

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

FRANCIS CHARLES THORPE, JR. : CIVIL ACTION  
v. :  
JOSEPH GRILLO, et al. : NO. 97-7571

**MEMORANDUM AND ORDER**

HUTTON, J.

February 24, 1998

Presently before this Court is the Defendants' Motion to Dismiss, or to Transfer Plaintiff's Complaint (Docket No. 9), and the Plaintiff's response thereto.

**I. BACKGROUND**

Plaintiff filed the instant suit on December 15, 1997. He has named the following people as defendants in their individual capacities: 1) Joseph Grillo, a corrections officer at the State Correctional Institution at Waymart ("Waymart"); 2) Bernard Chipego, also a corrections officer at Waymart; 3) William Curran, a corrections officer at the State Correctional Institution at Cresson ("Cresson"); 4) William Mishler, also a corrections officers at Cresson; 5) Timothy W. Smith, another corrections officers at Cresson; and 6) John Doe, a corrections officer at the State Correctional Institution at Graterford ("Graterford"), individually and as other officers involved in

these events for which plaintiff is yet unable to ascertain identities.

The complaint alleges that these officers have continually tried to force the plaintiff to admit that he is guilty of the crime for which he was convicted. Because the plaintiff has refused to confess, the plaintiff alleges that the officers have wrongfully denied the plaintiff access to certain prison programs and certain jobs. These programs and jobs, the plaintiff claims, are necessary for him to be considered for parole. Presently before the court is the defendants' Motion to Dismiss, or to Transfer Plaintiff's Complaint.

## **II. DISCUSSION**

Venue in this action is governed by 28 U.S.C. § 1391(b) (1993 & Supp. 1997), which states:

A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

"Because the residence[s] of the unnamed . . . officer[s are] not known, 28 U.S.C. § 1391(b)(1) does not apply to this action."

Fidtler v. Doe, No.CIV.A.93-5913, 1994 WL 12116, at \* 1 n. 2  
(E.D. Pa. Jan. 13, 1994).

Plaintiff argues that venue is proper under 28 U.S.C. § 1391(b)(2) because the complaint contains allegations of events that occurred at Graterford. However, an "examination of the entirety of the complaint shows that a 'substantial' part of the events alleged in the complaint did not occur in this district; venue is therefore improper under § 1391(b)(2)." Fidtler, 1994 WL 12116, at \* 1. As United States District Judge Norma L. Shapiro recently stated:

Although plaintiff alleges an initial wrongful act at Graterford, the requested relief demonstrates that the major portion of this action asserts continuing wrongful action at [Waymart]. Plaintiff requests injunctive relief prohibiting [future deprivations at Waymart] . . . . While the complaint alleges that [the wrongful conduct began] at Graterford, this single event is not "substantial" in relation to the alleged ongoing deprivation . . . in the Middle District of Pennsylvania. Venue is therefore properly situated in the Middle District of Pennsylvania under § 1391(b)(2).

Id.

Finally, section 1391(b)(3) does not apply. See Tirado v. Stepanik, No.CIV.A.95-1103, 1996 WL 337141, at \* 2 (E.D. Pa. May 27, 1997) (where court finds venue properly lies in a district under section 1391(b)(1) or (2), plaintiff may not bring action in a different district under section 1391(b)(3)); Fidtler, 1994 WL 12116, at \* 1. Thus, the plaintiff may not

bring this action in this venue under section 1391(b)(3), and this action is therefore transferred to the Middle District of Pennsylvania.

An appropriate Order follows.

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

FRANCIS CHARLES THORPE, JR. : CIVIL ACTION  
v. :  
JOSEPH GRILLO, et al. : NO. 97-7571

O R D E R

AND NOW, this 24th day February, 1998, upon consideration of the Defendants' Motion to Dismiss, or to Transfer Plaintiff's Complaint (Docket No. 9), and the Plaintiff's response thereto, IT IS HEREBY ORDERED that the Defendants' Motion is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk of the Court shall transfer the instant matter to the Middle District of Pennsylvania pursuant to 28 U.S.C. § 1406(a).

BY THE COURT:

---

HERBERT J. HUTTON, J.