

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

MICHAEL J. GIGNAC,)
)
 Plaintiff)
)
 v.) Civil No. 96-0198-P-C
)
 WESLEY RIDLON and FRANCINE)
 BRETON,)
)
 Defendants)

RECOMMENDED DECISION

Plaintiff brings this action pursuant to 28 U.S.C. § 1983, alleging a violation of his constitutional rights arising out of his being housed in the administrative segregation unit of the Cumberland County Jail while he was a pretrial detainee. In addition to his federal claims, he alleges several violations of state law.

Defendants move for summary judgment on three separate grounds.¹ First, they assert that they are supervisory personnel with no personal role in the events giving rise to Plaintiff's Complaint. Second, they seek judgment on the question whether the conditions of Plaintiff's confinement amounted to "punishment" such that his right to due process was thereby violated. Third, they seek judgment on the question whether Plaintiff's first amendment rights were violated when he was denied possession of a Bible and a visit with a chaplain during his confinement at the Cumberland

¹ In addition, Defendants assert in a footnote they were never properly served pursuant to Federal Rule 4. This defense was asserted in their Answer to Plaintiff's Complaint, however they apparently do not seek dismissal on this basis at this time. Accordingly, we will treat the defense as waived, and proceed to the merits as Defendants request in their Motion for Summary Judgment.

County Jail.² Finally, they assert they are entitled to qualified immunity with respect to Plaintiff's claims. Plaintiff has filed a Cross-Motion for Partial Summary Judgment on the due process and state law claims.

Undisputed Material Facts

1. At all times relevant to Plaintiff's Complaint, Defendant Ridlon was the Sheriff for Cumberland County, whose duties include authority as "keeper of the jail" for the Cumberland County Jail.

2. At all times relevant to Plaintiff's Complaint, Defendant Breton was the Captain in charge of Intake and Classification of inmates at the Cumberland County Jail.

3. Plaintiff is presently an inmate at the Maine State Prison in Thomaston, Maine. At the times referenced in the Complaint, Plaintiff was a federal pre-trial detainee at the Cumberland County Jail.

4. Plaintiff was placed in a holding cell during his confinement at the Cumberland County Jail because the United States Marshal Service had identified him as an escape risk.

5. During his stay in the Cumberland County Jail, Plaintiff wrote a letter to the "Chief Administrative Officer," in which he complained that he was being confined in a holding cell longer than 48 hours, which Plaintiff alleges is a violation of state law, and further, that he was forced to remain in his cell 23 hours per day.

6. Defendant Breton received Plaintiff's letter, investigated his allegation, and responded that he was not confined to his cell 23 hours per day, but was out of his cell at least 8 hours each day

² Defendants do not concede as a factual matter that Plaintiff was indeed denied these requests.

to attend trial. She explained to Plaintiff that he could not be placed in general population because he was a maximum security inmate. Defendant Breton had no further contact with Plaintiff.

7. Plaintiff did not file a formal grievance regarding the conditions of his confinement at the Cumberland County Jail. Defendant Ridlon had no knowledge of Plaintiff's situation until he received a copy of Plaintiff's Complaint.

8. No officer at the Cumberland County Jail remembers Plaintiff requesting a Bible or a visit with the jail chaplain. There is no record of Plaintiff having made a written request.

9. Plaintiff's confinement in the holding cell, despite his status as a pretrial detainee, conformed to Cumberland County Jail policies and procedures.

Discussion

I. Supervisory Liability.

Defendants correctly assert that they may not be held liable solely on the basis of their status as supervisory personnel within the Cumberland County Jail. There is no *respondeat superior* liability under section 1983. *Monell v. Department of Soc. Serv.*, 436 U.S. 658, 691 (1978). Defendants may only be held liable for their own acts or omissions. *Id.* Further, even where those acts or omissions involve implementing or enforcing a policy, as Plaintiff alleges here, they must be shown to have been deliberately indifferent to Plaintiff's constitutional rights. *City of Canton v. Harris*, 489 U.S. 378, 389-90 (1989).

In this case, Plaintiff has alleged no action or inaction on the part of Defendant Ridlon which would give rise to liability under section 1983. Instead, Plaintiff seeks to impose liability on the grounds that Defendant Ridlon reviews all policies and procedures created for the Cumberland County Jail. This is simply an insufficient basis for liability under *Monell* and *Harris*.

With respect to Defendant Breton, there is evidence that she knew Plaintiff was being housed in the holding area of the Cumberland County Jail, and that she nevertheless refused to reclassify him for general population.³ However, Defendant Breton's assertion that she believed Plaintiff's housing status was appropriate is uncontroverted. There is simply no evidence that Defendant Breton acted with deliberate indifference to Plaintiff's right not to be "punished" without due process. *See, Bell v. Wolfish*, 441 U.S. 520 (1979); *Ortega v. Rowe*, 796 F.2d 765 (5th Cir. 1986).

II. Due Process Claim.

The Court is also persuaded the conditions under which Plaintiff was confined at the Cumberland County Jail did not amount to "punishment" within the meaning of the due process clause. *See, Lyons v. Powell*, 838 F.2d 28, 31 (1st Cir. 1988), and cases cited therein. In *Lyons*, the court found a possible constitutional violation where a pretrial detainee was confined to his cell 22-23 hours per day for a 27-day period. After surveying other equally egregious cases, the Court noted "that the constitutional requirements of confinement may be less stringent in the case of a short-term confinement than in one of longer duration." *Id.*

III. First Amendment Claim.

Finally, the Court is satisfied Plaintiff's rights under the first amendment were not violated during his confinement at the Cumberland County Jail. The uncontroverted evidence with respect to this claim is that no officer at the jail recalls Plaintiff requesting a Bible or a visit with a chaplain. Nor is there a record of Plaintiff having made written requests. Accordingly, there is no factual dispute, and Defendants are entitled to judgment on this claim.

³ As with Defendant Ridlon, there is no evidence that Defendant Breton was involved in any way in decisions regarding Plaintiff's exercise of his religion.

IV. Qualified Immunity and State Law Claims.

In light of the Court's conclusion with respect to Plaintiff's constitutional claims, his state claims are appropriately dismissed. Further, our conclusion obviates the need to address Defendants' argument that they are entitled to qualified immunity.

Conclusion

For the foregoing reasons, I hereby RECOMMEND Defendants' Motion for Summary Judgment be GRANTED, and that Plaintiff's Motion for Partial Summary Judgment be DENIED.

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 April 3, 1997.