IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

ROBERT ARTHUR HALL,	§	
	§	
PLAINTIFF,	§	
	§	
VS.	§	CIVIL ACTION NO. H-97-874
	§	
SHERIFF TOMMY B. THOMAS, ET AL.,	§	
	§	
DEFENDANTS.	§	

MEMORANDUM OPINION

I. INTRODUCTION

The plaintiff, Robert Arthur Hall ("Hall"), instituted the present action against several employees of the Harris County Jail[1] and University of Texas Health Science Center at Houston Medical School[2] asserting causes of action under 42 U.S.C. § 1983 ("Section 1983") and the Americans with Disabilities Act, 42 U.S.C. § 12132 ("ADA"). Currently pending before this Court are the Doctors' (Instrument # 45), Sheriff Thomas' (Instrument #43), and Quinn's (Instrument #40) motions for summary judgment and Berry's motion to dismiss (Instrument # 24). Having reviewed the motions, the

---

[1] Specifically, Sheriff Tommy Thomas, Major K.W. Berry, Deputy Marcorif Thomas, and Major M.W. Quinn.

[2] Including, Michael Seale, Marcus Guice, Cuong Trinh, Anthony Phi, Kham Luu, Mark Chassay, and Donald Klein (collectively, "Doctors").

65

responses, the record, and the applicable law, this Court is of the opinion that each of the motions should be granted.

II. THE DISPUTE

On February 21, 1995, the United States Marshals Service arrested Hall pursuant to a parole violator warrant. At the time of his arrest, Hall had a history of mental and physical disabilities including: neurological and musculoskeletal difficulties, epilepsy, hypothyroidism, chronic kidney dysfunction, diabetes, and several mental and emotional disorders (i.e., bipolar disorder, clinical major depression, and split personality disorder).[3] The plaintiff was assigned to the Harris County Jail. While housed at this facility, Hall claims that his constitutional rights were violated based on the defendants' failure to adequately treat his medical conditions. Furthermore, Hall claims that he is entitled to relief under the ADA.

---

[3] As a condition of his prior release on September 8, 1993, Hall was ordered to participate in an in-patient or out-patient mental health program. Hall claims he was unable to comply with the Special Mental Health Aftercare Condition placed on his parole due to "la[c]king government funds." The plaintiff did receive some treatment at the Mental Health Mental Retardation Association.

III. ANALYSIS AND DISCUSSION

A. Applicable Standards of Review

1. Standard for Summary Judgment

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). When reviewing the record upon which the moving party's motion for summary judgment is based, the Court must draw all inferences in favor of the non-moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citing *United States v. Diebold, Inc.*, 369 U.S. 654 (1962)). The moving party bears the initial burden of "informing the [Court] of the basis for its motion," and identifying those portions of the record "which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

Once the moving party meets its burden, the nonmoving party must "go beyond the pleadings" and designate "specific facts" in the record "showing that there is a genuine issue for trial." *Id.* at 324. An issue is "genuine" if the evidence is sufficient for a reasonable jury to return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-49 (1986). A failure on the part of the nonmoving party to offer proof concerning an essential element of its case necessarily renders all other facts

immaterial and mandates a finding that no genuine issue of fact exists. *Saunders v. Michelin Tire Corp.*, 942 F.2d 299, 301 (5th Cir. 1991).

The primary inquiry here is whether the material facts present a sufficient disagreement as to require a trial, or whether the facts are sufficiently one-sided that one party should prevail, as a matter of law. *Anderson*, 477 U.S. at 247. The substantive law of the case identifies which facts are material. *Id.* at 248. Only disputed facts potentially affecting the outcome of the suit under the substantive law of the case preclude the entry of summary judgment. *Id.*

2. Standard for Motion to Dismiss

Pursuant to Fed. R. Civ. P. 12(b)(6), a Court is entitled to dismiss a complaint when it "fail[s] to state a claim upon which relief can be granted." In reviewing a Rule 12(b)(6) motion, the court must accept as true the factual allegations in the complaint and view them in the light most favorable to the plaintiff. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974); *Colle v. Brazos County*, 981 F.2d 237, 243 (5th Cir. 1993). Thus, a complaint must state specific facts, not simply legal and constitutional conclusions in order to survive a motion to dismiss. *Angel v. City of Fairfield*, 793 F.2d 737, 739 (5th Cir. 1986). A court should not grant a Rule 12(b)(6) motion simply because it disbelieves the complainant's factual allegations or considers recovery remote or unlikely. *Scheuer*, 416 U.S. at 236; *Columbia Natural Resources, Inc. v. Tatum*, 58 F.3d 1101, 1109 (6th Cir. 1995). A motion to dismiss, however, shall be granted if it

appears beyond doubt that the plaintiff can prove no set of facts that will entitle him to relief, *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957), or there is simply no legal theory entitling the plaintiff to relief, *Walker v. South Cent. Bell Tel. Co.*, 904 F.2d 275, 277 (5th Cir. 1990).

B. The ADA and Qualified Immunity

When acting in their official capacity, state employees performing discretionary functions are granted qualified immunity "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Melear v. Spears*, 862 F.2d 1177, 1184 n.8 (5th Cir. 1989). In order to constitute a "clearly established" right, a reasonable official must understand that what he is doing violates the right. *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). Thus, the assessment of a qualified immunity defense requires an examination of two factors. First, the court must consider whether the plaintiff has alleged the violation of a clearly established right. *Lampkin v. City of Nacogdoches*, 7 F.3d 430, 434 (5th Cir. 1993). Second, the court must consider whether the actions complained of, with reference to the law that existed at the time, were objectively reasonable. *Rankin v. Klevenhagen*, 5 F.3d 103, 108 (5th Cir. 1993).

In order to address the first step of the qualified immunity defense, this Court must determine if the provisions of the ADA apply to prisoners. The applicability of the ADA to state prisons has been a source of much consternation in the circuit courts.

Several circuits have found the broadly worded text of the statute clearly applies to prisons. *Crawford v. Indiana Dep't of Corrections*, 115 F.3d 481, 483-87 (7th Cir. 1997); *Duffy v. Riveland*, 98 F.3d 447, 454-55 (9th Cir. 1996); *Inmates of the Allegheny County Jail v. Wecht*, 93 F.3d 1124 (3d Cir.), *vacated and reh'g en banc granted*, 93 F.3d 1146 (1996); *see also Harris v. Thigpen*, 941 F.2d 1495, 1522 n.41 (11th Cir. 1991) (noting in dicta that Rehabilitation Act, a predecessor to the ADA, was applicable to prisoners). Others have refused to apply the statute to state prisons by virtue of the Eleventh Amendment. *Amos v. Maryland Dep't of Pub. Safety and Correctional Servs.*, 126 F.3d 589, 594-607 (4th Cir. 1997); *White v. Colorado*, 82 F.3d 364, 367 (10th Cir. 1996); *see also Onishea v. Hopper*, 126 F.3d 1323, 1350-51 n.61 (11th Cir. 1997) (Cox, J., concurring in part and dissenting in part) (questioning applicability of Rehabilitation Act to state prisons and arguing for en banc consideration of issue). The Fifth Circuit has not addressed this issue.

The Court's examination of the scope of the ADA must begin with the text of the statute itself. Title II of the ADA provides, in pertinent part,

> [N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. § 12132. Under the ADA, a "public entity" is defined as "any State or local government" and "any department, agency, special purpose district, or other instrumentality of a State or States or local Government." 42 U.S.C. § 12131(1). Without a doubt, the language of the ADA speaks in broad, all-encompassing terms.

In order to apply the ADA to state prisons, however, Congress must have clearly intended to alter the balance of power between the state and federal government. The constitutional system envisaged by the framers delineated powers between the federal and state governments. The Supreme Court has consistently recognized that Congress must speak in "unmistakably clear" language in order to alter this balance. *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242 (1985); *Pennhurst State Sch. and Hospital v. Halderman*, 465 U.S. 89, 99 (1984); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). As the Supreme Court stated in *Will v. Michigan Dep't of State Police*, "[T]he requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision." 491 U.S. 58, 65 (1989) (citing *United States v. Bass*, 404 U.S. 336, 349 (1971)). When faced with legislation potentially affecting traditional notions of federalism, a court must "be certain of Congress' intent before finding that federal law overrides" the previously established balance of power between the federal and state governments. *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) (quoting *Atascadero State Hospital*, 473 U.S. at 243).

The management of prisons is a governmental duty traditionally reserved to states. As the Supreme Court noted in *Procunier v. Martinez*,

> One of the primary functions of government is the preservation of societal order through enforcement of the criminal law, and the maintenance of penal institutions is an essential part of that task.

416 U.S. 396, 412 (1974), *overruled on other grounds*, *Thornburgh v. Abbott*, 490 U.S. 401, 413-14 (1989). Recognizing the operation of prisons as a core government concern, the Supreme Court has also observed,

> It is difficult to imagine an activity in which a State has a *stronger interest*, or one that is *more intricately bound up with state laws, regulations, and procedures*, than the administration of its prisons.

Preiser v. Rodriguez, 411 U.S. 475, 491-92 (1973) (emphasis added). Thus, in order to interpret the breadth of the ADA, this Court must find that Congress considered and unambiguously intended to disrupt the previous balance of federal/state authority with respect to the operation and management of state prisons.

Unguided by the Fifth Circuit and unpersuaded by arguments to the contrary, this Court holds that Congress did not clearly intend that the ADA should apply in the context of state prisons. With respect to the treatment of prisoners housed therein, state prisons do not clearly fall within the proscription of the ADA. As noted by the Fourth Circuit, Title II of the ADA is entitled "Public Services" -- a designation not readily applied in the prison context where the public is purposefully excluded. *Amos*, 126 F.3d at 596 ("'Public Services' -- connotes a ban on discrimination in services provided to the public, not in the prison context where the public is excluded.") (quoting *Torcasio v. Murray*, 57 F.3d 1340, 1346-47 n.5 (4th Cir. 1995)).

Whether a prisoner falls within the ADA's definition of a "qualified individual" is ambiguous at best. Under the ADA, discrimination against a "qualified individual with a disability" who "meets the essential eligibility requirements for the

receipt of services or the participation in programs or activities provided by a public entity" is forbidden. Both the Fourth and Tenth Circuits have refused to find that a prisoner can be characterized as a "qualified individual" for the purposes of the ADA. *Amos*, 126 F.3d at 596; *White*, 82 F.3d at 367 (adopting the reasoning of *Williams v. Meese*, 926 F.2d 994, 997 (10th Cir. 1991) (holding federal prison was not a program or activity for the purposes of the Rehabilitation Act)); *see also Bryant v. Madigan*, 84 F.3d 246, 248 (7th Cir. 1996) (questioning whether prisoner should be considered qualified individual under ADA); *but see Crawford*, 115 F.3d at 483 (rejecting *Bryant* "qualified individual" analysis in prisoner context). Finding the terms "eligible" and "participate" imply some degree of voluntariness, the Fourth Circuit found that Congress did not clearly intend that the ADA would apply in the context of correctional facilities where prisoners are held against their will. *Amos*, 126 F.3d at 596.

When examined in light of the entire statutory scheme, this Court is unable to clearly discern a congressional intention to include state correctional facilities within the ambit of Title II of the ADA. As such, the actions Hall attributes to the defendants could not have violated a "clearly established statutory right" and, thus, do not state a cause of action. In the alternative, due to the ambiguous language of the ADA, lack of guidance from the Fifth Circuit, and entrenched disagreement among the sister circuits, this Court finds that the defendants are entitled to qualified immunity for their actions with respect to Hall's ADA claim. Certainly, Hall's rights under the ADA were not so

clearly established that a reasonable state prison official would have realized his actions constituted a violation of the ADA.[4]

C. Official Capacity Claims Under Section 1983[5]

All claims for money damages against the defendants in their official capacities are dismissed. The Eleventh Amendment precludes actions for damages against a state. *Kentucky v. Graham*, 473 U.S. 159, 169 (1985). Further, claims against state employees in their official capacities are the functional equivalent of suits against the state. *Will*, 491 U.S. at 71. Therefore, unless specifically abrogated by Congress, the Eleventh Amendment prohibits claims for monetary damages against state employees acting in their official capacity. *Graham*, 473 U.S. at 169 ("[A] judgment against a public servant 'in his official capacity' imposes liability on the entity that he represents."). Because Congress failed to explicitly override the Eleventh Amendment with respect to

---

[4] The Court also notes that Hall's allegations merely amount to a claim for the wrongful denial of medical care. In *Bryant*, the Seventh Circuit refused to allow similar claims to proceed under the ADA, stating, "Even if there were (as we doubt) *some* domain of applicability of the [ADA] to prisoners, the [ADA] would not be violated by a prison's simply failing to attend to the medical needs of its disabled prisoners." 84 F.3d at 249.

[5] Hall's status as a federal prisoner held in a state facility does not affect this Court's analysis of the present dispute. A state does not become a federal actor for the purposes of liability by agreeing to house state prisoners. *See generally Harper v. United States*, 515 F.2d 576, 578 (5th Cir. 1975) (holding actions of state prison employees not imputed to federal government by virtue of contractual relationship). As such, Hall must establish liability against the accused officials in their capacity as state, not federal, employees.

actions under Section 1983, Hall's claims against the defendants in their official capacities are, likewise, barred. *Will*, 491 U.S. at 64-71.

D. Hall's Constitutional Claims Under Section 1983

In order to set forth a cause of action under Section 1983, Hall must prove that the defendants, acting under the color of state law, deprived him of a right, privilege, or immunity secured by the Constitution. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691-92 (1978). Mere conclusory allegations will not support a Section 1983 claim. *Baker v. Putnal*, 75 F.3d 190, 195 (5th Cir. 1996); *Schultea v. Wood*, 47 F.3d 1427, 1433 (5th Cir. 1995). Instead, Hall must allege facts specifying the individual defendant's personal involvement in the deprivation. *Murphy v. Kellar*, 950 F.2d 290, 292 (5th Cir. 1992).

In *Estelle v. Gamble*, the Supreme Court recognized a prison's obligation to supply inmates with medical care. 429 U.S. 97, 104 (1976). However, in order to establish a violation of the prisoner's Eighth Amendment rights, the acts or omissions of the defendant must be "sufficiently harmful to evidence deliberate indifference to serious medical needs." *Id.* at 106. In order to constitute "an unnecessary and wanton infliction of pain," a prison official must have known of and disregarded an excessive risk to the prisoner's health or safety. *Farmer v. Brennan*, 511 U.S. 825, 844 (1994); *Reeves v. Collins*, 27 F.3d 174, 176 (5th Cir. 1994). Only under exceptional circumstances will an

official's knowledge of a substantial risk be inferred by the obviousness of the risk. *Farmer*, 511 U.S. at 842-43, 843 n.8; *Reeves*, 27 F.3d at 176.

Negligent failure to supply medical care, standing alone, does not rise to the level of a constitutional deprivation. *Estelle*, 429 U.S. at 105-06. Inadvertent failures to supply medical care or negligent diagnoses do not establish deliberate indifference. *Id.* Further, a decision by a prison doctor not to perform additional diagnostic tests or to prescribe other forms of treatment is a matter of medical judgment and does not constitute cruel and unusual punishment. *Id.* at 107-08. While deliberate indifference may be manifested by a doctor's failure to respond to a prisoner's needs or by prison guards intentionally denying or delaying access to medical treatment,[6] the alleged facts must "*clearly evince* the medical need in question and the alleged official dereliction." *Johnson v. Treen*, 759 F.2d 1236, 1238 (5th Cir. 1985).

1. Hall's Claims Against the Doctors

Even if Hall's allegations are taken as true, the acts and omissions of the Doctors do not amount to a constitutional deprivation of medical care. Although Hall claims six medical appointments were canceled, Hall was not denied access to medical care and consistently received medical attention throughout his incarceration. Hall's allegations with respect to missed seizure medications do not amount to deliberate

---

[6] *See id.* at 104-05.

indifference. Once apprised of the low levels of medication in the plaintiff's blood, the Doctors attempted to cure the deficiency through alternative approaches to Hall's treatment regimen. Hall's complaints of kidney problems were not dismissed by the Doctors. In fact, an inquiry into the cause of Hall's kidney condition lead to the detection and management of Hall's previously undiagnosed diabetic condition. Presented with a history consistent with herpes, the Doctors' misdiagnosis of Hall's sores and rash fails to amount to a claim of constitutional proportions. When viewed in the light most favorable to the plaintiff, the Doctors' decision not to issue a Special Needs Advisement regarding the use of leg irons on the plaintiff constitutes a professional medical judgment that will not support a Section 1983 claim.

Although potentially negligent, the Doctors' alleged conduct was not deliberately indifferent to Hall's medical needs. Deliberate indifference stems from the knowledge of a substantial risk of harm and reckless disregard of the presented risk. When presented with Hall's myriad symptoms, the Doctors attempted to effectively diagnose and treat his conditions. The role of this Court is not to question the professional judgment of the medical doctors that treat inmates. Instead, this Court is bound to enforce the dictates of the Constitution. Hall's complaints do not amount to the "unnecessary and wanton infliction of pain" proscribed by Eighth Amendment and, as such, must be dismissed. *Estelle*, 429 U.S. at 105-06.

2. Hall's Section 1983 Claims Against Sheriff Thomas and Quinn[7]

Based on the allegations set forth in the original complaint and Court ordered Rule 7(a) reply, the plaintiff has failed state a claim under Section 1983 against Sheriff Thomas or Quinn. In order to assert a Section 1983 cause of action against an official in his individual capacity and overcome an asserted qualified immunity defense, a plaintiff must plead specific conduct on the part of each named defendant giving rise to an alleged constitutional violation. *Schultea*, 47 F.3d at 1434; *Murphy*, 950 F.2d at 292. Although Sheriff Thomas and Quinn may be held liable under Section 1983 for failure to properly train or supervise subordinates,[8] Hall must support the allegations in his complaint with factual specificity. *Schultea*, 47 F.3d at 1434.

The plaintiff has failed to allege individual conduct on the part of Sheriff Thomas or Quinn tending to establish improper supervision or failure to adequately train. The plaintiff's complaint merely states conclusory allegations of constitutional violations. *See id.* at 1433 ("[T]he district court must insist that a plaintiff suing a public official under § 1983 file a short and plain statement of his complaint, a statement that rests on

---

[7] On July 7, 1997, the plaintiff tendered Requests for Production of Documents to Sheriff Thomas and Quinn. Sheriff Thomas and Quinn returned responses and objections to the plaintiff's requests on August 7, 1997. On August 20, 1997, Sheriff Thomas and Quinn produced substantial records to the plaintiff. On August 19, 1997, this Court entered a protective order (Instrument #33) pursuant to the stipulations of Sheriff Thomas, Quinn, Berry, and the plaintiff. In this protective order, the parties agreed that no further discovery with respect to Sheriff Thomas, Quinn, or Berry would occur until after the Court ruled on the defendants' dispositive motions.

[8] *Baker*, 75 F.3d at 199.

more than conclusions alone."). Although given the opportunity, Hall has twice refused to support the allegations found in his original complaint with specific evidence of constitutional violations. In response to Sheriff Thomas' and Quinn's motions for summary judgment, the plaintiff claimed that insufficient discovery had been completed and, as such, he was unable to support a proper reply. In light of the parties' stipulated protective order,[9] this argument cannot preserve the plaintiff's action. The Court also offered the plaintiff the protection of a Rule 7(a) reply with which to support his complaint.[10] Again, the plaintiff fell woefully short of any factual specificity. In fact, Hall merely asserted that Sheriff Thomas and Quinn were "generally familiar with the policies and procedures of the Harris County Sheriff's Department." As such, Hall's claims against Sheriff Thomas and Quinn are dismissed pursuant to Fed. R. Civ. P. 12 (b)(6).[11]

3. Hall's Section 1983 Claim Against Berry

When viewed as a whole, the plaintiff's claims against Berry amount to a claim of deliberate indifference to serious medical needs. Although Hall questions the

---

[9] *See supra* note 7.

[10] *See* December 18, 1997 Order (Instrument #56).

[11] Although Sheriff Thomas and Quinn styled their pleadings as motions for summary judgment, this Court has not considered any evidence beyond the plaintiff's original complaint and Rule 7(a) reply in dismissing these claims.

manner in which he was classified,[12] the only individual conduct attributable to Berry for Section 1983 purposes relates to a letter sent to the plaintiff's attorney. In this letter, Berry promises to "review" the plaintiff's classification and medical needs. Hall claims that no "review" actually occurred and, as a consequence, Hall was deprived of adequate medical care.

Even when taken as true, the allegations in Hall's complaint fail to state a cause of action under Section 1983. At worst, Berry's failure to conduct a review of the plaintiff's medical needs constituted mere negligence. *Estelle*, 429 U.S. at 105-06 (holding negligence alone does not rise to the level of deliberate indifference). Furthermore, the plaintiff offers no evidence that Berry's failure, if any, denied or delayed the plaintiff's access to medical treatment. *Estelle*, 429 U.S. at 104-05. In fact, the record is overwhelmingly clear that Hall has been given appropriate access to doctors and medical treatment throughout his incarceration. *See supra* Section III.D.1. As such, Hall's claim against Berry must be dismissed under Fed. R. Civ. P. 12(b)(6).

---

[12] Hall also questions his initial classification and assignment to administrative segregation. However, a prisoner has no federally protected liberty interest in "remaining in a particular prison or *a particular unit within a prison*." *Mitchell v. Hicks*, 614 F.2d 1016, 1018 (5th Cir. 1980) (emphasis added) (citing *Meachum v. Fano*, 427 U.S. 215 (1976) and *Montanye v. Haymes*, 427 U.S. 236 (1976)). As such, a prisoner must resort to a state law entitlement in order to set forth a right protected by due process. Hall cites no state statute, prison regulation, or informal prison policy sufficient to create a constitutionally protected due process right with respect to his classification at the Harris County Jail. *Mitchell*, 614 F.2d at 1019.

IV. CONCLUSION

Although the plaintiff obviously suffers from severe mental and physical illnesses, this Court refuses to condemn the actions of the defendants. The plaintiff was not denied access to medical care, and the treatment prescribed by the Doctors was not inconsistent with the medical history presented by the plaintiff. As such factors are apparent from the record, the Doctors' motion for summary judgment is hereby GRANTED. As the plaintiff has failed to state a cause of action against Sheriff Thomas, Quinn, and Berry, their respective motions are also GRANTED.

Based on the foregoing, the plaintiff's Section 1983 claims against the Doctors, Sheriff Thomas, Quinn, and Berry, individually, are DISMISSED. The alleged conduct of the Doctors and Berry does not rise to the level of a constitutional violation. With respect to Sheriff Thomas and Quinn, the plaintiff has failed to specify *individual* conduct which caused a deprivation of a constitutional right.

The plaintiff's claims under the ADA, 42 U.S.C. § 12132, are DISMISSED with respect to *all named defendants*. The language of the ADA does not provide this Court with the clear congressional intention necessary to alter the existing federal and state balance of power in the prison context. Furthermore, the plaintiff has not shown that a reasonable prison official would have known that his actions constituted a violation of the ADA.

The plaintiff's official capacity claims under Section 1983 against *all named defendants* are DISMISSED to the extent the plaintiff requests money damages.

As the plaintiff is presently incarcerated in the Montgomery County Jail, the plaintiff's request for injunctive relief under Section 1983 is DISMISSED AS MOOT. The Eighth Amendment and prison administrative procedures have adequately protected the prisoner thus far. Further, no evidence of potential retaliatory conduct has been presented to this Court. Based on these considerations, injunctive relief is, therefore, inappropriate.

The sole remaining claims in this dispute are the plaintiff's Section 1983 causes of action against Pamela Wilson, K. Howard, and Marcorif Thomas, individually. The Court takes this opportunity, pursuant to Fed. R. Civ. P. 4(m), to advise the plaintiff that the time for serving Pamela Wilson and Marcorif Thomas has expired. Barring the submission of memoranda, within ten days of this date, showing good cause for this failure, the plaintiff's claims against these two defendants will be dismissed for want of prosecution.

Signed this 15th day of January, 1998.

KENNETH M. HOYT
United States District Judge