

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

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

**MEMORANDUM OF DECISION<sup>1</sup>**

Plaintiff's Complaint involves discipline he received while incarcerated at the Maine Correctional Institution in Warren, Maine, as a result of his assisting an illiterate co-inmate with internal grievances. Defendants move for summary judgment on Plaintiff's Complaint on the grounds, among others, that they are entitled to qualified immunity.<sup>2</sup> Specifically, they assert there is no clearly established constitutional right to assist other inmates with respect to internal prison grievances. *Hegarty v. Somerset County*, 53 F.3d 1367, 1373 (1st Cir. 1995).

The doctrine of qualified immunity shields government officers "from civil damages liability as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." *Id.* (quoting *Anderson v. Creighton*, 483 U.S. 635, 638 (1987)). This doctrine provides for the "inevitable reality that 'law enforcement officials will in some cases reasonably but mistakenly conclude that [their conduct] is [constitutional], and . . . that . . . those officials -- like

---

<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 73(b), the parties have consented to allow the United States Magistrate Judge to conduct any and all proceedings in this matter.

<sup>2</sup> Defendants originally raised this argument in their Motion to Dismiss, which Motion was denied on September 9, 1996. The Court now revisits the issue.

other officials who act in ways they reasonably believe to be lawful -- should not be held personally liable." *Id.* (quoting *Anderson*, 483 U.S. at 641).

The qualified immunity inquiry has two prongs, the first of which is whether the right asserted by Plaintiffs was clearly established at the time of the contested events. *Id.* The specific question is whether the specific contours of the right were sufficiently established such that the officer could understand how the law would be applied to his or her actions *in this case*. *Anderson*, 483 U.S. at 640. The Court now concludes that it was not.

Plaintiff bases his claim on a longstanding rule prohibiting prison officials from barring inmates from assisting each other with legal matters absent a "reasonable alternative." *Johnson v. Avery*, 393 U.S. 483, 490 (1969). *Avery* addressed the question in the context of a post-conviction petition; the rule was later enlarged to include civil rights litigation. *Wolff v. McDonnell*, 418 U.S. 539, 579-80 (1974).

Plaintiff asserts that, because the United States Supreme Court has not *limited* the general rule regarding 'jailhouse lawyers' to habeas petitions and civil rights actions, Defendants should have known they were violating Plaintiff's rights in this case. The Court disagrees. In *Wolff*, the Court based its conclusion on the fact that it found "no reasonable distinction between the two forms of actions." *Id.* at 580. Specifically:

both actions serve to protect basic constitutional rights. The right of *access to the courts*, upon which *Avery* was premised, is founded in the Due Process Clause and assures that no person will be denied the opportunity to present *to the judiciary* allegations concerning violations of fundamental constitutional rights.

*Id.* at 579.

Plaintiff may well be correct that "it would impose a distinction without a difference to say that Robinson would be entitled to obtain assistance from Picariello had he brought the claim under § 1983, but is not able to obtain such assistance if he chooses to file a grievance internally." But the courts have yet to conclude that "[b]ecause the basis for the claims are the same regardless of the venue in which relief is sought, the [*Avery* rule] regarding the availability of inmate-furnished legal assistance should apply when no other procedures are in place to ensure adequate legal support."<sup>3</sup> Until such a precedent is set forth, it cannot be said that Defendants are alleged to have violated Plaintiff's "clearly established" constitutional right. Accordingly, they are entitled to qualified immunity on Plaintiff's claim.

***Conclusion***

For the foregoing reason, Defendants' Motion for Summary Judgment is hereby GRANTED.

***SO ORDERED.***

\_\_\_\_\_  
Eugene W. Beaulieu  
U.S. Magistrate Judge

Dated at Bangor, Maine on November 20, 1996.

---

<sup>3</sup> We emphasize that we make no finding on the question whether reasonable alternative legal assistance is available to inmates at the Maine Correctional Institution.