

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

RICHARD PICARIELLO,)	
)	
Plaintiff)	
)	
v.)	Civil No. 95-0203-B
)	
MARTIN MAGNUSSON, et al.)	
)	
Defendants)	

RECOMMENDED DECISION ON DEFENDANT'S
MOTION TO DISMISS

Plaintiff Richard Picariello [”PICARIELLO”], a prison inmate at the Maine Correctional Institution (“MCI”) filed this civil rights action under 42 U.S.C. § 1983 on September 13, 1995. He alleges the Defendants, supervisory personnel at MCI, violated his constitutional rights guaranteed under the First and Fourteenth Amendments by disciplining him for providing legal assistance to another inmate, Wayne Robinson [”ROBINSON”]. On May 1, 1996 the Defendants filed a motion to dismiss the case pursuant to Rule 12 (b) (6) of the Fed. R. Civ. P. for failure to state a cause of action.

Although a plaintiff must plead facts sufficient to state a claim, *Ferranti v. Moran*, 618 F.2d 888, 890 (1st Cir. 1980), it is well established that the Federal Rules of Civil Procedure require that a complaint provide only notice pleading. *Conley v. Gibson*, 355 U.S. 41 (1957). “A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to

relief.” *Id.* at 45-46 (1957). When considering a motion to dismiss for failure to state a claim, the allegations of the complaint must be accepted as true, *Ferranti*, 618 F.2d at 890, and the facts construed in the light most favorable to the Plaintiff. *Id.* When the complaint is filed by a pro se plaintiff, it must be read with greater solicitude than would be accorded an initial pleading prepared by learned counsel. *Id.*

ALLEGATIONS OF THE COMPLAINT

Plaintiff alleges that Robinson, in an attempt to formulate a complaint for unspecified post-conviction relief, first sought the help of the prison librarian, who refused to assist him. As no alternative assistance was available, Robinson had no choice but to seek help from another inmate. Plaintiff states he drafted two complaints and handed them to a guard rather than to Robinson directly. Robinson then mailed the complaints to Defendant Lawrence Farrington [“FARRINGTON”], the grievance officer at MCI, who notified an officer at MCI that the Plaintiff wrote the complaints. The officer issued two disciplinary reports to the Plaintiff. Defendant Lt. Donald Black [“BLACK”] then conducted hearings regarding the reports and found the Plaintiff guilty of violating prison regulation C-58 which prohibits unauthorized communications between prisoners. Plaintiff was sentenced to 20 days in solitary confinement, 10 days for each complaint. The Plaintiff appealed the findings to Warden Martin Magnusson [“MAGNUSSON”] who forwarded them to Dep. Warden Riley. The Dep. Warden denied the appeals.

PLAINTIFF’S STANDING TO BRING A CONSTITUTIONAL CLAIM

The first issue raised by the Defendants is whether the Plaintiff has standing to bring a constitutional claim. Although a prisoner’s right to have access to the courts is indisputable, the

Defendants argue that the Plaintiff has no constitutional claim because his access to judicial remedies was not challenged by the authorities at MCI. While it is true that Picariello has no constitutionally protected right to provide counsel, neither he nor any inmate can be punished for doing so.

In 1969, the U.S. Supreme Court addressed a challenge to a prison regulation prohibiting inmates from assisting each other with legal matters. *Johnson v. Avery*, 393 U.S. 483 (1969). The Court upheld a lower court ruling that punishing an inmate for jailhouse lawyering precluded an illiterate or poorly educated inmate's possibly valid constitutional claim from being heard. *Id.* at 490. "Unless and until the state provides some reasonable alternative to assist inmates in the preparation of petitions for post conviction relief, it may not validly enforce a regulation such as that here in issue, barring inmates from furnishing such assistance to other prisoners." *Id.*

The First Circuit Court of Appeals has also ruled on this issue. *McDonald v. Hall*, 610 F.2d 16, 19 (1st Cir. 1979). In *McDonald*, the appellant alleged he was transferred as a result of providing legal assistance to other inmates. In considering whether the appellant could bring an action alleging violation of other prisoners' access to the courts, the court ruled, "the appellant does have standing to vindicate this right." *Id.*

The Sixth Circuit has summarized this issue well.

The Supreme Court in *Johnson v. Avery*. . . held that a state by statute or regulation may not bar inmates from providing legal assistance to other prisoners unless it provides reasonable alternatives. [S]egregation of a 'jailhouse lawyer' in retaliation for providing legal aid is equivalent to the prison regulation barring assistance in *Avery*. Each instance is an example of state action by prison officials which potentially may result in a denial of access to the courts. If proven to be true, said actions are constitutionally impermissible. Thus, while there is technically no independent right to assist, prison officials may not prevent such

assistance or retaliate for providing such assistance where no reasonable alternatives are available.

Gibbs v. Hopkins, 10 F.3d 373, 378 (6th Cir. 1993). Plaintiff's standing to bring a constitutional claim has been clearly established.

Further, Picariello has adequately alleged that no reasonable alternative to his jailhouse lawyering existed to assist inmate Robinson with his legal claims. In paragraph 8 of his Complaint, Plaintiff alleges that there are no legal assistants at the Maine Correctional Institute. He also states that the prison librarian refused to assist Robinson who certainly could not research and draft the complaint himself. Courts have been especially reluctant to infringe upon an illiterate inmate's right to seek assistance on legal matters from fellow inmates. "Where an illiterate inmate is involved . . . or whether the complexity of the issue makes it unlikely that the inmate will be able to collect and present the evidence necessary for an adequate comprehension of the case, he should be free to seek the aid of a fellow inmate, or if that is forbidden to have adequate substitute aid in the form of help from the staff or from a sufficiently competent inmate designated by the staff." *Wolff v. McDonnell*, 418 U.S. 539, 570 (1974). The Court rules that the Plaintiff has standing to bring a section 1983 claim alleging he was disciplined for providing legal assistance to another inmate.

DEFENDANTS' PERSONAL LIABILITY

Defendants argue that they engaged in no malfeasance and therefore no claim can be brought against them. The Court has already established that a constitutional deprivation may have occurred. The remaining issue is whether the Defendants are liable for the violation, if one can be proven.

In order to establish personal liability under § 1983, there must be a causal link between Defendant's actions and the alleged constitutional violation. *Rizzo v. Goode*, 423 U.S. 362, 375, 377 (1976); *Arruda v. Berman*, 522 F. Supp. 766, 768 (D. Mass. 1981). Defendants Black and Farrington's involvement in this affair satisfy the *Rizzo* test. Farrington forwarded the complaints to a prison official, instigating the disciplinary proceedings. Black reviewed the complaints prepared by Plaintiff, conducted a hearing where Plaintiff explained that he thought he was being punished for giving legal aid, and sentenced him to solitary confinement. The Court finds that Black and Farrington are properly named defendants in this action.

Plaintiff's allegation that Defendant Magnusson refused to review Plaintiff's appeal of the sentence is likewise sufficient. Defendants' counsel is correct in arguing that the warden's section 1983 liability cannot be predicated upon the doctrine of *respondeat superior*. *Monell v. Department of Soc. Servs.*, 436 U.S. 658, 691 (1978). Defendant may only be held liable for his own acts or omissions. *Id.* The Court, however, need not address this issue. Magnusson is a proper defendant because of his own failure to act, and not because of the actions of subordinates. *DiMarzo v. Cahill*, 575 F.2d 15, 18 (1st Cir. 1978).

QUALIFIED IMMUNITY

Defendants argue that they are entitled to a qualified immunity as they could not have known they were violating any clearly established constitutional rights. As the Defendants point out, this District has recently explained the doctrine of qualified immunity:

Qualified immunity shields public officials performing discretionary functions "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The right alleged to have been violated must have been clearly established at the

time of the alleged violation, id., and “[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.” *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

The qualified immunity analysis focuses on the objective reasonableness of the defendant’s actions. “[T]he relevant question is whether a reasonable official could have believed his actions were lawful in light of clearly established law and the information the official possessed at the time of his allegedly unlawful conduct.” *Febus-Rodriguez*, 14 F.3d at 91 (quoting *McBride v. Taylor*, 924 F.2d 386 389 (1st Cir. 1991).

Singer v. State of Maine, 49 F.3d 837, 844 (1st Cir. 1995).

The question which must be answered is whether the right which the Plaintiff is claiming to have been violated was clearly enough established so a reasonable prison official would know that imposing punishment for Plaintiff’s legal activities was unconstitutional. The Court finds that the right has been clearly established since 1979, when the First Circuit issued its decision in *McDonald*. Accordingly, a reasonable prison official should have known that disciplining an inmate for furnishing legal assistance is unconstitutional. Inasmuch as Plaintiff has stated a viable claim for just that violation, Defendants are not entitled to qualified immunity.

STATE LAW CLAIMS

Defendants also request the Court to dismiss the state law claims, if the federal claims are dismissed. As the Court upholds the federal claims, the state law claims will not be dismissed.

CONCLUSION

For the foregoing reasons, I hereby recommend the Court DENY Defendants’ Motion to Dismiss Plaintiff’s Complaint.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated in Bangor, Maine on August 12, 1996.