

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

DEVER McCLARY, : CIVIL ACTION  
Plaintiff, :  
 :  
v. :  
 :  
CITY OF PHILADELPHIA, et al., :  
Defendants. : NO. 97-323

MEMORANDUM & ORDER

J.M. KELLY, J.

FEBRUARY , 1998

Presently before the Court is Defendant Myrtis A. Gordon's ("Gordon") Motion for Summary Judgment in the above-captioned matter. Plaintiff, Dever McClary ("McClary"), filed a civil action on January 15th, 1997, against Defendants City of Philadelphia, Camp Hill Prison, and Myrtis A. Gordon. Plaintiff's complaint against Camp Hill Prison and City of Philadelphia were subsequently dismissed on June 17th, 1997 and June 30th, 1997 respectively. On October 17th, 1997, Gordon filed a motion to dismiss Plaintiff's complaint under Fed. R. Civ. P. 12(b)(6). Plaintiff failed to respond to Gordon's motion by November 5th, 1997 as ordered. On November 24th, 1997, the Court converted Gordon's motion to a motion for summary judgment under Fed. R. Civ. P. 12(b). Gordon filed a supplemental motion on December 5th 1997. The November 24th Order also gave Plaintiff 10 days from Gordon's filing of the supplemental motion to respond. Plaintiff did not respond within that time.

### **BACKGROUND**

Gordon is the Court Service Manager for the Clerk of Quarter Sessions of Philadelphia County. McClary served part of a sentence at Camp Hill prison from November 22nd, 1995 to December 8th, 1995, which he alleges exceeded his sentence because of credit for time he previously served. McClary alleges that Gordon failed to notify Camp Hill Prison of an order of the Honorable Eugene E.J. Maier, granting McClary credit for time served. Gordon has submitted an affidavit and a letter as evidence that, on April 18th, 1994, she sent a letter to the Superintendent of State Correctional Institutions, indicating that McClary be credited for time served. See Def. Aff. Dec. 5, 1997 and Def. Ex. C.

### **DISCUSSION**

In her motion for summary judgment, Gordon argues that McClary's claim should be dismissed because (1) she is not responsible for McClary's alleged injuries; (2) even if Gordon's actions harmed McClary, Defendant is cloaked with judicial immunity; (3) Gordon is also entitled to immunity from this suit under the Political Subdivision Tort Claims Act, 42 Pa. Cons. Stat. Ann. § 8541 (1982).

Under Fed. R. Civ. P. 56(c), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment

as a matter of law." This court is required, in resolving a motion for summary judgment pursuant to Rule 56, to determine whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In making this determination, the evidence of the nonmoving party is to be believed, and the district court must draw all reasonable inferences in the nonmovant's favor. See id. at 255. Furthermore, while the movant bears the initial responsibility of informing the court of the basis for its motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of material fact, Rule 56(c) requires the entry of summary judgment "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

Gordon argues that she is not responsible for Plaintiff's alleged injuries. In support of her motion for summary judgment, Gordon submitted an affidavit stating that she sent a letter to the Superintendent of the State Correctional Institution on April 18, 1994, regarding McClary's credit for time served. Gordon also submitted a photocopy of the letter. McClary did not file a response to Gordon's motion, although the Court gave him two opportunities to do so. Thus, there are no facts before the Court to contest the evidence presented by

Gordon.

Based upon the facts presented to the Court and the lack of evidence presented by McClary, I will grant Defendant's motion for summary judgment.<sup>1</sup>

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1. Since I grant Defendant's motion for summary judgment based on the lack of disputable facts in this case, I need not address her immunity defenses.

