

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

STEPHEN M. DOHERTY, )  
 )  
 Plaintiff )  
 )  
 v. ) Civil No. 97-0383-P-H  
 )  
 JAMES CLEMMONS, et al., )  
 )  
 Defendants )

**RECOMMENDED DECISION**

Plaintiff filed this Complaint pursuant to 42 U.S.C. § 1983, and has been granted leave to proceed in forma pauperis. The Court concludes, however, 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. § 1915(e)(2) (providing for dismissal of cases brought in forma pauperis at any time upon a determination that the complaint is frivolous or fails to state a claim upon which relief may be granted).

Plaintiff has named eleven Defendants in this action. Eight of these Defendants are apparently named by virtue of their supervisory roles within the Maine Correctional Center. 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 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). Plaintiff has not made such an allegation against the three Defendants who do appear in the factual description of Plaintiff's claims. Specifically, Defendant Lorraine Christensen is repeatedly described as providing unsatisfactory answers to Plaintiff's questions about the availability of legal materials and the cost

of photocopies. Plaintiff alleges Defendant "Superintendent" did not respond favorably to Plaintiff's appeal of his initial classification decision. Finally, Defendant Robyn Eagen provided an unsatisfactory answer to Plaintiff's questions about the amount of money he would receive upon his discharge from the Department of Corrections.

Further, Plaintiff's allegations do not state constitutional violations. Plaintiff first alleges various difficulties obtaining legal materials from the law library at the Maine Correctional Center, but he does not allege "actual injury" as a result of his inability to obtain the materials, which is required to state a claim under the sixth amendment. *Lewis v. Casey*, 116 S. Ct. 2174, 2180 (1996). Plaintiff then describes the system within the Maine Correctional Center for providing inmates with clothing, and complains that he is occasionally required to wear particular items of clothing, including underwear, for more than one day. These allegations simply do not rise to the level of cruel and unusual punishment necessary to state a claim for a violation of Plaintiff's constitutional rights. The Eighth Amendment does not guarantee that a prison will be comfortable. *Wilson v. Seiter*, 501 U.S. 294, 298 (1991) (citing *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981)). Plaintiff's Complaint, to state an Eighth Amendment claim, must at a minimum present a claim that the deprivations, either alone or in combination, resulted in the "deprivation of a single, identifiable human need such as food, warmth, or exercise." *Id.* at 304. Finally, Plaintiff complains that overcrowding at the Maine Correctional Center results in a delay in the classification process, which in turn deprived him of the ability to earn the "good time" credits available to minimum security inmates. Although this claim may be cognizable on a petition for writ of habeas corpus pursuant to 28 U.S.C. section 2254, it does not state a claim for relief under section 1983. Plaintiff may not seek damages for allegedly unconstitutional imprisonment until he can prove that the imprisonment has

been declared unlawful, whether through state processes or a federal *habeas* action. *Heck v. Humphrey*, 114 S. Ct. 2364, 2372 (1994).

### ***Conclusion***

For the foregoing reasons, I hereby recommend Plaintiff's Complaint be DISMISSED in its entirety for Plaintiff's failure to state a claim under 42 U.S.C. 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.

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Eugene W. Beaulieu  
United States Magistrate Judge

Dated on March 3, 2000.