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

PATRICK BETHUNE,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	NO. 04-186
WARDEN, BERKS COUNTY PRISON, et al.,	:	
	:	
Defendants.	:	
	:	

MEMORANDUM

Giles, C.J. January 5, 2005

I. Introduction

Patrick Bethune brought this civil rights action pursuant to 42 U.S.C. § 1983 for alleged violations of his Fourteenth Amendment rights. The defendants, the Warden, Assistant Warden and Deputy Warden of the Berks County Prison, have moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6). For the reasons stated below, the defendants' motion is granted and plaintiff's complaint is dismissed.

II. Factual Background

Before being deported to Guyana on March 11, 2004, Plaintiff was an immigration detainee housed at the Berks County Prison in Leesport, Pennsylvania. While at the prison the plaintiff was attacked by another detainee causing a fractured facial bone, facial swelling and related pain. (Pl.'s Compl. at 3.) Plaintiff alleges that the attack was made possible due to "procedures set forth by the defendants that allow Tier Officers to sit inside the control bubble

and not make security checks to insure that detainees are safe from any form of abuse . . . ." (Pl.'s Compl. at 3.) Plaintiff argues that these actions (1) violated his "right to equal protection," (2) exhibit a failure by defendants to "provide adequate security," and (3) were a violation of prison policies "set forth in the written procedural handbook." (Pl.'s Compl. at 3-4.) In short, plaintiff appears to attempt to assert equal protection and failure to protect claims under the Fourteenth Amendment.

Plaintiff sued the "Warden," "Assistant Warden," and "Deputy Warden" of the Berks County Prison, but did not specify whether he was suing these defendants in their individual or official capacities. Defendants have moved to dismiss the complaint on grounds that plaintiff has (1) failed to minimally plead the requirements of 42 U.S.C. § 1983 and (2) has failed to state a cause of action for supervisory liability. (Defs.' Mot. to Dismiss ¶ 12-13.)

III. Pleading Standards

Dismissal of a complaint pursuant to Fed. R. Civ. P. 12(b)(6) is proper "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). The court must accept all of plaintiff's allegations as true and draw all reasonable inferences therefrom. See Jenkins v. McKeithen, 395 U.S. 411, 421 (1969) ("the material allegations of complaint are taken as admitted"); Holder v. City of Allentown, 987 F.2d 188, 194 (3d Cir. 1993) ("[a]t all times in reviewing a motion to dismiss we must 'accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom.'" (quoting Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990))). Special attention must also be given to a pro se litigant in determining the sufficiency of the party's allegations under Fed. R. Civ. P. 12(b)(6).

See Zilich v. Lucht, 981 F.2d 694, 694 (3d Cir. 1992) (noting that when a plaintiff proceeds pro se the court has a special obligation to construe the complaint liberally).

In any § 1983 action, it must be established that the conduct complained of was (1) committed by a person acting under color of state law, and (2) that such conduct deprived the plaintiff of a right or privilege secured by the Constitution or laws of the United States. Parratt v. Taylor, 451 U.S. 527, 535 (1981); Cohen v. City of Philadelphia, 736 F.2d 81, 83 (3d Cir. 1984). Defendants do not dispute that plaintiff has satisfied the first element for a § 1983 action. However, defendants contend that the plaintiff has failed to state a claim for the deprivation of his federal rights.

In light of the "dual policy concerns of protecting state officials from a deluge of frivolous claims and providing state officials with sufficient notice of the claims" the third circuit has imposed a "heightened specificity requirement" for § 1983 claims. Colburn v. Upper Darby Township, 838 F.2d 663, 666 (3d Cir. 1988). Imposed is the requirement that "the complaint contain a modicum of factual specificity, identifying the particular conduct of defendants that is alleged to have harmed the plaintiff[]." Id. (quoting Ross v. Meagan, 638 F.2d 646, 650 (3d Cir. 1981)). Plaintiffs will have complied with this standard if they have alleged "the specific conduct violating the plaintiff's rights, the time and place of that conduct, and the identity of the responsible officials." Id.

IV. Discussion

A. Supervisory Liability

It is well established that a defendant sued in his individual capacity "in a civil rights action must have personal involvement in the alleged wrongs" because "liability cannot be predicated solely on the operation of respondeat superior." Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988). Personal involvement can be shown either "through allegations of personal direction or of actual knowledge and acquiescence." Id. These allegations, however, "must be made with appropriate particularity." Id. Supervisory liability will also attach if plaintiff identifies "a specific supervisory practice or procedure" that the defendants failed to employ which created an unreasonable risk of harm to plaintiff, for which the defendants were aware and indifferent. Sample v. Diecks, 885 F.2d 1099, 1118 (3d Cir. 1989). Such indifference can be shown, for example, by either demonstrating that the alleged harm has occurred on numerous occasions or that the specific acts or omissions of the supervisor evidence a relationship between the identified deficiency and the plaintiff's injury. Id.; Brown v. Muhlenberg Township, 269 F.3d 205, 216 (3d Cir. 2001).

Plaintiff alleges that the practice of allowing "Tier Officers to sit inside the control bubble and not make security checks" caused him physical harm. The plaintiff has not alleged any direct or personal involvement of the defendants in this practice. To the extent liability could attach for defendants under these circumstances, it would be for their failure to employ internal procedures which are designed to prevent this practice or custom from occurring. Unfortunately, however, the plaintiff has failed to specify how the defendants' actions or inactions caused his injury. First, the plaintiff has not identified specific prison guidelines which would have prevented his harm. Second, the plaintiff has not (1) specified the relationship

between the practice of Tier Officers sitting inside the control bubble and the potential violence toward detainees, (2) provided sufficient allegations as to the defendants' awareness of such a relationship, or (3) provided any showing of a pattern of injuries as a result of this practice. Under these circumstances, the plaintiff has failed to establish the necessary elements for supervisory liability given the heightened pleading requirements for § 1983 claims and the specificity requirements for supervisory liability claims.

B. Municipal or Official Liability

It is more likely that the plaintiff intends to sue the defendants in their official capacity, given that he named them by their official titles in the complaint.

Suits against state officers in their official capacity are treated as suits against the State. Hafer v. Melo, 502 U.S. 21, 25 (1991); Estate of Bailey v. County of York, 768 F.2d 503, 508 (1985). The court has long held that a government entity may not be liable under § 1983 on a respondeat superior theory. Monell v. Dept. of Soc. Serv., 436 U.S. 658, 691 (1978). Municipalities may only be held liable under § 1983 for acts which the municipality "has officially sanctioned or ordered." Pembaur v. City of Cincinnati, 475 U.S. 469, 480 (1986). In other words, the government entity must be the "moving force" behind the alleged deprivation. Kentucky v. Graham, 473 U.S. 159, 166 (1985).

A municipality is subject to § 1983 liability "when execution of a government's policy or custom . . . inflicts the injury" which is the subject of the plaintiff's action. Monell, 436 U.S. at 694. The mere description of an act as a "policy" or "custom" is insufficient to meet the requirements for a § 1983 claim. Estate of Bailey, 768 F.2d at 506. Rather, a government policy or custom can be established in two ways. First, a government policy generally "refers to formal rules or understandings—often but not always committed to writing—that are intended to, and

do, establish fixed plans of action to be followed under similar circumstances consistently and over time." Pembaur, 475 U.S. at 480-81. Examples include an "official proclamation, policy or edict" of an official decisionmaker or "a policy statement, ordinance, regulation, or decision officially adopted and promulgated" by the government's officers. Andrews, 895 F.2d at 1480; Monell, 436 U.S. at 690. Second, a government custom for § 1983 purposes are those practices which are so permanent and well-settled as to have the force law. Bd. of County Comm'r v. Brown, 520 U.S. 397, 404 (1997); Andrews, 895 F.2d at 1480; Brown, 269 F.3d at 215. In either case, in order to find liability under § 1983 the plaintiff must establish a "direct causal link between a municipal policy or custom and the alleged constitutional deprivation." City of Canton v. Harris, 489 U.S. 378, 385 (1989).

In order to subject a municipality to liability under § 1983 the plaintiff must also demonstrate that the alleged unconstitutional policy or custom was made by the government's "lawmakers or by those whose edicts or acts may fairly be said to represent official policy." Monell, 436 U.S. at 694. In other words, "only those municipal officials who have 'final policymaking authority' may by their actions subject the government to § 1983 liability." City of St. Louis v. Praprotnik, 485 U.S. 112, 123 (1988). Such final decisionmaking only attaches where "a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." Pembaur, 475 U.S. at 483. In determining the identity of the final "policymaker" courts look to state law. Praprotnik, 485 U.S. at 123. It is only those officials which have "final, unreviewable discretion to make a decision or take an action" which classify as "policymakers" for § 1983 purposes. Andrews, 895 F.2d at 1481.

Finally, once the appropriate "policymaker" is identified, the plaintiff must also establish

that the policymaker, through his "deliberate conduct" caused the deprivation for which the plaintiff seeks relief. Bd. of County Comm'r, 520 U.S. at 404 (emphasis in original). "That is, a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights." Id.

In the present action, the plaintiff has failed to specifically identify an official policy or custom which the defendants have violated. Although the plaintiff alludes to "policies" set forth in the prison's procedural handbook, there is no evidence that (1) these procedures represent the official policy of the municipality, (2) there exists a direct causal link between these policies and the harm suffered by the plaintiff, (3) the defendants represent the final policymakers for the alleged practices or procedures, or (4) the defendants either knowingly violated, or acquiesced in known violations, of the plaintiff's rights. Therefore, the plaintiff has failed to establish § 1983 liability against the defendants in their official capacity.

C. Equal Protection

Plaintiff alleges that the practice of allowing Tier Officers to sit inside the control bubble and not make security checks is a violation of his right to equal protection. In order to state a claim for equal protection, the plaintiff must establish that "persons similarly situated have not been prosecuted" and "that the decisions were made on the basis of an unjustifiable standard." Gov't of the Virgin Islands v. Harrigan, 791 F.2d 34, 36 (1986). The plaintiff has not alleged either that he was selectively treated or that his treatment was motivated by discrimination. Therefore, the plaintiff has failed to state a claim for a violation of his Fourteenth Amendment right to equal protection.

D. Failure to Protect

Prison officials have a duty to take reasonable measures to protect prisoners from attacks by other inmates. Farmer v. Brennan, 511 U.S. 825, 833 (1994). In order to state a claim against a prison official for failure to protect, the plaintiff must establish (1) "that he is incarcerated under conditions posing a substantial risk of serious harm" and (2) that the prison official was "deliberately indifferent" to the inmate's health or safety. Id. at 834. The prison official cannot be found liable "unless the official knows of and disregards an excessive risk to inmate health or safety" such that the official "must both be aware of the facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Id. at 837. This subjective requirement is satisfied, for example, where the plaintiff "presents evidence showing that a substantial risk of inmate attacks was longstanding, pervasive, well-documented, or expressly noted by prison officials in the past, and the circumstances suggest that the defendant-official being sued had been exposed to information concerning the risk and thus 'must have known' about it . . . ." Id. at 842.

Plaintiff has not provided sufficient evidence to suggest that the named defendants were aware, or should have been on notice, that he and other detainees were substantially at risk from attack by other inmates. Therefore, the plaintiff has failed to state a claim against the defendants for failure to protect.

V. Conclusion

For the foregoing reasons, Defendants' Motion to Dismiss is granted. An appropriate Order follows.

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v.	:	
	:	NO. 04-186
WARDEN, BERKS COUNTY	:	
PRISON, et al.,	:	
	:	
Defendants.	:	
	:	

ORDER

AND NOW, this 5th day of January, 2005, upon consideration of Defendants' Motion to Dismiss Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(6), it is hereby ORDERED that Defendants' Motion is GRANTED.

BY THE COURT:

S/ James T. Giles

C.J.

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