the motion is granted.

In order to state a claim under §1983, Plaintiff must allege facts showing that a Defendant acted under color of state law to deprive him of a right secured by the Constitution or laws of the United States. See 42 U.S.C. §1983. A public defender does not act under color of state law for purposes of §1983 when representing clients against the State in a criminal matter. Polk County v. Dodson, 454 U.S. 312, 324-25 (1981). Accordingly, Plaintiff's §1983 claim against the Public Defender of Montgomery County must be dismissed.

In addition, the Adult-Parole Department of Montgomery County is not a proper defendant in a §1983 action because it is a mere government department and has no legal identity separate from Montgomery County. It is not a "person" under §1983. Duffy v. County of Bucks, 7 F.Supp2d 569, 579 (E.D.Pa. 1998). Therefore, Plaintiff's §1983 claim against the Adult-Parole Department of Montgomery County must also be dismissed.

Although, there is no motion to dismiss filed on behalf of the Court of Common Pleas of Montgomery County, the Court will sua sponte dismiss the claim against that Defendant as well.

This Court has consistently held that state courts such as the Court of Common Pleas of Philadelphia County are arms of the

state and immune from liability under 42 U.S.C. 1983. See Reiff v. Philadelphia Court of Common Pleas, 827 F.Supp. 319 (E.D.Pa. 1993).

The court in Reiff stated:

The Court of Common Pleas is not subject to suit at all under § 1983, because states or “government entities that are considered ‘arms of the state’ for Eleventh Amendment purposes” are not among those liable for violations of the civil rights statute.

Id. at 324. Because the Court of Common Pleas of Montgomery County is not a “person” to be sued under 42 U.S.C. § 1983, the claim against this Defendant must be dismissed as well.

An appropriate Order follows.

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ORDER

AND NOW, this 8th day of January, 2007, it is hereby

ORDERED that:

1. The motion of the defendants Adult Probation-Parole Department of Montgomery County and the Public Defender of Montgomery County to dismiss [Doc. # 8] is GRANTED.

2. The Complaint is also DISMISSED as to Defendant Court of Common Pleas of Montgomery County.

3. The Clerk is DIRECTED to mark this case closed.

BY THE COURT:

THOMAS M. GOLDEN, J.