

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 move to dismiss the claims raised by Plaintiff in the original Complaint under docket number 98-0022-B. The matter has now been consolidated with docket number 98-0122-B, but the claims originally raised in that action are not addressed in the Motion to Dismiss.

Defendants assert that Plaintiff has failed to state a claim upon which relief may be granted because of his failure to identify with sufficient particularity which Defendants are alleged to have engaged in which conduct. 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).

With these standards in mind, the Court finds that Plaintiff's Complaint adequately sets forth a claim upon which relief may be granted in most respects against these Defendants. It is true that Plaintiff does not allege, for example, which named Defendants were kicking and punching him in paragraph 3 of "incident two" (Complaint at page 5). However, he did allege in paragraphs 1 and 2 which of the named Defendants participated in "incident two". The Court is satisfied that Plaintiff's description of the incidents in question provide the minimal "who did what to whom" required in this Circuit. *Dewey v. University of New Hampshire*, 694 F.2d 1, 3 (1st Cir. 1982).

The Court is further satisfied that Plaintiff's Complaint alleges specific actions on the part of Defendant Worcester on which he seeks to impose liability. Specifically, Plaintiff has alleged Defendant Worcester directly participated in "incident three". However, the Court agrees with Defendants Polky and Riley that Plaintiff's sole allegations against them are simply attempts to impose supervisory liability upon them, which is not permitted 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.*

Finally, the Court is satisfied that Plaintiff has alleged, for purposes of this Motion to Dismiss, physical injury sufficient to preclude dismissal of this Complaint under 42 U.S.C. § 1997e(e), which provides:

No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury, suffered while in custody without a prior showing of physical injury.

In particular, Plaintiff alleges that on one occasion, one of the Defendants slammed Plaintiff's face to the floor and other Defendants kicked and punched his ribs, lower back and stomach. Although Plaintiff does not specifically allege what injury resulted from this incident, the Complaint does seek redress generally for "physical pain" brought on by the repeated incidents set forth thereafter in the Complaint.

Conclusion

For the foregoing reasons, I hereby recommend Defendant's Motion to Dismiss Plaintiff's Complaint, filed in docket number 98-0022-B and applicable only to the Complaint originally filed under that docket number, be GRANTED as to Defendants Riley and Polky 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.