

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

RICKY E. BLOCK,)	
)	
Plaintiff)	
)	
v.)	Civil No. 97-59-B
)	
CUMBERLAND COUNTY JAIL,)	
PRISON HEALTH SERVICES,)	
WESLEY RIDLON, JEFFREY)	
NEWTON, and "30-50 JOHN)	
AND JANE DOES,")	
)	
Defendants)	

RECOMMENDED DECISION

Plaintiff brings this Complaint pursuant to 42 U.S.C. § 1983 and alleges deliberate indifference to the Plaintiff's medical needs. He further alleges that as a result of the inadequate medical care he attempted to kill himself. By their answer, the Cumberland county Defendants, Wesley Ridlon, Jeffrey Newton, and the "30-50 John and Jane Does to be named," denied all material allegations and asserted a variety of affirmative defenses including insufficiency of service of process, failure to state a claim, failure to identify an official policy, custom or practice that has been adopted by the Defendants, no *respondeat superior* liability, and no

standing to seek declaratory relief.¹ The Defendants have filed a Motion for Summary Judgment on the entirety of the Plaintiff's Complaint, in which they also seek dismissal of Plaintiff's claims on various grounds. The Court agrees that dismissal is the appropriate resolution of the Motion, and therefore recommends that the Motion be granted.

I. Claim against "30-50 Jane and John Does"

Defendants argue that the "30-50 Jane and John Does" have not been identified or served, therefore, the complaint against them should be dismissed. The Court has the authority to dismiss a complaint *sua sponte* when the defendants have not been identified. *See Craig v. U.S.*, 413 F.2d 854, 856 (9th Cir. 1969).² Accordingly, the claims against the "30-50 Jane and John Does" are properly dismissed.

II. Claims against Sheriff Ridlon and Major Newton

Defendants Sheriff Ridlon and Major Newton correctly argue 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 42

¹ The claim against Defendant Prison Health Services was dismissed as frivolous under 28 U.S.C. §1915(e)(2) on March 12, 1998. The Court will hereafter use the term "Defendants" to refer only to the remaining Defendants.

² The named Defendants need not have filed this portion of the Motion. The John and Jane Does have never been identified or served, and none have appeared in this action.

U.S.C. § 1983. *See Monell v. Department of Soc. Serv.*, 436 U.S. 658, 691 (1978).

Defendants may only be held liable for their own acts or omissions. *See Id.*

Further, those acts or omissions must be shown to have been deliberately indifferent to Plaintiff's constitutional rights. *See City of Canton v. Harris*, 489 U.S. 378, 389-90 (1989). Plaintiff has alleged no action or inaction on the behalf of the supervisors in this case to amount to a constitutional violation. Further, the Plaintiff failed to object to the dismissal of Major Newton as a party from the complaint. According to Local Rule 7, failure to object to a dismissal of a party from a complaint amounts to a waiver of objection. *See Mullen v. St. Paul Fire and Marine Ins. Co.*, 972 F.2d 446, 451-52 (1st Cir. 1992). Therefore, the claims against Sheriff Ridlon and Major Newton are properly dismissed.

III. Claim against Cumberland County Jail

The Defendant claims that the complaint against Cumberland County Jail can be dismissed for lack of service of process. As Defendants concede, it is not clear if the Plaintiff intended for service of Sheriff Ridlon to also be service of Cumberland County Jail. In any event, the Cumberland County Jail is not a "person" within the meaning of 42 U.S.C. § 1983. *See Will v. Michigan Dept. of*

State Police, 491 U.S. 58 (1989) (finding the same regarding the State Police).³

Accordingly, the claim against the Cumberland County Jail is properly dismissed.

Conclusion

For the foregoing reasons, I hereby recommend that Plaintiff's Complaint be DISMISSED as to "30-50 Jane and John Does" for failure to identify Defendants or make service of process on them. I further recommend that the Plaintiff's Complaint be DISMISSED as to Defendants Ridlon and Newton for Plaintiff's failure to state a claim against them. Finally, I recommend that the Plaintiff's Complaint be DISMISSED as against the Cumberland County Jail because it is not a person within the meaning of section 1983.

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.

³ That Defendants did not raise this issue does not prevent the Court from dismissing Plaintiff's claim on this ground. 28 U.S.C. § 1915(e)(2)(B)(ii) ("the court shall dismiss the case at any time if the court determines that -- . . . the action or appeal - - . . . fails to state a claim on which relief may be granted").

Eugene W. Beaulieu
United States Magistrate Judge

Dated on June 29, 1998.