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United States District Court, N.D. California.

Michael RHINEHART, Plaintiff,
v.
James GOMEZ, et al., Defendants.

C-90-2335-VRW. | Oct. 17, 1995.

Opinion

ORDER

WALKER, District Judge.

*1 On March 20, 1995, the court referred defendant's summary judgment motion to Chief Magistrate Judge Langford for a recommended disposition. Chief Magistrate Judge Langford assigned the case to Magistrate Judge Brazil, who submitted his recommended disposition to the court on August 8, 1995. Plaintiff timely objected to Magistrate Judge Brazil's recommendations, and the matter is currently before the court.

I

A

Plaintiff, a prisoner housed in the Security Housing Unit ("SHU") at Pelican Bay State Prison, filed this 42 USC § 1983 action on August 15, 1990. In his complaint, plaintiff sought both declaratory and injunctive relief and damages as remedies for what he characterizes as his improper placement in the SHU.

Although defendants moved for summary judgment on the merits of plaintiff's claim, Magistrate Judge Brazil recommended dismissing plaintiff's complaint for a different reason: it is moot. Magistrate Judge Brazil's recommendation was based on two findings. The magistrate judge first found that plaintiff had lost his damages claims when he failed to file an amended complaint. The magistrate judge then found that plaintiff's remaining claim for injunctive relief, which was based on the theory that plaintiff's placement in the SHU was improper to the extent it was grounded on his

alleged gang membership, was mooted by the subsequent imposition of a 48 month SHU term as discipline for plaintiff's assault on prison staff. Plaintiff has objected to both of these findings, as well as to Magistrate Judge Brazil's recommendation of dismissal.

B

The court's referral of defendant's summary judgment motion to Chief Magistrate Judge Langford was made under 28 USC § 636(b)(1)(B), which allows a district court to refer such matters to magistrates for "proposed findings of fact and recommendations for [their] disposition." The court thus must conduct a de novo review of both the factual and legal conclusions contained in the Magistrate Judge's recommendation. *Brown v Wesley's QuakerMaid, Inc.*, 771 F2d 952 (6th Cir), *cert denied*, 479 US 830 (1985).

II

Plaintiff's first objection is to the magistrate's conclusion that plaintiff lost his damages claims when he failed to amend his complaint. In order to recover damages in a § 1983 action, a plaintiff must identify individual defendants and show that they proximately caused the deprivations of his federally protected rights. *Leer v Murphy*, 844 F2d 628, 634 (9th Cir 1988). State officials are not subject to suit under § 1983 unless they play an affirmative part in the alleged deprivation. *King v Atiyeh*, 814 F2d 565, 568 (9th Cir 1987). Although plaintiff identified specific individual defendants in his complaint, Judge Patel found in a December 17, 1990, order that plaintiff had not "linked the named defendants to his injuries" and therefore granted plaintiff leave to amend his complaint to add facts which would state a damages claim against the individual defendants. As Judge Caulfield noted in a November 3, 1992, order, plaintiff never made such amendments. Plaintiff has thus failed to state a damages claim as a matter of law, and the magistrate judge was correct in concluding that plaintiff retains only his claims for declaratory and injunctive relief. This fact is not changed by plaintiff's objection that he has consistently claimed damages in this case; this may be true, but it is beside the point. Plaintiff's original complaint did not state a valid claim for damages. Plaintiff was given an opportunity to amend his complaint and cure this defect and plaintiff failed to do so. As a result, plaintiff may not now seek damages in this action, even if he has consistently purported to do so.

***2** Plaintiff's second objection is to the magistrate's conclusion that his claim for injunctive and declaratory relief is moot. The gravamen of plaintiff's complaint is that his placement in the SHU violates due process because it is based on his alleged gang membership and prison officials have no proof that he is indeed a gang member. Plaintiff further alleges that the only way he can currently leave the SHU is to participate in a debriefing interview, which interview he claims violates his right against self-incrimination. Because plaintiff claims that he is being improperly housed in the SHU based on his alleged gang membership, and because plaintiff claims that prison officials currently provide no way of leaving the SHU which does not violate his fifth amendment rights, he seeks an injunction releasing him from the SHU.

The key to plaintiff's complaint, then, is his allegation that his detention in the SHU is improperly based on his alleged gang membership. As the magistrate judge discovered, however, plaintiff is currently being housed in the SHU for disciplinary reasons as well. On April 27, 1993, the prison classification committee assessed plaintiff a 48 month SHU term as discipline for an assault on prison staff. This term has a minimum early release date of April 27, 1996. It is apparent, then, that although plaintiff may have originally been placed in the SHU due to his alleged gang membership, his complaint arising out of that placement was rendered moot by the subsequently imposed disciplinary term. Thus, even if the court were to find that plaintiff's original placement in the SHU violated due process, the court could not order his release from the SHU because that finding would not affect the disciplinary term in the SHU which plaintiff is currently

serving. Plaintiff's complaint thus no longer presents a live case or controversy, and the court accordingly lacks jurisdiction over its subject matter. *See generally Cox v McCarthy*, 829 F2d 800, 804 (9th Cir 1987).

The above conclusion is not affected by plaintiff's objection that he did not commit the attack on prison staff which is the basis of his 48 month disciplinary SHU term. The merits of that term--which were the subject of another action brought by plaintiff, *Rhinehart v Marshall*, C-93-3747-VRW, which is currently on appeal to the Ninth Circuit--are not currently before the court. The issue currently before the court is not whether the disciplinary term is itself invalid, but rather whether the existence of that term, given that it has not yet been invalidated by a court, moots plaintiff's current complaint. As was explained above, it does so.

In sum, plaintiff's complaint requests injunctive and declaratory relief which was made impossible when the disciplinary SHU term was imposed. The court accordingly lacks jurisdiction over the subject matter of plaintiff's complaint and therefore DISMISSES the complaint WITHOUT PREJUDICE. The court notes that if defendants hold plaintiff in the SHU after the expiration of his disciplinary term, plaintiff will then be able to refile this complaint, since his due process claims will then be ripe for adjudication.

***3 IT IS SO ORDERED.**