

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

COREY TRIAL,)
)
 Plaintiff)
)
 v.) Civil No. 99-0249-B
)
 JEFFREY MERRILL,)
)
 Defendant)

RECOMMENDED DECISION

On December 2, 1999, the undersigned issued a recommendation that this matter be dismissed for Plaintiff's failure to pay the initial partial filing fee in accordance with the Court's Order of November 17. On December 7, Plaintiff paid the initial partial filing fee. Accordingly, the Court hereby VACATES the December 2 Recommended Decision. I nevertheless recommend the matter be dismissed pursuant to 28 U.S.C. section 1915A(b) for Plaintiff's failure to state a claim upon which relief may be granted.

Plaintiff's Complaint alleges in its entirety as follows:

Medical and prison staff purposely failed to adequately provide plaintiff meaningful access to much needed partial denture plate. Defendants recklessly relied on a practice to discrimination [sic] amongst inmates, of who gets what dental care. A blatant violation of plaintiff's Eighth Amendment Right, based on a deliberate indifference so highly arbitrary in nature.

Comp. at 4, ¶ IV. In short, there is no connection made in the Complaint between acts or omissions alleged to have violated Plaintiff's rights, and any of the named Defendants. One of the named Defendants, for example, is Jeffrey Merrill, Warden of the Maine State Prison. However, there is no *respondeat superior* liability under section 1983. *Monell v. Department of Soc. Serv.*, 436 U.S. 658, 691 (1978). "Liability in damages can only be imposed upon officials who were involved personally in the deprivation of constitutional rights." *Ramirez v. Colon*, 21 F. Supp. 2d 96, 98 (D.P.R. 1997) (citing *Pinto v. Nettleship*, 737 F.2d 130, 132 (1st Cir. 1984)). In the case of inadequate medical care, for example, "[t]he requisite personal involvement of a prison official may be established by showing that the official knew of the prisoner's need for medical care yet failed to provide the same." *Id.*

The other two Defendants are Allen Briggs, Medical Administrator at the Maine State Prison, and Bruce Wentworth, Deputy Warden of the Maine State Prison. There are no allegations anywhere in the Complaint that Defendant Briggs had personal knowledge that Plaintiff had even requested a partial dental plate, let alone that he personally denied the request.

Plaintiff's Complaint does indicate that Defendant Wentworth personally denied him a partial dental plate, although it is included only in that portion of the form Complaint asking whether Plaintiff had sought redress through the prison

grievance procedure. However, even if that were enough, there is no allegation that Plaintiff suffers from a “serious medical need” or that Defendant was “deliberately indifferent” to that need. Both of these elements are required to state a claim under the eighth amendment. *Watson v. Caton*, 984 F.2d 537, 540 (1st Cir. 1993) (citing *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)).

Conclusion

For the foregoing reasons, I hereby recommend the Complaint be DISMISSED pursuant to 28 U.S.C. section 1915A(b).

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: December 10, 1999