

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

DANIEL DeMARCO : CIVIL ACTION  
 :  
 v. :  
 :  
 DEPARTMENT OF CORRECTIONS, et al. : NO. 99-2310

**MEMORANDUM AND ORDER**

HUTTON, J.

November 2, 1999

Presently before the Court is Defendant's motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. For the following reasons, the Court dismisses Plaintiff's complaint in part.

**I. BACKGROUND**

The facts as alleged in Plaintiff's complaint state that Plaintiff was employed by the Department of Corrections for the Commonwealth of Pennsylvania as a Plant Mechanic at the State Correctional Institute at Graterford. This institution was under the supervision and control of Superintendent Donald T. Vaughn. On May 7, 1997 Plaintiff was attending his normal work duties when he was told by an administrative employee that a mock hostage situation was commencing. Later that afternoon, Plaintiff was informed that he could leave his normal duties provided that he participate in said hostage simulation. Plaintiff was instructed to lie down on the outside landing of the Powerhouse and was

loosely bound with wire. Plaintiff was under the belief that he would simply be escorted away from the building by guards. At approximately 3:00 p.m., officers John Doe I, II, III, and IV under the direction of Lt. Fegan and Sgt. Earhart arrived to escort Plaintiff away from the building. At such time, Plaintiff alleges that Defendants used excessive force in his removal thereby causing serious injury. Plaintiff further states that despite his protests and statements that he was an employee and that he was injured, Defendants' forced him into handcuffs, physically searched him, and pulled him to his feet by placing night-sticks under each arm. Plaintiff now alleges that as a result of said events, he was seriously injured and will continue to suffer physical pain and mental suffering. As such, Plaintiff brings this instant action and Defendants move to dismiss the matter for failing to state a claim as pled by Plaintiff's complaint.

## **II. STANDARD OF REVIEW**

Federal Rule of Civil Procedure 8(a) requires that a plaintiff's complaint set forth "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Accordingly, the plaintiff does not have to "set out in detail the facts upon which he bases his claim." Conley v. Gibson, 355 U.S. 41, 47 (1957). In other words, the plaintiff need only to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id.

The Eleventh Amendment is a jurisdictional bar that deprives courts of jurisdiction over the subject matter. See Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 98-100 (1984). Therefore, the Court must consider all Defendants' Eleventh Amendment objections pursuant to Federal Rule of Civil Procedure 12(b)(1). See Blanciak v. Allegheny Ludlum Corp., 77 F.3d 690, 694 n.2 (3d Cir. 1996).

When considering a motion to dismiss a complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6),<sup>1</sup> this Court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990). The Court will only dismiss the complaint if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

### **III. DISCUSSION**

#### **A. Official Capacity Section 1983 and 1985(3) Claims**

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<sup>1</sup> Rule 12(b)(6) states as follows:

Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted . . . .

Fed. R. Civ. P. 12(b)(6).

Count I of Plaintiff's complaint alleges civil rights violations under the Fourth Amendment, Eighth Amendment, and Fourteenth Amendment pursuant to Title 42 Section 1983 of the United States Code. Further, Count II of Plaintiff's complaint alleges violations of Title 42 Section 1985(3) of the United States Code. Before the Court can begin to address the merits of Plaintiff's allegations, it must first consider Defendants' affirmative defense that the Eleventh Amendment affords immunity to the State with respect to such claims. Although the Defendants motion the Court to resolve these matters under Federal Rule of Civil Procedure 12(b)(6), the more appropriate consideration is under Federal Rule of Civil Procedure 12(b)(1).

As an agency of the Commonwealth of Pennsylvania, a suit against the Department of Corrections is, in essence, a suit against the Commonwealth. See Hunter v. Commonwealth of Pennsylvania Dep't of Corrections, 42 F. Supp. 2d 542, 547 (E.D. Pa. 1999). The Eleventh Amendment prohibits suits against the State both when it is named as a party and when it is a party in fact. See Chladek v. Commonwealth of Pennsylvania, No. CIV.A.97-0355, 1998 WL 54345, at \*5 (E.D. Pa. Jan. 29, 1998). Further, "[a] suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office . . . . As such, it is no different from a suit against the state itself." See Chladek, 1998 WL 54345, at \*5

(citing Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989)). The Supreme Court has held that a state may not be sued under Section 1983 for either damages or injunctive relief. See Chladek, 1998 WL 54345, at \*4 (citing Will, 491 U.S. at 58 (1989)).

Plaintiff in its response to Defendants' motion does not argue that the Department of Corrections is not entitled to immunity under the Eleventh Amendment. (See Pl.'s Resp. to Def.'s Mot. to Dismiss at 2). Rather, Plaintiff argues that he is seeking prospective relief and that such relief falls outside Eleventh Amendment protection. See Will, 491 U.S. at 71 n.10 (stating that a state official in his or her official capacity, when sued for injunctive relief, would be a person under § 1983 because "official-capacity actions for prospective relief are not treated as actions against the State"); see also Ex parte Young, 209 U.S. 123, 166-68 (1908).

Plaintiff alleges that because he requests that the "Department of Corrections . . . reinstate all lost compensation and benefits . . ." that the requisite prospective relief is sought and that the Eleventh Amendment is inapplicable to Plaintiff's claim. (See Pl.'s Compl. ¶ 35(7); see also Pl.'s Resp. to Def.'s Mot. to Dismiss at 2). However, Plaintiff's argument fails for two reasons.

First, Plaintiff's complaint fails to direct its reinstatement claim towards any state official, rather the claim is wholly

directed at the state agency. (See Pl.'s Compl. ¶ 35(7)). Thus, Plaintiff's argument by its very terms is outside the situation addressed in Will, which applied to state officials in their official capacity. See Will, 491 U.S. at 71 n.10.

Second, even assuming that the Department of Corrections as an agency is subject to the exception from Eleventh Amendment protection, the Plaintiff's argument still fails. The Plaintiff, without citing any support, asserts that attempting to compel reinstatement of benefits qualifies as injunctive or prospective relief which is not barred by the Eleventh Amendment. The Third Circuit has, however, had occasion to address this very issue in the context of a claim for "front pay." See Blanciak v. Allegheny Ludlum Corp., 77 F.3d 690 (3d Cir. 1996).

In Blanciak the Court determined that simply characterizing a claim as injunctive or prospective relief is not enough, the court "must look to the substance rather than the form of the relief requested to determine whether appellants' claims are barred by the Eleventh Amendment." 77 F.3d at 698. The Court concluded that when allegations target past conduct, and are not intended to halt a present, continuing violation of federal law, such claims are neither prospective nor equitable. See id. As such, the Court concluded that claims which are not designed to bring an end to present, continuing violations of federal law are barred by the Eleventh Amendment. See id.

A review of Plaintiff's complaint and his response to Defendants' motion to dismiss in no way supports a finding by the Court that Plaintiff is trying to halt an ongoing violation of federal law. Rather, Plaintiff's request for reinstatement of lost compensation and benefits appears to be wholly motivated by compensatory and not equitable desires. Plaintiff's complaint never alleges that there are ongoing practices at the Department of Corrections that violate federal law, nor does Plaintiff ever allege that he is currently suffering as a result of ongoing violations of federal law. As Plaintiff's complaint alleges no basis for injunctive or prospective relief, Eleventh Amendment immunity wholly applies to all claims against the Department of Corrections and its officers in their official capacity.

Further, with respect to Count II of Plaintiff's complaint, the identical analysis applies. See Germain v. Pennsylvania Liquor Control Board, No. CIV.A.98-5437, 1999 WL 79500, at \*4 (E.D. Pa. Jan. 15, 1999). As such, Plaintiff's Section 1985(3) claim is also barred by the Eleventh Amendment.

Accordingly, Count I and Count II of Plaintiff's complaint must be dismissed for lack of jurisdiction to the extent that Plaintiff alleges Section 1983 and Section 1985(3) claims against the Department of Corrections, Donald T. Vaughn in his official capacity, and the remaining defendants each in their official capacities.

**B. Plaintiff's Pendant State Law Claims**

The remaining counts of Plaintiff's complaint each assert some form of state law claim. Count III of the complaint indirectly alleges negligence in the provision of a safe work environment. Count IV of Plaintiff's complaint also alleges a failure to provide a safe work environment, however, a specific cause of action alludes identification. Count V of Plaintiff's complaint alleges injury resulting from emotional distress.

Pennsylvania's governmental immunity statute, codified at 1 Pa. Cons. Stat. Ann. § 2310, "provides that officers acting within their official capacities are generally immune from state law tort claims."<sup>2</sup> See Chladek, 1998 WL 54345, at \*6; see also 1 Pa. Cons. Stat. Ann. § 2310 (West 1999). As such, when no exception applies, officers and employees enjoy the protection of the governmental immunity statute when "acting within the scope of their duties," however, this protection does not apply when state officials and employees are acting outside that scope. See Chladek, 1998 WL 54345, at \*6. Thus, the only question to be considered is whether

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<sup>2</sup> There are nine enumerated exceptions to Section 2310. The exceptions are for negligent acts involving:

- (1) vehicle liability; (2) medical-professional liability; (3) care, custody, or control of personal property; (4) Commonwealth owned real property; (5) potholes and other dangerous conditions; (6) care, custody and control of animals; (7) liquor store sales; (8) National Guard activities; and (9) toxoids and vaccines.

See 42 Pa. Cons. Stat. Ann. § 8522(b) (West Supp. 1998).

Plaintiff alleges that Defendants acted outside the scope of their employment.

In Chladek this Court had occasion to consider the applicability of state law claims to individual defendants when the plaintiff's complaint stated that "all acts performed . . . by Defendants were performed . . . as agents, servants, workmen, and/or employees . . . ." 1998 WL 54345, at \*6. This Court concluded that such pleading did not exclude plaintiff from claiming that the defendants' actions were outside the scope of their duties. 1998 WL 54345, at \*6. However, this instant matter is quite different from the facts as presented in Chladek. Plaintiff's complaint unequivocally states that all of the defendants "were at all times mentioned in this Complaint acting within the purpose, course and scope of that agency or employment and with consent, permission and ratification of the remaining defendants." (See Pl.'s Compl. ¶ 9 (emphasis added)). This instant language goes well beyond simply evidencing that Defendants were employees of the Department of Corrections, such language goes to the very core of the determination surrounding the scope of Defendants' conduct as officers of the Department of Corrections. See, e.g., Chladek, 1998 WL 54345, at \*7.

As Plaintiff clearly states that the actions of the Defendants were not outside the scope of their employment, there is no

question that Defendants are immune from all state tort law claims. Consequently, Counts III, IV, and V of Plaintiff's complaint cannot state a claim as a matter of law. As such, these claims must be dismissed with respect to all Defendants because it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.

**C. Personal Capacity Section 1983 and Section 1985(3) Claims**

The Court has thus far dismissed Plaintiff's claims with respect to all Section 1983 and Section 1985(3) claims as they apply to all Defendants in their official capacities, in addition to all state law tort claims against all Defendants. Thus, the remaining claims to be considered are the Section 1983 and Section 1985(3) claims against Donald T. Vaughn, Lieutenant "R. Fegan," Sergeant "Earhart," and Correctional Officers John Doe I, II, III, IV, each in their personal capacity.

The distinction between official-capacity and personal-capacity is by all accounts, a difficult one. See Kentucky v. Graham, 473 U.S. 159, 165 (1985) (stating that "this distinction apparently continues to confuse lawyers and confound lower courts").

[T]he distinction between official-capacity suits and personal-capacity suits is more than "a mere pleading device. . . ." State officers sued for damages in their official capacity are not "persons" for purposes of the suit because they assume the identity of the government that employs them.

. . . By contrast, officers sued in their personal capacity come to court as individuals. A government official in the role of personal-capacity defendant thus fits comfortably within the statutory term "person."

Hafer v. Melo, 502 U.S. 21, 27 (1991); see also Chladek, 1998 WL 54345, at \*5. "On the merits, to establish personal liability in a § 1983 action, it is enough to show the official, acting under the color of state law, caused the deprivation of a federal right." Graham, 473 U.S. at 166.

Further, acting under color of state law requires "that the defendant in a § 1983 action have exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of the state law.'" Groman v. Township of Manalapan, 47 F.3d 628, 638 (3d Cir. 1995).

As Plaintiff's complaint alleges conduct which occurred entirely as a result of Defendants' authority and not because of actions unrelated to their employment, the Plaintiff has sufficiently pled facts necessary to maintain a claim against Defendants in their personal capacities. As such, the Court must consider the merits of Plaintiff's Section 1983 and 1985(3) claims against the remaining Defendants.

#### **(1) Individual Capacity 1983 Claim**

A prima facie case under § 1983 has two essential elements:  
(1) that the conduct complained of was committed by a person acting

under color of state law; and (2) that this conduct deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States. See Chladek, 1998 WL 54345, at \*3. As the Court has already determined that the "color of state law" requirement has been satisfied, the remaining issue centers around the finding of potential constitutional violations.

Count I of Plaintiff's complaint alleges violations of the Plaintiff's Fourth, Eighth, and Fourteenth Amendment rights. In the context of the Fourth Amendment, the Supreme Court has stated that "when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." Terry v. Ohio, 392 U.S. 1, 19 n.16 (1968). While Plaintiff's participation in the mock hostage situation was initially voluntary, the Complaint also sets forth facts that evidence Plaintiff was further restrained beyond his consent. (See Pl.'s Compl. ¶¶ 13-14). While this Court is unwilling to hold that the Fourth Amendment applies to mock hostage situations, given that this is a 12(b)(6) motion and that the Court must take everything in Plaintiff's complaint as true, including all reasonable inferences, it cannot be said as a matter of law that Plaintiff was not actually being detained and subject to an unreasonable search and seizure that was beyond his consent.

Accordingly, the Court will not dismiss the Plaintiff's Fourth Amendment claim.

With respect to Plaintiff's Eighth Amendment claim, the Supreme Court has stated that "the protection afforded by the Eighth Amendment is limited. After incarceration, only the 'unnecessary and wanton infliction of pain,' constitutes cruel and unusual punishment forbidden by the Eighth Amendment." Ingraham v. Wright, 430 U.S. 651, 669-70 (1977). As Plaintiff was not convicted of any crime by the State and was not subject to incarceration, there can be no cognizable Eighth Amendment claim.

Finally, with respect to Plaintiff's Fourteenth Amendment claim, the Third Circuit has held that "[t]o bring a successful claim under 42 U.S.C. § 1983 for denial of equal protection, plaintiff must prove the existence of purposeful discrimination." Andrews v. City of Philadelphia, 895 F.2d 1469 (3d Cir. 1990). In this matter, Plaintiff's complaint is completely devoid of any claim or inference of discrimination. Accepting the facts presented in the Plaintiff's complaint as true, it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. As such, the Court finds no cognizable Fourteenth Amendment claim with respect to Equal Protection.

Plaintiff's complaint, however, also alleges a violation of his Due Process rights under the Fourteenth Amendment. Although not specified, such a claim appears to be in the nature of substantive due process. As such, the Court reads Plaintiff's complaint as stating that Plaintiff was deprived the right to bodily integrity. See Albright v. Oliver, 510 U.S. 266 (1994) (plurality) ("The protections of substantive due process have for the most part been accorded to matters relating to marriage, family, procreation, and the right to bodily integrity."); see also Miller v. Webber, No. CIV.A.95-5832, 1997 WL 299447, at \*3 (E.D. Pa. May 30, 1997) (stating that individuals have a Fourteenth Amendment liberty interest in their physical security and bodily integrity). Accordingly, it can not be said as a matter of law that Plaintiff's complaint fails to state a substantive due process violation.

As a result of the preceding analysis, the Court finds that Plaintiff's complaint fails to state an actionable Section 1983 claim with respect to the Eighth and Fourteenth Amendment as it relates to Equal Protection. However, Plaintiff's complaint sufficiently raises a potential Fourth Amendment and Fourteenth Amendment substantive due process violation pursuant to Section 1983.

**(2) Individual Capacity 1985(3) Claim**

To sustain a Section 1985(3) claim, the plaintiff must allege "(1) a conspiracy; (2) motivated by a racial or class based discriminatory animus designed to deprive, directly or indirectly, any person, or class of persons . . . [of] the equal protection of laws; (3) an act in furtherance of the conspiracy; and (4) an injury to person or property or the deprivation of any right or privilege of a citizen of the United States." Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 253-54 (3d Cir. 1999) (quoting Lake v. Arnold, 112 F.3d 682, 685 (3d Cir. 1997); see also Boucher v. University of Pittsburgh, 882 F.2d 74, 79 (1989) (finding that a 1985(3) claim must have a discriminatory basis and is not, without more, applicable to substantive due process); see also Griffin v. Breckenridge, 403 U.S. 88, 102-103 (1971).

As previously discussed, Plaintiff's complaint is completely devoid of any allegation of racial or class based animus. See Ridgewood Bd. of Educ., 172 F.3d at 254 (holding that the district court's granting of summary judgment against plaintiff was proper because there was no evidence of racial or class based animus). As such, Plaintiff's Section 1985(3) claim must be dismissed against all Defendants because no relief could be granted under any set of facts that could be proved consistent with the allegations.

### **(3) Individual Section 1983 Claim Against Donald T. Vaughn**

A supervisor is liable for a constitutional violation committed by a subordinate only when he participated in violating their rights, or that he directed others to violate them, or that he, as the person in charge . . . , had knowledge of and acquiesced in his subordinates' violations." See Baker v. Monroe Township, 50 F.3d 1186, 1190-91 & n.3 (3d Cir. 1995). "Supervisory liability cannot be based solely upon the doctrine of respondeat superior,

but there must be some affirmative conduct by the supervisor that played a role in the [violation]." See Andrews, 895 F.2d at 1478.

A review of Plaintiff's complaint does in fact fail to allege that Defendant Vaughn in any way participated in the alleged violations, or directed, encouraged, condoned, or knowingly acquiesced to their occurrence. The complaint simply alleges that Defendant Vaghn, as Superintendent, was "responsible to train, supervise and control the individual officers named herein." (See Pl.'s Compl. ¶ 3). Such an allegation is nothing more than a basis for a respondeat superior claim and clearly fails to sufficiently link Defendant Vaughn to any alleged constitutional violation. As such, Plaintiff's Section 1983 claim must be dismissed to the extent it implicates Defendant Donald T. Vaughn.

An appropriate Order follows.

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O R D E R

AND NOW this 2<sup>nd</sup> day of November, 1999, upon consideration of the Defendants' Motions to Dismiss the Plaintiff's Complaint (Docket No. 3) and the Plaintiff's Response thereto, IT IS HEREBY ORDERED that:

(1) Defendants' Motion to Dismiss Count I and Count II of Plaintiff's complaint is **GRANTED** in favor of all Defendants in their official capacity pursuant to Federal Rule of Civil Procedure 12(b)(1);

(2) Defendants' Motion to Dismiss Count III, IV and V of Plaintiff's complaint is **GRANTED** in favor of all Defendants pursuant to Federal Rule of Civil Procedure 12(b)(6);

(3) Defendants' Motion to Dismiss the personal capacity claims under Count I of Plaintiff's complaint is **DENIED IN PART**. Count I of Plaintiff's complaint is **DISMISSED** to the extent that Count I alleges Section 1983 claims based upon the Eighth Amendment, Fourteenth Amendment under Equal Protection, and against Defendant Donald T. Vaughn, pursuant to Federal Rule of Civil Procedure 12(b)(6);



(4) Defendants' Motion to Dismiss the personal capacity claims under Count II of Plaintiff's complaint alleging Section 1985(3) violations is **GRANTED**, pursuant to Federal Rule of Civil Procedure 12(b)(6); and

(5) Defendants shall answer all remaining claims in Plaintiff's complaint within twenty (20) days of the date of this Order.

BY THE COURT:

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HERBERT J. HUTTON, J.