

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

MARTA RODRIGUEZ : CIVIL ACTION
: :
v. : :
: :
CITY OF PHILADELPHIA : :
PHILADELPHIA PRISON SYSTEM : :
LT. JOHN DELANY, and : :
C.O. WINFRED ARNOLD : NO. 98-330

O R D E R - M E M O R A N D U M

AND NOW, this 5th day of May, 1998, the motion to dismiss of defendants City of Philadelphia, Philadelphia Prison System, Lt. John Delany, and C.O. Winfred Arnold is granted in part and denied in part, Fed. R. Civ. P. 12(b)(6),¹ as follows:

1. Counts I and II - Granted as to the individual defendants - in that they can not be held liable under Title VII, 42 U.S.C. § 2000e et seq. (1994). See Sheridan v. E.I. DuPont de Nemours and Co., 100 F.3d 1061, 1078 (3d Cir. 1996), cert. denied, ___ U.S. ___, 117 S. Ct. 2532, 138 L. Ed.2d 1031 (1997) (no individual liability under Title VII). Plaintiff accedes to this result. Plaintiff's response, at 7.

2. All Counts - Granted as to defendant Philadelphia Prison System - in that it is not a suable entity separate and

¹ Under Rule 12(b)(6), the allegations of the complaint are accepted as true, all reasonable inferences are drawn in the light most favorable to the plaintiff, and dismissal is appropriate only if it appears that plaintiff could prove no set of facts that would entitle her to relief. Weiner v. Quaker Oats Co., 129 F.3d 310, 315 (3d Cir. 1997).

distinct from the City. See Bonenberger v. Plymouth Township, 132 F.3d 20, 25 n.4 (3d Cir. 1997) ("As in past cases, we treat the municipality and its police department as a single entity for purposes of section 1983 liability.") (citing Colburn v. Upper Darby Township, 838 F.2d 663, 671 n.7 (3d Cir. 1988)); Dunsmore v. Chester County Children & Youth Services, C.A. No. 92-3746, 1994 WL 446880, at *1 (E.D. Pa. Aug. 18, 1994), aff'd, 47 F.3d 1160 (3d Cir. 1995). Accordingly, all claims against the Philadelphia Prison System are dismissed.

3. Counts III, IV, V, and VI – Denied as to the claims against the City under 42 U.S.C. § 1983. According to the complaint, defendant Lt. John Delany was a policymaker for the City, ¶ 8. If so, the City is potentially liable for his conduct. See Andrews v. City of Philadelphia, 895 F.2d 1469, 1481 (3d Cir. 1990). However, it appears highly unlikely that a lieutenant in the prison system actually had final unreviewable discretion to make policy. At this stage, the allegations of the complaint must be accepted as true.²

4. Counts III, IV, V, and VI – Denied as to the individual defendants' claims for qualified immunity. Taking the facts as alleged in the complaint, it cannot be said as a matter of law that defendants Delany and Arnold could have believed such conduct to be permissible under clearly established law. Anderson v. Creighton, 483 U.S. 635, 641, 107 S. Ct. 3034, 3040, 97 L. Ed.2d

² This issue should be resolved expeditiously, either by agreement or by summary judgment. Fed. R. Civ. P. 56.

523 (1987); Karnes v. Skrutski, 62 F.3d 485, 491 (3d Cir. 1995). However, as to defendant Arnold, his alleged conduct – one racial slur – is insufficient to amount to a constitutional violation, and, without more, he will have to be let out of this case. See Meritor Savings Bank v. Vinson, 477 U.S. 57, 67, 106 S. Ct. 2399, 2405, 91 L. Ed.2d 49 (1986) (“[M]ere utterance of an ethnic or racial epithet which engenders offensive feelings in an employee would not affect the conditions of employment to [a] sufficiently significant degree to violate Title VII.”) (internal quotations and further citation omitted); Beardsley v. Webb, 30 F.3d 524, 529 (4th Cir. 1994) (Title VII standards applicable to similar litigation under § 1983); Trautvetter v. Quick, 916 F.2d 1140, 1149 (7th Cir. 1990) (same).

Edmund V. Ludwig, J.