

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

DANIEL R. STANTON, )  
 )  
 Plaintiff )  
 )  
 v. ) Civil No. 96-0117-P-C  
 )  
 CUMBERLAND COUNTY )  
 COMMISSIONERS, et al., )  
 )  
 Defendants )

***RECOMMENDED DECISION***

On June 17, 1996, the undersigned issued a Recommended Decision in the above-captioned matter, recommending that the Complaint be dismissed for Plaintiff's failure to state a claim upon which relief can be granted. 42 U.S.C. § 1997e(c), *as amended by* Act of April 26, 1996; 28 U.S.C. § 1915(d), *as amended by* Act of April 26, 1996. Specifically, Plaintiff alleged that he was treated with deliberate indifference and subjected to cruel and unusual punishment, however he failed to describe the actions constituting these constitutional violations or describe the roles allegedly played in the violations by the named Defendants.

Plaintiff has now filed a document entitled "Complaint of Deliberate Indifference" which has been docketed as an Amended Complaint. On the basis of the Amended Complaint, I hereby *sua sponte* reconsider the Recommended Decision.<sup>1</sup>

Plaintiff has attempted in his Amended Complaint to set forth specific actions taken by Defendant Maggie McGonagle that Plaintiff alleges denied him his constitutional rights. At best,

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<sup>1</sup> Plaintiff is hereby notified that subsequent amendments to the Complaint may or may not be considered in review by the District Court of this Recommended Decision. The Court strongly suggests that Plaintiff refer to, and follow, the provisions of 28 U.S.C. § 636(b)(1). The undersigned will not further reconsider this recommendation prior to review by the District Court.

however, Plaintiff has alleged that Defendant McGonagle told him his dental problem was not treated through her department, and that she delayed making an appointment for Plaintiff to see a dentist. There is nothing in the factual situation Plaintiff has described from which a factfinder could infer Defendant McGonagle acted with “deliberate indifference,” as is necessary to state a claim under section 1983. *Watson v. Caton*, 984 F.2d 537, 540 (1st Cir. 1993) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). “The courts have consistently refused to create constitutional claims out of disagreements between prisoners and doctors about the proper course of a prisoner’s medical treatment, or to conclude that simple medical malpractice rises to the level of cruel and unusual punishment.” *Id.* Accordingly, the Amended Complaint is appropriately dismissed as to Defendant McGonagle.

Further, Plaintiff has not remedies in the Amended Complaint his failure to allege affirmative actions on the part of the other named Defendants. For this reason, I continue to recommend the Complaint be dismissed as to these Defendants.

### ***Conclusion***

Accordingly, I hereby recommend Plaintiff’s Complaint be DISMISSED pursuant to 42 U.S.C. § 1997e(c) for failure to state a claim upon which relief can be granted.

### **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.

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Eugene W. Beaulieu  
United States Magistrate Judge

Dated in Bangor, Maine on June 28, 1996.