

UNITED STATES OF AMERICA
DISTRICT OF MAINE

SYDNEY BRADSHAW)	
)	
Plaintiff)	
)	
v.)	Civil No. 00-147-P-C
)	
SHERIFF, CUMBERLAND)	
COUNTY JAIL, et al.,)	
)	
Defendants)	

**RECOMMENDED DECISION GRANTING
DEFENDANTS' MOTION TO DISMISS (DOCKET NO. 21)**

This matter is before the Court on Plaintiff's Consolidated Complaints brought pursuant to 42 U.S.C. § 1983 alleging violations of his Constitutional rights, specifically a claim for violation of his Sixth Amendment right of access to the courts and a claim for racial discrimination. The Defendants filed a Motion to Dismiss (Docket No. 21) on September 14, 2000. I now recommend that the Court **GRANT** the Defendants' Motion and **DISMISS** the Consolidated Complaints in their entirety.

Procedural Background

Plaintiff instituted this pro se, in forma pauperis case on May 15, 2000, filing a complaint (Civil Action Docket No. 00-147-P) against the Cumberland County Jail ("CCJ"), Mark Dion, Susan Taylor, and Diana Sykes, alleging that the photocopying policy established by the Defendants unreasonably "impeded if not obstructed his ability to defend himself and has to some extent delayed justice to Petitioner." On June 5, 2000, Plaintiff filed a Second Complaint (Civil Action Docket No. 00-175-P) against the CCJ,

Wayne Pike, and Cindy Babbs complaining that the jail's policy limiting both legal and personal mail violated the Constitution by limiting access to the Courts. At the Plaintiff's request, I consolidated the two Complaints.¹ On June 28, the Plaintiff filed an Amended Complaint (Docket No. 8) naming Harold Gillman and Francine Breton as two new parties and alleging for the first time that he was denied photocopies while white inmates were provided copies by some of the Defendants.

The procedural history from this point forward becomes somewhat murky as the Plaintiff continued to file multiple requests for temporary restraining orders against various jail personnel and the Sheriff. Those requests were ultimately denied on September 5, 2000, by Judge Carter's Order affirming my earlier Recommended Decision. Construing the record most favorably to Plaintiff, the operative pleadings are now the Amended Complaint (Docket No. 8), as further amended and clarified by a letter dated July 8, 2000 (Docket No. 11).

Factual Allegations

Plaintiff alleges that beginning at the end of March, 2000, jail personnel, including Ms. Sykes and Ms. Taylor refused to make copies of legal paperwork when Plaintiff, at the time an inmate of the Cumberland County Jail, requested that they do so. Plaintiff alleges that white inmates did obtain copies from Ms. Sykes and another jail official, Harold Gillman, during this time. Plaintiff further alleges that he filed a grievance with Captain Francine Breton but that she never responded to his complaints.

¹ Two of the Defendants in Civil Action No. 00-175-P, Wayne Pike and Cindy Babbs, apparently have subsequently been dismissed from this litigation. *See* Docket No. 18, Order by Carter, J., denying Plaintiff's request to restore Wayne Pike to the case and Docket No. 22, voluntary dismissal by Plaintiff of Defendant Cindy Babbs.

Plaintiff goes on to assert that this denial of copying assistance has caused him emotional distress and resulted in his case being adversely affected by lost and delayed paperwork.

In his supplemental letter the Plaintiff further explains that the case to which he refers is an Immigration and Naturalization Service (“INS”) matter and that the reason he lost paperwork was that he was forced to seek the assistance of a third party to obtain copies of documents. The third party failed to return the documents in a timely fashion and, in some unexplained fashion, the loss of these documents has had a negative impact upon his INS case. Plaintiff further explains that the INS matter relates to a clerical error in 1974 and that the lost documents, which are identified as “INS documents,” contained a number which “[he] believe[s] was the certificate # of [his] derivative citizenship.” He further alleges that the INS has denied him access to his own files, apparently eliminating the possibility that he could replace these lost documents.

Plaintiff also complains that the jail policies deprive him of sufficient envelopes for his mail and force him to use a pencil to write his pleadings. He also complains that the jail personnel have advised him that his requests regarding legal materials should be directed to the U.S. Marshal’s Office. Other than the one paragraph pertaining to Ms. Sykes and Mr. Gillman’s alleged willingness to copy materials for white inmates, Mr. Bradshaw makes no further references to racial discrimination.

Discussion

In analyzing this Motion to Dismiss, Plaintiff’s allegations are accepted as true, and all reasonable inferences are drawn in his favor. *See Aybar v. Crispin-Reyes*, 118 F.3d 10, 13 (1st Cir. 1997). Furthermore, courts tend to review pro se complaints according to “less stringent standards than formal pleadings drafted by lawyers.” *Haines*

v. Kerner, 404 U.S. 519, 520-21 (1972). The Court need not, however, give credence to Plaintiff's "bald assertions, [or] insupportable conclusions." *Correa-Martinez v. Arrillaga-Belendez*, 903 F.2d 49, 52 (1st Cir. 1990). I have applied these legal standards to my analysis of Plaintiff's pleadings.

A. Claims of Racial Discrimination

Plaintiff was given an opportunity to amend his Complaint to include "specific nonconclusory factual allegations giving rise to a reasonable inference of racially discriminatory intent." (Order, dated July 6, 2000, Docket No. 9). All Plaintiff has alleged is that on at least one occasion a white inmate was able to obtain photocopies while he, who is black, was unable to obtain his photocopies. He has alleged no facts upon which a factfinder could base a finding of racially discriminatory intent.

The Plaintiff was previously cautioned that the pleading standard for racial discrimination claims applied by this court would be as set forth in *Judge v. City of Lowell*, 160 F.3d 67, 75 (1st Cir. 1998). Plaintiff's assertion of his belief that Defendants acted on the basis of an improper motive is simply not enough. In the absence of any specific factual allegations, Plaintiff's complaint fails to state a claim and must be dismissed.

B. Court Access Claims

The United States Supreme Court has held that an inmate alleging denial of court access must demonstrate "actual injury" caused by the policy or procedure in effect at the place of incarceration. *Lewis v. Casey*, 518 U.S. 343, 349 (1996). Other courts have interpreted this requirement to mean that the Plaintiff must allege that he has been prevented from pursuing a non-frivolous legal action as a result of the alleged conduct.

See Pilgrim v. Littlefield, 92 F.3d 413, 416 (6th Cir. 1996). Although Plaintiff complains that the jail policy caused him to lose the documents in question, he never explains how those particular documents were related to the underlying INS proceeding.

Plaintiff states in a conclusory fashion that the document containing the certificate number of his “derivative citizenship” would have affected the outcome of an INS proceeding, but he does not explain how. His claim of injury caused by the jail is especially perplexing because his pleadings seem to suggest that this information is somehow already contained in the INS files. I am simply unable to ascertain the “actual injury” suffered by Mr. Bradshaw as a result of the conduct of the officials at the CCJ as it relates to the photocopying policy. While I do not doubt that Plaintiff found the jail policy frustrating, he has not alleged an “actual injury” within the constraints of the applicable case law.

Conclusion

Based upon the foregoing, I recommend that the Court **GRANT** the Defendants’ Motion to Dismiss and **DISMISS** this case as to all defendants for failure to state a claim.

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) (1993) 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.

Margaret J. Kravchuk
U.S. Magistrate Judge

Dated: November 8, 2000.

PORTLD

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U.S. District Court
District of Maine (Portland)

CIVIL DOCKET FOR CASE #: 00-CV-147

BRADSHAW v. SHERIFF, CUMBERLAND, et al
05/15/00

Filed:

Assigned to: JUDGE GENE CARTER

Jury demand: Plaintiff

Demand: \$0,000

Nature of Suit: 555

Lead Docket: None

Jurisdiction: Federal

Question

Dkt # in USDC, Portland, ME : is 00cv61pc

Dkt # in USDC, Portland, ME : is 00cv99pc

Cause: 42:1983 Prisoner Civil Rights

SYDNEY BRADSHAW
plaintiff

SYDNEY BRADSHAW
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YORK, PA 17402

v.

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LIBRARIAN, CUMBERLAND COUNTY
JAIL
defendant

JOHN J. WALL, III, Esq.
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PIKE, CAPTAIN, CUMBERLAND
COUNTY CORRECTIONS OFFICER
consolidated defendant

JOHN J. WALL, III, Esq.
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CUMBERLAND COUNTY JAIL
consolidated defendant

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CINDY BABBS, CUMBERLAND COUNTY
CORRECTIONS OFFICER
consolidated defendant
[term 10/06/00]

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HAROLD GILLMAN, Individually
and in his capacity as
Educational Instructor at CCJ
defendant

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