

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

BRENT BARSTOW,)
)
 Plaintiff)
)
 v.) Civil No. 98-0186-B
)
 KENNEBEC COUNTY JAIL,)
 et al.,)
)
 Defendants)

RECOMMENDED DECISION

Plaintiff has filed a Complaint alleging facts arising during his pretrial detention at the Kennebec County Jail. He names as Defendants in the action the Jail, Sheriff Bryan Lamoreau, Detective Gilbert Turcotte, and three present or former Kennebec County Commissioners.

Plaintiff seeks leave to proceed *in Forma Pauperis* pursuant to 28 U.S.C. § 1915(a). The Application to so proceed is hereby GRANTED. However, this Court is required to dismiss a case in which the plaintiff is proceeding *pro se* "at any time if the court determines that -- . . . (B) the action or appeal -- (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. §

1915(e)(2). Plaintiff's Complaint is appropriately dismissed pursuant to this provision.

First, none of the Defendants except Defendant Turcotte is alleged to have engaged in any conduct giving rise to liability. Instead, Plaintiff seeks to impose liability on them by virtue of their supervisory positions within county government. However, 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, those acts or omissions 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).

As to Defendant Turcotte, Plaintiff alleges that he conducted an illegal search of his cell at the Kennebec County Jail and confiscated various documents, including a draft of a letter Plaintiff was writing to his criminal defense counsel. This letter and some of the other documents were later returned to Plaintiff at his attorney's request.

As a pretrial detainee, Plaintiff's allegations are technically that he was punished without due process by Defendant Turcotte's search and seizure. *Bell v. Wolfish*, 441 U.S. 520 (1979). The due process analysis in this context requires the Court to decide "whether the disability is imposed for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose." *Id.* at

538 (citation omitted). Plaintiff alleges in his Complaint that the search was conducted on the basis of a suspicion that his cell would contain documents evidencing Plaintiff's intent to influence witnesses in his underlying criminal case. Such a purpose is clearly "reasonably related to a legitimate governmental objective," such that Defendant's actions, as alleged by Plaintiff, do not amount to "punishment" in the constitutional sense. *Id.* at 539.

Conclusion

For the foregoing reasons, I hereby recommend Plaintiff's Complaint be DISMISSED in its entirety pursuant to 28 U.S.C. § 1915(e)(2).

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 on September 14, 1998.