

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

LEE THURLOW,)
)
 Plaintiff)
)
 v.) Civil No. 97-0121-P-H
)
 WESLEY RIDLON, et al.,)
)
 Defendants)

RECOMMENDED DECISION

Plaintiff has filed a Complaint pursuant to 42 U.S.C. § 1983 together with a letter requesting leave to proceed *in forma pauperis*, or in the alternative, a form with which to make such a request. The letter is ineffective as an Application to Proceed *in Forma Pauperis*, however, the Court concludes that Plaintiff has failed to state a claim within the meaning of section 1983. Accordingly, I hereby recommend Plaintiff's Complaint be DISMISSED pursuant to 28 U.S.C. § 1915A(b)(1) (providing for initial screening of prisoner complaints, and dismissal upon a finding that the complaint is frivolous or fails to state a claim upon which relief may be granted).

Section 1983 imposes civil liability if the Defendants "subject[], or cause[] to be subjected, any . . . person to the deprivation of any rights, privileges, or immunities secured by the Constitution and law of the United States." 42 U.S.C. § 1983. "By the terms of the statute itself, a section 1983 claim must be based upon a *federal* right." *Ahern v. O'Donnell*, ___ F.3d ___, 1997 WL 136198, *6 (March 31, 1997) (emphasis added). Plaintiff's Complaint, alleging only unspecified "harassment," does not make such a claim.

Further, section 1983 does not impose liability on defendants solely on the basis of their status as supervisory personnel within a particular institution, as Plaintiff appears to be trying to do with Defendant Ridlon. 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.*, which acts or omission 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).

Finally, the Cumberland County Sheriff's Office, named as a Defendant in this action, is not a person within the meaning of section 1983. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989) (finding the same for the State Police).

Conclusion

For the foregoing reasons, I hereby recommend Plaintiff's Complaint be DISMISSED in its entirety pursuant to 28 U.S.C. § 1915A(b)(1) for Plaintiff's 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.

Eugene W. Beaulieu
United States Magistrate Judge

Dated in Bangor, Maine on April 28, 1997.