

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JOHN FRANCIS SHORTSLEEVES,)
)
 Plaintiff)
)
 v.) Civil No. 98-0183-B
)
 DEPARTMENT OF CORRECTIONS,)
 et al.,)
)
 Defendants)

RECOMMENDED DECISION

This action alleges a violation of Plaintiff’s constitutional rights by Plaintiff’s continued incarceration at the state’s maximum security facility after Plaintiff satisfied Department of Corrections [”DOC”] policies regulating transfer out of that facility. The essence of the claim is that other similarly situated inmates have been transferred out while Plaintiff’s request for transfer has been denied. Defendants are the Commissioner of the Department of Corrections,¹ “M.C.I. - M.S.P. Classification,” and Stephen Maxwell. Defendants move to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) on the basis that they are not proper parties defendant under 42 U.S.C. section 1983.

¹ Defendants’ counsel reads Plaintiff’s Complaint to name the agency itself, rather than its Commissioner, as the Defendant. The question need not be answered, however, inasmuch as it does not affect the result on this Motion to Dismiss.

Defendants correctly state the applicable law. The “Department of Corrections” and “Classification Committee” are simply not ‘persons’ within the meaning of 42 U.S.C. section 1983. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989) (finding the same for the State Police). To the extent Plaintiff is asserting a claim against Commissioner Magnusson and Stephen Maxwell, he must allege they personally committed acts or omissions causing the constitutional violation. *Monell v. Department of Soc. Serv.*, 436 U.S. 658, 691 (1978). 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).

Here, Plaintiff simply alleges that the Classification Committee has denied his request for transfer back to the Maine State Prison despite his satisfaction of the stated requirements for such transfer. As to Defendant Maxwell, he alleges Defendant sent him a letter informing him that he could reapply in six months. He does not allege Defendant Maxwell personally blocked the transfer request. More importantly, he does not allege that Defendant did so with deliberate indifference to

Plaintiff's right to be treated like other inmates with respect to transfer out of the Maine Correctional Institution.²

In addition to his objection to the Motion to Dismiss, Plaintiff responded to the Motion by filing several motions of his own. In one, he seeks leave to amend the Complaint to clarify that he intended to name Martin Magnusson rather than the Department of Corrections, and Nelson Riley, Warden of the Maine Correctional Institution, instead of the Classification Committee. This amendment would not remedy the fatal flaw in his Complaint, however. Nowhere in the proposed amendment does Plaintiff allege personal action on behalf of these Defendants taken with deliberate indifference to his constitutional rights. The Motion to Amend Complaint should be denied as futile.

Conclusion

For the foregoing reasons, I hereby recommend Plaintiff's Motion to Amend Complaint (Docket Number 13) be DENIED AS FUTILE. I further recommend Defendants' Motion to Dismiss be GRANTED, and that this matter be DISMISSED in its entirety.

² The Court does not recommend a finding that such a right exists under the constitution., as it is not necessary to the resolution of this Motion to Dismiss. It is clear, in fact, that Plaintiff has no right to a particular placement within the Department of Corrections, at least as long as the conditions of his confinement do not amount to an "atypical and significant hardship . . . in relation to the ordinary incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 484 (1995).

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 March 3, 2000.