

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WARREN BENNETT :
 : CIVIL NO.
 :
 v. :
 :
 MARTIN F. HORN, et al. : 00-4757

MEMORANDUM

Giles, C. J.

August __, 2001

I. Introduction

In September 1998, Plaintiff was paroled by Pennsylvania to the Volunteers of America Community Correctional Center (hereinafter "VOA") in Philadelphia. VOA is a charitable organization which administrates community release programs in cooperation with the Pennsylvania Department of Corrections ("D.O.C."). As part of the terms of his parole, Plaintiff was only allowed to be away from the center during particular times of the day. When he failed to return from work at the appropriate time, the VOA staff alerted the D.O.C. As a result of this parole violation, Plaintiff was arrested by authorities and taken to state prison. Plaintiff alleges that his money, family pictures, court documents, and other items which were being held by VOA while he lived there, were wrongfully stolen or destroyed after he was taken to state prison.

He brings this action against VOA employee Kelly Rascoe (hereinafter "Rascoe"), Pennsylvania Department of Corrections Secretary Martin F. Horn (hereinafter "Horn"), and "all other

unknown individuals/officials." (Complaint, p. 1). Plaintiff sues Rascoe and Horn both in their individual and official capacities. Pursuant to 42 U.S.C. § 1983, Plaintiff seeks monetary and injunctive relief based on race discrimination, parolee discrimination, an equal protection violation, and a due process violation. He also alleges violations of 42 U.S.C. §§ 1981, 1985, and 1986.

Defendants have filed motions to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff has answered. For the reasons stated below, the motions are granted.

II. Dismissal of Frivolous Claims

Section 1997e of Title 42 of the United States Code allows this court to dismiss a claim if it is frivolous on its face. See 42 U.S.C. 1997e(c)(2). Many of Plaintiff's claims are dismissed as frivolous.

Plaintiff's claim for race discrimination, parolee discrimination, and an equal protection violation are dismissed. Plaintiff alleges no facts that even suggest that he was discriminated against on the basis of race, parolee status, or any other classification.

Plaintiff's claims pursuant to 42 U.S.C. §§ 1981, 1985, and 1986 are likewise dismissed as frivolous. Section 1981 pertains

to racial discrimination which is not factually supported in the complaint. Sections 1985 and 1986 apply only when there is a conspiracy to violate the civil rights of a person who belongs to a certain classification of persons. As Plaintiff has not alleged any particular facts that suggest two or more people were involved in the loss of property, this court denies these statutory claims on that basis alone.

Plaintiff alleges that Rascoe destroyed his property in order to testify falsely against him in a parole violation hearing. Plaintiff cannot bring a federal claim seeking a remedy for an allegedly unfair criminal sentence without filing a writ of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475, 489-90 (1973) ("Congress has determined that habeas corpus is the appropriate remedy for state prisoners attacking the validity of the fact or length of their confinement, and that specific determination must override the general terms of § 1983."). Further, a federal writ of habeas corpus cannot be filed until Plaintiff exhausts all claims pertinent to his confinement in the state courts pursuant to state post-conviction and collateral relief law and procedure. See 28 U.S.C. § 2254(b).

III. The Remaining Claims

Plaintiff alleges that his property was stolen or destroyed by Rascoe in violation of the due process clause of the

constitution. He further alleges that Horn should be vicariously liable for this loss because he was Rascoe's supervisor and was alerted that Plaintiff wanted his property back before Rascoe allegedly destroyed it.

Even if Horn were to be Rascoe's superior, he is not liable by that fact alone. Under the federal constitution, supervisors are not always liable for constitutional violations by their subordinates. Defendants in civil rights actions are only liable if the plaintiff can prove actual participation or acquiescence in the deprivation of the rights at issue. See Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988). Here, Plaintiff only alleges that he had written a letter to Horn, stating that he had yet to receive his property and that Rascoe later destroyed the property. Plaintiff has not alleged any fact that would sustain a reasonable inference that receipt of the letter constituted participation or acquiescence in the plaintiff's loss of property. Therefore, Plaintiff's due process claim against Horn is dismissed.

Plaintiff's due process claim against Rascoe can only survive if Rascoe is considered a state actor for purposes of § 1983. As evidence of this, Plaintiff alleges that the D.O.C. has day to day control over Rascoe, that Rascoe has to follow D.O.C. Procedures, and that Rascoe fills out D.O.C. forms at the D.O.C.'s request. In response, Rascoe only states that he is not

a state actor. Taking the facts in the light most favorable to Plaintiff, one cannot conclude at this juncture that Rascoe is not a state actor.

Nevertheless, Plaintiff's due process claim against Rascoe must be dismissed because he has an adequate state court remedy. The Supreme Court has held that "intentional destruction of property by a state employee does not violate due process if the state provides a meaningful postdeprivation remedy." Hudson v. Palmer, 468 U.S. 517, 530 (1984). Plaintiff has the right to bring a state civil action against Rascoe for the alleged destruction of property. See Bernhardt v. Needleman, 705 A.2d 875, 878 (Pa. Super. 1997)(stating that a party can recover damages when someone deprives him of the right to property without lawful justification).

Rascoe alleges that he is not a state actor. However, as the possibility exist that Rascoe may be entitled to sovereign immunity based on his connection to the D.O.C., this dismissal will be without prejudice to Bennett reasserting his federal claim if the Pennsylvania state courts hold that Rascoe is immune from suit. See 1 Pa. C.S.A. § 2310 (stating that state employees acting in their official capacities are immune from suit).

An appropriate Order follows.

