

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

KENNETH RICHARD MOORE,)	
)	
Plaintiff)	
)	
v.)	Civil No. 98-0022-B
)	
NELSON RILEY, et al.,)	
)	
Defendants)	

RECOMMENDED DECISION

Defendants Merrill, Riley, Parsons, and Tibbetts move to dismiss the claims raised by Plaintiff in the original Complaint under docket number 98-0122-B, which has now been consolidated with this action. A separate Motion to Dismiss was filed regarding the allegations contained in the original Complaint under docket number 98-0022-B, and that Motion has now been resolved.

In reviewing Rule 12(b)(6) motions, the Court assumes the well-pleaded factual allegations are true, and indulges all reasonable inferences in Plaintiff's failure. *Correa-Martinez v. Arrillaga-Belendez*, 903 F.2d 49, 51 (1st Cir. 1990). We tend to review *pro se* complaints according to "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

1. *Defendants Merrill and Riley.*

Defendants Merrill and Riley argue that Plaintiff's Complaint should be dismissed as it pertains to them because he seeks to impose liability upon them solely on the basis of their supervisory positions within the Maine Department of Corrections. The Court agrees with these Defendants in this regard. Defendants are simply alleged to have permitted continued use of the punishments which Plaintiff alleges were imposed upon him in violation of his constitutional rights. 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.* Plaintiff has not alleged that Defendant Merrill or Riley acted or failed to act in any way in connection with Plaintiff's particular disciplinary incidents.

2. *Defendants Parsons and Tibbetts.*

Defendants Parsons and Tibbetts assert that Plaintiff has failed to state a claim upon which relief may be granted because he alleges only that they restrained him, not itself a constitutional violation. The Court, however, is satisfied that Defendants Parsons and Tibbetts are adequately identified in the Complaint as the "riot team," which Plaintiff alleges assisted Defendant Ross in holding him to a floor covered in feces and urine after Defendant Ross knocked his feet out from under him for no apparent reason. These allegations are sufficient to survive this Motion to Dismiss.

Conclusion

For the foregoing reasons, I hereby recommend Defendants' Motion to Dismiss Plaintiff's Complaint, filed in docket number 98-0022-B as pleading number 29 but applicable only to the Complaint originally filed under docket number 98-0122-B, be GRANTED as to Defendants Merrill and Riley, and DENIED in all other respects.

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.